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

SECURITIES AND EXCHANGE COMMISSION,	§	
	§	
Plaintiff,	§	
	§	
v.	§	
	§	
STANFORD INTERNATIONAL BANK, LTD.,	§	CASE NO. 3-09-CV-00298-N
STANFORD GROUP COMPANY,	§	
STANFORD CAPITAL MANAGEMENT, LLC,	§	
R. ALLEN STANFORD, JAMES M. DAVIS, AND	§	
LAURA PENDERGEST-HOLT,	§	
	§	
Defendants	§	

OBJECTION OF THE RUPERT PLAINTIFFS TO
JOINT MOTION OF THE SEC AND RECEIVER FOR
ENTRY OF SECOND AMENDED RECEIVERSHIP ORDER (DOC. NO. 958)
AND BRIEF IN SUPPORT THEREOF

Randall A. Pulman – **Lead Counsel**
David Lopez
Eric A. Pullen
Lance Hunter "Luke" Beshara
Adam S. Block
PULMAN, CAPPUCCIO, PULLEN & BENSON, LLP
2161 NW Military Highway, Suite 400
San Antonio, Texas 78213
www.pulmanlaw.com
(210) 222-9494 Telephone
(210) 892-1610 Telecopier

ATTORNEYS FOR THE RUPERT PLAINTIFFS

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

TABLE OF AUTHORITIES (CONT'D)

Cases (Cont'd)

Statutes

Rules

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

SECURITIES AND EXCHANGE COMMISSION,	§	
	§	
Plaintiff,	§	
	§	
v.	§	
	§	
STANFORD INTERNATIONAL BANK, LTD.,	§	CASE NO. 3-09-CV-00298-N
STANFORD GROUP COMPANY,	§	
STANFORD CAPITAL MANAGEMENT, LLC,	§	
R. ALLEN STANFORD, JAMES M. DAVIS, AND	§	
LAURA PENDERGEST-HOLT,	§	
	§	
Defendants	§	

OBJECTION OF THE RUPERT PLAINTIFFS TO
JOINT MOTION OF THE SEC AND RECEIVER FOR
ENTRY OF SECOND AMENDED RECEIVERSHIP ORDER (DOC. NO. 958)
AND BRIEF IN SUPPORT THEREOF

TO THE HONORABLE DAVID C. GODBEY, UNITED STATES DISTRICT COURT JUDGE:

Now come Barry and Carol Rupert and the ninety-five other plaintiffs in that removed cause styled *Rupert, et al. v. Winter, et al.*, No. 2009-CI-15137 in the 73rd Judicial District Court of Bexar County, Texas[1], objecting to the Joint Motion of the Plaintiff Securities and Exchange Commission and Receiver, Mr. Ralph Janvey, for the Entry of a Second Amended Order Appointing Receiver (Doc. No. 958) and Brief in support thereof, and would respectfully show unto the Court as follows:

---

[1]A complete list of the Rupert Plaintiffs is attached to the Rupert Plaintiff's Appendix as "**Exhibit A**."

I. Summary

1. The Rupert Plaintiffs have brought a lawsuit against non-Receivership Entities in Texas State Court which no federal court has jurisdiction to hear. At bottom, there is no federal question or diversity jurisdiction to hear the Rupert Plaintiffs' claim. The SEC and the Receivers' proposed Second Amended Receivership Order would work a total deprivation of the Rupert Plaintiffs' right to recovery for their injuries because it would keep the Rupert Plaintiffs out of the only court which has jurisdiction to hear their claims and force them in to a court that cannot take jurisdiction.

2. The Rupert Plaintiffs object to the entry of an amended receivership order that includes an injunction to keep Stanford depositors from suing third parties. A litigation injunction is neither appropriate nor necessary to further the SEC's interest in arresting and preventing securities fraud and the Receiver's interest in administering the estate. The litigation injunction would probably be illegal and certainly be inequitable. To the extent the Receiver does have an interest in managing his response to discovery, this Court should require him to use a less restrictive means, such as seeking the entry of a protective order or working with the Rupert Plaintiffs and Defendants to cooperatively manage discovery as is done every day in Federal Court using the existing Federal Rules of Civil Procedure.

II.Factual and Procedural Background

A. The underlying facts of the Rupert suit.

3. The Rupert Plaintiffs filed their Plaintiffs' Original Petition, a true and correct copy of which is attached the Rupert Plaintiffs' Appendix as "**Exhibit B**," in Texas State Court on September 14, 2009. The Petition alleges causes of action against:

- insurance broker Willis Group Holdings, Ltd., and Willis of Colorado, Inc. and its

employee Ms. Amy Baranoucky

- insurance broker Bowen, Miclette & Britt, Inc. and its former employee Mr. Robert Winter (both citizens of Texas), and

- Texas citizens Mr. Ricardo Abuabara, Mr. Abraham Dubrovesky, Mr. Miguel Angel Garces, Ms. Janie Martinez, along with non-Texan citizens Mr. John Buzzell, Mr. Fabio Restrepo and Mr. Oreste Tonalli all former employees of Stanford International Bank, Ltd., Stanford Trust Company, and Stanford Fiduciary Investor Services, including several citizens of Texas.

(hereinafter "**Rupert Defendants**"). Several other parties were named as defendants, but subsequently non-suited. See the "Non-Suit" and "Order Dismissing," true and correct copies of which are attached the Rupert Plaintiffs' Appendix as "**Exhibit C-1**," and "**C-2**."

4. Some (but not all) of the defendants in the Rupert suit filed a meritless, twelve-page Notice of Removal on October 20, 2009, removing the Rupert suit to the United States District Court for the Western District of Texas. A true and correct copy of the Notice of Removal is attached the Rupert Plaintiffs' Appendix as "**Exhibit D**." Among other things, the Notice of Removal argues that the Receivership Order enjoins the Rupert suit and argues that the Receivership Order extends the limited jurisdiction of this Court to cover the otherwise non-removable Rupert suit.

5. The Rupert plaintiffs moved to remand the Rupert suit thirty days later on Nov. 19, 2009. A true and correct copy of the Motion to Remand is attached the Rupert Plaintiffs' Appendix as "**Exhibit E**." The Motion to Remand shows that the Rupert suit raises no substantial federal question, includes several non-removable claims, and is not subject to a federal removal statute. In addition, the Motion to Remand shows that the Notice of Removal suffers from gross procedural defects which deprive a federal court of jurisdiction to hear the suit.

6. None of the Receivership Entities are defendants in the Rupert suit. The Rupert suit does seek recovery of any Receivership Assets. Neither the Rupert Plaintiffs nor the Rupert

Defendants have served the Receiver with any discovery.

B. The proposed Second Amended Receivership Order could have an impact on the Rupert Plaintiffs.

7. Paragraph 9 of the proposed Second Amended Order Appointing Receiver contains several changes which appear to be targeted towards the Rupert Plaintiffs.[2] The following table presents a side-by-side comparison of the existing language and the proposed language:

[2]The Rupert Plaintiffs make all arguments against the proposed Second Amended Order Appointing Receiver without waiving any argument they make in the future that the proposed Second Amended Order does not restrain or enjoin them.

Amended Order Appointing Receiver (Doc. No. 157)	**Proposed Second Amended Order Appointing Receiver**
9. Creditors and all other persons are hereby restrained and enjoined from the following actions, except in this Court, unless this Court, consistent with general equitable principals and in accordance with its ancillary equitable jurisdiction in this matter, orders that such actions may be conducted **in another forum or jurisdiction**: (a) The commencement or continuation, including the Issuance or employment of process, of any judicial, administrative, or other proceeding against the Receiver, any of the defendants, the Receivership Estate, or any agent, officer, or employee related to the Receivership Estate, arising from the subject matter of this civil action; or (b) The enforcement, against the Receiver, or any of the defendants, of any judgment that would attach to or encumber the Receivership Estate that was obtained before the commencement of this proceeding.	9. Creditors and all other persons are hereby restrained and enjoined from the following actions, except in this Court **and with leave of this Court**, unless this Court, consistent with general equitable principals and in accordance with its ancillary equitable jurisdiction in this matter, orders that such actions may be conducted: (a) The commencement or continuation, including the issuance or employment of process, of any judicial, administrative, or other proceeding against the Receiver, any of the defendants, **any entity within the Receivership Estate**, any **current or former** agent, officer, or employee of the Receivership Estate or of any entity within the Receivership Estate, **Pershing LLC, and/or SEI Investment Company** arising from the subject matter of this civil action; or (b) The enforcement, against the Receiver, or any of the defendants, of any judgment that would attach to or encumber the Receivership Estate that was obtained before the commencement of this proceeding.

8. In three ways, (1) by omitting the language from the first Amended Order acknowledging that litigation would have to take place outside of this Court, (2) by purporting to restrain and enjoin creditors such as the Rupert Plaintiffs from filing suit without leave of this Court, and (3) by attempting to cover former agents, officers, and employees, the proposed Second Amended Order Appointing Receiver could be used to try to enjoin action by the Rupert Plaintiffs.

9. The Receiver and SEC have made it clear that the Rupert Plaintiffs (and others plaintiffs like them) are the targets of the proposed Second Amended Receivership Order. On pages 2 and three of their Joint Motion, Doc. No. 958, the Receiver and the SEC allege that "lawsuits against former Stanford Financial Advisors" are "demanding significant resources from the Receiver, his professionals, and the Estate," that "[p]laintiffs are taking the position that the litigation injunction does not apply to terminated employees," that "the Estate is in possession of documents relating to Stanford client accounts," meaning that parties will seek discovery from the Receiver, which will consume resources.

III. Motion for Leave to Object

10. To the extent necessary, and without seeking affirmative relief related to their removed action, the Rupert Plaintiffs seek leave of this Court to object to the proposed Second Amended Receivership Order.

11. Though not directly applicable, this Court should consider the Rupert Plaintiffs Motion for Leave under standards similar to those of Federal Rule of Civil Procedure 24 - Intervention, and applicable case law.

12. The Fifth Circuit has emphasized that "[f]ederal courts should allow intervention where no one would be hurt and the greater justice could be attained." *Doe No. 1 v. Glickman*, 256 F.3d 371, 375 (5th Cir. 2001) (quoting *Sierra Club v. Espy*, 18 F.3d 1202, 1205 (5th Cir. 1994)).

A. Intervention as of Right

13. To intervene of right under Rule 24(a)(2), an applicant must meet four requirements: (1) the application for intervention must be timely, (2) the applicant must have an interest relating to the property or transaction which is the subject of the action, (3) the applicant must be so situated that the disposition of the action may, as a practical matter, impair or impede his ability to protect

that interest and (4) the applicant's interest must be inadequately represented by the existing parties to the suit. *Haspel & Davis Milling & Planting Co. v. Bd. Of Levee Comm'rs*, 493 F.3d 570, 578 (5th Cir. 2007); *Cycle Sport, LLC v. Dinli Metal Indus. Co.*, 2008 U.S. Dist. LEXIS 88872, at *1-*2 (N.D. Tex. Oct. 30, 2008).

15. This intervention is timely. The Rupert Plaintiffs have filed their Objection within 21 days of the entry of the Receiver and the SEC's Joint Motion, which is the time permitted for filing a response pursuant to the Local Rules of the Northern District of Texas.

16. The Rupert Plaintiffs have a compelling need to object the proposed Secon Amended Receivership Order protect their right to seek compensation for harm done to them in state court. This need is enough to meet the second and third requirements under Rule 24.

17. With regard to the second requirement of Rule 24(a), a potential intervener asserts an interest that is related to the property or transaction that forms the basis of the controversy in the case into which he seeks to intervene, if the potential intervener has a direct, substantial and legally protectable interest in the property or transaction that forms the basis of the controversy in the case into which he seeks to intervene. *Doe No. 1*, 256 F.3d at 379. The fourth requirement of Rule 24(a) "is satisfied if the applicant shows that representation of his interest 'may be' inadequate; and the burden of making that showing should be treated as minimal." *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10 (1972).

18. If this Court were to approve the proposed Second Amended Order Appointing Receiver, the Rupert Plaintiffs might not be able to protect their interests in the future. The Rupert Plaintiffs are bringing suit against third parties who would seek to use the Second Amended Receivership Order in its current form against them, and no matter what the subsequent disposition of the Rupert Plaintiffs' pending Motion to Remand, the Rupert Plaintiffs could find themselves

needlessly back before this Court. Further, the Receiver could take the position that the Second Amended Receivership Order gives him the authority to pursue action against the Rupert Plaintiffs or to restrain the Rupert Plaintiffs action for the mere purpose of protecting the value of his Receivership authority, the need for which could have been avoided by more careful tailoring of the Order.

19. The Rupert Plaintiffs' interests are inadequately represented by the existing parties. While the Examiner, Mr. John Little, has been appointed to represent the interests of Stanford CD Depositors in the Receivership proceeding, he supports the entry of the proposed Second Amended Receivership Order in its current form, while the Rupert Plaintiffs Object. No existing party represents their interest in pursuing claims against third parties.

B. Permissive Intervention

20. In the alternative, this court has the authority to allow the Objection by analogy to permissive intervention under FED. R. CIV. P. 24(b). The decision to permit interventionunder Rule 24(b) requires a threshold determination that the applicant's claim or defense and the main action have a question of law or fact in common. *Newby v. Enron Corp.*, 443 F.3d 416, 421 (5th Cir. 2006). The determination is not discretionary; it is a question of law. *Id.* The "claim or defense" requirement of Rule 24(b) is construed liberally. *Id.* at 422. Permissive intervention is within a court's discretion. *Id.* at 424.

21. The Rupert Plaintiffs have that sufficient common question of law and fact to justify hearing their objection. The Receiver has already asserted Rupert suit is enjoined by the Receivership Order as it exists now. Without waiving any future objections the Rupert Plaintiffs might raise, it seems clear that the Receiver and the Rupert Defendants will argue that proposed

Second Amended Receivership Order bars the Rupert suit even more strongly than the current Receivership Order does.

22. Intervention should even be permitted in an SEC Receivership case such as this one. *SEC v. Credit Bancorp, Ltd.*, 194 F.R.D. 457 (S.D.N.Y. 2000), was an SEC enforcement action with many similarities to this case, in which the Honorable Robert Sweet granted investors' motions to intervene. In *SEC v. Forex Asset Mngmnt LLC*, 242 F.3d 325, 327-28 (5th Cir. 2001), the Fifth Circuit faulted investors, who sought leave to appeal late in the case, for failing to seek to intervene in an SEC enforcement action alleging that defendant engaged in a scheme to defraud investors.

IV. Arguments and Authorities on the Rupert Plaintiffs' Objection

A. The Receiver and the SEC cannot meet the four-part standard for granting an injunction

23. "A preliminary injunction is an extraordinary and drastic remedy, not to be granted routinely, but only when the movant, by a clear showing, carries the burden of persuasion. *Harris County v. CarMax Auto Superstores, Inc., 177 F.3d 306, 312 (5th Cir. 1999)* . The movant must establish that (1) it has a substantial likelihood of prevailing on the merits; (2) there is a substantial threat that it will suffer irreparable injury if the preliminary injunction is denied; (3) the potential injury to the movant outweighs the potential injury posed by the injunction to the party proposed to be enjoined; (4) granting the preliminary injunction will not disserve the public interest. *Guy Carpenter & Co. v. Provenzale, 334 F.3d 459, 464 (5th Cir. 2003).*" Oxford Global Resources, Inc. v. Weekley-Cessnun, No. 3:04-CV-0330-N, 2005 U.S. Dist LEXIS 1934, *5 (N.D. Tex. Feb. 8, 2005).

24. The Receiver and the SEC have not plead and could not prove that they have a substantial likelihood of prevailing on the merits of a claim that would allow them to obtain a third party litigation injunction.

25. There is no threat that the SEC and the Receiver will suffer irreparable injury if his requested litigation injunction is denied. If the litigation to be enjoined is allowed to proceed, the Receiver and the SEC will still have adequate remedies at law to protect their rights. As described in Part IV.D below, the Receiver and the SEC will be able to seek a protective order from both state and federal courts to protect their interests in managing discovery. Because the Receiver will ultimately be required to answer subpoenas and discovery one way or another, he faces no injury at all, let alone an irreparable one.

26. The potential injury to the Receiver and the SEC does not outweigh the potential injury to the Rupert Plaintiffs. The Receiver's claimed injury is that he will have to expend resources answering discovery if the Rupert suit is allowed to proceed. The Rupert Plaintiffs', on the other hand, will lose their right to pursue recovery in state court. The Rupert Plaintiffs' injury is far worse, because they will have lost something as fundamental as the right to seek recovery.

27. The grant of the proposed Second Amended Order Appointing Receiver would disserve the public interest. The SEC and the Receiver are not the only ones seeking to serve the public's interest because the Plaintiffs have an interest in seeking recovery from third parties. The effect on the Receivership of the proposed injunction is also relatively small compared to the windfall received by third-party defendants who may avoid liability altogether.

B. The Proposed Order is over-broad, the Receiver's authorities are inapplicable, and his requested relief would stand equity on its head.

28. The Rupert Plaintiffs would repeat and incorporate by reference the following of

the legal arguments and authorities discussed in other parties' objections to the proposed Second Amended Receivership Order as if repeated herein:

From the Pershing Class Action Plaintiffs' Brief in support of their Objection, Doc. No. 986:

- Section III.A, "The Court's Equitable Power Is Not Broad Enough to Stay the Pershing Class Action, Which Does Not Seek Assets of the Receivership Estate."

- Section III.B.3, "The cases cited by the Receiver do no apply."

- Section III.C "Equity Dictates that the Receiver's Motion Be Denied."

From the Louisiana Retirees' Motion to Intervene and Brief in Support, Doc No.992:

- Section III, "The Receiver Fails to Acknowledge The Production of Documents is Well Within the Scope of the Receivership and Past Federal Practice Dictates a Receivership Providing Access to a Document Depository to Facilitate the Wind-Down of Operation and Civil Litigation."

29. The Rupert suit, like the Pershing Plaintiffs's suit and the Louisiana Retirees' suit, does not seek assets of the Receivership.

C. The portion of the Proposed Order that enjoins state court litigation would violate the Anti-Injunction Act

30. The Anti-Injunction Act, 28 U.S.C. §2283, provides that "A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments." Paragraph 9 of the proposed Second Amended Receivership Order should not be approved because its litigation injunction would violate the Anti-Injunction Act.

31. The Anti-Injunction Act in this case strikes the constitutional balance between limited federal court jurisdiction on the one side and state sovereignty on the other. If a federal court were

allowed enjoin litigation that Congress has not given a federal court jurisdiction to hear, then the Rupert Plaintiffs and other parties would have no court in which to sue. If the Rupert Plaintiffs were left with a right but deprived of all remedies, that would work a total deprivation of their rights and a violation of their constitutional right to due process.

1. The Proposed Order is not expressly authorized by Act of Congress

32. The SEC and Receiver can point to only one express authorization by Act of Congress to support his requested relief, 15 U.S.C. §78u(d)(5), "In any action or proceeding brought or instituted by the Commission under and provision of the securities laws, the Commission may seek, and any Federal court may grant, any equitable relief that may be appropriate or necessary for the benefit of investors." *Compare* Securities and Exchange Commission's Application for Issuance of Restraining Order, etc., Doc. No. 5 (authorities cited in first paragraph). The SEC has the ability to seek an injunction under the INVESTMENT COMPANY ACT OF 1940, see 15 U.S.C. §80a-41b, and the Investment Advisers Act of 1940, see 15 U.S.C. §80b-41b,but these grants only allow the institution of an injunction to prevent violation of the securities laws, not for the benefit of investors.

33. The SEC's Memorandum of Law in support of its Motion for Ex Parte Temporary Restraining Order, Preliminary Injunction, and Temporary Relief makes it clear that the SEC instituted this far-reaching receivership as part of the relief it sought to arrest fraud. *See* SEC's Memorandum of Law, Doc. No. 6, pages 30-34.

34. To be authorized under the language of 15 U.S.C. §78u(d)(5)[3], the equitable relief must be "appropriate or necessary," it must be "for the benefit of investors," and it most of all, it

[3]No caselaw interprets the scope of this provision with respect to the rights of third parties. Section 78u(d)(5) became law relatively recently as part of the Sarbanes-Oxley Act. *See Sec. & Exch. Comm'n v. DiBella*, 409 F.3d 122, 130 (D. Conn. 2006).

must be equitable. The Rupert Plaintiffs will show in Part IV.C below that a protective order pursuant to FED. R. CIV. P. 26 and use of the coordination tools available under modern discovery practice will be much better suited to protecting the Receiver's interest in avoiding costly discovery. Because another, less coercive means of protecting the interest asserted is available, a litigation injunction cannot be said to be necessary or appropriate.

35. Reasonable minds can disagree about whether or not certain class actions or certain settlements may be said to be "for the benefit of investors," but ultimately, the Receiver cannot keep third parties from suing one another over the Stanford matter indefinitely, and at some point, they will subpoena documents and records from the Receivership Estate. There is no question that the Receiver should prepare to answer this discovery as inexpensively as possible. Insofar as the proposed litigation injunction would be "for the benefit of investors," it serves them poorly by avoiding the real problem of eventually answering discovery.

36. Enjoining the Rupert Plaintiffs' state court suit would grossly be inequitable. The individual depositors at Stanford International Bank, Ltd. have claims against third parties for negligence, fraud, and securities fraud that are not property of the Receivership Estate. *See In re: Seven Seas Petroleum, Inc.*, 522 F.3d 575, 584-588 (5th Cir. 2008). If the Receivership Order were amended to enjoin this *Seven Seas* type of creditor litigation against third party defendants, those defendants would have in effect won the Receivership lottery by avoiding liability to the Receiver under law and avoiding liability to the individual creditors under a perversion of equity. A litigation injunction "for the benefit of investors" would likewise be inequitable because it would only enjoin litigation by depositors subject to the jurisdiction of the United States. Depositors in other countries (or U.S. depositors who believe they have a good shot at avoiding detection) will be free to pursue their remedies against third-part defendants while U.S. depositors watch the train roll on by,

restrained by a misuse of equity.

2. The Proposed Order is not necessary in aid of this Court's jurisdiction or to protect or effectuate its judgments.

37. The SEC and the Receiver cannot meet the high standards of the in-aid-of-jurisdiction exception of the Anti-Injunction Act. The Fifth Circuit heard a similar case in *Newby v. Enron*, 338 F.3d 467 (5th Cir. 2003). In that case, the Fifth Circuit interpreted a portion of the SECURITIES LITIGATION UNIFORM STANDARDS ACT (SLUSA) which stayed discovery in both federal and state actions pending the outcome of a motion to dismiss for failure pursuant to Rule 12 (b)(6). *See Newby*, 338 F.3d at 473. In that case, upon basically egregious facts, the Fifth Circuit upheld an injunction. *Id.* at 474-76. The Receiver and the SEC cannot make the kind of showing the Fifth Circuit required in *Newby*, and they cannot make that showing with regard to all the depositors who would be effected by the litigation injunction. It seems well-settled that actions involving the same parties and the same nexus of facts can proceed together in state and federal court at the same time without frustrating the federal court's jurisdiction. *See In re: Diet Drugs Litigation*, 282 F.3d 220, 234 (3rd Cir. 2002). Based on the descriptions of cases cited by the Fifth Circuit in *Newby*, an injunction in-aid-of a federal court's jurisdiction requires some action that approaches sanctionable conduct by the attorney. *See Newby*, 338 F.3d at 474-75. Neither the Rupert Plaintiffs, nor to the best knowledge of their counsel, any of the other depositors have taken the kinds of acts that would justify an injunction under this exception to the Anti-Injunction Act, and the Receiver and SEC have not shown that one is necessary.

3. The governmental exception to the Anti-Injunction Act does not apply.

38. While there is a recognized exception to the Anti-Injunction Act when the United States or one of its agencies seeks to prevent the frustration of a federal interest, *see Leiter Minerals,*

Inc. v. U.S., 352 U.S. 220 (1957), *Texas v. United States*, 837 F.2d 184 (5th Cir. 1988), that exception would not allow the entry of an injunction in the form of the proposed Second Amended Order Appointing Receiver because the part of paragraph 9 discussed above does not prevent the frustration of a federal interest. The fraud has been arrested. Enjoining lawsuits against third-parties cannot possibly help the Securities and Exchange Commission prevent future violations of securities laws.

39. The federal government's other remaining interest, providing equitable relief for the benefit of investors, is not the right kind of federal interest and it is not compelling enough to justify the extraordinary application of the *Leiter Minerals* exception. *Compare United States v. Dowl*, Crim. Action No. 08-0164, 2008 U.S. Dist LEXIS 87716, *18-*26 (E.D. La., Oct. 7, 2008). In *Dowl*, the court enjoined discovery in a state court lawsuit by the defendant in a federal criminal case because it was clear that the state court discovery would be used as an end-run around restrictive federal criminal discovery practice. *Id.* The court's opinion found that the other the Leiter Minerals exception was available to "safeguard the property rights of the United States, to forestall conflicting judgments, or to protect the federal interest in regulating labor relations." *Id.* at 26. No case from within the Fifth Circuit has ever said that the SEC's actions "for the benefit of investors" were compelling enough to justify the exception.

40. Finally, as the Supreme Court noted, "Of course, the fact that an injunction *may* issue under the Anti-Injunction Act does not mean that it *must* issue." *Chick Kam Choo v. Exxon,* 486 U.S. 140, 151 (1988).

D. The Proposed Order is not the least restrictive means by which the Receiver can preserve Estate resources.

41. The Receiver has repeatedly urged that his interest is protect the Estate from

burdensome and expensive discovery requests. This Court should deny his requested relief of an over-broad, probably unlawful injunction and instead require him to begin searching for a less-restrictive method to protect the Estate.

42. Federal Rule of Civil Procedure 26(c) allows a party such as the Receiver to seek the entry of a protective order from "the court in which the action is pending." Now that the Judicial Panel on Multidistrict Litigation has entered its Transfer Order and Conditional Transfer Order, all federal class actions will be heard in this Court and all class actions yet-to-be filed will be transferred to this Court. It is no burden to the Receiver to seek the entry of a protective order and procedures for discovery from the Estate from this Court, and a litigation injunction will not advance that process.

43. The Rupert Plaintiffs reasonably anticipate that their suit will be remanded to Texas State Court soon. TEXAS RULE OF CIVIL PROCEDURE 205 governs discovery to non-parties, and expressly provides that a party requiring production of documents from a non-party (such as the Receiver) must reimburse the non-party's reasonable costs of production. Rule 192.6 allows the Receiver to seek the entry of a protective order in Texas State Court, including protection regarding the "time or place of discovery."

44. At least three other options would accomplish the Receiver's stated goal of reducing the cost and burden on the Receiver. The Rupert Plaintiffs and other state court litigants could choose to seek discovery on the same terms as those federal plaintiffs, the Rupert Plaintiffs and other state court litigants could attempt to otherwise coordinate discovery with the Receiver, or the Receiver could seek a protective from a Texas State Court. Even more methods may be found in resources such as the MANUAL FOR COMPLEX LITIGATION. So far, he has discussed none of these possibilities with the Rupert Plaintiffs.

V. Prayer

WHEREFORE, PREMISES CONSIDERED, Barry and Carol Rupert and the 95 other Plaintiffs described herein ask this Court to uphold their Objection to Joint Motion of the SEC and Receiver for Entry of Second Amended Receivership Order, and that the Court grant them any and all further relief to which they may be justly entitled.

Respectfully submitted,

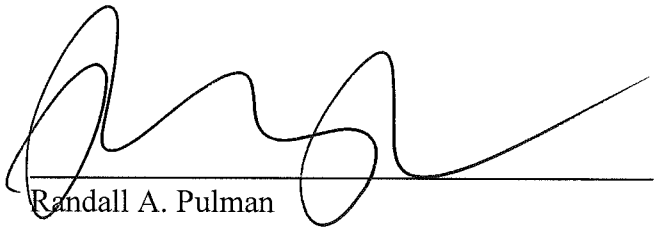
PULMAN, CAPPUCCIO, PULLEN & BENSON, LLP
2161 NW Military Highway, Suite 400
San Antonio, Texas 78213
www.pulmanlaw.com
(210) 222-9494 Telephone
(210) 892-1610 Telecopier

By: _____
Randall A. Pulman – **Lead Counsel**
Texas State Bar No. 16393250
rpulman@pulmanlaw.com
David Lopez
Texas State Bar No. 12562975
dlopez@pulmanlaw.com
Eric A. Pullen
Texas State Bar No. 24007881
epullen@pulmanlaw.com
Lance Hunter "Luke" Beshara
Texas State Bar No. 24045492
lbeshara@pulmanlaw.com
Adam S. Block
Texas State Bar No. 24066850
ablock@pulmanlaw.com

ATTORNEYS FOR THE RUPERT PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of February, 2010, I electronically filed the foregoing Objection to Joint Motion of the SEC and Receiver for Entry of Second Amended Receivership Order using the CM / ECF system which will send notification of such filing to all registered users of that system.



Randall A. Pulman