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

RALPH S. JANVEY, IN HIS CAPACITY AS	§	
COURT-APPOINTED RECEIVER FOR THE	§	
STANFORD INTERNATIONAL BANK, LTD.	, §	
ET AL.	§	
	§	Case No. 03:09-CV-0724-N
Plaintiff,	§	
	§	
V.	§	
	§	
JAMES R. ALGUIRE, ET AL.	§	
	§	
Defendants.	§	

RECEIVER'S MOTION FOR PARTIAL SUMMARY JUDGMENT AGAINST THE MAGNESS DEFENDANTS

Ralph S. Janvey, in his capacity as Receiver for Stanford International Bank, Ltd. ("SIB") and all other entities owned or controlled by R. Allen Stanford, moves for partial summary judgment against Defendants Gary D. Magness, as trustee of The Gary D. Magness Irrevocable Trust, Magness Securities LLC, and GMAG LLC (collectively, the "Magness Defendants") on the Receiver's claim for recovery of all amounts paid by SIB to the Magness Defendants in excess of the amounts they invested with SIB. As a matter of law, such payments constitute voidable fraudulent transfers under the Texas Uniform Fraudulent Transfer Act ("TUFTA"), chapter 24 of the Texas Business and Commerce Code. Each of the required matters listed in Local Rule 56.3(a) will be set forth in the Brief in support of this Motion.

1. The Receiver relies on the following summary judgment evidence:

This Motion does not address the Receiver's claim for return of the amounts paid to the Magness Defendants supposedly in reimbursement of the principal they invested. The Receiver's claim for attorneys' fees and costs will be determined at a later date.

- Exhibit 1 Declaration of Karyl Van Tassel regarding the Magness Defendants, dated June 18, 2010. *See* App. 1-99.
- Exhibit 2 James M. Davis's Plea Agreement in Criminal No. H-09-335 (S.D. Tex.—Houston Division). *See* App. 100-131.
- 2. The summary judgment evidence conclusively establishes that SIB was a Ponzi scheme, and the Court recently held that SIB was indeed a Ponzi scheme. [See Doc. 456 at 2, 11, and 13.] This fact, in turn, gives rise to conclusive legal presumptions that establish, as a matter of law, the Magness Defendants' liability under both sections 24.005(a)(1) (actual fraud) and 24.005(a)(2) (constructive fraud) of TUFTA. The Ponzi schemer is conclusively presumed to have made the payments "with actual intent to hinder, delay, or defraud . . . creditor[s] of the debtor" (see § 24.005(a)(1)), and the Ponzi entity is conclusively presumed to have had unreasonably small capital and to have lacked the ability to repay its debts at the time of the payments (see § 24.005(a)(2)(A) and (B)). In addition, payments to an investor that exceed the amount he, she, or it invested are, as a matter of law, not in exchange for "reasonably equivalent value."
- 3. Exhibit 1, the Declaration of Karyl Van Tassel, conclusively establishes that the Magness Defendants received payments in excess of their investments in the following amounts:

Name of Defendant	Amount in Excess of Investment
The Gary D. Magness Irrevocable Trust	\$4,491,442.93
Magness Securities LLC	\$879,734.30
GMAG LLC	\$3,144,779.91

PRAYER

The Receiver requests that the Court grant partial summary judgment that the Receiver recover from each Magness Defendant the amounts noted above; prejudgment and post-judgment interest thereon; and costs and attorneys' fees, as permitted by section 24.013 of the Texas Business and Commerce Code, in amounts to be determined at a later date. The Receiver also requests such other and further relief to which he may be justly entitled.

Dated: June 22, 2010 Respectfully submitted,

BAKER BOTTS L.L.P.

By: /s/ Kevin M. Sadler

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ATTORNEYS FOR RECEIVER RALPH S. JANVEY

CERTIFICATE OF SERVICE

On June 22, 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 will serve all counsel of record electronically or by other means authorized by the Court or the Federal Rules of Civil Procedure.

/s/ Kevin M. Sadler
Kevin M. Sadler