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

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| **IN RE:** | § | |
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| **STANFORD INTERNATIONAL** | § | |
| **BANK, LTD., *et al.*,** | § | **CIVIL ACTION NO. 3:09-CV-0721-N** |
| | § | |
| **Debtor in a Foreign Proceeding.** | § | |

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# BRIEF OF THE OFFICIAL STANFORD INVESTORS COMMITTEE IN OPPOSITION TO THE PETITION FOR RECOGNITION OF FOREIGN MAIN PROCEEDING PURSUANT TO CHAPTER 15 OF THE BANKRUPTCY CODE

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**BRIEF OF THE OFFICIAL STANFORD INVESTORS COMMITTEE IN OPPOSITION TO THE PETITION FOR RECOGNITION OF FOREIGN MAIN PROCEEDING PURSUANT TO CHAPTER 15 OF THE BANKRUPTCY CODE**

TO THE HONORABLE JUDGE OF SAID COURT:

The Official Stanford Investors Committee (the "Investors Committee") submits this brief in opposition to the Petition for Recognition of Foreign Main Proceeding Pursuant to Chapter 15 of the Bankruptcy Code [Doc. No. 4] (the "Petition"). The Petition was originally filed by the former liquidators, Nigel Hamilton-Smith and Peter Wastell, and is now championed[1] by Marcus Wide and Hugh Dickson (the "Joint Liquidators").

## I. Preliminary Statement and Argument Summary

When the parties last addressed the Petition in any substantive fashion, the Investors Committee had not been formed.[2] In this Brief, the Investors Committee will not repeat the extensive arguments already made by the SEC, the Receiver and the Examiner concerning the application of Chapter 15, the case law interpreting it, and this Court's analysis of where the

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[1] The Investors Committee assumes that the Joint Liquidators have adopted and seek recognition pursuant to the Petition originally filed by their predecessors, Messrs. Hamilton-Smith and Wastell. There is no other pleading on file in this proceeding pursuant to which the Joint Liquidators seek recognition, or any other relief.

[2] The Investors Committee was formed by an Order entered by this Court on August 10, 2010. Civil Action No. 09-298, Doc. 1149. The parties last filed substantive briefs addressing the Petition during the latter half of 2009.

center of main interest ("COMI") was located for both Stanford International Bank, Ltd. ("SIBL") and the Stanford fraud as a whole.[3]

The Investors Committee respectfully urges the Court to deny the Joint Liquidators any form of recognition under Chapter 15. Any recognition of these Joint Liquidators would be "manifestly contrary to the public policy of the United States." 11 U.S.C. § 1506. That is so for at least four separate reasons.

First, the appointment of the Joint Liquidators (and their predecessors) was pursued and obtained in violation of this Court's Orders. *See* Civil Action No. 3:09-CV-0298-N, Docs. No. 10 (the "Receivership Order") and 1130.[4] Granting these Joint Liquidators any form of Chapter 15 recognition, under these circumstances, would undermine fundamental regulatory and jurisdictional policies of the United States. *See, e.g., In re Gold & Honey, Ltd.*, 410 B.R. 357, 371-373 (Bankr. E.D.N.Y. 2009)(denying recognition to foreign receivers appointed in violation of automatic stay).

Second, there are significant conflicts of interest raised by the Joint Liquidators' request for recognition as the "foreign main" proceeding. The Receivership Estate has significant claims against the Antiguan government that will likely be frustrated (or abandoned) if the Joint Liquidators achieve "foreign main" recognition. The Investors Committee believes those conflicts are exacerbated by the multiple representations that have been undertaken in this proceeding by counsel for the Joint Liquidators.

Third, the recognition sought by the Joint Liquidators should be denied because it is very much a "one-way street." The Antiguan courts have already refused to recognize this Court's

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[3] The Investors Committee agrees with the SEC, the Receiver and the Examiner that SIBL's COMI was at all relevant times in the United States, not in Antigua.

[4] In this Brief, the Investors Committee will refer to documents filed in this proceeding (Civil Action No. 3:09-CV-0721-N) by their Docket No. [Doc. No. __]. Documents on file in other Stanford-related proceedings will be referred to by both the case number and docket number.

Receiver, finding both that the Receiver has "no legal entitlement to standing in Antigua and Barbuda" and that this Court's Order appointing the Receiver and taking sole possession of the assets of the various Stanford entities, including SIBL, was "unenforceable." Doc. No. 21-7 at ¶¶41-44 (order of the Antiguan court appointing the prior joint liquidators).

Fourth, recognition should be denied because it has become painfully obvious that the Antiguan government and the Antiguan judicial system have no real interest in prosecuting the individuals responsible for the Stanford fraud, nor in recovering assets for the benefit of Stanford's investor-victims. The Antiguan liquidation, which the Joint Liquidators now seek to have recognized as a "foreign main proceeding," was permitted by the Antiguan authorities and courts to lie dormant for almost a full year following the order "removing" the prior joint liquidators. Moreover, those same authorities and courts expropriated (or attempted to expropriate) valuable assets owned by the Stanford estate and permitted other assets that are subject to this Court's Receivership Order to be operated by Andrea Stoelker pursuant to a purported power of attorney given to her by Allen Stanford, all to the detriment of Stanford's victims.

## II. The Investors Committee

The Investors Committee was created by an Order of this Court issued on August 10, 2010 (the "Committee Order"). Civil Action No. 3:09-CV-0298-N, Doc. No. 1149. The Committee Order directs the Investors Committee to represent the customers of SIBL "who, as of February 16, 2009, had funds on deposit at [SIBL] and/or were holding certificates of deposit issued by [SIBL]." Committee Order at 2. The Committee Order confers upon the Investors Committee "rights and responsibilities similar to those of a committee appointed to serve in a bankruptcy case," including the "right to raise, appear and be heard on any issue in the

Receivership proceedings." *Id.* at 4.

The members of the Investors Committee were chosen by the agreement of certain Stanford investors, the SEC, the Receiver, and the Court-appointed Examiner, John J. Little (the "Examiner"), so that they would represent the broadest possible spectrum of Stanford investors. This Court has recently commented upon the international perspectives represented by the members of the Investors Committee. Civil Action No. 3:09-CV-0298-N, Doc. No. 1471 at 10.

## III. Factual Background

This Receivership was instituted more than 33 months ago. At that time, Allen Stanford and his co-conspirators were carrying out a massive international Ponzi scheme that was centered in the United States, primarily in Houston, Texas. Stanford was able to carry out his fraud, in part, through the "international bank" he owned in Antigua that served as the issuer of so-called "certificates of deposit" that were sold to investors. The purported bank in Antigua, SIBL, was a sham. It had few dealings with any customers and was not permitted to sell its CD products to Antiguan citizens. Doc. No. 21-7 at 3 (Declaration of Nigel Hamilton-Smith). Almost none of the money purportedly deposited into SIBL was actually held by SIBL, and virtually all decisions relating to the management of SIBL's supposed assets were made in the United States.[5]

The SEC brought this fraud to light on February 16, 2009, by filing its Original Complaint. Civil Action No. 3:09-CV-298-N, Doc. No. 1. This Court entered its original temporary restraining order, *id.*, Doc. No. 8 and the Receiver Order on the same date.

A few days later, the Antiguan government, acting through the Financial Services Regulatory Commission ("FSRC", the Antiguan government agency charged with regulating

[5] The Receiver's expert indicates that the average amount of cash on hand at SIBL was under $1,000,000 throughout most of its existence, as compared to the billions of dollars that were carried on its supposed balance sheet.

international banks like SIBL)[6] disregarded this Court's order vesting exclusive custody and control of all Stanford assets in this Court and its Receiver, and instituted proceedings seeking the "liquidation and dissolution" of SIBL, in an effort to bring to Antigua all of the "assets" of SIBL. At approximately the same time, an alleged Stanford investor residing in Miami named Alexander Fundora[7] also disregarded this Court's Orders and filed his own proceeding in the Antiguan courts seeking the liquidation and dissolution of SIBL. This Court's Receiver also attempted to participate in the proceedings commenced by FSRC and Mr. Fundora.

The Antiguan court first appointed two individuals (Nigel Hamilton-Smith and Peter Wastell) employed by Vantis Business Recovery Services ("Vantis") as its liquidators. Doc. No. 21-7 at 22 of 40. Vantis accomplished little, incurred fees and expenses in excess of $18 million,[8] acted in disregard of this Court's Orders, frustrated the Receiver's efforts to carry out his court-appointed duties with respect to overseas assets, and in some cases, even destroyed evidence.

By early 2010, Mr. Fundora[9] was back in the Antiguan courts, again in violation of this Court's orders, seeking the removal of the Vantis liquidators, Messrs. Hamilton-Smith and Wastell, and the appointment of Mr. Marcus Wide in their stead. The Antiguan court issued an

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[6] The SEC alleges that FSRC was complicit in Stanford's scheme. Leroy King, the former chief executive officer of the FSRC, has been named as a defendant by the SEC in these proceedings and has been indicted in the criminal proceedings pending in Houston, Texas. To date, the government of Antigua has not seen fit to extradite Mr. King so that he can face these charges.

[7] Mr. Fundora was represented by, among others, Mr. Edward Davis and his law firm in his efforts to obtain relief in the Antiguan courts.

[8] The Joint Liquidators have indicated that Vantis incurred fees in excess of $18 million. Doc. No. 76-18 at 6. No supporting materials have been made available to document those fees, and neither the Joint Liquidators nor their predecessors at Vantis have ever made information concerning their fees and expenses available to the Receiver, the Examiner or the Investors Committee. The Joint Liquidators also have indicated that the Antiguan court was to address the fee claims of Vantis in October 2011. *Id.* To date, there has been no report concerning what, if anything, the Antiguan court decided with respect to the Vantis fee claim.

[9] In this effort, Mr. Fundora was again represented by the same counsel, Mr. Edward Davis and Mr. Martin Kenney, who now represent the Joint Liquidators that Mr. Fundora got appointed.

Order dated June 8, 2010, removing Vantis. Doc. No. 69. That Order apparently was appealed and the Antiguan liquidation proceedings went dormant for almost a year.[10] Almost three years into this Receivership proceeding, the Joint Liquidators now ask this Court to recognize them, and the Antiguan liquidation proceedings commenced in violation of this Court's Orders, as a "foreign main" proceeding pursuant to Chapter 15.

## IV. The Joint Liquidators Should Not be Recognized Under Chapter 15

The Joint Liquidators have no entitlement to recognition under Chapter 15 of the Bankruptcy Code. They bear the burden of proof as to each element that must be established in order to obtain any form of recognition. *In re Bear Stearns High-Grade Structured Credit Strategies Master Fund, Ltd.*, 389 B.R. 325, 335 (S.D.N.Y. 2008). Recognition under Chapter 15 – whether as a "foreign main" or "foreign non-main" proceeding – is not a "rubber stamp exercise." *In re Basis Yield Alpha Fund (Master)*, 381 B.R. 37, 40 (Bankr. S.D.N.Y. 2008). In deciding the Petition, this Court can – indeed, it must – consider "any and all relevant facts." *Id.* at 41.

Among the "relevant facts" that this Court must consider are those that demonstrate that any recognition of the Antiguan proceedings under Chapter 15 would be contrary to the public policy of the United States. Section 1506 expressly authorizes this Court to deny recognition on public policy grounds: "[n]othing in this chapter prevents the court from refusing to take any action governed by this chapter if the action would be manifestly contrary to the public policy of the United States." *See* 11 U.S.C. § 1506. The Investors Committee suggests that this case represents exactly the reason that Congress included Section 1506 within Chapter 15 and respectfully request the Court use it to decline to recognize the Antiguan proceedings because

[10] The Joint Liquidators blame "legal posturing" by Vantis for the almost year-long delay between the removal of Vantis (on June 8, 2010) and the appointment of the Joint Liquidators (on May 12, 2011). Doc. No. 76 at 1.

any such recognition would put fundamental policies of the United States at risk. *In re Gold & Honey, Ltd.*, 410 B.R. 357, 372 (Bankr. E.D.N.Y. 2009).

### A. The Antiguan Proceedings Were Commenced, and the Joint Liquidators Appointed, in Violation of this Court's Orders.

This Court's Receivership Order was signed on February 16, 2009. In that Order, the Court "assumed exclusive? jurisdiction" and took "possession of the assets, monies, securities, properties, real and personal, tangible and intangible, of whatever kind or description, ***wherever located*** . . . of the Defendants and all entities they own or control." Receivership Order at 1 (emphasis added). SIBL was one of the "Defendants" that was named in, and bound by, that Order. *Id.* The Receivership Order, and the SEC lawsuit that gave rise to it, was widely reported in the press. The Antiguan Court recognized as much, noting that "international media news items" concerning the SEC's application caused SIBL to be "inundated by depositors" demanding their money. Doc. No. 21-7 at 7-8 of 40.

The Receivership Order also enjoined "creditors and all other persons" from taking a variety of actions unless those actions were filed in this Court or pursuant to this Court's further Order. Among the actions enjoined were "the commencement or continuation" of any "judicial, administrative or other proceeding against the Receiver, any of the defendants," or the Receivership Estate. Receivership Order at 6.

Both the FSRC and Mr. Fundora, together with their respective counsel,[11] chose to disregard this Court's Receivership Order and to institute proceedings against one of the defendants (SIBL) and the Receivership Estate. Initially, those proceedings resulted in the appointment of Messrs. Hamilton-Smith and Wastell, from Vantis, as the joint liquidators of

[11] While this Court's ability to enforce its Receivership Order against the FSRC may be subject to question, there is no doubt that both Mr. Fundora and his counsel, Mr. Davis, as American citizens and Florida residents, were and are subject to the Receivership Order and to this Court's power to enforce that Order.

SIBL. Some months later,[12] Mr. Fundora and his counsel again chose to disregard this Court's Receivership Order when they filed Mr. Fundora's petition seeking to remove Vantis and replace it with Mr. Wide as successor liquidator of SIBL. At all pertinent times, the Antiguan courts were well aware of this Court's Receivership Order, but chose to disregard it as "unenforceable" and to dismiss this Court's Receiver because he was not "entitled to standing" in the Antiguan courts.

As the SEC made clear in its initial brief filed in this proceeding, a fundamental policy of the United States is to maintain its ability (through the SEC) to enforce the securities laws enacted by Congress and the securities regulations adopted by the SEC. *See* Doc. 18 at 10. An equally fundamental policy of the United States is the need to preserve the jurisdiction of U.S. Courts, particularly when that jurisdiction is invoked (as it was here) by a governmental agency as a part of its regulatory and enforcement function. Granting any form of recognition to the Joint Liquidators would be manifestly contrary to these fundamental policies of the United States.

While there are relatively few cases that invoke Section 1506 to deny recognition, *In re Gold & Honey, Ltd.*, 410 B.R. 357, 372 (Bankr. E.D.N.Y. 2009) is such a case. More importantly, it addresses circumstances very similar to those present here. In *Gold & Honey*, the bankruptcy court entirely denied recognition to receivers who were appointed by an Israeli court. Like this case, the appointment of the Israeli receivers in *Gold & Honey* was pursued and obtained by a creditor after the automatic stay imposed by the Bankruptcy Code was triggered. 410 B.R. at 368. Also like this case, the bankruptcy court took note that the Israeli court was aware of the automatic stay and decided, in essence, to ignore it. *Id.* at 369. In deciding to deny

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[12] The Investors Committee has not been able to determine precisely when Mr. Fundora filed his proceeding in Antigua seeking to remove Vantis and appoint Mr. Wide as a successor liquidator.

recognition, the *Gold & Honey* court said the following:

> Recognition of the Israeli Receivership Proceeding as a foreign proceeding would be manifestly contrary to the public policy of the United States because such recognition would reward and legitimize [the creditor's] violation of both the automatic stay and this Court's Orders regarding the stay.

*Id.* at 372. The Court further observed that "[r]ecognition of such a proceeding would harm the United States' ability to carry out fundamental bankruptcy and jurisdictional policies." *Id.* at 373.

This Court can and should reach the same conclusion. Like the creditor in *Gold & Honey*, Mr. Fundora and his counsel twice commenced proceedings and sought the appointment of Joint Liquidators in the Antiguan courts in blatant violation of this Court's Receivership Order. Like the Israeli court, the Antiguan courts considered this Court's Receivership Order and decided to ignore it, deeming it "unenforceable." Doc. No. 21-7 at ¶¶41-44. As the court did in *Gold & Honey*, this Court should conclude that any recognition of these Joint Liquidators "would be manifestly contrary to the public policy of the United States because it would reward and legitimize" Mr. Fundora's violation of this Court's Receivership Order.

### B. Any Recognition of the Joint Liquidators Raises Multiple Conflicts of Interest

The Joint Liquidators' request for recognition should also be rejected because of the significant conflicts of interest raised by that request. The Receivership Estate (and Stanford's creditors) have significant claims against the Antiguan government arising out of its dealings with SIBL and other Stanford entities, both before and after the Receivership was created.

Among the claims the Receivership can and should assert that relate to the period before the Receiver was appointed are at least the following:

a. claims against the Antiguan government, the FSRC, and certain of its officials/employees for facilitating Stanford's fraud;

b. claims against the government of Antigua for loans made by SIBL to the Antiguan government that have never been repaid;[13] and

c. claims against various present and former officials within the Antiguan government to recover bribes and other fraudulent transfers made by Stanford to those officials.

Other claims against the Antiguan government arose following this Court's appointment of the Receiver, including at least the following:

a. claims relating to the decision to seize the Stanford-owned Bank of Antigua (and all of its assets);

b. claims relating to the government's effort to expropriate Antiguan real estate owned by Stanford entities; and

c. claims relating to the Antiguan authorities' failure to secure various properties owned by Stanford, such that they continued to be operated by one of Allen Stanford's girlfriends, Andrea Stoelker, for her own benefit and to the detriment of Stanford's creditors.

To date, the Joint Liquidators have made almost no effort to prosecute any of the above claims.[14] Stanford's investor/victims have little confidence that recognition will cause the Joint Liquidators to begin a vigorous prosecution of these claims.

As if these concerns were not sufficient to justify the denial of recognition, an additional conflict accompanies the lead counsel for the Joint Liquidators. As noted earlier, Edward Davis and his law firm, Astigarraga Davis, previously represented Mr. Fundora in his various efforts to secure the appointment of these Joint Liquidators. Upon the issuance of the Antiguan court's May 12, 2011 order appointing the Joint Liquidators, Mr. Davis and his firm became the general

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[13] The Joint Liquidators dispute the existence of these loans, at least on the books of SIBL. The Investors Committee believes and understands that substantial loans were made by SIBL to the Antiguan government, and that those loans may have been transferred by SIBL to the Bank or Antigua or another Stanford-controlled entity as a part of the manipulation of SIBL's balance sheet.

[14] The Investors Committee understands that the Joint Liquidators have commenced an action in Antigua to secure certain real property holdings that were being operated by Andrea Stoelker. The Joint Liquidators have provided little information concerning the status of that proceeding.

counsel for the Joint Liquidators. Mr. Davis and his firm have also represented the government of Antigua. *See Debt Settlement Administrators, LLC, v. Antigua and Barbuda*, 950 So. 2d 464 (Fla. Dist. Ct. App. 2007)(identifying Mr. Davis and his firm as counsel for respondents, Antigua and Barbuda).[15] Mr. Davis's prior relationship with the government of Antigua and Barbuda is more than sufficient to raise legitimate questions concerning the extent to which the Joint Liquidators and their counsel are tied to that government.

### C. Recognition Should Be Denied Because It Cannot Be Reciprocal

A further reason for this Court to deny recognition is that there is no possibility that the Antiguan courts will afford similar recognition to this Court's Receiver. Any recognition of the Joint Liquidators by this Court will be a one-way street. The Joint Liquidators seek access to this Court, and to the knowledge and information accumulated by the Receiver throughout his service, but they can offer nothing similar with respect to the Antiguan proceedings. That is so because there is no Antiguan equivalent to the recognition the Joint Liquidators seek here.

Chapter 15 of the Bankruptcy Code was enacted to implement the Model Law on Cross-Border Insolvency (the "Model Law"). The Model Law was a product of the United Nations Commission on International Trade Law ("UNCITRAL"); the United States was an active participant in the process that produced the Model Law. *In re Gold & Honey, Ltd.*, 410 B.R. at 365-366. Chapter 15 essentially tracks the Model Law, with some adjustments and modifications to conform to existing U.S. law. *In re Basis Yield Alpha Fund (Master)*, 381 B.R. 37, 44-45 (Bankr. S.D.N.Y. 2008)(citing *In re Iida*, 377 B.R. 243, 256 (9th Cir. BAP 2007)).

The Antiguan court captured the problem presented by the Joint Liquidators' request for recognition:

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[15] Absent discovery, the Investors Committee cannot determine the extent, if any, to which Mr. Davis or his firm has an on-going attorney-client relationship with the government of Antigua and Barbuda.

> It appears also that the USA has enacted the UNCITRAL Model rules. Antigua is not a designated state under those US UNCITRAL rules. Antigua has not enacted the UNCITRAL rules.

Doc. No. 21-7 at 7 of 40.

> The U.S. Receiver founded his interest in these local proceedings in an ***unenforceable order*** of a U.S. District Court in receivership type proceedings in the U.S.A. It is unclear whether the initial order of the U.S. Court was intended to have extra territorial affect. In any event, it cannot in its present state have the force of Law in Antigua and Barbuda. Further, Antigua and Barbuda has no reciprocal enforcement of Judgments or orders treaty with the U.S.A.; neither, as I said earlier, are we either a reciprocal party designated by the USA under their UNCITRAL model rules applicable in the USA, nor have we enacted the said UNCITRAL model rules in Antigua and Barbuda.

*Id.* at ¶41 (emphasis added).

As the Antiguan court recognized, it is incapable of granting anything like Chapter 15 recognition to this Court's Receiver because Antigua has never adopted the Model Law (or any variation of it) that forms the basis for Chapter 15. In short, the Receiver will continue to be denied access to the Antiguan proceedings even if this Court grants recognition to the Joint Liquidators. The "one-way" recognition sought by the Joint Liquidators is inherently unfair and contrary to the spirit of multi-lateral cooperation intended when Chapter 15 was enacted by Congress.

Antigua's "secrecy laws" make the "one way" nature of the recognition sought by the Joint Liquidators even more troublesome. Absent recognition, the Receiver cannot obtain access to the pleadings that are filed in the Antiguan courts.[16] The Antiguan courts have already made it clear that the Receiver is "not entitled" to standing in the Antiguan system.

The Receiver's inability to obtain recognition and to access the legal system in Antigua is exacerbated by Antigua's pervasive bank secrecy laws – many of which were drafted by

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[16] Apparently, such pleadings cannot be made public until they are referred to in "open court." Other pleadings on file are subject to orders sealing them from public view.

Stanford's counsel, at Stanford's expense, for the purpose of facilitating Stanford's fraudulent scheme. For years, Stanford took advantage of Antigua's bank secrecy laws to thwart efforts to investigate his fraud. The same veil of secrecy that protected Stanford—Antigua's privacy laws—is now being used to impede the efforts of the Receiver, the Examiner, and the Investors Committee. In light of this history, it would be manifestly contrary to United State public policy to allow the administration of the assets of the Stanford fraud to be controlled in whole or in part by a secret proceeding in a country whose laws, government and regulatory system were manipulated by Allen Stanford and his cohorts and were central to the perpetration of the Stanford fraud in the first place.

### D. The Joint Liquidators and the Antiguan System Have Shown Little Interest in Assisting Stanford Investor/Victims

The Joint Liquidators talk a good game. They can talk for hours about all the unspecified lawsuits they are planning to bring, under unspecified legal theories, pursuant to unspecified foreign law, against unidentified defendants. The Investors Committee (along with the Receiver, the Examiner and the SEC) has been listening to this talk for months. There has been very little action to back up the talk. To date, the Joint Liquidators have filed one proceeding that seeks to recover assets for the benefit of creditors. That proceeding was brought in Antigua, on or about July 20, 2011, against Allen Stanford, Andrea Stoelker, and several Stanford-related entities seeking to gain control of the entities (and their assets) that had been operated – without government interest or oversight – for over two years while the Antiguan proceedings were pending.[17]

The Joint Liquidators have demonstrated that their primary focus is to duplicate efforts

[17] The Joint Liquidators have also filed a proceeding in Canada against Toronto Dominion Bank, but even the Joint Liquidators describe that proceeding as little more than a placeholder to preserve the claim against the running of limitations.

and waste the resources of the Stanford estate and to disregard orders of this Court vesting exclusive jurisdiction over all Stanford-related assets, including documents, in this Court and its appointed Receiver. A few examples follow:

First, the Joint Liquidators are actively attempting to re-litigate the recognition of the U.S. Receiver in Canada. The principal (and probably only) purpose of that effort is to allow the Joint Liquidators to fight the Department of Justice's efforts to forfeit proceeds of the Stanford fraud and return those funds to the United States. The Joint Liquidators have openly stated that they believe that they, rather than DOJ , should control the distribution of those proceeds. *See* Doc. No. 76-18 at ¶¶9.2-9.4. The Joint Liquidators similarly oppose DOJ-initiated asset freezes in Switzerland and the United Kingdom, apparently because they also want control of those funds. Attempting to wrest control of funds away from law enforcement authorities that have already secured those funds provides no benefit, new or otherwise, to the victims and creditors of the Stanford fraud. Such an effort contravenes the United States' public policy and benefits only the Joint Liquidators, who need liquidity to fund their activities (and fees). *See* Doc. 76-18 at 7 of 46 (Joint Liquidators' Report addressing funding issues for the SIBL estate).

Second, while the Joint Liquidators speak of cooperation and working together, they are in fact working to thwart asset recovery efforts of the Receiver and the Investors Committee. Through the various meetings the parties have had between May and December 2011, the Joint Liquidators knew full well that the Receiver and the Investors Committee were actively pursuing claims against various third parties, including certain professional firms. Armed with this knowledge, the Joint Liquidators recently sent letters to various professional firms across the United States that had represented one or more of the Stanford entities, seeking to obtain the documents belonging to such entities. The true effect and intent of these letters was to put a halt

to any discussions that were occurring between the Receiver, the Investors Committee and these third parties by calling into question the ability of the Receiver and the Investors Committee to resolve claims.[18] Moreover, the Joint Liquidators' letter demanding the delivery of these documents violates this Court's Receivership Order, which directed that all such documents be delivered to and be under the exclusive jurisdiction and control of this Court through its Receiver.

For its part, the government of Antigua has shown that the protection of Antigua's interests is its primary (perhaps only) focus. While the Antiguan government responded to the indictment of Leroy King by pledging a "rigorous self-examination along with an internal investigation of Mr. King's employment conduct," nothing has actually happened. *Press Statement by Attorney General Justin L. Simon, QC, on the Sir Allen Stanford and Leroy King Matter, July 13, 2009.*[19] Mr. King has yet to be extradited to the United States to face the charges against him. Moreover, most press reports addressing his extradition include speculation that the government does not want to extradite King for fear that he will implicate other Antiguan officials in Stanford's fraud. *See* Clark, *Antigua and Barbuda: History of Corruption and the Stanford Case*, January 2011.[20] To date, the government of Antigua and Barbuda has not commenced any criminal prosecution of anyone relating to the Stanford fraud. *Id.* As for the Antiguan government's "rigorous self-examination" of its FSRC, that investigation concluded

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[18] Three of the letters were sent to professional firms that have been named as defendants in either class action lawsuits or in lawsuits being prosecuted by the Investors Committee and were obviously intended to interfere with the prosecution of those actions. No good can come from interference in pending lawsuits that are already being prosecuted for the benefit of Stanford investor/victims.

[19] This statement can be accessed via the official website of the government of Antigua and Barbuda, at http://www.ab.gov.ag/article_details.php?id=139&category=38. A copy is included in the Appendix filed in support of this Brief at 6.

[20] This article is available at the Library of Congress website, at http://www.loc.gov/law/help/antigua-corruption-stanford.php. A copy is included in the Appendix filed in support of this Brief at 7.

that "Antigua & Barbuda's international finance laws and regulations, of themselves, could not be faulted." *Statement from the Government of Antigua & Barbuda on the Stanford Victims Coalition Claims March 19, 2010.*[21]

Rather than seek to secure Stanford assets for the benefit of investor/victims, the Antiguan government has taken steps to grab those assets for its own account. Among other things, the Antiguan government has moved to "compulsorily acquire" the real property owned by the various Stanford entities in Antigua. While the Joint Liquidators tend to dismiss this effort, their story varies from that of Antigua's prime minister, W. Baldwin Spencer. In a speech he gave on or about March 12, 2010, he said the following:

> The decision of the Antigua and Barbuda Government to compulsorily acquire the real property of the Stanford group of companies is in the best interests of depositors, creditors and employees whose entitlements are yet to be satisfied. That decision has been challenged in the courts by Stanford and a stay obtained in respect of any further action by our government to perfect the acquisition.
>
> It should be pointed out that none of Stanford's local businesses were profitable. Some have been closed because they were dependent on massive monthly injection of cash from Houston, Texas.

*Prime Minister Hon. W. Baldwin Spencer, MP, Address on the Occasion of the First Anniversary of the Re-Election of the UPP Government March 12, 2010.*[22] *Press Statement by Attorney General Justin L. Simon, QC, on the Sir Allen Stanford and Leroy King Matter, July 13, 2009* ("Government's acquisition of the lands of these entities has been challenged in the High Court, . . . we firmly believe that the compulsory acquisition of the lands, Government's financial support of the Bank of Antigua, the liquidation of Stanford International Bank, and the action

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[21] This statement can be accessed via the official website of the government of Antigua and Barbuda, at http://www.ab.gov.ag/article_details.php?id=463&category=38. A copy is included in the Appendix filed in support of this Brief at 5.

[22] This address can be accessed via the official website of the government of Antigua and Barbuda, at http://www.ab.gov.ag/article_details.php?id=452&category=38. A copy is included in the Appendix filed in support of this Brief at 4.

initiated by the Registrar of Companies are all in the best interest of the country").

The Antiguan judicial system, though much praised by the Joint Liquidators, has done little to advance the cause of the Stanford investor/victims. We know that the Antiguan proceedings sat dormant for almost a year, essentially with no one in charge. We now know that the prior liquidators from Vantis incurred fees and expenses in excess of $18 million.[23] We also know that the work done by Vantis while running up this $18 million tab was, on the whole, useless. The Joint Liquidators report that "the materials received from the Former Liquidators . . . has been lacking in the necessary detailed backup on which we can make sound decisions." Doc. No. 76-18 at ¶5.4. We also know that the on-line claim process operated by Vantis was a waste of time and money; apparently, it did not comply with Antiguan law. On this note, the Joint Liquidators report that the "creditor claims process followed by the Former Liquidators may not comply with applicable Antiguan law and rules of insolvency practice." *Id.* at ¶5.5. The apparent problem is that the former liquidators did not bother to identify fictitious interest that was included in the claims being submitted, nor did they bother even to attempt to identify the "net equity" of each claimant.

Unlike this Court, it seems the Antiguan court asserts little supervision or control over the activities of the Joint Liquidators or their predecessors. Unlike the Vantis fees (and those of the Joint Liquidators), all of the fees incurred by the Receiver, his professionals and the Examiner are subject to this Court's review and approval.[24] Vantis apparently launched its ill-conceived claim system without review or approval from the Antiguan court; each step of the Receiver's

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[23] We also know that the prior liquidators recovered almost nothing – Bloomberg News reports (in an article posted on the Joint Liquidators' website) that total recoveries were only $300,000. At present, we know nothing about the basis for the $18 million claimed, the objections that have been asserted to that claim, or the Antiguan court's plan for addressing the claim.

[24] It is worth noting that the Joint Liquidators seem to have a considerable public relations team working on their behalf. This Court's Receiver, on the other hand, was instructed to terminate its public relations firm when the Examiner objected to the expenses that were being incurred on that front.

claim process will be subject to review by the SEC, the Examiner and the Investors Committee, to objection by interested parties, and to final approval by this Court.

All of the foregoing examples create considerable concern as to the intentions of the Antiguan judiciary and government with respect to Stanford's investor/victims. A fundamental policy of the United States is to attempt to compensate the victims of fraudulent securities schemes. It is not at all clear that Antigua shares that policy; in fact, the Investors Committee believes that recognition of the Joint Liquidators would work to thwart that important U.S. policy.

## V. Conclusion

The Investors Committee acknowledges that Chapter 15 recognition is rarely denied based upon the public policy concerns articulated in Section 1506. Nevertheless, the Investors Committee has demonstrated in this Brief that this is a case where this Court should rely upon Section 1506 and deny recognition to the Joint Liquidators.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

On December 5, 2011 I electronically submitted the foregoing document to the clerk of the court of the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all counsel and/or pro se parties of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Edward F. Valdespino