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

SECURITIES AND EXCHANGE COMMISSION,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Case No.: 3-09-CV-0298-N
	§	
STANFORD INTERNATIONAL BANK, LTD., *et al.,*	§	
	§	
Defendants.	§	

RECEIVER'S SUPPLEMENTAL BRIEF IN SUPPORT OF CONTINUING THE INJUNCTION AGAINST INVOLUNTARY BANKRUPTCY FILINGS

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I. INTRODUCTION

A transition from the Receivership into bankruptcy at this time would not provide investors with a higher – or speedier – recovery. Whereas in Receivership investors will have some recovery, in bankruptcy investors could be subordinated to general unsecured creditors and, perhaps, receive nothing. This is an issue that will only arise in bankruptcy and will only be resolved in expensive litigation for which investors will ultimately pay.

The Receiver is pursuing four basic tasks: liquidating assets, pursuing litigation to recover assets, winding down operations, and preparing to make distributions to claimants and other creditors. A bankruptcy trustee would have to pursue exactly these same tasks, but the trustee would have no better tools, rights, or resources than the Receiver to execute these tasks or maximize the value of the Estate. To the contrary, transition from Receivership to bankruptcy would be a time-consuming, disruptive, and expensive undertaking. In every one of the cases on which Movants rely, courts addressing the cost-benefit analysis favored continuation of the receivership rather than transition to bankruptcy.

A trustee and new team of professionals would need significant time to become familiar with the Estate, assets, processes in place, and transactions in the pipeline. Any pending transaction that a trustee determined was in the best interest of the Estate would have to be the subject of a new motion in the bankruptcy court, with the opportunity for all parties to object (again). The best case scenario would be that the same transactions would simply take longer and cost more to consummate. Pending asset sales are the result of weeks and months of research and skillful negotiation by the Receiver's team. Every delay creates additional risk that pending sales will be cancelled or the terms renegotiated to the detriment of the Estate. Transferring this Estate to bankruptcy would create a host of new procedural requirements and legal issues - standing, venue, substantive consolidation, priority of payment - that would be

contested and litigated, at significant additional expense to the Estate. In a very real sense, investors would pay directly, and dearly, for the trustee's steep learning curve.

Moreover, the total cost of liquidating the Estate will increase because bankruptcy will not negate the need for the Receivership. Movants may contend that the choice is simply between taking care of all that remains to be done in a Receivership versus a bankruptcy, but the realties show that this is a facile and false view. Lifting the injunction may result in one or more Stanford entities being placed into bankruptcy in this or some other venues, but many other entities (and the individual defendants) will remain in the Receivership supervised by this Court. No party, including the Receiver, appears to have standing to file bankruptcy for *all* of the defendants and all Estate entities. The administrative costs of a bankruptcy would simply be added to those of the Receivership, and would not be offset by any demonstrable pecuniary or procedural benefit to claimants. Adding a trustee (and his professionals), creditors' committees (and their professionals), and more litigation - as Movants seek to do, Doc. 773, at 3 - all with the added bonus of contemporaneous and potentially conflicting proceedings, will not provide any additional procedural or substantive due process needed by investors or required by law, but will disrupt the activities under way, increase costs, reduce and delay distributions to claimants, and consume the judicial resources of this and other courts.

Movants assert that there is a "Congressional mandate" requiring liquidation of the Stanford entities through bankruptcy proceedings rather than through Receivership. To the contrary, there are many reported cases in which insolvent companies have been liquidated, and the assets distributed to creditors, through an equitable receivership. In fact, numerous courts agree that a receiver "should see that the business is liquidated as economically and speedily as possible, unless its continuance is demonstrably beneficial to creditors." *See Jones v. Vill. of*

Proctorville, 290 F.2d 49, 50 (6th Cir. 1961) (citing *Kingsport Press, Inc. v. Brief English Sys., Inc.*, 54 F.2d 497, 501 (2d Cir. 1931)).

Movants selectively quote dicta, but have not cited a single case that ordered a federal receivership be converted to a bankruptcy proceeding or held that a district court abused its discretion when it entered, or refused to dissolve, an injunction against filing a bankruptcy petition. The question before this Court is whether it is in the "interests of the parties to direct that further proceedings be diverted into bankruptcy channels," *Esbitt v. Dutch-Am. Mercantile Corp.*, 335 F.2d 141, 143 (2d Cir. 1964), and the analysis is "primarily dependent upon the facts of the case," *SEC v. Lincoln Thrift Assoc.*, 577 F.2d 600, 607 (9th Cir. 1978). Based on the facts of this case, the answer is unequivocally "no" - bankruptcy is not in the best interest of the parties or the creditors of the Estate.

For these reasons, the Receiver asks that the Court deny the request to lift the injunction against filing petitions in bankruptcy.

II. ARGUMENT & AUTHORITIES

A. The Movants have not satisfied the burden to show that investors will benefit from a liquidation of some or all Stanford entities in bankruptcy.

The Court established the Receivership to locate and gather assets for the ultimate benefit of the investors defrauded by Allen Stanford and his companies. The focus of the Receiver has been, and will continue to be, on the best interests of those investors. Bankruptcy, by contrast, affords defrauded investors no higher status than that enjoyed by general unsecured creditors. Nor does bankruptcy offer any substantive or procedural mechanisms for liquidating the Estate or making distributions that are any better, faster, or cheaper than does the Receivership. The transition costs, delays, additional litigation, and administrative costs

attendant to fracturing this Estate into a bankruptcy make it a much less favorable framework for investors.

1. Movants have not demonstrated that in bankruptcy investors will receive a recovery that is as good as, much less better than, any recovery in Receivership.

The Examiner's recent Report asked how the comparative distribution schemes of bankruptcy and Receivership will treat Stanford investors. First, it is necessary to have some information regarding the categories of interested parties and losses they report. The Receiver's investigation and analysis of the Stanford records indicates that there are approximately 28,000 CD holders whose collective CD balance in February 2009 was $6.4 billion. To supplement the information gleaned from the Stanford records, the Receiver has accepted information by mail and on the Receivership web site. Only a small fraction of CD holders have submitted information, but the process has been purely voluntary, without any deadline. Information regarding non-CD creditors' claimed losses (more than $181.8 million) indicates that they could exceed the amount of unrestricted cash under the Receiver's control (approximately $67.1 million) by more than $100 million. Once a formalized claims submission and review process is approved by the Court, the magnitude of the claimed losses likely will be considerably greater than this self-reporting process indicates.

The chart below reflects information submitted[1] to the Receiver through January 7, 2010:

[1] This chart reflects raw data provided to the Receiver by various constituencies and has not been thoroughly analyzed yet. Some claims have been resolved completely or are in the process of being resolved, such as coin and bullion, employee, and landlord claims.

Nature of issue	**Number of submissions**	**Aggregate amount**
Other	336	$122,380,764.49
Employee	568	$20,295,797.55
Vendor	234	$13,756,196.54
Coin and bullion	230	$13,292,176.88
Secured	40	$9,448,083.51
Landlord	5	$2,698,328.43
Sub total	**1,413**	**$181,871,347.40**
Certificate of deposit	3,331	$1,661,754,095.60
Total	**4,744**	**$1,843,625,443.00**

This information provides the context for evaluating the principles that guide distribution in Receivership. A distribution plan in an SEC receivership need only be reasonable for a court to approve the plan using the court's inherent equitable powers. *See SEC v. Forex Asset Mgmt. LLC*, 242 F.3d 325, 331 (5th Cir. 2001); *SEC v. Wang*, 944 F.2d 80, 85 (2d Cir. 1991). The receivership case law provides a starting point for determining if a plan is reasonable: courts traditionally favor a *pro rata* distribution where victims' funds are commingled. *See SEC v. Credit Bancorp, Ltd.*, 290 F.3d 80, 88-89 (2d Cir. 2002); *see, e.g., Forex Asset Mgmt.*, 242 F.3d at 328 (receiver distributed assets *pro rata* despite fact that majority of recovered funds could be traced to one investor). *Pro rata* distribution operates as a framework within which the court may craft an equitable distribution scheme.

The Receiver has already begun conferring with the SEC and Examiner about developing a plan to make an interim distribution of several million dollars. Before filing such a plan, and in consultation with the SEC and Examiner, the Receiver will seek appropriate input from counsel for interested parties. The Receiver's interim and ultimate distribution plans, although not fully developed at this time, will give investors at least some recovery; bankruptcy proceedings create a risk that investors will receive nothing.

In bankruptcy, distributions to creditors are based on either the amount of debt set forth in the debtor's schedules of liabilities or in a proof of claim filed by the creditor. *See* 11 U.S.C. §§ 501, 502. The trustee may object to proofs of claim; in which case, the bankruptcy court determines the amount owed to the creditor. *See* 11 U.S.C. § 502.

In a chapter 7 case, distributions are made pursuant to the priority scheme in the Bankruptcy Code, which is structured as follows:

(1) priority claimants, including parties that are due:

   (a) administrative expenses arising from the bankruptcy case (i.e., trustee fees, attorney fees, committee fees);

   (b) claims arising during the period between the filing of an involuntary petition and when the order of relief was granted;

   (c) employee claims; and

   (d) government claims for taxes and penalties;[2]

(2) general unsecured creditors who timely filed their claims;

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[2] As the Examiner has noted, the IRS has so far asserted claims against Allen Stanford for $226 million in unpaid taxes, penalties and interest, and additional claims are expected. If the IRS chooses to satisfy this claim from Stanford assets, this claim would have priority over investor claims under the Bankruptcy Code. *See* Doc. 991, at 6. The Receiver is aware of an estimated $680,000 in income, franchise, and property taxes for 2008-09 that have not been paid and an additional $502,000 due for 2010 estimated taxes. There are other priority claimants that may also be applicable to this case, such as claims for domestic support obligations. This Court granted a motion for intervention by Allen Stanford's wife, Susan Stanford, whose divorce action was pending in Harris County when the Receiver was appointed. Doc. 950.

(3) general unsecured creditors who did not timely file their claims;

(4) creditors whose claims are for a fine, penalty, or damages that is not compensation;

(5) interest for unsecured creditors;

(6) debtor.

See 11 U.S.C. § 726(a). If the available funds are insufficient to pay all creditors in a particular classification in full, the creditors in that class share the funds *pro rata*. In a chapter 11 case, the distributions are made pursuant to a plan. Generally, a plan's proposed distribution scheme must correspond with the chapter 7 distribution scheme outlined above. Thus, the most fundamental difference between the law of distribution in Receivership and bankruptcy is that the former presumes fairness in a *pro rata* approach and the latter creates a strict hierarchy. And investors' place in this hierarchy may be quite low if their claims are subordinated under section 510(b) of the Bankruptcy Code.

The Movants have asserted that in bankruptcy, investors' claims on CDs definitely would not be subordinated to general unsecured claims under section 510(b) of the Bankruptcy Code. *See* Doc. 836 at 4, n.5. But that proposition is far from certain. Movants argue that because the CD holders have a claim "based upon the obligation represented by the CD itself," their claims are analogous to claims on promissory notes and will not be subordinated. A bankruptcy court might hold that CD claims are analogous to a claim on a note, in which case, investors would be lumped together with unsecured creditors.

On the other hand, the one case Colliers cites in support of Movant's position notes that, even with respect to a claim on a promissory note, section 510(b)'s mandatory subordination provision might apply in the event of "an allegation of fraud in the purchase, sale or issuance of the debt instrument." *Montgomery Ward Holding Corp. v. Schoeberl*, 272 B.R.

836, 844-45 (Bankr. D. Del. 2001). Given that the investors universally claim they were defrauded, a bankruptcy court could apply section 510(b)'s mandatory subordination provision. Investors' claims would be placed in line for payment behind general unsecured creditors and investors likely would recover nothing. Furthermore, the Movants ignore completely the SEC's position in this case that the CDs held by investors are in no way comparable to CDs properly sold and issued by federally regulated banks in the United States. *See* Doc. 6, at 20-24.

Although it is not apparent why Movants would wish to expose investors to a risk of subordination, especially with no demonstrable overall benefit even assuming this risk can be overcome, this Court need not resolve the question of whether investor claims would or would not be subordinated. The point is this: investors would not fare better under the Bankruptcy Code's mandated distribution scheme than in any distribution plan the Receiver will put forward, and they could fare far worse. And no matter how the subordination issue ultimately would be resolved, that resolution surely would come only after an expensive legal battle, paid for by investors, that puts investors' claims at risk. Both the cost and the risk are entirely avoidable by retaining the Estate in Receivership.

2. The Bankruptcy Code does not provide any substantive or procedural advantages in regard to liquidating assets, pursuing fraudulent transfer claims or avoiding any defenses.

The Examiner's Report correctly identified the activities that any Receiver or trustee must continue to pursue to increase the cash in the Estate that will be available for ultimate distribution to investors: liquidating assets, pursuing fraudulent transfer claims against investors and employees, and pursuing fraudulent transfer claims against third parties. One additional activity that any Receiver or trustee must pursue is the winding up of all ongoing business operations. The Receiver has made substantial progress in each of these areas. Perhaps even more important to this analysis is the fact that many activities to add value and cut

operating costs are pending right now. The moment a petition in bankruptcy was filed, all of these activities would cease for an indefinite period of time, while the trustee evaluated them, filed appropriate motions in another court, parties intervened and objected, and rulings were obtained. The best that can be said is the same transactions might be completed – at a later date and greater cost.

The case law cited by Movants is unanimous; when a Receivership liquidation is well advanced, there is no advantage to be gained by transferring the proceedings to a bankruptcy court. The more the Receiver, professionals, and district court know about the estate and have accomplished in furtherance of the liquidation, the less there is to gain by replacing them with a trustee, new set of professionals, and bankruptcy court. *See, e.g., SEC v. Lincoln Thrift Assoc.*, 577 F.2d 600, 609 (9th Cir. 1978). Movants have not been able to cite a single case where the cost benefit analysis favored bankruptcy.

The Bankruptcy Code does not provide any advantages to a trustee engaging in the major activities of the Receivership. A trustee would be required to employ the same means as the Receiver, but a trustee and his team of professionals would be hampered by the lack of historic knowledge of the Estate, assets, and claims, and by the additional litigation that would result from legal issues triggered by bankruptcy. Time would be lost while the bankruptcy team was educated regarding the Estate and ongoing activities, and the Receiver's team would spend vital time and resources tutoring the new team rather than performing the functions that put money in the bank. Finally, there are members of the Receiver's team who have developed crucial relationships of trust with individuals, entities, foreign government officials, and regulators. These relationships have facilitated transactions to liquidate assets, efforts to reduce

costs, and negotiations for pending contracts. These benefits will be lost if certain individuals are no longer representing the Estate.

At the very outset of bankruptcy proceedings, there would be a number of time-consuming procedural steps required before any additional activity could take place. Each step would take hours of professionals' billable time, and thus money, away from tasks that promote the goals of the Receivership and best interests of investors. The following documents are typically filed at the outset of a bankruptcy case:

- Bankruptcy Petitions
- Affidavit in Support of Petitions and First Day Orders, which includes a description of the events that led to the bankruptcy filing, information regarding the debtor's business, the debtor's debt structure, and other background information
- Motion for Joint Administration of Cases, which seeks to administer the bankruptcy cases on a single docket for administrative matters (i.e., filed claims, notices to creditors)
- Notice of Designation as a Complex Case, which allows for special scheduling and other procedures

Other motions typically filed shortly after the bankruptcy filing, include:

- Motion Authorizing Debtors to Mail Initial Notices and to File List of Creditors in Lieu of Disk or Label Matrix
- Motion to Extend the Time for Filing Schedules and Statement of Financial Affairs
- Motion for Order to Maintain Bank Accounts and Business Forms, to Continue Existing Cash Management System, and Granting Waiver of Compliance with Investment Guidelines
- Motion for Order Determining that Adequate Assurance Has Been Provided to Utility Companies, which prevents utilities providers from discontinuing service even if the debtor is delinquent on prior payments
- Motion Authorizing Debtors to Use Cash Collateral

- Motion Seeking Authority for Payment of Obligations Arising Under Workers' Compensation Insurance, General Liability Insurance and Other Insurance Policies
- Motion Seeking Authority for Payment of Prepetition Sales, Use, and Other Taxes
- Motions to Retain Professionals, including (a) Attorneys, (b) Accountants, (c) Investment Bankers and Financial Advisors, and (d) Claims/Notice Agent
- Motion for Establishment of Procedures for Interim Compensation and Reimbursement of Expenses of Professionals
- Motion for Order Authorizing Retention and Compensation of Professionals Utilized in the Ordinary Course of Business[3]

The question is not whether bankruptcy is a theoretically or philosophically superior method of liquidating a company. It is a method. Receivership is another. Under the facts of this case, switching some entities into a bankruptcy at this stage, with all the attendant

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[3] For each corporate entity for which a petition in bankruptcy is filed, the following would also have to be submitted. Completing these schedules is no menial task. The amount of detail and time required can be substantial, and parties frequently request extensions of time. See Exhibit A for the type of information required in these documents:

Schedules of Assets and Liabilities

- Description of real property, nature of debtor's interest therein, current value of such interest, and amount of any secured claim
- Description of and listing of current value of debtor's interest in personal property, divided into 35 categories
- Description, on a creditor-by-creditor basis, of secured, priority unsecured, and nonpriority unsecured claims
- Statement of Financial Affairs, a questionnaire consisting of 25 areas of inquiry, including:
  - income
  - payments to creditors within 90 days prior to the bankruptcy filing
  - payments to insiders (possibly including brokers) within 1 year prior to bankruptcy filing)
  - lawsuits
  - transfers of property other than in the ordinary course of business within 2 years prior to the bankruptcy filing
  - transfers of property by the debtor within 10 years prior to the bankruptcy filing to a self-settled trust or similar device of which the debtor is a beneficiary
- List of Names and Addresses of all Creditors, Parties to Executory Contracts and Expired Leases, and Co-Debtors
- List of Names, Addresses, and Claims of the Creditors (Excluding Insiders) Holding the 20 Largest Unsecured Claims

risks and complex legal problems that entails, is not a more time and cost effective means of liquidating all the Stanford entities. The Movants have failed to carry their burden to prove otherwise.

a. Bankruptcy provides no advantage in the liquidation of illiquid assets.

The Receiver has been securing and liquidating Estate assets throughout the United States and, to a lesser extent, outside the United States, for almost a year. Many sales of personal property, ranging from office furniture and a race horse to aircraft and private equity, have been consummated. Many more are at various stages of negotiation. Even in the current market, prospective buyers have expressed interest in some Stanford real estate holdings. Now that the Court has approved the Receiver's real estate motion, the Receiver is beginning to market these assets for sale. Doc. 979. Some of the more valuable real estate is unencumbered and will bring substantial cash under the Receiver's control in the near future.

Until recently, the Receiver was appealing for recognition in Antigua and the Antiguan Liquidators were prosecuting a chapter 15 action for recognition in the United States. These disputes made some third parties reluctant to acquire Estate assets and also generated considerable costs, about which many interested parties voiced concerns. The Receiver is near agreement with the Antiguan Liquidators that will resolve the chapter 15 action, and this will eliminate both those concerns. New bankruptcy petitions will simply reintroduce, but on an even larger, and more expensive scale, all the same practical and legal complications of contemporaneous and conflicting proceedings.

A bankruptcy trustee could also liquidate assets, but he would do so in the exact same manner as the Receiver. However, there would be significant transition costs associated with becoming familiar with the Estate and the status of any negotiations or pending sales.

There are no substantive or procedural mechanisms available in bankruptcy to liquidate assets for more money, or in less time, than are already available in the Receivership.

The process for selling assets in this Receivership involves hiring professionals, who evaluate the assets and make recommendations, which are then reviewed by the Receiver and proposed in motions to the Court. After hearing objections this Court has approved several such sales.[4] The process of selling assets in bankruptcy under section 363 would be fundamentally the same. The trustees' professionals evaluate assets, make recommendations and help with marketing. A trustee can elect a stalking horse bidder (or not), and if competing bids are received, an auction may be held. The trustee must file a motion seeking approval of a sale, parties are given an opportunity to object, a hearing is conducted, and the bankruptcy court determines whether to approve the sale as fair and reasonable. There is no demonstrable advantage to substituting the 363 process for the process already in place, which is basically the same.

Bankruptcy filings would disrupt all asset sales pending in the Receivership. The moment an entity enters bankruptcy, any pending action regarding the entities' assets is stayed. *See Cash Currency Exch., Inc. v. Shine*, 762 F.2d 542, 555 (7th Cir. 1985) ("liquidation procedures . . . 'directly conflict with the control of the property by the bankruptcy court'"); *In re Auto. Prof'ls, Inc.*, No. 07 B 06720, 2007 WL 1958595, at *6 (Bankr. N.D. Ill. July 3, 2007)

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[4] Below is a summary of completed asset liquidation activities of the Receivership:

- The Receiver's professionals have been reviewing Stanford's large private equity portfolio, and private equity interests have been sold for $8.9 million; $7.2 million in capital calls have been avoided. Docs. 911, 733, 734, 816, 861.
- The Receiver has coordinated property tax appraisals, insurance, maintenance, and other activities necessary to preserve the value of real property owned by the Estate. Doc. 36, at 38.
- The Receiver negotiated a return of 5 aircraft to the lender and collected $4.8 million for the Estate. Docs. 472, 516.
- The Receiver has negotiated the sale of the last remaining aircraft for $192,500 and will thus avoid the considerable carrying costs of this asset going forward. Doc. 916, 998.

("liquidation proceedings designed to protect the rights of creditors are not regulatory actions that fall within [an] exception [to the automatic stay]"). A trustee could, for example, re-file motions to authorize the sale of assets pending in this Court and ask the bankruptcy court to approve them under section 363 of the Bankruptcy Code. The motions might be granted and transactions consummated, but only with additional and unnecessary delay, professional services, court involvement, and fees. In the meantime, some prospective purchasers might pull out of their deals. Depending upon which entities are placed in bankruptcy there may be disputes over which entity owns or controls particular assets.[5]

The following activities, which are in progress, are likely to be delayed and disrupted by a bankruptcy filing:

- The Receiver has invested significant resources negotiating with government entities, regulatory agencies, and prospective purchasers in order to sell or otherwise liquidate Stanford entities in Latin America. These negotiations have been prolonged and complex and their success is due in large measure to the personal relationships with government officials, regulators, and prospective purchasers developed by Richard Roper of Thompson & Knight. The liquidation of these assets would be in jeopardy if they became part of the bankruptcy estate. *See* Doc. 976 at 5 (Motion to Sell Receivership Assets in Panama for $15.5 million).

- The Receiver has filed motions for approval to sell several private equity interests for combined total purchase price of $6.73 million, and avoidance of a $200,000 capital call.

- The Receiver has approved, and intends to seek Court approval of private equity sales in 9 companies for a combined purchase price of $8.9 million and avoidance of $3 million in capital calls.

- More than $12 million in combined offers have been received for the private equity holdings in 10 companies. These are being evaluated by the Receiver and Park Hill.

[5] Even the ownership and right to sell Stanford assets are issues likely to fuel litigation because many transfers among Stanford entities were fraudulent. If the Estate is fractured in bankruptcy, one entity may initiate a fraudulent transfer action against another entity to recover real or personal property, as well as cash payments.

- The Receiver has developed a comprehensive listing of owned properties in the United States, U.S. Virgin Islands, and Europe, with information regarding ownership, encumbrances and value. Doc. 336, at 37.

  - There are Caribbean properties owned by the Estate; they were purchased for a combined total of at least $35 million and have outstanding mortgages of approximately $3.6 million.

  - There are U.S. properties with a combined assessed value of at least $29 million. These include the following unencumbered properties: a Houston home with an assessed value of $2.5 million; a Houston condominium with an assessed value of $1.3 million; and an airport hangar with an assessed value of $1.0 million.

- The Receiver has filed motions to sell the vessels Little Eagle, Doc. 743, and Sea Eagle, Doc. 796.

- The Receiver requested that elected officials and campaign committees to whom defendants made political contributions return those amounts to the Estate. To date, 18 elected officials have returned a total of $80,300 to the Estate. The Receiver is pursuing $366,000 from 70 other candidates.

Maintaining the Receivership, and the team that has secured these assets, determined their ownership, assessed their value, and negotiated pending offers, will provide the very best opportunity to add the greatest value to the Estate for the benefit of investors. A trustee could succeed to these tasks but would gain absolutely no advantage. The Bankruptcy Code provides no shortcuts to liquidation. Transferring some Estate entities to bankruptcy would only disrupt the beneficial personal relationships fostered for almost a year as well as the legal processes underway. The investors would bear the costs of this disruption.

b. Bankruptcy provides no greater ability to pursue claims against, or avoid defenses of, investors, employees, and third parties.

The Stanford entities used more than 200 accounting and operating systems, many of which did not centrally report. Moreover, James Davis has admitted that the Stanford books were falsified and that the enterprise was a Ponzi scheme from the very beginning. The

Receiver's team has devoted significant time, energy, and money to locate, analyze, and provide access to reliable data in order to determine revenue sources and cash flow, and to identify the recipients of fraudulent transfers.

The Receiver has initiated multiple lawsuits against investors, employees, and third parties to recover value for the Estate. The Receiver is continuing to investigate payments made out of the Estate and is evaluating the possibility of filing additional lawsuits. All of these cases have the potential to add substantial value to the Estate. Some are producing cost-effective settlements. The cases are complex both procedurally and substantively. Nothing would be gained by adding a bankruptcy filing on top of this complexity.

In bankruptcy, the trustee assumes control of any pending litigation, and it becomes part of the debtor's bankruptcy estate.[6] *See* 11 U.S.C. §§ 541, 543. After deciding that a particular case has merit, the trustee can continue the case in its current venue or move to transfer the case to the district court where the bankruptcy case is pending. A trustee then litigates the lawsuits to judgment (with the possibility of appeal) or reaches a settlement, which would need to be approved by the bankruptcy court. *See* FED. R. BANKR. P. 9019. Any amounts recovered, through either judgment or settlement, are included in the assets distributed pursuant to a chapter 7 liquidation or chapter 11 plan of reorganization. This is no different than what the Receiver is pursuing under his court ordered mandate.

Because more than a year has passed since any Receivership entity made any payments to creditors, a trustee would not be able to avoid any transfers as preferences.[7] There

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[6] The ownership of particular claims and the identification of the party with standing to assert them - the Receiver versus the trustee - are other issues that would likely give rise to litigation.

[7] Chapter 5 of the Bankruptcy Code provides that preferential payments made to creditors within 90 days before the filing of a bankruptcy petition (or one year in the case of insiders) can be avoided and recovered for the benefit of the bankruptcy estate. *See* 11 U.S.C. §§ 547, 550.

are no causes of action available to a trustee that are not available to the Receiver. The trustee would not be able to avoid any defenses that the Receiver cannot avoid. *See* Examiner's Report No. 2, Doc. 991 at 7-8. There are some claims that neither the Receiver, nor a trustee, would have standing to bring. *See Reneker v. Offill*, No. 3:08-CV-1394-D, 2009 WL 804134, at *5 (N.D. Tex. Mar. 26, 2009) ("Like a trustee in bankruptcy or . . . the plaintiff in a derivative suit, an equity receiver may sue only to redress injuries to the entity in receivership, corresponding to the debtor in bankruptcy and the corporation of which the plaintiffs are shareholders in the derivative suit. It is a well-known legal principle that a receiver can bring only those claims belonging to the entit[ies] it represents and cannot bring claims on behalf of third parties.") (citations & internal quotation marks omitted). Thus, a bankruptcy trustee would have no advantage over the Receiver in prosecuting claims, but would have to devote substantial resources getting up to speed on the law and facts of each case. The Receiver is currently prosecuting the following claims:

- The Receiver's identification of investors who profited from the Stanford Ponzi scheme is ongoing, and numerous investors and millions of dollars are being discovered on a rolling basis. To date, the Receiver has identified 425 investors who collectively received over $175.8 million in CD Proceeds in excess of their investments.
  - Of these, 34 investors have settled with the Receiver by returning to the Receivership Estate the nearly $2.6 million in CD Proceeds they received in excess of their investments.
  - The Receiver has sued 196 of the investors who received more than $93.2 million of CD Proceeds in excess of their investments. The Receiver is in the process of settling with 9 of these investors, representing over $500,000 of the $93.2 million in net gains.
  - The remaining 195 investors received over $80 million of CD Proceeds in excess of their investments. The Receiver is in the process of sending – or has already sent – settlement offers to these investors. The Receiver will assert fraudulent-transfer and unjust-enrichment claims against those who do not to settle.

- The Receiver has sued 329 former Stanford employees for more than $215 million they received in CD Proceeds. This number is comprised of the following six categories: over $90.9 million in Loans; over $76.4 million in SIBL CD Commissions; over $30.3 million in SIBL Quarterly Bonuses; over $2.9 million in PARS Payments; over $7.5 million in Branch Managing Director Quarterly Compensation; and over $7.1 million in Severance Payments.[8]

- The Receiver and his team are in the process of identifying additional former Stanford employees who received compensation in the six categories listed above, as well as CD Proceeds that any former Stanford employees received from SIBL CDs in which they invested.

- The Receiver has also determined that at least two entities – R. Allen Stanford LLC and Christiansted Downtown Holdings – made significant payments to hundreds of third-party individuals and entities very shortly before the Receivership was instituted. One such entity received payments of over $12 million and at least two dozen others received more than $100,000 each. The Receiver's investigation continues to uncover additional payments and the Receiver is pursuing such claims in the most cost-effective manner possible – by making demands and sometimes settling claims – before incurring the additional costs of litigation.

- The Receiver has instituted an action against Rebecca Reeves Stanford, mother of two of Allen Stanford's children, who sold a house

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[8] The Receiver and his team have identified over 400 accounts at Pershing and JP Morgan belonging to the 329 former employees sued by the Receiver in his Second Amended Complaint Against Former Stanford Employees. In accord with this Court's Order Authorizing Partial Release of Former Employee Accounts (Doc. 214), the Receiver has undertaken a review of the held accounts in order to determine which ones may be released under that order. Former employees and their counsel are in daily contact with the Receivership to achieve a full or partial release of the accounts. But before an employee's accounts can be released in whole or in part, the Receiver and his team must determine how much money can be held back under the Court's order; whether any accounts are IRAs or other retirement accounts and, if so, whether the SEC approves the release of such employee's accounts; the net worth of the accounts, which fluctuates daily; and the accounts' composition of liquid versus illiquid funds. Once an account release has been approved, the Receiver and his professionals must coordinate with the former employees and their counsel to arrange for liquidation, to transfer funds to the Receiver's escrow account, and/or to wire or ACAT the released funds from the held accounts. The multi-factor release process necessarily involves an analysis unique to each former employee that takes time, experience, and negotiation to accomplish.

Because of the experience gained in releasing accounts formerly held for the investors and their in depth knowledge of the accounts at issue, the Receiver and his team are best positioned to complete this complex process efficiently and expediently. If a trustee were appointed and the current team of professionals replaced, it would significantly slow this account release process and perhaps halt it altogether until such time as the new team were fully trained and had an opportunity to analyze the accounts.

purchased with assets traceable to the Estate for $3 million and then moved the proceeds overseas.

- The Receiver has instituted an action against Christopher Aitken & Steve Thacker, two institutional financial advisors who entered employment with Stanford Capital Management LLC in late 2009, and received more than $11 million combined for their "personal goodwill."

The Receiver and his team of litigators and forensic accountants have been living this case full time for almost a year. They are intimately familiar with the claims that have been asserted, and the claims still being investigated, against almost 1,000 recipients of fraudulent transfers. They have devoted hundreds of hours to communicating directly with these defendants and their counsel to verify information, negotiate settlements, and reach agreement on procedural issues and deadlines. By contrast, a bankruptcy trustee would inherit some or all of this litigation (depending on the identity of the entities placed in bankruptcy) and have to start from scratch, without any substantive or procedural advantage that would expedite any settlement, any trial, or any appeal. In short, the investors do not stand to benefit from a trustee taking over as the plaintiff in any litigation that is pending on behalf of the Estate.

c. Unwinding the Estate's business operations would not be any more efficient under a bankruptcy regime.

In the year since his appointment, the Receiver has ceased significant, varied national and international business operations, and thereby achieved savings and reduction in ongoing carrying costs of the Stanford businesses. The Receiver has reduced overall Stanford U.S. headcount from 1,292, with a monthly payroll of $18.46 million at February 17, 2009, to a headcount of 52, with a monthly payroll of $454,000, at January 31, 2010. Corresponding benefit plans (for example, 401(k), welfare benefit plan benefits, medical coverage) have been reduced or terminated. Doc. 336, at 50.[9]

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[9] The Receiver's cost-savings measures include the following:

The Receiver continues the process of winding up all of the Stanford business operations, while maintaining ongoing operations necessary to serve Stanford customers with brokerage, trust, or coin and bullion accounts. The Receiver also maintains operations required to effect an orderly termination of business and employment relationships in conformity with state, federal, and foreign law. Bankruptcy would negate none of the legal requirements with which the Receiver must comply in connection with these activities, so there is no advantage to be gained by winding up these entities outside of the Receivership context. Dealing with these issues will only be delayed and complicated by a bankruptcy filing. For example:

- The Receiver is in the latter stages of terminating the Stanford 401(k) plan. Approximately 480 employees still have assets in their 401(k) accounts. The Receiver is contacting them by mail to solicit their distribution requests which will then be forwarded to the plan administration firm. From that point, it takes approximately two to three weeks for payment to be processed.

- Despite all of the automated processes in place and efforts to contact customers, there are still about 450 "residual" Stanford brokerage

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- The Receiver permanently closed 36 offices in leased locations in 33 U.S. cities. Doc. 336, at 9.
- The Receiver terminated or rejected 45 real property leases, reducing monthly rental expense from $1.8 million in March 2009 to $21,000 in January 2010.
- By January 25, 2010, approximately 30,840 Stanford brokerage accounts had cashed out or transferred to a new firm, and approximately 1,236 released brokerage accounts had taken no action to cash out or transfer their accounts to a new firm.
- The Receiver's team has completed most of the bulk transfer of released, but not yet transferred, accounts (approximately 1,150 accounts) to Dominick & Dominick LLC, with such transfer becoming effective on January 25. Docs. 747, 875.
- Over the course of the Receivership, approximately 1,420 of the approximately 1,480 Stanford Trust Company accounts have been released. Customers were given the option to either (1) transfer their accounts to a financial institution of their choice or (2) receive a distribution of their account balance.
- The Stanford offices in Mexico have been permanently closed. Operations and customer accounts in Mexico have been handled in a manner similar to the process used in the U.S. Doc. 336, at 25.
- The Receiver cancelled insurance coverage no longer needed. Doc. 336, at 51.
- The Receiver developed procedures, approved by the Court, for disposing of coin and bullion claims. Docs. 654, 943.
- The Receiver terminated all aviation operations.

accounts. A residual account is an account that has submitted transfer paperwork in the past but still has a balance for a number of reasons including income or dividends received after the transfer or assets that the new broker dealer was not willing or capable of accepting. The Receiver's team is actively working with these customers and the custodial firms, Pershing and JPMCC, to move the assets and close the accounts.

- All but 18 of the Stanford Trust Company accounts have been released. The Receiver's team must transfer such accounts to successor fiduciaries validly appointed in accordance with the applicable governing instruments and state law.

  - This process requires a review of the governing instruments pertaining to each account, including trust agreements and related amendments, wills and other testamentary documents, inter vivos agreements among beneficiaries and other interested parties, and judicial petitions, orders and other pleadings, and an analysis of the requirements of applicable state law.

  - Approximately 25 of the released accounts require additional work to complete the transfer of all assets in the respective accounts. This additional work includes, among other things, seeking judicial appointment of successor trustees and obtaining the requisite transfer authorizations from customers.

  - In addition, there are approximately 25 residual Stanford Trust Company accounts. The Receiver's team is actively working with these customers and the custodial firm, SEI Private Trust Company, to move the assets and close the accounts. After all accounts are transferred out, the Receiver's team will shut down the Trust Company in accordance with applicable law.

- There also continues to be a significant number of issues arising in connection with the distribution or transfer of certain released individual retirement accounts, including the tax notice and reporting requirements applicable to specific account circumstances, related income taxation and applicable tax withholding requirements, and other questions regarding the distribution or transfer of specific non-cash assets from such accounts.

- The owners of approximately 60 brokerage accounts subject to the bulk transfer notified the Receiver that they wanted to "opt out" of the bulk transfer but have yet to take action to cash out or move their accounts to a new firm. The Receiver's team is actively contacting these customers to encourage and assist them in moving their accounts.

Terminating the business operations, employment, and other contractual relationships of more than 100 Stanford entities on three continents has been a time consuming, legally complex, and expensive endeavor. However, whether in Receivership, or bankruptcy, the Estate must comply with the requirements imposed by law. A trustee would need to provide the same assistance, information, and rights to the remaining Stanford brokerage, trust, and coin and bullion account holders, employees, and vendors as the Receiver must. A trustee could no more throw a switch and simply turn off these obligations than the Receiver can. Once more, bankruptcy offers no advantage, only the significant disadvantages of lost time and money, to the investors.

B. Bankruptcy creates a host of legal issues that will be litigated at great expense to the bankruptcy estate.

Lifting the stay on filing bankruptcy petitions raises a number of complex legal issues, the outcome of which are impossible to predict. The only certainty is these issues would be hotly contested and litigated at considerable expense to the bankruptcy estate. Many of the risks and expenses the Receiver avoided by settling the chapter 15 action brought by the Antiguan Liquidators would be revived by an involuntary bankruptcy filing. The resolution of these issues may have a significant impact on the details of any distribution plan. The Receiver will set out several of these issues briefly.

The Examiner has challenged the Movants to identify the specific Stanford entities they seek to place into involuntary bankruptcy proceedings. The Receiver has identified 139 separate Stanford entities, several of which are possible targets for an involuntary petition in bankruptcy. However, not every creditor of the Receivership Estate would have standing to file a petition in bankruptcy for every Stanford entity. The Movants - CD holders - would appear to have standing only to file a petition against the Stanford International Bank, Ltd. (“SIBL”). It is

possible other groups of creditors could file petitions against other entities. But the Receiver is unaware of any group of creditors who would have standing as to all entities in the Estate; for example, even the Receiver does not have the power to file bankruptcy for the individual defendants. Thus, lifting the injunction, as Movants request, would almost certainly fracture the Receivership Estate into several estates, subject to different proceedings.

In an attempt to unify the Estate in the same manner as under this equitable Receivership, parties in bankruptcy could move for the substantive consolidation of multiple entities. But creditors of some entities would likely resist because their claims would be diluted by the CD holders' claims, which are much greater in number and amount than any other group. The Stanford entities were operated in concert to perpetrate the Ponzi scheme. Many of the transfers, payments, and asset sales among the entities and between the entities and Allen Stanford were fraudulent. A trustee of some subset of Stanford entities might initiate fraudulent transfer claims against other entities (as the Antiguan Liquidators expressed an intent to do on behalf of SIBL), which would engender additional costs that would reduce the value of the Estate and distributions to claimants.

In addition to this SEC enforcement action, there is a great deal of other "satellite" litigation against defendants and related persons. Determining which cases are stayed, and which are not, will be another complication introduced by lifting the stay. Upon the filing of a petition in bankruptcy, the Bankruptcy Code's automatic stay protects the debtor from the commencement or continuation of any formal or informal action or proceeding against the debtor. 11 U.S.C. § 362. The majority of litigation involving the Estate, Receiver, agents and former agents of the Stanford entities has been stayed pursuant to this Court's injunction. Cases against any entity in bankruptcy would remain stayed and any attempts to reinstitute or continue

them should be prevented by the stay. However, certain actions brought by a governmental unit are excepted from the stay. 11 U.S.C. § 362(b)(4). For example, the DOJ's criminal case would not be stayed. 11 U.S.C. § 362(b)(1). Investors have brought actions against Stanford principals and financial advisors affiliated with Stanford. Generally, the automatic stay does not protect legal entities that are separate from the debtor and bankruptcy estate, including corporate directors, officers, or affiliates, partners, and codefendants in pending litigation. *See, e.g., Wedgeworth v. Fiberboard Corp.*, 706 F.2d 541, 544 (5th Cir. 1983).

This is just a sample of the legal issues that can be avoided by denying the motion to lift the stay on filing an involuntary bankruptcy petition.[10]

C. Movants concede that bankruptcy would not effect any cost savings.

No compelling evidence or argument can be put forth that bankruptcy would be less expensive than the Receivership. This Court placed the assets and records of defendants, and all entities they have owned or controlled, into Receivership. Only some of these entities can be placed in bankruptcy. The result of lifting the injunction will be contemporaneous proceedings, each liquidating part of the current Receivership estate. The professional fees and expenses of this Receivership peaked several months ago and have been steadily declining. The Receiver's cost estimate for the first quarter of 2010 is $5.6 million ($1.8 to $1.9 million per

[10] Another contested legal issue could be the venue for any bankruptcy proceeding. Proper venue is the district in which the domicile, residence, principal place of business (in the United States), or principal assets (in the United States) of the debtor have been located for the 180 days preceding the filing, or for a longer portion of such 180-day period. 28 U.S.C. § 1408(1). A bankruptcy case can also be properly filed in the district where an entity's affiliate, general partner, or partnership has a bankruptcy case pending. 28 U.S.C. § 1408(2). It appears that the district courts of at least eleven different states are potential venues for filing bankruptcy against one or more entities. Attempts to venue shop or transfer venue provide more issues for litigation, and the attendant expenses.

month). The costs of bankruptcy – which will be significant – will simply be added to this amount.[11]

A bankruptcy trustee has no more creative, expeditious, economical, effective, or unassailable means of liquidating assets, pursuing litigation, or winding up the Estate than the Receiver. A trustee would engage in the same activities, using similar methods, but the expense to the Estate, and thus investors, would increase because of: (1) the time needed to transition to a new bankruptcy team; (2) delays and additional work for the remaining Receivership team which would have to devote resources to educating and sharing information with the new bankruptcy team; (3) a new set of legal issues in bankruptcy that do not exist in Receivership, and would undoubtedly be litigated; and (4) the cancellation of some transactions by parties unable or unwilling to tolerate additional delay or to work with a new team.

The professional fees and expenses of this Receivership have been substantial, but they cannot be evaluated in the abstract without reference to the work that has been accomplished and the *Johnson* factors, now familiar to all parties in this case. It is beyond dispute that this has been one of the largest, most complex, longest-lived, and far-flung Ponzi schemes in history. Three salient facts should be remembered in comparing the costs of bankruptcy and Receivership. First, every firm on the Receiver's team has provided a voluntary 20 percent discount on their fees for the life of the Receivership; several have provided additional discounts by percentages or agreements to "comp" specific expenses (such as meals, time devoted to preparing fee motions, proprietary software, etc.). Second, the professional fees

[11] The discounted hourly rate charged to the Estate by the Receiver is $425 and by his lead counsel, Kevin Sadler, is $555.25. Two years ago, Movants' attorneys were "Special Conflicts Counsel to the Official Committee of Unsecured Creditors of Calpine Corporation" in a Chapter 11 proceeding in the United States Bankruptcy Court for the Southern District of New York. *In re Calpine Corp., et al.*, Case No. 05-60200 (BRL). For the period of October 1, 2007 through January 31, 2008, Greg Blue's listed hourly rate was $555 and Peter Morgenstern's listed hourly rate was $720. There is no one on the Receiver's team charging an hourly rate of $720.

and expenses have dropped off dramatically month after month, in part because the team knows the client, the case, and the processes very well, and has been pursuing the basic tasks required, liquidation, litigation, and wind up, all with the goal of maximizing distributions. Third, a Receivership court has wide discretion to consider the value of the Estate in awarding fees; thus this Court has imposed a "hold back" on all fees and expenses awarded to date.

Bankruptcy - which would merely augment a continuing Receivership because not all defendants and Estate entities would be part of the bankruptcy estate - permits reasonable compensation to a bankruptcy trustee (§ 330(a)), the trustee's professionals (§ 327), committee members' expenses (§ 503(b)(3)(D), (b)(3)(F)), and the committee's professionals (§§ 330(a), 503(b)(4), 1103). The judicial doctrine of "economy of the estate" does not serve as a limit on compensation of bankruptcy professionals.

> In promulgating the Bankruptcy Reform Act, Congress made clear its intent to ensure competent representation of debtors by requiring compensation of "attorneys and other professionals serving in a case under Title 11 at the same rate as the attorney or other professional would be compensated for performing comparable services" in non-bankruptcy cases. In particular, Congress sought to repudiate a series of judicial decisions which had held that the compensation of attorneys in bankruptcy proceedings was subject to the overriding concern, unique to bankruptcy cases, of preserving the estate. Section 330 of the Bankruptcy Reform Act was intended to overrule the judicially fashioned doctrine of "economy of the estate" and to ensure adequate compensation for bankruptcy attorneys so that highly qualified specialists would not be forced to abandon the practice of bankruptcy law in favor of more remunerative kinds of legal work[.]

In re Nucorp Energy, Inc., 764 F.2d 655, 658 (9th Cir. 1985) (citations omitted); *see also In re Babcock & Wilcox Co.*, 526 F.3d 824, 827 (5th Cir. 2008); *In re Manoa Fin. Co.*, 853 F.2d 687, 689-90 (9th Cir. 1988); *In re Casco Bay Lines, Inc.*, 25 B.R. 747, 753-54 (B.A.P. 1st Cir. 1982);

In re Prop. Co. of Am. Joint Venture, 110 B.R. 244, 249-50 (Bankr. N.D. Tex. 1990); *In re Gulf Consol. Servs., Inc.*, 91 B.R. 414, 418-20 (Bankr. S.D. Tex. 1988).

Lifting the stay will only result in redundancy: a bankruptcy proceeding will result in a new set of professionals, with more fees, operating side by side, and sometimes at cross purposes, with the Receivership.

D. This Court has the discretion to determine that Receivership rather than bankruptcy is in the best interest of the parties and the Estate.

The Movants erroneously assert that the law provides them with an absolute right to access the bankruptcy courts to have their claims adjudicated. *See* Docs. 773 & 836. But the Movants' own authorities do not support their argument that bankruptcy is legally required to liquidate any company.

The oldest case on which Movants rely, *Esbitt*, was an action by a corporation's receiver to collect an indebtedness. *Esbitt v. Dutch-Am. Mercantile Corp.*, 335 F.2d 141, 142 (2d Cir. 1964). The district court rendered a money judgment that was affirmed on appeal. *Id.* In dicta the court observed that the entity in receivership was "hopelessly insolvent" and in the process of liquidation, but that it would "not be in the interests of the parties to direct that further proceedings be diverted into bankruptcy channels." *Id.* at 143.

Movants also rely on a 30-year old case affirming a district court's decision to permit a liquidation of several companies by a receiver:

> It would be impractical at this point to order the district court to turn the proceedings over to a bankruptcy court because of the court's intimate knowledge of the factual data relevant to liquidation; the receiver's expertise developed in making his recommendation that the companies be liquidated; and the fact that an initial distribution of $4,600,450 has already been made as well as payment in full to all creditors having claims of $25 or less. Newly instituted bankruptcy proceedings would result in expending additional expenses and fees over and beyond the over one million dollars already paid out.

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> . . . [B]ecause the trial judge did appoint an amicus curiae to represent the creditors in the proceedings; did provide notice to creditors of the proposed litigation; and did conduct a full hearing on the issue of liquidation; it cannot be said that the judge clearly abused his discretion, either in failing to transfer the liquidation to a bankruptcy court, or to conduct an election for new trustees and appoint a creditors' committee.

SEC v. Lincoln Thrift Assoc., 577 F.2d 600, 609 (9th Cir. 1978).

Movants also quote dicta from a case in which the Second Circuit notes that "we have never vacated or modified a receivership order on the ground that a district court had improperly attempted to effect a liquidation." *SEC v. Am. Bd. of Trade*, 830 F.2d 431, 437 (2d Cir. 1987) (questioning district court's setting priorities among classes of creditors in receivership). More recently, the Second Circuit affirmed a *pro rata* distribution plan devised by a receiver and challenged by an investor. *SEC v. Credit Bancorp, Ltd.*, 290 F.3d 80, 82-83 (2d Cir. 2002); *SEC v. Byers*, 637 F. Supp. 2d 166, 176 (S.D.N.Y. 2009) ("A number of creditors argue that this Court lacks the authority to approve a liquidation plan based on Second Circuit dicta cautioning that, in general, a District Court should not permit a receivership proceeding to evolve into a liquidation proceeding. . . . Dicta is not controlling, however, and, in any event, the Second Circuit's decision in *Credit Bancorp* casts serious doubt on the dicta in *Eberhard* and *American Board of Trade*.").[12]

Movants also rely on the *Gilchrist* case, which contains some facile and questionable reasoning. Creditors defied an injunction contained in a receivership order and filed a petition in bankruptcy in another state. *Gilchrist v. Gen. Elec. Capital Corp.*, 262 F.3d

[12] It is not necessary to set forth again the many cases approving of receivers' liquidation of assets and distributions to claimants. *See, e.g. SEC v. W.L. Moody & Co., Bankers*, 374 F. Supp. 465, 481 (S.D. Tex. 1974); *SEC v. Charles Plohn & Co.*, 433 F.2d 376, 379 (2d Cir. 1970); *see* Doc. 817, at 19 & n.17 (collecting cases involving liquidation by receivers); Doc. 817, at 22 & n.18 (collecting cases involving distribution of assets by receivers).

295, 297 (4th Cir. 2001). The Fourth Circuit held that the receivership proceeding was subject to the automatic stay of bankruptcy without citing any authority. *Id*. at 304-05. This holding is in conflict with other district and Circuit cases regarding a receivership court's authority to enjoin other proceedings.[13] *See e.g.*, *Le v. SEC*, 542 F. Supp. 2d 1318, 1321 (N.D. Ga. 2008) (failure to obtain leave of the receivership court deprives the second court of subject matter jurisdiction over claims against receiver); *Schauss v. Metals Depository Corp*., 757 F.2d 649, 655 (5th Cir. 1985) (vacating two year old judgment and ordering funds be repaid because Texas case was filed and tried after receivership court in New York had issued litigation injunction). The *Gilchrist* court also stated that the bankruptcy court had better "judicial tools" at its disposal, and specifically identified nationwide service of process as one such tool. 262 F.3d at 304. But nationwide service of process is also available in a receivership through operation of 28 U.S.C. §§ 754, 1692.[14]

Finally, Movants rely on dicta from another Second Circuit case where bankruptcy was not remotely at issue. *Eberhard v. Marcu*, 530 F.3d 122 (2d Cir. 2008).

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[13] Because "[t]he receivership court has a valid interest in both the value of the claims themselves and the costs of defending any suit as a drain on receivership assets," the court "may issue a blanket injunction, staying litigation against the named receiver and the entities under his control unless leave of that court is first obtained." *Liberte Capital Group, LLC v. Capwill*, 462 F.3d 543, 551 (6th Cir. 2006). This injunction can even bind all non-parties with notice, far exceeding normal limits on the scope of injunctions. *See SEC v. Wencke*, 622 F.2d 1363, 1369 (9th Cir. 1980). Furthermore, the power to enjoin "extends to the institution of any suit." *Liberte Capital*, 462 F.3d at 551.

[14] *Warfield v. Arpe*, No. 3:05-CV-1457-R, 2007 WL 549467, at *11 (N.D. Tex. Feb. 22, 2007); *Quilling v. Stark*, No. 3:05-CV-1976-L, 2006 WL 1683442, at *2-3 (N.D. Tex. June 19, 2006); *SEC v. Cook*, No. 3-01-CV-0480-R, 2001 WL 803791, at *2-3 (N.D. Tex. July 11, 2001); *see also SEC v. Bilzerian*, 378 F.3d 1100, 1104-06 (D.C. Cir. 2004); *Am. Freedom Train Found. v. Spurney*, 747 F.2d 1069, 1073 (1st Cir. 1984); *US v. Ariz. Fuels Corp*., 739 F.2d 455, 460 (9th Cir. 1984); *Haile v. Henderson Nat'l Bank*, 657 F.2d 816, 822 (6th Cir. 1981), *cert. denied*, 455 U.S. 949 (1982); *Quilling v. Cristell*, No. Civ. A. 304CV252, 2006 WL 316981, at *3 (W.D.N.C. Feb. 9, 2006); *Terry v. Walker*, 369 F. Supp. 2d 818, 819-21 (W.D. Va. 2005); *Terry v. June*, No. Civ. A. 303CV00052, 2003 WL 22125300, at *5 (W.D. Va. Sept. 12, 2003). To exercise personal jurisdiction, service of process issues from the appointing court on persons found within any district where the § 754 filings have been made. *Carter v. Powell*, 104 F.2d 428, 430 (5th Cir.), *cert denied*, 308 U.S. 611 (1939) (process issued from appointing court, Southern District of Florida, on defendants in Northern District of Florida, where they resided).

Thus, Movants not only have failed to cite any authority binding on this Court, but have failed to cite any authority that contains a well-reasoned analysis of relevant facts and law that can support Movants' arguments regarding the relative expenses, due process rights, and efficiencies of receivership and bankruptcy.

CONCLUSION

Movants have failed to carry their burden to show that bankruptcy would provide investors with a larger and faster recovery than this Receivership. In fact, bankruptcy would introduce many substantive and procedural complexities that will not arise in the Receivership, and that will need to be litigated, at great risk and expense to the investors. Bankruptcy would not negate the need for the Receivership and so the investors would simply bear the greater costs of contemporaneous proceedings and disputes between the Stanford entities regarding standing to bring claims and ownership of assets. For these reasons, the Receiver asks the Court to deny the motion to lift the injunction against filing petitions in bankruptcy.

Dated: February 8, 2010

Respectfully submitted,

BAKER BOTTS L.L.P.

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CERTIFICATE OF SERVICE

On February 8, 2010, I electronically submitted the foregoing document with 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 the Court-appointed Examiner, 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/ Kevin M. Sadler
Kevin M. Sadler