BAR TALK ONLINE

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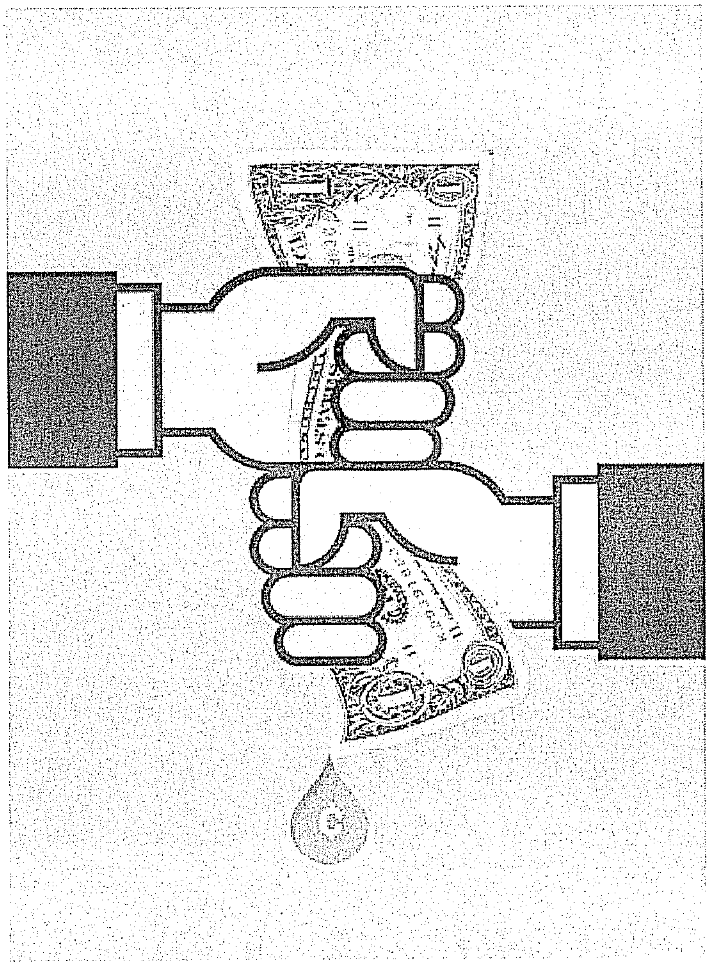


SQUEEZE PLAY

Investors in Allen Stanford's Ponzi scheme are now at the mercy of a floundering receivership. What went wrong? BY JULIE TRIEDMAN

Illustration By OLIVER MUNDAY

RALPH JANVEY WAS dealt a tough hand. The 61-year-old Dallas attorney was appointed in February 2009 to extract assets from the wreckage of R. Allen Stanford's empire on behalf of harmed investors. The Texas Ponzi schemer's businesses included 145 separate entities and assets spread out across more than a dozen countries.

However, critics contend that Janvey is making a mess of an already complicated proceeding. Two-and-a-half years into his term as receiver, Janvey has spent a lot and produced little. Some investors are complaining that Janvey's strategy is flawed, and accuse him of mismanaging funds. The Securities and Exchange Commission, which picked Janvey for the job, criticized his tactics and his spending early on, but since then has been quiet; the agency is now under scrutiny for possible lapses in its oversight of its receiver. Tensions between investors, the receiver, and the SEC are reaching a boiling point.

Contrast Janvey's progress to that of Irving Picard, the Baker & Hostetler partner and appointed trustee in the Securities Investor Protection Corp (SIPC)–supervised liquidation of Bernard Madoff's businesses. Picard has recovered more than $10 billion of $70 billion lost and, as of February, had spent about $290 million—0.3 percent of recovered assets—on legal and professional fees. Janvey, by contrast, had recovered $209 million as of July, including $63 million in cash balances already in Stanford accounts when he was appointed. Out of $7.2 billion in vanished CD investments, only about 3 cents had been recovered per dollar lost. And nearly half had already been spent: $49.2 million toward professional fees and $49.2 million in costs related to the wind-down of Stanford operations.

And things are not looking promising moving forward. Even if every penny is recovered from the frozen Stanford accounts abroad and from the 1,000-plus defendants in 54 clawback and fraudulent conveyance suits—an outcome that Janvey recently called very unlikely—Stanford's investors are still looking at getting back a maximum of just 14 cents per dollar.

In fairness, receivership experts say that Janvey, of four-lawyer Dallas litigation boutique Krage & Janvey, inherited a far different situation than Picard. The Madoff trustee has recovered billions of dollars in settlements with Madoff "feeder funds," while Janvey has no low-hanging fruit to go after. Stanford subsidiaries, not feeder funds, funneled new investors into the sham CDs issued by Stanford's Antiguan bank. Moreover, Stanford's companies never relied on the deep-pocketed audit firms, which have been the targets of other receivers. Janvey's efforts to find and recover Stanford assets, unlike Picard's, have been mired in cross-border jurisdictional disputes, with a parallel Antiguan liquidation proceeding successfully vying for control abroad. Janvey has been shut out of $335 million in known Stanford accounts in Canada and Europe, and has been barred from Antiguan warehouses holding Stanford records that may contain information about additional money.

But Janvey's troubles are also a product of the choices he's made. While Picard's team has even earned the praise of opposing counsel, Janvey's team has managed to alienate many investors and other would-be allies like the SEC. "You know everyone in the courtroom is angry with you," the judge overseeing the Stanford receivership, Dallas federal district court judge David Godbey, said in August 2009.

A first, major misstep was Janvey's decision to freeze investor accounts and sue individual investors for the return of their principal, not just their profits, in a wholesale attempt to redistribute losses evenly across all past and current investors. That is almost never done, say veterans of other Ponzi-scheme receiverships. The move prompted the SEC in June 2009 to ask Judge Godbey to rein in the receiver.

In another questionable move, in February 2011 Janvey's team sent out a spray of small-potatoes fraudulent conveyance claims that engendered a lot of ill will. His targets included a couple of children's hospitals, a Washington think tank, and a religious charity, among others. "These type of cases are very winnable, but it's a very tough call to make politically," says Barnes & Thornburg partner John Mills III, who has represented receivers and examiners in Ponzi schemes.

Around the same time, Janvey lodged a slew of eight-to-low-nine-figure fraudulent conveyance claims against the PGA Tour, the Golf Channel, the Memphis Grizzlies, the Houston Rockets, individual pro athletes seeking the return of money Stanford paid for endorsement contracts. Counsel say that such claims are much more difficult to win, since the contracts were fulfilled, and defendants are fighting them aggressively. "Under his theory, if Stanford made payments to Con Edison to keep his electricity on, it could be a potential target too," observes Akerman Senterfitt's Michael Goldberg, an expert on Ponzi schemes.

Janvey declined to comment on these claims,

> "You know everybody in the court is angry with you," **THE JUDGE OVERSEEING THE STANFORD RECEIVERSHIP SAID BACK IN 2009.** It's still true.

FROM FIRM TO FARM

When Hunton & Williams partner THOMAS SLATER entertains recruits, he doesn't buy them cocktails. Instead the litigator takes potential new hires to his historic Virginia farm, where laterals and associates trade briefs for boots and enjoy hayrides, horseback rides, and perhaps even bull rides. *Yee-haw!*

MICHAEL J.N. BOWLES

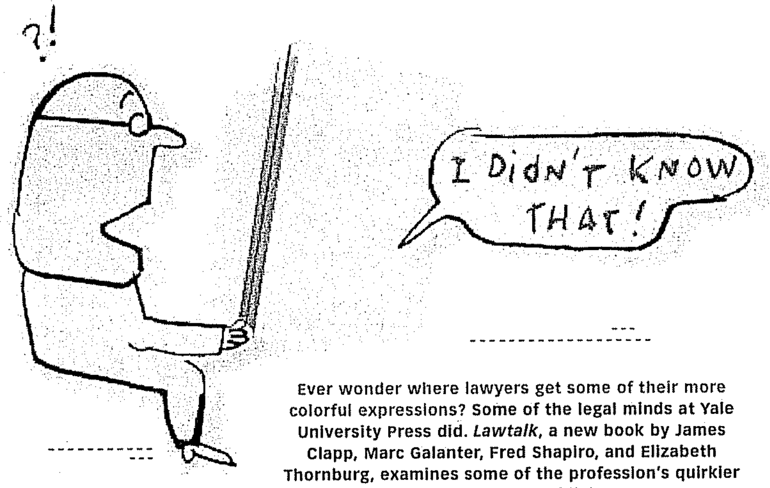
but his lead counsel, Baker Botts's Kevin Sadler, notes that Stanford used investor money to promote the Stanford name, and it was instrumental in perpetuating the Ponzi deal.

Meanwhile, investor frustration has been growing. In July a group of investors led by Gaytri Kachroo, the former McCarter & English lawyer who vaulted to prominence as counsel to Madoff whistle-blower Harry Markopolous, filed a motion to intervene. The group claims that the seven-member committee Janvey installed as the only investor voice with legal standing—which includes five lawyers and two investors—doesn't adequately represent investors' interests. Kachroo's clients allege that the lawyers on the committee, who have taken over suits originally developed by Janvey's legal team, are "double-dipping" in the estate. Under agreements approved by the judge earlier this year, the firms are eligible for a quarter of any recoveries. Those contingency fees, Kachroo asserts, come on top of retainers each firm had already signed with individual investors. (Retainer contracts ranged from $500 to $20,000 per investor, according to copies provided to *The American Lawyer*.) "The committee filed dozens of identical, boilerplate lawsuits based on the receiver's investigation, and will be rewarded generously for little or no work," Kachroo charges. Butzel Long partner Peter Morgenstern, a committee member representing roughly 1,000 investors, counters by saying that the retainer fees cover matters such as processing individual claims in both Stanford proceedings, regular communications with clients, and filing class actions on behalf of investors. The double-dipping notion "is a nonissue," he says. "We're all working awfully hard, and the finger-pointing and personal attacks are not constructive." At press time the judge had not yet ruled on the motion.

But all of the noise created by unhappy investors has finally caught the attention of the SEC. In July, David Kotz, the agency's inspector general, announced an investigation into the SEC's handling of the receivership. Though the scope of the investigation is still being determined, the office will be looking at potential misconduct or negligence by SEC staff, Kotz says. And in August, after facing intense pressure on Capitol Hill, the SEC declared that Stanford's victims are entitled to relief from SIPC, and has asked it to take over the liquidation of one of the 145 Stanford entities. Should that happen, it would flip the Stanford brokerage unit over to the control of bankruptcy court and a new SIPC–appointed trustee—leaving Janvey's future role in recovery efforts up in the air. A decision was expected in late September.

E-mail: jtriedman@alm.com.

SERGE BLOCH



Ever wonder where lawyers get some of their more colorful expressions? Some of the legal minds at Yale University Press did. *Lawtalk*, a new book by James Clapp, Marc Galanter, Fred Shapiro, and Elizabeth Thornburg, examines some of the profession's quirkier phrases. A few highlights:

CUT THE BABY IN HALF

In the Bible, King Solomon proposed this solution to resolve a custody battle: The woman who gave up the baby to avoid slicing it in half was deemed the true mother.

HANGED FOR A SHEEP

This phrase from an old English proverb refers to the idea that if a criminal planned to kill a lamb, he might as well kill a more valuable sheep.

INDICT A HAM SANDWICH

Former NY chief judge Sol Wachtler—who was later indicted himself for stalking an ex-girlfriend—coined the term in 1984 to show that grand juries had become useless.

SCOFFLAW

The term was originally used in reference to those who drank openly during Prohibition—and scoffed at the law.

JAILBAIT

The word appears to come from 1920s Chicago street slang. Official origins are unknown . . . but obvious.

WET FOOT, DRY FOOT

The phrase came about when a border patrol employee, attempting to explain the Clinton administration's policy toward Cuban refugees to a Miami reporter, pointed to Dr. Seuss flash cards of the same name.