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

SECURITIES AND EXCHANGE COMMISSION, Plaintiff	*	
VERSUS	*	Case No. 3-09-CV-298-N
STANFORD INTERNATIONAL BANK, LTD., STANFORD GROUP COMPANY STANFORD CAPITAL MANAGEMENT, LLC R. ALLEN STANFORD, JAMES M. DAVIS, AND LAURA PENDERGEST-HOLT Defendants	*	

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LOUISIANA RETIREES' MEMORANDUM IN OPPOSITION TO JOINT MOTION OF THE SEC AND RECEIVER FOR ENTRY OF SECOND AMENDED ORDER APPOINTING RECEIVER (DOCKET ENTRY NO. 958)

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The Lillie Plaintiffs (collectively referred to herein as "**Louisiana Retirees**" and as more particularly defined in **Appendix 1**) file this memorandum in opposition to the motion of Ralph Janvey (the "Receiver") entitled *"Joint Motion of SEC and Receiver for Entry of Second Amended Order Appointing Receiver"* and filed on January 14, 2010 (Docket Entry No. 958).[1] Plaintiffs are parties in the class action suit filed as *Troy Lillie et al. v. Stanford Trust Co.*, Docket No. 581670, Division 24, 19th J.D.C., Parish of East Baton Rouge, State of Louisiana (See **Exhibit A**) seeking damages from the activities of Louisiana based Stanford Trust and SEI Investments Company and SEI Private Trust Company ("SEI") based upon violations of the Louisiana securities law. The parties to this motion and the motion to intervene are also Plaintiff in the various state court suits pending in Louisiana in which non-class action suits have been filed against the brokers who made the fraudulent sales and their insurer, Certain Underwriters at Lloyd's of London in Syndicates 2987, 1866, 1084, 1274, 4000 & 1183 ("Insurer").[2] Many of the Louisiana Retirees are defendants in the

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[1]The Louisiana Retirees are plaintiffs in *Troy Lillie, et al. v. State of Louisiana*, et. al., Docket No. 581670, 19th Judicial District, East Baton Rouge Parish, State of Louisiana ("Lillie Case"). In the Becker, Starkey, Roland and Farr Cases, various Stanford brokers have been sued as defendants. See **Appendix** for a full description and identification of the parties in the Becker, Starkey, Roland, Farr, and Lillie Cases. The Becker, and Starkey Cases are pending in Louisiana state court. The Roland and Farr Cases are subject to the MDL order of February 3, 2010 transferring the cases to Judge Godbey to rule on the pending motions to remand to Louisiana state district court. **Exhibit I**. All of these suits involved claims against the individual brokers and their insurers. A class action lawsuit has been filed on behalf of all persons who purchased SIB CD's from the Louisiana Stanford Trust, which was operated by SEI known as the Lillie Lawsuit. The class of people represented in this lawsuit is not all investors, but only a limited group of retirees that purchased SIB CD's through the Louisiana Stanford Trust Company.

[2]Louisiana has a direct action statute in which both the name insured and insurer may be named as defendants in the pending litigation. La. R.S. 22:1269.

Alguire case based upon the first lawsuit that was filed on July 28, 2009 and the second lawsuit filed on *Janvey v. Alguire, et al.*, Docket No. 3:09-CV-724 in the U.S. District Court, Northern District of Texas on December 7, 2009. In addition, many of the parties in this motion are plaintiffs and representatives of classes in claims pending in Louisiana cases in which Plaintiffs have named SEI, the State of Louisiana, and certain brokers as Defendants. The Louisiana Retirees have intervened in this proceeding and request this Honorable Court to consider why the stay requested by the Receiver should not be granted as far as it relates to the Louisiana Retirees.[3] Time is of the essence in allowing the pursuit of the claims against SEI and the State of Louisiana given the age of the retirees and the needs for money. The implementation of the stay proposed by the Receiver will be a financial death sentence to many of the IRA Retirees.

The facts of the fraud that was aimed at the Louisiana Retirees differs from the other litigation being pursued by the Receiver because of the unique involvement of SEI and the Commissioner of Securities for the State of Louisiana. In a strange turn of events necessitated by this ironic case, the Louisiana Retirees now find themselves joining in the motion with Allen

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[3]Undersigned counsel represented this group of defendants in *Alguire* and the suit filed on July 28, 2009 and appeared on their behalf in presenting their case in the United States Fifth Circuit Court of Appeals where many of the claims of the Receiver were successfully dismissed or otherwise reduced. In reviewing the record, no appearances have been made in the primary lawsuit entitled *"SEC v. Stanford Int'l Bank, et al."*, 09 CV 298, U.S. District Court, Northern District of Texas ("Janvey Lawsuit") in which the stay is pending. However, throughout the appeal at the Fifth Circuit, the pleadings between the Janvey Lawsuit and *Alguire* were interchanged and treated as the same lawsuit. Further, the issues relating to the claim against the innocent investors first arose in the context of the order rendered by the court in the Janvey case. Out of an abundance of caution, counsel has filed a motion to intervene, even though for all practical purposes, counsel has made appearances at the Fifth Circuit on behalf of the Louisiana Retirees in issues arising out of the Janvey Lawsuit.

Stanford to lift the stay. Additionally, the irony extends to the Receiver attempting to protect SEI from the liability of its misconduct, which has resulted in millions of dollars of losses to Louisiana retirees who invested all of their IRA life saving in Stanford International Bank CD's (" SIB CD's") marketed the Louisiana Trust and SEI. A third irony is that the Receiver desires to stay the claim of the retiree investors against the Lloyds of London insurance policy in the Louisiana Retiree Lawsuits while the persons who committed the fraud use all of the policy proceeds in their defense of the claims.[4] What is a further irony is that Lloyds and the Receiver agree on this issue that the Louisiana Retirees' claims should be stayed because the insurer knows that the Receiver is excluded from filing claims under its policy because of the "receivership" exclusion in the policy. This is the best of all worlds for Lloyds. Stop the litigation under the policy being filed by investors, and then get off "scott-free" because the Receiver cannot make any claim under the policy on behalf of any SIB Investors.

The Receiver seeks a stay of these Louisiana proceedings for three reasons. **First**, the Receiver argues that additional discovery is burdensome on the Receiver. The discovery that will be allowed in *Alguire* is the same the discovery relating to the same issues that will be presented in the Louisiana state court litigation. There is no reason that this discovery should be taken twice. **Secondly**, the Receiver argues that the assets of the receivership estate will be required to indemnify

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[4]The insurance policy has the following exclusion: "The Underwriters shall not be liable to make any payment for Loss resulting from any Claim . . . brought by or at the behest of the Company or by or on behalf of any other Director or Officer **except** and to the extent that . . . (iii)***such Claim is brought by the examiner, trustee, receiver, liquidator, etc. in a bankruptcy proceeding***". See **Exhibit D**. Because no bankruptcy has been filed, the Receiver is barred from making a claim against the insurance policy. This is exactly what the insurer wanted. Stop the investor lawsuits because it knows the Receiver cannot make any claims.

SEI for any amount that the Louisiana Retirees collect from SEI as a result of SEI's wrongful conduct in selling SIB CD's throughout the Stanford Trust. In making this argument, the Receiver ignores the formal position of the SEC on this matter as well as a long lines of cases that preclude indemnification for violation of the securities law. *Stonewall v. Ted S. Finkel Inv. Servs., Inc.,* 641 F.2d 323, 335 (5th Cir. 1981); *In re Livent Securities Litigation,* 193 F.Supp.2d 750, 754 (S.D.N.Y.,2002). Further, the Receiver has failed to explain how it has any authority to attempt to stay a claim against the State of Louisiana, Office of Financial Institutions, Commissioner of Securities ("OFI"), for the claims that were filed in the Lillie suit, and allowed by the district court in the ruling of the court dated December 7, 2009. (**Exhibit C**). **Thirdly**, the Receiver seeks a stay because certain of the claims made in Louisiana have been made against Lloyds of London under its professional liability policy. However, the Receiver fails to explain to this Court that it may not file a claim under the Lloyds Policy because any claim filed by the Receiver against the individual brokers is excluded from coverage. (**Exhibit D**). To say it another way, the payment of any claims by Lloyds will not reduce the assets of the receivership estate in any way. The Receiver has failed to justify or explain its position on any of these arguments as required by *U.S. v. Acorn Technology Fund, L.P.*, 429 F.3d 438, 442-445 (3rd Cir.2005), or explain why the Receiver is legally justified in arguing that the interest of the receivership in requesting the stay supercedes the interest of the Lillie Plaintiffs and other Louisiana Retirees.

Since this Court has stated that the Receiver is allowed to prosecute the claims in the *Alguire* case and is not subject to the blanket stay, the facts which are at the center of that case, *i.e.* the extent of the Ponzi scheme and time of the Ponzi scheme, are the same facts that must be litigated in the

Louisiana state court proceedings. It is very difficult for the Receiver to argue that the discovery sought by the Louisiana Retirees is not the same discovery that will be an issue in *Alguire* that was initiated by the Receiver. Further, the Louisiana Retirees oppose the Receivers' motion to stay the actions against SEI, and the State of Louisiana because the claim against SEI and the State of Louisiana are not receivership assets.

Many, if not all, of the Louisiana Retirees lived off the interest income that was being paid on the SIB CD's during the past five to eight years. Many of these Louisiana Retirees have now seen their retirement savings evaporate to nothing as the SIB CD's have no value. The Receiver is now attempting to add insult to injury by seeking a stay to stop the lawsuit against SEI and the State of Louisiana which represents the best alternative for recovery by the Louisiana Retirees. The Court should note that the IRA lawsuits and the sales by Louisiana Trust are a small subsection of the overall litigation being pursued by the Receiver but represent a major source of recovery to the Louisiana Retirees and other retirees that purchased IRA's though the Louisiana Trust. The potential recovery against SEI is not a receivership asset because the claim and potential recovery is limited to a group of persons who purchased the SIB CD's from the Louisiana Trust for investment by their IRA.[5]

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[5]The Lillie Lawsuit covers the following investors who purchase IRA through the Stanford Trust. ""Plaintiffs file this matter as a class action, on behalf of themselves and all others similarly situated in Louisiana. The class which Plaintiffs seeks to represent is composed of all similarly affected persons, who (i.) purchased any SIB CD in Louisiana between January 1, 2007 and February 13, 2009 which would be subject to the Louisiana Securities Law; (ii,) renewed any SIB CD in Louisiana between January 1, 2007 and February 13, 2009; (iii.) made a decision not to redeem the SIB CD prior to maturity based upon express representations made by the Trust, their agents, or the Stanford Financial Group or based upon the values stated by SEI between January 1, 2007 and February 13, 2009; or (iv.) any Plaintiff for whom the trust

One year has now passed since the establishment of the receivership. Unfortunately to date, the Receiver has focused most of its money, time, and efforts in filing suits against the Louisiana Retirees and now seeks to impose a stay, which is really the only viable means of recovery in pursing claims against SEI for its involvement in the sale of SIB CD's to retirees through the Louisiana Trust that SEI performed all their operations. Simply, there is no authority for the blanket stay sought because there are no grounds to warrant to stay all litigation against SEI, and the State of Louisiana, and Lloyds of London.

The Receiver has spent most of the last year pursing claims against the Louisiana Retirees in the *Alguire* case. The Receiver now continues its assault on the Louisiana Retirees in its motion by attempting to protect SEI from its wrongful conduct with its sole justification that the Receiver is required to indemnify SEI for its wrongful conduct. Surely, this position by the Receiver and the inequities it creates for the Louisiana Retirees deserves more of an explanation.

STATEMENT OF FACTS

Baton Rouge, Louisiana was the epicenter of the broker fraud in which Louisiana Trust sold unregistered securities to innocent IRA Retirees, who were non-accredited, unsophisticated investors and the sale was assisted by SEI as the operations manager of Louisiana Trust. The "Louisiana Retirees" filed the suit in the Becker, Starkey, Roland, Farr, and Lillie Cases[6]. Most of the Louisiana

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purchased SIB CD's between January 1, 2007 and February 13, 2009." **Exhibit A** at Par. 101.

[6]See **Appendix 1** for a complete listing of the Plaintiffs involved in each of the Becker, Starkey, Roland, Farr, and Lillie Cases. The Lillie Case is a class action against SEI and the State of Louisiana, Office of Financial Institutions, State of Louisiana. The district court has ruled that the Lillie Plaintiff have stated a cause of action against the State of Louisiana. SEI has filed also filed certain exceptions which will be heard by the district court on February 8, 2010. (**Exhibit**

Retirees are retirees from Exxon or other companies located in Baton Rouge, Louisiana, who had accumulated retirement funds by working every day of their adult lives. Upon retirement, many of these individuals rolled their retirement savings into individual IRA's. In this particular case, their retirement funds were rolled into IRA's of which Louisiana Trust was the trustee and SEI was the entity that valued the investments on which the IRA participants relied.

SEI and the Louisiana Trust entered into an agreement which SEI would perform the trust functions of accounting and reporting of the IRA investments in SIB CD's. SEI is a leading global provider of outsourced asset management, investment processing and investment operations solutions. SEI provided investment processing, fund processing, and investment management business outsourcing solutions to the Trust by utilizing SEI's proprietary software system to track investment activities in multiple types of investment accounts. SEI allowed the Louisiana Trust to out source the trust and investment related activities. SEI, in particular, put its internationally known and respected brand name behind Stanford Financial, the Trust, and SIB, thereby lending recognition and credibility to Stanford Financial and the Trust and SIB and supporting its sales efforts.

The actions and inaction of SEI provided substantial assistance to the scheme, which devastated the Louisiana Retirees and their families. It is the position of the Louisiana Retirees that SEI intentionally and actively aided and abetted Stanford and the Louisiana Trust to operate as an illegal hedge or mutual fund in Louisiana and sell securities from, by and through Louisiana, by

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B). The other suits are individual lawsuits, as opposed to class actions, that have been filed against the brokers of the plaintiffs and their insurer, Lloyds of London. Pursuant to the recent order of this court, Plaintiffs have take no action in prosecuting the claim against Lloyds under the Direct action Statue of the State of Louisiana.

means of the conduct described herein. With full knowledge, SEI aided and abetted and perpetuated the Louisiana Trust and SIB's violations of the Louisiana Securities Law by continuing to provide the letters herein described for the known purpose of luring new customers like the Louisiana Retirees to the Louisiana Trust and SIB and selling them the worthless SIB CD's.

SUMMARY OF ARGUMENTS

In attempting to seek this blanket stay, the Receiver cloaks the justification for its stay under three broad categories and does not attempt make any showing that the rights of the receivership is necessary and outweighs the litigious rights of the Louisiana Retirees as required by *U.S. v. Acorn Technology Fund, L.P.*, 429 F.3d 438, 442-445 (3rd Cir.2005). The Receiver should not receive the unfettered deference that was afforded him in the original order granted more than one year ago. One thing has become abundantly clear is that the receivership is not the most cost effective way to pursue claims on behalf of the investors. The *Lillie* litigation is the most effective and efficient way to pursue the claim against SEI relating to the SEI's role in the sale of the SIB CD's to Louisiana Retirees for purpose of investing their IRA funds.

1. Without explanation, the Receiver attempts to derail the lawsuit filed against SEI by arguing that an indemnity agreement exists with SEI which requires the Receiver to indemnify SEI's wrongful conduct in assisting in the sale of the SIB CD's by the Louisiana Trust to unsophisticated Louisiana Retirees. The question that must be addressed by the Receiver is how could the Receiver possibly be required to indemnify SEI for wrongful conduct involving the SEI involvement in the IRA offerings, and if that is in fact the case, why is the same argument not applicable to all Stanford Defendants, including officers, directors and brokers, who have corporate indemnifications. The

answer to the question is apparent and deserves a response from the Receiver before the SEI litigations is stayed.

2. The Receiver argues that the expense of gathering the documents is not a reasonable receivership expense, yet fails to disclose or report to this Court the current status of the document depository and the ease of access that could be afforded litigants. Further, it is clear that the production of documents is well within the scope of the receivership, as illustrated by past federal practice involving bank failures which always resulted in receiverships providing access to a document depository to facilitate the wind down of an operation within a reasonable period of time after the bank failure. It is respectfully submitted that while getting access to these documents right after the filing of the receivership would have been a burden, it is difficult for the Receiver to justify why the document depositary is not up and working given the considerable expense to date incurred by the Receiver. It would be most unusual for the document data base not to be in place one year after the commencement of the receivership.

At a minimum, the Receiver should be required to explain to the Court the status of the document database, and why parties access to the database substantially increases the cost of the receivership. At some point in time, the cost will be required, and there is no reason for this access to be deferred. The delay in the individual lawsuits will not decrease the cost of providing access to the documents and may very will increase it. Further, because of the affirmative claim filed by the Receiver in *Alguire*, the documents must be made available in any event to allow the defendants a defense to the claims. Many of the defendants in *Alguire* and the plaintiffs in the Louisiana state

court litigation are one in the same, and there is no reason that discovery should not be taken for both purposes.

Given the costs incurred to date by the receivership, the methods being pursued are not the most efficient and least costly way to pursue assets on behalf of the Louisiana Retirees. The *Lillie* lawsuit represents the most efficient way to pursue the claims against SEI relating to all retiree plaintiffs that opened IRA accounts at the Louisiana Trust and invested in worthless SIB CD's administered by SEI. Further, the Louisiana Trust is regulated by the OFI. The Receiver has provided no authority that his right to supervise the liquidation of the Louisiana Trust supercedes the authority of the State of Louisiana for that matter, request a stay for litigation against the State of Louisiana, which has been allowed by the district court in the ruling dated December 15, 2009. **Exhibit C**. No authority has been provided by the Receiver where he would have the authority to stay litigation against the State of Louisiana or to stay any third party claim that may be filed by the State of Louisiana against any party. ("Federal court jurisdiction is limited by the Eleventh Amendment and the principle of sovereign immunity that it embodies. *Seminole Tribe of Florida v. Florida*, 517 U.S. 44, 54, 116 S.Ct. 1114, 1122, 134 L.Ed.2d 252 (1996); *Reickenbacker v. Foster*, 274 F.3d 974, 976 (5th Cir.2001). The "ultimate guarantee of the Eleventh Amendment," as the Supreme Court recently stated, is that a non-consenting State may not be sued in federal court by private individuals, including its own citizens"). *Board of Trustees of the Univ. of Alabama v. Garrett*, 531 U.S. 356, 363, 121 S.Ct. 955, 962, 148 L.Ed.2d 866 (2001).*Vogt v. Board of Com'rs of Orleans Levee Dist.*, 294 F.3d 684, 688 (5th Cir. 2002).

LAW AND ARGUMENT

The interest of the Receiver and the interest of all Retirees who purchased SIB CD's in their retirement accounts through the Louisiana based Stanford Trust Company must be balanced given the fact that a year has transpired since the filing of the receivership. *Landis v. North American Co.*, 299 U.S. 248, 254-255, 57 S.Ct. 163, 166 (U.S. 1936). The parties recognize the absolute deference that was given to the Receiver one year ago. However, it is now time for the interest of the Receiver to be balanced against the rights of the individual investors to pursue claims on their own behalf. To date, the time spent by the Receiver has been aimed at filing suit against these retirees and not in the pursuant of companies like SEI that assisted in the Stanford scheme. The United States Supreme Court has stated, "Receiverships for conservation have at times a legitimate function, but they are to be watched with jealous eyes lest their function be perverted." *People of State of Michigan, by Haggerty, v. Michigan Trust Co.*, 286 U.S. 334, 345, 52 S.Ct. 512, 515 (1932). A court has the power to grant and continue "stays to prevent interference with the receivership estate." *S.E.C. v. Madison Real Estate Group, LLC*, 647 F.Supp.2d 1271, 1275 (D.Utah 2009). To preclude other individuals from proceeding with their case in another forum, however, one must "make a strong showing" that a receivership is "necessary and that the disadvantageous effect on others would be clearly outweighed." *U.S. v. Acorn Technology Fund, supra.*

The *Acorn* court further stated that "a receivership is only a means to reach some legitimate end sought through the exercise of the power of a court of equity. It is not an end in itself." *Id.* Consequently, a receivership must be monitored to ensure it is still serving the function for which it was created. *S.E.C. v. Madison Real Estate Group, LLC*, 647 F.Supp.2d 1271, 1275 (D. Utah 2009):

> A court has the power to grant and continue "stays to prevent interference with the receivership estate." To preclude other individuals from proceeding with their case in another forum, however, one must "make a strong showing" that a receivership is "necessary and that the disadvantageous effect on others would be clearly outweighed." Indeed, "[a] receivership is only a means to reach some legitimate end sought through the exercise of the power of a court of equity. It is not an end in itself." Consequently, a receivership must be monitored to ensure it is still serving the function for which it was created. In the case of *Securities & Exchange Commission v. Wencke,* the court set forth three factors that are relevant here in determining whether the stay should be lifted for certain properties in this Receivership. **First**, the court should determine)whether the stay preserves the status quo or whether the Interveners "will suffer substantial injury if not permitted to proceed." **Second**, the court should look at the timing of the motion to lift stay to ensure the Receiver has had sufficient time to organize and understand the assets under his control. **Finally**, the court should determine whether the Interveners' claims have merit.

S.E.C. v. Madison Real Estate Group, LLC, 647 F.Supp.2d 1271, 1275 -1276 (D.Utah 2009).

However, given the fact that one year has expired since the date of the receivership, the balancing test is not further tilted in favor of the Receiver. The age of the retirees, the need for the money, and that SEI represents one of the most viable causes of action are all factor that weigh in favor of allowing the retirees the right to pursue their claims.

> The underlying principle clearly is that "[t]he right to proceed in court should not be denied except under the most extreme circumstances." *Klein v. Adams & Peck,* 436 F.2d 337, 339 (2d Cir.1971). Moreover, these precautions are of particular importance where, as here, restraints on other courts are contemplated: When an injunction sought in one federal proceeding would interfere with another federal proceeding, considerations of comity require more than the usual measure of restraint, and such injunctions should be granted only in the most unusual cases. *Bergh v. Washington,* 535 F.2d 505, 507 (9th Cir.), *cert. denied,* 429 U.S. 921, 97 S.Ct. 318, 50 L.Ed.2d 288 (1976).

Commodity Futures Trading Com'n v. Chilcott Portfolio Management, Inc., 713 F.2d 1477, 1484 (C.A. Colo. 1983).

How this can best be done calls for the exercise of judgment, which must weigh

> competing interests and maintain an even balance. *Kansas City Southern R. Co. v. United States*, 282 U.S. 760, 763, 51 S.Ct. 304, 305, 306, 75 L.Ed. 684; *Enelow v. New York Life Ins. Co.*, 293 U.S. 379, 382, 55 S.Ct. 310, 311, 79 L.Ed. 440. True, the suppliant for a stay must make out a clear case of hardship or inequity in being required to go forward, if there is even a fair possibility that the stay for which he prays will work damage to some one else. Only in rare circumstances will a litigant in one cause be compelled to stand aside while a litigant in another settles the rule of law that will define the rights of both.

Landis v. North American Co., 299 U.S. 248, 254-255, 57 S.Ct. 163, 166 (U.S. 1936).

The Receiver has fallen woefully short of providing the information required by law necessary for the court to apply a balancing of interest test between the Receiver and retirees as required by existing case law. One statement on expenses of a document database, and a half sentence on claims of SEI being subject to indemnification hardly meet the standard mandated by *Landis*, *supra*.

Before granting the broad stay requested by the Receiver and as a part of its duty to monitor the activities of the receivership, this Court should order the Receiver to fully and completely explain: (1.) the current status of the document depository and why additional expenses will be incurred in granting access to the document database; (2.) why it is not in the interest of the retirees who invested in the Louisiana Trust to allow this suit to go forward against SEI and the State of Louisiana because this is a subset of all investors in SIB CD's and is not a claim that can be pursued on behalf of all owners of SIB CD's against SEI and the State of Louisiana; and (3.) why it believes that it will be required to indemnify SEI for its wrongful conduct in the SIB CD offering given the current status of the law and the current position of the SEC on this issue. It is only through this process can the Court be fully informed so that the interests of the Receiver can be balanced against the retirees. In

this instant litigation, the Receiver asks for a blanket stay which suffocates any potential recovery that the retirees who invested in IRAs through the Stanford Trust would have.

I. THE RECEIVER FAILS TO SUBSTANTIATE THE INDEMNIFICATION CLAIM AND DOES NOT REFERENCE A SPECIFIC CONTRACT CLAUSE NECESSITATING THE ESTATE TO INDEMNIFY THE WRONGFUL ACTS OF SEI

The Receiver argues that the claim for the wrongful act of SEI in connection with the Louisiana Trust would diminish the estate's assets because of the existence of an indemnification between the Receiver and SEI. The Receiver simply states, "the contracts between SEI and Stanford and SEC and STC require the Estate to indemnify Pershing and SEI in these lawsuits and arbitrations."[7] The Receiver provides no evidence to substantiate such a indemnification, yet moves the Court to provide a blanket protection to SEI. At a minimum, the Receiver should be required to detail how the Receiver could possibly be liable for the misconduct of SEI as alleged in the Louisiana Suit against SEI which represents their only viable means and best avenue of recovery for the retirees that invested their life savings in IRA's with the Trust.

Furthermore, if the Receiver must indemnify SEI for all of its conduct- whether intentional or not, does the SEI indemnification agreement differ from the Stanford officers Indemnification agreement? Simply, no. It is highly unlikely that an indemnification agreement that would shield wrongful conduct would be enforceable. At the very least, in efforts to preserve the Louisiana Retirees' litigious rights, the Receiver must prove the likelihood of enforcement of the alleged indemnification agreement by SEI as a justification for pursing the stay of the *Lillie* suit on that basis.

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[7]See Joint Motion of the SEC and Receiver for Entry of Second Amended Order Appointing Receiver (Docket Entry No. 958) filed January 14, 2010 at p. 3.

Indemnification for violation of the securities laws is contrary to public policy. *Stonewall v. Ted S. Finkel Inv. Servs., Inc.*, 641 F.2d 323, 335 (5th Cir. 1981) (no indemnification for claims based on securities fraud or failure to register); *Laventhol, Krekstein, Horwath & Horwitch*, 637 F.2d 672, 676 (9th Cir. 1980); *Tucker v. Arthur Andersen & Co.*, 646 F.2d 721, 724 (2d Cir. 1981). ("Permitting claims of indemnification by alleged perpetrators of fraud would run counter to the paramount policy objectives of the securities laws to punish violators and to deter fraudulent conduct. Thus, the Second Circuit has held that "it is well established that one cannot insure himself against his own reckless, wilful or criminal misconduct.") *Globus v. Law Research Service, Inc.*, 418 F.2d 1276, 1288 (2d Cir.1969), *cert. denied,* 397 U.S. 913, 90 S.Ct. 913, 25 L.Ed.2d 93 (1970). *In re Livent Securities Litigation*, 193 F.Supp.2d 750, 754 (S.D.N.Y. 2002). Claims for indemnification where the underlying liability arose from securities law violations "run[s] counter to the policies underlying the securities acts' and therefore, should not be permitted. *Eichenholtz v. Brennan*, 52 F.3d 478, 484-85 (3rd Cir. 1995) (citing cases). These principles are well-settled because "a securities wrongdoer should not be permitted to escape loss by shifting his entire responsibility to another party." *Heizer Corp. v. Ross*, 601 F.2d 330, 334 (7th Cir. 1979). Accordingly, SEI should not be allowed to avail itself of an inapplicable and unenforceable claim for indemnity as a basis for amending the Order.

Finally the Item 512 of Regulation S-K, 17 C.F.R. §229.512(h), Form S-1, which is a regulation adopted by the SEC and required for any initial offering of securities registered with the SEC states the following:

> Insofar as indemnification for liabilities arising under the Securities Act of 1933, may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the

> opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable.

17 C.F.R. §229.512(h). It is clear that the position of the Receiver once again conflicted with the position of the SEC on this important issue in much the same way that existed in the past case before the Fifth Circuit relating to the extent of the clawbacks.

II. IN ADDITION TO THE SUITS AGAINST SEI AND THE STATE OF LOUISIANA, THE COURT SHOULD ALLOW LOUISIANA INVESTOR CLAIMS AGAINST STANFORD BROKERS WHICH ARE INSURED BY LLOYDS OF LONDON, BECAUSE BASED UPON THE CURRENT SITUATION, THE ONLY BENEFICIARY OF THE POLICIES ARE THE PERSONS THAT COMMITTED THE FRAUD AND NOT THE PERSONS WHO DESERVE TO BE INDEMNIFIED FOR THEIR LOSS.

A common misunderstanding in this litigation is the Receiver has a right to collect any proceeds from the insurance policies of Lloyds.[8] Excerpts from the policy are included in the Appendix as **Exhibit D**. The insurance policy has been previously filed with this Court by Lloyds in the case entitled *"Certain Underwriter's at Lloyds London v. Ralph S. Janvey"*, Docket No. 09CV 1736, U.S. District Court, Northern District of Texas. The policy has a specific exclusion which excludes form coverage claims:

> brought by or at the behest of the Company or by or on behalf of any other Director or Officer **except** and to the extent that
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> *********
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> (iii) ***such Claim is brought by the examiner, trustee, receiver, liquidator, etc. in a bankruptcy proceeding***

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[8]Lloyds has not been named as a defendant in the Lillie Suit. Lloyds has only been named as a defendant in the non-class action suits against the individual brokers that are known as the Becker, Starkey, Roland, and Farr suits as set forth in the Appendix.

Because of this exclusion, it should be apparent to the Court why Lloyds is attempting to stay all individual lawsuits— ***the Receiver's claim is excluded from coverage because Stanford is not in a bankruptcy proceeding***. Further, because the policy is a claims made policy, which expired on August 15, 2009, no claim can be filed in the future even if the company filed for bankruptcy. If the insurer would represent to this Court that it waives and does not intend to argue this exclusion, this become a different issue. However, absent a waiver of this exclusion, the suit by the Louisiana Retirees against Lloyds is not a receivership asset and each of the suits in Louisiana should go forward where the insurer has been named as a defendant under the Louisiana Direct Action Statute. At a minimum, the Court should order the Receiver and insurer to state their positions on the application of this exclusion prior to the time the claims are further stayed against the Lloyds.

The Louisiana Retirees will suffer substantial injury if not permitted to proceed with the State Court proceedings against the Stanford Brokers and Lloyds. The scope of the stay as it would apply to the Stanford Brokers remains a highly contested issues because of the potential for the diminishment of their assets and the depletion of the policy limits in the criminal proceeding rather than the more deserving civil defendants. Because the policies are limited, this is clearly a public policy issue that should be considered by this Court. Further, as stated above, the Receiver does not even have a claim for coverage under the insurance policy, even though the Receiver and the insurer have created an unholy alliance to prevent the parties that are most deserving from collecting under the terms of the policies. Yet again, the Receiver has put the interests of the defrauded investors behind those of the insurance companies—the very entity ensuring recovery for the defrauded investors.

Further, most of the sales to the Louisiana Retirees were in violation of the securities law because the purchasers were not accredited investors and met the definition of a non-public offering. The Receiver has no cause of action to recover damages against the brokers for the sale of unregistered securities to non-accredited investors. In most instances, the fact are peculiar to the Louisiana Retirees. In addition, no claim has been filed by the Receiver. Most of the claims of the Louisiana Retirees related to IRA retirees who were sold unregistered securities in connection with the IRA Retirement account. Because for the need for the fund for retirement, the time for pursuing these claims is of great important.

III. THE RECEIVER FAILS TO ACKNOWLEDGE THE PRODUCTION OF DOCUMENTS IS WELL WITHIN THE SCOPE OF RECEIVERSHIP AND PAST FEDERAL PRACTICE DICTATES A RECEIVERSHIP PROVIDING ACCESS TO A DOCUMENT DEPOSITORY TO FACILITATION THE WIND DOWN OPERATION AND CIVIL LITIGATIONS.

As a third justification for entering the blanket stay, the Receiver asserts that the Estate will incur additional costs in responding to the discovery request pending in all other lawsuits. In making this unsubstantiated assertion, the Receiver does not make an attempt to report the current status of its document catalogue.

The Receiver neglects to address that the document catalogue used in the *Alguire* case and the criminal prosecution will contain the same facts and the same information involving the inception of the Ponzi scheme as by the prosecution of certain claims against brokers and innocent investors in the litigation filed by the Louisiana Retirees. Simply, there is no need for the Receiver to reinvent the wheel when the Department of Justice must establish a document depository to proceed with prosecuting Allen Stanford. No new material costs will be incurred because these documents will be

catalogued for a dual purpose: prosecuting Allen Stanford in the criminal matter and substantiating the inception date and details of a Ponzi scheme in *Alguire*.

By granting the Receiver's request for a blanket stay on access to document through discovery, a dangerous and uncontrollable precedent will be set for future receiverships. The issue of the receivership estate providing access to other civil litigation is not a new issue to this Court. In every major bank failure that has occurred during the past 25 years, the FDIC, as receiver of failed banks, is required to provide document depositary for persons involved in civil litigation surround the bank failure. The document depository is not a novel concept–it is logical and the practice is well established. Federal Rule of Civil Procedure 66, which defines the limitations of a Receivership, states, "But the practice in administering an estate by a receiver or a similar court-appointed officer must accord with the historical practice in federal courts or with a local rule." Fed. R. Civ. P. 66. A court ruling that the establishment of a document database by an outside vendor, is not a reasonable expenditure will be a dangerous and historical precedent if issued under the guise of preservation of receivership assets. The accumulation of these documents and orderly presentation is one of the primary functions of the Receiver and the Receiver should be held strictly accountable for the performance of this function

Without justification or explanation, the Receiver has argued that giving the Louisiana Retirees access to a document depository is an unreasonable request and should be stayed indefinitely. It is respectfully submitted that given the expenditures incurred by the estate in other areas (see John Little's Response to Receiver's 4th Interim Fee Application. (Docket Entry No. 940). makes it difficult, if not impossible, for the Receiver to argue that the creating and maintenance of a document depository is not a reasonable receivership expense. At a minimum, it is an issue that should be

reviewed by this Court, and if there is a question of the priority of the expenditures, then the Court should determine whether access to the documents by defrauded investors in all Stanford litigations represents a better use of Receiver funds than pursuing claims against the defrauded investors.

The Receiver has, to date, spent an ample amount of time and resources unsuccessfully pursuing claims against the Louisiana Retirees. Namely 23% of the Receivership's assets have been spent attacking the very individuals the Receivership was set in place to protect.[9]

If a stay, rather than a document depository is put into place, the Louisiana Retirees will be substantially injured because at the rate of the Receivership's fees and expenses in pursuing third parties (which the receivership is just beginning to do), there will be no resources left to answer the discovery by the time the stay is lifted. The Receiver will have effectually shielded itself from any of the obligations of discovery because it ate the expenses using a sword to prey on innocent Investor Defendants, and then shielded himself with the very expenses to deflect their recovery requests.

The Receivership must produce documents in order to pursue claims filed on December 7, 2009 against the Louisiana Retirees in the *Alguire* litigation. The Receiver alleges a Ponzi scheme[10] in his complaint and must substantiate that claim with documentation proving when the Ponzi Scheme began in order to reap principle and net profits from certain Investor Defendants. If anything, discovery is "ripe for the picking" and the Receivership can kill two birds with one stone by utilizing

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[9]John Little's Response to Receiver's 4th Interim Fee Application. (Docket Entry No. 940).

[10]See Receiver's First Amended Complaint Against Certain Stanford Investors (Docket Entry No. 128 at paragraphs 17-26 filed December 7, 2009.

a document depository-- it can respond to discovery requests and pursue claims with a single fixed expense of establishing the document depository.

Additionally, the Receiver would gain control over the discovery process by faithfully carrying out the Court's order specifying time periods for arranging documents for discovery. For the Receiver to proceed in litigating *Alguire*, access to the documents are a necessity. The Receiver proposes a stay, which will further impede the judicial process for defrauded investors, rather than a document depository allowing all plaintiffs and defendants in these suits to uniformly and unilaterally have access to discovery. The document depository provides a less restrictive means of carrying out the purpose of the Receivership that would not crush the litigious rights of Louisiana Retirees.

CONCLUSION

"If not now, then when" will the Louisiana Retiree Investors have their day in court? One year has passed. The action of the Receiver has turned logic on its head.

1. The Receiver has spent more funds pursuing the Louisiana Retirees that going after other third parties involved in the scheme.

2. The Receiver and insurer are jointly seeking a stay against any claims against Lloyds even though any claim from the Receiver is excluded under the terms of the policy, and the stay allows insureds like Allen Stanford and other brokers and officer access to the policy proceed for defense cost, and precludes recovery by the retirees that have suffered the greatest loss.

3. The Receiver is attempting to protect SEI against a claim by the Louisiana Retirees that SEI assisted the Stanford Trust in marketing SIB CD's for investment by IRA's of the retirees under the pretense of a non-existent right of indemnification for wrongful conduct arising under the securities law.

The implementation of the stay only insures that the "bad guys" win and once again, the investors, who the receivership is designed to protect, get the "short end of the stick".

The Receiver has requested the extension of a blanket stay and the expansion of the scope of the stay to parties like SEI and the State of Louisiana that are not receivership assets or parties regulated by the Receiver. There is little or no justification for the expansion or continuation of the stay one year after the date of the filing of the receivership. Based upon the experience to date, the *Lillie* litigation represents the most economical and efficient manner to purse the claims against SEI relating to its marketing of SIB CD's to retirees that were purchased by the Louisiana Trust as investment for the retiree IRAs. Time is of the essence in pursuing these claims given the age of the retirees and the needs for money. The implementation of the stay proposed by the Receiver will be a financial death sentence to many of the Louisiana Retirees.

Respectfully submitted by:

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 3, 2010, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following ECF participants or by such other means as authorized by the Court and the Federal Rules of Civil Procedure.

s/Phillip W. Preis
Phillip W. Preis