Nathan Shaheen

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

MOTION RECORD
(motion for summary judgment)

McCarthy Tétrault LLP
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Lawyers for the Plaintiffs

INDEX

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

ONTARIO
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BETWEEN:

MARCUS WIDE of Grant Thornton (British Virgin Islands) Limited
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Tab

G. Exhibit "G" – Letter from McGuire Woods LLP to Ogilvy Rénault LLP dated April 10, 2009

H. Exhibit "H" – Order of the Eastern Caribbean Supreme Court dated April 15, 2009

I. Exhibit "I" – Reasons for Judgment of Justice Auclair dated September 11, 2009

J. Exhibit "J" – Order of the Quebec Court of Appeal dated December 17, 2009

K. Exhibit "K" – Judgment of the Supreme Court of Canada dated December 22, 2011

L. Exhibit "L" – Statement of Claim for fraud against Allen Stanford (issued in the Alberta Court of Queen's Bench dated April 17, 2009

M. Exhibit "M" – Statement of Claim against TD Bank (issued in the Alberta Court of Queen's Bench) re *Norwich* application issued April 17, 2009

N. Exhibit "N" – Reasons for Judgment of the Honourable Associate Chief Justice Wittman dated June 24, 2009

O. Exhibit "O" – Notice of Application in the Ontario Superior Court of Justice (Commercial List) issued April 24, 2009

P. Exhibit "P" – Notice of Application in the Ontario Superior Court of Justice issued July 29, 2009

Q. Exhibit "Q" – Notice of Motion to institute proceedings in the Quebec action dated August 17, 2011

R. Exhibit "R" – Affidavit of Stephanie Paige of Bennett Jones LLP sworn February 21. 2012

S. Exhibit "S" – Reasons for Judgment of Justice Auclair dated January 28, 2014

T. Exhibit "T" – First Amended Petition in Texas action

TAB 1

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

NOTICE OF MOTION
(motion for summary judgment)

THE TORONTO-DOMINION BANK ("**TD Bank**") will make a motion to a judge presiding over the Commercial List on a date to be fixed, at 330 University Avenue, Toronto.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR:

1. summary judgment dismissing this action;

2. costs of this motion and of the action; and

3. such further and other relief as this Court considers just.

THE GROUNDS FOR THE MOTION ARE:

1. The plaintiffs purport to sue TD Bank for losses allegedly suffered by investors in certificates of deposit issued by Stanford International Bank Ltd. ("**SIB**"), which was based in Antigua.

2. On February 16, 2009, a U.S. District Court in Dallas, Texas issued an order (the "**Freeze Order**") freezing the worldwide assets of SIB on the basis that SIB had engaged in a Ponzi scheme fraud.

3. From the time of the issuance of the Freeze Order onwards, it was publicly and generally known that SIB had engaged in a fraud.

4. Prior to the Freeze Order, TD Bank had provided correspondent banking services to SIB and related entities. This fact was also generally known as of February 2009.

5. In the months following the Freeze Order, a number of pieces of litigation were commenced worldwide in respect of the matter. In Canada, the litigation included proceedings brought by Bennett Jones LLP, currently counsel for Marcus Wide and High Dickson in their capacities as joint liquidators of SIB appointed by the Eastern Caribbean Supreme Court (the "**Joint Liquidators**"), and proceedings against TD Bank:

(a) on February 25, 2009, Bennett Jones LLP commenced a putative class action in the Alberta Court of Queen's Bench (under the style *Dynasty Furniture Limited (as a representative plaintiff) v. SIB*, Court File No. 0901-02821);

(b) on April 6, 2009, the Joint Liquidators' predecessors, also appointed by the Eastern Caribbean Supreme Court, brought an *ex parte* motion before a bankruptcy registrar of the Québec Superior Court seeking recognition under the *Bankruptcy and Insolvency Act* of the bankruptcy proceedings in the Eastern Caribbean Supreme Court (under the style *Stanford International Bank Ltd. and Stanford Trust Company Ltd. (Receivership of)*, Court File No. 500-11-036045-090);

(c) on April 17, 2009, Bennett Jones LLP, acting for a group of plaintiffs known as the "Dynasty Plaintiffs", commenced a fraud action against Allen Stanford, the owner of SIB, in the Alberta Court of Queen's Bench (under the style *Dynasty Furniture Manufacturing Ltd. v. Stanford*, Court File No. 0901-05677);

(d) on April 17, 2009, the Dynasty Plaintiffs also commenced a Norwich application against TD Bank in the Alberta Court of Queen's Bench (under the style *Dynasty Furniture Manufacturing Ltd. v. The Toronto-Dominion Bank*, Court File No. 0901-05717), with Bennett Jones LLP acting for the Dynasty Plaintiffs;

(e) on April 24, 2009, the Attorney General of Ontario commenced a proceeding in the Ontario Superior Court of Justice under the *Civil Remedies Act*, S.O. 2001, c. 28 in respect of approximately $20 million of SIB's funds that were on deposit with TD Bank at the time of the Freeze Order (under the style *Attorney General of*

Ontario v. The Contents of Various Financial Accounts Held With The TD Bank and TD Waterhouse (in rem), Court File No. CV-09-8154-00CL);

(f) on June 19, 2009, the United States Department of Justice issued a press release announcing that Robert Allen Stanford, the Chairman of SIB, and several other SIB executives had been indicted on fraud and obstruction charges related to SIB's Ponzi scheme fraud; and

(g) after the Dynasty Alberta Action and the Dynasty Alberta Norwich Application were stayed by the Alberta Court of Queen's Bench on the basis of *forum non conveniens*, on July 29, 2009, the Dynasty Plaintiffs, represented by Bennett Jones LLP, reinstituted the Dynasty Alberta Norwich Application by bringing an application in the Ontario Superior Court of Justice (under the style *Dynasty Furniture Manufacturing Ltd. v. The Toronto-Dominion Bank*, Court File No. 09-8300-00CL).

6. As a result, a reasonable person with the abilities and in the circumstances of the Joint Liquidators first ought to have known of a potential claim against TD Bank on the date of the Freeze Order, or in the alternative no later than February 25, 2009, or in the alternative no later than April 6, 2009, or in the alternative no later than April 17, 2009, or in the alternative no later than April 24, 2009, or in the alternative no later than June 19, 2009, or in the alternative no later than July 29, 2009.

7. Accordingly, since this action was not commenced until August 22, 2011, it is statute barred and ought to be dismissed. TD Bank pleads and relies on the *Limitations Act, 2002,* S.O. 2002, c. 24, Sch. B.

8. TD will also rely on such further and other grounds as counsel may advise and this Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. the Affidavit of Wolfgang Mersch, sworn October 10, 2014; and

2. such further and other materials as counsel may advise and this Court may permit.

October 10, 2014

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Lawyers for the Plaintiffs

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at Toronto

NOTICE OF MOTION

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Lawyers for the Defendant

DOCS 13848054

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TAB 2

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 WOLFGANG MERSCH
(motion for summary judgment)

I, Wolfgang Mersch, of the City of Toronto in the Province of Ontario, **MAKE OATH AND SAY:**

Introduction

1. I am currently Deputy Global Anti-Money Laundering Officer, Wholesale and Corporate at The Toronto-Dominion Bank ("TD Bank"). I was formerly Managing Director and Head of the Global Transaction Banking department at TD Bank. In that latter role, I was responsible for TD Bank's relationship with Stanford International Bank ("**SIB**"), As such, I have knowledge of the matters to which I hereinafter depose.

2. This affidavit is sworn in support of a motion for summary judgment by TD Bank to dismiss this action on the basis that it was commenced after the expiry of the limitation period under the *Limitations Act, 2002*. The action was commenced on August 22, 2011 by way of a notice of action, a copy of which is at Exhibit "A".

Prior to the Freeze Order

3. From the early 1990s until February 2009, TD Bank provided correspondent banking services to SIB, a bank based in Antigua, as well as to certain entities affiliated with SIB. Correspondent banking involves the provision by one bank to another bank of banking services such as electronic wire payments, cash management solutions and paper clearing services, typically when the bank employing the correspondent banking services does not have facilities in a particular currency.

The Freeze Order

4. On February 16, 2009, a U.S. District Court in Dallas, Texas issued an order freezing the worldwide assets of SIB (the "**Freeze Order**") on the basis that SIB had been engaged in a fraud. A copy of the Freeze Order is at Exhibit "B".

Media coverage

5. The Freeze Order and the discovery that SIB had engaged in a multi-billion dollar Ponzi scheme fraud made international news. Exhibit "C" consists of press articles from February 2009 in which reference is made to the SIB fraud. Some of the articles mention TD Bank's role as a correspondent bank for SIB. The articles were located in a search conducted by McCarthy Tétrault LLP, TD Bank's counsel.

The litigation fallout

6. Not surprisingly given the scale of the SIB fraud, litigation commenced almost immediately upon its discovery.

7. There has been litigation worldwide and I will not attempt in this affidavit to mention all of it. Instead, I will mention only the litigation pertinent to the motion that is presently before the Court, specifically litigation in Canada and litigation involving TD Bank.

The putative class action in Alberta

8. On February 25, 2009, Bennett Jones LLP (which is now counsel for the plaintiffs in this action) commenced a putative class action in the Alberta Court of Queen's Bench against certain of the principals of SIB. The statement of claim in this putative class action is at Exhibit "D".

9. The putative class action was discontinued on March 30, 2009.

Proceedings involving the Former Officeholders

10. In February 2009, the Eastern Caribbean Supreme Court appointed Nigel Hamilton-Smith and Peter Wastell (the "**Former Officeholders**") as receiver-managers of SIB.

11. On April 6, 2009, the Former Officeholders brought an *ex parte* motion before a bankruptcy registrar of the Quebec Superior Court seeking recognition under the Canadian *Bankruptcy and Insolvency Act* of the insolvency proceedings in the Eastern Caribbean Supreme Court. The order was granted (a copy is at Exhibit "E", although as noted in paragraph 14 below it was subsequently set aside by a judge of the Quebec Superior Court.

12. The Former Officeholders were certainly aware of TD Bank's involvement with SIB. This is illustrated by an exchange of correspondence on April 8 and 10, 2009 between Ogilvy Renault LLP (Canadian counsel to the Former Officeholders) and McGuire Woods LLP (counsel to TD Bank) with respect to certain funds belonging to SIB that TD Bank was holding at the time of the Freeze Order. A copy of this correspondence is at Exhibits "F" and "G".

13. On April 15, 2009, the Eastern Caribbean Supreme Court appointed the Former Officeholders as joint liquidators of SIB. The order of the court provided the Former Officeholders with the capacity to investigate and pursue third party claims on behalf of SIB. A copy of this order is at Exhibit "H".

14. On September 11, 2009, the Honourable Justice Auclair of the Quebec Superior Court set aside the order of the bankruptcy registrar, and instead recognized a receiver appointed by the

U.S. District Court. A copy of Justice Auclair's reasons for judgment is at Exhibit "I". An appeal from Justice Auclair's order was dismissed by the Quebec Court of Appeal on December 17, 2009 (see Exhibit "J"). An application for leave to appeal to the Supreme Court of Canada was dismissed on December 22, 2011 (see Exhibit "K").

The Dynasty proceedings in Alberta

15. On April 17, 2009, five investors in certificates of deposit issued by SIB (the "**Dynasty Plaintiffs**") commenced a fraud action against Allen Stanford, the owner of SIB, in the Alberta Court of Queen's Bench. A copy of this statement of claim is at Exhibit "L". Bennett Jones LLP acted for the Dynasty Plaintiffs.

16. Also on April 17, 2009, the Dynasty Plaintiffs also commenced a *Norwich* application against TD Bank in the Alberta Court of Queen's Bench. A copy of this statement of claim is at Exhibit "M". Once again, Bennett Jones LLP acted as counsel for the Dynasty Plaintiffs.

17. On June 24, 2009, the Alberta Court of Queen's Bench stayed both proceedings brought by the Dynasty Plaintiffs in Alberta on the basis of *forum non conveniens*, holding that Ontario was the more appropriate forum. The reasons for judgment of the Honourable Associate Chief Justice Wittmann (as he then was) are at Exhibit "N". No appeal was taken from this order.

The civil forfeiture proceedings in Ontario

18. On April 24, 2009, the Attorney General of Ontario commenced an application in the Ontario Superior Court of Justice (Commercial List) under the Ontario *Civil Remedies Act* in respect of approximately $20 million of SIB's funds that were on deposit with TD Bank at the time of the Freeze Order. A copy of the notice of application is at Exhibit "O".

The Dynasty proceedings in Ontario

19. On July 29, 2009, the Dynasty Plaintiffs, still represented by Bennett Jones LLP, reinstituted their *Norwich* application against TD in the Ontario Superior Court of Justice. A copy of this notice of application is at Exhibit "P". This application was ultimately abandoned in 2013.

Commencement of this action as a "placeholder action" and the Joint Liquidators' Quebec action

20. In 2010 the Eastern Caribbean Supreme Court removed the Former Officeholders from office. On May 12, 2011, the Eastern Caribbean Supreme Court appointed the plaintiffs in this action, Marcus A. Wide and Hugh Dickson, as replacement joint liquidators of SIB (the "**Second Joint Liquidators**").

21. On August 17, 2011 and August 22, 2011 – in other words, more than two years after the Freeze Order and the commencement of all of the proceedings set out in paragraphs 8 to 19 above – the Second Joint Liquidators commenced two actions against TD Bank, one in Quebec (commenced on August 17, 2011) and one in Ontario (commenced on August 22, 2011). The notice of action in the Ontario proceeding is at Exhibit "A". The notice of motion to institute proceedings in the Quebec action is at Exhibit "Q".

22. The Second Joint Liquidators were quite open that they preferred to proceed with the Quebec action – no doubt because under Quebec law there is a three-year prescription (limitation) period as opposed to the two-year limitation period under Ontario law – even going so far as to call this action the "Ontario Placeholder Action" that "was issued only for the purposes of preserving any limitation period in Ontario that may be applicable to the causes of action to the extent that the Ontario Placeholder action ever has to be pursued (see the affidavit of Stephanie Paige of Bennett Jones LLP sworn February 21, 2012, a copy of which is at Exhibit "R").

23. On January 28, 2014, Justice Auclair dismissed the Quebec action on the basis of *forum non conveniens* motion and dismissed the Quebec action. His reasons for judgment are at Exhibit "S". No appeal was taken from this order.

The U.S. class action

24. TD Bank is also a defendant, along with several other financial institutions, in a putative class action purportedly brought on behalf of all investors in SIB. The Plaintiffs' First Amended Petition in that proceeding is at Exhibit "T". The action was originally commenced in a Texas

state court but it has been transferred to a federal court, the U.S. District Court for the Northern District of Texas. The proceedings are ongoing in the U.S. District Court.

SWORN BEFORE ME at the City of Toronto, in the Province of Ontario on October 10, 2014.

Commissioner for Taking Affidavits

GEOFF R. HALL

Wolfgang Mersch

TAB A

016

Court File No: CV-11-433385

ONTARIO
SUPERIOR COURT OF JUSTICE

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 -

TORONTO-DOMINION BANK

Defendant

NOTICE OF ACTION

TO THE DEFENDANT(S)

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the statement of claim served with this notice of action.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this notice of action is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

This is Exhibit "A" *referred to in the affidavit of* Wolfgang Mersch *sworn before me, this* 10th *day of* October, 20 14

A COMMISSIONER FOR TAKING AFFIDAVITS

DATE: August 22, 2011

Issued by: _____
Local Registrar

Address of Court Office:

393 University Avenue, 10th Floor
Toronto, ON M5G 1E6

TO: **THE TORONTO-DOMINION BANK**
Legal Department
12th Floor
66 Wellington Street West
Toronto, Ontario M5K 1A2

CLAIM

1. The plaintiffs claim from the defendant, Toronto-Dominion Bank ("TD Bank"):

   (a) damages in the amount of $20,000,000 and further amounts to be determined prior to trial;

   (b) prejudgment and post-judgment interest on the amounts awarded to the plaintiffs pursuant to sections 128 and 129 of the *Court of Justice Act*, R.S.O. 1990, c. C.43, as amended;

   (c) costs of this action, plus applicable harmonized sales taxes thereon; and

   (d) such further and other relief as this Honourable Court may deem just.

2. The plaintiffs have commenced an action in Quebec for substantially the same relief sought herein. The within notice of action is issued for the purposes of preserving any limitation period in Ontario that may be applicable to this action and is without prejudice to the plaintiffs' position that the action ought to proceed in Quebec pursuant to the law of Quebec.

3. Marcus A. Wide and Hugh Dickson of Grant Thornton LLP were appointed as joint liquidators of SIB (in liquidation) ("Joint Liquidators") by the Eastern Caribbean Supreme Court, the High Court of Justice Antigua and Barbuda on May 12, 2011 before the Honourable Justice Mario Michel (the "Appointment Order"). The Appointment Order also removed the previous joint liquidators, Nigel Hamilton-Smith and Peter Wastell (the "Outgoing Officeholders") by the terms of a removal order of Thomas, J. of the High Court of Justice Antigua and Barbuda dated June 8, 2010. The appointment of the Outgoing Officeholders occurred by order of the court of April 15, 2009 (entered on April 17, 2009) having determined that it was just and convenient that

SIB be liquidated and dissolved under the supervision of the Antiguan Court pursuant to the *International Business Corporations Act*, Cap. 222 of the laws of Antigua and Barbuda (as amended).

4. Stanford International Bank Limited ("SIB"), an international banking company based in Antigua, offered directly and through other companies such as, the Stanford Group Company ("SGC"), opportunities to customers around the world to purchase certificates of deposit (CDs).

5. Billions of dollars in CD's were sold to in excess of 21,000 customers in approximately 113 different countries.

6. However, Allen Stanford and others actively breached their fiduciary and other duties owed to SIB and its customers and converted and/or misappropriated the vast majority of funds that SIB received from customers to other uses, including to benefit themselves (the "CD Scheme").

7. SIB had offices in and is registered to do business in Quebec.

8. The Defendant, The Toronto Dominion Bank ("TD Bank"), acted as correspondent bank for SIB. In particular, TD Bank received and/or held customer funds, opened and maintained multiple bank accounts for SIB and disbursed SIB's funds around the world.

9. TD Bank failed to act to prevent the CD Scheme and Allen Stanford's breaches of fiduciary duties owed to SIB. By its acts and omissions TD Bank assisted Allen Stanford's breaches of fiduciary duties to SIB. Further, TD Bank failed to act as a reasonable banker would have in the circumstances. In the circumstances of the present matter, TD Bank was required to take reasonable measures to avoid causing a loss to SIB and its customers but failed to do so,

which caused significant injury and loss to SIB and to SIB's customers, all of whom are now creditors of the SIB estate.

10. The Appointment Order, among other things, vested all the assets of SIB in the Joint Liquidators as successors to and in substitution for the Outgoing Officeholders. The Joint Liquidators are taking steps around the world, including this action that is to preserve the plaintiffs' rights and remedies and is without prejudice to the plaintiffs' position advanced in the action commenced in Quebec, all for the benefit of the 21,000 creditors of the SIB estate, which creditors are the victims of the Investment Scheme.

Date: August 22, 2011

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Solicitors for the plaintiffs

MARCUS A. WIDE, et al.
Plaintiffs

v.

TORONTO-DOMINION BANK
Defendant
Court File No. CV-11-433385

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

NOTICE OF ACTION

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TAB B

ORIGINAL

022

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

SECURITIES AND EXCHANGE COMMISSION,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Case No.:
	§	
STANFORD INTERNATIONAL BANK, LTD., STANFORD GROUP COMPANY, STANFORD CAPITAL MANAGEMENT, LLC, R. ALLEN STANFORD, JAMES M. DAVIS, and LAURA PENDERGEST-HOLT	§	**3-09CV0298-L**
	§	
Defendants.	§	

TEMPORARY RESTRAINING ORDER, ORDER FREEZING ASSETS, ORDER REQUIRING AN ACCOUNTING, ORDER REQUIRING PRESERVATION OF DOCUMENTS, AND ORDER AUTHORIZING EXPEDITED DISCOVERY

This matter came before me, the undersigned United States District Judge, this 16th day of February 2009, on the application of Plaintiff Securities and Exchange Commission ("Commission") for the issuance of a temporary restraining order against Defendants Stanford International Bank, Ltd. ("SIB"), Stanford Group Company ("SGC"), Stanford Capital Management, LLC ("SCM"), R. Allen Stanford ("Stanford"), James M. Davis ("Davis"), and Laura Pendergest-Holt ("Pendergest-Holt") (collectively, "Defendants"), and orders freezing assets, requiring an accounting, prohibiting the destruction of documents, pulling the passports of Stanford, Davis, and Pendergest-Holt, authorizing expedited discovery, and alternative service of process and notice. On the basis of the papers filed by the Commission, and argument of Commission counsel, the Court finds as follows:

1. This Court has jurisdiction over the subject matter of this action and over the Defendants.

2. The Commission is a proper party to bring this action seeking the relief sought in its Complaint.

3. Venue is appropriate in the Northern District of Texas.

4. There is good cause to believe that Defendants have engaged in, and are engaging in, acts and practices which did, do, and will constitute violations of Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)], Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §78j(b)], Exchange Act Rule 10b-5 [17 C.F.R. § 240.10b-5], Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 ("Advisers Act") [15 U.S.C. §§ 80b-6(1), (2)], and Section 7(d) of the Investment Company Act of 1940 ("Investment Company Act") [15 U.S.C. § 80a-7(d)].

5. There is good cause to believe that Defendants will continue to engage in the acts and practices constituting the violations set forth in paragraph 4 unless restrained and enjoined by an order of this Court.

6. There is good cause to believe that Defendants used improper means to obtain investor funds and assets. There is also good cause to believe that Defendants will dissipate assets and that some assets are located abroad.

7. An accounting is appropriate to determine the disposition of investor funds and to ascertain the total assets that should continue to be frozen.

8. It is necessary to preserve and maintain the business records of Defendants from destruction.

9. This proceeding is one in which the Commission seeks a preliminary injunction.

10. The timing restrictions of Fed. R. Civ. P. 26(d) and (f), 30(a)(2)(C) and 34 do not apply to this proceeding in light of the Commission's requested relief and its demonstration of good cause.

11. Expedited discovery is appropriate to permit a prompt and fair hearing on the Commission's Motion for Preliminary Injunction.

12. There is good cause to believe that Stanford, Davis, and Pendergest-Holt may seek to leave the United States in order to avoid responsibility for the fraudulent acts alleged herein.

IT IS THEREFORE ORDERED THAT:

A. Defendants, their officers, directors, agents, servants, employees, attorneys, and all other persons in active concert or participation with them, are restrained and enjoined from violating Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], directly or indirectly, in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, by:

(1) employing any device, scheme, or artifice to defraud; or

(2) obtaining money or property by means of any untrue statement of material fact or any omission to state a material fact necessary in order to make the statement(s) made, in the light of the circumstances under which they were made, not misleading; or

(3) engaging in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser;

B. Defendants, their officers, directors, agents, servants, employees, attorneys, and all other persons in active concert or participation with them, are restrained and enjoined

from violating Section 10(b) of the Exchange Act or Rule 10b-5 [15 U.S.C. § 78j(b) and 17 C.F.R. §240.10b-5], directly or indirectly, in connection with the purchase or sale of any security, by making use of any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange:

(1) to use or employ any manipulative or deceptive device or contrivance in contravention of the rules and regulations promulgated by the Commission;

(2) to employ any device, scheme, or artifice to defraud;

(3) to make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

(4) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person;

C. Stanford, Davis, Pendergest-Holt, SGC, SCM, their officers, directors, agents, servants, employees, attorneys, and all other persons in active concert or participation with them, are restrained and enjoined from violating Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§80b-6(1), (2)], directly or indirectly, by use of the mails or any means or instrumentality of interstate commerce, by:

(1) employing any device, scheme, or artifice to defraud any client or prospective client; or

(2) engaging in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client;

D. SIB, SGC, their officers, directors, agents, servants, employees, attorneys, and all other persons in active concert or participation with them, are restrained and enjoined from violating Section 7(d) of the Investment Company Act [15 U.S.C. §80a-7(d)], directly or indirectly, by use of the mails or any means or instrumentality of interstate commerce, by:

(1) acting as an investment company, not organized or otherwise created under the laws of the United States or of a State, and offering for sale, selling, or delivering after sale, in connection with a public offering, any security of which such company is the issuer; or

(2) acting as a depositor of, trustee of, or underwriter for such a company; unless

(3) the Commission, upon application by the investment company not organized or otherwise created under the laws of the United States or of a State, issues a conditional or unconditional order permitting such company to register and to make a public offering of its securities by use of the mails and means or instrumentalities of interstate commerce.

5. Defendants, their officers, directors, agents, servants, employees, attorneys, and all other persons in active concert or participation with them, who receive actual notice of this Order by personal service or otherwise, and each of them, are hereby restrained and enjoined from, directly or indirectly, making any payment or expenditure of funds belonging to or in the possession, custody, or control of Defendants, or effecting any sale, gift, hypothecation, or other disposition of any asset belonging to or in the possession, custody, or control of Defendants, pending a showing to this Court that Defendants have sufficient funds or assets to satisfy all claims

arising out of the violations alleged in the Commission's Complaint or the posting of a bond or surety sufficient to assure payment of any such claim. This provision shall continue in full force and effect until further ordered by this Court and shall not expire.

6. All banks, savings and loan associations, savings banks, trust companies, securities broker-dealers, commodities dealers, investment companies, other financial or depository institutions, and investment companies that hold one or more accounts in the name, on behalf or for the benefit of Defendants are hereby restrained and enjoined, in regard to any such account, from engaging in any transaction in securities (except liquidating transactions necessary to comply with a court order) or any disbursement of funds or securities pending further order of this Court. This provision shall continue in full force and effect until further order by this Court and shall not expire.

7. All other individuals, corporations, partnerships, limited liability companies, and other artificial entities are hereby restrained and enjoined from disbursing any funds, securities, or other property obtained from Defendants without adequate consideration. This provision shall continue in full force and effect until further order by this Court and shall not expire.

8. Defendants are hereby required to make an interim accounting, under oath, within ten days of the issuance of this order or three days prior to any hearing on the Commission's Motion for Preliminary Injunction, whichever is sooner: (1) detailing all monies and other benefits which each received, directly or indirectly, as a result of the activities alleged in the Complaint (including the date on which the monies or other benefit was received and the name, address, and telephone number of the person paying the money or providing the benefit); (2) listing all current assets wherever they may be located and by whomever they are being held (including the name and address of the holder and the amount or value of the holdings); and (3)

listing all accounts with any financial or brokerage institution maintained in the name of, on behalf of, or for the benefit of, Defendants (including the name and address of the account holder and the account number) and the amount held in each account at any point during the period from January 1, 2000 through the date of the accounting. This provision shall continue in full force and effect until further order by this Court and shall not expire.

9. Defendants, their officers, directors, agents, servants, employees, attorneys, and all other persons in active concert or participation with them, including any bank, securities broker-dealer, or any financial or depositary institution, who receives actual notice of this Order by personal service or otherwise, and each of them, are hereby restrained and enjoined from destroying, removing, mutilating, altering, concealing, or disposing of, in any manner, any books and records owned by, or pertaining to, the financial transactions and assets of Defendants or any entities under their control. This provision shall continue in full force and effect until further order by this Court and shall not expire.

10. The United States Marshal in any judicial district in which Defendants do business or may be found, or in which any Receivership Asset may be located, is authorized and directed to make service of process at the request of the Commission.

11. The Commission is authorized to serve process on, and give notice of these proceedings and the relief granted herein to, Defendants by U.S. Mail, e-mail, facsimile, or any other means authorized by the Federal Rules of Civil Procedure.

12. Expedited discovery may take place consistent with the following:

A. Any party may notice and conduct depositions upon oral examination and may request and obtain production of documents or other things for inspection and copying from parties prior to the expiration of thirty days

after service of a summons and the Plaintiff Commission's Complaint upon Defendants.

B. All parties shall comply with the provisions of Fed. R. Civ. P. 45 regarding issuance and service of subpoenas, unless the person designated to provide testimony or to produce documents and things agrees to provide the testimony or to produce the documents or things without the issuance of a subpoena or to do so at a place other than one at which testimony or production can be compelled.

C. Any party may notice and conduct depositions upon oral examination subject to minimum notice of seventy-two (72) hours.

D. All parties shall produce for inspection and copying all documents and things that are requested within seventy-two (72) hours of service of a written request for those documents and things.

E. All parties shall serve written responses to written interrogatories within seventy-two (72) hours after service of the interrogatories.

13. All parties shall serve written responses to any other party's request for discovery and the interim accountings to be provided by Defendants by delivery to the Plaintiff Commission address as follows:

UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Fort Worth Regional Office
Attention: David Reece
Burnett Plaza, Suite 1900
801 Cherry Street, Unit #18
Fort Worth, TX 76102-6882
Facsimile: (817) 978-4927

and by delivery to other parties at such address(es) as may be designated by them in writing. Such delivery shall be made by the most expeditious means available, including e-mail and facsimile.

14. Stanford, Davis, and Pendergest-Holt shall surrender their passports, pending the determination of the Commission's request for a preliminary injunction, and are barred from traveling outside the United States.

15. Defendants, their directors, officers, agents, servants, employees, attorneys, depositories, banks, and those persons in active concert or participation with anyone or more of them, and each of them, shall:

(a) take such steps as are necessary to repatriate to the territory of the United States all funds and assets of investors described in the Commission's Complaint in this action which are held by them, or are under their direct or indirect control, jointly or singly, and deposit such funds into the Registry of the United States District Court, Northern District of Texas; and

(b) provide the Commission and the Court a written description of the funds and assets so repatriated.

16. Defendants shall serve, by the most expeditious means possible, including e-mail and facsimile, any papers in opposition to the Commission's Motion for Preliminary Injunction and for other relief no later than 72 hours before any scheduled hearing on the Motion for Preliminary Injunction. The Commission shall serve any reply at least 24 hours before any hearing on the Motion for Preliminary Injunction by the most expeditious means available, including facsimile.

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17. Unless extended by agreement of the parties, the portion of this order that constitutes a temporary restraining order shall expire at 5 o'clock p.m. on the 2nd day of March 2009 or at such later date as may be ordered by this Court. All other provisions of this order shall remain in full force and effect until specifically modified by further order of this Court. Unless the Court rules upon the Commission's Motion for Preliminary Injunction pursuant to Fed. R. Civ. P. 43(e), adjudication of the Commission's Motion for Preliminary Injunction shall take place at the United States Courthouse, Northern District of Tex Dallas, Texas, on the 12th day of March, 2009, at 10 o'clock a.m. 1100 Commerce Street Dallas Texas 75242 (Earl Cabell Bldg).

EXECUTED AND ENTERED at 11:40 o'clock a.m. CST this 16th day of February 2009.

UNITED STATES DISTRICT JUDGE

TAB C

National Post

Stanford officer freed on bond

Sat Feb 28 2009
Page: FP2
Section: Financial Post
Byline: Anna Driver
Dateline: HOUSTON
Source: Reuters
Illustrations: Black & White Photo: F. Carter Smith, Bloomberg News / Laura Pendergest-Holt, chief investment officer of Stanford Financial Group, right, is escorted by a U. S. marshal into the federal courthouse in Houston, Tex., yesterday. She was later released on a US$300,000 bond.

Laura Pendergest-Holt, the first person arrested in the US$8-billion Allen Stanford fraud investigation, can walk free once she posts US$300,000 bond, a Houston judge ruled yesterday.

Ms. Pendergest-Holt, the 35-year-old chief investment officer for the Stanford Financial Group who was arrested by the FBI on Thursday, spent the night in a Houston detention centre, then faced U. S. Magistrate Judge Mary Milloy in court.

U. S. prosecutors had asked the judge to set bond at US$1-million, an amount that Ms. Pendergest-Holt's attorney, Dan Cogdell, called "outrageous."

While agreeing it was a serious case, Judge Milloy lowered the amount to US$300,000 and ordered Ms. Pendergest-Holt, who appeared in court dressed in a dark pants suit and heels, to wear an electronic tracking device after her release.

The tall, slender brunette appeared grim for most of the hearing but occasionally turned in her chair to smile at her husband, equity fund manager Jim Holt.

FBI agents had arrested her at Stanford's Houston-based headquarters and accused her of obstructing an investigation by the U.S. Securities and Exchange Commission into what the agency called "massive ongoing fraud" by Allen Stanford, the chairman of Stanford Financial Group, and three of his companies.

The developments could signify that prosecutors are closing in on the Texas billionaire, who has dual U. S. and Antigua Barbuda citizenship and has been a prominent sponsor of cricket, golf, tennis and polo events.

Under questioning from Ms. Pendergest-Holt's lawyer, FBI agent Vanessa Walther said there is no arrest warrant for Mr. Stanford and he is believed still to be in northern Virginia, where he was served court papers last week.

Meanwhile, Mr. Stanford's assets are under the control of a court-appointed receiver -- Dallas attorney Ralph Janvey -- who must sort out dozens of claims by Stanford account holders whse funds have been frozen indefinitely.

A Dallas judge is expected to rule on Monday on whether to extend a temporary restraining order that gives Mr. Janvey control of Mr. Stanford's assets -- pegged by the company at US$50-billion.

Ms. Pendergest-Holt's criminal case also moves to U. S. District Court in Dallas,

where the charges were filed, lawyers said.

However, the receiver thus far has identified only about US$90-million in actual assets, the FBI's Ms. Walther told the judge yesterday.

The Globe And Mail

Top Stanford official first to face criminal charges

Fri Feb 27 2009
Page: A11
Section: International News

Byline: Evan Perez And Kara Scannell

Source: Wall Street Journal

Federal prosecutors filed obstruction charges against a top Stanford Financial Group official, the first criminal charges to emerge in the investigation of Texas businessman Allen Stanford's offshore financial empire.

Federal Bureau of Investigation agents in Houston arrested and charged Laura Pendergest-Holt, Stanford's chief investment officer, the Justice Department said. She was arrested yesterday afternoon.

An FBI affidavit filed in U.S. District Court in Dallas alleges that Ms. Pendergest-Holt misled Securities and Exchange Commission investigators who took her testimony in their probe of alleged fraud at Stanford International Bank, Mr. Stanford's Antigua-based offshore bank.

The SEC earlier this month filed civil charges against Mr. Stanford, Ms. Pendergest-Holt and James Davis, chief financial officer of the bank. The SEC alleges Stanford International Bank defrauded investors and account holders of an estimated $8-billion in deposits. Federal investigators have been focusing their probe on whether Stanford International Bank operated as a Ponzi scheme, according to people familiar with the investigation.

The FBI affidavit says Ms. Pendergest-Holt met with Stanford officials in Miami during the week of Feb. 2 to prepare for her testimony with SEC investigators, including reviewing data on investments.

In SEC interviews later, the FBI affidavit says, Ms. Pendergest-Holt made "misrepresentations" about her knowledge of Stanford's investment portfolio and about whether she had even met with other Stanford officials to prepare for her testimony.

"We dispute and deny that our client has committed any crime," said Jeff Tillotson, Ms. Pendergest-Holt's attorney.

Meanwhile, Reuters reported that a former Stanford Group Company employee, Leyla Basagoitia, told broker-dealer watchdogs in 2003 that the financial services firm was engaged in fraud, about five years before U.S. securities regulators charged Mr. Stanford.

National Post

Canadian suit hits Stanford; Calgary firm leads class-action

Fri Feb 27 2009
Page: FP1
Section: Financial Post
Byline: Jim Middlemiss
Source: Financial Post
Illustrations: Black & White Photo: Tom Shaw, Getty Images Files / The lawsuit against Allen Stanford and his banking empire alleges its investments were "not legitimate."

A Calgary-based furniture manufacturer who is an immigrant success story has filed a lawsuit seeking to be named as the lead plaintiff in what is believed to be the first Canadian class-action lawsuit against Texas billionaire Allen Stanford and his group of companies, which have been accused by the Securities and Exchange Commission of committing an US$8-billion fraud.

In the lawsuit, filed on Feb. 25 in Alberta Court of Queen's Bench in Calgary, Dynasty Furniture Manufacturing Ltd., one of Canada's largest manufacturers of upholstered furniture, started in 1979 by East African immigrant Jim Sunderji, seeks damages for misrepresentation, unjust enrichment, conversion, fraudulent conveyance and breach of trust for what it claims is an investment scheme that is "untruthful and inaccurate."

Dynasty, which makes sofas, love-seats, chairs and tables and operates large plants in Calgary and Mississauga, alleges it invested US$1-million in "self-styled" certificates of deposit offered by Stanford International Bank, Ltd. (SIB), which is also named in the suit. Last week Canadian banking regulators closed SIB's Montreal office.

Other parties named in the proposed class action include the Stanford Group Company (SGC); Stanford Capital Management LLC; James M. Davis, a director and chief financial officer of the Stanford companies who lives in Baldwin, Miss.; and Laura Pendergest-Holt, chief investment officer for SIB.

In an unrelated move, a Texas judge has already appointed a receiver to take over the assets of the companies and the individuals named in the Dynasty suit.

The Calgary claim must still be proven in a court of law and certified as a class action. The receiver for the Stanford companies directed calls to the SEC, which would not comment on the suit. Calls to Ms. Pendergest-Holt's lawyer were not returned at press time. Mr. Stanford's lawyer has ceased representing him.

The claim alleges that Stanford Bank sold the certificates through a network of its own financial advisors, including Faran Kassam, who allegedly sold Dynasty the investments after "promising high rates of return that exceed those available through true certificates of deposit offered by traditional banks."

Certificates of deposit are normally considered a risk-free investment offered by banks and trust companies. The claim alleges the difference between a bank CD and Stanford's offering was as much as

2.175% on a three-year CD and at one point Stanford offered a 10% return.

The claim alleges "SIB's network of SGC financial advisors has made repeated misrepresentations to the purchasers of CDs in order to induce them into thinking their investment is safe." These include representations that the money was primarily in "liquid financial investments," subject to monitoring by a portfolio of 20 analysts, and audited annually by financial regulators in Antigua.

However, Dynasty, which sells its furniture to leading retailers such Sears Canada and the Brick, claims none of that was true. "A substantial portion of the portfolio was placed in illiquid investments, such as real estate and private equity," the lawsuit claims. Moreover, Dynasty's law firm, Bennett Jones, alleges that only Mr. Stanford and Mr. Davis monitored the portfolio and that Antiguan regulators never verified the assets, as claimed.

The suit also alleges that some of the money was tied up in the alleged US$50-billion Ponzi scheme of New York financier Bernie Madoff.

The claim alleges the fraud extended to other Stanford investments, including a US $1-billion wrap program called the Stanford Allocation Strategy, and accuses the defendants of "using materially false and misleading historical performance data." The wrap grew from US$10-million in 2004 to US$1.2-billion and generated fees for Stanford in excess of US$25-million.

"Unbenownst to the plaintiff and class members, the investment scheme, and the resulting investments ... were not legitimate investments," the claim alleges.

The claim also alleges that the defendants have "transferred assets from themselves to others in order to avoid creditors," which constitutes an illegal "fraudulent conveyance."

Dynasty is asking the court to trace any monies that flowed to other parties. In previous cases, the courts have ordered that such money must be returned to the investing pool and shared on a pro rata basis by all investors. Dynasty also seeks $500,000 in punitive damages.

Calls to Mr. Sunderji were not returned at press time. Mr. Sunderji's lawyer, Jim Patterson, head of the fraud law group at Bennett Jones, told the National Post on Tuesday that his firm had been "retained by a number of Canadian investors in Stanford Financial representing tens of millions [of dollars] in investments. We are actively considering recovery options for these clients."

Mr. Sunderji has been put forward by the law firm as the proposed representative plaintiff in the class suit, which, if approved, would be expanded to include the other investors who currently remain anonymous.

National Post

Frozen assets of players linked to fraud case may be freed soon: Boras

Thu Feb 26 2009
Page: S5
Section: Sports
Byline: Ken Belson
Source: The New York Times

Johnny Damon, Xavier Nady, Mike Pelfrey and other major-league baseball players who have had some of their assets frozen because they were linked to a company affiliated with the financier Robert Allen Stanford should have access to their money soon, according to Scott Boras, the players' agent. The players did not invest directly in Stanford funds, but their investment advisers used Stanford as their broker-dealer. Regulators, who have frozen all of Stanford's accounts, are trying to unravel what role, if any, Stanford's broker-dealer played in the US$8-billion financial fraud that Stanford is accused of orchestrating. "There's no risk of loss in their funds, but the government, in an attempt to protect everyone involved, put a wide net over the funds," Boras said. Boras said that his company, Scott Boras Corp., was helping players with "any cash-flow issues" as a result of their accounts being frozen. Damon said he would direct his paycheques to a new account so he could have access to the money.

The Globe And Mail

Stanford's movers and shakers; Advisory board membership reflected alleged fraudster's penchant for name-dropping

Thu Feb 26 2009
Page: B7
Section: Report On Business: International
Byline: Paul Waldie
Illustrations: Illustration

When Luis Giusti met Allen Stanford a few years ago in Houston, he was so impressed that he joined the advisory board of Mr. Stanford's company, Stanford Financial Group.

Mr. Stanford was "a very energetic guy," recalled Mr. Giusti, a Washington- based energy consultant and the former chief executive officer of Venezuela's state oil company, Petroleos de Venezuela SA. "He looked like, at that time, a good leader of his people."

Mr. Giusti was one of several high-profile people Mr. Stanford attracted to the advisory board as he expanded his operations around the world, including into Canada. Others included Peter Romero, a former U.S. ambassador to Ecuador; Adolf Ogi, former president of Switzerland; Jorge Castaneda, former secretary of state of Mexico; Alfredo Arízaga, former minister of finance of Ecuador; and Lee Brown, former mayor of Houston and drug czar during the Bill Clinton administration. A senior portfolio manager at Toronto-Dominion Bank's TD Asset Management also served on the board, according to documents filed in court, and Courtney Blackman, a former diplomat in Barbados, was on the corporate board.

Now, with Mr. Stanford under investigation by the U.S. Securities and Exchange Commission over allegations of an $8-billion (U.S.) fraud and regulators closing down his operations, some board members are distancing themselves from the company. Mr. Ogi resigned his post this week, saying through a spokesperson that he did not "want to be involved in any legal case involving a financial scandal." Others declined comment when contacted.

Mr. Giusti said he was shocked by the SEC allegations and he is worried about his investments with Stanford, which had 30,000 clients in more than 100 countries.

"This has been an unpleasant surprise for us. I wish the best for the clients," he said. "It's a very sad story."

Mr. Giusti stressed the advisory board did little actual work and had no role in investment decisions. "During my eight years the so-called board met only three times, and we simply listened to presentations from guests about topics of general interest," he said. "It really didn't function as a board."

His job consisted of giving occasional speeches to Stanford investors about the oil industry and he said many of the other board members did nothing. Mr. Stanford just wanted to use their names to open doors in various countries, he added. For the most part it worked. Stanford Financial

has several offices in Mexico, Ecuador, Venezuela and throughout the Caribbean, as well as a large staff in Zurich.

Mr. Stanford wasn't shy about dropping names or pushing connections to high-profile people in business, sports and politics. When Mr. Ogi joined the advisory board in 2008, Mr. Stanford issued a press release quoting Mr. Ogi as saying "I am proud to be involved with a financial services group which also understands the importance of improving communities through sport and philanthropy."

He has also proudly touted an award he received from the Inter-American Economic Council in 2006 during a ceremony hosted by then U.S. president George W. Bush, as well as his numerous political connections.

"Politics is a game with him and that's what it was all about," Mr. Stanford's father, James, said in a recent interview.

In Canada, Mr. Stanford claimed Pierre Beaudoin, head of Bombardier Inc., suggested he open an office in Montreal for Stanford International Bank, a key part of his empire (Bombardier officials have played down Mr. Beaudoin's role).

The Montreal office - which was shut down earlier this week and is in receivership - was also used to promote Mr. Stanford's public policy initiatives. It hosted a working lunch last year whose topic was the global role of the big emerging economies such as Brazil, India and China, according to Alain Lapointe, the head of the Montreal operations.

Joanne Thornton, a senior vice-president at the Stanford Washington Research Group in Washington, confirmed that she came up to Montreal to make a presentation at the luncheon last year. But she declined to discuss any other details about the group's activities or its current relationship with Stanford Financial.

Stanford Financial acquired Washington Research Group in 2005. In a news release at the time, Stanford Financial said it planned to stage an institutional policy conference with former U.S. secretary of state Colin Powell.

Mr. Stanford is quoted in the news release as saying: "At a time when much of the securities industry is scaling back its commitment to research, the launch of the Stanford Washington Research Group is a key component of our strategy to aggressively build our research capabilities for the long term and invest in new service offerings."

with files from reporter Bertrand Marotte in Montreal

National Post

Stanford's Montreal office shuttered

Wed Feb 25 2009
Page: FP6
Section: Financial Post
Column: National Report
Source: Reuters

The Montreal office of Stanford International Bank Ltd. has been shut down by a financial receiver, a spokesman for Canada's financial regulator said yesterday. "I can confirm that the receiver has closed the bank's rep office in Montreal," said Rod Giles, spokesman for the Office of the Superintendent of Financial Institutions (OSFI). The news came a day after OSFI announced the regulator would allow the office to remain open on the condition that it limit its activities to helping clients recover their assets. The U. S. Securities and Exchange Commission has accused Allen Stanford, the billionaire Texan at the head of Stanford International Bank, and two colleagues of running an US$8-billion fraud involving high-yield certificates of deposits. There have been no allegations or charges in connection with the Montreal operations. The bank is not licensed to carry out any banking transactions in the country but can promote its products. Regulators have seized Mr. Stanford's banks and companies in Antigua. Canadian media reported that Montreal clients had found a handwritten note taped to the door of the Stanford bank office, referring them to British-based financial receiver Vantis Business Recovery Services.

National Post

Sponsorship sinking for sports and arts; Canadian's project among many scrambling for funds

Wed Feb 25 2009
Page: FP3
Section: Financial Post
Byline: Duncan Mavin
Column: Duncan Mavin
Dateline: HONG KONG
Source: Financial Post
Illustrations: Color Photo: Duncan Mavin, National Post / Canadian yachtsman Cameron Dueck has a day job as a Hong Kong-based financial journalist and his "night shift" is spent drumming up the cash to pay for the four-month voyage through Canada's Arctic.

Canadian yachtsman Cameron Dueck is ready for some tough weather and hard sailing when he leads a four-person crew through the Northwest Passage this summer.

But months before he sets off, Mr. Dueck is already facing bigger challenges than he planned thanks to the global financial crisis. Indeed, the Manitoba native's problems securing finance for his 'Open Passage Expedition' represent just the tip of a global sponsorship crunch for everything from arctic expeditions to major sports events to the arts.

Sponsorship money Mr. Dueck was counting on is "just not there," he said last week in a break between his day job as a Hong Kong-based financial journalist and his 'night shift' spent drumming up the cash to pay for the four-month voyage through Canada's Arctic.

The 35-year old, who grew up on a Mennonite turkey farm and didn't turn to sailing until he moved to Chicago as an adult, has already liquidated his own stock portfolio at deflated values and poured his savings into the 7,000-nautical-mile expedition from Victoria to Halifax. He plans to stop at remote Inuit settlements and talk to native people about how climate change is affecting their lives. The outcome of the hazardous expedition will be a book deal and numerous magazine articles, as well as some radio slots. Mr. Dueck is also very close to signing a multimedia deal with a major international television network and online news site.

But even that publicity has not been enough to capture the corporate dollars for financing of "about what it would cost for a mid-sized SUV. I know I have a compelling project for sponsors because a lot of them will get back to me [and say,] 'If you'd come to us a year earlier, we'd have been really interested.' But they are all saying they just don't have cash."

It's a similar story in other sectors, especially sports, for which the high-profile sponsorship deals gone awry in recent months include the tie-up between British soccer giants Manchester United and troubled life insurer AIG, and the US$54-million link-up of Dutch financial services group ING Groep with Formula One motor racing team Renault. Ailing U. S. automaker General Motors has scrapped a US$7-million deal with Tiger Woods.

According to IEG, a consultancy that has

tracked the corporate-sponsorship market since 1984, corporate funding for sports and the arts in North America will grow by the smallest increase on record in 2009.

"The economy has forced many companies to keep a tighter hold on their purse strings, and big-ticket pro sports properties will take the biggest hit," William Chipps of IEG said in a statement this month.

A similar trend is likely in the European sports-sponsorship market, which will fall by 11.3%, or US$6.3-billion, in 2009 according to a report from Italian sports marketing group StageUp, Reuters reports.

As well as general corporate belt-tightening, the sponsorship market has seen major backers get into deep financial trouble. Billionaire investment manager Allen Stanford, who is facing serious fraud allegations in the United States, has been a key source of funding for international cricket and golf, and his companies' sponsorship efforts also extend to sailing events in the Caribbean. He and Bernard Madoff were also significant supporters of the global arts community, with large arts charities among those who lost money through the alleged investment scams run by the two high-profile businessmen.

The worst of the sponsorship slowdown may be yet to come, said an experienced sports marketer in Asia. Some promoters and recipients of sponsorship dollars are "in denial" right now about the declining value of the sports and other events they represent and may only face up to the reality that they will have to get by on less once existing multi-year deals run out, he added.

In Vancouver, there was a better outlook from organizers of the 2010 Winter Olympics, who insisted this month that most of their sponsorship dollars were locked up prior to the global economic downturn. The Games' organizers say that Tier 1 sponsor Nortel Networks Corp. will honour its commitment to the event despite entering bankruptcy protection.

For smaller events such as Mr. Dueck's expedition through Canada's North, the challenging economic environment can mean a lot more time spent trying to get funding and fewer hours working on the voyage itself. The Canadian explorer has recently managed to attract some corporate help, signing a deal with U. S. power company Direct Energy. He has also persuaded several marine-equipment manufacturers to provide their products at discounted prices. In contrast, the yachtsman has had no luck with "just about every big Canadian brand name you can think of," nor has he received cash from traditional sources of expedition funding and research grants, such as government bodies and geographic organizations.

Still, the Manitoban has no intention of delaying his "dream" expedition until sunnier economic times.

"By waiting a year, I think the chances of losing momentum are greater than the chances of more success," he says. "Once you've got momentum, you've got to go."

dmavin@nationalpost.com

National Post

Swiss tar ospel with ABS brush; Former UBS Chief; Bank 'left its home country in shambles'

Wed Feb 25 2009
Page: FP3
Section: Financial Post
Byline: Antonio Ligi and Ben Holland
Source: Bloomberg News
Illustrations: Color Photo: /

Bernard Madoff and Allen Stanford could probably go unnoticed in the streets of Zurich. The Swiss are too busy berating Marcel Ospel, who has gone from being Switzerland's most respected banker in 2007 to the most hated.

The former UBS AG chairman, rated the most influential Swiss two years ago, has become the public face of the financial crisis.TV comedian Mike Mueller made him the butt of jokes, rapper Gimma sang a satirical song outside his villa and the newspaper Blick demanded he repay bonuses. He may get a hostile reception at next week's Basel carnival, a masked march that Mr. Ospel has been joining since he was seven years old.

As Citigroup Inc.'s Vikram Pandit and Fred Goodwin of Royal Bank of Scotland Group PLC endured public grilling from U. S. and U. K. lawmakers, Mr. Ospel was in seclusion in Switzerland. The 59-year-old is the target of outrage after earning more than any other Swiss banker while running up the largest losses. Many Swiss blame him for importing the American financial crisis to Zurich, and would welcome the chance to tell him so.

"I'd like to say to him: 'You've damaged Swiss banking,' " Fredi Sturzenegger, a retired official from a union of bank employees, said as he left the Sternen bratwurst stand, around the corner from Zurich's Kronenhalle, one of Mr. Ospel's favourite restaurants. "His ambition was to be at the top. Today, UBS stands almost at the bottom."

In 2007, Mr. Ospel seemed close to achieving his ambition. That year, the Zurichbased business magazine Bilanz placed him atop its annual list of the country's most powerful people.

After creating the world's biggest wealth manager with the US$19.7-billion merger of Swiss Bank Corp. and Union Bank of Switzerland in 1998, he vowed to turn it into the largest global investment bank. That required a larger presence in the United States.

Mr. Ospel, who worked for Merrill Lynch & Co. from 1984 to 1987, bought New York-based broker Paine Webber Group Inc. for US$11.5-billion in 2000 and oversaw the purchase of about US$100-billion of U. S. asset-backed securities (ABS).

By April, 2008, UBS had lost US$38-billion on those securities, and shareholders applauded when Mr. Ospel stepped down as chairman at the bank's annual meeting. When Bilanz published its 2008 list of movers and shakers, Mr. Ospel wasn't on it.

This month, UBS reported a loss of 19.7-billion Swiss francs (US$16.8-billion) for 2008, the biggest ever by a Swiss company. It also agreed to pay US$780-million and disclose the names of hundreds of account holders to avoid U. S. prosecution on a charge that it helped wealthy Americans evade taxes.

One day after the agreement, described by Swiss media as the beginning of the end of bank secrecy, the U. S. sued UBS to force disclosure of as many as 52,000 American customers who allegedly hid their Swiss accounts from tax authorities. That's given the Swiss a new stick to beat the former UBS chief with.

"Ospel and his like have truly failed the country," the Delemont-based newspaper Le Quotidien Jurassien said in an editorial on Feb. 20, while Suedostschweiz said his efforts to grab market share for UBS in the United States had "left its home country in a shambles."

Mr. Ospel declined to be interviewed for this story.

UBS has posted writedowns in excess of US$50-billion stemming from the collapse of the subprime-mortgage market, more than any other European bank. The lender's shares have fallen 85% in the past two years.

Mr. Ospel received almost 137-million francs in compensation as CEO and later chairman of UBS from 2000 through 2007. In 2006 alone, he was paid 26.6-million francs in salary and bonus, 66% more than the 16-million francs Walter Kielholz got as chairman of Credit Suisse Group AG.

Before Mr. Ospel, UBS "was truly a Swiss bank, and he made it into a soulless money machine," said Bernhard Bauhofer, founder of Sparring Partners GMbH, which advises businesses on reputation management.

UBS LOSSES

MARCEL OSPEL BY THE NUMBERS

$50B Writedown, in U. S. dollars, stemming from subprime mortgage collapse.

-85% Decline in UBS share price in past two years.

OSPEL'S GAIN

$26.8M Marcel Ospel's compensation as UBS CEO and later chairman from 2000 through 2007, in U. S. dollars.

$5.2M Ospel's total compensation in 2006, in U. S. dollars.

+66% Amount by which Ospel's pay exceeded that of CEO of Credit Suisse, Switzerland's second-biggest bank.

The Globe And Mail

How Allen Stanford's Canadian conduit grew

Wed Feb 25 2009
Page: B1
Section: Report On Business: Canadian

Byline: Bertrand Marotte And Paul Waldie

Dateline: MONTREAL and TORONTO
Illustrations: Illustration

MONTREAL and TORONTO -- Allen Stanford's journey into Canada began seven years ago with a meeting involving Pierre Beaudoin, then president of Bombardier Aerospace, and it wasn't long before Canada became a key part of Mr. Stanford's global financial empire.

That empire is now crumbling amid an investigation launched by the U.S. Securities and Exchange Commission, which alleged Houston-based Stanford Financial Group orchestrated an $8-billion (U.S.) fraud. Mr. Stanford, a Texas billionaire, has not responded to the civil charges but regulators around the world, including in Canada, have shut down his operations and investors have gone to court in an attempt to recover something.

A Globe and Mail interview with Mr. Stanford's representative in Canada, Alain Lapointe, and court filings reveal the scope of Mr. Stanford's Canadian connection and the role Bombardier Inc. and Toronto-Dominion Bank played in helping build Stanford's various holdings including Antigua-based Stanford International Bank (SIB).

TD provided banking services for most of its North American operations and handled some investments, according to documents filed in court. The filings stated SIB had three correspondent banks to handle financial transactions - TD, HSBC in Europe and National Republic in the U.S. - but "most money flows through TD."

A senior portfolio manager from TD Asset Management, Perry Mercer, also sat on an advisory board for SIB.

Along with Mr. Mercer, others on the board included former U.S. ambassador Peter Romero, and Luis Guisti, the former head of Venezuela's state oil company. It's not clear when Mr. Mercer sat on the board or how long he remained. He was unavailable for comment.

The Canadian venture started with a meeting in 2002 between Mr. Stanford and Mr. Beaudoin in Montreal. Mr. Stanford was picking up a new Bombardier Global Express 9100 and the company held a small celebration. But according to Mr. Lapointe, the conversation turned to other opportunities.

"[Mr. Stanford] said it was Pierre Beaudoin who played the role of ambassador, who told him that if he was looking to open a Canadian office, to come to cosmopolitan, international Montreal," Mr. Lapointe said yesterday.

Mr. Stanford replied by saying, "It's a deal," according to Mr. Lapointe.

Bombardier spokesman John-Paul Macdonald confirmed the meeting took

place, but he said it was a brief exchange. Mr. Stanford asked if Montreal was a good place to business and Mr. Beaudoin replied, "as he does to all Bombardier's international customers, that it is a wonderful place to do business," Mr. Macdonald said.

Mr. Beaudoin, now the president and CEO of Bombardier, recalled being pitched by some of SIB's staff in the Montreal office at a later date, Mr. Macdonald said. "It was done as a courtesy because Stanford was a client," he said.

"But nothing ever transpired."

The meeting left such an impression on Mr. Stanford that he mentioned it during the official opening of SIB's representative office in Montreal in 2005.

By then, Mr. Stanford was on the way to acquiring a handful of Bombardier turbojets for a small Florida-based airline he'd launched called Caribbean Star. Some of the initial financing for the airline came from TD Bank, which extended a $4.8-million letter of credit to Caribbean Star in 2001. The airline and another Stanford air venture called Caribbean Sun were taken over in 2007 by LIAT Ltd., which is controlled by a group of Caribbean governments.

TD spokeswoman Julia Koene declined to comment on the specifics of the bank's relationships with SIB and said the bank is co-operating with the investigation.

"As we've said, we are one of the banks that provide cash management services to Stanford and we manage a small investment account on their behalf," she said. "We do not distribute any of the Stanford Group investments products and therefore none of our clients have been impacted through their relationship with TD ... There is no allegation of any wrongdoing on the part of TD or any of its employees."

Yesterday Mr. Lapointe, 59, said he was as shocked as anyone when the allegations against Mr. Stanford's financial group surfaced last week.

"I'm angry. I'm insulted," he said of the claims, hastening to add that no wrongdoing has been alleged against the Montreal satellite office - which was placed in receivership on Monday, along with SIB.

He declined to provide details about how many clients the Montreal office has or the estimated value of the assets. But he said it strictly followed the rules for operating a representative office of a foreign bank in Canada, doing only promotion for SIB products and services in Canada but not taking deposits or doing any kind of transactions.

He said the paperwork to register from the Office of the Superintendent of Financial Institutions was done by Terry Didus, a partner in the law firm of Heenan Blaikie, whom he knew from his days as an executive with Computershare Trust Co. of Canada, formerly Montreal Trust.

Mr. Didus was not available to comment yesterday.

National Post

Bennett Jones on fraud case

Wed Feb 25 2009
Page: FP18
Section: Legal Post
Byline: Jim Middlemiss
Column: Behind The Bar
Source: Financial Post

Illustrations: Color Photo: Joe Skipper, Reuters Files / The SEC is investigating billionaire Allen Stanford.

The Bennett Jones fraud law group is on a roll and has landed a high-profile case involving financier Allen Stanford, whom the U. S. Securities and Exchange Commission has accused of conducting "a massive and ongoing fraud" involving US $8-billion of certificates of deposit allegedly sold to investors in the United States, Canada and South America.

"We've been retained by a number of Canadian investors in Stanford Financial representing tens of millions [of dollars] in investments. We are actively considering recovery options for these clients," said Toronto-based Jim Patterson, head of the group. Canada's federal bank regulator has tightened restrictions around Stanford International Bank's representative branch in Montreal to prevent it from bringing in more clients.

Just last week Bennett Jones was asked to join a legal alliance formed to co-ordinate efforts among victims of another alleged investment scam -- the Bernie Madoff US $50-billion Ponzi scheme.

Lawyers from 35 law firms in 22 countries have agreed to work together in a "non-exclusive" alliance and co-ordinate their efforts in relation to representing any Madoff victims, he said, and it could be expanded to cover other cases, such as Stanford.

He said the cross-border nature of frauds and Ponzi schemes today requires dealing with multiple jurisdictions. "I think that there's going to be a lot of litigation dealing with the issue of who is ultimately liable and who will contribute to the recovery," he said of the recent rise in investor fraud cases.

His firm knows a lot about pursuing claims against bad investments. It launched a class-action suit in Alberta on behalf of investors against 23 defendants alleging misrepresentation in an "investment pyramid scheme," where investors' money was used to make interest and principal payments to other investors. Among the defendants are the Institute For Financial Learning, Group of Companies Inc. and its CEO, Milowe Allen Brost. The claim relates to a Honduras mining project, known as Merendon.

Bennett Jones is also involved in investor litigation involving another of Mr. Brost's initiatives, Strategic Metals Corp., which raised more than $36-million from investors. Strategic is now in receivership.

On July 11, 2007, the Alberta Securities Commission cracked down on various principals involved in Strategic. It issued a lifetime ban against Mr. Brost and fined him $650,000 for "conduct amounting to

fraud on investors in Strategic Metals Corp."

LEGAL CHARITIES

The crashing economy and plummeting interest rates not only affect the retirement plans of investors, but also the revenue of charities, including the Law Foundation of Ontario, which helps fund several legal initiatives.

The foundation receives interest on lawyers' mixed-trust accounts, which is used to fund legal activities, such as pro bono programs.

The trust account money comes from a wide variety of sources, including the sale and purchase of businesses and property.

"We would assume a downturn in the economy means less money in mixed-trust accounts. We are expecting there will be a drop in our revenue," said lawyer Elizabeth Gold-berg, CEO of the foundation.

"We're aware that there are fluctuations in the economy," she said, noting "we have always been fiscally prudent. Because of that we have not had to cut funding for any of our grantees. In fact, we're continuing to encourage new applications, keeping in mind that in an economic downturn there's a greater need."

About 75% of the foundation's annual revenue goes to the Legal Aid Ontario. According to foundation's most recent annual report, it earned $75.5-million in interest after expenses in 2007. About $56-million was paid to legal aid and another $14-million in grants were authorized for everything from $110,000 for the Association In Defence of the Wrongly Convicted to more than $1.38-million for pro bono initiatives.

The courts are already swamped with unrepresented litigants, a concern highlighted in speeches by Supreme Court of Canada Chief Justice Beverley McLachlin and Ontario Court of Appeal Chief Justice Warren Winkler.

A rise in job losses and martial breakdowns will put even greater pressure on access to justice issues and the various programs that the foundation helps fund.

It's a point not lost on Ms. Goldberg. "We have to monitor the situation and see how it will play out," she said. "

"We realize there's a lag in the state of the economy and an impact on balances." She said the foundation decides on major grants each quarter.

The end of March could be a telling sign for just how bad the economy is. With capital market activity drying up and a decline in real estate transactions and deals, it doesn't bode well for the various law foundations and charities catering to those in legal need.

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National Post

Peruvian investors linked to Stanford could lose US$100M: lawyer

Wed Feb 25 2009
Page: FP3
Section: Financial Post
Source: Reuters
Illustrations: Color Photo: /

A lawyer representing about 100 investors from Peru with money tied to Stanford Financial Group said yesterday his clients could face losses of up to US$100-million. Last week, Allen Stanford, right, and three of his companies were charged with fraudulently selling US$8-billion in high-yield certificates of deposit. Stanford's office in Peru, where the securities regulator has suspended operations for 30 days, was authorized to work as a broker-dealer, but is under investigation for whether it sold CDs without a licence. It is not clear yet whether it did. "The total amount is estimated to be between US$50-and US$100-million -- closer to US$100-million," said Jaime Pinto, a lawyer representing investors from Peru. Conasev, Peru's securities regulator, has said it has not uncovered evidence suggesting Stanford's Peru office acted outside legal limits.

National Post

Stanford's Montreal chief at loss for words

Tue Feb 24 2009
Page: FP2
Section: Financial Post
Byline: John Greenwood
Source: Financial Post
Illustrations: Black & White Photo: Joe Skipper, Reuters Files / The SEC has accused billionaire financier Allen Stanford of a massive fraud, but has not laid criminal charges.

The head of Stanford International Bank's Montreal office says he was just as surprised as his clients to discover that the organization founded by billionaire financier Allen Stanford had become the focus of a massive fraud investigation.

"Surprised is not the right word, I was shocked, insulted," said Alain Lapointe, speaking in a telephone interview. "There is no word to describe what we felt."

Mr. Lapointe, a former manager with Royal Bank of Canada and a respected member of Montreal's business community, said he didn't have any suspicions about the bank, "otherwise I never would have joined the organization."

His comments come less than a week after the U. S. Securities and Exchange Commission accused Mr. Stanford of perpetrating an US$8-billion fraud focusing on certificates of deposit in a bank in Antigua that were sold to investors around the world based on outsized returns.

The colourful financier, whose assets included a US$100-million fleet of private planes, a castle in Florida and a cricket stadium in Antigua, was served with legal papers last week but has not been criminally charged.

On Friday, Canada's federal bank regulator tightened the restrictions around Stanford International Bank's representative branch in Montreal to prevent it from bringing in more clients.

Opened in 2006, it won permission from the Office of the Superintendent of Financial Institutions to promote the products of Stanford International Bank to potential clients in Canada. Under the new restrictions, the branch is allowed only to help existing clients get their money back.

Mr. Lapointe said he doesn't know how many Canadian clients the bank has or how much they have invested.

"My role was to promote the name of the bank and to act as liaison with Canadian clients," he said.

Stanford International Bank was part of Stanford Financial Group, a sprawling network of investment advisors and wealth-management companies boasting assets under management of US$50-billion. During the past few days, regulators in the United States, Venezuela, Mexico and the Caribbean have taken over Stanford subsidiaries.

Most of the assets are believed to be held by Stanford International Bank in Antigua, whose government recently pushed the bank into receivership.

That process in Antigua is being overseen by Vantis PLC, a U.K.-based accounting firm that trades on London's AIM stock market.

Nick O'Reilly, a partner with Vantis Business Recovery, said it will be at least two months before the receiver can say how many clients the bank had and where they are located.

"In terms of finding the money, it could take a lot longer," he said. Vantis is working in co-operation with U. S. regulators.

Mr. O'Reilly said the main problem for the receiver is the lack of transparency around the assets of the bank, which he said is structured in three tiers. The first is cash and the second is public equities, but the lion's share of the money is in what might be best described as private equity.

"That's what we are tracking at the moment, the third type, but apparently only two individuals in the organization know where [these assets] are," he said, referring to Mr. Stanford and his senior investment manager, a former college roommate.

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The Globe And Mail

It just wasn't cricket; Why a trusted employee blew the whistle on Allen Stanford's $8-billion empire

Mon Feb 23 2009
Page: B3
Section: Report On Business: International
Byline: Paul Waldie
Illustrations: Illustration

Charles Rawl wasn't surprised when police raided the Houston offices of Stanford Financial Group last week as part of an investigation into allegations of an $8-billion (U.S.) fraud.

Mr. Rawl had worked at Stanford for two years as a financial adviser, and he'd been raising concerns about the company's operations since the summer of 2006. When no one took him seriously, he and a colleague quit in late 2007 and sued Stanford, alleging they'd been forced out for refusing to participate in illegal activities.

As the U.S. Securities and Exchange Commission filed civil charges last Tuesday, alleging the company and its founder, Texas businessman Allen Stanford, had engaged in a "massive fraud," Mr. Rawl said he felt some satisfaction.

"We feel vindicated, but sad at the same time," he said, referring to himself and his colleague, Mark Tidwell. "I mean, it's a difficult time and we feel sorry for the people who have life savings tied up in that [company] and currently are unable to get it out. It's very bittersweet."

By the time Mr. Rawl joined Stanford in May, 2005, the firm was soaring and Mr. Stanford had become a billionaire.

Born in tiny Mexia, outside of Dallas, Mr. Stanford had transformed his grandfather's small insurance business into a far-flung financial empire that had offices in dozens of countries, including Canada, and more than $7-billion in assets. Stanford Financial included a financial services operation based in Houston and a bank, Stanford International Bank (SIB), based in Antigua.

Some of its investment products posted annual returns as high as 32 per cent, and Mr. Stanford boasted the company had never failed to hit its targeted investment returns since 1994, according to court filings. Soon people were sinking millions into Stanford.

"It took a lot of hard work," said Allen's father, James, who still lives in Mexia and is an SIB director. "It's grown and grown. They worked seven days a week, 24 hours a day."

As the money poured in, Mr. Stanford left Mexia, population 6,600, far behind. He moved to the Caribbean, first to Montserrat and then St. Croix, where he owns a 160-acre estate. He also has a house in the U.S. Virgin Islands and once owned an 18,000-square-foot home in Miami called Wackenhut Castle, which had a moat. Separated, with six children, he still divides his time between the Caribbean and the

U.S.

His business interests expanded as well. He briefly ran an airline, buying a handful of planes from Bombardier Inc., in addition to a Global Express 9100 for himself. In Antigua, Mr. Stanford owns a local newspaper, a cricket stadium, several buildings and two restaurants, including one called The Sticky Wicket.

And that's not all. Mr. Stanford became intrigued by politics and sports. He donated millions of dollars to dozens of politicians, including the presidential campaigns of Barack Obama and John McCain. (Last week, both donated his gifts to charity.) He created a $20-million cricket event, became an official financial adviser to the men's professional tennis tour and sponsored a myriad of polo, yachting and golf events, including a few in Canada.

Such a high-profile and growing business was hard for someone like Mr. Rawl to resist. He was working at UBS AG in Houston in 2005, but he could see how well his counterparts at Stanford were doing. Stanford's impressive returns meant clients weren't hard to find and fees for Stanford advisers soared. In 2007, Stanford paid out nearly $300-million in commissions, according to court filings. There were also trips to Switzerland and junkets to Antigua for clients prepared to buy $5-million worth of Stanford investment products. So when a head hunter called Mr. Rawl about an opening at Stanford, he jumped.

It wasn't long before Mr. Rawl became uncomfortable. In court filings, Mr. Rawl said he noticed that returns in Stanford's promotional material didn't match the actual figures. After working the numbers more closely, he fired off an e-mail to his bosses, saying, in part, "I am starting to have a little concern for legal liability."

The company brushed aside his concerns for months, and then brought in an outside consultant who came to a similar conclusion, filings alleged. The consultant allegedly told company officials that "all bets were off" as far as the accuracy of performance figures was concerned. Mr. Rawl alleged the firm made only slight changes, prompting him to quit in December, 2007.

In the summer of 2008, the SEC questioned Mr. Rawl and Mr. Tidwell about Stanford, and started digging deeper. They talked to Michael Zarich, a former Stanford chief investment officer, and Laura Pendergest-Holt, current CIO, and soon discovered Stanford was largely a one-man operation.

Mr. Stanford was the sole shareholder and the company's directors consisted of himself, his 81-year-old father, a college pal and an 85-year-old buddy in Mexia who ran a car dealership and had a stroke in 2000. Ms. Pendergest-Holt, another family friend, had never held a job before joining Stanford in 1997. She and Mr. Zarich told investigators they had no idea how much of the Stanford money was invested, according to court filings. The only outside scrutiny for the company, which in 2008 claimed $50-billion in assets under management, appeared to come from a tiny auditing firm in Antigua called C.A.S. Hewlett & Co. Ms. Pendergest-Holt could barely recall meeting anyone at Hewlett and, according to court filings, the company told clients that hiring a major auditing firm would be "quite costly and would impact profitability."

As the SEC closed in last fall, other banks became concerned about Stanford, and started refusing to process wire transfers. The firm also lost money on investments with Bernard Madoff. Despite the difficulties, Mr. Stanford kept up a brave face. He played down the SEC probe, shot back at Mr. Rawl in a counterclaim and told his father that everything was fine.

When police arrived at Stanford's Houston office, Mr. Stanford wasn't around. He disappeared for two days, finally surfacing in Virginia to accept court filings from the FBI.

As for Mr. Rawl, he is still fighting his lawsuit and runs a financial firm in Houston. When asked about his two years at Stanford, Mr. Rawl chuckled and said: "It was an interesting time."

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Stanford connections

Barack Obama

The U.S. President was the recipient of a $4,600 campaign donation from Mr. Stanford, the maximum amount allowed.

John McCain

Over the years, the former presidential candidate has received campaign contributions of $28,000 from Mr. Stanford.

Tiger Woods

The world's No. 1 golfer hosted the AT&T National PGA tour event, which is sponsored by Stanford Financial Group.

Vijay Singh

The Fijian golfer is sponsored by Stanford and has participated in charity programs organized by the company.

Michael Owen

The popular soccer player signed on last year as a brand ambassador for Stanford Financial Group.

Johnny Damon

Fox Sports and the New York Post reported yesterday that Yankee fielder Johnny Damon had assets frozen last week.

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Verbatim

As a company founded in the midst of the Great Depression we have a long- proven understanding of how even the most severe down cycles can bring opportunities that yield significant benefits in the long run.

Allen Stanford

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SPORTING EVENTS

Stanford's private Twenty20 cricket competition in the Caribbean includes a $20-million game in November between England and his own team made up of West Indian players.

Stanford is the host sponsor of the 2009 Sony Ericsson Open tennis event in Biscayne, Fla. on March 23-April 5.

Sponsors venues at the Houston Polo Club and International Polo Club in Palm Beach, and sponsors the Stanford Charity Polo Day at the Royal Military Academy Sandhurst in the U.K.

In golf, Stanford sponsors the PGA Tour's Stanford St. Jude Championship in Memphis, Tenn.

Sponsors the Stanford Antigua Sailing Week.

Reuters

The Globe And Mail

To vent, press 1. To curse me out, press 2. To rage incoherently, press 3. To sob uncontrollably, press 4.; Across the country, financial advisers are getting an earful from angry and fearful clients who have seen their portfolios crumble. It's getting personal, Carly Weeks reports

Mon Feb 23 2009
Page: L1
Section: Globe Life
Byline: Carly Weeks

Some people do yoga as a stress release. Others go for a long, reflective walk. Judith Cane plays the banjo.

As a financial adviser dealing with tumbling portfolios and panicky clients during the worst economic downturn in generations, she's been giving it a workout lately.

"I am playing my banjo really loudly and really hard," said Ms. Cane, president of Antara Financial Group in Ottawa. "It is really stressful."

It seems nearly impossible to have a conversation with friends or co-workers lately that doesn't revolve around the economy, musings over when the recession will end, or the pros and cons of an RRSP versus the new tax-free savings account.

But the polite veneer of water-cooler chit-chat quickly washes away when your investment adviser tells you your account has plummeted 30 per cent in the past year. Canadians who are suddenly worried about whether they can afford to retire or pay for their child's education have no qualms about telling their investment manager what's really on their minds, unloading their fears, frustrations - and even hostility - on their adviser's lap.

It's creating major stress across the industry, according to a Toronto-based adviser whose clients have resorted to angry calls and insults, while colleagues have been personally blamed for their clients' losses.

"Sometimes you don't realize how stressed you are until you can't find the right Tupperware lid and have a meltdown," said Ms. Cane, who is also on the board of Advocis, the Financial Advisors Association of Canada.

Yet she describes herself as one of the lucky ones.

"I sometimes go home and say to my husband, 'I can't believe people aren't yelling at me,' " she said. "Nobody knows what to do in this situation. Our generation has never seen it before."

The looming RRSP contribution deadline is a telling sign of the times. February is normally the busiest month for financial advisers and planners, with Canadians calling to top up their savings. This year, their phones are still ringing off the hook - but instead of calling to invest money, many clients are calling to complain.

"Honestly, I think there will be a lot of advisers who aren't in the business any

more by the end of the year," Ms. Cane said.

The animosity is exacerbated by the general backlash against the financial industry as clients seek an outlet for the rage fuelled by images of Wall Street executives who engineered the subprime mortgage crisis and allegations of massive fraud orchestrated by men such as Bernie Madoff and Allen Stanford.

"I would say at this point there's a sense of disillusionment," said Alan Kotai, financial adviser and portfolio manager at Rogers Group Financial in Vancouver. "I have a sense that there is an anger."

That means even those advisers who have tried to use conservative investing strategies are facing iciness from clients, even as their own savings and income start to dwindle.

"Not only are our clients' portfolios down, but our own portfolios are down, too," Ms. Cane said.

She took a full two weeks off at Christmas to get away from the anxiety that is consuming her industry, she said. Then, she took a week and a half off in January and headed to California.

"I just sat by the pool for four days because I was totally stressed out," she said. "My back was spasming. You go to the chiropractor and they say, 'Gee, are you under a lot of stress?' "

She said many of her colleagues are taking up yoga. Other advisers say regular exercise has become an extremely valuable tool helping them to keep their cool.

"I get up and walk faithfully with my dog because the dog doesn't care, right? He's just so glad to get out in the morning," said Marie Richardson, owner of Richardson Financial Consulting at Peak Securities Inc. in Kingston.

But there may be a silver lining in sight.

Before the economic turmoil began, many Canadians weren't used to seeing sustained drops in their stock portfolios and may have taken more risks with their investments as a result of an extended period of financial growth.

From now on, Ms. Cane hopes, "People will know what kind of risk they're willing to take."

The Globe And Mail

IT'S BEEN A GOOD WEEK FOR...IT'S BEEN A BAD WEEK FOR...

Sat Feb 21 2009
Page: S6
Section: Sports
Byline: Paul Attfield
Illustrations: Illustration

KEN GRIFFEY

The return of the prodigal son has put baseball back on the map in Seattle again. While his former Kingdome running mate is being lambasted for "a stupid mistake," Junior is garnering nothing but positive headlines in the Pacific Northwest. And for a city that has recently endured the demise of the Sonics, the Seahawks' fall from grace and the 0-12 University of Washington football team, it's a welcome respite, although with the expansion Seattle Sounders about to embark on their inaugural MLS season, it probably won't last long.

MIKE COMRIE

First Barack and now Hilary. It's a veritable Democratic convention in Ottawa these days. Actually, we have no idea of Ms. Duff's political orientation, but with her beau back in a Senators uniform after yesterday's trade, there will surely be more sightings of the pop princess in the stands, where she will doubtless be joined by American Idol Carrie Underwood, Mike Fisher's current love interest. Still, it must put a smile on GM Bryan Murray's face - we all know he has a penchant for overpaid stars.

NATE ROBINSON

Never mind A-Rod's "boli," there's a new designer drug in town, and you'd have to go much further than the Dominican to get it. Clearly, the little guard that could - 5-foot-7 Nate Robinson - was so doped up on Kryptonite last Saturday that his uniform, his shoes and even the ball turned green. And if that wasn't evidence enough, the pint-sized Knick used his new-found powers to slay Superman, soaring over the 6-foot-11 Dwight Howard to win the dunk contest. Where's Dick Pound when you need him?

ALEX KOVALEV

While the entire Montreal Canadiens organization seems like an enigma these days, getting the reigning all-star game MVP playing up to potential is certainly a big part of the riddle. You would think giving the Russian winger two games off would allow him to recharge his batteries for the stretch drive, but based on the way some other Habs allegedly spend their downtime these days, he may have been better off under lock and key at Chez Gainey.

JOHNNY DAMON

The man who went from Jesus to Judas in Boston has hit rock bottom. "I can't pay bills right now," says the hard-up Yankees outfielder, whose accounts were caught in a U.S. government freeze of a company affiliated with financier Robert Allen

Stanford. Assuming he's spent his 20 pieces of silver, it's a shame he hasn't been a part of any of those 26 Bronx Bomber World Series wins. Those gaudy championship rings always make good collateral.

AL DAVIS

There's a new mantra in Oakland these days. In the absence of winning, the Raiders owner has decided to 'Just spend, baby,' and how. After making Shane Lechler the best-paid punter in NFL history on Wednesday, Davis then repeated that feat with Pro Bowl cornerback Nnamdi Asomugha, signing him to a three-year, $45.3-million (U.S.) contract. Let's hope he has enough left for a decent quarterback when the team finally returns to contention.

National Post

Plenty of red flags; Critics are wondering why it took so long for authorities to twig to Allen Stanford

Sat Feb 21 2009
Page: FP5
Section: Financial Post
Byline: John Greenwood
Source: Financial Post
Illustrations: Color Photo: Joe Skipper, Reuters / Texan billionaire Allen Stanford talks during an interview in Miami in this May 1, 2008, file photo. The FBI has served him with court papers accusing him of an US$8-billion fraud.

Color Photo: Jonathan Ernst, Reuters / The house in Virginia where police found Allen Stanford.

Regulators in Canada and around the world are cranking up investigations into the allegedly fraudulent Stanford International Bank after the billionaire owner was found by U. S. authorities in Virginia on Thursday.

Allen Stanford, who holds both U. S. and Antiguan passports, is accused by the U. S. Securities and Exchange Commission of running "a massive and ongoing fraud," involving US$8-billion of certificates of deposit that were allegedly sold to investors across the U. S., Canada and South America.

Meanwhile, critics are wondering why it took so long for authorities to act given the number of red flags around the Antigua-based bank including the fact that it has been operating the same way for a decade.

Yesterday, the federal banking regulator effectively shut down Stanford International Bank's Canadian office by amending its registration to prevent it from doing anything but responding to requests from existing clients to get their money out. "We are not going to speculate on what the next step is," said Rod Giles, a spokesman for OSFI, adding that the regulator will continue with its probe of the bank.

Stanford International Bank is part of Texas-based Stanford Financial Group, which claims to have offices in 50 countries and more than US$50-billion of assets under management.

According to the SEC, Mr. Stanford along with senior officials at his organization sold investments in certificates of deposit by promising "improbably" high rates of return.

Meanwhile, governments in several countries including Venezuela, Peru and Ecuador have shut down operations at local banks controlled by the Stanford group. The Mexican regulator says it is looking at whether Stanford affiliates violated banking legislation.

Quebec's securities regulator has also launched a probe even though the province does not officially have jurisdiction over banks. "We are doing some verification to see what they were doing," said Sylvain Theberge, a spokesman for Autorite des marches financiers. "We think it is our responsibility to see what kind of financial products they promoted and what type of

investors they were reaching. If it's more than banking, there will be further steps."

Mr. Stanford is a major player in the Caribbean where he owns a fleet of aircraft worth US$100-million and a 120-foot yacht, according to documents filed in connection with a recent paternity case.

Shortly after setting up his bank in Antigua in the 1990s, he took an interest in cricket, becoming a significant patron of the sport, sponsoring tournaments to the tune of millions of dollars.

Stanford's Montreal office, with about a dozen staff, is one of 32 foreign bank representative offices registered in Canada that are allowed to market the services of their owners but not to take deposits.

It is headed up by Alain Lapointe, a former official at Royal Bank of Canada and Laurentian Bank who in the past has helped raise funds for Quebec business schools and universities.

Mr. Lapointe did not respond to a request for an interview yesterday.

"You have to wonder how this was allowed to happen," said a former receiver for several failed offshore banks, adding there have long been plenty of reasons to be suspicious about Allen Stanford. Over the past few years, dozens of offshore banks headquartered in Caribbean countries have been forced to close as a result of fraud or because they broke banking rules.

It is unclear how many Canadians put their savings into Stanford International Bank, but according to the former receiver, who asked not to be named, it could be in the hundreds of millions of dollars.

jgreenwood@nationalpost.com

The Globe And Mail

OSFI puts restraints on Stanford office; Montreal office can only help clients recover Antiguan investments, agency says

Sat Feb 21 2009
Page: B6
Section: Report On Business: Canadian
Byline: Paul Waldie And Kevin Carmichael
Dateline: TORONTO and OTTAWA
Illustrations: Illustration

TORONTO and OTTAWA -- Canada's banking regulator restricted the operations of Stanford International Bank's office in Montreal yesterday as an international probe intensified into allegations the company engaged in a massive fraud.

Antigua-based Stanford International Bank (SIB) is at the heart of the financial empire run by Texas billionaire Allen Stanford. The U.S. Securities and Exchange Commission has alleged Mr. Stanford's financial group engaged in an $8-billion (U.S.) fraud by offering clients bogus investment products. SIB has 30,000 clients in 131 countries.

The company opened a representative office in Montreal in 2004, headed by former Royal Bank of Canada manager Alain Lapointe. The Canadian office could promote services in jurisdictions where SIB held a licence but it was not allowed to take deposits or do any other banking in Canada. Court filings show that Canadian depositors had placed $33.5-million in SIB at the end of 2006.

Yesterday, the Office of the Superintendent of Financial Institutions amended the order that allowed Stanford to set up the office, saying the company is now permitted only to use that office to assist clients in recovering investments from Antigua.

"The representative office shall not provide any assistance opening an account or otherwise making an investment with the bank," said Rod Giles, OSFI's spokesman. The regulator stopped short of forcing Stanford to close its Montreal office because it wanted Canadian clients to have a place where they could go to collect information, Mr. Giles said.

Mr. Giles said it would be incorrect to assume the order means OSFI has uncovered wrongdoing on the part of Stanford in Canada. "We're continuing to look into it," he said.

Regulators in several other countries have seized Stanford assets and frozen bank accounts. In Antigua, regulators took over Stanford banks, and officials in Peru, Panama and several other countries have launched investigations. In Venezuela, a court barred local Stanford Financial Group executives from leaving the country pending an investigation into the bank.

In Texas, a federal judge appointed a receiver to take over the Stanford group operations, which are based largely out of Houston and Memphis. Yesterday, the receiver, Ralph Janvey, said all accounts have been frozen and Stanford employees sent home.

Allen Stanford has not been seen publicly

since the civil charges were filed by the SEC in a Texas court Tuesday. The FBI said it located him Thursday in Virginia and handed him court papers. He was not arrested because no criminal charges have been filed, but he turned over his passport.

As the international intrigue continued, his father came to his defence. James Stanford, who is a director of SIB, called the SEC allegations unbelievable.

"I don't believe it," James Stanford said in an interview from his office in Mexia, Tex., where the family has lived for generations. "I can't really think that they did anything crooked, like the SEC is alleging."

Mr. Stanford, 81, said he was not involved in many of the day-to-day operations of SIB and hadn't been to Antigua in about three years. The SEC alleges that SIB sold investors products based on "false promises and fabricated historical returns." Mr. Stanford said the company's products simply outperformed others and were legitimate. "I can't believe these outlandish promises were made, that's got to be proven to me," he said.

Mr. Stanford said he did not know much about SIB's Canadian operations. "I know we talked about opening an office [in Canada] for a while before it was ever done," he said. "I really can't tell you the volume [of business]."

Court filings show that the SEC had been investigating the Stanford group for months, but Mr. Stanford said he only learned about the probe from friends on Tuesday when the civil charges were laid against his son.

"They called and said that it's on television. That was the first news I had, " he said, adding that he talked to his son last Friday when he was in Florida. "He sounded fine and all right."

Mr. Stanford said he had not been able to reach his son since the allegations came out and he was beginning to worry for his son's safety. "I have a number where I've always been able to reach him. I tried earlier, two days ago, and I couldn't get him," Mr. Stanford said. "I was naturally worried as a parent."

The Globe And Mail

Stanford used TD's banking services

Fri Feb 20 2009
Page: B1
Section: Report On Business: Canadian
Byline: Paul Waldie
Illustrations: Illustration

As regulators around the world froze assets belonging to Texas billionaire Allen Stanford, Toronto-Dominion Bank has emerged as a significant player in Mr. Stanford's far-flung financial empire that is now under investigation by the U.S. Securities and Exchange Commission.

The SEC has alleged that Mr. Stanford's financial group orchestrated an $8- billion (U.S.) fraud. Mr. Stanford had not been seen since the SEC filed civil charges Tuesday in a Texas court. He was located yesterday in Virginia by the FBI, which served him with papers.

Court filings indicated that TD was one of three banks that provided financial services to Stanford International Bank Ltd. (SIB) and show that at one point in 2006, Stanford's entities had more than $160-million in various TD accounts.

"We have been contacted by regulatory authorities and although there are no allegations of wrongdoing on the part of TD, we are, of course, co-operating fully," TD spokeswoman Julia Koene said yesterday.

SIB is at the centre of Mr. Stanford's global financial empire. The Antigua- based bank has 30,000 clients in 131 countries and offices around the world, including one in Montreal.

"Cash sits at three correspondent banks," said one SIB document dated 2005. Correspondent banks generally perform banking operations for small foreign banks. Those listed in the court filing were TD, HSBC in Europe and National Republic in the United States. The document added that "most money flows through TD."

Court filings also showed that the Stanford group had $10.1-million invested through TD Asset Management in 2004. It was one of many investment firms that had a relationship with Stanford.

Others included Lehman Brothers, Refco and several Swiss firms.

Ms. Koene confirmed that TD is "one of the banks that provide cash management services to Stanford and we do manage a small investment account on their behalf. We do not distribute any of the Stanford Group investment products and therefore none of our clients have been impacted through their relationship with TD."

She added that "the total amount Stanford has in accounts and investments with TD is significantly less than $50-million (Canadian) and has no material impact to TD."

Among the hundreds of documents filed was a list of responses SIB employees were to give to questions from customers. The

response to the question: "How do you achieve your returns?" included telling clients that the bank had "20 plus advisers primarily located in Europe and Canada."

If asked: "Will the bank name any of the advisers?" the response was: "We can mention adviser relationships but generally do not [name individuals] in order to protect their privacy ... [We] will occasionally mention adviser if client pushes enough - for example, Soc Gen., CSFB or TD. Can mention correspondents bank relationships - HSBC (euro and pound) and TD (U.S.)."

It is not clear how many clients SIB had in Canada, but one SIB document listed "deposits classified by country of depositor and currency" as of the end of 2006. According to that filing, Canadian depositors accounted for $33.5- million (U.S.). That compared with more than $1-billion in each of Antigua, Venezuela and the U.S. and more than $700-million in Mexico. Other countries listed included Ecuador, Panama, Colombia, Switzerland, Britain, Haiti and Libya.

Regulators in several countries have begun freezing the assets of SIB and other Stanford companies after clients rushed to withdraw money. Mr. Stanford lives mainly on the island of St. Croix in the U.S. Virgin Islands and had extensive business interests in Antigua.

Another list of questions and answers filed in court contained this question: "What is in place to prevent fraud and/or Mr. Stanford from running off with all the money?" The answer: "Regulatory oversight ... Too many checks and balances ... Too many years, too much history. Stanford has been in business for 70 years, it's [not] likely that all of a sudden he would up and vanish." Last night. Mr. Stanford's father, James, who is also a director of SIB, said he hadn't heard from his son in days, and dismissed the allegations.

"I don't believe it," the elder Stanford said from his home in Mexia, Tex. "I can't really think that [he's] done anything crooked like the SEC is alleging. Anyway, we shall see."

National Post

FBI serves Stanford with fraud papers; Found In Virginia

Fri Feb 20 2009
Page: FP6
Section: Financial Post

Byline: James Vicini And Jason Szep
Dateline: WASHINGTON/ST. JOHN'S

Source: Reuters
Illustrations: Color Photo: /

U.S. law-enforcement officials found Texas billionaire Allen Stanford in the Fredericksburg, Va., area yesterday and served him with a complaint accusing him of a US$8-billion fraud.

FBI spokesman Richard Kolko said the FBI acted at the request of the U. S. Securities and Exchange Commission and that Mr. Stanford had not been arrested. The FBI gave few other details.

The whereabouts of the jet-setting 58-year-old tycoon who has luxury U. S. and Caribbean homes, had been the subject of intense speculation since he failed to respond to civil charges filed in Texas on Tuesday.

Mr. Stanford, two colleagues and three Stanford companies are accused of a "massive fraud" by the U. S. Securities and Exchange Commission.

U. S. federal agents raided Stanford Group offices in Miami, Houston and other U. S. cities earlier this week.

The fallout from the SEC charges against the flamboyant, mustachioed financier and sports entrepreneur, pictured here, has rippled far beyond U. S. borders, prompting investigations from Houston to Antigua and Caracas.

Five Latin American countries have now acted against Stanford businesses, while Britain's Serious Fraud Office is monitoring a possible U. K. link after media reports that Stanford's books were audited in Britain.

The SEC accused

Mr. Stanford in a civil complaint

on Tuesday of fraudulently selling US$8-bi l -lion in certificates of

deposit with impossibly high interest rates from his Antiguan affiliate, Stanford International Bank Ltd.

The scandal, emerging hard on the heels of the alleged US$50-billion fraud by Wall Street veteran Bernard Madoff, has again spooked international investors and sharply increased public distrust of investment plans.

In Caracas, the government of socialist President Hugo Chavez took control of Stanford Bank Venezuela, one of the country's smallest commercial banks, to stem massive online withdrawals following the SEC fraud charges.

"The authorities were forced to take the decision to intervene, and there will be an immediate sale [of the bank]," Ali

Rodriguez, the Finance Minister, told reporters.

Another Andean nation, Ecuador, announced it was seizing two local Stanford units -- a brokerage house and a fiduciary firm. "We will intervene to protect the interests of investors," said Santiago Noboa, the state regulator of the stock exchange in Quito.

Mexico's banking regulator said it was investigating the local Stanford bank affiliate for possible violation of banking laws.

Peru's securities regulator suspended the operations of a local Stanford unit.

ABC News reported on Wednesday that federal authorities had been probing whether Mr. Stanford was involved in laundering Mexican drug money, but the U. S. Drug Enforcement Administration said it had no current inquiry underway.

An initial review also revealed no past investigations, but officials were

still checking, a DEA spokesman said.

National Post

Can't find Stanford, U.S. SEC admits; Suspect in 'massive fraud' has six planes

Thu Feb 19 2009
Page: FP14
Section: Financial Post
Byline: David Scheer
Source: Bloomberg News, with files from Reuters
Illustrations: Color Photo: Jewel Samad, AFP, Getty Images / Customers line up outside a Stanford Group-owned Bank of Antigua branch in St John's.

U.S. regulators don't know the whereabouts of R. Allen Stanford, the billionaire accused of running a "massive, ongoing fraud" through his Houstonbased Stanford Group Co., a Securities and Exchange Commission official said yesterday.

"We don't know where he is, quite frankly," said Rose Romero, director of the SEC's office in Fort Worth, Tex.

The SEC on Tuesday filed a civil lawsuit against Mr. Stanford, companies he controls and two colleagues, claiming they misled investors while selling US$8-billion in certificates from an affiliated bank in Antigua. He has not been criminally charged, a step that could restrict his movements.

The SEC and a court-appointed receiver are seeking to locate investor assets to determine any possible losses. The agency said Mr. Stanford has "wholly failed to co-operate" with U. S. efforts to account for investor funds at Antiguabased Stanford International Bank. About 90% of the firm's investment portfolio is essentially a "black box," shielded from independent oversight, the regulator said.

Stanford has offices in Panama, Venezuela, Mexico, Ecuador, Peru and Colombia.

Allen Stanford, who last year was named the 605th wealthiest person in the world by Forbes magazine, has six planes registered with the Federal Aviation Administration, according to the agency's Web site. He is a citizen of the United States and of Antigua&Barbuda after being naturalized in that country 10 years ago, according to a biography from the company's Web site. Stanford Group has 19 wealth-management offices in the United States, according to its Web site.

Alfredo Perez, a spokesman for the U. S. Marshall's office in Houston, which raided the company's offices there, said he is not aware of any arrest warrant for Mr. Stanford.

Meanwhile, hundreds of people lined up at Stanford's Antiguan bank yesterday seeking to withdraw funds.

Two police officers stood watch at the Bank of Antigua at midmorning as at least 600 people stood in a line stretching around a street corner, despite assurances from regional monetary authorities that the bank had sufficient reserves.

"I'm worried and I'd like to get my money out," said Andrea Lamar, 28, who joined the line with a friend on a street popular with tourists in the state capital, St. John's.

A woman in the queue who declined to give her name said, "I wasn't panicked until I saw this crowd. Now I'm concerned."

The six-nation Eastern Caribbean Central Bank posted a statement at Bank of Antigua saying many depositors had started to withdraw funds, "causing some anxiety," but that the bank had sufficient reserves.

"However, if individuals persist in rushing to the bank in a panic, they will precipitate the very situation that we are all trying to avoid," the statement said.

Bank of Antigua, with three branches in the tiny twin-island state of Antigua and Barbuda, is part of Mr. Stanford's sprawling global business interests but is separate from an offshore affiliate at the heart of fraud charges lodged by U. S. regulators.

Baldwin Spencer, Antigua's Prime Minister, said in a televised address to the nation late Tuesday that the charges against Mr. Stanford could have "catastrophic" consequences for the nation, but he urged the public not to panic.

Holding dual U. S.-Antiguan citizenship, Mr. Stanford lived for more than 20 years on the reef-girded island, only 14 kilo-metres wide and 19 km long.

The Globe And Mail

HOW A HIGH-FLYING TEXAS BUSINESSMAN CAME TO HAVE CANADIAN CONNECTIONS; As allegations surface, worried investors besiege Allen Stanford's Montreal office

Thu Feb 19 2009
Page: B1
Section: Report On Business: International
Byline: Sinclair Stewart, Paul Waldie And Bertrand Marotte
Dateline: NEW YORK, TORONTO, MONTREAL
Source: With files from reporter Kevin Carmichael in Ottawa and wire news services
Illustrations: Illustration

NEW YORK, TORONTO, MONTREAL -- A week before Christmas in 2002, Texas billionaire Allen Stanford arrived in Montreal to burnish his credentials as a high-living, high-flying investment executive. He had ordered a Global Express 9100 jet from Bombardier - the 100th that had been sold - and to mark the occasion, executives presented the aircraft to him during a private ceremony at the company's completion centre.

He returned to the city two years later, only this time it was to open a swank satellite office for his Antigua-based financial outfit, Stanford International Bank. The five-person operation, headed by former Royal Bank of Canada manager Alain Lapointe, promoted the attractive returns offered by Stanford's offshore investments.

Yesterday, customers of the Montreal office were among thousands around the globe who descended on the bank's far-flung branches in a panic, demanding answers - not to mention a return of their money - amid allegations that Mr. Stanford masterminded an $8-billion (U.S.) investment fraud.

At Stanford International's representative office on the 30th floor of the Montreal Trust tower, a distraught customer admitted that, before the scandal broke, he wondered whether the terrific returns were too good to be true.

But he said he was swayed by explanations that the bank benefited from significant tax breaks as an offshore operation.

"Now, with what I've been hearing, I'm wondering if the investments [Stanford] made are legitimate," said the client, who did not want to be identified. After trying to contact Mr. Lapointe on his cellphone, the customer dropped off some papers and left.

A woman in Stanford's offices confirmed Mr. Lapointe was in, but said he wasn't available to comment on the controversy.

Mr. Lapointe, who also worked at Laurentian Bank and Computershare before joining Stanford, received his MBA from HEC-Montreal, the University of Montreal's business school.

In 2004-2005, Mr. Lapointe, a director of the HEC alumni association, helped its class of '85 graduates raise $50,000 for the school, and last September, he helped organize a golf fundraiser. There is speculation in local circles that some of HEC's close-knit alumni populated the

Stanford client list, but school spokeswoman Kathleen Grant declined to comment, other than to say "he is someone who is very devoted to the school."

The whereabouts of Mr. Stanford, or "Sir Allen" in Antigua, where he became the first American citizen to receive a knighthood, remains a mystery. One report suggested he attempted to fly from Houston to the small Caribbean island by private jet, but abandoned the plan after his credit card was refused by the aircraft's operator.

Once described as "haughty, arrogant and obnoxious" by Antiguan Prime Minister Baldwin Spencer, Mr. Stanford is America's 205th-richest man according to Forbes magazine, which values his personal worth at approximately $2-billion.

He is both a divisive and colourful character in his adoptive home of 70,000 people, where some residents continued to voice their support for him yesterday, noting he is one of the island's economic linchpins - not to mention one of its quirkier citizens. He once transported a wounded, bleeding priest on his private plane and claimed he received a "life-changing" surge when the two touched heads.

Back in the United States, Mr. Stanford stirred controversy by claiming family ties to Leland Stanford, who founded Stanford University in the 1890s. The university says there is no genealogical connection between the two and sued Stanford Group in October for infringing on its trademark.

Mr. Stanford owns Antigua's largest newspaper and operated a pair of Caribbean airlines, which were customers of Bombardier.

He is also a major sponsor of several sports, including polo, yachting, soccer, golf and cricket. Last year he underwrote a $1-million-per-player cricket tournament in Antigua, but also created a stir when he reportedly flirted with the wives of English cricketers. He was also supposed to back a cricket tournament in Quebec this summer, but that plan is now up in the air following allegations by the U.S. Securities and Exchange Commission.

On Tuesday, the regulator accused him of promising "improbable, if not impossible" returns on a type of security known as certificates of deposits. The SEC said that instead of putting these assets into transparent, liquid investments, the money was placed into a "black box." The allegations stretch back a decade, and receivers are now attempting to account for the approximately $8-billion worth of CDs purchased by investors.

Officials in many Latin American countries are now scrambling to calm nervous investors amid potential runs on the bank. Hundreds lined up outside the flagship branch in Antigua trying to get their money out, and similar consternation played out in Venezuela, Colombia, and Peru. Panamanian authorities, meanwhile, seized Stanford's operation there because of "massive withdrawals."

Stanford was able to set up a storefront in Canada under provisions in the Bank Act dating back about three decades that allow international lenders to promote their services, provided they don't accept deposits. Stanford International Bank Ltd. is one of 32 "foreign bank representative offices" in Canada that are overseen by the

Office of the Superintendent of Financial Institutions (OSFI), which is now looking into the company.

While it is difficult to assess how much money Canadian investors poured into Stanford, it is clear the company did have established relationships here.

According to documents filed by the SEC in a Texas court, Toronto-Dominion Bank and TD private client services had some involvement with Stanford International Bank.

Mark Zarich, who was at Stanford for nearly 10 years and ran the firm's investment advisory group, told SEC lawyers in January that client money was deposited into three banks around the world.

"I know HSBC was one of them," Mr. Zarich said according to a transcript filed in court. "Toronto-Dominion was another, and I think there was a third in the States."

SEC lawyers then handed Mr. Zarich a document that read: "Cash sits in three correspondent banks: TD, Toronto-Dominion, HSBC and National Republic."

He confirmed the list and added that the HSBC bank was in London and the National Republic branch somewhere in the United States.

Mr. Zarich also quoted from an internal document that indicated the company had several advisers in Canada. Stanford International "utilizes 20 plus advisers primarily located in Europe and Canada."

A spokesman for TD said that the bank does not distribute any Stanford products and that none of its customers have been affected. She said the bank would co-operate with any investigation, but declined to comment on any matters being probed by regulators.

According to their biographies, three managers at Stanford's Antigua headquarters formerly worked for the Bank of Nova Scotia, but a spokesman for the bank, which has extensive operations in the Caribbean, was unable to confirm this.

National Post

Authorities Raid Stanford Office; Cricket Billionaire Charged In Fraud

Wed Feb 18 2009
Page: FP1
Section: Financial Post
Byline: Janet Whitman and Eoin Callan
Dateline: New York and Toronto
Source: Financial Post
Illustrations: Color Photo: Jewel Samad, AFP, Getty Images / R. Allen Stanford celebrates last November after a series of cricket matches between his team, the Stanford Superstars, and England's cricket team.

U. S. marshals and FBI agents swarmed the offices of Texan billionaire R. Allen Stanford yesterday, accusing him of duping investors in an US$8-billion fraud -- an alleged scam that could end up costing many Canadians.

U. S. securities regulators charged Mr. Stanford and his Houston-based Stanford Group Co. with making false promises and fabricating historical return data to prey on investors who thought they were putting their nest eggs in ultra-safe "certificates of deposit," also known as CDs.

Hinting at another scandal three months after Bernard Madoff's alleged US$50-billion scam, the United States Securities and Exchange Commission said that 90% of Mr. Stanford's portfolio resides in a "black box" shielded from any independent oversight.

Kimberly Garber, an SEC spokeswoman, said the extent and nature of the fraud are unclear, adding that the agency isn't ruling out the possibility of another Ponzi scheme.

The SEC, which brought the charges, said Mr. Stanford, 58, has refused to co-operate in its investigation seeking to account for the US$8-billion.

Mr. Stanford, an internationally known cricket fan, and his top associates failed to turn up to testify after recent subpoenas from the SEC.

Canada's top bank regulator is understood to have launched a probe into Stanford's operations in the country, and has sought information from the firm.

Investigators started probing Mr. Stanford and his giant investment portfolio several months ago, alerted by his promise of double-digit investment returns over the past 15 years -- an improbable performance.

In 2008, for instance, Mr. Stanford boasted that his "diversified portfolio of investments" lost only 1.3% -- at a time when the Standard & Poor's 500 index sank nearly 40%.

Investigators stepped up their probe after the December arrest of Mr. Madoff, whose investment firm also signalled giant red flags for years by offering too-good-to-be-true returns.

The SEC alleged Mr. Stanford assured his investors he was investing their money in safe, liquid securities. Instead, he allegedly put the money in much higher risk real estate and private equity.

Rather than being monitored by a team of 20 analysts as he allegedly pledged, investments were overseen by two people, himself and James Davis, the bank's chief financial officer, who was also charged yesterday.

In a strange twist, Mr. Stanford allegedly assured investors his firm hadn't lost money by investing with Mr. Madoff when in fact it had.

"We are alleging a fraud of shocking magnitude that has spread its tentacles throughout the world," Rose Romero, regional director of the SEC's office in Fort Worth, Tex., said in announcing the charges.

She was unavailable for further comment.

Canadians may end up losing in the alleged massive fraud. Mr. Stanford's firm started building an extensive network in Canada after being licensed to operate north of the border four years ago.

Canada's Office of Superintendent of Financial Services confirmed last night it is probing Stanford's operations here.

The bank opened an office in Montreal's financial district after being granted permission to hawk its wares by the federal bank regulator in Ottawa in 2004.

The approval to operate a representative office was relatively rare at the time for a privately held foreign bank, and was used by Mr. Stanford as an opening to host receptions for

influential members of Canada's business community.

The bank also appears to have developed relationships among alumni at Canadian colleges and universities, including graduates of business school HEC Montreal.

The Montreal office is headed by Alain Lapointe, a former manager at Royal Bank of Canada and Laurentian Bank, who has also assisted the business school with fundraising in the past, bundling donations from graduates.

As more than a dozen federal agents entered Mr. Standford's Houston headquarters yesterday, the company said it remained open for business. But a sign taped to the door said the firm was now operating "under the management of a receiver."

STANFORD GROUP CO. BY THE NUMBERS

-1.3% Loss claimed by R. Allen Stanford in 2008 on "diversified portfolio of investments" at a time when the Standard & Poor's 500 stock index sank nearly 40%.

30,000 Number of investors keeping deposits with Stanford International Bank.

US$8.5B Total assets held by Stanford International Bank.

US$51B Total assets being managed by Houston-based Stanford Group Co. and its affiliates.

US$20M Amount cricket team owned by R. Allen Stanford won in a series of matches against England.

The Globe And Mail

SEC charges Stanford with $8-billion fraud

Wed Feb 18 2009
Page: B11
Section: Report On Business: International
Source: Reuters

U.S. authorities charged Texas billionaire Allen Stanford and three of his companies with "massive ongoing fraud" yesterday as federal agents swooped in on Mr. Stanford's U.S. headquarters. In a complaint filed in federal court in Dallas, the Securities and Exchange Commission accused the cricket- loving Mr. Stanford and two other top executives at Stanford Financial Group of fraudulently selling $8-billion (U.S.) in high-yield certificates of deposit. According to the complaint, Mr. Stanford sold $8-billion in CDs "by promising high return rates that exceed those available through true certificates of deposits offered by traditional banks." The SEC said it was seeking to freeze the assets of the company and appoint a receiver. Mr. Stanford's investment companies were exposed to losses from the alleged Ponzi scheme run by Bernard Madoff, and falsely reassured investors otherwise, the SEC also alleged. A Stanford spokesman did not return calls seeking comment.

The Globe And Mail

Canadians may be exposed as SEC accuses Stanford of $8-billion fraud

Wed Feb 18 2009
Page: A7
Section: News Business

Byline: David Scheer And Alison Fitzgerald

Source: Bloomberg News

U.S. regulators accused R. Allen Stanford of running a "massive, ongoing fraud" through his Houston-based Stanford Group Co. while selling about $8-billion in certificates issued by an affiliated bank in Antigua.

Stanford International Bank touted "improbable, if not impossible" returns, the Securities and Exchange Commission said yesterday in a complaint against Mr. Stanford, firms he controls and two colleagues. A federal court in Dallas agreed to freeze assets and appoint a receiver to account for investor money.

"We are alleging a fraud of shocking magnitude that has spread its tentacles throughout the world," Rose Romero, director of the SEC's Fort Worth office, said yesterday in a statement. Stanford spokesman Brian Bertsch referred questions to the regulator.

The company has 39 offices worldwide, largely in the United States and Latin America. It has one Canadian office, located in Montreal. The SEC has been investigating Stanford Group since at least last summer over sales of the certificates.

The U.S. Marshal's office in Houston sent a 15-person task force to secure files and computers at Stanford's offices in the Galleria shopping district about 10 a.m. Texas time, and remained with employees, said Marshals spokesman Alfredo Perez. "Once everybody leaves, the offices will be locked down," he said.

Stanford Group, selling the certificates through a network of financial advisers, told clients their funds would be placed mainly in easily sellable financial instruments, monitored by more than 20 analysts and audited by regulators on the Caribbean nation of Antigua, the SEC said. Instead, the "vast majority" of the portfolio was managed by Allen Stanford and the Antigua subsidiary's chief financial officer, James Davis, according to the regulator.

Mr. Stanford and Mr. Davis didn't appear for testimony or provide any documents in response to SEC subpoenas in the past several weeks as investigators tried to account for the $8-billion in investor money, the agency said. Laura Pendergest-Holt, a member of Stanford International's investment committee, couldn't account for the funds, nor could a former senior investment officer, the agency said. She and Mr. Davis were also named as defendants in the civil case.

Attorneys for Mr. Stanford, Mr. Davis and Ms. Pendergest-Holt couldn't be located for comment.

National Post

Stanford leading light in cricket world; Link Suspended

Wed Feb 18 2009
Page: FP3
Section: Financial Post
Byline: Barry Critchley
Source: Financial Post

The world of cricket, at least in the West Indies, will never be the same with the news that Sir Allen Stanford, the Texas-born, cricket-loving resident of Antigua, has been charged with fraud by the U. S. Securites and Exchange Commission.

Mr. Stanford moved to Antigua many years ago, acquired citizenship and became a major backer of cricket, the once-dominant sport, in the region.

He picked cricket because he felt that the players, who give so much delight to the local people, weren't making the money he felt they should.

By being generous with the players, he hoped he could reverse the slide in West Indies cricket: The team that dominated the cricket world for a 15-year period that ended in the late 1990s is now ranked just above Bangladesh and Zimbabwe in world standings.

Initially, he organized an interisland 20-20 tournament, a match that lasts about three hours. (The 20-20 refers to the maximum number of overs that each team can receive. Each over has six balls.) The winning team -- and 32 started -- received a US$1-million prize, an unheard of amount for a cricket match.

About this time, the Stanford Oval arrived on the scene. Mr. Stanford moved on to the international stage. In June, 2008, he reached a five-year agreement with The England and Wales Cricket Board over a series of matches involving the so-called Stanford Superstars.

Again it was a winner-take-all format. In the first matches played last November, the Stanford team won decisively -- meaning a US$20-million payday for the West Indies players. Despite the cash, the games attracted considerable criticism: The lighting was felt to be less than adequate and the pitches were not up to scratch. Mr. Stanford's behaviour, particularly his fraternizing with the players' wives, also drew criticism.

The ECB wasn't praised for agreeing to the five-year deal. One former chief described the games as a "pantomine" and "obscene," a case of the almighty dollar overruling common sense. The ECB said yesterday is has suspended talks with Mr. Stanford.

bcritchley@nationalpost.com

TAB D

This is Exhibit "D" referred to in the affidavit of Wolfgang Mersch sworn before me, this 10th day of October, 2014

A COMMISSIONER FOR TAKING AFFIDAVITS

ACTION NO.

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY

BETWEEN:

DYNASTY FURNITURE MANUFACTURING LTD., as representative plaintiff

Plaintiff

- and -

STANFORD INTERNATIONAL BANK, LTD., STANFORD GROUP COMPANY, STANFORD CAPITAL MANAGEMENT, LLC, R. ALLEN STANFORD, JAMES M. DAVIS, LAURA PENDERGEST-HOLT, ABC CORP 1 to 9 and JOHN DOE 1 to 9 and JANE DOE 1 to 9 and other entities and individuals known to the Defendants

Defendants

Brought under the *Class Proceedings Act*

STATEMENT OF CLAIM

1. The Plaintiff, Dynasty Furniture Manufacturing Ltd. (hereinafter, the "Representative Plaintiff" or "Plaintiff"), is a corporation incorporated pursuant to the laws of Alberta. The Plaintiff invested approximately U.S. $1,000,000 of its own money in the Investment Scheme (as described below). The Plaintiff brings this action on its own behalf and on behalf of all persons other than the Defendants who invested in any of the Defendant corporations or who purchased investment products offered or promoted by any of the Defendants ("Class Members").

2. The Defendant Stanford International Bank, Ltd. ("SIB"), purports to be a private international bank domiciled in St. John's, Antigua, West Indies. SIB claims to serve clients in 131 countries and to hold U.S. $7.2 billion in assets under management. SIB's Annual Report for 2007 states that SIB has 50,000 clients. SIB is part of a complex web of affiliated companies

that exist and operate under the brand Stanford Financial Group ("SFG"). SFG is described as a privately-held group of companies that has in excess of U.S. $50 billion "under advisement". SIB's multi-billion portfolio of investments is purportedly monitored by SFG's chief financial officer in Memphis, Tennessee (namely, the Defendant James Davis). Unlike a commercial bank, SIB does not loan money. SIB sells certificates of deposit ("CDs") to investors through its affiliated investment advisor (the Defendant Stanford Group Company).

3. The Defendant Stanford Group Company ("SGC"), is a Houston-based corporation, registered with the Securities Exchange Commission (the "SEC") as a broker-dealer and investment advisor. It has 29 offices located throughout the United States. SGC's principal business consists of sales of SIB-issued securities, marketed as CDs. SGC is a wholly-owned subsidiary of Stanford Group Holdings, Inc. ("SGHI"), which in turn is owned by Stanford.

4. The Defendant Stanford Capital Management, LLC ("SCM"), is a registered investment advisor in the United States, which took over management of the SAS program (described below) from SGC in early 2007. SGC markets the SAS program through SCM.

5. The Defendant R. Allan Stanford ("Stanford"), is a U.S. citizen, the Chairman of the Board of SIB, the sole shareholder of SIB and the sole director of SGC's parent company, SGHI. Stanford is and has at all material times been the directing mind behind the Investment Scheme (as described below).

6. The Defendant James M. Davis ("Davis"), is a U.S. citizen and a resident of Baldwin, Mississippi. Davis has offices in Memphis, Tennessee and Tulepo, Mississippi. Davis is a director and the chief financial officer of SFG and SIB. Davis has at all material times been a knowing participant in the Investment Scheme (as described below).

7. The Defendant Laura Pendergest-Holt ("Holt"), is the Chief Investment Officer of SIB and its affiliate SFG. She supervises a group of analysts in Memphis, Tupelo, and St. Croix who "oversee" performance of a portion of the assets (sometimes described internally as Tier 2 assets). Holt has at all material times been a knowing participant in the Investment Scheme (as described below).

8. The Defendants John Doe 1 to 9, Jane Doe 1 to 9 and ABC Corp. 1 to 9 (collectively, the "John Doe Defendants"), are additional individuals and entities involved in the Investment Scheme. Particulars in respect of these individuals and entities are known to the Defendants and will be particularized by the Plaintiff prior to the trial of the action.

9. SIB, SGC, SCM, Stanford, Davis, Holt and the John Doe Defendants are sometimes referred to herein collectively as the Defendants.

THE INVESTMENT SCHEME

10. SIB, acting through a network of SGC financial advisors, including financial advisor Faran Kassam who met with the Plaintiff in Calgary, Alberta, and sold it U.S. $1,000,000 of CDs, has sold approximately U.S. $8 billion of self-styled "certificates of deposit" (*i.e.*, the CDs) by promising high rates of return that exceed those available through true certificates of deposit offered by traditional banks. For example, on November 28, 2008, SIB quoted 5.375% on a 3 year CD, while comparable U.S. bank CDs paid under 3.2%. Recently, SIB quoted rates of over 10% on five year CDs.

11. For almost fifteen years, SIB has represented to the public that it has experienced consistently high returns on its investment of deposits (ranging from 11.5% in 2005 to 16.5% in 1993). Since 1994 SIB claims to have never failed to exceed its targeted investment return of

10% per annum. The returns on the CDs were not as great as SIB represented. The Defendants have refused to cooperate with an investigation by the SEC to confirm the rates of return actually earned.

12. SIB's network of SGC financial advisors has made repeated misrepresentations to the purchasers of CDs in order to induce them into thinking their investment is safe. SIB and its advisors have misrepresented to CD purchasers that their deposits are safe because the bank: (i) re-invests client funds (the "Portfolio") primarily in "liquid" financial investments, (ii) monitors the Portfolio through a team of 20-plus analysts; and (iii) is subject to yearly audits by Antiguan regulators. Moreover, SIB has attempted to calm its investors by claiming the bank has no "direct or indirect" exposure to the recent investment scheme being investigated in respect of Bernard Madoff. None of these representations are true.

13. Contrary to the representations made, the Portfolio was not invested primarily in liquid financial instruments or allocated in the manner described in SIB's promotional material and public reports. Instead, a substantial portion of the Portfolio was placed in illiquid investments, such as real estate and private equity. Further, the vast majority of the Portfolio was not monitored by a team of analysts, but rather by two people – Stanford and Davis. And contrary to SIB's representations, the Antiguan regulator responsible for oversight of the Portfolio – the Financial Services Regulatory Commission – does not audit the Portfolio or verify the assets SIB claims in its financial statements. Moreover, the Portfolio has exposure to the Madoff investment scheme despite SIB's public assurances to the contrary.

14. SGC has failed to disclose material facts to its advisory clients, such as the fact that (i) in recent weeks there has been an alarming increase in the amount of liquidation activity by SIB,

and attempts to wire money out of the Portfolio, and (ii) a major clearing firm – after unsuccessfully attempting to find information about SIB's financial condition and because it could not obtain adequate transparency into SIB's financials – has recently informed SGC that it would no longer process wires from SGC accounts at the clearing firm to SIB for the purchase of SIB issued CDs, even if they were accompanied by customer letters of authorization.

15. The Defendants' fraudulent conduct is not limited to the sale of CDs. Since 2005, SGC advisors have sold more than U.S. $1 billion of a proprietary mutual fund wrap program called Stanford Allocation Strategy ("SAS"), by using materially false and misleading historical performance data. The false data has helped SGC grow the SAS program from less than U.S. $10 million in around 2004 to over U.S. $1.2 billion, generating fees for SGC (and ultimately Stanford) in excess of U.S. $25 million. Also, the fraudulent SAS performance was used to recruit registered financial advisors with significant books of business, who were then heavily incentivized to re-allocate their clients' assets to SIB's CD program.

16. SGC receives 3% based on the aggregate sales of CDs by SGC advisors, and the financial advisors themselves receive a 1% commission upon the sale of the CDs, and are eligible to receive as much as a 1% trailing commission throughout the term of the CDs. This commission structure provides a powerful incentive for SGC financial advisors to aggressively sell CDs to investors.

17. Contrary to the representations made in SIB's 2007 annual reports that its Portfolio was invested in a "well-diversified portfolio of highly marketable securities issued by stable governments, strong multinational companies and major international banks", in fact

approximately 90% of the Portfolio was invested in illiquid investments – namely real estate and private equity.

18. Contrary to the representation that responsibility for SIB's multi-billion dollar Portfolio was "spread-out" among 20-plus people, in fact only Stanford and Davis know the whereabouts of the vast majority of the bank's investments. Without any independent verification, Stanford and Davis alone were aware of where the vast majority of the investments were, and they alone calculated the returns on the aggregated Portfolio. Holt, who has at all material times been responsible for training SIB's Senior Investment Officer and SGC's financial advisors in respect of the CDs, knowingly misled them into telling investors that the entire Portfolio was spread-out among over 20 analysts.

19. The Investment Scheme was a fraudulent means designed and carried out by the Defendants to acquire, for their own benefit, the Plaintiff's and Class Members' funds.

MISREPRESENTATIONS

20. Unbeknownst to the Plaintiff and Class Members, the Investment Scheme, and the resulting investments (collectively the "Investment Agreements") were not legitimate investments. Rather, these transactions were designed by the Defendants for the purpose of converting the Plaintiff's and Class Members' funds to the Defendants' benefit.

21. The representations made by the Defendants to the Plaintiff and Class Members regarding the Investment Scheme and the workings and purpose of the Investment Scheme and the Investment Agreements were untruthful and inaccurate. Further, the Defendants knew such representations were untrue and inaccurate or, alternatively, were willfully blind as to the truth or accuracy of such representations. Such representations were made by the Defendants to the

Plaintiff and Class Members for the purpose of having the Plaintiff and Class Members participate in the Investment Scheme and enter into the Investment Agreements.

22. In the alternative, the said Defendants were negligent as to the truthfulness and accuracy of the representations they made to the Plaintiff and Class Members regarding the Investment Scheme and the Investment Agreements. Such representations were untrue and inaccurate and the said Defendants ought to have known of such untruths and inaccuracies. They were made by the Defendants to the Plaintiff and Class Members in breach of a duty of care owed by the Defendants to the Plaintiff and Class Members.

23. Had the Plaintiff and Class Members known that the said Defendants' representations regarding the Investment Scheme and Investment Agreements were untrue and inaccurate, they would not have participated in the Investment Scheme and, more particularly, would not have entered into the Investment Agreements.

24. As a result of their reliance on the said Defendants' misrepresentations, the Plaintiff and Class Members have suffered loss consisting of the outstanding principal amounts of their respective Investment Agreements and the opportunity to earn a return on those monies.

CONVERSION

25. By means of the illegitimate Investment Agreements, the Defendants have converted the Plaintiff's and Class Members' funds to their own uses and thereby deprived the Plaintiff and Class Members of the benefit of those funds.

26. The Plaintiff and Class Members are entitled to judgment for the recovery of the entire amounts fraudulently converted, namely the unreturned principal investments under the Investment Agreements.

BREACH OF TRUST AND BREACH OF FIDUCIARY DUTIES

27. In receiving the Plaintiff's and Class Members' investment funds, the Defendants stood as trustees, or alternatively constructive trustees, and fiduciaries with respect to those funds and, as such, owed duties to the Plaintiff and Class Members in that regard. The Defendants breached those duties by, among other things:

(a) converting the Plaintiff's and Class Members' funds to their own use;

(b) failing to protect the Plaintiff's and Class Members' funds from conversion or misuse by others;

(c) failing to fully inform the Plaintiff and Class Members of the illegitimate nature of the Investment Scheme and the Investment Agreements; and

(d) such further and other particulars as may be proven at the trial of this Action.

28. As a result of the Defendants' breaches of trust and breaches of fiduciary duties, the Plaintiff and Class Members have suffered losses including the loss of the unreturned principal investments under the Investment Agreements.

UNJUST ENRICHMENT

29. The Defendants have received the benefit of the Plaintiff's and Class Members' funds, to the detriment of the Plaintiff and Class Members and in the absence of any juristic reason.

CONSPIRACY

30. In engaging in all of the foregoing conduct, the Defendants have acted jointly and unlawfully with the common purpose and malicious intention of injuring the Plaintiff and Class Members. Alternatively, the Defendants have acted jointly, their conduct as set out above was directed at the Plaintiff and Class Members, and the Defendants knew or ought to have known that the Plaintiff and Class Members would suffer harm as a result of the Defendants' actions.

31. By virtue of the Defendants' conspiracy, the Plaintiff and Class Members have suffered losses including the loss of the unreturned principal investments under the Investment Agreements. Further, by conspiring in the manner they have, the Defendants are liable jointly and severally to the Plaintiff and Class Members for the entirety of the Plaintiff's and Class Members' collective losses notwithstanding that a particular Defendant may not have conducted a particular act alleged above.

FRAUDULENT CONVEYANCES

32. At various instances, the full particulars of which are only known to the Defendants, the Defendants have transferred assets from themselves to others in order to avoid creditors, including the Plaintiff and Class Members, or alternatively to the payees in preference to other creditors, including the Plaintiff and Class Members (the "Fraudulent Conveyances"). The Fraudulent Conveyances were made at such time as the Defendants knew they were insolvent or knew that, in light of the claims against them, including the potential claims of the Plaintiff and Class Members, they were on the eve of insolvency. All such Fraudulent Conveyances were illegal and contrary to the *Statute of Elizabeth* and the *Fraudulent Preferences Act*, R.S.A. 2000, c. F-24, upon which statutes the Plaintiff and Class Members expressly plead and rely.

33. The Plaintiff and Class Members seek Orders of this Court to set aside the Fraudulent Conveyances and make the assets so transferred available to the Plaintiff and Class Members to satisfy such Judgments as the Plaintiff and Class Members and other investors may obtain against the Defendants.

DISHONEST ASSISTANCE AND KNOWING RECEIPT

34. Each of the actions taken by the Defendants as set out above was contrary to the normal acceptable standards of honest conduct. By engaging in the conduct alleged herein, each of the Defendants has participated in transactions involving conversion, breach of trust, breach of contract and breach of fiduciary duty in which the Defendants, in all of the circumstances, knew or ought to have known that they could not and ought not honestly participate and further or alternatively participated in such transactions when they were or ought to have been suspicious about the validity and propriety of the transactions, and yet made conscious decisions to not inquire about the validity and propriety of such transactions.

35. By acting to assist, facilitate and allow the transactions and matters set out herein to proceed notwithstanding the knowledge and/or suspicions set out above, each of the Defendants facilitated and allowed the Plaintiff's and Class Members' losses and is therefore liable to the Plaintiff and Class Members for such dishonest assistance in the full amount of the Plaintiff's and Class Members' claims herein. Furthermore, by knowingly receiving the proceeds of conduct which the Defendants knew or ought to have known was dishonest, illegal or otherwise wrongful, the Defendants are liable to the Plaintiff and Class Members in the full amount of the Plaintiff's and Class Members' claims herein.

TRACING, FREEZING ASSETS, ACCOUNTING AND DISGORGEMENT

36. As a result of the Defendants' wrongful conduct as set out above, the Plaintiff and Class Members are entitled to trace all amounts received or disbursed by the Defendants as part of or as a result of the Investment Scheme and to recover same. The Plaintiff and Class Members are also entitled to an accounting of the monies belonging to the Plaintiff and Class Members that have come into the possession of the Defendants and to an accounting of any benefit received by the Defendants as a result of the Investment Scheme.

37. The Plaintiff and Class Members are entitled to interlocutory and permanent injunctions restraining the Defendants from disposing of any of their assets wheresoever located and an accounting of all of the Defendants' assets, effects, and property, including any trust account or jointly held assets, any improper disposition thereof, and all money had or received by the Defendants or anyone on their behalf.

38. In order to maximize the recovery to the Plaintiff and Class Members and other investors, the Plaintiff and Class Members require and seek the appointment of a Receiver or, in the interim, an Inspector over the undertaking and assets of the Defendants in order to trace, locate and freeze funds received from the defrauded investors, including the Plaintiff and Class Members.

39. The Defendants are liable to make restitution to the Plaintiff and Class Members and to disgorge any benefits they have received from the Investment Scheme.

40. The Plaintiff and Class Members have incurred significant out-of-pocket expenses and special damages in their detection, investigation and quantification of the fraud and losses suffered and their attempts to recover their losses at the hands of the Defendants in an amount to

be proven at the trial of this Action. The Plaintiff and Class Members claim these amounts from the Defendants.

POOLING OF ASSETS

41. Further, and in the alternative, the Plaintiff and Class Members plead that the Investment Scheme was, by its nature, insolvent from inception, and that any monies paid to individual investors in excess of their contributed capital are monies unlawfully received that ought to be shared *pro rata* by Class Members.

PUNITIVE DAMAGES AND COSTS

42. The Plaintiff and Class Members further plead that they are entitled to recover punitive and exemplary damages in the amount of $500,000.00 as a result of the acts of the Defendants described herein.

43. The Plaintiff and Class Members further state that, as a result of the Defendants' fraudulent and malicious conduct as set out above, the Defendants ought to pay costs of this action on a solicitor and his own client basis.

STATUTES

44. The Plaintiff and Class Members plead and rely upon the provisions of the *Securities Act* R.S.A. 2000, c. S-4, the *Class Proceedings Act* S.A. 2003, c. C-16.5, the *Business Corporations Act* R.S.A. 2000, c. B-9, the *Bank Act*, R.S.C. 1991, c.46, the *Contributory Negligence Act*, R.S.A. 2000 c. C-27, the *Tortfeasors Act*, R.S.A. 2000, c. T-5, the *Statute of Elizabeth* and the *Fraudulent Preferences Act*, R.S.A. 2000, c. F-24.

TRIAL OF THE ACTION

45. The Plaintiff and Class Members propose that the trial of this action be held at the Calgary Courts Centre, in the City of Calgary, in the Province of Alberta. In the opinion of the Plaintiff and Class Members, this action will not likely take more than 25 days to try.

WHEREFORE THE PLAINTIFF AND CLASS MEMBERS SEEK from the Court an Order certifying this action as a class proceeding and appointing the Plaintiff as the Representative Plaintiff of the class.

AND WHEREFORE THE PLAINTIFF AND CLASS MEMBERS FURTHER CLAIM as against the Defendants, jointly and severally:

(a) judgment in the amount of the funds invested with or given to the Defendants or any of them for the purposes of investment, together with such further or other amounts as have been converted by the Defendants, all in Canadian Dollars (to be converted either at the time of the investment or such other time as the Court directs);

(b) an accounting and disgorgement of all fees and other expenses paid by the Plaintiff or Class Members to the Defendants or any of them, and judgment for such amounts;

(c) further and/or in the alternative, damages for breach of contract, misrepresentation, fraud, breach of trust, breach of fiduciary duty, conversion, negligence, unjust enrichment and/or conspiracy in respect of the amounts

invested by the Plaintiff and Class Members in an amount to be particularlized prior to the trial of this action;

(d) special damages and out-of-pocket expenses arising out of the detection, investigation, quantification, and recovery of the fraud, losses, and consequential losses suffered by the Plaintiff and Class Members in an amount to be proven at the trial of this action;

(e) the appointment of an interim and permanent Receiver over the undertaking and property of the Defendants;

(f) in the alternative, the appointment of an Inspector;

(g) a declaration that any funds or benefits received by the Defendants from the Investment Scheme are held in trust for the Plaintiff and Class Members and that the Plaintiff and Class Members are entitled to trace the monies that the Defendants received or disbursed as part of or as a result of the Investment Scheme;

(h) a declaration that the Defendants must account to the Plaintiff and Class Members for all monies taken from the Plaintiff and Class Members as part of the Investment Scheme and for any benefit received by the Defendants as a result of the Investment Scheme;

(i) an Order setting aside the Fraudulent Conveyances;

(j) an Order permitting the Plaintiff and Class Members to trace the monies that the Defendants fraudulently obtained from the Plaintiff and Class Members, and from the sale of any goods fraudulently obtained with the Plaintiff's and Class Members' monies into and through any financial institution accounts or deposit facilities in the name of any of the Defendants and into or through any assets purchased by the Defendants with the Plaintiff's and Class Members' monies;

(k) a declaration that any real property owned in whole or in part by the Defendants shall be sold in order to deliver up to the Plaintiff and Class Members the funds which can be traced to those lands;

(l) interlocutory and permanent injunctions attaching the Defendants' assets and restraining the Defendants from disposing of any of their assets, including those held by another person on their behalf, wheresoever located;

(m) exemplary and punitive damages in the amount of $500,000;

(n) pre-judgment and post judgment interest on all amounts awarded to the Plaintiff and Class Members at such rate or rates as may be ordered, compounded annually or monthly, pursuant to the *Judgment Interest Act*, R.S.A 2000, c. J-1, as amended;

(o) the Plaintiff's and Class Members' costs of this action on a solicitor and his own client basis including costs of distributing or administering any award in favour of the Plaintiff and Class Members, or, in the alternative, on such other basis as this Honourable Court may order; and

(p) such further and other relief as this Honourable Court may permit.

DATED at the City of Calgary, in the Province of Alberta, this 25th day of February, 2009, AND DELIVERED BY BENNETT JONES LLP, Barristers and Solicitors, solicitors for the Plaintiff herein whose address for service is in care of the said solicitors at 4500 Bankers Hall East, 855 - 2nd Street S.W., Calgary, Alberta T2P 4K7.

ISSUED out of the Office of the Clerk of the Court of Queen's Bench of Alberta, Judicial District of Calgary, this 25th day of February, 2009.

V.A. BRANDT COURT SEAL

CLERK OF THE COURT

NOTICE

TO: STANFORD INTERNATIONAL BANK, LTD., STANFORD GROUP COMPANY, STANFORD CAPITAL MANAGEMENT, LLC, R. ALLEN STANFORD, JAMES M. DAVIS, LAURA PENDERGEST-HOLT, ABC CORP 1 to 9 and JOHN DOE 1 to 9 and JANE DOE 1 to 9 and other entities and individuals known to the Defendants

You have been sued. You are the Defendants. You have only 15 days to file and serve a Statement of Defence or Demand of Notice. You or your lawyer must file your Statement of Defence or Demand of Notice in the office of the Clerk of the Court of Queen's Bench in Calgary, Alberta. You or your lawyer must also leave a copy of your Statement of Defence or Demand of Notice at the address for service for the Plaintiff named in this Statement of Claim.

WARNING: If you do not do both things within 15 days, you may automatically lose the lawsuit. The Plaintiff may get a Court Judgment against you if you do not file, or do not give a copy to the Plaintiff, or do either thing late.

This Statement of Claim is issued by

BENNETT JONES LLP
Jim Patterson / Lincoln Caylor / Farouk Adatia
Tel: 416.777.6250 / 6121 / 403.298.3342
Fax: 416.863.1716 / 403.265.7219

Solicitors for the Plaintiff and Class Members whose address for service is in care of the said solicitors.

The Defendants reside or carry on business, as the case may be, in or about Calgary, Alberta.

CLERK OF THE COURT
FEB 25 2009
CALGARY, ALBERTA

ACTION NO. ~~0801~~ 0901-02821

IN THE COURT OF QUEEN'S BENCH OF ALBERTA JUDICIAL DISTRICT OF CALGARY

BETWEEN:

DYNASTY FURNITURE MANUFACTURING LTD., as representative plaintiff

Plaintiff

- and -

STANFORD INTERNATIONAL BANK, LTD., STANFORD GROUP COMPANY, STANFORD CAPITAL MANAGEMENT, LLC, R. ALLEN STANFORD, JAMES M. DAVIS, LAURA PENDERGEST-HOLT, ABC CORP 1 to 9 and JOHN DOE 1 to 9 and JANE DOE 1 to 9 and other entities and individuals known to the Defendants

Defendants

STATEMENT OF CLAIM

BENNETT JONES LLP
4500 Bankers Hall East
855 2nd Street SW
Calgary, AB T2P 4K7

Jim Patterson / Lincoln Caylor / Farouk Adatia
Tel: 416.777.6250 / 6121 / 403.298.3342
Fax: 416.863.1716 / 403.265.7219

Solicitors for the Plaintiff, Dynasty Furniture Manufacturing Ltd., as representative plaintiff

TAB E

SUPERIOR COURT
(Commercial Division)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

NO.: 500-11-036045-090

DATE: April 6, 2009

This is Exhibit "F" referred to in the affidavit of Wolfgang Mersch sworn before me, this 10th day of October 2014

A COMMISSIONER FOR TAKING AFFIDAVITS

PRESENT : CHANTAL FLAMAND, REGISTRAR

IN THE MATTER OF THE RECEIVERSHIP OF:

STANFORD INTERNATIONAL BANK LIMITED
-and-
STANFORD TRUST COMPANY LIMITED

Debtors

NIGEL JOHN HAMILTON-SMITH
-and-
PETER NICHOLAS WASTELL

Joint Receivers-Managers / Petitioners

ORDER
(Appointment of a foreign representative, the recognition of a foreign order, for judicial assistance and for the appointment of an interim receiver)

SEEING the Petitioners' Motion Seeking the appointment of a foreign representative, the recognition of a foreign order, for judicial assistance and for the appointment of an interim receiver pursuant to Sections 46(1) and 267 and seq. of Part XIII, International Insolvencies, of the Bankruptcy and Insolvency Act, R.S.C., 1985, c. B-3 (the "BIA"), the exhibits in support thereof, the Certificate of Jurisconsult from Mtre. Charlesworth O. D.

Brown, attorney at law, practicing in Antigua and the Affidavit of Mr. Nigel John Hamilton-Smith in support thereof;

GIVEN the provisions of the Receivership Order rendered by the Eastern Caribbean Supreme Court in the High Court of Justice in Antigua and Barbuda on February 26, 2009;

GIVEN the provisions of the BIA;

WHEREFORE THE COURT:

[1] GRANTS the present *Motion Seeking the Appointment of a Foreign Representative, the Recognition of a Foreign Order, for Judicial Assistance and for the Appointment of an Interim Receiver* (the "**Motion**") and the remedies sought herein (the "**Order**");

[2] RECOGNIZES the appointment of Nigel John Hamilton-Smith and Peter Nicholas Wastell as Joint Receivers-Managers (the "**Joint Receivers-Managers**") of Stanford International Bank Limited (the "**Bank**") and Stanford Trust Company Limited (the "**Trust Company**") (collectively, the "**Debtors**") in Antigua and Barbuda pursuant to the terms of the Receivership Order (Exhibit P-2) (the "**Receivership Order**");

[3] EXEMPTS the Joint Receivers-Managers from any obligation to serve the Motion and from any notice or delay of presentation relating thereto;

[4] APPOINTS the Joint Receivers-Managers as foreign representatives pursuant to sections 267 and *seq.* of the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3 (the "BIA");

[5] GRANTS the Joint Receivers-Managers the power to take immediate steps to stabilize the operations of the Debtors;

[6] GRANTS the Joint Receivers-Managers the power to take into custody and control all the property, undertakings and other assets of the Debtors;

[7] GRANTS the Joint Receivers-Managers the power to open and maintain bank account as they consider appropriate in their names as Joint Receivers-Managers for the monies of the Debtors coming under their control;

[8] AUTHORIZES the Joint Receivers-Managers to exercise, perform and discharge their duties independently or jointly and in so doing they shall be deemed to act as agents for the Debtors without personal liability;

[9] AUTHORIZES the Joint Receivers-Managers to disclose information concerning the management, operations, and financial situation of the Debtors as they

consider appropriate in the performance of their functions provided that no disclosure of customer specific information is authorized without further or other order of the Court;

[10] ORDERS that, notwithstanding any other provision of the Order, the Joint Receivers-Managers may apply at any time to this Court to seek any further relief, advice or instructions or present any petition which is required or appropriate with respect to the present Motion or the Receivership Order (P-2) or the rendering of any order that would be useful or appropriate in the circumstances;

[11] APPOINTS the Joint Receivers-Managers as interim receivers of any or all of the Debtors' property located in Canada, to take conservatory measures with regards to said property and/or summarily dispose of property that is perishable or likely to depreciate rapidly in value or to generate additional costs for the Debtors;

[12] ORDERS the provisional execution of this Order, notwithstanding any appeal and without the necessity of furnishing any security;

[13] THE WHOLE WITHOUT COSTS, save and except in case of contestation.

K

COPIE CONFORME
Éloïne C-Nova
Greffier adjoint

REGISTRAR

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No.: 500-11-036045-090

SUPERIOR COURT
(Commercial Division)

IN THE MATTER OF THE RECEIVERSHIP OF:

STANFORD INTERNATIONAL BANK LIMITED, a banking corporation organized under the laws of Antigua and Barbuda, having its head office and principal place of business at No. 11, Pavilion Drive, St. John's, Antigua, West Indies

-and-

STANFORD TRUST COMPANY LIMITED, a corporation organized under the laws of Antigua and Barbuda, having its head office and principal place of business at No. 1, Pavilion Drive, St. John's, Antigua, West Indies

Debtors

-and-

NIGEL JOHN HAMILTON-SMITH of Torrington House, 47 Holywell Hill, St Albans, Herfordshire, England

-and-

PETER NICHOLAS WASTELL of Torrington House, 47 Holywell Hill, St Albans, Herfordshire, England

Joint Receivers-Managers / Petitioners

TAB F

OGILVY RENAULT

This is Exhibit "F" referred to in the affidavit of Wolfgang Mersch sworn before me, this 10th day of October, 2014

A COMMISSIONER FOR TAKING AFFIDAVITS

Direct Dial: (514) 847-6017
jhimo@ogilvyrenault.com

SENT BY FACSIMILE

Montréal, April 8, 2009

WITHOUT PREJUDICE

Mtre Robert Plotkin
McGuireWoods LLP
Washington Square
1050 Connecticut Avenue N .W.
Suite 1200
Washington, DC 20036-5317
United States of America

Dear Sir:

RE: The Toronto Dominion Bank
In the Matter of the Receivership of:
Stanford International Bank Limited
and Stanford Trust Company

We are instructed by our clients, the receivers-managers Nigel John Hamilton-Smith and Peter Nicholas Wastell (the "**Receivers**") of Stanford International Bank Limited ("**SIB**") and Stanford Trust Company ("**STC**") to send you the present letter.

By email sent on March 4, 2009 to the law firm of Cameron McKenna LLP (copy attached), you confirmed that the Toronto Dominion Bank is currently holding in the name and/or on behalf of SIB the following amounts: (i) Can$1,848,409.84, (ii) US$18,889,458.60 and (iii) EUR$880,881.88.

You also indicated to our English colleagues that these sums were frozen under the Order of the United States and that no disbursements would be made until you receive appropriate guidance regarding your legal responsibilities.

Please be advise that on April 6, 2009, the Superior Court of Quebec, judicial District of Montreal, rendered an order granting our clients' *Motion Seeking the Appointment of a Foreign Representative, the Recognition of a Foreign Order, for Judicial Assistance and for the Appointment of an Interim Receiver* (the "**Order**") and the remedies sought therein. You will find attached a copy of the Order.

As you will notice upon review of the Order, the Superior Court of Quebec appointed the Receivers as foreign representatives pursuant to sections 267 and seq. of the *Bankruptcy and Insolvency Act* (R.S.C., 1985, c. B-3) and granted to our client, at paragraph 6 the power to take into custody and control all the property, undertakings and other assets of SIB and STC. This Order has full force and effect in Canada and it is executory notwithstanding any appeal.

Consequently, pursuant to the powers conferred to the Receivers in the Order by the Superior Court of Quebec, we hereby demand that you forward to the undersigned without further delay a cheque for the transfer of all assets and/or cash balances held in the name or for the benefit of SIB to the order of ***Ogilvy Renault In Trust.***

You can also proceed by way of wire transfer by using the following wire transfer information:

ROYAL BANK OF CANADA
1 PLACE VILLE MARIE
MONTREAL, QUEBEC H3C 3B5

TRANSIT: 00001
BRANCH: 003
TRUST ACCOUNT NO: 161-313-2

ACCOUNT NAME: OGILVY RENAULT

Should you fail to comply with the Order and with the request contained in this letter, our clients will have no other choice but to file legal proceedings against your clients without further notice or delay.

Counting on your cooperation, we remain,

Yours truly,

Julie Himo
JH/na
Encl.
c.c.: Nigel Hamilton-Smith, *Vantis*
Geoffrey Rowley, *Vantis*

SUPERIOR COURT
(Commercial Division)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

NO.: 500-11-036045-090

DATE: April 6, 2009

PRESENT : CHANTAL FLAMAND, REGISTRAR

IN THE MATTER OF THE RECEIVERSHIP OF:

STANFORD INTERNATIONAL BANK LIMITED
-and-
STANFORD TRUST COMPANY LIMITED

Debtors

NIGEL JOHN HAMILTON-SMITH
-and-
PETER NICHOLAS WASTELL

Joint Receivers-Managers / Petitioners

ORDER
(Appointment of a foreign representative, the recognition of a foreign order, for judicial assistance and for the appointment of an interim receiver)

SEEING the Petitioners' Motion Seeking the appointment of a foreign representative, the recognition of a foreign order, for judicial assistance and for the appointment of an interim receiver pursuant to Sections 46(1) and 267 and seq. of Part XIII, International Insolvencies, of the Bankruptcy and Insolvency Act, R.S.C., 1985, c. B-3 (the "BIA"), the exhibits in support thereof, the Certificate of Jurisconsult from Mtre. Charlesworth O. D.

Brown, attorney at law, practicing in Antigua and the Affidavit of Mr. Nigel John Hamilton-Smith in support thereof;

GIVEN the provisions of the Receivership Order rendered by the Eastern Caribbean Supreme Court in the High Court of Justice in Antigua and Barbuda on February 26, 2009;

GIVEN the provisions of the BIA;

WHEREFORE THE COURT:

[1] **GRANTS** the present *Motion Seeking the Appointment of a Foreign Representative, the Recognition of a Foreign Order, for Judicial Assistance and for the Appointment of an Interim Receiver* (the "**Motion**") and the remedies sought herein (the "**Order**");

[2] **RECOGNIZES** the appointment of Nigel John Hamilton-Smith and Peter Nicholas Wastell as Joint Receivers-Managers (the "**Joint Receivers-Managers**") of Stanford International Bank Limited (the "**Bank**") and Stanford Trust Company Limited (the "**Trust Company**") (collectively, the "**Debtors**") in Antigua and Barbuda pursuant to the terms of the Receivership Order (Exhibit P-2) (the "**Receivership Order**");

[3] **EXEMPTS** the Joint Receivers-Managers from any obligation to serve the Motion and from any notice or delay of presentation relating thereto;

[4] **APPOINTS** the Joint Receivers-Managers as foreign representatives pursuant to sections 267 and *seq.* of the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3 (the "**BIA**");

[5] **GRANTS** the Joint Receivers-Managers the power to take immediate steps to stabilize the operations of the Debtors;

[6] **GRANTS** the Joint Receivers-Managers the power to take into custody and control all the property, undertakings and other assets of the Debtors;

[7] **GRANTS** the Joint Receivers-Managers the power to open and maintain bank account as they consider appropriate in their names as Joint Receivers-Managers for the monies of the Debtors coming under their control;

[8] **AUTHORIZES** the Joint Receivers-Managers to exercise, perform and discharge their duties independently or jointly and in so doing they shall be deemed to act as agents for the Debtors without personal liability;

[9] **AUTHORIZES** the Joint Receivers-Managers to disclose information concerning the management, operations, and financial situation of the Debtors as they

consider appropriate in the performance of their functions provided that no disclosure of customer specific information is authorized without further or other order of the Court;

[10] **ORDERS** that, notwithstanding any other provision of the Order, the Joint Receivers-Managers may apply at any time to this Court to seek any further relief, advice or instructions or present any petition which is required or appropriate with respect to the present Motion or the Receivership Order (P-2) or the rendering of any order that would be useful or appropriate in the circumstances;

[11] **APPOINTS** the Joint Receivers-Managers as interim receivers of any or all of the Debtors' property located in Canada, to take conservatory measures with regards to said property and/or summarily dispose of property that is perishable or likely to depreciate rapidly in value or to generate additional costs for the Debtors;

[12] **ORDERS** the provisional execution of this Order, notwithstanding any appeal and without the necessity of furnishing any security;

[13] **THE WHOLE WITHOUT COSTS**, save and except in case of contestation.

COPIE CONFORME
Elaine C-Nova
Greffier adjoint

REGISTRAR.

TAB G

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Suite 1200
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Phone: 202.857.1700
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Robert Plotkin
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McGUIREWOODS

105

rplotkin@mcguirewoods.com
Direct Fax: 202.857.1737

April 10, 2009

This is Exhibit "G" referred to in the affidavit of Wolfgang Mersch sworn before me, this 10th day of October, 2014

A COMMISSIONER FOR TAKING AFFIDAVITS

VIA FACSIMILE (513-286-5474) AND EMAIL

Julie Himo, Esquire
Oglivy Renault
1981 McGill College Avenue, Suite 1100
Montreal, Quebec H3A 3C1
CANADA

RE: In the Matter of the Receivership of Stanford International Bank Ltd., et al.

Dear Ms. Himo:

On April 9, 2009, we received your April 8, 2009, letter to our clients, The Toronto Dominion Bank and TD Waterhouse (collectively "TD") in connection with the above-referenced matter. Our clients have asked us promptly to reply to your "demand" that they transfer "all assets" of the Stanford International Bank and Stanford Trust Co. to your firm's trust account "without further delay."

First, as you yourself know and state in your letter, the assets that you demand to be transferred are the subject of a prior Court order issued by a federal court in the United States, prohibiting their disbursement. TD's practice is to recognize valid court orders from foreign jurisdictions, and your demand places TD in peril of violating that order. TD is in the process of evaluating its competing legal obligations, and will advise you when it has completed this deliberation.

Second, it is not clear whether your clients, in the course of seeking their Canadian appointment, made full disclosure of the existing United States Order to the Superior Court. We therefore request a copy of that application to assist in TD's analysis.

Third, even assuming that TD might elect to meet your demand (which it has not done), the amounts you set forth in your letter are confusing and inaccurate. In your letter to TD Waterhouse, for example, based upon information TD previously provided, you demand the transfer of US$198,537.62. However, in the enclosure "supporting" this request, the stated amount reported by TD in the relevant account is US$45,162. This is a material difference of more than US$150,000, and it must be clarified before any payment by TD Waterhouse might ever be made.

Finally, as a courtesy to TD and as officers of the Court, should your clients determine to petition the Superior Court for an actual court-order seeking transfer of these funds, TD requests that your firm provide it with timely notice of such application, so that TD may appear and be heard before the Court. We thank you for this anticipated courtesy.

Yours truly,

Robert Plotkin

TAB H

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REGISTRAR'S OFFICE 2:00 2009 ANTIGUA & BARBUDA

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

Claim No. ANUHCV 2009/ 0149

In the Matter of Stanford International Bank Limited (In Receivership)
-And-

In the Matter of the International Business Corporations Act, Cap 222 of the Laws of Antigua and Barbuda
-And-

In the Matter of an Application for the Liquidation and Dissolution of Stanford International Bank Limited and the Appointment of Liquidators

EASTERN CARIBBEAN SUPREME COURT HIGH COURT

This is Exhibit H9 *referred to in the affidavit of* Wolfgang Mersch *sworn before me, this* 10th *day of* October, 20 14

COMMISSIONER FOR TAKING AFFIDAVITS

ORDER

BEFORE THE HONOURABLE JUSTICE DAVID HARRIS, IN OPEN COURT

DATED THE 15TH DAY OF APRIL, 2009

ENTERED THE 17th **DAY OF APRIL, 2009**

UPON THE Hearing of the Petition filed herein on the 25th day of March, 2009.

AND UPON READING the Petition and Affidavits of Paul A. Ashe and Nigel Hamilton-Smith filed herein on the 25th day of March 2009 in support of the Petition;

AND UPON HEARING the evidence of Paul A. Ashe and Nigel Hamilton-Smith given in Court on the 15th day of April, 2009

AND UPON HEARING Charlesworth O. D. Brown, Counsel for the Petitioner, Jasmine Wade appearing with him; Conliffe Clarke, Counsel for Alexander M. Fundora, and several other creditors and an interested persons, appearing with Marcel E. Commodore and R. Dexter Wason; Leslie Anne Brisette, Counsel for Victoria Rolston and other creditors and interested persons; and Sir Clare K. Roberts QC, amicus curiae, Counsel for Ralph S. Janvey, US Receiver of the

Stanford International Bank Limited appointed by the United States District Court for the Northern District of Texas, Dallas Division United States of America.

THE PETITION herein

Having been filed by Paul A. Ashe, the Supervisor of International Banks and Trusts of the Financial Services Regulatory Commission, the Appropriate Official, under section 300 of the International Business Corporations Act, Cap. 222 of the Laws of Antigua and Barbuda (the Act);

Having been heard on the 6th, 7th, 8th, 9th, 14th, and 15th days of April 2009 together with the Petition of Alexander M. Fundora, a creditor and an interested person, filed on the 9th day of March 2009 under section 220 0f the Act in Claim No; ANUHCV 2009/ 0126 (the Fundora Petition).

THIS COURT having

dismissed the Fundora Petition on the ground that Mr. Fundora has no standing to present the Fundora Petition under section 220 of the Act;

satisfied itself that the Stanford International Bank had acted in contravention of the Act and that the Appropriate Official has standing and met the pre requisite conditions stipulated under section 300 of the Act;

considered the evidence adduced in support of and in opposition to the Petition;

noted the failure of the Stanford International Bank Limited to oppose the Petition or otherwise avail itself of the opportunity to be heard during the proceedings by itself or through Counsel.

AND THIS COURT having determined that in the circumstances it is just and convenient that the Stanford International Bank be liquidated and dissolved under the supervision of this Court pursuant to the Act.

IT IS HEREBY ORDERED THAT:

1. Stanford International Bank Limited (the "Bank") be liquidated and dissolved under the supervision of this Honourable Court pursuant to the provisions of the International Business Corporations Act, Cap. 222, as amended, of the Laws of Antigua and Barbuda (the Act).

2. Nigel Hamilton-Smith and Peter Wastell be and are hereby appointed liquidators (the "Liquidators") of the Bank, with all of the powers and duties of a liquidator as contained in the Act or any other legislation

related thereto and with further powers, duties and responsibilities as conferred by this Order.

3. The Liquidators shall forthwith give notice of the liquidation and the appointment of the Liquidators to each known claimant and creditor of the Bank and all other interested persons by publishing a notice in the Official Gazette and in a newspaper with national circulation in Antigua and Barbuda and otherwise give notice in every jurisdiction where the Bank had a place of business.

4. The Liquidators shall take possession of, gather in and realise all the present and future assets and property of the Bank, including without limitation, any real and personal property, cash, choses in action, negotiable instruments, security granted or assigned to the Bank by third parties including property held in trust or for the benefit of the Bank, and rights, tangible or intangible, wheresoever situate and to take, such steps as are necessary or appropriate to verify the existence and location of all the assets of the Bank, or any assets formerly held whether directly or indirectly or to the order of or for the benefit of the Bank or any present or former subsidiary or company associated with the Bank, including the terms of all agreements or other arrangements relating thereto, whether written or oral, the existence or assertion of any lien, charge, encumbrance or security interest thereon, and any other matters which in the opinion of the Liquidators may affect the extent, value, existence, preservation, and liquidation of the assets and property of the Bank.

5. All assets, tangible and intangible and wheresoever situate, shall vest in the Liquidators, who shall collect and gather in all such assets for the general benefit of the Bank's creditors and as may be directed by this Court.

6. The Liquidators shall open and maintain in their official name as Liquidators a bank account in this jurisdiction or in such other jurisdiction as they consider appropriate (collectively referred to as the "Account"), in order to deposit therein the funds so gathered and realised.

7. The funds in the Account and any other of the Bank's assets and property are to be held for the benefit of the depositors, creditors and investors of the Bank as their interests appear in accordance with the laws of Antigua and Barbuda, subject to the payment of the fees, expenses and costs of the receivership and liquidation which shall be paid in the following order in priority to claims of depositors, creditors and investors:

7.1 The fees and expenses of the Receiver-Managers and of the Liquidators, including fees and expenses of legal counsel, and agents, accountants, investigators or other experts engaged by the Receiver-Managers and

the Liquidators to assist them in the conduct of their duties and responsibilities;

7.2 The costs of the receivership and the liquidation, including but not limited to any costs of retaining the Bank's staff and officers to assist in liquidation including without limitation benefits and expenses, rent, power telephone, charges associated with computer systems, bank charges and interest and any other costs that in the opinion of the Liquidators are required to facilitate the liquidation process;

7.3 Severance payments to former employees of the Bank;

7.4 The balance to be paid on account of the claims of creditors and depositors of the Bank as at the date of this Order and in accordance with their priority under the Act and other laws of Antigua and Barbuda, or as may be ordered by this Honourable Court with the remaining balance, if any, to be distributed to the shareholders of the Bank in accordance with their entitlement.

8. The Liquidators shall have a first priority security interest in the assets and property of the Bank in priority to all other persons as security for the Liquidators' fees, expenses and costs.

9. The Liquidators shall be at liberty, and without the necessity of any further order, to summon before the High Court for examination under oath any person reasonably thought to have knowledge of the affairs of the Bank or any person who is or has been a director, officer, employee, agent, shareholder, accountant of the Bank, or such other person believed to be knowledgeable of the affairs of the Bank and to order such person(s) liable to be examined to produce any books, documents, correspondence or papers in his or her possession or power relating to all or in part to the Bank, its dealings, property and assets and the Liquidators are authorised to issue writs of subpoena ad testificandum and duces tecum for the compulsory attendance of any of the persons aforesaid required for such examination.

10. The Bank and any person holding or reasonably believed to have in their possession or power any assets or property of the Bank including without limitation, computer records, programs, disks, documents, books of account, corporate records, minutes, opinions rendered to the Bank, documents of title, electronic or otherwise (collectively called "Papers") relating in whole or in part to the Bank or such persons, dealings, or property showing that he or she is indebted to the Bank may be required by the Liquidators to produce or deliver over such property forthwith to the Liquidators notwithstanding any claim or lien that such person may have or claim on such assets and property and the Liquidators shall have full and complete possession and control of such assets and property of

the Bank including its premises. In the event of a bona fide dispute as to ownership and legal entitlement to such property and Papers, the Liquidators shall take away copies of such Papers.

11. Further, and without limiting the generality of paragraphs 9 and 10 hereof:

11.1 The (i) Bank; (ii) all of its current and former directors, officers, managers, employees, agents, accountants, holders of powers of attorney, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Liquidators of the existence of any Property in such Person's possession, power, control, or knowledge, and shall grant immediate and continued access to the Property to the Liquidators, and shall deliver all such Property to the Liquidators upon the Liquidators' request, subject only to any privilege attaching to solicitor-client communications or statutory provisions prohibiting such disclosure;

11.2 All Persons shall forthwith advise the Liquidators of the existence of and grant access to and deliver to the Liquidators or to such Agent or Agents they may appoint, any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Bank, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Liquidators or permit the Liquidators to make, retain and take away copies thereof and grant to the Liquidators unfettered access to and use of accounting, computer, software and physical facilities relating thereto, subject only to any privilege attaching to solicitor-client communications or statutory provisions prohibiting such disclosure;

11.3 If any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Liquidators for the purpose of allowing the Liquidators to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Liquidators in their discretion deem expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Liquidators. Further, for the purposes of this paragraph, all Persons shall provide the Liquidators

with all such assistance in gaining immediate access to the information in the Records as the Liquidators may in their discretion require including providing the Liquidators with instructions on the use of any computer or other system and providing the Liquidators with any and all access codes, account names and account numbers that may be required to gain access to the information; and

11.4 The Persons are hereby restrained and enjoined from disturbing or interfering with the Liquidators and with the exercise of the powers and authority of the Liquidators conferred hereunder.

12. The Liquidators are authorised in their own names or on behalf of the Bank as Liquidators to join in and execute, assign, issue and endorse such transfers conveyances, contracts, leases, deeds, bill of sale, cheques, bills of lading or exchange or other documents of whatever nature in respect of any assets and property of the Bank as may be required to carry out their duties including the realisation and liquidation of the assets of the Bank or for any purpose pursuant to this Order or under the law.

13. The remuneration of the Liquidators and their expenses and costs, may be drawn on account of the total on a monthly basis from the assets from the Bank including cash and deposits on hand, on the basis of the time expended by the Liquidators and their staff at rates to be approved by this Court, provided always that the statement of the Liquidators' fees expenses and costs for a particular month must be presented to the Court within 7 days of the following month.

14. The Liquidators may engage agents, appraisers, auctioneers, brokers, or any other experts as may be required to assist them with the liquidation process and determining claims in the liquidation.

15. The Liquidators may retain independent legal advice and engage legal counsel both inside and outside Antigua and Barbuda to assist them for purposes of fulfilling their duties hereunder.

16. No person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Bank, without written consent of the Liquidators or leave of this Honourable Court:

17. All persons having oral or written agreements with the Bank or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation and freight services, utility or other services to the Bank are hereby restrained until further Order of this Honourable Court from

discontinuing, altering, interfering-with or terminating the supply of such goods or services as may be required by the Liquidators; and that the Liquidators shall be entitled to the continued use of the Bank's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Liquidators in accordance with normal payment practices of the Bank or such other practices as may be agreed upon by the supplier or service provider and the Liquidators, or as may be ordered by this Honourable Court,

18. The Liquidators shall have the authority as officers of this Honourable Court to act in Antigua and Barbuda or any foreign jurisdiction where they believe assets, property or Papers of the Bank may be situate or traced at equity or otherwise, and shall have the right to bring any proceeding or action in Antigua and Barbuda and/or in a foreign jurisdiction for the purpose of fulfilling their duties and obligations under this Order and to seek the assistance of any Court of a foreign jurisdiction in the carrying out of the provisions of this Order, including without limitation, an order of examination of persons believed to be knowledgeable of the affairs, assets, property and Papers of the Bank and to assist the Liquidators in the recovery of the assets and property of the Bank.

19. The Liquidators shall have the authority to initiate, prosecute and continue the prosecution of any and all proceedings, and to defend all proceedings for the benefit of the Bank's creditors now pending or hereinafter initiated with respect to the Bank and, upon receiving the approval of this Court, to settle or compromise any such proceeding.

20. The Liquidators are hereby constituted as foreign representatives for the purposes of any proceeding with respect to the Bank that may be commenced or taken under any applicable law outside of Antigua and Barbuda, including but not limited to bankruptcy, trust, insolvency, company or other applicable law.

21. The Liquidators shall be at liberty and are hereby authorized and empowered to apply, upon such notice as they may consider necessary or desirable, to any other Court or administrative bodies in any other jurisdictions, whether in Antigua and Barbuda or elsewhere, without limitation, for orders recognizing the appointment of the Liquidators by this Honourable Court and confirming the powers of the Liquidators in such other jurisdictions, and requesting the further aid, assistance or recognition of any court, tribunal, governmental and administrative body, or other judicial authority, howsoever styled or constituted, to assist in the carrying out of the terms of this Order and the duties and responsibilities

of the Liquidators hereunder, including but not limited to, and on the basis of:

21.1 all applicable foreign corporate, insolvency, or other statutory provisions or customary practices that permit the recognition of foreign representatives of an insolvent estate; and/or

21.2 the doctrines curial deference and comity, including but not limited to:

21.2.1 recognizing the Liquidators as having the equivalent powers of a liquidator or of an insolvency office holder within any foreign jurisdictions and to investigate the affairs of the Bank, take evidence thereof and identify, trace, arrest, seize, freeze, detain, secure, recover, receive, control, preserve and protect the Bank's assets, property and Papers and administer such property, assets and Papers, howsoever characterized, pursuant to this Order;

21.2.2 granting extraordinary relief to the Liquidators to identify, trace, arrest, seize, freeze, detain, secure, recover, receive, control, preserve and protect the Bank's assets, property, and Papers and compel disclosure of information and documents to the fullest extent otherwise permitted, in aid of the Liquidators authority hereunder to discover assets, property and Papers under the dominion or control of the Bank, to trace the movement and conversion, past and present, of the Bank's property, assets or Papers and to fully learn of the activities of the Bank with regard thereto;

21.2.3 compelling disclosure of the identities of all known or unknown wrongdoers, facilitators and all other persons or entities who have acted, knowingly or unknowingly, in concert with the Bank in any fashion whatsoever;

21.2.4 restraining any person who may become aware of this Order or of any other proceedings in connection therewith from disclosing same, or any information whatsoever in this regard; and

21.2.5 compelling for examination under oath, by the Liquidators or other authorized person, any person reasonably thought to have knowledge of the affairs of the Bank, or any person who is or has been an agent, banker, clerk, employee, contractor, servant, officer, director, nominee, trustee, fiduciary, auditor, accountant, shareholder, lawyer, attorney, solicitor, advocate or advisor to the Bank, regarding the Bank, their dealings or the Bank's assets, property or papers; in ordering any person liable to be so examined to produce any books, documents, correspondence,

reports or papers in his possession or power, relating in all or in part to the Bank, or in respect of his dealings with either the Bank or with the Bank's assets, property or Papers.

22. This Honourable Court requests the aid, assistance and recognition of any foreign Court, tribunal, governmental body or other judicial authority, howsoever styled or constituted, in any other jurisdiction where property and assets of the Bank may be found (or traced) to assist in carrying out the terms of this Order and the duties and responsibilities of the Liquidators hereunder and to act in aid of and to be complementary to this Court in carrying out the terms of this Order.

23. The Liquidators shall provide a report to this Honourable Court within ninety (90) days of the date of this Order with respect to the liquidation and their preliminary determination of the assets to be realised, the likely recoveries and the extent to which the claims of creditors, depositors, and investors in the Bank may be met. The Liquidators shall further report to the Court as they or the Court determine is appropriate, but shall in any event report no less frequently than three (3) months from the date of their last report.

24. The Liquidators, their officers, employees, legal counsel, agents and such other persons retained by them in the performance of their duties hereunder shall be granted indemnity from the assets of the Bank for all fees, expenses and actions taken, including indemnity for any litigation or other claims, actions or demands whatsoever in respect of any debts, costs, claims, liabilities, acts, matters, or things done or due to be done or omitted by the Liquidators, their officers, employees, legal counsel, agents and such other persons retained by them except where there is a finding by the Court of negligence or wilful neglect in the performance of their and/or their respective duties.

25. All actions, proceedings and any claims whatsoever and wheresoever initiated against the Bank, its assets and property, are hereby stayed and no person, which shall include a body corporate, shall bring or continue with a claim or proceeding in Antigua and Barbuda or elsewhere as against the Liquidators or the Bank without leave of this Honourable Court.

26. The Liquidators in the carrying out of their duties and responsibilities may apply for directions and guidance from this Honourable Court from time to time including any application as may be required for the amendment of this Order.

27. The Liquidators, in their names or in the name of the Bank, shall be at liberty to apply for any permits, licences, approvals or permissions as may be required by or deemed necessary pursuant to any laws,

governmental or regulatory authority, in the pursuit and performance of their duties hereunder.

28. The Liquidators are not required to post security in respect of their appointment.

29. The Liquidators shall exercise, perform or discharge their duties independently or jointly and in doing so shall be deemed to act as agents for the Bank and they act solely in their capacity as Liquidators and without personal liability if they rely in good faith upon the financial statements of the Bank or upon an opinion, report or statement of any professional adviser retained by them.

30. The Petitioner is hereby awarded costs to be paid out of the liquidation estate of the Bank.

31. This Order shall take effect from the date hereof.

BY THE COURT

Registrar

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

Claim No. ANUHCV 2009/ 0149

In the Matter of Stanford International Bank Limited (In Receivership)
-And-

In the Matter of the International Business Corporations Act, Cap 222 of the Laws of Antigua and Barbuda
-And-

In the Matter of an Application for the Liquidation and Dissolution of Stanford International Bank Limited and the Appointment of Liquidators

++++++++++++++++++++++++++++++++++++

ORDER

++++++++++++++++++++++++++++++++++++

CHARLESWORTH O.D. BROWN
Attorney-at-Law

CERTIFIED TO BE A TRUE
COPY OF THE ORIGINAL

REGISTRAR OF THE HIGH COURT
ANTIGUA & BARBUDA

DATE: 16/4/2009

9:55 am

TAB I

Unofficial English Translation

Stanford International Bank Ltd. (Syndic de) **2009 QCCS 4106**

SUPERIOR COURT

(Commercial Division)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No.: 500-11-036045-090

DATE: September 11, 2009

This is Exhibit T-11 *referred to in the affidavit of* Wolfgang Mersch *sworn before me, this* 10th *day of* October, *20* 14

A COMMISSIONER FOR TAKING AFFIDAVITS

THE HONOURABLE CLAUDE AUCLAIR, J.S.C., PRESIDING

IN THE MATTER OF THE BANKRUPTCY OF:

STANFORD INTERNATIONAL BANK LIMITED
Debtor
and
NIGEL JOHN HAMILTON-SMITH
and
PETER WASTELL
Liquidators-Petitioners
and
AUTORITÉ DES MARCHÉS FINANCIERS
Intervener

REASONS AND JUDGMENT RENDERED ORALLY

---

[1] By their motion dated April 22, 2009, the petitioners Nigel John Hamilton-Smith and Peter Wastell ("Vantis") seek:

1. By this Motion, Petitioners Nigel John Hamilton-Smith and Peter Wastell, licensed insolvency practitioners and partners at Vantis Business Recovery Services (the "**Liquidators**") are seeking the following reliefs:

a) a recognition of the Winding-Up Order pursuant to Sections 267 and *seq.* of Part XIII, *International Insolvencies*, of the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3 (the "**BIA**");

b) a recognition that their status as Liquidators of Stanford International Bank Limited (in liquidation) (the "**Bank**") in Antigua and Barbuda granted under the Winding-Up Order is similar to the status of a "foreign representative" of an estate in a "foreign proceeding" pursuant to section 267 and *seq.* of the BIA;

c) a recognition of their powers as Liquidators through the issuance of an order *inter alia*:

i. staying any present or future proceedings against the Bank or any of its property in Quebec, and generally in Canada, and authorizing the Liquidators to institute or continue any present legal proceedings initiated by the Bank in Quebec, and generally in Canada;

ii. ordering the turnover to the Liquidators of any property, assets and any documents, computer records, electronic records, programs, disks, books of account, corporate records, minutes, correspondence, opinions rendered to the Bank, documents of title, whether in an electronic media or otherwise held in the name of or traceable to the Bank; and

iii. availing the Liquidators of the facility to discover and trace any assets or property of the Bank that are located in Quebec and generally in Canada, (whether such assets or property are possessed in the name of the Bank or have in any way been misappropriated, fraudulently transferred and/or otherwise concealed from the Liquidators);

d) any further relief necessary to assist the Liquidators in the due carriage of their duties under the Winding-Up Order and under Sections 267 and *seq.* of the BIA;

[2] The motion is opposed by the receiver appointed in the United States, Ralph S. Janvey, the American receiver ("Janvey").

[3] Janvey first argues that the Antiguan petitioners Vantis do not come with clean hands and that therefore their proceeding is inadmissible.

[4] The Court accepts the following from the chronology prepared by legal counsel for Janvey:

[TRANSLATION]

14. On February 16, 2009, the SEC obtained a receivership order from the U.S. District Court naming Ralph Janvey as receiver of the Stanford Group, which order was amended on March 12, 2009.

15. On the same date, the U.S. District Court issued a freeze order enjoining the members of the Stanford Group from committing any further violations of the U.S. *Securities Act* and from dealing in the assets of the Stanford Group Ltd.

16. On February 19, 2009, the FSRC issued an order naming Messrs. Wastell and Hamilton-Smith of Vantis as the joint receiver-managers of SIB and STC. A similar order was rendered by the High Court of Antigua on February 26, 2009.

17. On February 20, 2009, the Antiguan receivers retained the services of Stroz Friedderg Ltd., a U.K. registered company (the "**IT specialist**"), for the purpose of having it attend the offices of SIB in Montreal in order to review, collect and copy SIB's electronic records.

18. On February 23, 2009, the AMF commenced an investigation into the affairs of SIB.

19. On February 25, 2009, the AMF wrote to Vantis advising it of the commencement of the investigation into the affairs of SIB and requesting information regarding the status of the Montreal office and the records of SIB therein.

20. On February 26, 2009, Mr. Hamilton-Smith "Vantis" prepared a report regarding the progress of his work as co-receiver-manager of SIB and STC (**RSJ-53**).

"The Receivers-Managers arranged for members of their team to attend the offices of SIB along with legal counsel from Ogilvy Renault on Monday 23rd February 2009 for the purposes of securing the records and IT equipment held at the office and to advise the staff that operations are to cease. The offices are now shut with access under the control of the Receivers-Managers and their lawyers."

22. On March 3, 2009, Vantis replied to the AMF's letter dated February 25, 2009 (**I-1**), by way of Matthew Peat's e-mail (**I-2**), advising that the employees at the Montreal office had been terminated on February 27, that SIB's landlord had "agreed that no action would be taken against the Company's property without notice to the Receivers", and that it had retained the services of CapCon Holdings "to provide data recovery services".

23. In an earlier e-mail on the same date from Nick O'Reilly (**I-2**), the AMF was advised by Vantis that "the office was closed last Monday. No client file was

found on site and no one has dealt with the computers since the closure." (Garon's affidavit, para. 7; **I-2**).

24. On March 5, 2009, Vantis' IT specialist attended SIB's Montreal offices to carry out his mandate, which was completed by March 8 (Admissions, paras. 3 to 7).

25. On March 8, 2009, the IT specialist personally brought the imaged electronic data from SIB's Montreal office to the U.K. and eventually forwarded one of the copies of this imaged data to the Antiguan liquidators in Antigua.

26. On March 27, 2009, Dan Roffman, the IT specialist whose services were retained by Ralph Janvey, attended at the Montreal offices of SIB and saw that some servers appeared to be in the process of being deleted.

28. On March 30, 2009, representatives of the AMF held a telephone conversation with legal counsel for Vantis, during which conversation they were informed that one of their colleagues had attended at the offices of SIB on March 27 [TRANSLATION] "to do an inventory of the assets and was not aware of the request for information that the AMF had sent on February 25, 2009, to the Antiguan receiver" (Garon's affidavit, para. 11).

29. On March 30, 2009, the AMF also spoke to one of Janvey's attorneys, William Stutts, and was advised (based on Dan Roffman's above-described observations of March 27) that the Antiguan liquidators were erasing electronic information in the Montreal office of SIB (Garon's affidavit, para. 12).

30. On March 30, 2009, Janvey's counsel wrote to Ogilvy Renault regarding Mr. Roffman's visit to the Montreal offices on March 27, 2009, and requested that any information destroyed or otherwise erased by Vantis from the servers at the Montreal office be immediately restored to the relevant servers (Janvey's Motion to Revoke and to Rescind, para. 30; see Exhibit **R-9** attached to same).

31. On March 31, 2009, the AMF wrote to Vantis requesting a follow-up to Vantis' e-mail of March 3, 2009 (**I-2**), because the AMF had still not received the list of Canadian investors, and requesting information as to what had happened to the documents and electronic data of SIB (Garon's affidavit, para. 13; **I-3**).

32. On April 1, 2009, Ogilvy responded to Janvey's letter (R-9) by stating that: "The information on the Bank's servers located in its Montreal premises has been imaged onto hard disks and have been preserved to the standards required in the criminal investigation matter. This was done by our client to make sure that this data would be securely maintained and that no one entering the Bank's Montreal premises could in any way tamper with said data or take a copy thereof or take a copy thereof without any right" (Motion to Revoke and Rescind, para. 37; **R-10**).

33. On April 1, 2009, Baker Botts replied by e-mail to Mtre Himo's letter of April 1 (**R-10**) (Motion to Revoke and Rescind, para. 37; **R-12**) requesting that Mtre Himo confirm "that there was no erasure or deletion of data from the servers in

the Montreal office...in other words, Vantis representatives have done nothing to remove data from those servers". A follow-up e-mail was sent by Baker Botts on the same date, requesting that Mtre Himo confirm whether "Vantis representatives have in fact removed data from the Montreal servers, please advise promptly where the data currently is - - including in what country - - and whose possession...Also, are the servers still in the Montreal office?"

34. On April 1, 2009, Peat of Vantis responded to the AMF's e-mail of March 31 (**I-3**) that he would refer the AMF's request to his colleague, Julian Greenup.

35. On April 1, 2009, a conference call was held between the representatives of the AMF and legal counsel for Vantis, who informed the AMF that they were not authorized to send the list of investors to the AMF, and that an order of the Court in Antigua would probably be necessary.

36. On April 2, 2009, legal counsel for Vantis responded tersely to Mr. Stutts' foregoing e-mail of April 1 (**R-12**): "I will get back to you as soon as possible".

37. On April 3, 2009, Hamilton-Smith of Vantis signed an affidavit in support of the motion for recognition of the decision of the FSRC (**P-1**) and the receivership order of the High Court of Justice of Antigua (**P-2**), which he presented on April 6 before the Registrar Flamand.

38. On April 6, 2009, the Antiguan receivers presented their motion for recognition as receiver-managers of SIB and STC, dated April 3, 2009, which motion was presented on an *ex parte* basis to the Registrar Chantal Flamand, without notice to the AMF or Ralph Janvey.

39. On April 15, 2009, legal counsel for Vantis wrote to Mr. Stutts responding to his e-mail of April 1, advising him for the first time that the servers, desktops, and laptops in SIB's Montreal office had been "wiped", that "there were no client records on the computers that were imaged and erased since the servers in Montreal were designed for recovery purposes and all tests had client data removed given the need to preserve client confidentiality and privacy" and that "the imaged drives are currently held in Antigua under the control of the Antiguan Receivers-Managers". (Motion to Revoke and Rescind, para. 38.)

40. On April 16, 2009, Janvey filed and served his Motion to Revoke and Rescind the decision and order of the Registrar Flamand.

41. On April 22, 2009, Vantis served and filed its Motion Seeking the Recognition of the Winding-Up Order of the High Court of Antigua dated April 17, 2009 (**P-7**).

42. After learning at the hearing of July 15, 2009 in this case that there were three servers in the Montreal office that ostensibly contained information relating to other members of the Stanford Group which were apparently not copied or deleted by Vantis' IT specialist (**Admissions - 5**), legal counsel for Janvey requested access to said servers in an exchange of correspondence between counsel for the parties on August 12, 14, and 18, 2009. Access to said servers was not secured until the August 25 hearing.

> 43. Until the hearings on August 25, 26, and 27, the Antiguan receivers refused to provide the AMF with the list of Canadian investors as well as any information regarding the documents and records of SIB which were taken from its Montreal office, despite the repeated requests of the AMF (Garon, para. 21).
>
> 44. The Antiguan liquidators also refused to give Janvey's representatives the imaged records of SIB.
>
> (Emphasis added.)

The discretionary nature of the remedy or application of *fin de non-recevoir*

[5] Part XIII of the BIA, *International Insolvencies*, allows a petitioner to qualify as a foreign representative by requesting the Court's authorization and thereby facilitating the coordination of proceedings in regard to insolvent persons.

[6] The powers of the Court are extremely broad, as are the powers requested by the petitioners Vantis. Section 268(6) *BIA* specifies:

> Nothing in this Part requires the court to make any order that is not in compliance with the laws of Canada or to enforce any order made by a foreign court.

[7] In the case of *Immeubles Port Louis Ltée,*[1] a decision of the Supreme Court, Gonthier J. relied on the holding in *Homex* and found that a judge may also examine the behaviour of the parties and dismiss the action without even taking a decision on the merits. It is understood that the Court must exercise its power of review in a judicial manner and observe the applicable principles.

[8] Thirteen years later, in *Société de la Place des Arts*,[2] Gonthier J. discussed the granting of an injunction and wrote:

> 13 ...The power of the Quebec Superior Court to grant injunctions rests on statutory footing. Yet it is a discretionary power of the sort exercised by common law jurisdictions in equity. In Quebec as elsewhere, it is an exceptional and discretionary form of relief. The court will not grant an injunction under arts. 751 *et seq.* simply because the applicant is strictly entitled to one. The applicant must also demonstrate that the circumstances warrant such a potentially intrusive remedy, and that he is deserving of it.
>
> (References omitted.)
> (Emphasis added.)

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1 *Immeubles Port Louis Ltée v. Corporation municipale du Village de Lafontaine* [1991] 1 S.C.R. 326 at 364.

2 *I.A.T.S.E., Stage Local* 56 *v.* Société *de la Place des Arts de Montréal* [2004] SCC 2 at para. 13.

[9] A party seeking to have the Court grant a discretionary measure must have acted in good faith and all of its actions must be beyond reproach in regard to the object of its motion.

[10] Denis Lemieux, the author of *Le contrôle judiciaire de l'action gouvernementale,*[3] writes:

> [TRANSLATION]
>
> A similar reasoning is used in regard to judicial review, notably in cases of interlocutory injunctions. This principle, often described as the clean hands doctrine, means that a petitioner who, by his conduct, was party to an illegal act, either by acquiescing to it or committing a wrongdoing or illegal act himself, may not obtain the relief sought even if he meets the general conditions for the remedy sought to be granted. Thus, Sopinka J. recently stated that "in the exercise of the discretion whether or not to grant a declaration, the court may take into account certain equitable principles such as the conduct of the party seeking the relief". This discretion of the court is based on the principle of *fin de non-recevoir.* It is a general principle of the civil law that applies broadly, and may also find support in articles 6, 7, and 1375 of the *Civil Code*, which sanction unreasonable conduct and bad faith.
>
> (Emphasis added.)

[11] By way of s. 268(6) BIA, the Court enjoys great discretion in deciding whether or not to recognize a foreign representative.

[12] The conclusions sought by Vantis' motion are:

> **6. GRANT** the Liquidators the power to take possession of, gather in and realise all the present and future assets and property of the Bank, including without limitation, any real and personal property, cash, choses in action, negotiable instruments, security granted or assigned to the Bank by third parties including property held in trust or for the benefit of the Bank, and rights, tangible or intangible ("**Property**"), wheresoever situate and to take, such steps as are necessary or appropriate to verify the existence and location of all the assets of the Bank, or any assets formerly held whether directly or indirectly or to the order of or for the benefit of the Bank or any present or former subsidiary or company associated with the Bank, including the terms of all agreements or other arrangements relating thereto, whether written or oral, the existence or assertion of any lien, charge, encumbrance or security interest thereon, and any other matters which in the opinion of the Liquidators may affect the extent, value, existence, preservation, and liquidation of the assets and property of the Bank;
>
> **7. ORDER** that all assets, tangible and intangible and wheresoever situated, shall vest in the Liquidators, who shall collect and gather in all such assets for the

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[3] Denis Lemieux, *Le contrôle judiciaire de l'action gouvernementale*, looseleaf edtion (Brossard: CCH) at para. 15-135.

general benefit of the Bank's creditors and as may be directed by the High Court of Antigua;

11 ORDER that the Liquidators shall be at liberty, and without the necessity of any further order, to summon before this Court for examination under oath any person reasonably thought to have knowledge of the affairs of the Bank or any person who is or has been a director, officer, employee, agent, shareholder, accountant of the Bank, or such other person believed to be knowledgeable of the affairs of the Bank and to order such person(s) liable to be examined to produce any books, documents, correspondence or papers in his or her possession or power relating to all or in part to the Bank, its dealings, property and assets and the Liquidators are authorised to issue writs of subpoena ad testificandum and duces tecum for the compulsory attendance of any of the persons aforesaid required for such examination;

12 ORDER that the Bank and any person holding or reasonably believed to have in their possession or power any assets or property of the Bank including without limitation, computer records, programs, disks, documents, books of account, corporate records, minutes, opinions rendered to the Bank, documents of title, electronic or otherwise (collectively called "**Papers**") relating in whole or in part to the Bank or such persons, dealings, or property showing that he or she is indebted to the Bank may be required by the Liquidators to produce or deliver over such property forthwith to the Liquidators notwithstanding any claim or lien that such person may have or claim on such assets and property and the Liquidators shall have full and complete possession and control of such assets and property of the Bank including its premises. In the event of a bona fide dispute as to ownership and legal entitlement to such property and Papers, the Liquidators shall take away copies of such Papers;

13 ORDER that (i) the Bank; (ii) all of its current and former directors, officers, managers, employees, agents, accountants, holders of powers of attorney, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Liquidators of the existence of any Property in such Person's possession, power, control, or knowledge, shall grant immediate and continued access to the Property to the Liquidators, and shall deliver all such Property to the Liquidators upon the Liquidators' request, subject only to any privilege attaching to solicitor-client communications or statutory provisions prohibiting such disclosure;

14 ORDER that all persons shall forthwith advise the Liquidators of the existence of and grant access to and deliver to the Liquidators or to such Agent or Agents they may appoint, any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Bank, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Liquidators or permit the Liquidators to make, retain and take away copies thereof and grant to the Liquidators unfettered access to and use of accounting, computer, software and physical facilities relating thereto, subject only to any privilege attaching to solicitor-client communications or statutory provisions prohibiting such disclosure;

15 ORDER that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all persons in possession or control of such Records shall forthwith give unfettered access to the Liquidators for the purpose of allowing the Liquidators to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Liquidators in their discretion deem expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Liquidators. Further, for the purposes of this paragraph, all Persons shall provide the Liquidators with all such assistance in gaining immediate access to the information in the Records as the Liquidators may in their discretion require including providing the Liquidators with instructions on the use of any computer or other system and providing the Liquidators with any and all access codes, account names and account numbers that may be required to gain access to the information;

16 ORDER the Persons are hereby restrained and enjoined from disturbing or interfering with the Liquidators and with the exercise of the powers and authority of the Liquidators conferred by this Order;

21. ORDER that no person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, license or permit in favour of or held by the Bank, without written consent of the Liquidators or leave of this Honourable Court;

22 ORDER that all persons having oral or written agreements with the Bank or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services; insurance, transportation and freight services, utility or other services to the Bank are hereby restrained until further Order of this Honourable Court from discontinuing, altering, interfering-with or terminating the supply of such goods or services as may be required by the Liquidators; and that the Liquidators shall be entitled to the continued use of the Bank's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal

prices or charges for all such goods or services received after the date of this Order are paid by the Liquidators in accordance with normal payment practices of the Bank or such other practices as may be agreed upon by the supplier or service provider and the Liquidators, or as may be ordered by this Honourable Court;

23 RECOGNIZE that the Liquidators shall have the authority as officers of the High Court of Antigua to act in Antigua and Barbuda or any foreign jurisdiction where they believe assets, property or Papers of the Bank may be situate or traced at equity or otherwise, and shall have the right to bring any proceeding or action in Antigua and Barbuda and/or in a foreign jurisdiction for the purpose of fulfilling their duties and obligations under the Winding-Up Order and to seek the assistance of any Court of a foreign jurisdiction in the carrying out of the provisions of the Winding-Up Order, including without limitation, an order of examination of persons believed to be knowledgeable of the affairs, assets, property and Papers of the Bank and to assist the Liquidators in the recovery of the assets and property of the Bank;

24 ORDER that the Liquidators shall have the authority to initiate, prosecute and continue the prosecution of any and all proceedings, and to defend all proceedings for the benefit of the Bank's creditors now pending or hereinafter initiated with respect to the Bank and, upon receiving the approval of this Court, to settle or compromise any such proceeding;

30 ORDER that all actions, proceedings and any claims whatsoever and wheresoever initiated against the Bank, its assets and property, are hereby stayed and no person, which shall include a body corporate, shall bring or continue with a claim or proceeding in Antigua and Barbuda or elsewhere as against the Liquidators or the Bank without leave of this Honourable Court;

32 ORDER that the Liquidators, in their names or in the name of the Bank, shall be at liberty to apply for any permits, licenses, approvals or permissions as may be required by or deemed necessary pursuant to any laws, governmental or regulatory authority, in the pursuit and performance of their duties hereunder;

34 ORDER that the Liquidators shall exercise, perform or discharge their duties independently or jointly and in doing so shall be deemed to act as agents for the Bank and they act solely in their capacity as Liquidators and without personal liability if they rely in good faith upon the financial statements of the Bank or upon an opinion, report or statement of any professional adviser retained by them;

37 ORDER the provisional execution of this Order, notwithstanding any appeal and without the necessity of furnishing any security;

[13] These conclusions are injunctive and in some cases declaratory, and the powers sought are extremely broad.

[14] In *Saargummi,*[4] the Superior Court confirmed that the *BIA* is an equitable statue and that the exercise of discretionary powers under it is subject to the application of the clean hands doctrine:

> [TRANSLATION]
>
> [92] A seventh criterion that is not taken from the *Bankruptcy Act* but rather from the general exercise of discretionary powers of the Superior Court is that a party coming before the Court asking it to exercise judicial discretion must be in good faith and have "clean hands."
>
> ...
>
> [117] When an applicant requests that the Superior Court exercise its judicial discretion, he must present himself with "clean hands."
>
> [118] This clean hands doctrine dates from the eighteenth century and has been applied many times in Canada and in Quebec. The doctrine developed out of a concern for equity, and indeed, the *Bankruptcy and Insolvency Act* is an equitable statute.

[15] In this case, Vantis seeks not only the recognition of a foreign judgment. Rather, it asks this Court to grant it considerable powers within the territory of Canada and even be allowed to act as an officer of the court.[5]

[16] Vantis seeks to exercise considerable powers in Canada. Its conduct must be considered by the Court in exercising its discretion.

[17] Cooperation between various jurisdictions must not constitute an obstacle to the Court's exercise of discretion. What is at stake is safeguarding the interests of Quebec and Canadian creditors and upholding the foundations of the Canadian judicial system.

[18] With regard to the appointment of a foreign representative under the BIA, the Court has broad discretion, similar to that which it exercises in issuing injunctions or declaratory judgments, and nothing demonstrates that the petitioner's conduct must not be a factor considered by the court – quite the contrary, since the receiver and/or trustee are officers of the court.

[19] Among the principles outlined in *Holt Cargo*,[6] the court notes that, although it is generally desirable for the courts of various jurisdictions to cooperate in cases of international insolvencies, "a Canadian bankruptcy court has a responsibility to consider the interests of the litigants before it and other affected parties in this country."[7]

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4 *Saargummi*, para. 92 and *Murphy (Syndic de)*, 2006 QCCS 989 at para. 24.

5 It should be noted that in conclusion [11] of its Motion, Vantis requests the power to issue subpoenas.

6 *Holt Cargo v. ABC Containerline*, [2001] 3 S.C.R. 907.

7 *Ibid.* at para. 33; see also paras. 68-70.

[20] In *Holt Cargo*, the Supreme Court ruled that Canadian courts must inquire as to whether the recognition of a foreign proceeding and lending assistance in relation thereto would cause an interested party to lose some juridical advantage that it would have had under Canadian law. Although the loss of any type of advantage does not bar cooperation with one jurisdiction (Antigua) rather than another (U.S.), the "extent of juridical advantage for the various parties [is] clearly an important factor to throw into the balance."[8]

[21] The Supreme Court in *Holt Cargo* writes that the plurality approach requires that a court coordinate with, but not be subordinate to, foreign courts.

[22] In *Menegon v. Philip Services Corp.*,[9] Blair J. of the Ontario Superior Court of Justice, citing s. 18.6(5) of the *Companies' Creditors Arrangement Act*,[10] ("**CCAA**") (which is identical to s. 268(6) *BIA*) explains that "comity and international co-operation do not mean that one Court must cede its authority and jurisdiction over its own process or over the application of the substantive laws of its own jurisdiction."[11]

[23] It is thus clear that this Court has broad discretion under s. 268(6) *BIA*, and that this discretion should not be subordinated to a desire for procedural uniformity.

[24] The Supreme Court of Ireland, ruling *In the Matter of Eurofood IFSC Ltd and in the Matter of the Companies Acts 1963 to 2001*,[12] gave a liberal interpretation to the public policy exception in Article 26 of *Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings*[13] ("**EC Regulation**") to refuse recognition of the decision of an Italian court on the grounds that the extraordinary administrator had disregarded the principles of fair procedures.

[25] Article 26 of the *EC Regulation* is similar to Article 6 of the *Model Law*, in that it reads as follows:

> Any Member State may refuse to recognise insolvency proceedings opened in another Member State or to enforce a judgment handed down in the context of such proceedings where the effects of such recognition or enforcement would be manifestly contrary to the State's public policy, in particular its fundamental principles or the constitutional rights and liberties of the individual.

[26] Although Article 26 is narrower than our s. 268(6) *BIA*, the Supreme Court of Ireland was nevertheless shocked by the circumstances before it.

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8 *Ibid.* at para. 34.
9 *Menegon v. Philip Services Corp.*, (1999), 11 C.B.R. (4th) 262.
10 R.S.C. 1985, c. C-36.
11 At para. 48.
12 [2006] IESC 41.
13 [2000] O.J. L 160/1 at p. 9.

[27] In that case, the extraordinary administrator failed to advise the creditors of *Eurofood* of the hearing before the Italian court. Moreover, he only provided the provisional liquidator the documentation relating to the application after the hearing had taken place.

[28] Similarly, Vantis failed to inform Janvey as well as the AMF of its actions in the Montreal office and of the filing of its motion before Registrar Flamand.

[29] The Supreme Court of Ireland stated the following in regard to the importance of the fair procedures:

> I regret to say that it is quite shocking that the appellant should have deliberately refused to provide the Provisional Liquidator with the documents necessary for his appearance before the Parma Court in February 2004.... This Court is fully conscious of the important role now accorded to the principle of mutual recognition of judicial decisions in many contexts of European Community and Union law. It is based on a principle of mutual trust. This Court respects those principles. They must, therefore, entail respect for principles of fairness that are common to the traditions of the Member States and which have been affirmed again and again by the European Court.
>
> (Emphasis added.)

[30] As was argued by counsel for the AMF in the course of the hearing, the Antiguan judgment explicitly deprives Canadian and foreign government and regulatory authorities of the benefits of cooperation from the Antiguan liquidators, except in cases where mutual disclosure obligations exist, which is not the case in this instance.

[31] The conclusions of the Antiguan judgment naming Vantis as receiver stated in para. 12 the following:

> 12. Without prejudice to the provisions of Section 373 of the Act, the Joint Receiver Managers be and are hereby authorized to disclose information concerning the management, operations, and financial situation of the Respondents/Defendants as they consider appropriate in the performance of their functions PROVIDED ALWAYS THAT:
>
> (1) no disclosure of customer specific information is authorized without further or other order of the Court; and
>
> (2) no disclosure of information is permitted under this Order to any foreign governmental or regulatory body unless such disclosure is subject to mutual disclosure obligations.
>
> (Emphasis added.)

[32] This is a major irritant in this case. This provision is not restated in the judgment naming Vantis as liquidator, but counsel for Vantis wrote the following in their Notes and Authorities:

> [TRANSLATION]
>
> 78. ...This confidentiality provision was made by the High Court of Antigua in the Antigua Receivership Order at paragraph 12, and the Flamand Order simply recognized it. It further results from the existence of Section 244 (as amended) of the IBCA, which provides the Bank's duty of confidentiality in favour of its customers. Although this duty is not repeated in the Winding-Up Order, it still applies, and the liquidators cannot disclose any customer information without an order from the High Court of Antigua.

[33] The Court notes that the Antiguan court shows no deference for our regulatory authorities. However, SIB did in fact operate an office in Montreal.

[34] In *Exchange Bank & Trust inc. v. British Columbia Securities Commission and Bank of Montreal*,[14] the Court of Appeal for British Columbia writes:

> EBT stressed that its ability to present evidence was hampered by the privacy laws of Nevis. That may be so. However, the property subject to the Orders is in British Columbia and it is the securities laws of British Columbia, and those of the United States, that are alleged to have been contravened. EBT chose to locate assets outside the jurisdiction of Nevis and must accept that those assets are subject to laws of the jurisdiction in which they are located, in this case British Columbia. It would be an utter abandonment of the public interest if we were to conclude that a party subject to secrecy laws in another jurisdiction could use those laws to shield themselves from the legitimate exercise of powers to enforce securities regulation in British Columbia. In short, the Nevis privacy laws are not relevant.[15]
>
> (Emphasis added.)

[35] Vantis had an obligation to obey the laws of Canada and Quebec.

[36] In *Richter v. Merrill Lynch*,[16] the Court of Appeal of Quebec writes:

> [TRANSLATION]

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14 2000 BCCA 389.
15 *Ibid.* at 12.
16 *Richter & Associés inc. v. Merrill Lynch Canada inc.*, 2007 QCCA 124.

> [54] I am of the opinion that the application of a party cannot be lawfully heard when it is based above all on the misconduct and false representations made by that party to its contracting partners from whom it seeks compensation for damages for which it is principally responsible.
>
> ...
>
> [57] The legal doctrine in Quebec, rather, is based on certain *fins de non-recevoir*, which are likened to judicial sanctions applied to the wrongful conduct by one party:
>
> ...
>
> A *fin de non-recevoir* sanctions conduct that is unfair or uncooperative by refusing to grant an application presented by the very author of the problem.
>
> A *fin de non-recevoir* therefore allows the Court to reject an application, otherwise well founded in law, when the applicant's highly objectionable conduct is precisely what gave rise to the dispute.
>
> ...
>
> [60] Here, the *fin de non-recevoir* invoked is above all founded on the obligation of good faith that must guide the conduct of any person in the exercise of his rights and in his contractual relationships (arts. 6, 7 and 1375 *C.C.Q.*).
>
> ...
>
> [62] This is foremost a question of fact that must be reviewed by applying the doctrine of good faith and equity.
>
> (References omitted.)
> (Emphasis added.)

[37] Vantis does not deserve the trust of the Court, as its own reprehensible conduct in no way offers any assurances for the future in this case. The conduct by Hamilton from Vantis is unacceptable, and the circumstances are such that its motion is inadmissible.

[38] Following the appointment in the United States of the American receivers for all of the corporations, the Financial Service Regularity Commission of Antigua, whose president was then Leroy King—who was also criminally accused at some point prior to the proceedings of conspiracy with Allen Stanford, President of the Stanford Group, for having, among other things, assisted in money-laundering operations—requested on February 26, 2009, that the Antiguan Court appoint a receiver for SIB and STC; that is, one week after the American receiver had been named in the United States to act as receiver for all the corporations of the Stanford Group, including SIB and STC.

[39] The Antiguan receivers presented before Registrar Chantal Flamand an *ex parte* motion for the appointment of a foreign representative, for recognition of a foreign order, for judicial assistance, and for the appointment of an interim receiver, yet failed to do the following:

A. Notify the AMF and Janvey of the filing of their motion.

B. Mention that approximately one month (that is, on March 8, 2009) before the filing of the motion, Vantis' representatives had gone to the Montreal offices of SIB, took possession of its records and assets (without prior authorization of the Canadian court), and deleted the original electronic data after having made copies and having taken all such copies out of the country.

C. Report that the AMF had begun an investigation into the business dealings of SIB on February 23, 2009, and had requested that the Antiguan receivers provide documents and data from the Montreal office no later than February 25, 2009.

D. Note that they were not authorized trustees in bankruptcy pursuant to the *Bankruptcy and Insolvency Act*, which therefore rendered illegal any acts committed by the Antiguan receivers in Canada with regard to the assets and records of SIB prior to this date, as s. 271 *BIA* provides that such actions may only be carried out by a bankruptcy trustee as defined in s. 2 BIA, which Vantis is not according to the definition of the BIA.

E. Expressly mention the role of Janvey for all the corporations; in their motion they referred only to the freeze order and not the American order instituting the receivership.

[40] The moving party must fully and faithfully disclose all important facts.[17]

[41] By failing to disclose key information, the Antiguan liquidators succeeded in obtaining the *ex parte* order they sought.

[42] As explained by Dufresne J., at the time of the Superior Court, the Court may subsequently revoke an *ex parte* order if the applicant has failed to reveal facts that are important for its decision:

> [TRANSLATION]
>
> [19] The party whose *ex parte* motion is granted by a Court is then exposed to the possibility that it will subsequently be dismissed upon a showing that significant facts on which the Court based the decision to grant the authorization

[17] *Microcell Solutions inc. v. Telus Communications inc.*, J.E. 2004-738.

> were omitted, either deliberately or as part of a strategy of the party seeking the motion. The omission must obviously be blatant.[18]

[43] The omissions of the Antiguan receivers in the present matter are blatant and inexcusable.

[44] In *TMR Energy Ltd. v. State Property Fund of Ukraine*, the Federal Court had to rule on the validity of the decision by a prothonotary to accept a request for registration *ex parte,* and recognition and enforcement of a foreign arbitral award. On appeal, the Federal Court quashed the decision of the prothonotary on the grounds that he did not have the power to render such a decision and that the petitioner had in any event not fully disclosed to the prothonotary the impediments to the registration and enforcement of the award.

[45] The Federal Court of Appeal upheld the decision of the Federal Court and declared as follows:

> [63] I have found no reviewable error in Martineau J.'s conclusion that "where a motion or application is made *ex parte*, the moving party or applicant has a duty of full and fair disclosure with respect to all material facts."[19]

[46] The circumstances in the present case are similar given that the Antiguan receivers failed to fully and openly disclose material information to the Court.

[47] The Antiguan receivers have refused all demands for repatriation of the imaged records of SIB to Quebec or to disclose or provide a copy of these records to Janvey or to the AMF.

Deletion of the data from the servers

[48] One month before the issuance of the April 6, 2009, recognition order in Quebec, representatives of the Antiguan receivers went to SIB's Montreal office and deliberately "erased" the SIB servers found there, without advising the American receiver, the AMF, or this Court. To the American receiver's request, through counsel, that the Antiguan receivers explain these actions, their own counsel replied only after two weeks (April 1 to 15), acknowledging that the servers had been erased, that the data had been transformed into imaged data, and that the copies were now in Antigua. The Antiguan receivers removed all the electronic data from Canada to Antigua, and therefore removed the data from the jurisdiction of Canadian courts and regulatory authorities prior to obtaining their *ex parte* recognition order.

[49] Hamilton-Smith's statements claimed that in a report he informed Janvey of his intention to image the data on the hard drives at the Montreal office, to delete them, and to send the copies out of Canada to Antigua, on February 26, 2009, and that Janvey

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18 *Ibid.* at para. 19.

19 *TMR Energy Ltd. v. State Property Fund of Ukraine* (F.C.A.) 2005 FCA at para. 63.

raised no objection whatsoever, is unfortunately questionable. Hamilton-Smith's and Janvey's versions of this account contradict each other.

[50] Vantis states that the basic terms of its plan were disclosed to the American receiver. Its report states that: "The Receiver-Managers arranged for members of their team to attend the offices of SIB in Montreal along with legal counsel from Ogilvy Renault on Monday 23rd February 2009 for the purposes of securing the records and IT equipment held at the office and to advise the staff that operations are to cease. The offices are now shut with access under the control of the Receiver-Managers and their lawyers." The Court adds: without having been authorized by a Canadian court.

[51] James Coulthard's admissions, filed by the Antiguan receivers on August 19, 2009, indicate at para. 6 that the "Antiguan Liquidators were concerned that the electronic data be preserved to a criminal evidential standard for use in any subsequent legal proceedings against Mr. Allen Stanford or others involved in the Stanford fraud". Instead of preserving the evidence in Canada and the originals, the Antiguan receivers made copies, deleted the original version and sent the copies to Antigua, out of the reach of the Canadian authorities, and refused to provide a copy to the American receiver until the time of the hearing.

[52] The Antiguan receivers also refused to provide a copy of the imaged data to the AMF. According to Sébastien Garon, the AMF was sent certain documents, but not the list of Canadian investors nor information pertaining to the documents that were removed from SIB's Montreal office, despite repeated requests made to the representatives of the Antiguan receivers after February 25, 2009.

[53] The argument that these did not constitute official orders was made very late. If this was Vantis' argument, it should have been raised early on, and it was not. The Court considers this argument a pretext or justification after the fact.

[54] Counsel for Vantis informed the AMF that they were not authorized to disclose the list of investors and that an order of the Antiguan Court would likely be necessary. The necessity of an order from the AMF was not raised.

[55] At para. 6 of James Coulthard's statement, the Antiguan receivers justified the process of erasure in this way:

> ... the servers were to be left at SIB's Montreal premises and the Antiguan "Liquidators" were concerned that the Landlord may repossess the premises and/or exercise powers of distraint on the servers, potentially giving access to any data left on them.

[56] As if safes were not available in Canada where files could be protected and safeguarded!

[57] If the Antiguan receivers had genuinely feared that someone could have unauthorized access to the original servers found at SIB's Montreal office, they had only

to remove the servers from the office and put them in a safe place, thus allowing the AMF and Janvey, as well as any other interested person, to have access to them in order to verify whether the copies made by the IT specialist were authentic and complete. It was entirely unnecessary to destroy the original servers which contained SIB's electronic data in Montreal. Where was the urgency? The concern is not a justification but a pretext.

[58] What motives—unspoken and unspeakable—justify the *Blue Water* operation, that is, destroying the original, making imaged copies before even obtaining Court authorization, and moving all information out of the country to Antigua?

[59] The Court concludes that Vantis' conduct, through the petitioners, disqualifies it from acting and precludes it from presenting the motion, as it cannot be trusted by the Court, given that:

a) It acted in Canada before even obtaining the necessary permission from the Court;

b) It destroyed the servers from which it claims to have made copies, and removed such copies from Canada making it impossible for the Court to ever confirm their accuracy;

c) The Antiguan receiver, personally and/or through its representatives, repeatedly ignored requests from the AMF, or when it did answer them, responded by saying, [TRANSLATION] "Institute proceedings in Antigua", while knowing that such proceedings would be dismissed since no treaty exists between the two countries;

d) It is unacceptable for the petitioner and/or his representatives to now argue: [TRANSLATION] "We will provide you with a copy of what we destroyed as it does not contain any confidential information" and yet claim to have destroyed and made copies for the very purpose of protecting confidential matters;

e) They failed to disclose everything to Registrar Chantal Flamand, and furthermore the lease termination was merely a screen and a pretext to obtain the *ex parte* order of April 6, 2009;

f) In addition, they obtained an order against the AMF without giving notice to the AMF and without disclosing to the Registrar the repeated requests from the AMF, which is after all the Quebec regulatory organization with jurisdiction over the operations that took place in Montreal.

g) The fact that Janvey had already been appointed by the American court as receiver of the debtors, the respondents, and the entities related to them and that he had the power to control all their assets, wherever they were located;

h) The fact that they were not authorized trustees in bankruptcy pursuant to the BIA;

i) The fact that Janvey and the Antiguan liquidators were engaged in a dispute for the control and possession of the assets belonging to the debtors and the respondents (valued at more than US$20 million), which are in the possession of the TD Bank, in Toronto.

[60] The Court does not believe Vantis when it claims to have informed Janvey of the operation of the destruction of the servers, as Vantis' written report refers only to protection and not destruction, for which reason the Court accepts Vantis' written documents rather than its testimony.

[61] Even if the liquidator's motion was well founded on the merits, it does not merit the confidence of the Court, an essential element enabling it to submit its motion, and this, because of the absence of good faith and respect for the Canadian public interest, represented by the Court and the regulatory authorities.

FOR THESE REASONS, THE COURT:

[62] **DECLARES** inadmissible the Antiguan liquidators' motion of April 22, 2009;

[63] **DISMISSES** the motion of the Antiguan liquidators.

[64] **The whole**, with costs.

CLAUDE AUCLAIR J.S.C.

Mtre Julie Himo
Mtre Philippe Giraldeau
Counsel for Liquidators-Petitioners

Mtre George R. Hendy
Mtre Martin Desrosiers
Mtre Nicholas Nadeau-Ouellette
Counsel for the Petitioner Ralph S. Janvey

Mtre Émilie Robert
Mtre Amélie Hébert
Counsel for the Intervener

Date of hearing: August 26, 27, and 28, 2009. Supplementary arguments: September 2, 4, and 8, 2009

TAB J

COURT OF APPEAL

CANADA
PROVINCE OF QUEBEC
REGISTRY OF MONTREAL

No: 500-09-020001-095
(500-11-036045-090)

DATE: DECEMBER 17, 2009

This is Exhibit 11 J referred to in the affidavit of Wolfgang Mersch sworn before me, this 10th day of October, 2014

A COMMISSIONER FOR TAKING AFFIDAVITS

CORAM: THE HONOURABLE JACQUES CHAMBERLAND, J.A.
ANDRÉ FORGET, J.A.
YVES-MARIE MORISSETTE, J.A.

IN THE MATTER OF THE LIQUIDATION OF :

STANFORD INTERNATIONAL BANK LIMITED
and
STANFORD TRUST COMPANY LIMITED
Debtors
and
NIGEL JOHN HAMILTON-SMITH
and
PETER NICHOLAS WASTELL
APPELLANTS – Liquidators
and
RALPH S. JANVEY
RESPONDENT – U.S. Receiver
and
AUTORITÉ DES MARCHÉS FINANCIERS
IMPLEADED PARTY - Intervener

JUDGMENT

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[1] The Court is seized with two motions, one by respondent Ralph S. Janvey (Janvey) to dismiss the appeal (article 501(2) and (4.1) of the *Code of Civil Procedure*

(C.C.P.); the other, *de bene esse*, by appellants Nigel John Hamilton-Smith and Peter Nicholas Wastell (H-S/W) for leave to appeal (section 193 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3) (BIA).

******

[2] The appeal involves two judgments rendered orally by Auclair J. of the Quebec Superior Court (Commercial Division) on September 11, 2009, with written reasons subsequently issued on September 14, 2009.

[3] In the first of the these two judgements, Auclair J. dismissed H-S/W's request to have a winding-up order issued by the High Court of Antigua and Barbuda and the liquidator appointed by that court recognized as a "foreign proceeding" and a "foreign representative" within the meaning of the BIA, Part XIII/International Insolvencies.[1]

[4] In the second judgment, Auclair J. granted Janvey's request to have a receivership order made by the United States District Court for the Northern District of Texas, Dallas Division and the receiver appointed by that court recognized as a "foreign proceeding" and a "foreign representative" within the meaning of Part XIII of the BIA.

[5] In short, the two judgements relate to the recognition of a "foreign representative" within the meaning of s. 267 of the BIA; one of the judgments also relates to the appointment of an interim receiver under Part XIII of the BIA.

*****

[6] Janvey's position on the Motion to dismiss is a) that the appellants have no *de plano* right to appeal (article 501(2) of the C.C.P.) and b) that the appeal has no reasonable chance of success (article 501(4.1) of the C.C.P.).

[7] H-S/W's position is that they can appeal as of right and without leave by virtue of s. 193(c) of the BIA:

> **193.** Unless otherwise expressly provided, an appeal lies to the Court of Appeal from any order or decision of a judge of the court in the following cases:
>
> (a) if the point at issue involves future rights;
>
> (b) if the order or decision is likely to affect other cases of a similar nature in the bankruptcy proceedings;

---

1 The relevant provisions of the BIA have recently been modified by both the *Wager Earner Protection Program Act*, S.C. 2005, c. 47, s. 122 and *An Act to Amend the Bankruptcy and Insolvency Act, the Companies' Creditors Arrangement Act, the Wager Earner Protection Program Act and Chapter 47 of the Statutes of Canada*, 2005, S.C. 2007, c. 36, ss. 59 and 60, modifications which came into force on September 18, 2009.

(c) if the property involved in the appeal exceeds in value ten thousand dollars;

(d) from the grant of or refusal to grant a discharge if the aggregate unpaid claims of creditors exceed five hundred dollars; and

(e) in any other case by leave of a judge of the Court of Appeal.

(emphasis added)

[8] H-S/W argue that, in any event, leave to appeal ought to be granted because a) the point of appeal – namely determining the principles that should guide Canadian courts in deciding whether to recognize "foreign proceedings" and "foreign representatives" within the meaning of the BIA – is of great significance to the practice of bankruptcy and insolvency since there is sparse judicial guidance with respect to the interpretation of the provisions of Part XIII of the BIA; b) the point of appeal is of significance to the action itself since the decisions definitively recognize one foreign representative at the expense of another in multi-jurisdictional proceedings; c) the appeal is *prima facie* meritorious since the judge of first instance made a number of manifest errors of law; d) the appeal will not unduly hinder the progress of the action since the parties are already involved in appeal proceedings in two other jurisdictions (namely the UK and Antigua).

[9] With regard to H-S/W's Motion for leave to appeal, Janvey replies that the threshold question is whether the appeal is *prima facie* meritorious, and this in light of the elevated standard of review applicable to the proposed appeal. Janvey argues that the issues raised by H-S/W with regard to both judgments do not disclose any reasonable chance of success.

[10] As can be seen, one argument is common to both motions and is determinative as to the fate of each of them: the appeal, according to Janvey, has no reasonable chance of success. The answer to this question, should it be affirmative, would carry with it the dismissal of the appeal formed by H-S/W and the dismissal of their application for leave to appeal, without the Court having to express any firm and final opinion as to the interpretation and application of subsections 193(c) and (e) of the BIA.

[11] In this context, the question of whether H-S/W's appeal has any reasonable chance of success is the first one the Court ought to study.

*****

[12] At the outset, it is appropriate to make two preliminary observations.

[13] First, in their application to the Quebec Superior Court, H-S/W were not simply asking that the decision of the High Court of Antigua and Barbuda appointing them as liquidators of SIB be recognized, but rather that they be named the "foreign

representative" of SIB in Canada, with powers similar to those of a licensed trustee – an officer of the Court – in Canada.

[14] Second, while H-S/W are not incorrect in alleging that their application was summarily dismissed in light of their wrongful behaviour, it would be more accurate to state that the trial judge also concluded that the "centre névralgique" of SIB was located in Houston, U.S. (rather than in Antigua or Barbuda) and that, given all the circumstances of this multi-jurisdictional financial fiasco, it was "plus équitable" to appoint Janvey as the "foreign representative" of SIB. Auclair J.'s reasoning thus goes well beyond the behaviour of H-S/W.

[15] The Court if of the view that H-S/W's appeal from the two judgments rendered by Auclair J. is bound to fail.

With regard to the judgement dismissing H-S/W's request for the recognition of the order issued by the High Court of Antigua and Barbuda and for their appointment as the "foreign representative" of SIB in Canada

[16] The discretion vested in the judge seized with such a request is broad. Subsection 268(6) of the BIA provides that:

> Nothing in this Part [Part XIII] requires the court to make any order that is not in compliance with the laws of Canada or to enforce any order made by a foreign Court.
>
> (emphasis added)

[17] In the case at bar, it is plainly wrong to argue that Auclair J. failed to consider the purpose of Part XIII of the BIA. His decision is based on *Holt Cargo Systems Inc. v. ABC Containerline N.V. (Syndics de)*, [2001] 3 S.C.R. 907, a binding authority on the issue; he thoroughly canvassed and properly weighed the appropriate factors, as required by this decision.

[18] In his reasons, Auclair J. recognizes that Part XIII of the BIA exists in order to foster cooperation between jurisdictions. However, he concludes that this goal cannot set aside the discretion vested in the court by subsection 268(6) of the BIA; Part XIII seeks to protect the interests of Canadian creditors by facilitating cooperation amongst jurisdictions where it is in their interests, while affording Canadian courts the discretion to refuse cooperation where it is not.

[19] Auclair J. examined whether, in the case at bar, cooperation with the High Court of Antigua and Barbuda was possible and in the interest of the Canadian creditors of SIB and he determined, in the light of all the evidence placed before him, that it was not.

[20] This approach is in line with the approach dictated by the Supreme Court of Canada in *Holt* (especially, par. 33, 34, and 80) and it constitutes a proper exercise of Auclair J.'s judicial discretion.

[21] Furthermore, the question of what is or is not in the interests of the Canadian creditors is a question of fact within the exclusive purview of the trial judge. Faced with two competing insolvency regimes (Antigua and U.S.), Auclair J. came to the conclusion that it was the cooperation with the U.S. receivership that was in the best interests of the Canadian creditors of SIB. This conclusion is supported by the evidence and, as such, is unassailable.

[22] Auclair J. also came to the conclusion that SIB's real and substantial connection is with the United States and not Antigua. Again, this conclusion is supported by the evidence and, in the absence of any palpable and overriding error, is unassailable.

[23] All of these considerations are independent of any question pertaining to H-S/W's behaviour and they constitute, in and of themselves, sufficient grounds for Auclair J.'s conclusion, in the very exercise of his judicial discretion, that cooperation with the Antigua and Barbuda authorities was not, in this instance, in the interest of the Canadian creditors.

[24] Furthermore, the argument that the trial judge erred in relying on the clean hands doctrine in the exercise of the discretion vested in the Superior Court by subsection 268(6) of the BIA is ill-founded.

[25] As noted above, H-S/W were not simply asking for the recognition of the order rendered by the High Court of Antigua and Barbuda but rather were asking to be designated as the "foreign representative" of SIB in Canada and thus, to be granted powers similar to those of a licensed trustee, an officer of the court under the BIA.

[26] In this context, it is difficult to imagine any principle or authority supporting the proposition that, when exercising its statute-conferred discretion pursuant to the BIA, the Superior Court is not entitled to apply the clean hands doctrine – or its equivalent in civil law, "la fin de non-recevoir" (article 6,7 and 1375 of the *Quebec Civil Code*) – while it can be applied in the exercise of any other statute-conferred discretionary powers. [2]

[27] In the case at bar, Auclair J. held that H-S/W did not come before the Court with clean hands. This characterization of petitioners' conduct is amply supported by the evidence and, failing any palpable and overriding error, is unassailable.

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[2] In fact, specific authority exists to the contrary: *Saargummi Quebec Inc. (Proposition de),* [2006] R.J.Q. 1644 (Dumas J. Q. Sup. Ct,).

With regard to the judgment granting Janvey's request for the recognition of the receivership order made by the United States District Court and for his appointment as the "foreign representative" of SIB creditors in Canada

[28] The issue, as framed by H-S/W, rests solely on whether Auclair J. erred in determining that a Receivership Order made by the U.S. District Court for the Northern District of Texas, under various U.S. securities laws and the common law, falls under the terms "foreign proceeding" as they are defined in section 267 BIA:

> **267.** In this Part,
>
> "debtor" means an insolvent person who has property in Canada, a bankrupt who has property in Canada or a person who has the status of a bankrupt under foreign law in a foreign proceeding and has property in Canada;
>
> "foreign proceeding" means a judicial or administrative proceeding commenced outside Canada in respect of a debtor, under a law relating to bankruptcy or insolvency and dealing with the collective interests of creditors generally;
>
> "foreign representative" means a person, other than a debtor, holding office under the law of a jurisdiction outside Canada who, irrespective of the person's designation, is assigned, under the laws of the jurisdiction outside Canada, functions in connection with a foreign proceeding that are similar to those performed by a trustee, liquidator, administrator or receiver appointed by the court.

[29] The judge of first instance reached the conclusion that the U.S. receivership was a "foreign proceeding" after conducting a detailed analysis of the content and substance of the Receivership Order and of the powers vested in Janvey, as receiver, over the entities of the Stanford Group and their assets.

[30] He also conducted a comparative analysis of the Antiguan and U.S. Receivership Order, concluding that the powers given to Janvey pursuant to the U.S. Receivership Order were much broader in scope than those given to H-S/W under the Antiguan Receivership Order which, in passing, H-S/W had asked Registrar Chantal Flamand (of the Quebec Superior Court, Bankruptcy Division) to recognize as a "foreign proceeding".

[31] In light of the foregoing, the Court is of the view that petitioners' efforts to have this conclusion set aside shows no reasonable chance of success.

[32] FOR ALL THESE REASONS:

[33] Respondent's Motion to Dismiss the Appeal is granted, with cost, and the appeal is dismissed, with cost; and

[34] Appellants' *de bene esse* Application for Leave to Appeal is dismissed, without cost.

JACQUES CHAMBERLAND, J.A.

ANDRÉ FORGET, J.A.

YVES-MARIE MORISSETTE, J.A.

M^tre^ Julie Himo
M^tre^ Azim Hussain
OGILVY RENAULT
For appellants

M^tre^ George R. Hendy
M^tre^ Martin Desrosiers
M^tre^ Nicolas Nadeau-Ouellet
OSLER, HOSKIN & HARCOURT
For respondent Ralph S. Janvey

M^tre^ Émilie Robert
Autorité des marchés financiers
For impleaded party

Date of hearing: December 14, 2009

TAB K

No. 33568

December 22, 2011

Coram: LeBel, Abella and Cromwell JJ.

BETWEEN:

Marcus A. Wide and Hugh Dickson

Applicants

- and -

Ralph S. Janvey

Respondent

- and -

Autorité des Marchés Financiers

Intervener

JUDGMENT

The application for leave to appeal from the judgment of the Court of Appeal of Quebec (Montréal), Number 500-09-020001-095, 2009 QCCA 2475, dated December 17, 2009, is dismissed with costs to the respondent and intervener.

Le 22 décembre 2011

Coram : Les juges LeBel, Abella et Cromwell

ENTRE :

Marcus A. Wide et Hugh Dickson

Demandeurs

- et -

Ralph S. Janvey

Intimé

- et -

Autorité des Marchés Financiers

Intervenante

JUGEMENT

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel du Québec (Montréal), numéro 500-09-020001-095, 2009 QCCA 2475, daté du 17 décembre 2009, est rejetée avec dépens en faveur de l'intimé et de l'intervenante.

J.S.C.C.

This is Exhibit K *referred to in the affidavit of* Wolfgang Mersch *sworn before me, this* 10th *day of* October, 2014

A COMMISSIONER FOR TAKING AFFIDAVITS

No. 33568

J.C.S.C.

TAB L

This is Exhibit "1" referred to in the affidavit of Wolfgang Mersch sworn before me, this 10th day of October, 2014

A COMMISSIONER FOR TAKING AFFIDAVITS

ACTION NO. 0901- 05677

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY

BETWEEN:

DYNASTY FURNITURE MANUFACTURING LTD., SHAFIQ HIRANI, HANIF ASARIA, DINMOHAMED SUNDERJI and 2645-1252 QUEBEC INC.

Plaintiffs

- and -

STANFORD INTERNATIONAL BANK, LTD., STANFORD GROUP COMPANY, STANFORD CAPITAL MANAGEMENT, LLC, R. ALLEN STANFORD, JAMES M. DAVIS, LAURA PENDERGEST-HOLT, FARAN KASSAM, ALAIN LAPOINTE, ABC CORP 1 to 9, JOHN DOE 1 to 9 and JANE DOE 1 to 9 and other entities and individuals known to the Defendants

Defendants

STATEMENT OF CLAIM

1. In this action the Plaintiffs seek recovery from the Defendants for, *inter alia*, the losses and damages they suffered as a result of collectively investing approximately CDN $17.5 million in the Investment Scheme (as described below), based on the misrepresentations and other wrong-doings of the Defendants, the particulars of which are set out below.

The Plaintiffs

2. The Plaintiff, Dynasty Furniture Manufacturing Ltd. ("Dynasty"), is a corporation incorporated pursuant to the laws of Alberta. Dynasty invested approximately CDN $1 million in the Investment Scheme (as described below) in or about June 2008 based on misrepresentations made by the Defendants, and in particular based on misrepresentations made by the Defendant Faran Kassam ("Kassam"), who was a financial advisor acting on behalf of the

corporate defendants. Kassam met with Dynasty in Calgary, Alberta to open an account for Dynasty and to cause Dynasty to make the investment it did.

3. The Plaintiff Shafiq Hirani ("Hirani") is an individual residing in the Province of Alberta. Hirani invested approximately CDN $8 million in the Investment Scheme (as described below) in or about December 2005 based on misrepresentations made by the Defendants, and in particular based on misrepresentations made by the Defendant Kassam. Kassam met with Hirani in Calgary, Alberta to discuss opening an account and making an investment. Hirana later opened an account via email with Kassam and made the investment he did.

4. The Plaintiff Dr. Hanif Asaria ("Asaria") is an individual residing in the Province of Alberta. Asaria invested approximately CDN $1 million in the Investment Scheme (as described below) between about September 2007 and January 2009 based on misrepresentations made by the Defendants, and in particular based on misrepresentations made by the Defendant Kassam. Kassam met with Asaria in Calgary, Alberta to open an account for Asaria and to cause Asaria to make the investments he did.

5. The Plaintiff Dinmohamed Sunderji ("Sunderji") is an individual residing in the Province of Alberta. Sunderji invested approximately CDN $2.3 million in the Investment Scheme (as described below) in or about January 2009 based on misrepresentations made by the Defendants, and in particular based on misrepresentations made by the Defendant Kassam. Kassam met with Sunderji in Calgary, Alberta to open an account for Sunderji and to cause Sunderji to make the investments he did.

6. The Plaintiff 2645-1252 Quebec Inc. ("1252 Quebec") is a corporation incorporated pursuant to the laws of the Province of Quebec. 1252 Quebec invested approximately CDN $5

million in the Investment Scheme (as described below) between about January 2007 and March 2008 based on misrepresentations made by the Defendants, and in particular based on misrepresentations made by the Defendant Alain Lapointe ("Lapointe"), who was the head of the office in Montreal, Quebec for the Defendant Stanford International Bank Ltd. Lapointe met with 1252 Quebec in Montreal, Quebec to open an account for 1252 Quebec and to cause 1252 Quebec to make the investment it did.

7. In deciding to invest their monies in what turned out to be the Investment Scheme (as described below), the Plaintiffs each relied on the misrepresentations made to them that, *inter alia*, the "certificates for deposit" ("CDs") they were buying were safe investments backed by the Defendant Stanford International Bank, Ltd., which was said to be a reputable, long-standing, multi-billion dollar banking institution.

8. Dynasty, Hirani, Asaria, Sunderji and 1252 Quebec are sometimes referred to herein collectively as the Plaintiffs.

The Defendants

9. The Defendant Stanford International Bank, Ltd. ("SIB"), purports to be a private international bank domiciled in St. John's, Antigua, West Indies. SIB claims to serve clients in 131 countries and to hold U.S. $7.2 billion in assets under management. SIB's Annual Report for 2007 states that SIB has 50,000 clients. SIB is part of a complex web of affiliated companies that exist and operate under the brand Stanford Financial Group ("SFG"). SFG is described as a privately-held group of companies that has in excess of U.S. $50 billion "under advisement". SIB's multi-billion portfolio of investments is purportedly monitored by SFG's chief financial officer in Memphis, Tennessee (namely, the Defendant James Davis). Unlike a commercial

bank, SIB does not loan money. SIB sells CDs to investors through its affiliated investment advisor (the Defendant Stanford Group Company).

10. The Defendant Stanford Group Company ("SGC"), is a Houston-based corporation, registered with the Securities Exchange Commission (the "SEC") as a broker-dealer and investment advisor. It has 29 offices located throughout the United States. SGC's principal business consists of sales of SIB-issued securities, marketed as CDs. SGC is a wholly-owned subsidiary of Stanford Group Holdings, Inc. ("SGHI"), which in turn is owned by the Defendant R. Allan Stanford.

11. The Defendant Stanford Capital Management, LLC ("SCM"), is a registered investment advisor in the United States, which took over management of the SAS program (described below) from SGC in early 2007. SGC markets the SAS program through SCM.

12. The Defendant R. Allan Stanford ("Stanford") is a U.S. citizen, the Chairman of the Board of SIB, the sole shareholder of SIB and the sole director of SGC's parent company, SGHI. Stanford is and has at all material times been the directing mind behind the Investment Scheme (as described below).

13. The Defendant James M. Davis ("Davis"), is a U.S. citizen and a resident of Baldwin, Mississippi. Davis has offices in Memphis, Tennessee and Tulepo, Mississippi. Davis is a director and the chief financial officer of SFG and SIB. Davis has at all material times been a knowing participant in the Investment Scheme (as described below).

14. The Defendant Laura Pendergest-Holt ("Pendergest-Holt"), is the Chief Investment Officer of SIB and its affiliate SFG. She supervises a group of analysts in Memphis, Tupelo, and

St. Croix who "oversee" performance of a portion of the assets (sometimes described internally as Tier 2 assets). Pendergest-Holt has at all material times been a knowing participant in the Investment Scheme (as described below).

15. The Defendant Kassam is a financial advisor who promoted CDs to Canadian investors, including the Plaintiffs Dynasty, Hirani, Asaria and Sunderji. Kassam's business card states that he is Director, Private Wealth Management for Stanford Group (Antigua) Limited, which company is part of the Sanford group of companies operating under the SFG brand.

16. The Defendant Lapointe is the head of SIB's office in Montreal, Quebec. Lapointe promoted CDs to Canadian investors, including the Plaintiff 1252 Quebec.

17. The Defendants John Doe 1 to 9, Jane Doe 1 to 9 and ABC Corp. 1 to 9 (collectively, the "John Doe Defendants"), are additional individuals and entities involved in the Investment Scheme. Particulars in respect of these individuals and entities are known to the Defendants and will be particularized by the Plaintiff prior to the trial of the action.

18. SIB, SGC, SCM, Stanford, Davis, Pendergest-Holt, Kassam, Lapointe and the John Doe Defendants are sometimes referred to herein collectively as the Defendants.

THE INVESTMENT SCHEME

19. SIB, acting through a network of SGC financial advisors, including financial advisor Kassam, has sold approximately U.S. $8 billion of self-styled "certificates of deposit" (*i.e.*, the CDs) by promising high rates of return that exceed those available through true certificates of deposit offered by traditional banks. For example, on November 28, 2008, SIB quoted 5.375%

on a 3 year CD, while comparable U.S. bank CDs paid under 3.2%. Recently, SIB quoted rates of over 10% on five year CDs.

20. For almost fifteen years, SIB has represented to the public that it has experienced consistently high returns on its investment of deposits (ranging from 11.5% in 2005 to 16.5% in 1993). Since 1994 SIB claims to have never failed to exceed its targeted investment return of 10% per annum. The returns on the CDs were not as great as SIB represented. The Defendants have refused to cooperate with an investigation by the SEC to confirm the rates of return actually earned.

21. SIB's network of SGC financial advisors has made repeated misrepresentations to the purchasers of CDs in order to induce them into thinking their investment is safe. SIB and its advisors have misrepresented to CD purchasers that their deposits are safe because the bank: (i) re-invests client funds (the "Portfolio") primarily in "liquid" financial investments, (ii) monitors the Portfolio through a team of 20-plus analysts; and (iii) is subject to yearly audits by Antiguan regulators. Moreover, SIB has attempted to calm its investors by claiming the bank has no "direct or indirect" exposure to the recent investment scheme being investigated in respect of Bernard Madoff. None of these representations are true.

22. Contrary to the representations made, the Portfolio was not invested primarily in liquid financial instruments or allocated in the manner described in SIB's promotional material and public reports. Instead, a substantial portion of the Portfolio was placed in illiquid investments, such as real estate and private equity. Further, the vast majority of the Portfolio was not monitored by a team of analysts, but rather by two people – Stanford and Davis. And contrary to SIB's representations, the Antiguan regulator responsible for oversight of the Portfolio – the

Financial Services Regulatory Commission – does not audit the Portfolio or verify the assets SIB claims in its financial statements. Moreover, the Portfolio has exposure to the Madoff investment scheme despite SIB's public assurances to the contrary.

23. SGC has failed to disclose material facts to its advisory clients, such as the fact that (i) in the weeks preceding the legal proceedings taken by the Securities and Exchange Commission in the State of Texas, there had been an alarming increase in the amount of liquidation activity by SIB, and attempts to wire money out of the Portfolio, and (ii) a major clearing firm – after unsuccessfully attempting to find information about SIB's financial condition and because it could not obtain adequate transparency into SIB's financials –informed SGC that it would no longer process wires from SGC accounts at the clearing firm to SIB for the purchase of SIB issued CDs, even if they were accompanied by customer letters of authorization.

24. The Defendants' fraudulent conduct is not limited to the sale of CDs. Since 2005, SGC advisors have sold more than U.S. $1 billion of a proprietary mutual fund wrap program called Stanford Allocation Strategy ("SAS"), by using materially false and misleading historical performance data. The false data has helped SGC grow the SAS program from less than U.S. $10 million in around 2004 to over U.S. $1.2 billion, generating fees for SGC (and ultimately Stanford) in excess of U.S. $25 million. Also, the fraudulent SAS performance was used to recruit registered financial advisors with significant books of business, who were then heavily incentivized to re-allocate their clients' assets to SIB's CD program.

25. SGC receives 3% based on the aggregate sales of CDs by SGC advisors, and the financial advisors themselves receive a 1% commission upon the sale of the CDs, and are eligible to receive as much as a 1% trailing commission throughout the term of the CDs. This commission

structure provides a powerful incentive for SGC financial advisors to aggressively sell CDs to investors.

26. Contrary to the representations made in SIB's 2007 annual reports that its Portfolio was invested in a "well-diversified portfolio of highly marketable securities issued by stable governments, strong multinational companies and major international banks", in fact approximately 90% of the Portfolio was invested in illiquid investments – namely real estate and private equity.

27. Contrary to the representation that responsibility for SIB's multi-billion dollar Portfolio was "spread-out" among 20-plus people, in fact only Stanford and Davis know the whereabouts of the vast majority of the bank's investments. Without any independent verification, Stanford and Davis alone were aware of where the vast majority of the investments were, and they alone calculated the returns on the aggregated Portfolio. Pendergest-Holt, who has at all material times been responsible for training SIB's Senior Investment Officer and SGC's financial advisors in respect of the CDs, knowingly misled them into telling investors that the entire Portfolio was spread-out among over 20 analysts.

28. The Investment Scheme was a fraudulent means designed and carried out by the Defendants to acquire the Plaintiffs' funds for their own benefit.

MISREPRESENTATIONS

29. Unbeknownst to the Plaintiffs, the Investment Scheme, and the resulting investments (collectively the "Investment Agreements") were not legitimate investments. Rather, these transactions were designed by the Defendants for the purpose of converting the Plaintiffs' funds to the Defendants' benefit.

30. The representations made by the Defendants to the Plaintiffs regarding the Investment Scheme and the workings and purpose of the Investment Scheme and the Investment Agreements were untruthful and inaccurate. Further, the Defendants knew such representations were untrue and inaccurate or, alternatively, were willfully blind as to the truth or accuracy of such representations. Such representations were made by the Defendants to the Plaintiff for the purpose of having the Plaintiffs participate in the Investment Scheme and enter into the Investment Agreements.

31. In the alternative, the said Defendants were negligent as to the truthfulness and accuracy of the representations they made to the Plaintiffs regarding the Investment Scheme and the Investment Agreements. Such representations were untrue and inaccurate and the said Defendants ought to have known of such untruths and inaccuracies. They were made by the Defendants to the Plaintiffs in breach of a duty of care owed by the Defendants to the Plaintiffs.

32. Had the Plaintiffs known that the said Defendants' representations regarding the Investment Scheme and Investment Agreements were untrue and inaccurate, they would not have participated in the Investment Scheme and, more particularly, would not have entered into the Investment Agreements.

33. As a result of their reliance on the said Defendants' misrepresentations, the Plaintiffs have suffered losses consisting of the outstanding principal amounts of their respective Investment Agreements and the opportunity to earn a return on those monies.

CONVERSION

34. By means of the illegitimate Investment Agreements, the Defendants have converted the Plaintiffs' funds to their own uses and thereby deprived the Plaintiffs of the benefit of those funds.

35. The Plaintiffs are entitled to judgment for the recovery of all amounts fraudulently converted, namely the unreturned principal investments under the Investment Agreements.

BREACH OF TRUST AND BREACH OF FIDUCIARY DUTIES

36. In receiving the Plaintiffs' investment funds, the Defendants stood as trustees, or alternatively constructive trustees, and fiduciaries with respect to those funds and, as such, owed duties to the Plaintiffs in that regard. The Defendants breached those duties by, among other things:

(a) converting the Plaintiffs' funds to their own use;

(b) failing to protect the Plaintiffs' funds from conversion or misuse by others;

(c) failing to fully inform the Plaintiffs of the illegitimate nature of the Investment Scheme and the Investment Agreements; and

(d) such further and other particulars as may be proven at the trial of this Action.

37. As a result of the Defendants' breaches of trust and breaches of fiduciary duties, the Plaintiffs have suffered losses including the loss of the unreturned principal investments under the Investment Agreements.

UNJUST ENRICHMENT

38. The Defendants have received the benefit of the Plaintiffs' funds to the detriment of the Plaintiffs and in the absence of any juristic reason.

CONSPIRACY

39. In engaging in all of the foregoing conduct, the Defendants have acted jointly and unlawfully with the common purpose and malicious intention of injuring the Plaintiffs. Alternatively, the Defendants have acted jointly, their conduct as set out above was directed at the Plaintiffs, and the Defendants knew or ought to have known that the Plaintiffs would suffer harm as a result of the Defendants' actions.

40. By virtue of the Defendants' conspiracy, the Plaintiffs have suffered losses including the loss of the unreturned principal investments under the Investment Agreements. Further, by conspiring in the manner they have, the Defendants are liable jointly and severally to the Plaintiffs for the entirety of the Plaintiffs' collective losses notwithstanding that a particular Defendant may not have conducted a particular act alleged above.

FRAUDULENT CONVEYANCES

41. At various instances, the full particulars of which are only known to the Defendants, the Defendants have transferred assets from themselves to others in order to avoid creditors, including the Plaintiffs, or alternatively to the payees in preference to other creditors, including the Plaintiffs (the "Fraudulent Conveyances"). The Fraudulent Conveyances were made at such time as the Defendants knew they were insolvent or knew that, in light of the claims against them, including the potential claims of the Plaintiffs, they were on the eve of insolvency. All such Fraudulent Conveyances were illegal and contrary to the *Statute of Elizabeth* and the

Fraudulent Preferences Act, R.S.A. 2000, c. F-24, upon which statutes the Plaintiffs expressly plead and rely.

42. The Plaintiffs seek Orders of this Court to set aside the Fraudulent Conveyances and make the assets so transferred available to the Plaintiffs to satisfy such judgments as the Plaintiffs may obtain against the Defendants.

DISHONEST ASSISTANCE AND KNOWING RECEIPT

43. Each of the actions taken by the Defendants as set out above was contrary to the normal acceptable standards of honest conduct. By engaging in the conduct alleged herein, each of the Defendants has participated in transactions involving conversion, breach of trust, breach of contract and breach of fiduciary duty in which the Defendants, in all of the circumstances, knew or ought to have known that they could not and ought not honestly participate and further or alternatively participated in such transactions when they were or ought to have been suspicious about the validity and propriety of the transactions, and yet made conscious decisions to not inquire about the validity and propriety of such transactions.

44. By acting to assist, facilitate and allow the transactions and matters set out herein to proceed notwithstanding the knowledge and/or suspicions set out above, each of the Defendants facilitated and allowed the Plaintiffs' losses and is therefore liable to the Plaintiffs for such dishonest assistance in the full amount of the Plaintiffs' claims herein. Furthermore, by knowingly receiving the proceeds of conduct which the Defendants knew or ought to have known was dishonest, illegal or otherwise wrongful, the Defendants are liable to the Plaintiffs in the full amount of the Plaintiffs' claims herein.

TRACING, FREEZING ASSETS, ACCOUNTING AND DISGORGEMENT

45. As a result of the Defendants' wrongful conduct as set out above, the Plaintiffs are entitled to trace all amounts received or disbursed by the Defendants as part of or as a result of the Investment Scheme and to recover same. The Plaintiffs are also entitled to an accounting of the monies belonging to the Plaintiffs that have come into the possession of the Defendants and to an accounting of any benefit received by the Defendants as a result of the Investment Scheme.

46. The Plaintiffs are entitled to interlocutory and permanent injunctions restraining the Defendants from disposing of any of their assets wheresoever located and an accounting of all of the Defendants' assets, effects, and property, including any trust account or jointly held assets, any improper disposition thereof, and all money had or received by the Defendants or anyone on their behalf.

47. The Defendants are liable to make restitution to the Plaintiffs and to disgorge any benefits they have received from the Investment Scheme.

48. The Plaintiffs have incurred significant out-of-pocket expenses and special damages in their detection, investigation and quantification of the fraud and losses suffered and their attempts to recover their losses at the hands of the Defendants in an amount to be proven at the trial of this Action. The Plaintiffs claim these amounts from the Defendants.

PUNITIVE DAMAGES AND COSTS

49. The Plaintiffs further plead that they are entitled to recover punitive and exemplary damages in the amount of $500,000.00 as a result of the acts of the Defendants described herein.

50. The Plaintiffs further state that as a result of the Defendants' fraudulent and malicious conduct as set out above, the Defendants ought to pay costs of this action on a solicitor and his own client basis.

STATUTES

51. The Plaintiffs plead and rely upon the provisions of the *Securities Act* R.S.A. 2000, c. S-4, the *Class Proceedings Act* S.A. 2003, c. C-16.5, the *Business Corporations Act* R.S.A. 2000, c. B-9, the *Bank Act*, R.S.C. 1991, c.46, the *Contributory Negligence Act*, R.S.A. 2000 c. C-27, the *Tortfeasors Act*, R.S.A. 2000, c. T-5, the *Statute of Elizabeth* and the *Fraudulent Preferences Act*, R.S.A. 2000, c. F-24.

TRIAL OF THE ACTION

52. The Plaintiffs propose that the trial of this action be held at the Calgary Courts Centre, in the City of Calgary, in the Province of Alberta. In the opinion of the Plaintiffs, this action will not likely take more than 25 days to try.

WHEREFORE THE PLAINTIFFS CLAIM as against the Defendants, jointly and severally:

(a) judgment in the amount of the funds invested with or given to the Defendants or any of them for the purposes of investment, together with such further or other amounts as have been converted by the Defendants, all in Canadian Dollars (to be converted either at the time of the investment or such other time as the Court directs);

(b) an accounting and disgorgement of all fees and other expenses paid by the Plaintiffs to the Defendants or any of them, and judgment for such amounts;

(c) further and/or in the alternative, damages for breach of contract, misrepresentation, fraud, breach of trust, breach of fiduciary duty, conversion, negligence, unjust enrichment and/or conspiracy in respect of the amounts invested by the Plaintiffs in an amount to be particularlized prior to the trial of this action;

(d) special damages and out-of-pocket expenses arising out of the detection, investigation, quantification, and recovery of the fraud, losses, and consequential losses suffered by the Plaintiffs in an amount to be proven at the trial of this action;

(e) a declaration that any funds or benefits received by the Defendants from the Investment Scheme are held in trust for the Plaintiffs and that the Plaintiffs are entitled to trace the monies that the Defendants received or disbursed as part of or as a result of the Investment Scheme;

(f) a declaration that the Defendants must account to the Plaintiffs for all monies taken from the Plaintiffs as part of the Investment Scheme and for any benefit received by the Defendants as a result of the Investment Scheme;

(g) an Order setting aside the Fraudulent Conveyances;

(h) an Order permitting the Plaintiffs to trace the monies that the Defendants fraudulently obtained from the Plaintiffs, and from the sale of any goods

fraudulently obtained with the Plaintiffs' monies into and through any financial institution accounts or deposit facilities in the name of any of the Defendants and into or through any assets purchased by the Defendants with the Plaintiffs' monies;

(i) a declaration that any real property owned in whole or in part by the Defendants shall be sold in order to deliver up to the Plaintiffs the funds which can be traced to those lands;

(j) interlocutory and permanent injunctions attaching the Defendants' assets and restraining the Defendants from disposing of any of their assets, including those held by another person on their behalf, wheresoever located;

(k) exemplary and punitive damages in the amount of $500,000;

(l) pre-judgment and post judgment interest on all amounts awarded to the Plaintiffs at such rate or rates as may be ordered, compounded annually or monthly, pursuant to the *Judgment Interest Act*, R.S.A 2000, c. J-1, as amended;

(m) the Plaintiffs' costs of this action on a solicitor and his own client basis including costs of distributing or administering any award in favour of the Plaintiffs, or, in the alternative, on such other basis as this Honourable Court may order; and

(n) such further and other relief as this Honourable Court may permit.

DATED at the City of Calgary, in the Province of Alberta, this 17 day of April, 2009, AND DELIVERED BY BENNETT JONES LLP, Barristers and Solicitors, solicitors for

the Plaintiff herein whose address for service is in care of the said solicitors at 4500 Bankers Hall East, 855 - 2nd Street S.W., Calgary, Alberta T2P 4K7.

ISSUED out of the Office of the Clerk of the Court of Queen's Bench of Alberta, Judicial District of Calgary, this 17th day of April, 2009.

V.A. BRANDT (COURT SEAL)

CLERK OF THE COURT

NOTICE

TO: STANFORD INTERNATIONAL BANK, LTD., STANFORD GROUP COMPANY, STANFORD CAPITAL MANAGEMENT, LLC, R. ALLEN STANFORD, JAMES M. DAVIS, LAURA PENDERGEST-HOLT, FARAN KASSAM, ALAIN LAPOINTE, ABC CORP 1 to 9 and JOHN DOE 1 to 9 and JANE DOE 1 to 9 and other entities and individuals known to the Defendants

You have been sued. You are the Defendants. You have only 15 days to file and serve a Statement of Defence or Demand of Notice. You or your lawyer must file your Statement of Defence or Demand of Notice in the office of the Clerk of the Court of Queen's Bench in Calgary, Alberta. You or your lawyer must also leave a copy of your Statement of Defence or Demand of Notice at the address for service for the Plaintiff named in this Statement of Claim.

WARNING: If you do not do both things within 15 days, you may automatically lose the lawsuit. The Plaintiff may get a Court Judgment against you if you do not file, or do not give a copy to the Plaintiff, or do either thing late.

This Statement of Claim is issued by

BENNETT JONES LLP
Jim Patterson / Lincoln Caylor / Farouk Adatia
Tel: 416.777.6250 / 6121 / 403.298.3342
Fax: 416.863.1716 / 403.265.7219

Solicitors for the Plaintiffs whose address for service is in care of the said solicitors.

The Defendants reside or carry on business, as the case may be, in or about Calgary, Alberta.

ACTION NO. 0901- 05677

IN THE COURT OF QUEEN'S BENCH OF ALBERTA JUDICIAL DISTRICT OF CALGARY

BETWEEN:

DYNASTY FURNITURE MANUFACTURING LTD., SHAFIQ HIRANI, HANIF ASARIA, DINMOHAMED SUNDERJI and 2645-1252 QUEBEC INC.

Plaintiffs

- and -

STANFORD INTERNATIONAL BANK, LTD., STANFORD GROUP COMPANY, STANFORD CAPITAL MANAGEMENT, LLC, R. ALLEN STANFORD, JAMES M. DAVIS, LAURA PENDERGEST-HOLT, FARAN KASSAM, ALAIN LAPOINTE, ABC CORP 1 to 9 and JOHN DOE 1 to 9 and JANE DOE 1 to 9 and other entities and individuals known to the Defendants

Defendants

STATEMENT OF CLAIM

BENNETT JONES LLP
4500 Bankers Hall East
855 2nd Street SW
Calgary, AB T2P 4K7

Jim Patterson / Lincoln Caylor / Farouk Adatia
Tel: 416.777.6250 / 6121 / 403.298.3342
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Solicitors for the Plaintiffs

WSLegal\036521\00010\5198382v1

CLERK OF THE COURT
APR 17 2009
CALGARY, ALBERTA

TAB M

ACTION NO. 0901- 05717

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY

BETWEEN:

DYNASTY FURNITURE MANUFACTURING LTD., SHAFIQ HIRANI, HANIF ASARIA, DINMOHAMED SUNDERJI and 2645-1252 QUEBEC INC.

Plaintiffs

- and -

TORONTO-DOMINION BANK

Defendant

This is Exhibit "M" referred to in the affidavit of Waltraud Mersch sworn before me, this 8th day of October, 20 14

A COMMISSIONER FOR TAKING AFFIDAVITS

STATEMENT OF CLAIM

1. In this action the Plaintiffs seek an immediate, interlocutory Order to examine: (i) the bank accounts, investment accounts and related banking and credit records and other documents with respect to all accounts, assets, safety deposit boxes and any other assets on deposit with the Defendant or any affiliates of the Defendant, and/or any asset, fund or account whatsoever in which any of the Named Companies (as described below) have a beneficial interest, or in which any or all of them have authority to conduct transactions; and (ii) any agreements, reports, instructions, records, documents and/or other information concerning the Defendant's relationship with the Named Companies, the terms under which the Defendant holds funds for the Named Companies and/or the investors who purchased certificates of deposit offered by the Named Companies, and the Named Companies' use of any such funds.

2. The Plaintiffs further seek an Order that the Defendant provide to the Plaintiffs forthwith copies of all agreements, reports, instructions, documents, banking, investment and credit records for all accounts and things they are permitted to examine pursuant to the above-described Order.

3. The Plaintiffs finally seek an Order declaring that the Defendant holds certain Trust Funds (as described below) in trust for the Plaintiffs. As necessary, the Plaintiffs will seek further relief to trace the Trust Funds, any proceeds of the Trust Funds, and/or declarations of priority over the Trust Funds.

The Plaintiffs

4. The Plaintiff, Dynasty Furniture Manufacturing Ltd. ("Dynasty"), is a corporation incorporated pursuant to the laws of Alberta. Dynasty invested approximately CDN $1 million in the Investment Scheme (as described below) based on misrepresentations made to it by the Named Companies and/or individuals acting on their behalf. Based on the misrepresentations made (the particulars of which are set out in the Related Action, described below), in or about June 2008 Dynasty directed its investment funds to Stanford International Bank Ltd. ("SIB") via Toronto-Dominion Bank ("TD Bank") for the purchase of self-styled "certificates of deposit" ("CDs") offered by the Named Companies.

5. The Plaintiff Dr. Hanif Asaria ("Asaria") is an individual residing in the Province of Alberta. Asaria invested approximately CDN $1 million in the Investment Scheme (as described below) based on misrepresentations made to him by the Named Companies and/or individuals acting on their behalf. Based on the misrepresentations made (the particulars of which are set out in the Related Action, described below), between about September 2007 and January 2009, Asaria directed his investment funds to SIB via TD-Bank for the purchase of CDs offered by the Named Companies.

6. The Plaintiff Dinmohamed Sunderji ("Sunderji") is an individual residing in the Province of Alberta. Sunderji invested approximately CDN $2.3 million in the Investment Scheme (as

described below) based on misrepresentations made to him by the Named Companies and/or individuals acting on their behalf. Based on the misrepresentations made (the particulars of which are set out in the Related Action, described below), in or about January 2009, Sunderji directed his investment funds to SIB via TD-Bank for the purchase of CDs offered by the Named Companies.

7. The Plaintiff 2645-1252 Quebec Inc. ("1252 Quebec") is a corporation incorporated pursuant to the laws of the Province of Quebec. 1252 Quebec invested approximately CDN $5 million in the Investment Scheme (as described below) based on misrepresentations made to it by the Named Companies and/or individuals acting on their behalf. Based on the misrepresentations made (the particulars of which are set out in the Related Action, described below), between about January 2007 and March 2008, 1252 Quebec directed its investment funds to SIB via TD-Bank for the purchase of CDs offered by the Named Companies.

8. The Plaintiff Shafiq Hirani ("Hirani") is an individual residing in the Province of Alberta. Hirani invested approximately CDN $8 million in the Investment Scheme (as described below) based on misrepresentations made to him by the Named Companies and/or individuals acting on their behalf. Based on the misrepresentations made (the particulars of which are set out in the Related Action, described below), in or about December 2005 Hirani directed his investment funds to SIB via HSBC, London, UK for the purchase of CDs offered by the Named Companies. Hirani made regular withdrawals from his SIB account via TD-Bank.

9. In deciding to invest their monies in what turned out to be the Investment Scheme (as described below), the Plaintiffs each relied on the misrepresentations made to them that, *inter*

alia, the CDs were safe investments backed by SIB, which was said to be a reputable, long-standing, multi-billion dollar banking institution.

10. Dynasty, Hirani, Asaria, Sunderji and 1252 Quebec are sometimes referred to herein collectively as the Plaintiffs.

The Defendant

11. The Defendant, TD Bank, is a Schedule I bank pursuant to the *Bank Act*, 1991, R.S.C. c.46 with operations throughout Canada and elsewhere. TD Bank acted as correspondent bank for the Named Companies, and has on deposit almost U.S. $19 million of investor funds related to their purchases of CDs (the "Trust Funds"). TD Bank also has important records concerning those purchases and the Named Companies' receipt and use of the Trust Funds.

The Named Companies

12. SIB purports to be a private international bank domiciled in St. John's, Antigua, West Indies. SIB claims to serve clients in 131 countries and to hold U.S. $7.2 billion in assets under management. SIB's Annual Report for 2007 states that SIB has 50,000 clients. SIB is part of a complex web of affiliated companies that exist and operate under the brand Stanford Financial Group ("SFG"). SFG is described as a privately-held group of companies that has in excess of U.S. $50 billion "under advisement". Unlike a commercial bank, SIB does not loan money. SIB sells CDs to investors through its affiliated investment advisor (Stanford Group Company).

13. Stanford Group Company ("SGC") is a Houston-based corporation, registered with the Securities Exchange Commission (the "SEC") as a broker-dealer and investment advisor. It has

29 offices located throughout the United States. SGC's principal business consists of sales of SIB-issued securities, marketed as CDs.

14. Stanford Capital Management, LLC ("SCM"), is a registered investment advisor in the United States, which took over management of the SAS program from SGC in early 2007. The SAS program is another investment promoted by the Named Companies and believed to be related to the sale of CDs. SGC marketed the SAS program through SCM.

15. SIB, SGC and SCM are referred to herein collectively as the Named Companies.

The Related Action

16. By statement of claim filed April 17, 2009 (Action No. 0901-05677), the Plaintiffs commenced legal proceedings in the Court of Queen's Bench of Alberta for, among other things, the recovery of the amounts they invested in the Investment Scheme (as described below) (the "Related Action"). The Defendants in the Related Action are the Named Companies plus R. Allan Stanford, James M. Davis, Laura Pendergest-Holt, Faran Kassam, Alain Lapointe and as-of-yet-unidentified individuals and corporations described as John Doe 1 to 9, Jane Doe 1 to 9 and ABC Corp. 1 to 9.

17. The Plaintiffs allege in the Related Action that, among other things, SIB, acting through a network of SGC financial advisors, sold approximately U.S. $8 billion of CDs to investors by misrepresenting to them the nature of the investment, including that the CDs were safe, and that the CDs would provide rates of return that exceeded those available through true certificates of deposit offered by traditional banks (the "Investment Scheme").

18. The representations that were made to the Plaintiffs to induce them into purchasing CDs were false. Among other things, the investments were not safe and the returns on the CDs were not as represented.

19. The Plaintiffs further allege in the Related Action that the Investment Scheme was a fraudulent means designed and carried out by the defendants in that action to acquire the Plaintiffs' funds for their own benefit.

20. The Plaintiffs allege in this Action that the funds they invested in the Investment Scheme were received and/or are held by the Defendant herein as all or a portion of the Trust Funds.

The Claim Against This Defendant

21. The Plaintiffs plead that the Defendant TD Bank acted as correspondent banks for the Named Companies and thereby became involved in the tortious acts of those companies so as to facilitate the wrongdoings alleged in the Related Action and summarized herein at paragraphs 16 to 19.

22. The Plaintiffs plead that the Defendant thereby has a duty to assist the Plaintiffs by giving them full information as to: the wrongdoings of the defendants in the Related Action; the location of the funds obtained by those defendants by fraud; and the particulars of any transfer(s) of these fraudulently obtained funds. The Plaintiffs seek such disclosure on an immediate basis so that they may pursue the Related Action as against the Defendants in the Related Action, including the Named Companies, or such other Defendants as may be revealed from the disclosure sought.

23. The Plaintiffs further seek an Order waiving any implied undertaking of confidentiality over the disclosure set out above such that they may use such disclosure in the Related Action or such further actions relating to the matters set out in the Related Action as may be appropriate.

24. The Plaintiffs seek an Order declaring that all or some portion of the Trust Funds are held by the Defendant for the benefit of the Plaintiffs.

TRIAL OF THE ACTION

25. The Plaintiffs propose that the trial of this action be held at the Calgary Courts Centre, in the City of Calgary, in the Province of Alberta. In the opinion of the Plaintiffs, this action will not likely take more than 25 days to try.

WHEREFORE THE PLAINTIFFS CLAIM as against the Defendant:

(a) an immediate, interlocutory Order permitted the Plaintiffs to examine (i) the bank accounts, investment accounts and related banking and credit records and other documents with respect to all accounts, assets, safety deposit boxes and any other assets on deposit with the Defendant or any affiliates of the Defendant, and/or any asset, fund or account whatsoever in which any of the Named Companies have a beneficial interest, or in which any or all of them have authority to conduct transactions, and (ii) any agreements, reports, instructions, records, documents and/or other information concerning the Defendant's relationship with the Named Companies, the terms under which the Defendant holds funds for the Named Companies and/or the investors who purchased certificates of deposit offered by the Named Companies, and the Named Companies' use of any such funds;

(b) an immediate, interlocutory Order directing that the Defendant provide to the Plaintiffs forthwith, copies of all agreements, reports, instructions, documents, banking, investment and credit records for all accounts and things they are permitted to examine pursuant to the above-described Order;

(c) an Order waiving any implied undertaking of confidentiality over the disclosure set out above and permitting the Plaintiffs to use such disclosure in the Related Action or such further actions relating to the matters set out in the Related Action as may be appropriate;

(d) an Order declaring that the Defendant holds all or some portion of the Trust Funds in trust for the Plaintiffs;

(e) an Order permitting the Plaintiffs to further apply to this Honourable Court for such further relief as may be appropriate including, without limitation, Orders to trace any proceeds of the Trust Funds and/or to declare that such Trust Funds are held on the Plaintiffs' behalf in priority to the claims of other creditors; and

(f) such further and other relief as this Honourable Court may permit.

DATED at the City of Calgary, in the Province of Alberta, this 17th day of April, 2009, AND DELIVERED BY BENNETT JONES LLP, Barristers and Solicitors, solicitors for the Plaintiff herein whose address for service is in care of the said solicitors at 4500 Bankers Hall East, 855 - 2nd Street S.W., Calgary, Alberta T2P 4K7.

ISSUED out of the Office of the Clerk of the Court of Queen's Bench of Alberta, Judicial District of Calgary, this 17th day of April, 2009.

V.A. BRANDT COURT SEAL

CLERK OF THE COURT

NOTICE

ACTION NO. 0901- 05717

TO: TORONTO DOMINION BANK

You have been sued. You are the Defendants. You have only 15 days to file and serve a Statement of Defence or Demand of Notice. You or your lawyer must file your Statement of Defence or Demand of Notice in the office of the Clerk of the Court of Queen's Bench in Calgary, Alberta. You or your lawyer must also leave a copy of your Statement of Defence or Demand of Notice at the address for service for the Plaintiff named in this Statement of Claim.

WARNING: If you do not do both things within 15 days, you may automatically lose the lawsuit. The Plaintiff may get a Court Judgment against you if you do not file, or do not give a copy to the Plaintiff, or do either thing late.

This Statement of Claim is issued by

BENNETT JONES LLP
Jim Patterson / Lincoln Caylor / Farouk Adatia
Tel: 416.777.6250 / 6121 / 403.298.3342
Fax: 416.863.1716 / 403.265.7219

Solicitors for the Plaintiffs whose address for service is in care of the said solicitors.

The Defendants reside or carry on business, as the case may be, in or about Calgary, Alberta.

IN THE COURT OF QUEEN'S BENCH OF ALBERTA JUDICIAL DISTRICT OF CALGARY

BETWEEN:

DYNASTY FURNITURE MANUFACTURING LTD., SHAFIQ HIRANI, HANIF ASARIA, DINMOHAMED SUNDERJI and 2645-1252 QUEBEC INC.

Plaintiffs

- and -

TORONTO DOMINION BANK

Defendant

STATEMENT OF CLAIM

BENNETT JONES LLP
4500 Bankers Hall East
855 2nd Street SW
Calgary, AB T2P 4K7

Jim Patterson / Lincoln Caylor / Farouk Adatia
Tel: 416.777.6250 / 6121 / 403.298.3342
Fax: 416.863.1716 / 403.265.7219

Solicitors for the Plaintiffs

WSLegal\036521\00010\5204069v3

CLERK OF THE COURT
APR 17 2009
CALGARY, ALBERTA

TAB N

Court of Queen's Bench of Alberta

Citation: Dynasty Furniture Manufacturing Ltd. v. Toronto-Dominion Bank, 2009 ABQB 388

Date: 20090624
Docket: 0901 05717; 0901 05677
Registry: Calgary

Between:

**Dynasty Furniture Manufacturing Ltd.,
Shafiq Hirani, Hanif Asaria, Dinmohamed Sunderji
and 2645-1252 Quebec Inc.**

Plaintiffs

- and -

Toronto-Dominion Bank

Defendant

Action No. 0901 05677

And Between:

**Dynasty Furniture Manufacturing Ltd. Shafia Hirani,
Hanif Asaria, Dinmohamed Sunderji and 2645-1252 Quebec Inc.**

Plaintiffs

- and -

**Stanford International Bank Ltd., Stanford Group Company,
Stanford Capital Management, LLC, R. Allen Stanford,
James M. Davis, Laura Pendergest-Holt, Faran Kassam,
Alain Lapointe, ABC Corp. 1 to 9, John Doe 1 to 9
and Jane Doe 1 to 9 and other Entities and Individuals
known to the Defendants**

Defendants

This is Exhibit "N" referred to in the
affidavit of Wolfgang Mersch
sworn before me, this 10th
day of October, 20 14

A COMMISSIONER FOR TAKING AFFIDAVITS

Reasons for Judgment
of the
Associate Chief Justice
Neil Wittmann

Background

[1] The same Plaintiffs in two actions are the applicants before the Court. The Plaintiffs are four Alberta investors and one Quebec investor in the Stanford International Bank Ltd. ("SIB"), a corporation that, together with Stanford Group Company, Stanford Capital Management LLC, R. Allen Stanford, James M. Davis and Laura Pendergest-Holt (collectively, "the Stanford Group") is accused of orchestrating one of the larger and more notorious Ponzi schemes in recent history. SIB is headquartered in Antigua and until recently conducted business largely in the United States, but maintained an office in the province of Quebec. The Plaintiffs sued SIB, the Stanford Group and others on April 17th, 2009 (the SIB Action). No defence has been filed.

[2] The Plaintiffs also sued the Toronto-Dominion Bank ("TD Bank"), on April 21st, 2009 (the TD Bank Action). In the TD Bank Action, the Plaintiffs have applied for an order allowing them to review and examine all bank accounts, investment accounts and related bank and credit records and other documents with respect to any assets on deposit with the TD Bank or its affiliates. This type of order is commonly referred to as a *Norwich* order, derived from ***Norwich Pharmacal Co and others v. Commissioners of Customs and Excise***, [1973] 2 All ER 943 (H.L.). The ultimate relief claimed is an order declaring that the TD Bank holds all or some portion of monies the Plaintiffs describe as trust funds invested through the TD Bank as a corresponding bank and in favour of the Plaintiffs.

[3] The Plaintiffs allege that collectively they have invested over $17 million with SIB since 2005. The Stanford Group maintained several TD Bank accounts in Ontario, and recent investigations by SIB receivers appointed by courts in Texas and Antigua revealed some $20 million to be held there. The Plaintiffs have applied to examine TD Bank records in an effort to trace their funds and so have brought an application to compel the Defendant TD Bank to provide, in essence, all of its records relating to the Stanford Group. A cross-motion has been brought by the Receiver appointed by the United States District Court in Texas, who seeks a stay of the TD Bank Action as well as a stay in the SIB Action against, inter alia, the Stanford Group.

Timeline of Proceedings:

[4] On February 16, 2009, the United States Securities and Exchange Commission filed for emergency civil enforcement action in the United States District Court for the Northern District of Texas. District Court Judge Reed O'Connor issued a freeze order and restrained all banks and/or financial institutions holding accounts in the name or for the benefit of the Stanford Group from engaging in any transaction or disbursing any funds without further order of the court. The order also required all banks and financial institutions to take the steps necessary to

repatriate to the United States the funds of defrauded investors. In a separate order, Judge O'Connor appointed Mr. Ralph Janvey ("the U.S. Receiver") as receiver to take control and possession of the assets of the Stanford Group companies and the District Court assumed exclusive jurisdiction of the assets wherever located.

[5] On February 19, 2009 the Antiguan Financial Services Regulatory Commission appointed Mr. Peter Wastell and Mr. Nigel Hamilton-Smith ("the Antigua Receivers") receivers of all of the undertakings, property and assets of SIB.

[6] On February 25, 2009 the Plaintiff Dynasty Furniture Manufacturing Ltd. ("Dynasty") filed a class action in this Court against the Stanford Group and a number of other parties, and on March 6, 2009, notice of this action was provided by Dynasty's counsel to the Antiguan and U.S. Receivers. This action was discontinued by Dynasty on March 30, 2009.

[7] On April 6, 2009, upon an ex parte application, the Quebec Superior Court, Commercial Division recognized the appointment of the Antiguan Receivers and appointed them foreign representatives, per s.267 of the *Bankruptcy and Insolvency Act*. The Order of the Quebec Superior Court ("the Quebec Recognition Order") granted the Antiguan Receivers the power to take into custody and control all property, undertakings and other assets of the SIB and Stanford Trust Company Limited.

[8] On April 17, 2009, Justice David Harris of the Eastern Caribbean Supreme Court, upon application by the Antigua Receivers, issued an Order authorizing the liquidation of SIB and appointing the Antigua Receivers the liquidators of SIB ("the Winding Up Order"). Under the Winding Up Order, the Antigua Receivers were empowered to take possession of all of the assets of SIB, wheresoever located. The Winding Up Order further stayed all proceedings against SIB, wheresoever initiated. On the same day, the Plaintiffs filed the SIB Action. The Plaintiffs filed the TD Bank Action, seeking equitable discovery of records in the possession of TD Bank, April 21st, 2009.

[9] On April 24, 2009, the Attorney General of Ontario applied ex parte and obtained a Preservation Order from Justice Campbell of the Ontario Superior Court, under the *Civil Remedies Act, 2001*, requiring funds held by the TD Bank in SIB-related accounts to be paid into Court. More than $20 million was paid, including monies from the two accounts identified by the Plaintiffs as being the accounts into which the Plaintiff Dynasty's funds were wire transferred. The Plaintiffs have obtained an order from Justice Campbell of the Ontario Superior Court, granting them standing in the Ontario proceedings. The U.S. and Antiguan Receivers have filed motions to obtain standing before the Ontario Superior Court. That matter is scheduled to be heard by Justice Campbell on June 24, 2009. Counsel before me indicated an adjournment is likely, because the U.S. Receiver has challenged the Quebec Recognition Order and its motion to overturn that Order is scheduled to be heard by the Quebec Superior Court on August 4 and 5, 2009.

The Applications

[10] The Plaintiffs, in support of their application for a *Norwich* order, filed the Affidavit of Zaherali (Jim) Sunderji, the President of the corporate Plaintiff, Dynasty. Also filed was the cross-examination of Sunderji on his Affidavit by counsel for the U.S. Receiver and the TD Bank. Extensive briefs of law and argument were filed by the Plaintiffs in support of their application as well as by counsel for the TD Bank and the U.S. Receiver.

[11] As the argument evolved, all counsel agreed that a stay in the SIB Action was appropriate, at least as against the Defendants represented by the U.S. Receiver. That position may change depending on the results of the application by the U.S. Receiver challenging the Quebec Recognition Order which, as stated above, is not scheduled to be heard in Quebec Superior Court until August, 2009.

[12] The remaining contested issue before me was whether this Court ought to grant equitable discovery to the Plaintiffs. This issue was vigorously advanced by the Plaintiffs and opposed with equal vigour by counsel for the TD Bank. Counsel for the U.S. Receiver and the Antiguan Receivers both made oral submissions at the hearing but the Antiguan Receivers did not file any written materials.

Submissions of Counsel

[13] The Plaintiffs cited a number of authorities in favour of this Court granting them equitable discovery of the TD Bank records. Foremost amongst them was ***Alberta (Treasury Branches) v. Leahy***, 2000 ABQB 575; ***AB v. CD***, 2008 ABCA 51. The thrust of the opposition included a reference to ***Leahy*** and ***AB v CD***. Specifically, the opposition was that a *Norwich* order is draconian in effect: para. 15 ***AB v. CD***; and that a *Norwich* order should only be granted in Alberta in the circumstances outlined in para. 106 of ***Leahy*** which included a requirement that the order must be granted to "find *and preserve* evidence" (emphasis supplied) and the third party must be the only practicable source of the information available.

Analysis

[14] While it may be that the concepts set forth in para. 106 of ***Leahy*** represent the law in Alberta in terms of the factors to be considered in the exercise of the court's discretion in granting a *Norwich* order, I prefer to rest my decision on more fundamental principles, namely *forum conveniens* and inter-jurisdictional comity.

[15] Where two or more courts in Canada are exercising jurisdiction, and the same relief by the same party is being sought in two or more jurisdictions, it is generally inappropriate for the court in one jurisdiction to make an order affecting the availability of evidence for the use of the party in an application or proceeding in the other jurisdiction.

[16] This is especially so where there is no evidence or logical or rational argument as to why the application for obtaining evidence cannot be made and heard in the jurisdiction where the application will be heard on its merits. The best argument counsel for the Plaintiffs could make

in this regard, was to articulate, not without some vagueness, that in this case the Ontario Superior Court would be grateful that another court had enabled the marshalling of evidence before it and that if the Plaintiffs were to await the proceedings in the Ontario Superior Court, they might be delayed in obtaining the equitable discovery they desire. The former assertion is dubious and the latter, although perhaps realistic, is the inevitable result of a court being the master of its own procedure. It should not, absent unusual circumstances, be subject to the process direction of another court.

[17] Furthermore, there is no evidence before me that any of the records sought are in any way confined to or limited to Calgary or Alberta. Even if some of them are, there is no suggestion the Ontario Superior Court cannot make a direction to the TD Bank for disclosure in accordance with the application before it.

Decision

[18] As a result of proceedings initiated by the Attorney General of Ontario, some $20 million has been paid into Court in that province. The Plaintiffs lay claim to approximately $17.5 million of that money and seek to establish claims of trust and priority over it. The Plaintiffs do not want these funds to become part of the pool of assets distributed to the very substantial number of Stanford Group investors who have suffered losses. This Court is not in a position to decide or comment upon the merits of the Plaintiffs' trust claim.

[19] Presently, there are proceedings pending in Texas, Antigua, Quebec and Ontario. Two receivers have been appointed. The issue of which Receiver is appropriately recognized as the proper foreign representative in Canada will not be determined until it is heard by the Quebec Superior Court on August 4 and 5, 2009.

[20] It is not necessary to decide whether the U.S. Receiver has standing. The Plaintiffs have acknowledged that a stay in the SIB Action is appropriate in view of the proceedings unfolding in Quebec and Ontario and accordingly a stay of that proceeding is ordered pending further order of this Court.

[21] The monies in issue are now within the control of the Ontario Superior Court and all parties have already attorned to that jurisdiction. It is there that the Plaintiffs should pursue their claim for equitable discovery or, possibly discovery of records pursuant to r.30.10 of the Ontario *Rules of Civil Procedure*. The Plaintiffs in argument suggested that an order for equitable discovery from this Court would assist them in obtaining evidence necessary for the advancement of a trust claim before the Ontario Superior Court. They have not provided any compelling reason why this essentially interlocutory order could not, or should not, be obtained from the Ontario Court itself. The efficient resolution of all claims relating to the Stanford Group, including the Plaintiffs' claims, will not be aided by the involvement of another court in another jurisdiction. Indeed, in the circumstances here, it would be seen as interfering in the process of another court, whose jurisdiction is not disputed.

Conclusion

[22] The Plaintiffs' application for a *Norwich* order is dismissed because this Court declines to entertain it in the circumstances.

[23] A stay in the SIB Action, action no. 0901-05677 is ordered and a stay in the TD Bank Action, action no. 0901-05717, is also ordered, pending further order of this Court.

Heard on the 12th day of June, 2009.
Dated at the City of Calgary, Alberta this 24th day of June, 2009.

Neil Wittmann
A.C.J.C.Q.B.A.

Appearances:

A.L. Friend, Q.C.
M.D. Mysak
for the Applicant Dynasty Furniture Manufacturing Ltd.

M.M. Chernos
R.V. Reichelt
for the Respondent Toronto-Dominion Bank

T.J. Mallett
W.W. McLeod
for U.S. Receiver

C.P. Russell, Q.C.
for Antiguan Receivers

TAB O

Court file no.: CV-09-8154-00C

ONTARIO

SUPERIOR COURT OF JUSTICE

This is Exhibit "O" referred to in the affidavit of Lisa Regan Mers sworn before me, this 16th day of October, 2009

A COMMISSIONER FOR TAKING AFFI

BETWEEN:

ATTORNEY GENERAL OF ONTARIO

Applicant

– and –

The Contents Of Various Financial Accounts Held With the Toronto-Dominion Bank and T-D Waterhouse (IN REM)

Respondents

NOTICE OF APPLICATION

(for Forfeiture)

TO THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following pages.

THIS APPLICATION will come on for a hearing on May 22, 2009, at ~~10:00~~ 9:30 a.m. at the Court House located at ~~393~~ 330 University Avenue, Toronto, Ontario.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on

the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least two days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date April 24, 2009 Issued by Christine Irwin
Registrar, Superior Court of Justice
~~Local Registrar~~

Address of court office

~~Superior Court of Justice – Civil~~
~~Local registrar~~
~~393 University Avenue~~
~~Toronto, Ontario~~
~~M5G 1E6~~

TO:

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Stanford Group Company
Stanford Capital Management
Stanford Financial Group
Stanford Financial Group Bldg, Inc
Krage & Janvey
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Fax: 214-220-0230

Laura Pendergest-Holt
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OR:
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Lynn Tillotson Pinker & Cox LLP
2100 Ross Avenue Suite 2700
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OR:
Brent R. Baker (Counsel Utah)
Parsons Behle & Latimer,
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Bank of Montreal
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CIBC
Sean Scanlan
Director Response
CIBC Corpoarte Security
Commerce Court West
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Toronto, ON M5L 1A2
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Fax: 416-980-3046
Email: sean.scanlan@cibc.com

APPLICATION

1. The applicant, the Attorney General of Ontario, makes application for:

a. Forfeiture of the contents of the following financial accounts to the Crown in right of Ontario, as proceeds or instruments , or both, of unlawful activity pursuant to sections 3(1) and 8(1) of the *Civil Remedies Act, 2001* (hereinafter, "*Civil Remedies Act*")

i. All TD Bank accounts held by Stanford International Bank, including the following accounts:

a. 036001-2161573

b. 036001-2161670

c. 036001-2224235

d. 036001-2260513

e. 036001-2300380

f. 0360014035558

g. 036001-4035569

h. and 036001-4035624;

ii. TD Bank account number 2501-0302513 held by Stanford Group Company;

iii. TD Waterhouse account number NP6941 held by Stanford International Bank;

iv. Any other TD Bank or TD Waterhouse accounts held by Stanford International Bank, Ltd, Stanford Group Company, Stanford Capital Management, LLC, R. Allen Stanford, James M. Davis, Laura Pendergest-Holt, Stanford Financial Group and Stanford Financial Group Bldg, Inc.;

b. Costs of this Application;

c. Such further and other order as this Honourable Court may deem just.

2. The grounds for the application are:

a. Pursuant to subsections 3(1) and 8(1) of the *Civil Remedies Act* the court shall, except where it would clearly not be in the interests of justice, make an order forfeiting property that is in Ontario to the Crown in right of Ontario, if the Court finds that the property is proceeds or an instrument of unlawful activity;

b. Subsections 3(2) and 8(2) of the *Civil Remedies Act* provide that a proceeding under the *Civil Remedies Act* may be by application;

c. There are reasonable grounds for the court to find that the property that is the subject of this proceeding is proceeds, an instrument, or both, of unlawful activity within the meaning of the *Civil Remedies Act*:

i. It is alleged that R. Allen Stanford, James M. Davis and Laura Pendergest-Holt, Stanford International Bank and related corporate entities executed a large-scale international fraud against unsuspecting investors. The fraud involves the misappropriation of at least $8 billion U.S. dollars largely through a massive Ponzi scheme;

ii. On 16 February 2009, the SEC filed an emergency civil enforcement action in the United States District Court for the Northern District of Texas and obtained a freezing order against the assets of Stanford, SIB and the other Defendants;

iii. In order to prevent the waste and dissipation of the assets to the detriment of investors, the court also appointed on February 16, 2009 a Receiver to take control and possession of the assets of the Defendants;

iv. Evidence made available by the U.S. Receiver to date indicates that certain assets from the Ponzi scheme, totalling at least $20 million U.S., are held by Stanford International Bank and Stanford Group Company in accounts at TD Bank and TD Waterhouse;

d. Such further and other grounds as counsel may advise and this Honourable Court may permit.

3. The following documentary evidence will be used at the hearing of the application:

a. Application Record with Supporting Affidavits; and,

b. Such further and other evidence as counsel may provide and this Honourable Court may permit.

Dated at Toronto this 24th day of April, 2009

James McKeachie, LSUC #32985A
Dan Phelan, LSUC #51119R

Ministry of the Attorney General
Legal Services Division
Civil Remedies for Illicit Activities Office (CRIA)
Tel: 416-314-5881
Fax: 416-314-3714

Counsel for the Applicant and Moving Party
Attorney General Of Ontario

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Address for service of documents and courier deliveries:
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Toronto, ON M5G 2K1

Court File No.

Attorney General of Ontario

Applicant

- and -

The Contents Of Various Financial Accounts Held With the Toronto-Dominion Bank and T-D Waterhouse (IN REM)

Respondents

ONTARIO

SUPERIOR COURT OF JUSTICE

Proceedings commenced at Toronto

NOTICE OF APPLICATION

James McKeachie, LSUC # 32985A
Dan Phelan, LSUC #51119R

Tel: 416-314-5881
Fax: 416-314-3714

Ministry of the Attorney General
Legal Services Division
Civil Remedies for Illicit Activities Office (CRIA)

Counsel for the Applicant
the Attorney General of Ontario

- Mailing address:
  77 Wellesley Street West
  P.O. Box #333
  Toronto ON M7A 1N3

- Address for service of documents and courier deliveries:
  720 Bay Street
  8th Floor
  Toronto ON M5G 2K1

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TAB P

09-8300-00CL 189

FORM 14E

Court File No.

This is Exhibit "P" referred to in the affidavit of Wolfgang Mersch sworn before me, this 16th day of October, 2009

A COMMISSIONER FOR TAKING AFFIDAVITS

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

DYNASTY FURNITURE MANUFACTURING LTD., SHAFIQ HIRANI, HANIF ASARIA, DINMOHAMED SUNDERJI and 2645-1252 QUEBEC INC.

Applicants

-and-

TORONTO-DOMINION BANK

Respondent

NOTICE OF APPLICATION

TO THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicants. The claim made by the applicants appears on the following page.

THIS APPLICATION will come on for a hearing on friday, Sept. 4, 2009 at 9:30, at 330 University Avenue, 7th Floor, Toronto, Ontario, M5G 1R7.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a

lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least two days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

DATE: July 29 2009 Issued by:

Local Registrar

Address of Court Office:

7th Floor, 330 University Avenue
Toronto, Ontario
M5G 1R7

TO: **TORONTO DOMINION BANK**
Attn: Colin Taylor & David Braunstein
12th Floor – Legal Department
Toronto Dominion Bank Tower
66 Wellington Street West
Toronto, ON M5K 1A2

APPLICATION

1. The applicants, Dynasty Furniture Manufacturing Ltd., Shafiq Hirani, Hanif Asaria, Dinmohamed Sunderji and 2645-1252 Québec Inc. (together, the "Applicants"), make application to a Judge sitting on the Commercial List in Toronto for:

(a) an Order to examine the bank accounts, investment accounts and related banking and credit records and other documents with respect to all accounts, assets, safety deposit boxes and any other assets on deposit with or previously on deposit with the Respondent, Toronto-Dominion Bank or any affiliates thereof (together, the "TD Bank"), and/or any asset, fund or account whatsoever in which any of the Named Companies (as described below) have a beneficial interest, or in which any or all of them have authority to conduct transactions;

(b) an Order to examine any agreements, reports, instructions, records, documents and/or other information concerning the TD Bank's relationship with the Named Companies, the terms under which the TD Bank holds or has held funds for the Named Companies and/or the investors who purchased certificates of deposit offered by the Named Companies, and the Named Companies' use of any such funds;

(c) an Order that the TD Bank provide to the Applicants forthwith copies of all agreements, reports, instructions, documents, banking, investment and credit records for all accounts and things they are permitted to examine pursuant to the above-described Order;

(d) an Order waiving any implied or deemed undertaking of confidentiality over the disclosure set out above and permitting the Applicants to use such disclosure in the AGO Application (described below) or such further applications and/or actions relating to the matters set out in the Related Action (described below) as may be appropriate;

(e) an Order permitting the Applicants to further apply to this Honourable Court for such further relief as may be appropriate including, without limitation, Orders to trace any proceeds of the Trust Funds (described below) and/or to declare that such Trust Funds are held on the Applicants' behalf in priority to the claims of other creditors; and

(f) such further and other relief as this Honourable Court may permit

2. The grounds for the application are:

(a) the Applicant, Dynasty Furniture Manufacturing Ltd. ("Dynasty"), is a corporation incorporated pursuant to the laws of Alberta;

(b) the Applicants Dr. Hanif Asaria ("Asaria"), Dinmohamed Sunderji ("Sunderji") and Shafiq Hirani ("Hirani") are individuals residing in the Province of Alberta;

(c) the Applicant 2645-1252 Québec Inc. ("1252 Québec") is a corporation incorporated pursuant to the laws of the Province of Québec;

(d) based on misrepresentations made to them by the Named Companies and/or individuals acting on their behalf, the Applicants together invested approximately CDN $17.5 million in the Investment Scheme (as described below);

(e) in making their investments, Dynasty, Asaria, Sunderji and 1252 Québec directed their investment funds to Stanford International Bank Ltd. ("SIB") via TD Bank for the purchase of self-styled "certificates of deposit" ("CDs") offered by the Named Companies;

(f) the Applicant Hirani directed his investment funds to SIB via HSBC, London, UK for the purchase of CDs offered by the Named Companies. Hirani made regular withdrawals from his SIB account via TD-Bank;

(g) in deciding to invest their monies in what turned out to be the Investment Scheme (as described below), the Applicants each relied on the misrepresentations made to them that, *inter alia*, the CDs were safe investments backed by SIB, which was said to be a reputable, long-standing, multi-billion dollar banking institution;

(h) the Respondent, TD Bank, is a Schedule I bank pursuant to the *Bank Act*, 1991, R.S.C. c.46 with operations throughout Canada and elsewhere. TD Bank acted as correspondent bank for the Named Companies;

(i) pursuant to an Order of this Honourable Court dated April 24, 2009 obtained by the Attorney-General of Ontario (*i.e.*, the Preservation Order described below), TD Bank paid into court the investor funds it had on deposit in connection with investor purchases of CDs (over CDN $20 million) (the "Trust Funds");

(j) TD Bank has important records concerning investor purchases of CDs, and the Named Companies' receipt and use of the Trust Funds;

The Named Companies

(k) SIB purports to be a private international bank domiciled in St. John's, Antigua, West Indies. SIB claims to serve clients in 131 countries and to hold U.S. $7.2 billion in assets under management. SIB's Annual Report for 2007 states that SIB has 50,000 clients. SIB is part of a complex web of affiliated companies that exist and operate under the brand Stanford Financial Group ("SFG"). SFG is described as a privately-held group of companies that has in excess of U.S. $50 billion "under advisement". Unlike a commercial bank, SIB does not loan money. SIB sells CDs to investors through its affiliated investment advisor (Stanford Group Company);

(l) Stanford Group Company ("SGC") is a Houston-based corporation, registered with the Securities Exchange Commission (the "SEC") as a broker-dealer and

investment advisor. It has 29 offices located throughout the United States. SGC's principal business consists of sales of SIB-issued securities, marketed as CDs;

(m) Stanford Capital Management, LLC ("SCM"), is a registered investment advisor in the United States, which took over management of the SAS program from SGC in early 2007. The SAS program is another investment promoted by the Named Companies and believed to be related to the sale of CDs. SGC marketed the SAS program through SCM;

(n) SIB, SGC and SCM are referred to herein collectively as the Named Companies;

The AGO Application

(o) in April 2009 the Attorney-General of Ontario brought an *ex parte* application before this Honourable Court for an Order pursuant to the *Civil Remedies Act* (Ontario) to have the Trust Funds paid into court on the basis that those funds are proceeds or instruments of unlawful activity. By Order dated April 24, 2009, this Honourable Court ordered TD Bank to pay the Trust Funds into court (the "Preservation Order");

(p) TD Bank has paid in excess of CDN $20 million into court pursuant to the Preservation Order;

(q) by Order dated June 23, 2009, this Honourable Court extended the Preservation Order until further Order of the court;

(r) in its Notice of Application in the AGO Application, the Attorney-General of Ontario seeks to have the Trust Funds forfeited to the Crown on the basis that those funds are proceeds or instruments of unlawful activity;

(s) in May 2009 the Applicants filed a Notice of Appearance to appear in the AGO Application. The Applicants' position in the AGO Application is that they are the legitimate owners of the Trust Funds, and that their status as legitimate owners

will be proved by tracing once they obtain and review the disclosure sought from the TD Bank in this proceeding;

(t) also to file Notices of Appearance in the AGO Application are (i) Messrs. Nigel Hamilton-Smith and Peter Wastell, who were appointed in February 2009 by the High Court of Antigua and Barbuda to serve as receivers (later liquidators) to liquidate SIB, and (ii) Mr. Ralph Janvey, who was appointed in February 2009 by the United Stated District Court for the Northern District of Texas to serve as receiver over, among other things, the assets and things of SIB and certain related entities and individuals;

(u) without the disclosure requested herein, the Applicants will not be able to trace the monies they invested in the Investment Scheme to the Trust Funds, which would likely result in the Trust Funds being paid to parties who are not the legitimate owners of those funds;

Unknown Defendants

(v) the Applicants require the disclosure sought herein not only to trace the monies they invested in the Investment Scheme to the Trust Funds, but also to identify such other defendants as may be revealed from the disclosure sought;

The Related Action

(w) by statement of claim filed April 17, 2009 (Action No. 0901-05677), the Applicants commenced legal proceedings in the Court of Queen's Bench of Alberta for, among other things, the recovery of the amounts they invested in the Investment Scheme (as described below) (the "Related Action"). The Defendants in the Related Action are the Named Companies plus R. Allan Stanford, James M. Davis, Laura Pendergest-Holt, Faran Kassam, Alain Lapointe and as-of-yet-unidentified individuals and corporations described as John Doe 1 to 9, Jane Doe 1 to 9 and ABC Corp. 1 to 9;

(x) the Applicants allege in the Related Action that, among other things, SIB, acting through a network of SGC financial advisors, sold approximately U.S. $8 billion of CDs to investors by misrepresenting to them the nature of the investment, including that the CDs were safe, and that the CDs would provide rates of return that exceeded those available through true certificates of deposit offered by traditional banks (the "Investment Scheme");

(y) the representations that were made to the Applicants to induce them into purchasing CDs were false. Among other things, the investments were not safe and the returns on the CDs were not as represented;

(z) the Applicants further allege in the Related Action that the Investment Scheme was a fraudulent means designed and carried out by the defendants in that action to acquire the Applicants' funds for their own benefit;

(aa) the Applicants allege in this application that the funds they invested in the Investment Scheme were received and/or are held by TD Bank as all or a portion of the Trust Funds;

(bb) by reasons for decision dated June 24, 2009, the Related Action was stayed (as of the date hereof no Order had yet been taken out);

The Claim Against TD Bank

(cc) the Applicants plead that TD Bank acted as correspondent banks for the Named Companies and thereby became involved in the tortious acts of those companies so as to facilitate the wrongdoings alleged in the Related Action and summarized herein at paragraphs 2(w) to 2(bb);

(dd) the Applicants plead that TD Bank thereby has a duty to assist the Applicants by giving them full information as to: the wrongdoings of the defendants in the Related Action; the location of the funds obtained by those defendants by fraud; and the particulars of any transfer(s) of these fraudulently obtained funds. The

Applicants seek such disclosure on an immediate basis so that they may pursue their claim to the Trust Funds in the AGO Application, and actions and/or applications as against such other defendants as may be revealed from the disclosure sought;

(ee) the Applicants further seek an Order waiving any implied or deemed undertaking of confidentiality over the disclosure set out above such that they may use such disclosure in the AGO Application or such further actions and/or applications relating to the matters set out in the Related Action as may be appropriate; and

(ff) Rules 14.05(3)(g) and (h) of the *Rules of Civil Procedure*.

3. The following documentary evidence will be used at the hearing of the application:

(a) the affidavit of Zaherali (Jim) Sunderji, sworn July 20, 2009 and the exhibits referred to therein; and

(b) such further and other material as counsel may advise and this Honourable Court may permit.

DATED: July 29, 2009

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Lawyers for the Applicant

DYNASTY FURNITURE MANUFACTURING LTD. ET AL -and- TORONTO-DOMINION BANK	09-8300-00CL
Applicants / Respondent	Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

NOTICE OF APPLICATION

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TAB Q

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

NO.

500-17-067367-113

SUPERIOR COURT

This is Exhibit "Q-11" referred to in the affidavit of Wolfgang Mersch sworn before me, this 10th day of October, 2014

A COMMISSIONER FOR TAKING AFFIDAVITS

MARCUS WIDE of Grant Thornton (British Virgin Islands) Limited, having a place of business at 171 Main Street, The Barracks, 2nd Floor, P.O.Box 4259, Tortola (Road Town) British Virgin Islands, and **HUGH DICKSON,** of Grant Thornton Specialist Services (Cayman) Ltd, having a place of business at 10 Market Street #765, Camana Bay, Grand Cayman, Cayman Islands, KY1 9006, acting together herein in their capacities as joint liquidators of Stanford International Bank Limited, a legal person formerly having a place of business at 3010-1800 McGill College Avenue, in the City and District of Montreal, Province of Quebec, H3A 3J6;

Plaintiffs

v.

THE TORONTO-DOMINION BANK, a Schedule I bank, duly constituted by letters patent under the authority of the *Bank Act*, R.S.C. 1991, c. 46, with a head office located 12th 66 Wellington Street West, Toronto, in the Province of Ontario, M5K 1A2;

Defendant

MOTION TO INTRODUCE PROCEEDINGS

(Articles 110 *et seq.* of the *Code of Civil Procedure* of Quebec)

IN SUPPORT OF THEIR MOTION, PLAINTIFFS SUBMIT THE FOLLOWING:

OVERVIEW OF THE PRESENT LAW SUIT

1. Stanford International Bank Limited ("SIB"), an international banking company based in Antigua, offered directly and through other companies such as its affiliated investment advisor, the Stanford Group Company ("SGC"),

opportunities to customers around the world to purchase certificates of deposit (CDs).

2. Billions of dollars in CD's were sold to in excess of 21,000 customers in approximately 113 different countries.

3. However, Allen Stanford and others actively breached their fiduciary and other duties owed to SIB and its customers and converted and/or misappropriated the vast majority of funds that SIB received from customers to other uses, including to benefit themselves (the "CD Scheme").

4. SIB had offices in and is registered to do business in Quebec.

5. The Defendant, The Toronto Dominion Bank ("TD Bank"), acted as correspondent bank for SIB. In particular, TD Bank received and/or held customer funds, opened and maintained multiple bank accounts for SIB and disbursed SIB's funds around the world.

6. TD Bank failed to act to prevent the CD Scheme and Allen Stanford's breaches of fiduciary duties owed to SIB. By its acts and omissions described herein, TD Bank assisted Allen Stanford's breaches of fiduciary duties to SIB. Further, TD Bank failed to act as a reasonable banker would have in the suspicious circumstances. In the circumstances of the present matter, TD Bank was required to take reasonable measures to avoid causing a loss to SIB and its customers but failed to do so, which caused significant injury and loss to SIB and to SIB's customers, all of whom are now creditors of the SIB estate.

II. THE PARTIES

A. THE PLAINTIFFS

7. Marcus A. Wide and Hugh Dickson of Grant Thornton LLP were appointed as joint liquidators of SIB (in liquidation) ("Joint Liquidators") by the Eastern Caribbean Supreme Court, the High Court of Justice in Antigua and Barbuda on May 12, 2011, as appears from the appointment order rendered by the High Court of Justice in Antigua and Barbuda (the "Appointment Order"), a copy of which is disclosed herewith as Exhibit **P-1**.

8. The previous joint liquidators, Nigel Hamilton-Smith and Peter Wastell (the "Outgoing Officeholders") had been removed further to a removal order of the High Court of Justice Antigua and Barbuda dated June 8, 2010, a copy of which is disclosed herewith as Exhibit **P-2**.

9. The appointment of the Outgoing Officeholders occurred by order of the court of April 15, 2009 (entered on April 17, 2009) having determined that it was just and convenient that SIB be liquidated and dissolved under the supervision of the Antiguan Court pursuant to the *International Business Corporations Act*, Cap. 222 of the laws of Antigua and Barbuda (as amended) (the "*IBC Act*"), as

appears from the initial appointment order of the High Court of Justice in Antigua and Barbuda dated April 15, 2009, and entered into on April 17, 2009, a copy of which is disclosed herewith as Exhibit **P-3**.

10. The Appointment Order, among other things, vested all the assets of SIB in the Joint Liquidators as successors to and in substitution for the Outgoing Officeholders as appears from Section 3 of the Appointment Order, Exhibit P-1.

11. The Joint Liquidators are taking steps around the world, including this action, for the benefit of SIB and its more than 21,000 creditors, of which creditors more than 99.9% are the ultimate victims of the CD Scheme.

12. The Appointment Order empowers the Joint Liquidators to sue entities in relation to SIB in any jurisdiction where they believe assets or property of SIB may be located, as appears from Sections 25, 26 and 27 of the Appointment Order, Exhibit P-1.

B. SIB

13. SIB (now in liquidation) was a private international bank with a head office in St. John's, Antigua, West Indies.

14. SIB was registered under the laws of Quebec in 2004 to do business in Quebec, as appears from the CIDREQ of SIB, a copy of which is disclosed herewith as Exhibit **P-4**.

15. SIB's Canadian office and center of Canadian activities was at 3010-1800 av. McGill College Montréal (Québec) H3A 3J6, from which SIB conducted business in Quebec, as more fully appears from the CIDREQ of SIB, Exhibit P-4. To occupy the foregoing premises, SIB entered into and executed a lease agreement with Centumon Properties Inc., Immeubles Régime XII Inc., Kevlar Montréal Trust, L.P., Fishman PMT Property Inc. and 1800 McGill College Associates, L.P. (the "Lease"), a copy of which is disclosed hereto as Exhibit **P-5**.

16. Notwithstanding that SIB had a place of business in Quebec, SIB elected domicile at 1250, Rene-Levesque Ouest, Bureau 2500 Montreal (Quebec) H3B 4Y1, as appears from the CIDREQ of SIB, Exhibit P-4.

17. SIB's furniture and equipment are still in the leased premises located at 1800 McGill College, although there are no longer any business activities taking place therein.

18. Robert Allen Stanford and James A. Stanford, among others, were listed on the registration documents as being members of SIB's board of directors.

C. THE DEFENDANT TORONTO-DOMINION BANK

19. TD Bank is a Schedule I bank, duly constituted by letters patent under the authority of the *Bank Act*, R.S.C. 1991, c. 46, with a head office located in Toronto, in the Province of Ontario.

20. TD Bank has many establishments in Quebec and conducts business and is engaged in activities therein. Specifically, TD Bank is engaged in activities in Quebec related to the provision of financial services to its customers, one of which was SIB.

21. TD Bank acted as correspondent bank for SIB. TD Bank held SIB's customers' funds related to the purchase of the CDs.

22. By Order of the Ontario Superior Court of Justice (Commercial List) dated April 24, 2009 (and subsequently extended) in Court File No. CV-09-8154-00CL (*Attorney General of Ontario v. The Contents of Various Accounts Held with TD Bank and TD Waterhouse* in rem), TD Bank was ordered to pay into court the monies it held on behalf of SIB, as appears from the Ontario Superior Court of Justice Order dated April 24, 2009, and the Ontario Superior Court of Justice Order date June 23, 2009, copies of which are disclosed *en liasse* herewith as Exhibit **P-6**.

III. BACKGROUND

23. SIB operated in approximately 113 countries and reported that it held approximately U.S. $8 billion in assets under management. SIB's Annual Report for 2007 stated that SIB had 50,000 clients.

24. SIB sold its CDs either directly or through other entities such as Stanford Financial Group ("SFG").

25. SFG was described as a privately-held group of companies that had in excess of U.S. $50 billion "under advisement".

26. Unlike a commercial bank, SIB did not loan money. Rather, SIB sold CDs to customers directly and through SGC and other related entities, and through the facilities of its correspondent banks; which included the Defendant TD Bank.

27. SIB sought to provide customers with opportunities to earn a profit and used TD Bank as a correspondent bank in this endeavor.

IV. ALLEN STANFORD'S FIDUCIARY DUTIES TO SIB

28. As CEO, director and Chairman of the Board of Directors of SIB, Allen Stanford owed fiduciary duties to SIB.

29. Allen Stanford breached his fiduciary duties by converting SIB customer funds to his own use and implementing a scheme to defraud SIB and its customers of their funds.

V. OPERATION OF THE CD SCHEME

30. SIB sold billions of dollars of certificates of deposit (*i.e.*, the CDs).

31. The customers were told that they would experience rates of return in respect of their purchased CDs and that their CDs were safe.

32. However, as a result of Allen Stanford's fraud and breach of fiduciary duties to SIB, the funds received by SIB were largely diverted to unsafe investments, Allen Stanford personally and/or to other improper uses.

33. Contrary to the representations made in promotional materials and reports, including SIB's 2007 annual report, that the CD portfolio was a "well-diversified portfolio of highly marketable securities issued by stable governments, strong multi-national companies and major international banks", approximately 90% of the portfolio was invested in illiquid investments - namely real estate and private equity and/or diverted by Allen Stanford to his personal use.

VI. TD BANK ACTS AS CORRESPONDENT BANK TO SIB

34. Since at least 1991, TD Bank has acted as the correspondent bank for SIB. Over the course of the relationship between SIB and TD Bank, TD Bank opened and maintained approximately 14 separate accounts for SIB.

35. As correspondent bank, TD Bank accepted deposits into the SIB accounts directly from customers from all over the world.

36. Since SIB's TD Bank accounts were opened in or about 1991, considerable sums have been transferred through those accounts.

37. TD Bank processed wire payments to or from SIB accounts pursuant to wire transfer instructions and served as an intermediary between SIB, its customers, and SIB's other investments.

38. TD Bank knew or ought to have known of SIB's CD business, SIB's duties to its customers and of Allen Stanford's role in the business and his duties to SIB.

39. Further, in 2001, TD Bank also provided financing to Allen Stanford, including for an airline acquired by Allen Stanford.

VII. CORRESPONDENT BANKING AND THE SIGNS OF FRAUD

40. Regulators and organizations focused on combating money laundering have warned that correspondent banking relationships with foreign financial institutions often facilitate money laundering and create a risk of participation in criminal activity. They warned that correspondent accounts merit particular care and heightened due diligence and monitoring, especially those that involve the provision of services in jurisdictions known to have relaxed regulatory standards for banks since failure to do so may result in the bank holding and/or transmitting money linked to corruption, fraud or other illegal activity.

41. Regulators specifically identified Antiguan financial institutions as potential risks for money laundering and other criminal activities.

42. International regulators and government authorities commented publicly that Antigua needed to improve its banking regulations to prevent money laundering and criminal activity. In particular, in April, 1999, the U.S. Treasury Department issued an extraordinary advisory advising banks to scrutinize all financial transactions routed into or out of Antigua for evidence of money laundering. The U.K. issued a similar advisory as appears from the FinCEN Advisory No. 11, dated April, 1999, a copy of which is disclosed herewith as Exhibit **P-7**.

43. In 2000, the Organization for Economic Cooperation and Development published a list of countries whose regulations were deemed designed to help people avoid paying taxes in their home countries and Antigua was on that list.

44. In one particular report, the U.S. Senate's Minority Staff of the Permanent Subcommittee on Investigations' report entitled "Report on Correspondent Banking: A Gateway for Money Laundering" dated February 5, 2001 ("U.S. Senate Report"), a copy of which is disclosed herewith as Exhibit **P-8**, specifically named TD Bank as having provided correspondent banking services to an Antiguan financial institution, the American International Bank (AIB).

45. The U.S. Senate Report, Exhibit P-8, identified that AIB had fallen into liquidation after it laundered millions of dollars and collapsed from insider abuse, insufficient capital and the sudden withdrawal of deposits. TD Bank's involvement in this fraudulent scheme appeared as a case study in the U.S. Senate Report which identified that:

    a. Correspondent accounts are particularly vulnerable to money laundering and provide corrupt foreign banks access to the U.S. financial system and the freedom to move money around the world. With respect to TD Bank's relationship with the Antiguan AIB, it concluded, *inter alia*, that:

i. TD Bank was used to receive wire transfers from fraud victims and/or to disburse the illicit funds to accounts controlled by the criminals; and

ii. The TD Bank in Canada was a major conduit for AIB funds in to the U.S. banking system and that between June 1996 and January 1997, $20.9 million was wired to the AIB correspondent account from the account at TD Bank in Canada.

46. It was also clear from the U.S. Senate Report, Exhibit P-8, that TD Bank representatives were interviewed and asked to produce documents regarding this corrupt and fraudulent Antiguan bank during the time that Allen Stanford was committing his fraud, yet TD Bank apparently failed to adequately review, investigate or monitor its other Antiguan based correspondent bank accounts such as SIB.

47. At all materials times, TD Bank possessed actual or constructive knowledge of the CD Scheme and Allen Stanford's role in it, or was reckless or willfully blind to it or had information sufficient to put it on notice or at least it should have been alive to the strong possibility that something was askew.

48. As a result, TD Bank was bound to act to prevent the losses claimed herein. It did not.

49. The information available to TD Bank includes, but is not limited to the following:

a. In or around 1999, Allen Stanford, a major contributor to the election of the then Antiguan Prime-Minister, was named, along with another prominent Antiguan banker, to sit on the new government board that supervised the offshore banking sector. This is after Antigua enacted new banking rules that were drafted by a lawyer paid by Allen Stanford. – a clear conflict of interest situation, the whole as appears from the Wall Street Journal Article by Michael Allen dated April 27, 1999, the Chicago Tribune Article by Shelley Emling dated July 25, 1999, the Houston Chronicle Article by David Ivanovich dated July 16, 2000, and the Miami Herald Article by Chris Mondics dated September 2, 2002, copies of which are disclosed *en liasse* herewith as Exhibit **P-9**, as well as from the FinCEN Advisory No. 11, Exhibit P-7.

b. It was apparent that the April 1999 U.S. Treasury Department advisory, that banks scrutinize all financial transactions routed into or out of Antigua, was specifically referring to Stanford when it warned that the Antiguan International Financial Sector Authority's board of directors included "representatives of the very institutions the Authority is supposed to regulate" and that the "Authority is neither independent nor otherwise able to conduct an effective regulatory program in accordance with

international standards," the whole as appears from the Miami Herald Article by Chris Mondics dated September 2, 2002, Exhibit P-9.

c. In or around 2000, James Johnson, the U.S. Treasury Department's Undersecretary of Enforcement, complained in a letter to Antiguan Prime Minister, Lester Bird, that "Antigua had compromised its laws against money laundering and created a conflict of interest by allowing [Allen] Stanford and other banking officials to sit on the regulatory board." He noted in the letter that the Financial Sector Authorities' seizure of bank documents from a civil servant "raises substantial questions as to Antigua and Barbuda's commitment to provide effective supervision of its offshore sector," the whole as appears from the the Houston Chronicle Article by David Ivanovich dated July 16, 2000, Exhibit P-9.

d. SIB's Annual Reports identified SIB's auditors. They clearly did not possess sufficient competence to adequately audit a financial institution the size and scale of SIB, as appears from SIB's 2007 Annual Report, a copy of which is disclosed herewith as Exhibit **P-10**.

e. By 2008, media reports indicated that the Securities and Exchange Commission was investigating the activities of the Stanford Group, as appears from the Daily Telegraph Article by Nick Hoult dated July 5, 2008, Exhibit P-9.

f. SIB represented that a senior portfolio manager from TD Asset Management, Perry Mercer, sat on an advisory board for SIB as appears from The Globe and Mail Article by Bertrand Marotte and Paul Waldie dated February 25, 2009, Exhibit P-9. If indeed Mercer sat on the advisory board this relationship also provided TD Bank with access to information concerning the CD Scheme. If he did not, and SIB represented that he did, TD Bank ought to have been aware of this. Such a misrepresentation would have been a red flag, to say the least, to TD Bank that required TD Bank to investigate and take action.

g. The pattern of the banking activities was marked by a large number of transfers of funds belonging to customers to offshore accounts outside the ordinary course.

h. The SIB promotional brochure, which induced prospective customers to purchase CDs, advertised rates of return in excess of those offered by TD Bank, without explaining how those rates of return were earned or could be paid, as appears from SIB's Brochure, a copy of which is disclosed herewith as Exhibit **P-11**.

i. TD Bank held millions of dollars of customers' funds which should have been properly managed to ensure payment of the substantial rates of return promised to customers in the brochure.

j. The accounts that were opened for SIB were for the purpose of receiving deposits from customers all over the world. There was no legitimate business reason for non-Canadians to direct their monies to TD Bank, or for TD Bank to hold international customers' or Canadian customers' funds sent from SIB to TD Bank in Canada.

k. The accounts that were opened for SIB were also for the purpose of moving funds all over the world, and in particular out of Canada. Hundreds of millions of dollars of funds were in fact moved around the world and out of Canada.

l. TD Bank conducted internal investigations and generated internal reports regarding the SIB accounts, including audit reports prepared by audit teams TD Bank sent to Antigua to investigate and audit SIB and its operations.

m. TD Bank conducted corporate security and/or risk management investigations and generated internal reports and emails regarding those investigations which should have indicated the existence of the CD Scheme and other suspicious activities and risks.

n. TD Bank conducted further investigations and prepared further internal reports concerning its dealings with Allen Stanford once allegations were made by the SEC in or about February 2009 that Allen Stanford was engaged in a fraudulent scheme.

o. The pattern of SIB's banking activities constituted suspicious circumstances.

VIII. TD BANK'S FAILURE TO ACT

50. Despite possession of this and other information set out herein, TD Bank failed to investigate adequately, or at all, the CD Scheme, failed to report it to regulators and to SIB in Montreal and failed to take any steps to prevent the continued operation of the CD Scheme.

51. TD Bank also failed to take any steps to prevent Allen Stanford from continuing to breach his fiduciary duties to SIB. In fact, TD Bank took absolutely no steps whatsoever to limit SIB's banking activities or to report to any regulatory authority at all until receiving the freezing order dated March 12, 2009 from the Securities and Exchange Commission.

52. TD Bank failed to act to the standard of a reasonable and prudent banker, thereby causing the losses claimed herein.

53. TD Bank is subject to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, S.C. 2000, c. 17 (the "*Proceeds of Crime Act*"). Section 7 of the

Proceeds of Crime Act enumerates a standard of care by which entities, including those governed by the *Bank Act*:

> shall report to the Centre [...] every financial transaction that occurs or that is attempted in the course of their activities and in respect of which there are reasonable grounds to suspect that:
>
> (a) the transaction is related to the commission or the attempted commission of a money laundering offense;
>
> [...]

54. TD Bank either took the necessary steps to inform itself in order to submit reports as required by section 7 of the *Proceeds of Crime Act* in respect of the activity in SIB's accounts, and failed to act on such information; or, in the alternative, TD Bank failed to take necessary steps to inform itself and submit the reports required by section 7 of the *Proceeds of Crime Act*, or to make any or adequate inquiries.

55. The transactions carried out in SIB's accounts had many of the hallmarks of suspicious transactions that ought to be detected and reported by financial institutions under the proceeds of crime legislation. As correspondent bank for SIB, TD Bank ought to have taken action in order to comply with the *Proceeds of Crime Act* and have investigated and reported the numerous and frequent suspicious transactions it facilitated through its various SIB accounts for more than 20 years. TD Bank failed to do so.

56. TD Bank failed to take adequate steps that a reasonable banker ought to have taken in the circumstances. Such steps that TD Bank failed to take include:

a. reporting suspicious transactions and large electronic funds transfers;

b. setting policies that set out due diligence standards such as a definition of enhanced due diligence applicable to higher risk clients;

c. implementing business rules defining what are unusual transactions and which unusual transactions are suspicious;

d. conducting a risk assessment of dealing with Antigua and reviewing whether SIB was properly regulated in Antigua;

e. implementing a process to monitor transactions in order to identify patterns of activity that may be suspicious;

f. acting in accordance with (i) customary bank practices, (ii) standard banking industry policies and procedures, and (iii) its own internal policies and procedures, including its "Know Your Client" policy;

g. notifying authorities of the suspicious banking activities in violation of the *Proceeds of Crime Act;*

h. meeting the standards prescribed for these steps by other recommendations and guidelines prescribed by other regulatory bodies such as the Financial Action Task Force, the Basel Committee on Banking Supervision and the Canadian Government's Office of the Superintendant of Financial Institutions;

i. making enquiries into the nature of SIB's accounts at the time of account opening or afterwards;

j. making enquiries concerning Allen Stanford's use of funds; and

k. investigating Allen Stanford and SIB's accounts and transactions that were suspicious, unusual or indicative of unusual activity.

57. TD Bank facilitated frequent and numerous transactions in the SIB accounts that a reasonable banker in the circumstances would consider to be suspicious.

58. TD Bank did not take appropriate, or any, measures to remove the suspicion or any steps in order to prevent misdealing in the SIB accounts. In particular, TD Bank, in suspicious circumstances that required action and investigation, as set out herein, did the following:

a. provided banking services for over 20 years for compensation that facilitated the operation of the CD Scheme;

b. accepted considerable amounts from customers who were buying CDs, and transferred substantial portions of those funds out of the country and around the world;

c. provided financing to Allen Stanford; and

d. provided banking services for compensation to SIB in a manner where a reasonable banker would conclude that such banking services were assisting in Allen Stanford's unlawful activities and breaches of the fiduciary duties he owed to SIB and were likely to result in losses to SIB and its customers.

IX. SIB'S LOSS OF BUSINESS AND LOSS OF REPUTATION

59. Due to TD Bank's acts and omissions described herein, SIB ultimately became insolvent and was put in to liquidation.

60. This has resulted in a loss of business to SIB in Quebec and has resulted in damage to SIB's reputation, clientele and brand in Quebec that is presently not fully known and quantified;

X. DAMAGES

61. It was reasonably foreseeable that SIB and its customers would suffer the damages described herein as a result of the foregoing acts and omissions of TD Bank described herein.

62. TD Bank's acts and omissions described herein are the proximate cause of the harm suffered by SIB and its customers. But for TD Bank's conduct described herein, the CD Scheme would have been discovered and prevented, the fraudulent transactions at issue would not have been completed and damages would not have been suffered by SIB and its customers.

63. By failing to act as a reasonable banker, TD Bank allowed the CD Scheme to continue when it ought to have been reported and prevented, thereby causing a catastrophic loss to SIB and its customers, who now comprise 28,000 creditors of SIB's estate.

64. SIB and its customers suffered substantial damages and losses, in an amount that is presently not fully known, but that will be quantified prior to trial, and that is at least in the amount of CDN$20,000,000.00 (twenty million Canadian Dollars) and likely to be significantly more than that.

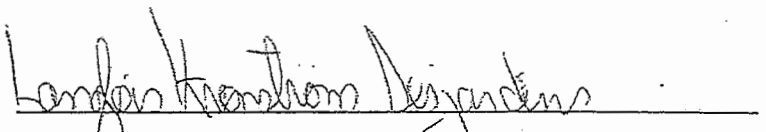
FOR THESE REASONS, MAY IT PLEASE THIS HONOURABLE COURT TO:

GRANT the present Motion to Introduce Proceedings;

CONDEMN Defendant to pay Plaintiffs an amount of CDN$20,000,000.00 (twenty million Canadian dollars), subject to adjustment, with interest at the legal rate, plus the additional indemnity provided by law, to accrue from the date of service hereof;

THE WHOLE WITH COSTS, INCLUSIVE OF THE COSTS OF PLAINTIFFS' EXPERTS.

Montreal, this 17th day of August, 2011



LANGLOIS KRONSTRÖM DESJARDINS L.L.P.
Attorneys for Plaintiffs

N° :

SUPERIOR COURT
District of Montreal

MARCUS WIDE, of Grant Thornton (British Virgin Islands) Limited, having a place of business at 171 Main Street, The Barracks, 2nd Floor, P.O.Box 4259, Tortola (Road Town) British Virgin Islands, and HUGH DICKSON, of Grant Thornton Specialist Services (Cayman) Ltd, having a place of business at 10 Market Street #765, Camana Bay, Grand Cayman, Cayman Islands, KY1 9006, acting together, herein in their capacities as joint liquidators of Stanford International Bank Limited, a legal person formerly having a place of business at 3010-1800 McGill College Avenue, in the City and District of Montreal, Province of Quebec, H3A 3J6

V.

Plaintiffs

THE TORONTO-DOMINION BANK, a Schedule I bank, duly constituted by letters patent under the authority of the *Bank Act*, R.S.C. 1991, c. 46, with a head office located 12th 66 Wellington Street West, Toronto, in the Province of Ontario, M5K 1A2

Defendant

MOTION TO INTRODUCE PROCEEDINGS
(Articles 110 & seq. of the C.C.P.Q.)

ORIGINAL

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TAB R

This is Exhibit "R 4" referred to in the affidavit of Wolfgang Mersch sworn before me, this 10th day of October, 20 14

A COMMISSIONER FOR TAKING AFFIDAVITS

Court File No. CV-11-433385

ONTARIO
SUPERIOR COURT OF JUSTICE

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 /
Moving Parties

-and-

TORONTO-DOMINION BANK

Defendant /
Responding Party

AFFIDAVIT OF STEPHANIE PAIGE
(Sworn February 21, 2012)

(Motion to Extend Time for Service and Clarify the Title of Proceedings)

I, **STEPHANIE PAIGE**, of the Town of Markham, in the Province of Ontario, MAKE OATH AND SAY:

1. I am a law clerk at the Toronto office of Bennett Jones LLP, lawyers for the plaintiffs, and as such, have knowledge of the matters to which I depose below, except where I rely upon information provided by others, in which case I state the source of the information and I believe it to be true. By swearing this affidavit neither I nor Bennett Jones LLP intend to waive any privilege.

2. This affidavit is sworn in support of a motion brought by Marcus A. Wide of Grant Thornton (British Virgin Islands) Limited and Hugh Dickson of Grant Thornton Specialist

Services (Cayman) Ltd. (the "Joint Liquidators"), who are acting together in their capacities as joint liquidators, and in the name and on behalf of, Stanford International Bank Limited (In Liquidation) seeking an order for an extension of time to serve the originating process in the within action upon the defendant *sine die* or until further order of the court.

3. The Joint Liquidators were appointed by order of the Eastern Caribbean Supreme Court, High Court of Justice, Antigua and Barbuda dated May 12, 2011 (entered on May 13, 2011) (the "Appointment Order"), a copy of which is attached to my affidavit as **Exhibit "A"**.

4. The previous joint liquidators, Nigel Hamilton-Smith and Peter Wastell (the "Outgoing Officeholders"), were removed further to a removal order of the High Court of Justice Antigua and Barbuda dated June 8, 2010, a copy of which is attached to my affidavit as **Exhibit "B"**.

5. The appointment of the Outgoing Officeholders occurred by order of the court of April 15, 2009 (entered on April 17, 2009) having determined that it was just and convenient that SIB be liquidated and dissolved under the supervision of the Antiguan Court pursuant to the *International Business Corporations Act*, Cap. 222 of the laws of Antigua and Barbuda (as amended) (the "IBC Act"), as appears from the initial appointment order of the High Court of Justice in Antigua and Barbuda dated April 15, 2009, a copy of which is attached to my affidavit as **Exhibit "C"**.

6. Paragraph 3 of the Appointment Order (Exhibit "A"), among other things, vests all the assets of SIB in the Joint Liquidators as at April 15, 2009.

7. Paragraphs 25, 26 and 27 of the Appointment Order empowers the Joint Liquidators to commence proceedings in Antigua and Barbuda or any foreign jurisdiction where they believe

assets or property of SIB may be located. In addition, s. 308(1)(b) of IBC Act, empowers the Joint Liquidators to bring, defend or take part in any civil or administrative action or proceeding in the name and on behalf of SIB. A copy of s.308(1)(b) of the IBC Act is attached as **Exhibit "D"** to my affidavit.

8. On September 11, 2009, Ernst & Young Inc. was appointed interim receiver of the Canadian assets of, among others, SIB pursuant to the *Bankruptcy and Insolvency Act* (Canada) ("Interim Receiver"), by Order of the Superior Court of Québec (Commercial Division) ("E&Y Appointment Order"). A copy of the E&Y Appointment Order is attached as **Exhibit "E"** to my affidavit.

9. The E&Y Appointment Order, empowers and authorizes the Interim Receiver to, among other things, "initiate, prosecute and continue the prosecution of any and all proceedings" with respect to SIB.

10. On August 19, 2011, pursuant to a Judgment of the Superior Court of Québec (Commercial Division), the Joint Liquidators were authorized and empowered to institute and litigate, in the place and stead of the Interim Receiver (Ernst & Young Inc.), proceedings against Toronto-Dominion Bank ("TD Bank"), whether in the Province of Québec and/or any other appropriate jurisdiction(s). A copy of the August 19, 2011 Judgment of the Quebec Court is attached as **Exhibit "F"** to my affidavit.

11. In addition, the August 19, 2011 Judgment specifically recognized the Joint Liquidators as having "the equivalent or substantially similar powers and capacities than [sic] those of a trustee in bankruptcy or other insolvency holder within Canada" and authorized the Joint

Liquidators to exercise those powers and capacities for the purposes of the institution and litigation by the Joint Liquidators against TD Bank.

12. On August 22, 2011, the Joint Liquidators commenced an action against TD Bank in Quebec by issuance of a motion to introduce proceedings in the Quebec Superior Court (the "Quebec Action"). A copy of the Joint Liquidators' "fresh as amended" motion to introduce proceedings, amended motion to introduce proceedings and motion to introduce proceedings (all without exhibits), are attached to my affidavit as **Exhibit "G"**.

13. The Joint Liquidators' motion to introduce proceedings in both its original and an amended form were served upon TD Bank on February 17, 2012.

14. I am advised by Lincoln Caylor of Bennett Jones LLP, the lawyer who has carriage of this matter, that on August 22, 2011, following the issuance of the Quebec Action, the Joint Liquidators commenced the within action (the "Ontario Placeholder Action") by having issued by this court a notice of action. The Ontario Placeholder Action was issued only for the purposes of preserving any limitation period in Ontario that may be applicable to the causes of action to the extent that the Ontario Placeholder action ever has to be pursued. A copy of the notice of action is attached to my affidavit as **Exhibit "H"**.

15. On September 21, 2011, the Joint Liquidators filed a statement of claim for the Ontario Placeholder Action with this court. A copy of the statement of claim is attached to my affidavit as **Exhibit "I"**.

16. The notice of action and the statement of claim for the Ontario Placeholder Action have not been served upon TD Bank.

17. Because the Ontario Placeholder Action was commenced by way of a notice of action issued on August 22, 2011, the service deadline for the pleadings in the Ontario Action is on or about February 21, 2012.

18. An action against the same defendant as in the Ontario Placeholder Action, TD Bank, was commenced by Dynasty Furniture Manufacturing Ltd., Shafiq Hirani, Hanif Asaria, Dinmohamed Sunderji, and 2645-1252 Quebec Inc. on August 26, 2009 and the statement of claim was amended on November 2, 2010 (the "Dynasty Action"). I am advised by Mr. Caylor that the plaintiffs in the Dynasty Action form part of the group of creditors that are represented in the Quebec Action by the Joint Liquidators.

19. I am also advised by Mr. Caylor that the plaintiffs In the Dynasty Action have assigned their right to receive any proceeds which may arise under the Dynasty Action to the Joint Liquidators.

20. The plaintiffs in the Dynasty Action and the Joint Liquidators are jointly seeking a stay of the Dynasty Action pending a determination of the Quebec Action and, if necessary, the Ontario Placeholder Action.

SWORN BEFORE ME, at the City of Toronto, in the Province of Ontario, this 21th day of February, 2012.

A Commissioner in and for the Province of Ontario

STEPHANIE PAIGE

Kelly Ann McPhie, a Commissioner, etc.,
Province of Ontario, for Bennett Jones LLP,
Barristers and Solicitors.
Expires September 23, 2012.

TAB S

Unofficial English Translation

SUPERIOR COURT

(Commercial Division)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No.: 500-11-042971-123

DATE: JANUARY 28, 2014

This is Exhibit "S-11" referred to in the affidavit of Wolfgang Mersch sworn before me, this 10th day of October, 2014

A COMMISSIONER FOR TAKING AFFIDAVITS

THE HONOURABLE CLAUDE AUCLAIR, J.S.C., PRESIDING

MARCUS A. WIDE, of Grant Thornton (British Virgin Islands) Limited
and
HUGH DICKSON, of Grant Thornton Specialist Services (Cayman) Ltd.

Acting as joint liquidators, in the name and on behalf of **STANFORD INTERNATIONAL BANK LIMITED (IN LIQUIDATION)**
Plaintiffs

v.

TORONTO-DOMINION BANK
Defendant

JUDGMENT

[1] The Court is seized of a motion by the defendant, Toronto-Dominion Bank (TD Bank), to dismiss the plaintiffs' amended motion to introduce proceedings on the basis of *forum non conveniens* or to stay the plaintiffs' proceedings for *lis pendens* (number 30 in the ledger).

[2] This debate is bitterly contested and nothing has been left to chance. The hearing was held over one year, having been stayed by a motion to have counsel for

the defendant disqualified. The judgment on this motion[1] was the subject of a motion for leave to appeal, which was dismissed by the Court of Appeal.[2]

THE FACTS

[3] The plaintiffs are the joint liquidators of Stanford International Bank (SIB), appointed by the Court of Antigua, and seek damages on behalf of SIB and its creditors, as stated in their amended motion to introduce proceedings:

> 31. The Joint Liquidators have commenced these proceedings both in the name and on behalf of SIB and on behalf of SIB's creditors. As such, the Joint Liquidators seek damages on behalf of SIB and its creditors.

[4] SIB is an offshore bank that operated in Antigua and had a business relationship with TD Bank for over 20 years providing:

4.1. correspondent banking services;

4.2. commercial, financing and treasury services; and

4.3. portfolio and investment management services.

[5] The plaintiffs argue that, as a correspondent bank, TD Bank knew, or should have known, that Robert Allen Stanford and other conspirators were orchestrating a substantial fraud at SIB's expense. This knowledge on the part of TD Bank, whether real or presumed, allegedly arose specifically from the services provided to SIB, hence the claim for $20 million.

[6] In 2004, SIB opened a representative office in Montreal under section 522(a) of the *Bank Act*,[3] and operated it until February 20, 2009. On that date, the Office of the Superintendant of Financial Institutions (OSFI) authorized SIB to maintain an office to "allow the representative office to remain open to assist Canadian clients in trying to recover the investments made with Stanford International Bank in Antigua".[4] (Emphasis added by the Court.)

[7] The duties of the five people employed at the Montreal office involved marketing certificates of deposit to potential customers in Quebec, and SIB allegedly maintained its disaster electronic backup facilities there. The office was closed in the spring of 2009 by the previously named Antiguan liquidators, who were acting after the SEC had appointed other liquidators to act in the United States.

---

1 *Stanford International Bank Ltd (Trustee of)*, 2013 QCCS 1693.
2 *Stanford International Bank Ltd (Trustee of)*, 2013 QCCA 988.
3 *Bank Act*, S.C. 1991, c. 46.
4 Exhibit I-16, *en liasse*: Announcement of Office of the Superintendant of Financial Institutions dated February 20, 2009 and related press release dated February 23, 2009.

[8] On September 11, 2009, the undersigned rendered two judgments[5] in the matter of SIB's insolvency. The American liquidator was recognized as the foreign representative acting in Canada, at the expense of the Antiguan liquidator Vantis. The Court[6] ruled, *inter alia*, on the real and substantial connection. It dealt with that question as follows:

> [TRANSLATION]
>
> The real and substantial connection
>
> [13] Vantis argued that the real and substantial connection was with Antigua. The Court dismissed Vantis's motion.
>
> [14] SIB is a foreign bank within the meaning of Antiguan law and cannot take deposits from the citizens of Antigua. It is an offshore bank whose money did not stay in its coffers in Antigua but was forwarded to banks outside the territory of Antigua.
>
> [15] In terms of value, more than 37% of the holders of certificates of deposits are Americans, which is more than all the other citizens of other countries.
>
> [16] In its notes and authorities, Vantis acknowledged that SIB was part of a global network of Stanford companies.
>
> [17] Allen Stanford, president and shareholder of all the corporations in the Stanford Group, has dual American and Antiguan citizenship and is currently in prison in the United States.
>
> [18] The FSRC is the applicant in Antigua that applied for the appointment of the receivership [sic] and then that of the liquidator.
>
> [19] The Court specifies, however, that the proceedings were not signed by Leroy King, who was also accused in the United States of being an accomplice of Stanford in a money-laundering suit.
>
> [20] All parties to this case recognize that the entire group, including SIB is insolvent, and that SIB had customers in 113 countries.
>
> [21] Most of the investor client creditors are from outside Antigua.
>
> [22] The immovable assets in Antigua were expropriated by the government of Antigua without compensation, in anticipation of the negative impact of the American receivership on Antigua's economy, according to the resolution of the Antiguan government.

---

5 *Stanford International Bank Ltd (Trustee of)*, 2009 QCCS 4106 and 2009 QCCS 4109.
6 *Stanford International Bank Ltd (Trustee of)*, 2009 QCCS 4109.

[23] In its notes and authorities, Vantis recognizes that the key companies in the Stanford Group are the following:

- Stanford Group Company (SGC), an investment dealer and broker dealer registered in the United States;
- Stanford Financial Group Global Management (SFGGML) and Stanford Global Advisory LLC, two U.S. Virgin Islands companies that charged large amounts to SIB, officially for consultant services.

[24] In its notes and authorities concerning the assets, Vantis stated the following:

> [TRANSLATION]
>
> These assets that have thus far been located are described in the second affidavit of Hamilton-Smith. The value placed on some of the investments may prove to be inaccurate, and, where the financial institution that held the assets has refused until now to communicate the current balance, these assets have not been included. These assets therefore consist of:

i. cash (in Canada ($19 million), in Antigua ($10 million) and in the United States ($9 million)) ("Tier I assets");

ii. funds invested with international financial institutions (in Switzerland ($117 million), in the United Kingdom ($105 million) and in the United States ($12 million)) ("Tier II assets"); and

iii. other assets, including equity securities, accounts receivable, immovable property situate in Antigua and claims on Stanford and other Stanford entities, including possible traceback claims against assets that they purchased, such as investments made by Stanford with the amount of $1.6 billion that SIB allegedly "lent" it ("Tier III assets").

[25] The High Court of Justice, Chancery Division (Companies Court) acknowledged that the Stanford Group was the one to start a Ponzi scheme.

[26] All the fraudulent operations connected all the corporations in the Stanford Group.

[27] A significant portion of the the Stanford Group's operations were situated in Houston. The Stanford Group carried out services for SIB worth $268 million when SIB had a payroll expense of $3 million, which just goes to show the scope of the services rendered outside Antigua and that SIB was merely a tax screen.

[28] As for Stanford Trust, it had three times as many employees in the United States as it did in Antigua.

...

[32] The Court paraphrases this last sentence in the following way: the real and substantial connection must take into account the specific way offshore banks operate.

[33] The Court sees there an important parallel with our case, in which SIB, an offshore bank, served only as a screen and a tool for a gigantic fraudulent scheme involving several billion dollars connecting the entire Stanford Group, with victims scattered in more than 113 countries.

[34] The Court, to paraphrase the Supreme Court, is of the view that the "modus operandi" of this offshore bank was directly tied to the head office of the Stanford Group in Houston, with SIB in Antigua being merely a link in the chain.

[35] The Court is of the view that, for Ponzi schemes, the real and substantial connection is with the place of business of the nerve centre or, as one might refer to it, the centre of this tangled web that was fraudulently woven.

[36] The importance of the Houston nerve centre is indisputable. And the fairest approach would be for the Court to recognize the receivership as a foreign proceeding and the U.S. receiver Janvey as the foreign representative.

[Emphasis added.]

[9] The two judgments[7] rendered on September 11, 2009, were upheld by the Court of Appeal[8] and the application for leave to appeal to the Supreme Court was dismissed on December 22, 2011.[9]

[10] After the operations were frozen around the world, a series of proceedings ensued. A history of the judicial proceedings in Canada in connection with SIB was prepared jointly by counsel for the parties. Here is the result:

[TRANSLATION]

HISTORY OF JUDICIAL PROCEEDINGS IN CANADA
IN CONNECTION WITH STANFORD INTERNATIONAL BANK LTD. ("SIB")

November 26, 2013

1. February 25, 2009: Filing of a class action in Alberta (*N.B.*: the action was discontinued on March 30, 2009.)

   Dynasty Furniture Manufacturing Ltd. (as representative plaintiff) v. SIB, Stanford Group Company, Stanford Capital Management LLC, R. Allen Stanford, James M. Davis, Laura Pendergest-Holt, ABC Corp. 1 to 9, John Doe 1 to 9 and Jane Doe 1 to 9 (the "Stanford Defendants"); No. 0901-02821

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7 *Stanford International Bank Ltd. (Trustee of)*, *supra* note 5.

8 *Stanford International Bank Ltd. (In the matter of the winding-up of)*, 2009 QCCA 2475.

9 *Marcus A. Wide and Hugh Dickson v. Ralph S. Janvey*, No. 33568.

2. April 6, 2009: Initial recognition of the appointment of the former liquidators and their status as foreign representatives in the matter of the bankruptcy of SIB in Canada (Superior Court of Quebec (Commercial Division) – active case)

   Stanford International Bank Ltd. and Stanford Trust Company Ltd. (Receivership of); No. 500-11-036045-090

3. April 17, 2009: Filing of the Action for Fraud in Alberta (*N.B.*: this action was stayed on June 24, 2009.)

   - Exhibit I-1 (For the stay, see Exhibit TD-1 at para. 23)

   Dynasty Furniture Manufacturing Ltd., Shafiq Hirani, Hanif Asaria, Dinmohamed Sunderji and 2645-1252 Quebec Inc. (the "Dynasty Group") *v. Stanford Defendants*; No. 0901-05677

4. April 17, 2009: Filing of the Norwich Action in Alberta (*N.B.*: this action was stayed on June 24, 2009.)

   - Exhibit I-2 (For the stay, see Exhibit TD-1 at para. 23)

   Dynasty Group v. TD Bank; No. 0901-05717

5. April 24, 2009: Filing of the Forfeiture Action in Ontario (*N.B.*: this action was settled out of court on August 27, 2013; Settlement approved by Auclair, J., on September 13, 2013, and by Campbell, J., on September 23, 2013.)

   - Exhibit I-3 (For the settlement, see Exhibits I-6A and I-6B)

   Attorney General of Ontario v. The Contents of Various Financial Accounts Held with TD-Bank and T-D Waterhouse (in rem); No. CV-09-8154-OOCL

6. June 24, 2009: Judgment of the Court of Queen's Bench of Alberta staying the Action for Fraud in Alberta and the Norwich Action in Alberta

   - Exhibit TD-1 at para. 23

   Dynasty Group v. Stanford Defendants; No. 0901-05677

   Dynasty Group v. TD Bank; No. 0901-05717

7. July 29, 2009: Filing of the Norwich Action in Ontario (*N.B.*: the discontinuance of this action was confirmed in the out-of-court settlement approved by Campbell, J., on September 23, 2013.)

   - Exhibit I-5 (For confirmation of the discontinuance, see Exhibit I-6B)

   Dynasty Group v. TD Bank; No. 09-8300-00CL

8. August 26, 2009: Filing of the Dynasty Action in Ontario (*N.B.*: this action was stayed on July 3, 2012, pursuant to the terms of paragraph 28 of the judgment rendered by Cumming, J., on July 3, 2012.)

   - Exhibit TD-2 (For the stay, see Exhibit I-12)

   Dynasty Group v. TD Bank; No. 09-8373-00CL[1]

(1) Formerly CV-09-385834.

9. September 11, 2009: Judgment of Auclair, J., of the Superior Court of Quebec (Commercial Division) appointing Ernst & Young Inc. as interim receiver of SIB and authorizing it, *inter alia*, to bring certain legal proceedings subject to prior approval by the Court on the terms and conditions provided therein.

- Exhibit TD-8 (See also TD-28)

SIB, Nigel Smith, Peter Wastell, Ralph S. Janvey *et al.*; No. 500-11-036045-090

10. January 21, 2010: Judgment of the Superior Court of Ontario ordering the striking-out of allegations in the Dynasty Action (*N.B.*: this judgment was upheld on appeal on July 21, 2010.)

- Exhibit TD-3 (See also Exhibit TD-4)

Dynasty Group v. TD Bank; No. 09-8373-00CL. (On appeal: *Dynasty Group v. TD Bank*; C51698)

11. August 19, 2011: Judgment of Corriveau, J., of the Superior Court of Quebec (Commercial Division) giving Marcus A. Wide and Hugh Dickson (the "Liquidators") leave to bring an action for damages against TD Bank according to the terms and conditions provided therein.

- Exhibit TD-10

SIB, Liquidators, Ralph S. Janvey *et al.*; No. 500-11-041205-119

12. August 22, 2011 (10:53 a.m.): Quebec action (active case) issued in the court docket

- Exhibit I-22

Liquidators v. TD Bank; No. 500-11-042971-123[2]

(2) Formerly 500-17-067367-113.

13. August 22, 2011 (2:40 p.m.): Placeholder Action (as defined by Cumming, J., at para. 6 of I-12) in Ontario issued in the court docket (*N.B.*: this action was stayed on July 3, 2012, pursuant to paragraph 27 of the judgment rendered by Cumming. J., on July 3, 2012; the stay was confirmed by the Division Court on October 5, 2012.)

- Exhibits I-7 and I-23 (For the stay, see Exhibits I-12 and I-12A,)

Liquidators v. TD Bank; No. CV-12-9780-00CL[3] (In division court: No. 366/12)

(3) Formerly CV-11-433385.

14. February 17, 2012: Service of the Motion to introduce Proceedings and the Amended Motion to introduce Proceedings.

15. July 3, 2012: Judgment rendered by Cumming, J., ordering the stay of the Dynasty Action (see no. 8) and the Placeholder Action (see no. 13) pursuant to paragraphs 27 and 28.

    - Exhibit I-12

    Liquidators v. TD Bank; CV-11-43385

    Dynasty Group v. TD Bank; No. 09-8373-00CL

16. September 23, 2013: Approval of the out-of-court settlement in the Forfeiture Action in Ontario (see no. 5) and in the Norwich Action in Ontario (see no. 7), by Campbell, J., after approval from Auclair, J., on September 13, 2013

    - Exhibit I-6B (See also Exhibit I-6A.)

    Attorney General of Ontario v. The Contents of Various Financial Accounts Held with TD-Bank and T-D Waterhouse (in rem); No. CV-09-8154-OOCL

    Dynasty Group v. TD Bank; No. 09-8300-00CL

[11] The plaintiff Wide admitted[10] that an amount of US$45,788,864 represented the gross value of the Canadian investments out of a fraud totalling more than US$4.4 billion.

[12] The portion of the Quebec investors appears to be about $12 million, not including Mr. Cohen, who had an investment of $15 million but who was a U.S. resident when SIB ceased operations. Thus over 70% of the Canadian creditors of SIB resided outside Quebec.

[13] TD Bank was one of many correspondent banks that acted for SIB[11] and the Canadian creditors, in terms of value, represent less than 1% of the value of the total fraud.

[14] According to bank statements and the testimony of the plaintiff Wide, SIB had 14 accounts at TD Bank in Toronto.

[15] The letters of credit were issued in Toronto "from the global business services" of TD Bank.[12] [13]

[16] The portfolio management service was in Toronto.

[17] When the Antiguan liquidators took possession of the Montreal office and closed it, no sums of money and no bank accounts were found in Montreal.[14]

---

10 Amended motion to introduce proceedings dated February 17, 2012, at para. 27.

11 Transcription of hearings held on October 15, 2012, cross-examination of Mr. Wide, at 167.

12 *Ibid.*, at 138–140.

13 Transcription of the hearings held on October 16, 2012, cross-examination of Mr. Wide, at 103–105 and at169.

[18] In the fall of 2008, a few months before SIB collapsed, SIB and TD Bank signed an agreement[15] setting out the terms and conditions for correspondent banks. The agreement stipulated, *inter alia*:

> These Terms and Conditions form an agreement (the "Terms and Conditions") between The Toronto-Dominion Bank ("TD") and each customer ("Correspondent") maintaining one or more demand deposit accounts with TD (all such accounts are herein called the "Account"). For the purpose of these Terms and Conditions, a Correspondent is defined as a bank or non-bank financial institution holding an Account. By accepting this documentation, or by using the Account, the Correspondent agrees to be legally bound by these Terms and Conditions, as amended from time to time. Other terms and conditions contained in a separate agreement (each called a "Service Schedule") or instructions and user manuals (the "Guides") between Correspondent and TD related to certain account services provided by TD shall also apply to the Account. All prior general terms and conditions are superseded by this document.
>
> TD reserves the right to amend these Terms and Conditions, and shall provide the Correspondent with prior notice of such changes. Changes to these Terms and Conditions required by law or regulation may be implemented immediately, if so required, or otherwise upon reasonable notice to Correspondent.
>
> ...
>
> **Cash Letter Deposit Service**
>
> A Correspondent with an Account may send Cash Letters for items eligible for Canadian clearing to TD at the address provided herein under the Notice section or if agreed to between TD and Correspondent to TD's designated processing centre (the "Designated Processing Centre"), located at the following address:
>
> TD Bank Financial Group
> c/o Symcor Inc.
> 8 Prince Andrew Place
> Toronto, Ontario
> M3C 2H4 CANADA
>
> Items eligible for Canadian clearing are:
>
> - Canadian Dollar or US Dollar commercial cheques drawn on banks in Canada;
> - Canadian Dollar or US Dollar bank drafts payable in Canada;
> - Canadian Dollar Travelers cheques drawn on institutions in Canada.
>
> This Cash Letter Service cannot be used to transport banknotes, coins or any type of negotiable securities. All deposited items are subject to final payment.
>
> ...

---

[14] *Ibid.*, at 170.

[15] Exhibit TD-15: The Toronto-Dominion Bank – Terms and Conditions for Correspondent Banks, effective October 1, 2008.

Applicable Laws

These Terms and Conditions shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. TD and Correspondent hereby submit to the non-exclusive jurisdiction of the courts of the Province of Ontario.

...

Notice

Any notices which may be required from Correspondent or which may be provided by Correspondent shall be directed to TD at the address below:

TD Bank Financial Group, Head Office
Global Business Services
222 Bay St.
15th floor
Toronto, Ontario
Canada M5K 1A2
SWIFT Address: TDOMCATTTOR
Telephone: 416.982.2441
Facsimile: 416.982.5671

[Emphasis added.]

[19] On November 14, 2008, SIB and TD Bank amended their agreement. The amendment, like agreement TD-15, was not executed in Quebec and contained the following undertaking:

> 4. Except as amended herein, all of the other Terms and Conditions shall continue in full force and effect. For greater certainty, TD reserves the right to further amend these Terms and Conditions and to terminate this Amending Agreement on prior written notice to the Correspondent.

[20] One can see from the various documents[16] that were executed and governed the parties at the time that the applicable laws were those of Ontario and that this choice goes back to at least 2003.

[21] The TD Bank representatives who were responsible for relations with SIB were in Toronto.

[22] On the last day of the hearing, counsel for the plaintiffs filed an undertaking concerning the other action brought Ontario on same day as the motion to introduce proceedings in this matter was issued. The undertaking reads as follows:

---

[16] Exhibits TD-15, TD-17, TD-18, TD-19, TD-20 and TD-21.

13.11.2013

The Joint Liquidators undertake not to reactivate or cause to be reactivated the Ontario Dynasty Action unless the Quebec Action is dismissed or the Toronto-Dominion's Motion for Forum Non Conveniens is granted.

THE DISPUTE

[23] The defendant recognizes that the Superior Court of Quebec has jurisdiction. Even so, it invokes the theory of *forum non conveniens* to ask that the matter be stayed or dismissed.

THE LAW

[24] In Quebec, the *Civil Code* states at article 3135:

> 3135. Even though a Quebec authority has jurisdiction to hear a dispute, it may exceptionally and on an application by a party, decline jurisdiction if it considers that the authorities of another country are in a better position to decide.

[25] In a judgment written by Le Bel J., the Supreme Court of Canada states in *Club Resorts*:[17]

> [103] If a defendant raises an issue of *forum non conveniens*, the burden is on him or her to show why the court should decline to exercise its jurisdiction and displace the forum chosen by the plaintiff. The defendant must identify another forum that has an appropriate connection under the conflicts rules and that should be allowed to dispose of the action. The defendant must show, using the same analytical approach the court followed to establish the existence of a real and substantial connection with the local forum, what connections this alternative forum has with the subject matter of the litigation. Finally, the party asking for a stay on the basis of *forum non conveniens* must demonstrate why the proposed alternative forum should be preferred and considered to be more appropriate.
>
> [104] This Court reviewed and structured the method of application of the doctrine of *forum non conveniens* in *Amchem*. It built on the existing jurisprudence, and in particular on the judgment of the House of Lords in *Spiliada Maritime Corp. v. Cansulex Ltd.*, [1987] 1 A.C. 460. The doctrine tempers the consequences of a strict application of the rules governing the assumption of jurisdiction. As those rules are, at their core, based on establishing the existence of objective factual connections, their use by the courts might give rise to concerns about their potential rigidity and lack of consideration for the actual circumstances of the parties. When it is invoked, the doctrine of *forum non conveniens* requires a court to go beyond a strict application of the test governing the recognition and assumption of jurisdiction. It is based on a recognition that a

[17] *Club Resorts Ltd. v. Van Breda*, 2012 SCC 17.

common law court retains a residual power to decline to exercise its jurisdiction in appropriate, but limited, circumstances in order to assure fairness to the parties and the efficient resolution of the dispute. The court can stay proceedings brought before it on the basis of the doctrine.

[105] A party applying for a stay on the basis of *forum non conveniens* may raise diverse facts, considerations and concerns. Despite some legislative attempts to draw up exhaustive lists, I doubt that it will ever be possible to do so. In essence, the doctrine focusses on the contexts of individual cases, and its purpose is to ensure that both parties are treated fairly and that the process for resolving their litigation is efficient. For example, s. 11(1) of the *CJPTA* provides that a court may decline to exercise its jurisdiction if, "[a]fter considering the interests of the parties to a proceeding and the ends of justice", it finds that a court of another state is a more appropriate forum to hear the case. Section 11(2) then provides that the court must consider the "circumstances relevant to the proceeding". To illustrate those circumstances, it contains a non-exhaustive list of factors:

> (a) the comparative convenience and expense for the parties to the proceeding and for their witnesses, in litigating in the court or in any alternative forum;
>
> (b) the law to be applied to issues in the proceeding;
>
> (c) the desirability of avoiding multiplicity of legal proceedings;
>
> (d) the desirability of avoiding conflicting decisions in different courts;
>
> (e) the enforcement of an eventual judgment; and
>
> (f) the fair and efficient working of the Canadian legal system as a whole. [s. 11(2)]

[106] British Columbia's *Court Jurisdiction and Proceedings Transfer Act*, which is based on the *CJPTA*, contains an identical provision — s. 11 — on *forum non conveniens*. In *Teck Cominco Metals Ltd. v. Lloyd's Underwriters*, 2009 SCC 11, [2009] 1 S.C.R. 321, at para. 22, this Court stated that s. 11 of the British Columbia statute was intended to "codify" *forum non conveniens*. Article 3135 of the *Civil Code of Québec* provides that *forum non conveniens* forms part of the private international law of Quebec, but it does not contain a description of the factors that are to govern the application of the doctrine in Quebec law. The courts are left with the tasks of developing an approach to applying it and of identifying the relevant considerations.

[107] Quebec's courts have adopted an approach that, although basically identical to that of the common law courts, is subject to the indication in art. 3135 that *forum non conveniens* is an exceptional recourse. A good example of this can be found in the judgment of the Quebec Court of Appeal in *Oppenheim forfait GMBH v. Lexus maritime inc.*, 1998 CanLII 13001, in which an action brought in

Quebec was stayed in favour of a German court on the basis of *forum non conveniens*. Pidgeon J.A. emphasized the wide-ranging and contextual nature of a *forum non conveniens* analysis. The judge might consider such factors as the domicile of the parties, the locations of witnesses and of pieces of evidence, parallel proceedings, juridical advantage, the interests of both parties and the interests of justice (pp. 7-8; see also *Spar Aerospace*, at para. 71; J. A. Talpis with the collaboration of S. L. Kath, *"If I am from Grand-Mère, Why Am I Being Sued in Texas?" Responding to Inappropriate Foreign Jurisdiction in Quebec-United States Crossborder Litigation* (2001), at pp. 44-45).

[108] Regarding the burden imposed on a party asking for a stay on the basis of *forum non conveniens*, the courts have held that the party must show that the alternative forum is clearly more appropriate. The expression "clearly more appropriate" is well established. It was used in *Spiliada* and *Amchem*. On the other hand, it has not always been used consistently and does not appear in the *CJPTA* or any of the statutes based on the *CJPTA*, which simply require that the party moving for a stay establish that there is a "more appropriate forum" elsewhere. Nor is this expression found in art. 3135 of the *Civil Code of Québec*, which refers instead to the exceptional nature of the power conferred on a Quebec authority to decline jurisdiction: ". . . it may exceptionally and on an application by a party, decline jurisdiction . . .".

[109] The use of the words "clearly" and "exceptionally" should be interpreted as an acknowledgment that the normal state of affairs is that jurisdiction should be exercised once it is properly assumed. The burden is on a party who seeks to depart from this normal state of affairs to show that, in light of the characteristics of the alternative forum, it would be fairer and more efficient to do so and that the plaintiff should be denied the benefits of his or her decision to select a forum that is appropriate under the conflicts rules. The court should not exercise its discretion in favour of a stay solely because it finds, once all relevant concerns and factors are weighed, that comparable forums exist in other provinces or states. It is not a matter of flipping a coin. A court hearing an application for a stay of proceedings must find that a forum exists that is in a better position to dispose fairly and efficiently of the litigation. But the court must be mindful that jurisdiction may sometimes be established on a rather low threshold under the conflicts rules. *Forum non conveniens* may play an important role in identifying a forum that is clearly more appropriate for disposing of the litigation and thus ensuring fairness to the parties and a more efficient process for resolving their dispute.

[110] As I mentioned above, the factors that a court may consider in deciding whether to apply *forum non conveniens* may vary depending on the context and might include the locations of parties and witnesses, the cost of transferring the case to another jurisdiction or of declining the stay, the impact of a transfer on the conduct of the litigation or on related or parallel proceedings, the possibility of conflicting judgments, problems related to the recognition and enforcement of judgments, and the relative strengths of the connections of the two parties.

[Emphasis added by the Court.]

[26] And the Supreme Court of Canada – also in a judgment written by Le Bel J.– states in *Breeden v. Black*:[18]

> III. Conclusion
>
> [37] In the end, some of the factors relevant to the *forum non conveniens* analysis favour the Illinois court, while others favour the Ontario court. The *forum non conveniens* analysis does not require that all the factors point to a single forum or involve a simple numerical tallying up of the relevant factors. However, it does require that one forum ultimately emerge as *clearly* more appropriate. The party raising *forum non conveniens* has the burden of showing that his or her forum is *clearly* more appropriate. Also, the decision not to exercise jurisdiction and to stay an action based on *forum non conveniens* is a discretionary one. ...
>
> [Emphasis added.]

[27] Vézina, J.A., recently stated in *Stormbreaker*:[19]

> [TRANSLATION]
>
> [77] According to the judge, the fact that the foreign court is [TRANSLATION] "in a better position to decide" means that [TRANSLATION] "exceptionally, jurisdiction should be declined". If he elaborates on the reasons to conclude on the first point, he adds nothing to justify the second, the [TRANSLATION] "exceptionally".
>
> [78] But two different tests are involved. Each must be met. One may not stop at the first without giving the reasons and justifications for the second.
>
> [79] That is clear from the very text of article 3135 *C.C.Q.* and the teachings of the Supreme Court in *Spar Aerospace Ltd. v. American Mobile Satellite Corp.* rendered in 2002:
>
> > 69 ...two key parts of art. 3135 include its exceptional nature and the requirement that another country be in a better position to decide (see E. Groffier, *La réforme du droit international privé québécois: supplément au Précis de droit international privé québécois* (1993), at p. 130).
> >
> > 70 These two features of the *forum non conveniens* doctrine set out in art. 3135 are consistent with the common law requirements set out by the House of Lords in the seminal case, *Spiliada Maritime Corp. v. Cansulex Ltd.*, [1987] 1 A.C. 460, at p. 476, as well as this Court in *Amchem*, *supra*, at pp. 919-921, and *Holt Cargo*, *supra*, at para. 89....
>
> [80] The authors are of the same view.
>
> ...

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[18] *Breeden v. Black*, 2012 SCC 19.

[19] *Stormbreaker Marketing and Productions Inc. v. Weinstock*, 2013 QCCA 269.

[86] In brief, the *Civil Code* allows a court to decline jurisdiction only "exceptionally". As with any decision, reasons must be given, which is not the case of the impugned judgment. The circumstances of the matter should therefore be analyzed to determine whether the second test is met.

[87] The *Civil Code* does not set out any test for the application of "exceptionally" apart from the word itself, which evokes the idea of circumstances that are rare, unusual, special or out of the ordinary.

[88] The authors Guillemard, Prujiner and Sabourin add to their already cited comments the proposition that the exception must not unduly reduce the scope of the rule granting jurisdiction:

> [TRANSLATION]
>
> It remains to specify the conditions for this exception.
>
> ...
>
> *Second proposition*: the exceptional nature of the rule of article 3135 requires the presence of circumstances that make it possible to rule out a connection provided by the Code without destroying the principle of it. It is therefore not an assessment *in abstracto* of the weakness or the strength of the relationship between the dispute and the Court that must be considered, but the fact that the litigation's connection to Quebec is so weak, even from the standpoint of the jurisdictional policy of the Code, that it would be justifiable to disregard it in favour of the [TRANSLATION] "far narrower" relationship in favour of another jurisdiction.
>
> In these conditions, it becomes possible to reconcile the logic of the *Code* and that of article 3135 *C.C.Q.* The Court ensures that it is truly "exceptional" circumstances that give rise to exclusion of a connection whose normal application is not threatened by such a decision.

[89] The Supreme Court recently rendered *Club Resorts Ltd. v. Van Breda*, which contains similar teachings. Even though it is a common law judgment, LeBel J., writing for the Court, considered article 3135 *C.C.Q.* in it:

...

[91] The judge who was asked to decline jurisdiction therefore had to weigh, on the one hand, the protection granted the appellant by the possibility of litigating in Quebec versus, on the other hand, the circumstances that would make it possible to characterize the matter as exceptional.

[92] Protection is important. The party that succeeds in having the trial held in its own forum is in a position of strength. The judicial actors and the rules, including the unwritten rules, are familiar to it. To wage war on known terrain is an asset. A hockey fan would speak of home-ice advantage. In my view, this is the main factor to be considered in this case.

...

[104] At the outset, I am of the view that large sums are at issue is not sufficient to cause a litigant to lose the protection granted under the law, especially if it is clearly prepared to incur the costs that one wishes to spare it, as is the case of the appellant here.

[105] Moreover, in my view the additional costs are low.

...

[110] From the standpoint of fairness, I am of the view that this too favours holding the trial here, as the appellant wishes.

[111] Indeed, it has from the outset sought the protection that any dispute be resolved in Quebec according to its laws. That is the clause from Contract P-1 cited above.

[Emphasis added by the Court.]

[28] It has been clearly and unanimously established by case law that, to determine whether it is appropriate to decline jurisdiction, the Court must perform an overall analysis of the case in relation to the specific facts of that case. The relevant factors that are applicable to a case depend essentially on the features specific to it.

[29] None of the factors listed by the Supreme Court of Canada is itself determinant and the list itself has not been established as a rigid framework, but rather as a list of examples of factors that the Court may take into consideration among others. It is therefore in relation to the factors of this case that the Court must decide the matter.

[30] First, the Court will examine the various factors, as suggested by the plaintiffs, that are related to the test of the clearly more appropriate forum, namely:

a. the residence of the parties, non-expert witnesses, and experts;

b. the location of the evidence;

c. the place where the contract that gave rise to the application was negotiated and executed;

d. the existence and content of another action pending before a foreign jurisdiction and the stage of such proceeding;

e. the location of the defendant's assets;

f. the applicable law;

g. advantages conferred upon the plaintiff by its choice of forum, if any;

h. the interests of justice;

i. the interests of the parties;

j. the need to have the judgment recognized in another jurisdiction.

[31] Second, the Court will examine the exceptional test.

1. THE TEST OF THE CLEARLY MORE APPROPRIATE FORUM

[32] The Court will now examine the 10 factors that are commonly considered when analyzing the clearly more appropriate forum.

A. THE RESIDENCE OF THE PARTIES, THE NON-EXPERT WITNESSES, AND EXPERTS

[33] The Court does not share the plaintiffs' view that the majority of the Canadian creditors reside in Quebec and that they substantially suffered the prejudices there. The fact that more than 70% of the Canadian creditors reside outside Quebec contradicts that statement.

[34] As for the location of the witnesses, the plaintiffs contend that the location of the witnesses did not argue in favour of Ontario, which is somewhat surprising in this case.

[35] Counsel for the plaintiff acknowledge in their written argument:

> [TRANSLATION]
>
> 46. Concerning evidence of the fault committed by TD Bank, the plaintiffs will have to, *inter alia*, adduce evidence of:
>
> a. The looting of SIB through the testimony of representatives of SIB, investigators and other third-party witnesses, and representatives of Grant Thornton;
>
> b. The actions that a reasonable banker would have taken in respect of the activities of SIB and the looting of SIB, through, *inter alia*, representatives of other financial institutions having refused to do business with SIB, experts and representatives of regulatory bodies; and
>
> c. The acts or omissions of TD Bank, through the testimony of representatives of TD Bank concerning the looting of SIB and the standards of a reasonable banker.
>
> 47. As for establishing the damages suffered by SIB and/or its creditors, we expect that this will require extensive testimony from representatives of Grant Thornton (including that of the plaintiffs), as well as representatives of SIB.

48. Concerning the causal connection between the wrongful acts and/or omissions of TD Bank and the damages arising therefrom, the testimony of representatives of Grant Thornton, representatives of SIB, and investigators and other third-party witnesses will be required.

49. In short, it can already be expected that witness evidence to be tendered will require the testimony of at least nine (9) representatives of SIB, eight (8) representatives of TD Bank, four (4) representatives of Grant Thornton, and fifteen (15) third parties, including investigators and representatives of regulatory bodies.

50. From a geographic standpoint, TD Bank can hardly argue that most of the key witnesses are in Ontario, because it would appear from the preliminary count by the plaintiffs that seven (7) persons reside in Quebec, seven (7) persons reside in the United States, eight (8) persons reside in Ontario, four (4) persons reside in the British Virgin Islands, two (2) persons reside in the United Kingdom, three (3) persons reside in Antigua, one (1) person resides in Alberta, one (1) person resides in the Cayman Islands, one (1) person resides in Switzerland, one (1) person resides in Trinidad and Tobago and one (1) person resides in Barbados.

51. There is no doubt that the examinations for discovery to be conducted in this matter are likely to reveal the identity of other witnesses who may be in several different jurisdictions. For example, it is sufficient to refer to the composition of the Risk Committee of TD Bank, as it appears in the 2011 Annual Report of TD Bank, to note that the members reside in different jurisdictions.

52. Owing to the international nature of the operations of TD Bank and the fact that there are "four key businesses operating in a number of locations in key financial centers around the globe", at this stage we do not know where the witnesses on the merits for TD Bank reside.

53. The plaintiff Marcus Wide testified during the hearing that TD Bank implemented oversight measures to combat money laundering in connection with SIB at a certain time in Montreal and New Jersey with respect to SIB accounts in U.S. dollars. Moreover, the great majority of the SIB accounts held by TD Bank were in U.S. dollars, such that it is possible that representatives and important witnesses of TD Bank are situated in New Jersey. The plaintiffs are continuing their investigation in this regard.

[Emphasis added by the Court.]

[36] Moreover, Wide testified:[20]

You were asked... You were referred to your amended motion and you were asked about your intentions with respect to demonstrating whether TD's conduct was compliant with all those different standards that Me Poplaw took you through

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[20] Transcription of the hearing of October 16, 2012, re-examination of Mr. Wide, at 197–199.

that you've indentified in your proceeding, and then, ultimately you were asked a very interesting question, "Assuming that the TD people were in Toronto, you would be calling these TD witnesses on the compliance standards". You said in response that you emphasized that that was a big assumption.

A. Yes.

Q. Could you explain to the Court why you emphasized that?

A. Certainly. Our investigation suggests that as these US dollar accounts, there's a very strong probability and perhaps an obligation on TD Bank to run a know-your-client and anti-money laundering operations for this money in New Jersey.

...

Q. Would you please answer the question and elaborate on what your investigation has revealed with respect to the TD people doing their compliance?

A. Some, I believe their compliance with these accounts was taking place in New Jersey, and also note that at one point during this period anyway, the head of AML was located in Montreal for TD Bank.

Q. What is the... You spoke previously to the fact that some of the accounts were US dollars and some were Canadian dollars. What is, to the best of your knowledge, the relative proportion of the money flows that went through TD in terms of the currency?

A. Very heavily in favour of the US dollars.

Q. Why don't you have or why aren't there on the list of witnesses TD representatives from New Jersey?

A. This was a finding that we only recently made and we have not identified as yet persons who might be witnesses in that.

[37] In its notes and authorities, the defendant argued that the evidence from the testimony of Mr. Boaden,[21] showed that he admitted that, to his knowledge, Messrs. Collin, Doyle, Mercer, Mersch, Musafar, Rotwell and Zebensky – the only representatives of TD Bank (with the exception of Ms. Gold) who were included in the list of witnesses[22] – were all based in Toronto at the time of the facts in issue.

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21 Transcription of the hearing of October 15, 2012, cross-examination of Mr. Boaden, at 69–71.
22 Exhibit I-20: Joint Liquidators' Preliminary List of Witnesses, as at August 13, 2012.

[38] The defendant's notes and authorities also emphasize, from the testimony of Mr. Wide,[23] that he had inadequate knowledge of the relevant facts:

> Q. So you have no knowledge of any TD corresponding banking services people being in Montreal and dealing with SIB?
>
> A. I don't know exactly who they dealt with, no, face-to-face, day-to-day.
>
> Q. ... So if I suggested the corresponding banking services people were based in Toronto, you can't disagree with that?
>
> A. Today I'm not going to disagree.
>
> ...
>
> Q I understand your evidence that you don't know and investigations are ongoing, but I suggest to you that you cannot, sitting here today, identify any service in paragraph 137 that TD personnel were based in Quebec and allegedly provided to either SIB or BOA?
>
> A. The answer today is I don't know.
>
> ...
>
> Q. Sitting here today, you, similarly I take it, can't identify these 14 separate accounts as having been opened somewhere in Quebec as opposed to somewhere in Ontario?
>
> A. No.
>
> Q. You just don't know?
>
> A. Exactly.
>
> Q. Overall, I take it you haven't – at this point, you're not able to identify any TD personnel based in Quebec that had anything to do with any of the allegations that are raised in the Quebec action?
>
> A. I simply don't know where TD personnel sat, physically.

[39] The Court points out that, of the seven witnesses allegedly from Quebec who were announced by Mr. Boaden, five were former marketing employees residing in Montreal. The two other witnesses were the president of Bombardier, which financed the purchase of an aircraft under a leasing contract, and counsel for SIB, who represented SIB before the Superintendent of Financial Institutions. It appears that

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[23] Transcription of the examination for discovery of Mr. Wide, held on May 7, 2012, in Toronto, at 44–47.

these persons, if they testify, will make a very relative and very limited contribution to the case against TD Bank in the context of the allegations against it. As the plaintiffs recognized in their notes and authorities:

> [TRANSLATION]
>
> 54. The evidence clearly shows that the key witnesses on the merits in this matter are in a multitude of jurisdictions.
>
> ...
>
> 58. This is especially true considering that, as stated in the Amended Motion, executives of TD Bank and/or TD Waterhouse went to Houston, Texas on several occasions as well as to Antigua to meet with the officers of SIB. Moreover, the officers of TD Bank also met with those of SIB in Montreal, Quebec.
>
> [Emphasis added.]

[40] The Court is of the view that Ontario is the clearly more appropriate forum to hear the case between the liquidators and TD Bank, unless the most appropriate court is in Houston or Antigua, rather than Quebec, where the representative office was located, which was an artificial office because everything was decided and negotiated elsewhere.

[41] Paragraphs 46 to 53 of the plaintiffs' notes and authorities, already reproduced at paragraph 35 of this judgment, did not specify which witnesses will demonstrate the looting. The representatives of SIB? In Houston or Antigua? Which bankers will demonstrate the character of a reasonable banker? Which other financial institutions refused to do business with SIB? Where do the investigators that the plaintiffs would like to have testify come from? The plaintiffs have not indicated where its witnesses come from[24] but one must conclude that they are not from Quebec.

[42] On this matter, the plaintiffs' notes and authorities reflect reality: the witnesses come from outside Quebec. No Quebec creditor appears on their witness list.[25] This suggests that at this stage the plaintiffs do not intend to have them testify.

[43] On this point, the Court concludes that Ontario is a more appropriate forum than Quebec.

B. THE LOCATION OF THE EVIDENCE

[44] The plaintiffs recognize that the relevant documentation for the Quebec action comes from several different jurisdictions. This factor in no way favours the argument

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[24] Exhibit I-20: *supra* note 22.
[25] *Ibid.*

that the case must be heard in Quebec. As for TD Bank, all its documentation is in Toronto, although it is more easily accessible now that it has been digitized.

[45] This element is not a determining factor.

C. THE PLACE OF WHERE THE CONTRACT THAT GAVE RISE TO THE APPLICATION WAS NEGOTIATED AND EXECUTED

[46] Even though the plaintiffs specified that the case involved an action for damages that may be in contract or in tort, they relied mainly on *Bank of Montreal v. Bank of Nova Scotia*,[26] in which the Court of Appeal of Quebec, in a judgment written by Gascon, J.A., determined that that the abuse of rights was due to an extracontractual fault.

[47] According to the testimony of Mr. Mersch, the transactions took place with Houston and not with the Montreal office. If a contractual fault is involved, the most appropriate forum would be Ontario because the contracts were executed in Ontario, Houston or Antigua, and provided that they would be governed by the laws of Ontario.

[48] In the case of an extracontractual fault, the trial judge will have to determine the places where the faults were committed and the places where the damage was suffered and thereafter determine the applicable law. This factor argues in favour of a transfer to Ontario. Was the fault or prejudice suffered in Antigua, Houston, Toronto or Montreal? As discussed above, in terms of value, the creditors represent only $44 million of a deficit of $4 billion. It was not demonstrated that the plaintiffs would benefit significantly from the case being heard or continued in Quebec. Nor was it demonstrated that Quebec creditors were interested in testifying or making a claim, according to the list of witnesses,[27] which does not indicate this, quite the contrary in fact.

[49] This element argues in favour of a transfer to Ontario, which is the clearly more appropriate forum in the circumstances.

D. THE EXISTENCE AND CONTENT OF ANOTHER ACTION PENDING BEFORE A FOREIGN JURISDICTION AND THE STAGE OF SUCH PROCEEDING

[50] As the history of judicial proceedings in Canada[28] has shown us, various other proceedings brought in Alberta and Ontario as a result of SIB's collapse in February of 2009 tend to demonstrate that Ontario is a clearly more appropriate forum than Quebec to hear the liquidators' action.

[51] Counsel for the defendant has demonstrated the great similarity between the Ontario action and the Quebec action brought by the liquidators.

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[26] *Bank of Montreal v. the Bank of Nova Scotia*, 2013 QCCA 1548.

[27] Exhibit I-20: *supra* note 22.

[28] History of the judicial proceedings in Canada in connection with SIB, reproduced at para. 10 of this judgment.

[52] Moreover, the Placeholder Action was stayed temporarily by the Ontario Court:[29]

> [28] The motion is granted for an Order temporarily staying the Dynasty Creditors Action until such further order which this Court may grant after the Quebec Superior Court has made its determination with finality as to whether the Quebec Creditors Action is to be heard in Quebec. The very limited purpose of this Order is to hold the Dynasty Creditors Action in abeyance pending the determination in Quebec as to whether the Joint Liquidators can continue to pursue the claims advanced in the Quebec Creditors Action. If TD Bank is successful in disputing Quebec's jurisdiction or, alternatively, is successful in an argument as to Quebec not being the *forum conveniens*, then the continuation of the Ontario Creditors Action (i.e. the Placeholder Action) should be case managed in tandem with the Dynasty Creditors Action. Conversely, if TD Bank is unsuccessful in disputing Quebec's jurisdiction in the Quebec Creditors Action, then while the Placeholder Action is moot, the Dynasty Creditors Action shall proceed in Ontario.

subject to being reactivated on application for an order to the Ontario court,[30] depending on the outcome of this motion for *forum non conveniens*.

[53] In light of these arguments, the Court is convinced that the Ontario action has progressed the most. Moreover, the liquidators acknowledge in their undertaking that, if they do not succeed on the merits of the motion to introduce proceedings in this matter, they will continue the action brought on the same date in Ontario, which argues that, for the sound administration of justice, Ontario is the most appropriate forum because the actions could be joined, at the discretion of the Ontario court.

E. THE LOCATION OF THE DEFENDANT'S ASSETS

[54] This point is not contested, given that TD Bank has substantial assets in Quebec.

F. THE APPLICABLE LAW

[55] The plaintiffs argued that TD Bank was subject to the applicable laws of Quebec and that it had a duty to inform SIB of the fraud carried out by the small group of insiders, including Robert Allen Stanford, and that it was foreseeable that SIB and its creditors would suffer a prejudice in Quebec. The plaintiffs did not specify whom TD Bank was to inform: the other officers of SIB or the creditors who were not customers of TD Bank?

[56] Moreover, if the action is contractual, documents TD-15 and TD-16 would be subject to the applicable laws of Ontario.

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29 Exhibit I-12: Decision of Justice Cumming of the Ontario Superior Court of Justice (Commercial List) dated July 3, 2012.

30 Exhibit I-12A: Oral Reasons for Judgment rendered by Justice Kiteley of the Ontario Superior Court of Justice in docket number 366/12 dated October 4, 2012.

[57] The plaintiffs argue that clauses selecting the governing laws appliy only from the date of their coming into force. At paragraph 31 of their argument, they add:

> [TRANSLATION]
>
> 131. Even though SIB collapsed in 2009, the period relevant to the dispute extends over almost 20 years. TD Bank's impugned behaviour consists of a series of wrongful acts (or omissions) committed in a continuous fashion throughout that period. Thus the great majority of TD Bank's alleged wrongful acts or omissions are likely, given the length of the fraud, to have extended over a long period before the coming into force of the 2008 T&Cs and the 2007 T&Cs.
>
> [Emphasis added.]

[58] The Court adds that based on the testimony of Mr. Mersch, the evidence has shown that there was no business relationship between TD Bank and SIB representatives in Montreal.

[59] Thus, by arguing that the activities lasted almost 20 years, even though SIB did not have any operations in Montreal prior to 2004, the plaintiffs are arguing contradictory positions. For over 15 years, there was therefore no connection to Quebec. Accordingly, this point argues in favour of a hearing in Ontario.

[60] Although at this stage the Court is unable to determine the law that would be applicable to the merits of this case, it is clear that this point is not determinative in an analysis of *forum non conveniens* but demonstrates that there is a greater connection with Toronto, and that Toronto is clearly a more appropriate forum than is Montreal at this stage.

G. ADVANTAGES CONFERRED UPON THE PLAINTIFF BY ITS CHOICE OF FORUM, IF ANY

[61] The plaintiffs are not residents of Quebec. The one operates in the British Virgin Islands and the other in the Cayman Islands. They will have to travel, regardless of the location of the trial. According to Mr. Wide, the documentation is available in digital format. It was grudgingly pointed out that the action would not be prescribed in Quebec. The applicable law at this stage has not been determined and it will be up to the trial judge to determine what is the applicable law. But as we stated earlier, more than $32 million of the $44 million in potential Canadian claims apparently stems from Canadian creditors outside Quebec. The Court cannot conclude that the plaintiffs will have a definite advantage if the action proceeds in Quebec, especially as the Quebec creditors have not been announced as witnesses[31] at this stage.

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[31] Exhibit I-20: *supra* note 22.

H. THE INTERESTS OF JUSTICE

[62] It would be appropriate that the dispute be heard in Ontario because, according to the undertaking made during the hearing, in the event that the motion to introduce proceedings in Quebec is dismissed on the merits, the plaintiffs wish to continue the action in Ontario. It would therefore be in the interests of sound administration of justice that the Ontario action and the Quebec action be heard jointly. I say this without ruling on the management of these two cases, because it will be up to the judge who will hear the matter to decide how to proceed.

[63] The related costs argue in favour of Ontario because, in any case, the plaintiffs are not residents of Quebec and, from the testimony of Mr. Mersch, it is clear that the defendant's witnesses are essentially all in Toronto and that a piddling portion of the creditors reside in Quebec.

I. THE INTERESTS OF THE PARTIES

[64] The liquidators argue that TD Bank has as much interest in proceeding in Quebec, given its connections on a national scale, and that it had been in Quebec for 152 years.

[65] The fact that the plaintiffs are not Canadian is not an element that argues in favour of Quebec or Ontario in this matter.

[66] The Court concludes that Ontario has closer connections with this dispute and the parties, because the Ontario court has a more real and more substantial connection with the business relationship of SIB and TD Bank. The plaintiffs were unable to provide any element connecting TD Bank with SIB in Quebec, not even a deposit.

J. THE NEED TO HAVE THE JUDGMENT RECOGNIZED IN ANOTHER JURISDICTION

[67] This factor does not apply to this case.

2. THE EXCEPTIONAL SITUATION

[68] The Court notes the weakness of the case's connections to Quebec.

[69] Moreover, the circumstances of this case are fairly exceptional. As previously stated, Vézina, J.A. wrote in *Stormbreaker*:[32]

> [TRANSLATION]

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[32] *Stormbreaker Marketing and Productions Inc. v. Weinstock*, *supra* note 19.

> [87] The *Civil Code* does not set out any test for the application of "exceptionally" apart from the word itself, which evokes the idea of circumstances that are rare, unusual, special or out of the ordinary.

[70] One cannot help but argue that this is an exceptional case because at the time of the collapse of the Stanford group:

70.1. SIB had creditors in 113 countries;

70.2. even though its head office was in Antigua, a large portion of the operations came out of Houston;[33]

70.3. as the Court stated in its judgment[34] of September 11, 2009, the spider's web and the nerve centre were in Houston, and it was a Ponzi scheme;

70.4. the Attorney General of Ontario brought an action for the forfeiture of all amounts held by TD Bank. This matter was settled by the trustee Janvey, TD Bank having remitted all the amounts that it held, namely about $20 million;

70.5. it represented a worldwide fraud with a deficit of more than $4 billion and a complexity acknowledged by the plaintiffs;

70.6. the president of SIB is in prison in Houston;

70.7. according to the representatives of the plaintiffs, they will require experts, possibly from New Jersey;

70.8. SIB had only a representative office in Montreal;

70.9. SIB and TD Bank had business relations for more than 20 years, whereas the Montreal office existed for only about five years during the final phase of SIB's operations;

70.10. Mr. Mersch gave the following testimony:[35]

> 31Q- So let me get this straight, so that I understand. Again, to bring it to a tangible level, if SIB sought to obtain the issuance of an LC by TD Bank, can you tell us who from SIB would call who at TD Bank, and how the process or how the different steps leading to the issuance of the LC would take place?
>
> A- So, normally, il will be... the primary contact for SIB with our group was Patricia Moldonado, out of SIB Houston office. Generally, requests would... would come through her... or in conjunction with the Antiguan office as well. Those requests

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33 *Stanford International Bank Ltd. (Trustee of)*, *supra* note 5 at para. 27.

34 *Stanford International Bank Ltd. (Trustee of)*, *supra* note 5 at para. 35.

35 Transcription of the hearing of November 11, 2013, cross-examination of Mr. Mersch, at 23, 47, 48 and 49.

would be made to the Relationship... SIB Relationship Management team in correspondent ...

...

94Q- These are the bank accounts of SIB; can you, for the benefit of the Court, tell us where were those bank accounts opened, maintained and managed?

A- They were opened, maintained and managed in Toronto.

95Q- And can you, please, explain to the Court, what do you mean by "maintaining bank accounts in relation to the corresponding banking services that were provided to SIB"?

A- Yes. I think I need to start with... with the opening of an account. So, if SIB wanted to open up an account, they would contact their Relationship Management team in Toronto. The Relationship Management team then would discuss with the SIB personnel out of the U.S., generally. Again, primary contact was Miss Moldonado in Houston; any sort of specific terms and conditions and any sort of pricing, that sort of stuff.

From there, the Relationship manager... Management team would then liaise with our Operations area in Toronto for the actual opening of the account, because the accounts were housed at our operations area in Toronto.

And the on an ongoing basis, from a maintenance of the account, if there are any sort of... any sort of billing, any sort of account statements, that sort of stuff would have come out of Toronto to SIB in Antigua... and the U.S. If there was any sort of inquiries in terms of wires, they would come into our help desk in Toronto. If there was any general relationship management issues, they would come into the Relationship team in Toronto.

And then, there was also visits between the Relationship team and the SIB personnel, from an overall relationship standpoint.

...

97Q- What about wires, where the activities in respect of the issuance of any wires were handled from?

A- The wire activity would have... was out of our Operations area, the core operations area being in one of the TD tours, it's in the Ernst & Young tower presently. So any sort of wire activity, that's where our wire engine is, so to speak, in terms of where transactions take place.

98Q- Where is the E&G tour?

...

99Q- In Toronto?

A- In Toronto, correct.

[71] Thus the Court does not hesitate to paraphrase Vézina, J.A., to say that this case evokes the idea of circumstances that are rare, usual, special or out of the ordinary. In fact, the plaintiffs acknowledge that witnesses will come from around the world.[36]

[72] At this stage, there is nothing in the evidence to indicate that Quebec creditors will testify as victims of a prejudice by TD Bank. We have the Antiguan liquidator acting on behalf of SIB and on behalf of the creditors of the Dynasty Action, of whom none were identified as Quebecers. The argument of a connection to Quebec because the plaintiffs suffered a prejudice in Quebec is weak because there are no Quebec creditors on the list[37] of witnesses.

[73] In conclusion, the Court is of the view that, given this exceptional situation, the courts of Ontario are in a better position to decide.

[74] The Court is convinced that the place with the most substantial connection with the parties and the dispute as such is Ontario, Houston or Antigua, but not Montreal. The Court has already written that the centre of the spider's web was in Houston and that, according to the testimony of Mr. Mersch, the communications were Toronto/Houston and sometimes Antigua, but not Montreal.

[75] Moreover, it was not by chance that the plaintiffs simultaneously brought another action in Ontario, the same day as this action, at an interval of only a few minutes.

[76] The circumstances of this matter are different from those of *Stormbreaker*[38] in terms of the very nature of the action and the difficulties related to it.

[77] The Court concludes that it would be fairer and more efficient that the case be heard with the Ontario case to ensure equity for the parties and to avoid the duplication of efforts, because we must bear in mind that:

77.1. the Ontario action brought in parallel will continue if the Quebec action is dismissed;

77.2. the costs for the defendant will be lower if the trial takes place in Ontario,

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[36] Plaintiffs' argument, at paras. 46–53 reproduced at para. 35 of this judgment and at paras. 54 and 58 reproduced at para. 39 of this judgment.

[37] Exhibit I-20: *supra* note 22.

[38] *Stormbreaker Marketing and Productions Inc. v. Weinstock*, *supra* note 19.

whereas it makes no difference for the plaintiffs because they are not from Quebec;

77.3. the same witnesses and the same factual situation are involved in the related proceedings; and

77.4. this matter involves an exceptional situation where the case, as constituted by the plaintiffs, shows a weak connection to Quebec in an action for damages against TD Bank.

[78] The fact that the undersigned manages SIB's insolvency case does not make the Quebec court the more appropriate forum because the action brought by the plaintiffs is a civil liability action that is either in contract or in tort against TD Bank.

FOR THESE REASONS, THE COURT:

[79] **ALLOWS** the motion for *forum non conveniens* in part;

[80] **DECLINES** jurisdiction to hear the Amended Motion to Introduce Proceedings and **TRANSFERS** the file to Ontario;

[81] **DISMISSES** the Amended Motion to Introduce Proceedings;

[82] **THE WHOLE, WITH COSTS.**

CLAUDE AUCLAIR, J.S.C.

Mtre. Guy de Blois
Mtre. Stefan Chripounoff
Mtre. Gerry Apostolatos
Mtre. Dimitri Maniatis
LANGLOIS KRONSTRÖM DESJARDINS
For the plaintiffs

Mtre. Mason Poplaw
Mtre. Miguel Bourbonnais
McCARTHY TÉTRAULT
For the defendant

Dates: October 15, 16 and 17, 2012 and November 11, 12 and 13, 2013

Receipt of the history of the proceedings: November 26, 2013

TAB T

RECEIPT NUMBER 393761 0.00
TRACKING NUMBER 72465098 MTA

246

CAUSE NUMBER 200953545

PLAINTIFF: ROTSTAIN, PEGGY ROIF
vs.
DEFENDANT: TRUSTMARK NATIONAL BANK

In The 129th
Judicial District Court of
Harris County, Texas

This is Exhibit "T" referred to in the affidavit of Wolfgang Mersch sworn before me, this 10th day of October, 2014

A COMMISSIONER FOR TAKING AFFIDAVITS

CITATION CORPORATE

THE STATE OF TEXAS
County of Harris

TO: TORONTO-DOMINION BANK (BANKING CORPORATION)
BY SERVING ITS REGISTERED AGENT CSC CORPORATION
701 BRAZOS STREET SUITE 1050 AUSTIN TX 78701

Attached is a copy of PLAINTIFF'S FIRST AMENDED PETITION

This instrument was filed on the 9th day of October, 20 09, in the above cited cause number and court. The instrument attached describes the claim against you.

YOU HAVE BEEN SUED; you may employ an attorney. If you or your attorney do not file a written answer with the District Clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of 20 days after you were served this citation and petition, a default judgment may be taken against you.

TO OFFICER SERVING:

This Citation was issued under my hand and seal of said Court, at Houston, Texas, this 21st day of October, 20 09.

Issued at request of:
HERSHMAN, SCOTT S.
3102 OAK LAWN AVE700
DALLAS, TX 75219
Tel: (214) 560-2201
Bar Number: 793205

DISTRICT COURT OF HARRIS COUNTY TEXAS

LOREN JACKSON, District Clerk
Harris County, Texas
201 Caroline, Houston, Texas 77002
P.O. Box 4651, Houston, Texas 77210

Generated by: KITCHEN, AAYESHA LAM SBK/SBK/8532

OFFICER/AUTHORIZED PERSON RETURN

I received this citation on the 4th day of November, 20 09, at 8:00 o'clock A.M., endorsed the date of delivery thereon, and executed it at _____ (street address), _____ (city),

in _____ County, Texas on the _____ day of _____, 20___, at _____ o'clock.___. M.,

by delivering to _____ (the defendant corporation named in citation), by delivering to its

_____ (registered agent, president, or vice-president), in person, whose name is _____,

a true copy of this citation, with a copy of the _____ (description of petition, e.g., "Plaintiffs Original") Petition attached,

and with accompanying copies of _____ (additional documents, if any, delivered with the petition).

I certify that the facts stated in this return are true by my signature below on the _____ day of _____, 20___.

FEE: $ _____ DELIVERED ON 11/09/09 BY SCH 118

By: _____ (signature of officer)

Printed Name: _____

_____ Affiant Other Than Officer

As Deputy for: _____ (printed name & title of sheriff or constable)

On this day, _____, known to me to be the person whose signature appears on the foregoing return, personally appeared. After being by me duly sworn, he/she stated that this citation was executed by him/her in the exact manner recited on the return.

SWORN TO AND SUBSCRIBED BEFORE ME, on this _____ day of _____, 20 _____

_____ Notary Public

N.INT.CITC.P

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CAUSE NO. 2009-53845

PEGGY ROIF ROTSTAIN, GUTHRIE ABBOTT, CATHERINE BURNELL, STEVEN QUEYROUZE, JAIME ALEXIS ARROYO BORNSTEIN, and JUAN C. OLANO, on behalf of themselves and all others similarly situated,	§	**IN THE DISTRICT COURT**
Plaintiffs,	§	
v.	§	**HARRIS COUNTY, TEXAS**
TRUSTMARK NATIONAL BANK, HSBC BANK PLC, THE TORONTO-DOMINION BANK, SG PRIVATE BANKING (SUISSE) S.A., and BANK OF HOUSTON,	§	
Defendants.	§	**129th JUDICIAL DISTRICT**

PLANTIFFS' FIRST AMENDED PETITION

Plaintiffs PEGGY ROIF ROTSTAIN, GUTHRIE ABBOTT, CATHERINE BURNELL, STEVEN QUEYROUZE, JAIME ALEXIS ARROYO BORNSTEIN, and JUAN C. OLANO, ("Plaintiffs") on behalf of themselves and all others similarly situated, by and through their undersigned attorneys, as and for their First Amended Petition against Defendants TRUSTMARK NATIONAL BANK ("Trustmark"), HSBC BANK PLC ("HSBC"), THE TORONTO-DOMINION BANK ("TD Bank"), SG PRIVATE BANKING (SUISSE) S.A. ("Société Générale"), and BANK OF HOUSTON ("BoH") (collectively, "Defendants"), allege on information and belief as follows:

I.

PRELIMINARY STATEMENT

This is an action on behalf of the victims of the fraud at Stanford International Bank, Ltd. ("SIBL"), part of the Stanford Financial Group[1], to recover damages and fraudulent transfers from the banks that provided essential assistance to Stanford in one of the largest financial crimes in history.

The Stanford fraud was based upon the collection of billions of dollars from unsuspecting victims in the United States, Canada, Mexico, Colombia, Peru, Venezuela, and elsewhere in the world. Through a network of sales offices located in those countries, SFG sold purported certificates of deposit ("CDs") issued by Antigua-based SIBL, offering interest rates higher than those generally available at other banks. While SFG's sales representatives convinced the victims that SIBL could offer those higher rates of return because of its unique and successful investment strategy, the operation was a fraud. The Defendants each played an essential role in that scheme, and reaped substantial fees from doing so.

In particular, Defendants HSBC and TD Bank acted as willing and essential conduits for the flow of money from Stanford's unsuspecting victims to Stanford's fraudulent criminal enterprise. Stanford used HSBC to collect all wire transfers intended by the victims to be deposited in SIBL in British Pound Sterling, Euros, and other

[1] Stanford Financial Group ("SFG") refers to the dozens of affiliated companies owned and/or controlled by R. Allen Stanford ("Allen Stanford"), including but not limited to SIBL, Stanford Group Company, Stanford Capital Management, LLC, Stanford Trust Company Ltd., and Stanford Financial Group Global Management, LLC. As used herein, "SFG" refers to these entities, and "Stanford" refers to these entities together with Allen Stanford.

European currencies. Similarly, Stanford used TD Bank to collect all such deposits in US dollar and Canadian dollar denominations. All or substantially all of the money that Stanford's victims sent to HSBC and TD Bank was eventually diverted from SIBL, where the victims intended the funds to go, to be "invested" in Allen Stanford's private ventures, used to fund Allen Stanford's lavish lifestyle, and reinvested in the criminal venture to keep the fraudulent scheme in operation.

Both HSBC and TD Bank handled enormous volumes of such transfers. Upon information and belief, HSBC and TD Bank either knew that Stanford's banking operation was illegitimate or, through reasonable and required diligence could have determined that it was illegitimate.

Société Générale also played a central role in the scheme, providing essential banking services to Stanford. Upon information and belief, Société Générale held SFG operating accounts that were used to make illicit monthly payments to Stanford's purported auditor. When Stanford's financial troubles increased – and the need to purchase the cooperation of its auditor grew more urgent – Stanford directed Société Générale to make larger monthly payments to that auditor. That instruction was given by Stanford to Blaise Friedli, Executive Vice President of Société Générale Private Banking in Geneva, Switzerland, who – not coincidentally – was a member of the Stanford Financial Group International Advisory Board. Moreover, in a highly unusual transfer of funds, Stanford directed Société Générale to transfer more than $100 million out of Société Générale in the last two weeks of December 2008. Upon information and belief,

all or substantially all of that money is missing, and is unavailable to satisfy victims' claims.

Through its role as Stanford's private banker, its essential assistance in the payment of bribes to Stanford's purported auditor, and Mr. Friedli's position on the Stanford Financial Group International Advisory Board, among other things, Société Générale either knew that Stanford's banking operation was illegitimate or, through reasonable and required diligence, could have determined that it was illegitimate.

Trustmark received daily bundles of checks that Class members intended for deposit in SIBL in Antigua. Those checks were deposited in SIBL accounts at Trustmark, and later distributed to other Stanford entities and put to the private use of Allen Stanford. These highly suspicious and unusual deposits, together with other information readily available to Trustmark concerning Stanford's operations, either did, or should have, alerted Trustmark to the illegal nature of the Stanford banking operation.

Finally, each of the Defendants collected substantial fees and other payoffs in exchange for its role in transferring money from the victims of the crime, to SFG and, in many instances, out to R. Allen Stanford's personal and private business ventures. Every dollar that was paid to the Defendants by SFG was paid in furtherance of Stanford's scheme to defraud the victims of the scheme, using money fraudulently stolen from the victims. As a result, all such payments are recoverable by SFG's creditors as fraudulent transfers under the Texas Uniform Fraudulent Transfer Act ("UFTA") and pursuant to common law.

II.

DISCOVERY CONTROL PLAN

1. Plaintiffs intend that discovery shall be conducted under Level 2, pursuant to Rule 190.3 of the TEXAS RULES OF CIVIL PROCEDURE.

III.

JURISDICTION AND VENUE

2. Venue is appropriate in Harris County, Texas, because all or a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in Harris County, Texas.

3. Jurisdiction is proper in this Court because each of the Defendants have purposefully availed themselves of the privilege of conducting business activities in Texas and each of the Defendants has had continuous and systematic business contacts with Texas. Additionally, the amount in controversy exceeds the minimum jurisdictional threshold of this Court.

4. Pursuant to Section 15.001, *et seq.*, of the TEXAS CIVIL PRACTICE & REMEDIES CODE, venue is proper in this Court because: (a) the events or omissions giving rise to Plaintiffs' causes of action occurred in whole or part in Harris County, Texas; and/or (b) one or more of the Defendants has its principal office in the State of Texas located in Harris County, Texas.

5. Among other things, Defendants conspired with one or more Texas residents to commit torts in Texas; committed torts in and/or directed at Texas residents; caused foreseeable harm in Texas; made misrepresentations to or relied upon in Texas;

converted, fraudulently transferred and/or aided and abetted in converting and fraudulently transferring Texas property and/or property of Texas residents, or did so in a manner foreseeably harming Texas residents and violating the laws and protections of the State of Texas.

IV.

PARTIES

6. At all relevant times, Plaintiff Peggy Roif Rotstain is and was a citizen of Peru residing in Peru. Rotstain caused funds to be transmitted via draft to SIBL, and to TD Bank, for the intended purpose of purchasing SIBL CDs.

7. At all relevant times, Plaintiff Guthrie Abbott is and was a citizen of the United States.

8. At all relevant times, Plaintiff Catherine Burnell is and was a citizen of the United Kingdom residing in Antigua. Burnell caused funds to be transmitted to HSBC for the intended purpose of purchasing SIBL CDs.

9. At all relevant times, Plaintiff Steven Queyrouze is and was a citizen of the United States residing in Louisiana.

10. At all relevant times, Plaintiff Jaime Alexis Arroyo Bornstein is and was a citizen of Mexico residing in Mexico. Bornstein caused funds to be transmitted to TD Bank for the intended purpose of purchasing SIBL CDs.

11. At all relevant times, Plaintiff Juan C. Olano was a citizen of Colombia and the United States residing in Florida.

12. As of February 16, 2009, Plaintiffs were customers of SIBL, had money on deposit at SIBL, and held CDs issued by SIBL. Plaintiffs are each members of the Class, as defined below.

13. Upon information and belief, Defendant TD Bank is a banking corporation incorporated in Canada. TD Bank may be served by serving its registered agent, CSC Corporation, 701 Brazos Street, Suite 1050, Austin, Texas 78701.

14. Upon information and belief, Defendant HSBC is an international bank with its registered office and principal place of business located at 8 Canada Square, London E14 5HQ, England. HSBC may be served by serving its Deputy Chairman and Chief Executive Officer, Dyfrig D.J. John, at 8 Canada Square, London E14 5HQ, England.

15. Upon information and belief, Defendant Société Générale is a banking corporation organized under the laws of France with its principal place of business in France. Société Générale may be served by serving its Executive Vice President, Blaise Friedli, at 701 Brickell Avenue, Suite 1740, Miami, Florida 33131.

16. Upon information and belief, Defendant Trustmark is a national banking association chartered by the Office of the Comptroller of the Currency pursuant to the applicable laws of the United States of America and the related rules promulgated by the Office of the Comptroller of the Currency. Upon information and belief, Trustmark's corporate headquarters and principal place of business are located in Jackson, Mississippi. Upon information and belief, Trustmark is "located" in and is a citizen of the State of Mississippi, although Trustmark also maintains offices in Harris County,

Texas and in other jurisdictions. Trustmark may be served by serving its registered agent, James M. Outlaw, Jr., at 4200 Westheimer, Suite 102, Houston, Texas 77027.

17. Upon information and belief, Defendant BoH is a banking institution with its principal place of business at 750 Bering Drive, Suite 100, Houston, Texas 77057. BoH may be served by serving its President and Chief Executive Officer, Jim Stein, at 750 Bering Drive, Suite 100, Houston, Texas 77057.

RELEVANT NON-PARTIES

18. At all relevant times, SFG was a group of affiliated financial services entities led by Allen Stanford. SFG maintained its headquarters in Houston, Texas, and maintained offices in several other locations including Memphis, Tennessee, and Miami, Florida. Upon information and belief, the activities of SFG and all of the Stanford Entities were directed from SFG's Houston, Texas, headquarters.

19. At all relevant times, SIBL was a private, offshore bank with offices on the island of Antigua. SIBL was organized in Montserrat, originally under the name of Guardian International Bank. In or about 1989, SIBL's principal banking location was moved to Antigua.

20. Until the SEC instituted civil enforcement proceedings against it in February of 2009, SIBL marketed CDs and promised higher rates of return on those CDs than were generally offered at banks in the United States. In its 2007 Annual Report, SIBL stated that it had approximately $6.7 billion worth of CD deposits, and more than $7 billion in total assets. In its December, 2008, Monthly Report, SIBL purported to have more than 30,000 clients from 131 countries, representing $8.5 billion in assets.

21. Stanford Group Company ("SGC"), a Houston-based company, was founded in or about 1995. SGC, and the financial advisers employed by SGC, promoted the sale of SIBL's CDs through SGC's 25 offices located throughout the United States. According to the Court-appointed receiver[2] for the Stanford entities, "the principal purpose and focus of most of [Stanford's] combined operations was to attract and funnel outside investor funds into the Stanford companies through the sale of [CDs] issued by Stanford's offshore entity SIBL." Report Of The Receiver Dated April 23, 2009 (the "Report"), at p. 6.

22. Allen Stanford founded and owned SFG and its affiliated companies, including, through a holding company, SIBL. Allen Stanford was the chairman of SIBL's Board of Directors and a member of SIBL's Investment Committee.

V.

FACTS APPLICABLE TO ALL COUNTS

CLASS ALLEGATIONS

23. The class of persons that Plaintiffs seek to represent (the "Class") is comprised of all individuals who, and entities that, as of February 16, 2009, were customers of SIBL, with monies on deposit at SIBL and/or holding CDs issued by SIBL. All such individuals are creditors of SIBL, Allen Stanford, and other entities that are members of SFG within the meaning of the UFTA.

[2] In February 2009, the SEC filed a complaint in the United States District Court for the Northern District of Texas (the "SEC Action") against Allen Stanford and various Stanford entities and employees, alleging a "massive, on-going fraud." By order dated February 16, 2009 (as amended March 12, 2009), the court in the SEC Action appointed Ralph Janvey, Esq., to be the receiver in that action (hereinafter, the "Receiver"). On or about February 27, 2009, the SEC filed a First Amended Complaint in the SEC Action.

24. *Numerosity.* A class action is appropriate in this case because the Class is so numerous that joinder of all members is impracticable. While the precise number of Class members and their addresses are unknown to the Plaintiffs, their identities can be determined from SIBL's records. Upon information and belief, Class members number in the tens of thousands.

25. *Commonality.* A class action is appropriate in this case because there are questions of law and fact common to the Class, including but not limited to:

(a) whether the Defendants received fees and other monies from Stanford within the relevant time period;

(b) whether Stanford paid fees and other monies to the Defendants with the actual intent to hinder, delay, or defraud members of the Class;

(c) whether any such fees were paid, or other monies transferred, by Stanford to the Defendants while Stanford was engaged or was about to engage in a business or a transaction for which Stanford's remaining assets were unreasonably small in relation to the business or transaction;

(d) whether any such fees were paid, or other monies transferred, by Stanford to the Defendants when Stanford intended to incur, or believed or reasonably should have believed that it would incur, debts beyond the its ability to pay as they became due;

(e) whether any such fees were paid, or other monies transferred, by Stanford to the Defendants without Stanford receiving a reasonably equivalent value in exchange for the transfer;

(f) whether any such fees were paid, or other monies transferred, by Stanford to the Defendants at a time when Stanford was insolvent, or whether Stanford became insolvent as a result of the payment of such fees or other monies transferred;

(g) whether the Defendants received any such fees, or other monies transferred, in good faith and for a reasonably equivalent value;

(h) whether the Defendants conspired with Stanford;

(i) whether the Defendants knew or should have known of Stanford's fraud;

(j) whether the Defendants knew or should have known of Stanford's fraud; and

(k) whether the Class has been damaged by the alleged conspiracy by or among the Defendants and Stanford.

26. The questions of law and fact common to the Class predominate over any questions affecting only individual members.

27. *Typicality.* The claims of the representative Plaintiffs are typical of the claims of the Class.

28. *Adequacy.* The representative Plaintiffs will fairly and adequately protect the interests of the Class.

29. In the absence of class certification, there is a risk that adjudications in thousands of separate cases with respect to individual Class members would, as a practical matter, be dispositive of the interests of the other members not parties to the

individual adjudications, or would substantially impair or impede their ability to protect their interests.

30. A class action is superior to other available methods for fairly and efficiently adjudicating this controversy.

FACTUAL ALLEGATIONS

The Fraud[3]

31. Stanford's business was a massive fraud in which Stanford misappropriated billions of dollars, falsified SIBL's financial statements, and concealed their fraudulent conduct from customers, prospective customers, and regulators in the United States and elsewhere.

32. SIBL represented to the Plaintiffs and the Class that: (i) their assets were safe and secure because the bank invested in a "globally diversified portfolio" of "marketable securities;" (ii) SIBL had averaged double-digit returns on its investments for over 15 years; (iii) Allen Stanford had solidified SIBL's capital position in late 2008 by infusing $541 million in capital into the bank; (iv) SIBL's multi-billion dollar portfolio was managed by a "global network of portfolio managers" and "monitored" by a team of SFG analysts in Memphis, Tennessee; (v) SIBL, in early 2009, was stronger than at any time in its history; and (vi) SIBL did not have exposure to losses from investments in the fraudulent "Ponzi" scheme that had been operated by Bernard L. Madoff (the "Madoff Scheme"). More fundamentally, Stanford represented that SIBL

[3] The factual allegations in this sub-section are made upon information and belief, based upon the allegations made by the SEC in its civil enforcement action *SEC v. Stanford International Bank, Ltd., et al.*, Case No. 09-cv-0298-N (N.D. Tex), the indictment in *United States v. Stanford, et al.*, Case No. 09-cr-342 (S.D. Tex), the public materials cited therein, and other public materials and media reports.

was a legitimate banking institution, which made money by investing assets and generating investment returns. These representations were false.

33. Stanford intended that Plaintiffs and other members of the Class would rely upon these representations when making their decisions to entrust their money to Stanford, and the Plaintiffs and other members of the Class did so.

34. Contrary to SIBL's public statements, by February 2009, Stanford had misappropriated billions of dollars from Plaintiffs and the Class, and "invested" an undetermined amount of those funds in speculative, unprofitable private businesses controlled by Allen Stanford. Contrary to SIBL's representations regarding the liquidity and safety of its portfolio, the Plaintiffs' and the Class's funds were not invested in a "well-diversified portfolio of highly marketable securities." Instead, SIBL's internal records reflect that more than half of the bank's investment portfolio was comprised of undisclosed "Private Equity Real Estate."

35. According to the SEC, Stanford fabricated SIBL's financial statements. Using a predetermined return on investment number, Stanford reverse-engineered SIBL's financial statements to report investment income that SIBL had not actually earned. As a result, information in SIBL's financial statements and annual reports bore little or no relationship to the actual performance of SIBL's investments.

36. Plaintiffs and other members of the Class reasonably relied upon SIBL's fabricated financial statements when making their decisions to entrust their money to Stanford.

37. In selling the CDs, SIBL touted, among other things, the CDs' safety, security, and liquidity. SIBL told Plaintiffs and the Class that SIBL aggregated customer deposits, and then reinvested those funds in a "globally diversified portfolio" of assets. SIBL also represented to the Plaintiffs and the Class that Stanford employed a sizeable team of analysts to monitor SIBL's portfolio. These representations were false.

38. Plaintiffs and other members of the Class reasonably relied upon SIBL's representations regarding the safety, security, liquidity, composition, and monitoring of SIBL's investment portfolio.

39. SIBL's annual reports also represented that "SIBL does not expose its clients to the risks associated with commercial loans...the Bank's only lending is on a cash secured basis." Contrary to SIBL's representations, however, SIBL exposed Plaintiffs and the Class to the risks associated with more than $1.6 billion in undisclosed and unsecured personal "loans" to Allen Stanford. To conceal the theft, some of these "loans" were evidenced by promissory notes from Allen Stanford.

40. These promissory notes were typically created after James M. Davis ("Davis"), who was the Chief Financial Officer of SFG and SIBL, and served as a member of SIBL's Investment Committee, had, at Allen Stanford's direction, fraudulently wired out billions dollars of SIBL investor funds to Allen Stanford or his designees. Allen Stanford made few, if any, payments required by the terms of the promissory notes, and the outstanding loan balances and interest owed by him to SIBL were rolled into new, larger, promissory notes.

41. The personal "loans" to Allen Stanford were inconsistent with representations that had been made to Plaintiffs and members of the Class: despite the fact that SIBL's annual reports included a section entitled "Related-Party Transactions" that purported to disclose all related-party transactions entered into by SIBL, SIBL's "loans" to Allen Stanford were not disclosed in the "Related-Party Transactions" section of SIBL's annual reports from 2004 through 2008.

42. Allen Stanford used the money that he "borrowed" from SIBL to, among other things, fund his personal ventures and private pursuits, including more than $400 million to fund personal real estate deals and more than $36 million to subsidize "Stanford 20/20," an annual cricket tournament that boasted a $20 million purse.

43. Plaintiffs and other members of the Class reasonably relied upon SIBL's misrepresentations regarding SIBL's bogus "loans" to Allen Stanford.

44. Allen Stanford's misappropriation of the Plaintiffs' and the Class's assets (and the poor performance of SIBL's investment portfolio) created a giant hole in SIBL's balance sheet. To conceal their fraudulent conduct and thereby ensure that Plaintiffs and the Class continued to entrust their money to SIBL, the Stanford Co-Conspirators fabricated the growth, composition, and performance of SIBL's investment portfolio to give the appearance that SIBL's investments were highly profitable.

45. In its training materials for the SGC advisers, SIBL represented that it had earned consistent double-digit annual returns on its investment of deposits (ranging from 11.5% in 2005 to 16.5% in 1993) for almost fifteen years. SIBL marketed the CDs using these purported returns on investment. Likewise, SIBL's Annual Reports stated that the

bank earned from its "diversified" investments approximately $642 million in 2007 (11 %), and $479 million in 2006 (12%).

46. SIBL claimed that its high returns on investment allowed it to offer higher rates on the CD than those offered by U.S. banks. For example, SIBL offered 7.45% as of June 1, 2005, and 7.878% as of March 20, 2006, for a fixed-rate CD based upon an investment of $100,000. On November 28, 2008, SIBL quoted 5.375% on a 3-year flex CD, while comparable U.S. bank CDs paid less than 3.2%.

47. None of the information that SIBL disseminated regarding the growth, composition, and performance of its investment portfolio was true. Instead, through their actions, the Stanford Co-Conspirators caused SIBL to report investment income that the bank did not actually earn and, thereby, greatly inflate the value of its investment portfolio. Specifically, the Stanford Co-Conspirators prepared and reviewed SIBL's financial statements, including the annual reports that were provided to customers and posted on the bank's website.

48. Plaintiffs and other members of the Class reasonably relied upon the information that SIBL disseminated regarding the growth, composition, and performance of its investment portfolio.

49. As world financial markets experienced substantial declines in 2008, it became apparent to Allen Stanford and Davis that SIBL could not credibly report investment profits in the 11 % to 15% range (as it had done in previous years). Allen Stanford and Davis thus agreed that SIBL would for the first time show a "modest" loss to avoid raising too many "red flags" to customers and other nations' regulators. In other

words, they opted to tell a "more believable lie" in order to conceal their many previous years of fraudulent conduct.

50. SIBL touted a purported $541 million capital infusion from Allen Stanford in a December 2008 report:

> Although our earnings will not meet expectations in 2008, Stanford International Bank Ltd. is strong, safe and fiscally sound. We have always believed that depositor safety was our number one priority. To further support the Bank's growth and provide a strong cushion for any further market volatility, the Bank' s Board of Directors made a decision to increase the Bank's capital by $541 million on November 28, 2008. This contribution brings total shareholder equity to $1,020,029,802 with a capital to assets ratio of 11.87% and a capital to deposits ratio of 13.48%.

51. The purported capital infusions by Allen Stanford were backdated, fictitious, and engineered to give the appearance that SIBL had achieved "desired" levels of capital.

52. In December 2008, well after Allen Stanford had purportedly infused the $541 million in additional capital into SIBL, Stanford implemented a series of fraudulent round-trip real estate transactions utilizing undeveloped Antiguan real estate acquired by SIBL in 2008 for approximately $63.5 million (or roughly $40,000 per acre).

53. To give the appearance that the above-referenced capital infusions actually occurred Stanford falsified accounting records by recording bogus transactions:

- SIBL sold the Antiguan real estate to several newly-created Stanford-controlled entities at the original cost of $63.5 million (although there is no evidence that Stanford paid SIBL the $63.5 million);
- the Stanford-controlled entities, at Allen Stanford's and Davis's instruction, immediately wrote-up the value of the real estate to approximately $3.2 billion dollars (or $2 million per acre), thereby exponentially increasing the value of the entities' stock;

- in an effort to satisfy a portion of Allen Stanford's personal debt to SIBL, Allen Stanford contributed to SIBL $1.7 billion of the fraudulently-inflated stock (using the inflated $2 million per acre valuation); and

- Allen Stanford then contributed to SIBL additional stock in the real estate holding companies valued at $200 million and $541 million (again using the inflated $2 million per acre valuation) to fund the backdated capital contributions.

54. These transactions did not infuse real capital into SIBL. In fact, the entire process was fabricated after the reported capital contributions allegedly occurred. Moreover, the purported inflation in value of the real estate from $40,000 to $2 million per acre was not justifiable under applicable U.S. or international accounting principles. SIBL did not secure an appraisal and had no other reasonable support for such a drastic increase in value. The transactions among Stanford-controlled entities simply were not the kind of arm's-length transactions required to justify a 5000% increase in value. Nevertheless, on a mere promise from Allen Stanford that the land would be appraised for over $3 billion, Stanford used $63.5 million of Antiguan real estate to simultaneously plug a multi-billion dollar hole in SIBL's balance sheet and eliminate a significant portion of Allen Stanford's personal debt to SIBL.

55. Following the fraudulent capital infusions, the largest segment of the bank's investment portfolio would have been $3.2 billion in over-valued real estate. Yet, SIBL did not disclose the transactions in its December 2008 newsletter, which touted Allen Stanford's purported capital infusion. Moreover, Stanford's real estate investments were wholly inconsistent with SIBL's representations to customers that SIBL's investment portfolio was composed of marketable securities, and not real estate.

56. Plaintiffs and other members of the Class reasonably relied upon the information regarding Allen Stanford's purported capital infusion to SIBL.

Misrepresentations Regarding Management of SIBL's Investment Portfolio

57. Prior to making decisions to entrust their money to SIBL, prospective customers routinely asked how SIBL safeguarded and monitored its assets. They also frequently inquired whether Stanford could "run off with the money."

58. In response to these questions, at least during 2006 and much of 2007, Pendergest-Holt trained SIBL's senior investment officer ("SIO") to tell customers and prospective customers that the bank's multi-billion dollar portfolio was managed by a "global network of portfolio managers" and "monitored" by a team of SFG analysts in Memphis, Tennessee. The SIO followed Pendergest-Holt's instructions, telling customers and prospective customers that SIBL's entire investment portfolio was managed by a global network of money managers and monitored by a team of more than twenty analysts.

59. Neither Pendergest-Holt nor the SIO disclosed to customers that SIBL segregated its investment portfolio into three tiers: (i) cash and cash equivalents ("Tier 1"); (ii) investments with "outside portfolio managers (25+)" that were monitored by the SFG analysts ("Tier 2"); and (iii) undisclosed assets managed by Stanford and Davis ("Tier 3"). As of December 2008, Tier 1 represented merely approximately 9% ($800 million) of SIBL's purported portfolio. Tier 2, prior to the bank's decision to liquidate $250 million of investments in late 2008, represented approximately 10% of

SIBL's portfolio. Tier 3, the undisclosed assets managed by Allen Stanford and Davis, thus represented *approximately 80%* of SIBL's investment portfolio in December, 2008.

60. Neither Pendergest-Holt nor SIBL's SIO disclosed that the bank's Tier 3 assets were managed and/or monitored exclusively by Allen Stanford and Davis. Likewise, they did not disclose that Allen Stanford and Davis surrounded themselves with a close-knit circle of family, friends and confidants, thereby eliminating any independent oversight of SIBL's assets.

61. Neither Pendergest-Holt nor the SIO disclosed to the Plaintiffs or the Class that the "global network" of money managers and the team of analysts did not manage any of SIBL's Tier 3 investments and, in reality, only monitored approximately 10% of SIBL's portfolio. In fact, Pendergest-Holt trained the SIO "not to divulge too much" about the oversight of SIBL's portfolio because that information "wouldn't leave an investor with a lot of confidence." Likewise, Davis instructed the SIO to "steer" potential customers away from information about SIBL's portfolio.

62. Plaintiffs and other members of the Class reasonably relied upon the information disseminated by SIBL's SIO when making their decisions to invest in and with the Stanford Entities.

Misrepresentation That SIBL Was "Stronger" Than Ever Before

63. On January 10, 2009, Allen Stanford, Davis and Pendergest-Holt spoke to SGC's Top Performers Club (a collection of high performing Stanford financial advisers) in Miami, Florida.

64. During that meeting, Davis stated that SIBL was "stronger" than at any time in its history. Allen Stanford, Davis, and Pendergest-Holt represented that SIBL was secure and built upon a strong foundation, and that its financial condition was shored up by Allen Stanford's capital infusions. Davis, however, failed to disclose that he had been informed only days earlier by the head of SIBL's treasury that, despite SIBL's best efforts to liquidate Tier 2 assets, SIBL's cash position had fallen from the June 30, 2008, reported balance of $779 million to less than $28 million.

65. Allen Stanford and Davis also failed to disclose to the SGC sales force that: (i) Allen Stanford had misappropriated more than $1.6 billion of investor funds; (ii) SIBL's annual reports, financial statements and quarterly reports to the FSRC were false; (iii) hundreds of millions of dollars of SIBL customers' funds had been invested in a manner inconsistent with SIBL's representations to customers that SIBL's investment portfolio was composed of marketable securities, and not real estate and/or private equity; and (iv) the purported 2008 capital infusions by Allen Stanford were a fiction.

66. During her speech, Pendergest-Holt, after being introduced as SFG's chief investment officer and a "member of the investment committee of the bank," answered questions about SIBL's investment portfolio. In so doing, she failed to disclose to attendees that she and her team of analysts did not manage SIBL's entire investment portfolio and, instead, only monitored approximately 10% of the bank's investments. She also failed to disclose that SIBL had invested SIBL's funds in a manner inconsistent with SIBL's representations to customers that SIBL's investment portfolio was composed of marketable securities, and not real estate and/or private equity.

67. Allen Stanford, Davis and Pendergest-Holt also failed to disclose that, on or about December 12, 2008, Pershing, LLC (SGC's clearing broker-dealer) had informed SGC that it would no longer process wire transfers from SGC to SIBL for the purchase of the CDs, citing suspicions about SIBL's investment returns and its inability to get from the bank "a reasonable level of transparency" into its investment portfolio.

68. Allen Stanford, Davis and Pendergest-Holt knew that SGC advisers would rely upon the information provided to them during the Top Performers Club meeting to sell CDs. Plaintiffs and other members of the Class reasonably relied upon that information.

Exposure to Losses From Madoff-related Investments

69. In the December 2008 Monthly Report, SIBL told its customers that it "had no direct or indirect exposure to any of [Bernard] Madoff s investments."

70. Contrary to this statement, Allen Stanford, Davis and Pendergest-Holt knew, prior to the release of the December 2008 Monthly Report, that SIBL had exposure to losses from the Madoff Scheme.

71. On December 12, 2008, and again on December 18, 2008, Pendergest-Holt received e-mails from Meridian Capital Partners, a hedge fund with which SIBL had invested, detailing SIBL's exposure to losses from the Madoff Scheme.

72. On December 15, 2008, an SFG-affiliated employee notified Pendergest-Holt and Davis that SIBL had exposure to losses from the Madoff Scheme in two additional funds through which SIBL had invested. That same day, Davis, Pendergest-

Holt, and others consulted with Allen Stanford regarding the bank's exposure to losses from the Madoff Scheme.

73. Allen Stanford, Davis and Pendergest-Holt never corrected this misrepresentation in the December 2008 monthly report.

74. Plaintiffs and other members of the Class reasonably relied upon the information regarding SIBL's purported lack of exposure to losses from the Madoff Scheme.

Bribery of Regulatory Officials

75. Stanford also represented to Plaintiffs and members of the Class that it was subject to the laws of the Commonwealth of Antigua and Barbuda ("Antigua") and the regulatory oversight of that nation's Financial Services Regulatory Commission of ("FSRC").

76. The FSRC was created by and, at all relevant times, existed under the authority of, Antigua's International Business Corporations Act (the "IBC Act").

77. Leroy King ("King") was the Administrator and Chief Executive Officer for the FSRC. King, among other things, was ostensibly responsible for FSRC's (and, thus, Antigua's) oversight of SIBL's investment portfolio, including the review of SIBL's financial reports, and the response to requests by foreign regulators, including the SEC, for information and documents regarding SIBL's operations.

78. King, however, "facilitated the Ponzi scheme by ensuring that the FSRC 'looked the other way' and conducted sham audits and examinations of [SIBL's] books and records. In exchange for bribes paid to him over a period of several years, King

made sure that the FSRC did not examine [SIBL's] investment portfolio. King also provided Stanford with access to the FSRC's confidential regulatory files."[4]

79. Thus, Stanford was engaged in a multi-year, international scheme in which literally every transaction was undertaken with the purpose and intent of defrauding the Class.

VI.
CLAIMS

A. COUNT ONE: AGAINST ALL DEFENDANTS FOR AVOIDANCE OF FRAUDULENT TRANSFERS UNDER § 24.005(a)(1) OF THE TEXAS UNIFORM FRAUDULENT TRANSFER ACT AND/OR UNDER THE COMMON LAW

80. Plaintiffs repeat, reiterate, and reallege each of the allegations in the foregoing paragraphs.

81. At all relevant times Defendants provided banking services to Stanford.

82. Upon information and belief, Defendants received substantial fees and other monies from Stanford during the preceding four (4) years.

83. Upon information and belief, all or substantially all of those fees and other monies were paid with funds fraudulently stolen from the Plaintiffs and members of the Class.

84. Upon information and belief, Stanford paid all such fees and other monies to the Defendants in connection with the scheme, and with the actual intent to hinder, delay, or defraud members of the Class.

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[4] SEC Action, (Proposed) Second Amended Complaint, at p. 3.

85. By reason of the foregoing, each such payment or transfer was fraudulent as to Class members whose claim(s) arose before or within a reasonable time after the transfer was made pursuant to § 24.005(a)(1) of the UFTA.

86. By reason of the foregoing, the Class is entitled to avoidance of the transfers to the extent necessary to satisfy the Class's claims against Stanford pursuant to § 24.008(a)(1) of the UFTA.

87. By reason of the foregoing, each such payment or transfer was fraudulent as to Class members and the Class is entitled to avoidance of the transfers to the extent necessary to satisfy the Class's claims against Stanford under the common law applicable to fraudulent transfers.

B. COUNT TWO: AGAINST ALL DEFENDANTS FOR AVOIDANCE OF FRAUDULENT TRANSFERS UNDER § 24.005(a)(2) OF THE TEXAS UNIFORM FRAUDULENT TRANSFER ACT AND/OR UNDER THE COMMON LAW

88. Plaintiffs repeat, reiterate, and reallege each of the allegations in the foregoing paragraphs.

89. Upon information and belief, Stanford paid all such fees and other monies to the Defendants in connection with the scheme without receiving a reasonably equivalent value in exchange for the transfers, and at a time when Stanford was engaged or was about to engage in a business or a transaction for which Stanford's remaining assets were unreasonably small in relation to the business or transaction; or Stanford intended to incur, or believed or reasonably should have believed that the it would incur, debts beyond its ability to pay as they became due.

90. By reason of the foregoing, each such payment or transfer was fraudulent as to Class members whose claim(s) arose before or within a reasonable time after the transfer was made pursuant to § 24.005(a)(2) of the UFTA.

2. By reason of the foregoing, the Class is entitled to avoidance of the transfers to the extent necessary to satisfy the Class's claims against Stanford pursuant to § 24.008(a)(1) of the UFTA.

91. By reason of the foregoing, each such payment or transfer was fraudulent as to Class members and the Class is entitled to avoidance of the transfers to the extent necessary to satisfy the Class's claims against Stanford under the common law applicable to fraudulent transfers.

C. COUNT THREE: AGAINST ALL DEFENDANTS FOR AVOIDANCE OF FRAUDULENT TRANSFERS UNDER § 24.006(a) OF THE TEXAS UNIFORM FRAUDULENT TRANSFER ACT AND/OR UNDER THE COMMON LAW

92. Plaintiffs repeat, reiterate, and reallege each of the allegations in the foregoing paragraphs.

93. Upon information and belief, Stanford paid all such fees and other monies to the Defendants without receiving a reasonably equivalent value in exchange for the transfers.

94. Upon information and belief, Stanford was insolvent at the time of each transfer or became insolvent as a result of such transfers.

95. By reason of the foregoing, each such payment or transfer to the Defendants was fraudulent as to Class members whose claim(s) arose before such transfer was made pursuant to § 24.006(a) of the UFTA.

96. By reason of the foregoing, the Class is entitled to avoidance of the transfers to the extent necessary to satisfy the Class's claims against Stanford pursuant to § 24.008(a)(1) of the UFTA.

97. By reason of the foregoing, each such payment or transfer was fraudulent as to Class members and the Class is entitled to avoidance of the transfers to the extent necessary to satisfy the Class's claims against Stanford under the common law applicable to fraudulent transfers.

D. COUNT FOUR: AGAINST ALL DEFENDANTS FOR CONSPIRACY TO COMMIT FRAUD AND/OR AIDING AND ABETTING FRAUD

98. Plaintiffs repeat, reiterate, and reallege each of the allegations in the foregoing paragraphs.

FinCEN Advisory

99. In April 1999, the United States Department of Treasury Financial Crimes Enforcement Network ("FinCEN") issued a FinCEN Advisory concerning "Enhanced Scrutiny for Transactions Involving Antigua and Barbuda. The FinCEN Advisory warned that:

> Banks and other financial institutions are advised to give enhanced scrutiny to all financial transactions routed into or out of Antigua and Barbuda, or involving entities organized or domiciled, or non-resident persons maintaining accounts, in Antigua and Barbuda....
>
> In November 1998, the government of Antigua and Barbuda amended its Money Laundering (Prevention) Act in a manner that significantly weakened that Act; the statute had been enacted in December 1996 but had not been fully implemented. In November 1998, the Antiguan and Barbudan government also changed the supervision of its offshore financial services sector, by vesting authority over that sector in a new International Financial Sector Authority. The Authority's board of directors includes

> representatives of the very institutions the Authority is supposed to regulate, thus raising serious concerns that those representatives are in fact in control of the Authority, so that the Authority is neither independent nor otherwise able to conduct an effective regulatory program in accordance with international standards.
>
> The amendment of the Money Laundering (Prevention) Act, combined with changes in Antigua and Barbuda's treatment of its offshore financial services sector, are likely to erode supervision, stiffen bank secrecy, and decrease the possibility for effective international law enforcement and judicial cooperation regarding assets secreted in Antigua and Barbuda. These changes threaten to create a "haven" whose existence will undermine international efforts of the United States and other nations to counter money laundering and other criminal activity, a concern of which the United States has repeatedly made the government of Antigua and Barbuda aware.
>
> The actions taken by the government of Antigua and Barbuda that weaken that nation's anti-money laundering laws and oversight of its financial institutions necessarily raise questions about the purposes of transactions routed into or out of Antigua and Barbuda or involving entities organized or domiciled, or non-resident persons maintaining accounts, in Antigua and Barbuda. Institutions subject to the suspicious activity reporting rules contained in 31 CFR 103.21 (effective April 1, 1996) should carefully examine the available facts relating to any such transaction, to determine if such transaction (of $5,000 or more, U.S. dollar equivalent) requires reporting in accordance with those rules. (Institutions subject to the Bank Secrecy Act but not yet subject to specific suspicious activity reporting rules should consider such a transaction with relation to their reporting obligations under other applicable law.) Enhanced scrutiny is especially important for transactions involving Antigua and Barbuda offshore banks, transactions involving both Antigua and Barbuda offshore banks and the nine commercial banks licensed to do business in Antigua and Barbuda, and transactions in which one or more of such nine commercial banks act for one or more Antigua and Barbuda offshore institutions.

100. The FinCEN Advisory's reference to the International Financial Sector Authority's board of directors including "representatives of the very institutions the Authority is supposed to regulate," was a reference to representatives of Stanford.

101. Upon information and belief, the Defendants received and were aware of the FinCEN Advisory.

102. Upon information and belief, the Defendants knew or should have known that FinCEN Advisory was referring specifically to Stanford when it warned that the International Financial Sector Authority's board of directors included "representatives of the very institutions the Authority is supposed to regulate," and that the Authority is neither independent nor otherwise able to conduct an effective regulatory program in accordance with international standards."

103. While the FinCEN Advisory was withdrawn in August 2001, FinCEN cautioned that "[t]he withdrawal of [the] Advisory...does not relieve institutions of their pre-existing and on-going obligation to report suspicious activity, as set forth in regulations issued by FinCEN and by the federal bank supervisory agencies, as well as their obligation to comply with all other applicable provisions of law."

104. Moreover, each of Defendants knew, or should have known, by virtue of their knowledge and experience in international banking and banking regulation, that Antigua's lax regulatory oversight of its offshore banking sector, including SIBL, posed a heightened risk that Stanford was involved in illegal activity.

HSBC

105. Defendant HSBC was a "correspondent" bank of SIBL, receiving wire transfers of funds from members of the Class.

106. As a correspondent bank of Stanford, HSBC was required, pursuant to The Money Laundering Regulations 2007, enacted by Parliament on July 25, 2007, and

effective as of December 15, 2007, to conduct thorough due diligence on SIBL and SFG's operations. Specifically, The Money Laundering Regulations 2007 provide, in relevant part:

> A credit institution ("the correspondent") which has or proposes to have a correspondent banking relationship with a respondent institution ("the respondent") from a non-[European Economic Area] state must—
> (a) gather sufficient information about the respondent to understand fully the nature of its business;
> (b) determine from publicly-available information the reputation of the respondent and the quality of its supervision;
> (c) assess the respondent's anti-money laundering and anti-terrorist financing controls;
> (d) obtain approval from senior management before establishing a new correspondent banking relationship;
> (e) document the respective responsibilities of the respondent and correspondent; and
> (f) be satisfied that, in respect of those of the respondent's customers who have direct access to accounts of the correspondent, the respondent—
> (i) has verified the identity of, and conducts ongoing monitoring in respect of, such customers; and
> (ii) is able to provide to the correspondent, upon request, the documents, data or information obtained when applying customer due diligence measures and ongoing monitoring.

107. Upon information and belief, prior to and during their establishment of a correspondent banking relationship with Stanford, HSBC gathered sufficient information concerning Stanford to understand Stanford's business and, as a result, knew, or should have known, that Stanford was conducting an illegal and fraudulent scheme.

108. Stanford provided members of the Class with deposit instructions indicating that they could make deposits in Antigua-based SIBL by wiring funds to HSBC in London.

109. HSBC was aware of these instructions that were provided to members of the Class, and expressly agreed with Stanford to receive wire deposits from members of the Class for further transfer to SIBL in Antigua.

110. After the establishment of the HSBC-Stanford correspondent bank relationship, members of the Class transferred funds to HSBC with the intent that such funds would be transferred to SIBL in Antigua for deposit there.

111. Upon information and belief, all or substantially all of the funds that members of the class transferred to HSBC, with the intent that such funds would be transferred to SIBL in Antigua for deposit there, were redirected by HSBC, in concert with and/or at the direction of Stanford, to bank accounts in Houston, Texas, and elsewhere, after which such funds were distributed to other Stanford entities, "invested" in Allen Stanford's private ventures, used to fund Allen Stanford's lavish lifestyle, and reinvested in the criminal venture to keep the fraudulent scheme in operation.

112. Based upon the foregoing, and based upon its longstanding correspondent banking relationship with Stanford, HSBC knew, or should have known, that Stanford was conducting an illegal and fraudulent scheme.

TD Bank

113. Defendant TD Bank was a "correspondent" bank of SIBL, receiving wire transfers of funds from members of the Class.

114. As a correspondent bank of SFG, TD Bank was required, pursuant to Canadian money laundering regulations, to conduct thorough due diligence on SIBL and SFG's operations.

115. Upon information and belief, prior to and during their establishment of a correspondent banking relationship with SFG, TD Bank gathered sufficient information concerning SFG to understand Stanford's business and, as a result, knew, or should have known, that Stanford was conducting an illegal and fraudulent scheme.

116. Stanford provided members of the Class with deposit instructions indicating that they could make deposits in Antigua-based SIBL by wiring funds to TD Bank.

117. TD Bank was aware of these instructions that were provided to members of the Class, and expressly agreed with Stanford to receive wire deposits from members of the Class for further transfer to SIBL in Antigua.

118. After the establishment of the TD Bank-Stanford correspondent bank relationship, members of the Class transferred funds to TD Bank with the intent that such funds would be transferred to SIBL in Antigua for deposit there.

119. Upon information and belief, all or substantially all of the funds that members of the class transferred to TD Bank, with the intent that such funds would be transferred to SIBL in Antigua for deposit there, were redirected by TD Bank, in concert with and/or at the direction of Stanford, to bank accounts in Houston, Texas, and elsewhere, after which such funds were distributed to other Stanford entities, "invested" in Allen Stanford's private ventures, used to fund Allen Stanford's lavish lifestyle, and reinvested in the criminal venture to keep the fraudulent scheme in operation.

120. Among other things, during 2008 alone, approximately $474 million of funds were transferred from SIBL's accounts at TD Bank to SIBL's account at BoH.

121. Based upon the foregoing, and based upon its longstanding correspondent banking relationship with Stanford, TD Bank knew, or should have known, that Stanford was conducting an illegal and fraudulent scheme.

Société Générale

122. Defendant Société Générale provided "private banking" services to Stanford.

123. Upon information and belief, Société Générale earned substantial fees through its "private banking" relationship with Stanford.

124. Blaise Friedli, the Executive Vice President of Private Banking at Société Générale, served on the Stanford Financial Group International Advisory Board.

125. Upon information and belief, Stanford, with the active support and assistance of Friedli and Société Générale, made illicit payments to Stanford's outside auditor in exchange for the auditor's role in conducting sham audits and falsely vouching for the financial integrity of SIBL and SIBL's investments.[5]

126. Specifically, Stanford made regular monthly payments to an outside auditor, C.A.S. Hewlett, as payment for that firm's accounting services. Those regular payments, made from a Stanford Financial Group Limited account at Trustmark Bank in Houston, Texas, were $18,000 per month for professional services in 2007 and through April 2008, and $25,000 per month thereafter.

[5] The allegations concerning the payments to C.A.S. Hewlett from the account at Société Générale are made upon information and belief, and based upon the Supplemental Declaration of Karyl Van Tassel dated July 10, 2009, submitted in *In re Stanford International Bank, Ltd.*, Case No. 3-09-CV-0721-N (S.D. Tex.), Dkt. No. 42, Exh. A.

127. Stanford, however, made *additional* payments to C.A.S. Hewlett from its private Swiss accounts at Société Générale. Those payments, which were in the amount of £ 15,000 (sterling) per month, were *increased* to £20,000 (sterling) per month effective June 15, 2008. Upon information and belief, those additional payments were not for audit services, but were instead illicit payments made with the purpose and intent of paying C.A.S. Hewlett to provide fraudulent auditing services.

128. Mr. Friedli, a member of the Stanford Financial Group International Advisory Board, and the Executive Vice President of Private Banking at Société Générale, was aware of those payments to C.A.S. Hewlett and, in fact, was essential to carrying them out. According to documents made filed in the Receivership Action, James Davis informed Mr. Friedli in May 2008 to increase the additional payments to C.A.S. Hewlett from the Société Générale accounts, and Stanford's financial records reflect that Mr. Friedli did so.

129. Based upon the foregoing, and based upon Mr. Friedli's knowledge: (a) of Stanford as a member of Stanford's International Advisory Board; (b) of Stanford's bank accounts and funds transfers as the Executive Vice President of Private Banking at Société Générale, and the Société Générale banker in charge of overseeing those accounts; and (c) that Stanford was making monthly illicit payments to C.A.S. Hewlett from accounts at Société Générale, Société Générale knew, or should have known, that Stanford was conducting an illegal and fraudulent scheme.

Trustmark

130. Trustmark held and managed numerous Stanford operating accounts, including a SIBL "sweep" account, which sent: (i) approximately $295 million to SIBL's account at TD Bank during 2008; (ii) approximately $66 million to an SIBL client account at Trustmark; (iii) $32 million to an SIBL Vendor Account at Trustmark; and (iv) approximately $2 million to the SIBL Payroll Account at Trustmark.

131. Trustmark was required, pursuant to U.S. anti-money laundering laws and regulations, to conduct a thorough investigation of any suspicious and potentially illegal banking activity.

132. Upon information and belief, Trustmark received large and highly suspicious wire transfers from HSBC and TD Bank of funds that were received by those institutions from members of the Class and intended for deposit with SIBL in Antigua.

133. Upon information and belief, Class members who paid by check in U.S. dollars sent their checks to SIBL in Antigua, where those checks were bundled and sent daily to Trustmark National Bank in Houston, Texas, for deposit there.

3. Members of the Class were not aware that their checks were diverted from Antigua to Houston, Texas, where they were deposited in a bank other than the intended recipient, SIBL.

134. Upon information and belief, numerous large transfers of funds were made from SIBL's accounts at Trustmark to other Stanford entities, "invested" in Allen Stanford's private ventures, used to fund Allen Stanford's lavish lifestyle, and reinvested in the criminal venture to keep the fraudulent scheme in operation.

135. Based upon the foregoing, and based upon its longstanding banking relationship with Stanford, Trustmark knew, or should have known, that Stanford was conducting an illegal and fraudulent scheme.

BoH

136. BoH held and managed certain of Stanford's operating accounts, including Stanford's principal operating account.

137. BoH was required, pursuant to U.S. anti-money laundering laws and regulations, to conduct a thorough investigation of any suspicious and potentially illegal banking activity.

138. Upon information and belief, BoH received large and highly suspicious wire transfers from HSBC and TD Bank of funds that were received by those institutions from members of the Class and intended for deposit with SIBL in Antigua.

139. Among other things, during 2008 alone, approximately $474 million of funds were transferred from SIBL's accounts at TD Bank to SIBL's account at BoH.

140. Members of the Class were not aware that their checks were diverted from Antigua to Houston, Texas, where they were deposited in a bank other that the intended recipient, SIBL.

141. Upon information and belief, numerous large transfers of funds were made from SIBL's accounts at BoH to other Stanford entities, and "invested" in Allen Stanford's private ventures, used to fund Allen Stanford's lavish lifestyle, and reinvested in the criminal venture to keep the fraudulent scheme in operation. Upon information

and belief, during 2008 approximately $300 million of SIBL funds were distributed from BoH among various Stanford entities.

142. Based upon the foregoing, and based upon its longstanding banking relationship with Stanford, BoH knew, or should have known, that Stanford was conducting an illegal and fraudulent scheme.

General Allegations

143. Defendants together or separately, conspired with Stanford to commit fraud.

144. The object of the fraud was to fraudulently induce members of the Class to send funds to SIBL, which were then distributed to Defendants in the form of "fees," and diverted for: (a) "investment" in Allen Stanford's personal business ventures; (b) funding Allen Stanford's lavish lifestyle; and (c) funding and perpetuating the fraud described above.

145. Defendants together or separately, had a meeting of the minds with Stanford on the course of action for perpetrating the fraud.

146. Specifically Defendants, by word and deed, conveyed to members of the Class that funds transmitted to SIBL, through HSBC and/or TD Bank, were being deposited in SIBL in Antigua, and being entrusted to a legitimate banking institution.

147. By reason of the foregoing, the Class has been damaged in an amount to be determined at trial, but believed to be in excess of $7 billion.

148. By reason of the foregoing, Defendants are liable to the Plaintiffs and the Class for Conspiracy to Commit Fraud and/or Aiding and Abetting Fraud.

JURY DEMAND

149. Plaintiffs demand a jury trial.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

(i) certify the Class;

(ii) enter judgment in favor of the Class and against the Defendants: (a) ordering the avoidance of the fraudulent transfers described herein;

(b) awarding damages in an amount to be determined at trial;

(c) awarding attorney fees, and costs as permitted by law; and

(d) granting such other and further relief as the Court may deem just and appropriate.

LACKEY HERSHMAN, L.L.P.

By: /s/ Scott S. Hershman
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DISTRICT COURT OF HARRIS COUNTY TEXAS

I, Loren Jackson, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date
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