

ORIGINAL

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

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
APR 20 2009
CLEVELAND U.S. DISTRICT COURT
By [Signature] Deputy

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In re :
Stanford International Bank, Ltd., :
Debtor in a Foreign Proceeding. :
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Chapter 15
Case No. 09- _____ ()

3-09CV0721-N

**MEMORANDUM OF LAW IN SUPPORT OF PETITION
FOR RECOGNITION OF FOREIGN MAIN PROCEEDING
PURSUANT TO CHAPTER 15 OF THE BANKRUPTCY CODE**

Nigel Hamilton-Smith and Peter Wastell (the "Foreign Representatives"), the duly appointed Joint Receivers-Managers and Liquidators of all the undertaking, property and assets of Stanford International Bank, Ltd. ("SIB" or the "Debtor") in the insolvency proceeding currently pending under the laws of Antigua and Barbuda (the "Antiguan Proceeding"), by and through their undersigned counsel, hereby submit this Memorandum of Law (the "Memorandum of Law") in Support of Petition for Recognition of Foreign Main Proceeding Pursuant to Chapter 15 of the Bankruptcy Code (the "Petition for Recognition") and the Official Form Petition (collectively with the Petition for Recognition, the "Petition"). In support of this Memorandum of Law, the Debtor incorporates the statements contained in the Declaration of Nigel Hamilton-Smith in Support of the Petition for Recognition of a Foreign Main Proceeding Pursuant to Chapter 15 of the Bankruptcy Code (the "Hamilton-Smith Declaration") filed contemporaneously herewith and incorporated herein by reference.

I. **Background**

The Debtor

1. SIB is a private international bank chartered under the laws of Antigua and Barbuda and domiciled in St. John's, Antigua, West Indies. As of February 19, 2009, the records of SIB indicate that it had 27,992 active clients with a total reported invested amount, including accrued interest, of \$7,206,204,579. SIB primarily sold various forms of certificates of deposit ("CDs") that purportedly yielded rates of return exceeding those offered by more traditional banks. The CDs were marketed to investors throughout the world, and SIB had clients based in 113 countries.

The SEC Proceedings and the U.S. Receiver

2. On February 16, 2009, the Securities and Exchange Commission (the "SEC") filed a Complaint (the "Complaint") in the United States District Court for the Northern District of Texas (the "U.S. District Court"), naming SIB, certain affiliated companies, R. Allen Stanford, James M. Davis and Laura Pendergrest-Holt as co-defendants (collectively, the "Defendants"), and alleging certain violations of Federal securities laws. Generally, the SEC asserted that the Defendants perpetrated a massive and ongoing fraud through the sale of SIB CDs. In the Complaint, the SEC sought certain emergency relief, including the freezing of the Defendants' assets and the appointment of a temporary receiver to marshal and preserve the funds and assets of the Defendants for the benefit of investors.

3. Based on the Complaint, on February 16, 2009, the U.S. District Court entered (i) the Temporary Restraining Order, Order Freezing Assets, Order Requiring an Accounting, Order Requiring Preservation of Documents, and Order Authorizing Expedited Discovery (the "TRO"), and (ii) the Order Appointing Receiver. Among other things, the TRO denied SIB access to its bank accounts and prevented SIB from continuing its investment

operations. Pursuant to the Order Appointing Receiver, the U.S. District Court appointed Ralph S. Janvey of Dallas, Texas as the receiver for the Defendants (the "U.S. Receiver"), and issued, among others, an injunction prohibiting the Defendants and their agents, officers and employees from filing any proceeding "initiated pursuant to the United States Bankruptcy Code, except with the permission of" the U.S. District Court.

The Antiguan Proceedings and the Foreign Representatives

4. Following the action taken by the SEC, a large number of certificate of deposit holders sought to withdraw their funds from SIB. In response, the Financial Services Regulatory Commission (the "FSRC"), a statutory body established under the International Business Corporation Act, Cap. 222 of the Laws of Antigua and Barbuda, as amended (the "IBCA")¹ issued an order (the "Instrument of Appointment") appointing the Foreign Representatives as Joint Receivers-Managers of all the undertaking, property and assets of SIB and Stanford Trust Company Ltd. ("STCL") and granting the Foreign Representatives "all the powers, duties and liabilities conferred and imposed by the [IBCA]," including "the duties and powers previously vested and discharged by the directors of [SIB] and STCL." (Instrument of Appointment, attached as Exhibit A to the Hamilton-Smith Declaration.) The Foreign Representatives have exercised those powers and managed the affairs of both entities since the FSRC entered the Instrument of Appointment on February 19, 2009.

5. On February 26, 2009, the Eastern Caribbean Supreme Court in the High Court of Justice, Antigua and Barbuda (the "Antigua Supreme Court"), on application by the FSRC, ordered the appointment (the "Supreme Court Order") of the Foreign Representatives as Joint Receivers-Managers of SIB and STCL pursuant to Section 220 of the IBCA with such

¹ Among other things, the FSRC provides certain oversight to international bank and trust companies domiciled in Antigua.

powers as the Court may determine. The Antigua Supreme Court, among other things, ordered the Liquidators to:

- "take immediate steps to stabilize the operations of [SIB and STCL]" (Supreme Court Order ¶ 5, attached as Exhibit B to the Hamilton-Smith Declaration);
- "execute their duties in accordance with the [IBC] Act and otherwise only in accordance with this order and the directions of the Court" (Id. ¶ 6);
- "take into their custody and control all the property, undertakings and other assets of [SIB and STCL] pursuant to Section 221 of the [IBCA]" (Id. ¶ 9); and
- "open and maintain bank accounts within the jurisdiction or in such jurisdictions as they consider appropriate in their names as Joint Receiver-Managers of [SIB and STCL]" (Id. ¶ 10)

6. Pursuant to their appointment as Joint Receivers-Managers, the Foreign Representatives, and a team from Vantis Business Recovery — a division of Vantis plc, one of the largest accounting firms in the United Kingdom — have been based at SIB's headquarters in St John's, Antigua since February 20, 2009. The Foreign Representatives have undertaken an enormous amount of work in that time and have gained a deep understanding of SIB's business, its assets, its liabilities and its customers from their analysis of SIB's records, computer systems and IT databases, and their interviews of key members of SIB's staff.

7. Specifically, the Foreign Representatives have had a number of meetings with SIB's staff to identify the nature of SIB's activities and its interaction with other Stanford companies and operations it conducted in other parts of the world. The Foreign Representatives have reviewed a substantial volume of records held by SIB to obtain information about the deposits taken from clients and investments made by SIB.

8. The Foreign Representatives have been carrying out investigations to identify assets held by SIB, including cash balances, investment assets and non-investment assets. This investigation has involved not only analyzing SIB's records but also

communicating with approximately 68 financial institutions and companies to obtain their confirmation as to the cash, bonds, equities and other investments they are holding on behalf of SIB. The Foreign Representatives have also communicated with regulators in Ecuador, Columbia, Canada and Mexico and the lawyers acting for the U.S. Receiver about the relationship between SIB and other entities in the Stanford group.

9. Additionally, the Foreign Representatives have been carrying out a forensic investigation to seek to identify claims and recover assets from other entities for the benefit of SIB's creditors, including an investigation into funds that Stanford obtained via SIB that were used to fund a number of entities in Antigua and an investigation into hundreds of millions of dollars in commissions and management fees paid by SIB.

10. The Foreign Representatives have put in place appropriate arrangements to ensure communication with SIB's more than 27,000 clients, including by way of press releases, websites, re-opening of SIB's telephone lines, opening email communication channels for investors, producing statements of accounts for them and holding daily meetings. The Foreign Representatives have handled more than 13,500 investor inquiries and processed more than 3,000 change of address forms. They have also gathered information relating to the 3,500 credit cards issued by SIB and are in the process of producing revised statements for those credit card holders.

11. Additionally, the Foreign Representatives sent a team of accountants and specialist IT technicians to SIB's sales office in Montreal, Canada to dismiss staff, deal with local legal issues in conjunction with local legal counsel, and ensure that all files and paperwork have been stored and IT equipment has been imaged and safe-guarded. The Foreign Representatives are currently arranging for the sale of assets located in the Canada office, which

are limited to office and IT equipment. In the course of dealing with SIB's assets in Canada, the Foreign Representatives were recognized by the Superior Court in Quebec for the District of Montreal, which granted the Foreign Representatives the power to take custody and control over SIB assets in Canada, and acted to terminate the Montreal lease.

12. The information technology advisors to the Foreign Representatives have made significant progress in developing an on-line claims management system that will be used to process claims from various creditors of SIB. The on-line system will allow the Foreign Representatives to issue all creditors a unique registration number and will provide various security checks relating to, among others, account numbers, passwords and digital signatures. At the same time, all physical records have been preserved to allow for necessary cross checking to prevent against fraudulent claims.

13. After conducting a preliminary investigation in accordance with the authority granted by the Antigua Supreme Court, the Foreign Representatives determined that SIB was insolvent and incapable of being reorganized. Accordingly, the FSRC applied to the Antigua Supreme Court and recommended that SIB be placed into immediate liquidation (the "Application for Liquidation"). The Antigua Supreme Court entered an order (the "Order Initiating Antiguan Proceeding")² on April 17, 2009 instituting the Antiguan Proceeding, a liquidation proceeding under Antiguan law, and appointing the Foreign Representatives as Liquidators of SIB.

Interactions With the U.S. Receiver

14. From the outset, the Foreign Representatives recognized that the orderly analysis and administration of SIB would best be accomplished if the receivers in the U.S. and

² A certified copy of the Order Initiating Antiguan Proceeding is attached to the Hamilton-Smith Declaration as Exhibit C.

Antigua cooperated and coordinated their efforts. Accordingly, the day after the FSRC appointment, the Foreign Receivers contacted the U.S. Receiver to schedule a meeting to establish a cooperative framework for the collection and sharing of information and, ultimately, the collection, preservation and administration of SIB's assets. The U.S. Receiver declined the offer to meet at that time, but the parties agreed to keep lines of communication open. In a good faith effort to begin cooperation and coordination, the Foreign Representatives subsequently provided the U.S. Receiver with a report summarizing much of the work they had performed and what they had discovered regarding SIB's assets and investors. The U.S. Receiver, however, has shared virtually no information with the Foreign Representatives.

15. On March 11, 2009, the U.S. Receiver filed a Motion to Amend Order Appointing Receiver (the "Motion to Amend") with the U.S. District Court, seeking, among other things, (a) sole and exclusive authority to file bankruptcy petitions for any of the Defendants, and (b) injunctions preventing any person from (i) filing petitions for recognition of a foreign proceeding under chapter 15 of the Bankruptcy Code, and (ii) seeking relief from the injunction prohibiting the filing of a chapter 15 petition for 180 days after entry of an amended order. The U.S. District Court entered a modified version of the proposed amended order on March 12, 2009 (the "Amended Order") that, among other things, enjoined any person from filing a petition for recognition of a foreign proceeding under chapter 15 of the Bankruptcy Code without prior approval of the U.S. District Court, or seeking relief from that injunction for 180 days after entry of the Amended Order.

16. On April 1, 2009, the Foreign Representatives met with the U.S. Receiver and their counsel in Miami. Further meetings were discussed, and the parties agreed to continue to work to see whether some form of cooperation and information sharing can be achieved.

Nevertheless, the day after the Miami meeting, the U.S. Receiver filed an application to be joined in the Antiguan proceeding as an interested party (the "Application in Intervention"), and seeking to have the Application for Liquidation struck, or, in the alternative, to have himself, rather than the Foreign Representatives, appointed as the liquidator in the Antiguan Proceeding.³ Having already sought to bar the Foreign Representatives from seeking cooperation in the U.S. courts, the U.S. Receiver asserted in the Application in Intervention that, in his view, "it would be beneficial if there were co-operation between the U.S. Receiver and Antiguan Receiver . . . and [s]uch co-operation can best be achieved by having the same person in both positions." Given the U.S. Receiver's actions to date, it appears that the U.S. Receiver is largely uninterested in cooperating in any meaningful way. Indeed, the U.S. Receiver's attitude to the appointment of the Foreign Representatives as Joint Receivers-Managers of SIB and the authority of the Antiguan Supreme Court is succinctly summarized in a March 11, 2009 email drafted by the representatives of the U.S. Receiver regarding the insurance of certain SIB assets located in Antigua, wherein the representatives wrote:

Thank you for forwarding the information from Vantis. Mr. Janvey was appointed a Receiver for the two subject entities [SIB and STCL] more than a week before the Antiguan Court took action to appoint Mr. Hamilton-Smith and Mr. Wastell as Receivers. We do not recognize the Antiguan Receivers as having any authority. Neither, to our understanding, is their receivership recognised in the United Kingdom. We see no need for you to provide any information on Mr. Hamilton-Smith's instructions. So far as we are concerned, insurable interests are as have been previously discussed.

³ The U.S. Receiver actually requested that he be appointed co-liquidator in the Antiguan Proceeding, along with Mr. Richard I. Thomas of Ernst & Young, LLP.

The Chapter 15 Petition

17. Based on the U.S. Receiver's actions to date, the Foreign Representatives believe that the only way to secure the necessary cooperation from the appropriate U.S. authorities to share relevant information and collect and administer SIB's assets as is necessary to protect the interests of creditors and investors is to obtain recognition as a foreign representative under the Bankruptcy Code. The Foreign Representatives are initiating that process by filing the Petition and the necessary supporting documentation, seeking recognition as foreign representatives and recognition of the Antiguan Proceeding as a foreign main proceeding pursuant to chapter 15 of the Bankruptcy Code. The relief requested in the Petition is a necessary predicate for the Foreign Representatives, as Liquidators of SIB, to apply directly for relief in a U.S. court or to seek comity or cooperation from a U.S. court. To enable the Foreign Representatives to carry out their mandate, they are also commencing proceedings for recognition in the United Kingdom, Switzerland and Canada.

18. The Foreign Representatives are mindful of the provisions in the Amended Order which enjoin parties from (a) filing a chapter 15 petition without leave of Court, and/or (b) seeking relief from that provision for 180 days. Accordingly, the Foreign Representatives are filing the Petition and supporting pleadings initially in the U.S. District Court (for reference to Judge Godbey) and concurrently requesting that Judge Godbey refer the Petition and the related pleadings to the United States Bankruptcy Court for the Northern District of Texas. The Foreign Representatives are also seeking to have that portion of the Amended Order enjoining the filing of a chapter 15 petition vacated.

II. Argument

The Court Should Enter an Order Recognizing the Antiguan Proceeding as a Foreign Main Proceeding

19. Chapter 15 applies where, as here, "assistance is sought in the United States by a foreign court or a foreign representative in connection with a foreign proceeding." 11 U.S.C. § 1501(b)(1). Section 1517 of the Bankruptcy Code provides that a court *shall* enter an order recognizing a foreign proceeding if: "(1) such foreign proceeding for which recognition is sought is a foreign main proceeding or foreign nonmain proceeding within the meaning of section 1502; (2) the foreign representative applying for recognition is a person or body; and (3) the petition meets the requirements of section 1515." 11 U.S.C. § 1517 (emphasis added). In this case, each of these statutory requirements is satisfied, and the Court should enter an order recognizing the Antiguan Proceeding as a foreign main proceeding pursuant to section 1517(b)(1) of the Bankruptcy Code.

This Chapter 15 Case Was Commenced by Foreign Representatives

20. As defined in the Bankruptcy Code, a foreign representative is

A person or body, including a person or body appointed on an interim basis, authorized in a foreign proceeding to administer the reorganization or the liquidation of the debtor's assets or affairs or to act as a representative of such foreign proceeding.

11 U.S.C. § 101(24). The Foreign Representatives satisfy this definition. As an initial matter, the Foreign Representatives are clearly persons, which is specifically defined in the Bankruptcy Code to include, among other things, individuals. 11 U.S.C. § 101(41); (Hamilton-Smith Declaration ¶ 33.) Further, the Foreign Representatives were authorized, by virtue of their appointment as Liquidators by the Antigua Supreme Court, to administer the liquidation of SIB. (Hamilton-Smith Declaration ¶ 32; See Order Initiating Antiguan Proceeding ¶ 2; attached as Exhibit C to the Hamilton-Smith Declaration.)

The Foreign Representatives' Chapter 15 Petition Satisfies the Requirements of the Bankruptcy Code

21. Section 1515 of the Bankruptcy Code provides, in pertinent part:

(a) A foreign representative applies to the court for recognition of a foreign proceeding in which the foreign representative has been appointed by filing a petition for recognition.

(b) A petition for recognition shall be accompanied by—

(1) a certified copy of the decision commencing such foreign proceeding and appointing the foreign representative;

(2) a certificate from the foreign court affirming the existence of such foreign proceeding and of the appointment of the foreign representative; or

(3) in the absence of evidence referred to in paragraphs (1) and (2), any other evidence acceptable to the court of the existence of such foreign proceeding and of the appointment of the foreign representative.

(c) A petition for recognition shall also be accompanied by a statement identifying all foreign proceedings with respect to the debtor that are known to the foreign representative.

11 U.S.C. § 1515. The pleadings submitted by the Foreign Representatives — the Official Form Petition, the Petition for Recognition, the Memorandum of Law and the Hamilton-Smith Declaration — meet these requirements. The Foreign Representatives have filed the Petition, including both the Official Form Petition and a Petition for Recognition. Moreover, a certified copy of the Antiguan Court Order is attached to the Hamilton-Smith Declaration as Exhibit C. Finally, the Hamilton-Smith Declaration provides that the Foreign Representatives are unaware of any foreign proceedings with respect to the Debtor other than the Antiguan Proceeding. (Hamilton-Smith Declaration ¶ 39.)

22. Rule 1007(a)(4) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") additionally requires that a petition for recognition of a foreign

proceeding be accompanied by lists containing the names and addresses of (a) all administrators in foreign proceedings of the debtor, (b) all parties to any litigation in which the debtor is a party and that is pending in the United States at the time of filing of the petition and (c) all entities against whom provisional relief is being sought under section 1519 of the Bankruptcy Code. Fed. R. Bankr. P. 1007(a)(4). The first two of these are attached as exhibits to the Hamilton-Smith Declaration (See Exhibits G and H to the Hamilton-Smith Declaration), and the third is not applicable because the Foreign Representatives are not currently seeking provisional relief pursuant to section 1519 of the Bankruptcy Code. (Hamilton-Smith Declaration ¶ 37.) Accordingly, the Foreign Representatives have complied with section 1515 of the Bankruptcy Code and the relevant requirements of the Bankruptcy Rules in commencing this chapter 15 case.

The Antiguan Proceeding is a Foreign Proceeding

23. The term "foreign proceeding" is defined in the Bankruptcy Code to mean:

A collective judicial or administrative proceeding in a foreign country, including an interim proceeding, under a law relating to insolvency or adjustment of debt in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of restructuring or liquidation.

11 U.S.C. § 101(23). The Antiguan Proceeding qualifies as a "foreign proceeding" under section 101(23) of the Bankruptcy Code as it is a collective judicial proceeding in Antigua relating to the liquidation of the Debtor's assets subject to the supervision of the Antigua Supreme Court. (Hamilton-Smith Declaration ¶ 32; See Order Initiating Antiguan Proceeding attached as Exhibit C to the Hamilton-Smith Declaration.)

The Antiguan Proceeding Should Be Recognized as a Foreign Main Proceeding

24. Pursuant to the Bankruptcy Code, a foreign proceeding must be recognized as a foreign main proceeding "if it is pending in the country where the debtor has the center of its main interests." 11 U.S.C. § 1517(b)(1). The Bankruptcy Code also creates a statutory presumption that "[i]n the absence of evidence to the contrary, the debtor's registered office . . . [is] the center of the debtor's main interests." 11 U.S.C. § 1516(c). The Debtor in this chapter 15 proceeding has maintained its registered office and headquarters in St. John's, Antigua since 1990, giving rise to a presumption that Antigua is the Debtor's center of main interests ("COMI"). (Hamilton-Smith Declaration ¶ 25.)

25. Although the Bankruptcy Code is silent as to how COMI should be defined or interpreted, bankruptcy courts have generally equated COMI with a debtor's principal place of business and applied a relatively consistent set of factors in the few cases where COMI was in dispute. In re Tri-Continental Exchange Ltd., 349 B.R. 627, 634 (Bankr. E.D. Cal. 2006) (COMI "generally equates with the concept of a 'principal place of business' in United States law"); In re Bear Stearns High-Grade Structured Credit Strategies Master Fund, Ltd., 374 B.R. 122, 129 (Bankr. S.D.N.Y. 2007) (same), aff'd, 389 B.R. 325 (S.D.N.Y. 2008). These factors include: (1) the location of the debtor's headquarters, employees and primary assets; (2) the location of the majority of the debtor's creditors and investors; and (3) the jurisdiction whose law would apply to most disputes involving the debtor. In re SPhinX, 351 B.R. 103, 117 (Bankr. S.D.N.Y. 2006); Bear Stearns, 374 B.R. at 128 (the court should consider "the location of the debtor's headquarters; the location of those who actually manage the debtor (which, conceivably could be the headquarters of a holding company); the location of the debtor's primary assets; the location of the majority of the debtor's creditors or of a majority of the

creditors who would be affected by the case; and/or the jurisdiction whose law would apply to most disputes"); In re Ernst & Young, Inc., 383 B.R. 773, 780-81 (Bankr. D. Colo. 2008) (applying Bear Stearns factors); In re Loy, 380 B.R. 154, 162-63 (Bankr. E.D. Va. 2007) (same). These factors should be based on objective, observable facts that are ascertainable by third parties rather than the subjective intent of the debtor. SPhinX, 351 B.R. at 118 (citing to European Union case law — Bondi v. Bank of America, N.A. (In re Eurofood IFSC Ltd.), Case 341/04, slip op. at 6, 2006 E.C.R., 2006 WL 1142304 (E.C.J. May 2, 2006)). The COMI inquiry "examines the debtor's administration, management, and operations along with whether reasonable and ordinary third parties can discern or perceive where the debtor is conducting these various functions." In re Betcorp. Ltd., 400 B.R. 266, 290 (Bankr. D. Nev. 2009).

26. As mentioned above, SIB has maintained its registered office and headquarters in St. John's, Antigua since 1990 and has been at its current address, No. 11 Pavilion Drive, since 2002. (Hamilton-Smith Declaration ¶ 25.) The corporate offices are in a 30,000 square foot Georgian-style building outside Antigua Airport. (Id.) SIB's only other office is a sales office in Montreal, Canada. (Id.) In close proximity, and all built by R. Allen Stanford ("Stanford"), the sole shareholder of SIB's ultimate parent company,⁴ are the Bank of Antigua, the Pavilion Restaurant, the 5,000-seat Stanford Cricket Ground and the Sticky Wicket, a restaurant and bar where Stanford could frequently be found. (Id.)

27. In addition to being the sole shareholder of SIB's ultimate parent company, Stanford owned Antigua's largest newspaper, the Antigua Sun, headed the Bank of Antigua, was formerly the largest private employer in Antigua, sponsored Antigua Sail Week,

⁴ The Foreign Representatives believe that SIB is owned by Stanford Bank Holdings Limited (an Antigua company), which in turn is owned by Stanford Financial Group Limited (an Antigua company), which in turn is owned by Stanford. (Hamilton-Smith Decl. at ¶ 25.)

one of the world's most famous sailing regattas, and was in the midst of developing a marina, shopping and entertainment complex near Antigua Airport when the SIB scandal broke.

(Hamilton-Smith Declaration ¶ 26.) Stanford held dual U.S.-Antiguan citizenship and resided in Antigua for more than 20 years. (Id.) He was even knighted by the government of Antigua. (Id.)

28. The vast majority of SIB's employees worked in Antigua. (Hamilton-Smith Declaration ¶ 27.) Specifically, out of 93 employees, 88 were located in Antigua. (Id.) The remaining five employees were located in Montreal, Canada. (Id.) No employees were ever located in the United States. (Id.) Additionally, other than the office equipment for the office in Montreal, all of SIB's non-investment assets are located in Antigua. (Id.) With respect to investment assets, and while much remains to be determined, such assets appear to have been invested throughout the world, although by far the largest financial institution holdings appear to be in Switzerland and real property investments appear to be limited to the Pelican and Guiana Islands, which are part of Antigua. (Id.)

29. SIB's clients were located throughout the world. (Hamilton-Smith Declaration at ¶ 28.) More than 84% of SIB's clients in number came from outside the U.S., and in terms of total dollars deposited, more than 78% of those deposits came from outside the U.S. (Id.) The largest number of clients were from Venezuela, constituting approximately 37% of the clients, followed by the United States at a little less than 16% and Mexico at a little less than 14%. (Id.) With respect to total dollars deposited, clients in the U.S. accounted for approximately 22%, followed closely by Venezuela at 21% and Mexico at 13%. (Id.) The following chart shows the 10 countries with the largest number of SIB clients:

Country of Depositor	Number of Clients	% of total clients	Amount US\$	% of total deposits
United States of America	4,380	15.66%	1,574,389,287	21.85%
Venezuela	10,432	37.29%	1,511,898,916	20.98%
Antigua & Barbuda (including investments held in the name of Stanford Trust Company Ltd on behalf of its 3,800 clients)	4,011	14.34%	1,402,094,191	19.46%
Mexico	3,865	13.82%	932,241,682	12.94%
Canada	224	0.80%	308,349,645	4.28%
Haiti	412	1.47%	219,667,759	3.05%
Peru	553	1.98%	120,767,660	1.68%
Columbia	580	2.07%	110,245,322	1.53%
Panama	171	0.61%	89,540,559	1.24%
British Virgin Islands	132	0.47%	84,632,344	1.17%
TOTALS (relating to top 10 by deposit value)	24,760	88.51%	6,353,827,370	88.18%

30. From its Antiguan headquarters, SIB maintained and managed all depositor accounts, including performing all account opening procedures, undertaking money laundering checks and compliance procedures, maintaining all client files, managing SIB's operating software, generating client statements, managing clients' accounts in respect of loan requests, credit cards and bill payment services, executing all interest and redemptions payments to clients, receiving statements from financial institutions holding monies on behalf of SIB and handling all day to day communications with clients or their advisors. (Hamilton-Smith Declaration at ¶ 29.) Additionally, SIB submitted quarterly filings to the FSRC. (*Id.*)

31. In its marketing materials, SIB promoted itself as an Antiguan bank. (Hamilton-Smith Declaration ¶ 30.) The first sentence of the Disclosure Statement for the U.S. Accredited Investor Certificate of Deposit Program provides that "[t]his Disclosure Statement was prepared and is being furnished by Stanford International Bank Ltd. . . . a bank chartered in Antigua and Barbuda under the International Business Corporations Act, No. 28, of 1982, solely for use by certain prospective depositors who reside in the United States" (Disclosure Statement at 3; attached as Exhibit D to the Hamilton-Smith Declaration.) The Disclosure Statement also contains a lengthy description of Antigua and Barbuda, including its geography, system of government, legal system, economy and financial regulatory system, and advises

potential investors that "[n]o entity or person other than [SIB] is liable for payment of the CD Deposits." (Id. at 4, 13.)

32. Finally, the relationship between SIB and its depositors was governed by Antiguan law. (Hamilton-Smith Declaration ¶ 31.) The General Terms and Conditions of SIB that were incorporated into most transaction documents with depositors expressly provide:

These Terms and Conditions shall be interpreted in accordance with the laws of Antigua and Barbuda, W.I. For any action or proceeding which the Bank or the Depositor may commence in connection with the account or with any operation or transaction involving payment to or from the account, the Depositor irrevocably submits to the jurisdiction of the courts of Antigua and Barbuda, W. I., and to the fullest extent permitted by law, waives any and all immunity that it or any of its property, may have under any applicable law, as well as waiving any claim that such courts would be an inconvenient forum. Jurisdiction for all legal proceedings shall be in Antigua. The Bank, furthermore shall have the right to take legal action against Depositor before the competent court in Depositor's place of domicile or before any other competent court.

(General Terms and Conditions ¶ 23; attached as Exhibit E to the Hamilton-Smith Declaration.)

Further, the Subscription Agreement provided as part of the U.S. Accredited Investor Certificate of Deposit Program states that "this Subscription Agreement shall be construed in accordance with and governed exclusively by the laws of Antigua and Barbuda, and you consent to the exclusive jurisdiction of the courts in Antigua and Barbuda in relation to any action or proceeding arising under this Subscription Agreement." (Subscription Agreement at 2(k); attached as Exhibit F to the Hamilton-Smith Declaration.) Finally, the Disclosure Statement expressly states that "under the Subscription Agreement you sign for each CD Deposit, you will agree that your rights and obligations with respect to the CD Deposits will be governed by the laws of Antigua and Barbuda and that the courts of Antigua and Barbuda will have exclusive

jurisdiction over any dispute relating to the CD Deposit." (Hamilton-Smith Declaration ¶ 31; Disclosure Statement at 4.)

33. In his Application in Intervention, the U.S. Receiver argued that the United States should be considered SIB's center of main interests based on contentions that Stanford ultimately owned and controlled SIB, all major decisions were made in the U.S.⁵ and SIB was part of a single, integrated global enterprise that was based in the U.S. The U.S. Receiver, however, did not cite to any objective facts ascertainable by a third party that would lead that party to conclude that SIB's principal place of business was anywhere other than Antigua or that in doing business with SIB, that party was doing business with a U.S.-based enterprise. Indeed, at least one District Court — the United States District Court for the Southern District of Florida — has held that "it is undisputed that Stanford Bank is an Antiguan corporation that operates in Antigua." (Order Dismissing for Forum Non Conveniens at 9, Juan Alberto Zepeda Mendez and Radon Trading, Ltd. v. Stanford International Bank, Ltd. and Stanford Group Co., Case No. 02-22567 (S.D. Fla. July 9, 2003), attached hereto as Exhibit A.) In support of SIB's motion to dismiss for lack of personal jurisdiction, Franciscus P. Vingerhoedt, the then President and CEO of SIB, filed a Declaration on December 11, 2002, asserting, among other things, that SIB (a) had never operated, conducted, engaged in or carried on any business in the United States, (b) did not own property in the United States, (c) had never had an office or branch in the United States, (d) was not required to pay taxes in the United States, and (e) had never had an office address or telephone number in the United States. (See Declaration of Franciscus P. Vingerhoedt ¶¶ 18-24, Radon Trading, Ltd., Case No.

⁵ As noted previously, Stanford was also a citizen of Antigua and played a significant role in economic life in Antigua, where he undoubtedly spent considerable time. Accordingly, whether he directed the alleged fraud from the U.S. or Antigua is a matter of debate. The Foreign Representatives submit, however, that the location from where he may have directed activities should not be a key factor in determining the COMI.

02-22567 (S.D. Fla. July 9, 2003), attached hereto as Exhibit B.) Furthermore, even if there were a basis to ignore the separateness of the legal entities, SIB was unquestionably the most prominent entity and the entity through which the vast majority of all investors appear to have made their investments (through SIB-issued CDs). It was SIB that appears to have been held out to the public as the central institution, and it was consistently held out as an institution domiciled and headquartered in Antigua.

34. As established above, SIB's center of main interest was in Antigua. SIB and Stanford were integral components of Antiguan economic life. SIB was domiciled and headquartered in Antigua, its operations were conducted in Antigua, its only offices were in Antigua and Montreal, almost all of its employees were in Antigua, investor documentation held out SIB as an Antiguan enterprise and Antiguan law expressly governed the relationship between SIB and its depositors.

III. Conclusion

For all the foregoing reasons, the Foreign Representatives submit that the Antiguan Proceeding satisfies the statutory requirements in the Bankruptcy Code, and the Foreign Representatives respectfully request that the Court enter an order recognizing the Antiguan Proceeding as a foreign main proceeding and granting to the Foreign Representatives such other and further relief as the Court may deem proper.

Dated: April 20, 2009
Dallas, Texas

Respectfully submitted,



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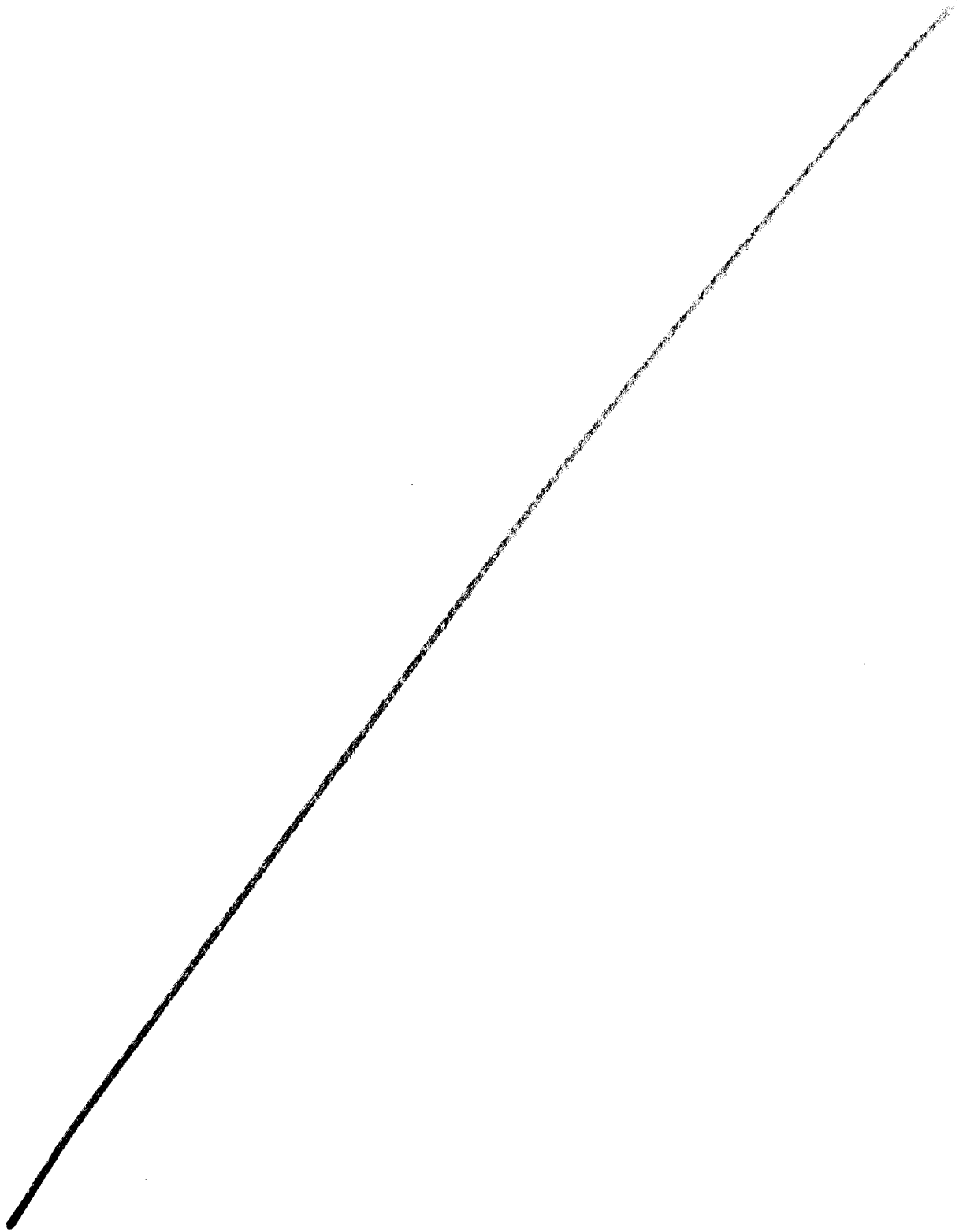
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ATTORNEYS FOR THE FOREIGN
REPRESENTATIVES

EXHIBIT A

(Order Dismissing Case for Forum Non Conveniens)



UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
Miami Division

Case Number: 02-22567-CIV-MARTINEZ

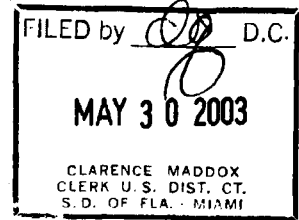
JUAN ALBERTO ZEPEDA MENDEZ
and RADON TRADING LTD.,

Plaintiffs,

vs.

STANFORD INTERNATIONAL BANK, LTD.
and STANFORD GROUP COMPANY,

Defendants.



**CLOSED
CIVIL
CASE**

ORDER DISMISSING CASE FOR FORUM NON CONVENIENS

THIS CAUSE came before the Court upon Defendants' Motions to Dismiss (D.E. Nos. 43-1, 44-1, 46-1, 46-2, 47-1, 47-2, 48-1, 50-1).¹ The Court, having carefully considered the entire case file and heard argument, is duly advised. The Court finds under the doctrine of *forum non conveniens*, this case shall be dismissed, based upon certain conditions, including the court of Antigua hearing this case.

I. BACKGROUND

Around 1996 or 1997, Mexican Law Enforcement officials identified Plaintiff, Juan Alberto Zepeda Mendez ("Zepeda Mendez"), a Mexican Citizen, as allegedly having assisted suspected drug traffickers acquire an interest in Banco Anahuac, a Mexican financial institution (Am. Compl. ¶10).² As the Banco Anahuac scandal became more publicized, Zepeda Mendez

¹Docket Entry Number ("D.E. No.").

²Because this is a motion to dismiss, the facts are taken from Plaintiff's Amended Complaint.

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sought Stanford Group Company's ("Stanford Group") aid and expertise in protecting his personal assets. Id. at ¶¶ 11, 12, 14. Stanford Group arranged for Zepeda Mendez to take control of a British Virgin Islands shell corporation, Radon Trading, Ltd. ("Radon"), also a Plaintiff here,³ and to open accounts⁴ in Stanford International Bank ("Stanford Bank") in Antigua. Id. at ¶¶ 15, 17, 18. According to Plaintiffs, Stanford Group assured Zepeda Mendez his assets would be safe, because Stanford Bank operated and conducted business solely in Antigua and was only subject to Antigua's laws and jurisdiction. Id. at ¶ 16. Stanford Group allegedly further represented Stanford Bank was an independent entity and completely separate from Stanford Group. Id. All transactions involving Plaintiff's Zepeda Mendez and Radon accounts in Stanford Bank were processed by Stanford Group. Id. at ¶¶ 18, 19.

An international agreement based in large part upon the allegations of Zepeda Mendez's money laundering resulted in the litigation of a civil forfeiture action in this district, United States v. \$3,138,211.87 in U.S. Currency et al., Case No. 00-1633-CIV-Seitz ("the forfeiture action"). On April 6, 1998, United States Magistrate Judge William Turnoff issued an order to Stanford Bank freezing the Zepeda and Radon accounts. Id. at ¶ 21. The order was served on Stanford Group at their Miami office. According to Plaintiffs, Stanford Group and Stanford Bank decided jointly to honor the freeze order. Subsequently the Antiguan Government directed Stanford Bank to restrain the accounts. The proceeds of the accounts were transferred to the United States where they became the subject of the forfeiture action. The case resulted in a

³As Plaintiff Zepeda Mendez controlled Plaintiff Radon, this Court shall refer to Plaintiffs Zepeda Mendez and Radon collectively, unless further distinction is required.

⁴These accounts shall be referred to as the "Zepeda Mendez" and "Radon" accounts or "the funds."

settlement agreement.

On April 4, 2002, Plaintiffs filed this action in the Circuit Court for the Eleventh Judicial Circuit in and for Miami-Dade County, Florida. On August 29, 2002, Defendant Stanford Group removed the case to this Court (D.E. No. 1). All of the following motions were filed on **December 16, 2002**. Defendant Stanford Bank filed a Motion to Dismiss for Lack of Personal Jurisdiction (D.E. No. 43-1); a Motion to Dismiss for Improper Venue, Forum Non Conveniens, and Comity (D.E. No. 44-1) [hereinafter "Motion"]; a Motion to Dismiss the Amended Complaint with Prejudice (D.E. No. 47-1); and a Motion to Strike Certain Claims for Relief (D.E. No. 47-2). Stanford Group also filed a Motion to Dismiss the Amended Complaint with Prejudice (D.E. No. 46-1) and a Motion to Strike Certain Claims for Relief (D.E. No. 46-2). On **April 22, 2003**, Plaintiffs filed a Motion to Stay Ruling on Stanford Bank's Motion to Dismiss for Improper Venue, Forum Non Conveniens, and Comity (D.E. No. 85-1). The Court heard argument on all the pending motions on May 13, 2003. As this Court finds the issue of *forum non conveniens* to be dispositive, the Court shall not address the other issues raised by the parties.

II. ANALYSIS

The applicable standard to assess a case with regard to a *forum non conveniens* claim was recently set forth by the Eleventh Circuit in Ford v. Brown, 319 F.3d 1302 (11th Cir. 2003). First, this Court must engage in a two-part inquiry to determine: 1) the availability and 2) the adequacy of the alternate forum. Id. at 1311 (citing C.A. La Seguridad v. Transytur Line, 707 F.2d 1304 (11th Cir. 1983)). If the alternate forum is both available and adequate, then this Court must balance the public interests and the private interests. Id. The standard this Court

must apply was summarized as follows:

As a prerequisite, the court must establish whether an adequate alternative forum exists which [sic] possesses jurisdiction over the whole case. Next, the trial judge must consider all relevant factors of *private* interest, weighing in the balance a strong presumption against disturbing plaintiffs' initial forum choice. If the trial judge finds this balance of private interests to be in equipoise or near equipoise, he must then determine whether or not factors of *public* interest tip the balance in favor of a trial in a foreign forum. If he decides that the balance favors such a foreign forum, the trial judge must finally ensure that plaintiffs can reinstate their suit in the alternative forum without undue inconvenience or prejudice.

C.A. La Seguridad, 707 F.2d at 1307 (quoting Pain v. United Technologies Corp., 637 F.2d 775, 784-85 (D.C. Cir. 1980)(emphasis in original)). Further, the defendant has the burden of persuasion as to all elements of a *forum non conveniens* motion to dismiss. Leon v. Millon Air, Inc., 251 F.3d 1305, 1311 (11th Cir. 2001).

A. Available Forum

For Antigua to be an available forum, it must have jurisdiction over the entire case. Id. Here, there is no question Antigua has jurisdiction over Stanford Bank. Plaintiffs assert Antigua does not have jurisdiction over the entire case, because Defendants have failed to establish Defendant Stanford Group is amenable to process in Antigua (See Plaintiff's Response to Defendant Stanford Bank's Motion to Dismiss for Lack of Personal Jurisdiction [hereinafter "Response"] (D.E. No. 61), pp. 5-6).⁵ Defendant Stanford Group has asserted it will subject

⁵This Court notes the paradox that *this Court* may not have jurisdiction over the *entire case*, based upon Plaintiffs' choice of this forum. Stanford Bank concurrently filed a Motion to Dismiss for Lack of Personal Jurisdiction, asserting Stanford Bank does not conduct business in the United States and has no contacts with the United States, which is undisputed. Plaintiffs assert this Court has personal jurisdiction over Stanford Bank on various theories: apparent agency, the torts were committed in Florida, the injury occurred in Florida, and based upon the conspiracy between Stanford Bank and Stanford Group that occurred in Florida. However, the Court need not reach the issue of whether this Court has personal jurisdiction over Stanford Bank, as this Court finds the issue of *forum non conveniens* to be dispositive.

itself to the jurisdiction of Antigua (see Motion, p. 14; see Defendant Stanford International Bank's Reply in Support of Motion to Dismiss for Lack of Personal Jurisdiction [hereinafter "Reply"], p. 2; Stanford Group's Stipulation of Submission to Antiguan Jurisdiction, Reply, Exhibit A), thereby negating Plaintiffs' argument that Antigua is an unavailable forum.

Additionally, the use of a conditional dismissal alleviates Plaintiffs' concerns regarding an unavailable forum. The Eleventh Circuit in Magnin v. Teledyne Continental Motors approved the district court's use of a conditional dismissal, 91 F.3d 1424, 1430-31 (11th Cir. 1996), in which "the district court dismisses the case only if the defendant waives jurisdiction and limitations defenses, and only if it turns out that another court ultimately exercises jurisdiction over the case." Ford, 319 F.3d at 1310. The Court shall next assess whether Antigua is an adequate forum. See Leon, 251 F.3d at 1311 ("Availability and adequacy warrant separate consideration.")(citing Satz, 244 F.3d at 1283-4).

B. Adequate Forum

A defendant also bears the burden of proving the adequacy the alternative forum. See e.g., Satz v. McDonnell Douglas Corp., 244 F.3d 1279, 1282 (11th Cir. 2001) (defendant carried burden of proving Argentina was an adequate forum). The Supreme Court noted dismissal may be improper where "the remedy provided by the alternative forum is so clearly inadequate or unsatisfactory that it is no remedy at all." Piper Aircraft Co. v. Reyno, 454 U.S. 235, 254; 102 S. Ct. 252, 265 (1982). The Eleventh Circuit noted: "courts have been strict about requiring that defendants demonstrate that the alternative forum offers at least some relief." Leon, 251 F.3d at 1311 (citing Mercier v. Sheraton International, Inc., 935 F.2d 419, 425 (1st Cir. 1991) (the court reversed a *forum non conveniens* dismissal because the defendant failed to prove "expressly that

Turkish law recognized claims for breach of contract and tortious interference with contract"))).

In this case, Stanford Bank asserts Antigua is an adequate forum. In support of its contention, Stanford Bank proffered the Declaration of Dr. Eroll Cort, who is an attorney licenced to practice in the Eastern Carribean Supreme Court, in particular, in the jurisdiction of Antigua and Barbuda (Motion, Exhibit U, ¶1). Dr. Cort's declaration states the law of Antigua is based upon the British legal system, as is that of the United States of America. Id. at ¶7. Dr. Cort further states the causes of action asserted in the Amended Complaint (breach of contract, negligence, conspiracy, breach of fiduciary duty, and conversion) are recognized by the courts of Antigua, and a prevailing party would be entitled to monetary damages among other remedies. Id. at ¶8. Dr. Cort also states Plaintiffs' claims are not barred by the statute of limitations. Id. at ¶9.

Plaintiffs, in their Response, attack only the credibility of the Declarant, Dr. Cort.⁶ Plaintiffs assert this Court should not give Dr. Cort's Declaration much credibility, because Dr. Cort is an attorney for Stanford Bank (Response, p. 8). In the Declaration itself, Dr. Cort disclosed his relationship as an attorney for Stanford Bank (See Motion, Exhibit U, ¶4). Plaintiffs' argument is without merit. The Eleventh Circuit has held with regard to the adequacy of the alternate forum, "defendants have the ultimate burden of persuasion, but only where the plaintiff has substantiated his allegations of serious corruption or delay. Thus, where the allegations are insubstantially supported . . . a District Court may reject them without considering

⁶Plaintiffs, however, have not moved to strike or otherwise sought disqualification of Dr. Cort based upon the conflict of interest. See e.g., Satz, 244 F.3d at 1282 n.2 (noting the Magistrate Judge struck the affidavits of a proffered expert based upon a conflict of interest; however, the second expert's affidavit adopted the conclusions of the stricken affidavit and were admitted over Plaintiffs' objections).

any evidence from the defendant." Leon, 251 F.3d at 1312. Here, Plaintiffs have not proffered any argument that Antigua is an inadequate forum (See Response, p. 8). Therefore, this Court need not assess the credibility of Dr. Cort's Declaration.

This Court additionally considered another district court's finding that Antigua is an adequate forum. The District Court for the Eastern District of New York found that Antigua is an adequate forum for the negligence claim that was at issue in that case. Feinstein v. Curtain Bluff Resort, 1998 U.S. Dist. Lexis 11925, *16-17 (E.D.N.Y. 1998). The court in that case stated, in part:

Curtain Bluff (the defendant) is subject to process in Antigua and the Antiguan statute of limitations has not run, as stated in the affidavit of Antiguan attorney R. Dexter Wason. Antiguan law permits the recovery of damages for negligence, and applies legal principles closely related to those that would be applied by a United States court.

Id. at *17 (internal citations omitted). In this case, the Court notes the similarity to the Curtain Bluff case, since Stanford Bank also produced a declaration of an Antiguan attorney, which states the statute of limitations has not run, damages are recoverable, and the legal system in Antigua is similar to that of the United States. Further, in Curtain Bluff, the claim was for negligence, a common-law tort, and in this case, the causes of action consist largely of common-law torts. Additionally, as discussed below, in this case, the law of Antigua may apply. Therefore, Antigua is an adequate forum. As this Court finds Antigua is both adequate and available forum, the Court shall now balance the private and public interests.

C. Private Interests

The Supreme Court, in its opinion written by Justice Jackson, explained the balancing test this Court must perform at this point in the analysis:

An interest to be considered, and the one likely to be most pressed, is the private interest of the litigant. Important considerations are the relative ease of access to sources of proof; availability of compulsory process for attendance of unwilling, and the cost of obtaining attendance of willing, witnesses; possibility of view of the premises, if view would be appropriate to the action; and all other practical problems that make trial of a case easy, expeditious and inexpensive. There may also be questions as the enforceability of a judgment if one is obtained. The court will weigh relative advantages and obstacles to fair trial. It is often said that the plaintiff may not, by choice of an inconvenient forum, "vex," "harass," or "oppress" the defendant by inflicting upon him expense or trouble not necessary to his own right to pursue his remedy. But unless the balance is strongly in favor of the defendant, the plaintiff's choice of forum should rarely be disturbed.

Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 508-09; 67 S. CT. 839, 843 (1947). The Eleventh

Circuit has recently further clarified this Court's task in assessing the private interests in the Ford

case. 319 F.3d at 1302. The Eleventh Circuit stated:

Perhaps the most important "private interest" of the litigants is access to evidence. . . . A correct "private interest" analysis begins with the elements of the plaintiff's causes of action. The court must then consider the necessary evidence required to prove each element. Lastly, the court should make a seasoned assessment as to the likely location of such proof.

Id. at 1308 (citing Van Cauwenberghe v. Biard, 486 U.S. 517, 528; 108 S. CT. 1945, 1952

(1988)). In this case, Plaintiffs assert ten counts in their Amended Complaint, consisting of five causes of action,⁷ which are pled separately for each Plaintiff--breach of contract, negligent misrepresentation, conspiracy, breach of fiduciary duty, and conversion. The Court shall first address the likely location of documentary evidence and then the location of witnesses.

1. The Likely Location of Documentary Evidence

This Court's assessment of the private interests, particularly regarding the location of evidence, requires this Court to analyze Plaintiffs' causes of actions and the elements to establish each. For this purpose, the Court shall utilize the elements of Florida law, as this Court sits in diversity, which is sufficient for the ultimate purpose of this evaluation--for this Court to assess the *location* of evidence. However, the Court again notes that the applicable law in this case may be that of Antigua, as is discussed below.

In the case at hand, the causes of action, and the evidence required to prove those causes of action, are intertwined through the operative background facts, as discussed above. Here, the Court will discuss the likely location of evidence based upon the first claim, breach of contract. The Court shall then discuss the remaining claims in turn and only discuss the evidence further if such warrants separate consideration.

The elements of a breach of contract are: 1) a valid contract; 2) a material breach; and 3) damages. See e.g., Beck v. Lazard Freres & Co., LLC, 175 F.3d 913, 914 (11th Cir. 1999) (citing Abuzzo v. Haller, 603 So.2d 1338, 1340 (Fla. 1st DCA 1992)). Plaintiffs allege Defendants breached their contractual duties when Defendants failed to obey instructions to withdraw and transfer funds from Plaintiffs' accounts prior to the forfeiture (Am. Compl. ¶¶33-38, 59-64). With regard to Stanford Bank, it is undisputed Stanford Bank is an Antiguan corporation that operates in Antigua. Thus, the contract regarding to Stanford Bank, documents regarding Plaintiffs instructions to Stanford Bank, and documents regarding the Antiguan government's instructions to Stanford Bank are in Antigua (Motion, pp. 15-16). Therefore, with regard to Stanford Bank, the documentary evidence for Plaintiffs' breach of contract claim, as well as all the other claims, is located in Antigua, except as otherwise noted below.

Documents regarding Plaintiffs' claims against Stanford Group⁸ may very well be in Florida, as Plaintiffs assert in their single conclusory statement regarding the potential location of evidence, which does not contain any citation or authority: "Documentary evidence also exists in Florida" (Response, p. 10). However, Stanford Group is a Texas corporation (Am. Compl. ¶5).

⁸As this was Stanford Bank's Motion to Dismiss, Stanford Group, a co-defendant, did not respond or provide evidence to assist this Court in assessing the location of evidence, therefore, this Court shall make a "seasoned assessment" as is required by this circuit.

Plaintiffs submitted the Declaration of Plaintiff, Juan Alberto Zepeda Mendez in support of their response to the motion to dismiss for lack of personal jurisdiction. Mr. Zepeda Mendez's Declaration states he participated "in a series of meetings and conversations" with Mr. Malvaez and other Stanford Group employees (Declaration, ¶8). Mr. Zepeda Mendez clarifies "[a]t least two of these meetings . . . occurred between me and Mr. Malvaez at Stanford Group's offices in Miami, Florida." *Id.* A careful reading of this Declaration shows two of this series of meetings occurred in this forum. Logic then dictates that meetings occurred outside this forum. Therefore, while evidence may be contained here in this forum in Stanford Group's Miami office, evidence also may be contained in its Texas headquarters or any other office that Mr. Zepeda Mendez either contacted or visited for a meeting. A review of the debit/withdrawal instructions forms, which are attached to Plaintiffs' Response, reveals most Mr. Zepeda Mendez had a telephone authorization on file with Stanford Group, which would enable Mr. Zepeda Mendez to conduct business over the telephone with Stanford Group. Therefore, with regard to Stanford Group, documentation may be in this forum; however, documentary evidence could as easily be contained at any of Stanford Group's offices.

The elements of Plaintiffs' negligent misrepresentation claims are: 1) there was a misrepresentation of material fact; 2) the representer either knew of the misrepresentation, made the misrepresentation without knowledge of its truth or falsity, or should have known the representation was false; 3) the representer intended to induce another to act on the misrepresentation; and 4) injury resulted to a party acting in justifiable reliance upon the misrepresentation. Gilchrist Timber Co. v. ITT Rayonier, Inc., 127 F.3d 1390, 1393 (citing Baggett v. Electricians Local 915 Credit Union, 620 So. 2d 784 (Fla. 2d DCA 1993)). Here, the

alleged conduct intertwines with another cause of action, as Defendants' alleged misrepresentations are the basis for Plaintiffs entering into the contracts with Defendants, thereby creating the fiduciary duty claimed. In the case of a claim of breach of fiduciary duty, the elements of negligence are used;⁹ however, the duty must be a fiduciary duty. Gracey v. Eaker, 837 So. 3d 348 (Fla. 2002). With regard to Plaintiffs' negligence and breach of fiduciary duty claims, Plaintiffs assert Defendants failed to disclose or improperly disclosed the alleged relationship between Defendants and Defendants alleged misrepresented Stanford Bank was only subjected to Antiguan law and only follows directions from the Antiguan government (Am. Compl. ¶¶39-43, 51-58, 65-69, 77-85). This Court's assessment of the likely locations of the documentary evidence regarding Plaintiffs' allegations of breach of contract likewise applies to Plaintiffs' allegations of breach of fiduciary duty and negligent misrepresentation, as the contract was formed at the same time of the alleged misrepresentations, and the breaches stem from the same alleged misconduct.

A civil conspiracy is proved by establishing the following: 1) a conspiracy between two or more parties; 2) to do an unlawful act or to do a lawful act by unlawful means; 3) the doing of some overt act in pursuance of the conspiracy; and 4) damage to plaintiff as a result of acts done under conspiracy. Florida Fern Growers Ass'n v. Concerned Citizens of Putnam County, 616 So. 2d 562, 565 (Fla. App. 1993); see also Posner v. Essex Ins. Co., 178 F.3d 1209, 1217 (11th Cir. 1999). The Court's above-analysis of the likely location of evidence applies to the civil

⁹ The elements of a negligence claim are: 1) defendant owed a duty of reasonable care to plaintiff; 2) defendant breached that duty; 3) the breach was the proximate cause of the injury to plaintiff; and 4) plaintiff suffered damages. Hasenfus v. Secord, 962 F.2d 1556, 1559-60 (11th Cir. 1992)(citing Rupp v. Bryant, 417 So. 2d 658, 668 n.27 (Fla. 1982).

conspiracy claims as well. However, here, the element of the overt act requires further discussion.

At this early stage of the case, it is unclear where the overt act was alleged to have occurred. The Amended Complaint merely states Defendants “entered into an agreement” and “committed overt acts in furtherance of this conspiracy” (Am. Compl. ¶¶48-49). At the hearing held on this matter, Plaintiffs’ counsel clarified Plaintiffs allege the agreement and overt act occurred in Miami, Florida, when Stanford Group received Judge Turnoff’s order and allegedly agreed and conspired with Stanford Bank to refuse to process Plaintiffs’ transactions. This Court, at that time, noted that such events, if true, could as easily have happened in Antigua or by electronic communication, for example, by facsimile machine or telephone, thereby making the location of the act questionable. Documentary evidence, such as memoranda, directives, or meeting agendas, if any exist, may be found in this jurisdiction, as easily as in any of Stanford Group’s offices, as well as in Antigua, or in any combination thereof.

The tort of conversion occurs when: 1) defendant intentionally deprived plaintiff of personal property; 2) the deprivation was permanent or for an indefinite time; 3) plaintiff had a present or immediate right to possess the property; and 4) the deprivation was without plaintiff’s consent or authorization. See e.g., National Union Fire Ins. Co. v. Carib Aviation, Inc., 759 F.2d 873, 878 (11th Cir. 1985) (quoting Senfeld v. Bank of Nova Scotia Trust Co., 450 So. 2d 1157, 1160-61 (Fla. 3rd DCA 1984)). Plaintiffs allege the conversion occurred when Defendants deprived Plaintiffs of their funds (Am. Compl. ¶¶44-46; 70-72). As these claims allege the same misconduct as outlined above, this Court’s above-analysis of the location of potential evidence applies to this cause of action as well. The Court shall next proceed to assessing the location of

witnesses before concluding about the private interest factor of access to evidence.

2. The Location of Witnesses

The Court shall next focus on the location of witnesses to this controversy. It is undisputed that many of the witnesses reside in Antigua. Stanford Bank asserts, and Plaintiffs do not contest, many witnesses reside in Antigua: officers of Stanford Bank (Frans P. Vingerhoedt and Harry Van Bergen); Plaintiffs' attorneys (Cecile Hill, Esq. And Nicolle M. Doherty, Esq.); Antiguan government officials (Wrenford D. Ferrance, Clarence Davis, Lebrecht Hesse, and Alvin Goodwin) (See Notice of Scrivener's Error, Correcting Motion, p. 15). Plaintiffs assert, on the other hand, many witnesses do not reside in Antigua (Response, pp. 9-10); however, the witnesses listed by Plaintiff also do not reside in this forum. Manuel Malvaez, Tony Perez, Alvaro Trullenque, and Lena Stinson (employees of Stanford Group) reside in Texas (Reply, p. 4, citing Stanford Bank's Rule 26 Initial Disclosures, at Exhibit B to the Reply).

The witnesses who are located in this jurisdiction are those connected with the forfeiture case, for example, the attorneys and agents (Reply, Exhibit B; Response, p. 10). Plaintiffs claim the witnesses are essential to proving Judge Turnoff's Order was valid. However, this Court is unpersuaded the forfeiture case witnesses are relevant to proving any of the elements of Plaintiffs' proffered causes of action. See Ford, 319 F.2d at 1310 (reversing District Court's failure to dismiss for *forum non conveniens*, partially because: "The district court's analysis was flawed in three respects. First, the court did not consider the elements of the causes of action . . . and the likely sources of proof."). Here, Plaintiffs' causes of action refer to Defendants' alleged actions with regard to Judge Turnoff's freeze order, whereas the forfeiture proceeding related to the alleged misconduct of Plaintiff, Mr. Zepeda Mendez. In essence, Plaintiffs seek to re-litigate

the forfeiture case by contesting the validity of Judge Turnoff's order. In fact, the injury Plaintiffs allege to have occurred is that Plaintiffs were unable to transfer the money in the Stanford Bank accounts, thereby thwarting Plaintiffs' attempts to transfer the funds to avoid the forfeiture. Therefore, although several witnesses do reside in Miami, Florida, they are not essential to proving the allegations of the Amended Complaint.¹⁰

3. Conclusion Regarding The Likely Location of Evidence

This Court's assessment of the location of documents and witnesses tips in favor of dismissal for *forum non conveniens*. Many witnesses reside in Antigua. The remaining relevant witnesses, although they do not reside in Antigua, they do not reside in this judicial district. With regard to the location of witnesses, the public interest factor weighs heavily in favor of dismissal for Antigua.

All of the documentary evidence regarding Stanford Bank is located in Antigua, with the possible exception of the allegations regarding an agreement between Stanford Bank and Stanford Group, such as conspiracy, breach of fiduciary duty, and negligent misrepresentation. As to evidence about any agreement between Defendants, such documentation, if any, may be found in Antigua, Miami, any of Stanford Group's offices, or any combination thereof. Therefore, with regard to Stanford Bank, the private interest factor weighs heavily in favor of dismissal.

It is clear certain documents are located in Antigua. It is unclear where the remaining

¹⁰This Court notes in direct contradiction to Plaintiffs' assertions regarding the forfeiture witnesses, Defendants may choose to utilize the propriety of Judge Turnoff's order as an affirmative defense, therefore, the burden of producing the forfeiture witness seems logically to bear more heavily upon Defendants, not Plaintiffs.

documents may be located. However, the Eleventh Circuit has affirmed the dismissal of a case for *forum non conveniens*, which was conditioned upon conducting discovery in accordance with the Federal Rules of Civil Procedure and voluntarily producing documents and witnesses within the United States. See Satz, 244 F.3d at 1283. Additionally, many documents have already been produced as exhibits to the various pending motions. As previously mentioned, the parties have already provided Fed.R.Civ.P. 26 Initial Disclosures. With regard to Defendant, Stanford Group, the location of evidence factor seems to be at equipoise, as some documentation may be located in Florida as a few meetings were conducted in Miami, yet, some documentation may be located in Texas or another Stanford Group office, as business between Plaintiffs and Stanford Group employees was often conducted via telephone or other impersonal means. However, a conditional dismissal of this action based upon the production of documents in this jurisdiction, as was done in the Satz case, would seem to tip the balance slightly in favor of dismissal.

Further, Defendant Stanford Group may suffer prejudice if this case were to continue in this forum. As was noted above, Stanford Bank filed a motion to dismiss for lack of personal jurisdiction. If this Court does not have personal jurisdiction over Stanford Bank, that would leave Stanford Group alone at the defense table. As the Eleventh Circuit noted in Satz:

In the save vein, we note that MDC [one defendant] would likely suffer prejudice if it were the sole defendant in a lawsuit in the United States while other, potentially culpable, defendants were sued in Argentina. MDC intends to avoid liability by arguing that other entities were responsible for the air crash. Such an accusation is surely less persuasive when aimed at a set of empty chairs. If a Southern District of Florida jury ultimately looked to place blame at the defense table, it would have available only one, rather than several, defendants to bear the brunt of its verdict and damage award

244 F.3d at 1284 n.4. Here, Stanford Group has agreed to submit to the jurisdiction of Antigua, which would make Antigua an appropriate forum to hear this entire case.

Therefore, the private interest factors of the likely location of documentation, the location of witnesses, and the potential prejudice of Stanford Group as the sole defendant indicates a dismissal for *forum non conveniens* is appropriate. However, this Court must assess the remaining factors before making a final determination. Although prior decisions seemed to indicate the court must only assess the public interests when the private interest factors are at or near "equipoise," the Eleventh Circuit has clarified this Court should assess both the private interests and public interests. Leon, 251 F.3d at 1311 ("As a leading commentator has noted, even though the private factors are 'generally considered more important' than the public factors, the better rule is to consider both factors in all cases, and this has been our approach in recent cases" (internal citations omitted)).

D. Public Interests

The Supreme Court in Gilbert also guided this Court as to the factors that constitute public interests:

Factors of public interest also have a place in applying the doctrine. Administrative difficulties follow for courts when litigation is piled up in congested centers instead of being handled at its origin. Jury duty is a burden that ought not to be imposed upon the people of a community which has no relation to the litigation. In cases which touch the affairs of many persons, there is reason for holding the trial in their view and reach rather than in remote parts of the country where they can learn of it by report only. There is a local interest in having localized controversies decided at home. There is an appropriateness, too, in having the trial of a diversity case in a forum that is at home with the state law that must govern the case, rather than having a court in some other forum untangle problems in conflict of laws, and in law foreign to itself.

Gilbert, 330 U.S. at 508-09. Without further comment, the factor of a congested docket in this jurisdiction weighs heavily in favor of dismissal.

Plaintiffs contend the public interests favor denying dismissal, because the misconduct

and injury are alleged to have occurred in Florida (Response, p.11). As discussed above, the misconduct could have been committed in Texas, Florida, or Antigua, and the injury may have been sustained in Antigua or Florida. Plaintiffs assert Florida has an interest in protecting against faulty investment advice, *id.*, yet, in this case, the alleged advice could easily have been given in Texas or via electronic equipment internationally.

Plaintiffs additionally failed to recognize that while Florida may have an interest in the dispute regarding Stanford Group, Antigua has a far greater interest in litigating the dispute with Stanford Bank. The interest of Antigua is one of comity. The Eleventh Circuit in Ford stated, as is appropriate here, comity is an appropriate factor to include in the court's analysis of the public interest factors. Ford, 319 F.3d at 1309 n.22. Comity is "the respect a foreign sovereign is due." Id. at 1309-10 (citing Societe Nationale Industrielle Aerospatiale v. United States Dist. Court for S.D. Iowa, 482 U.S. 522, 534 n.27 (1987) ("Comity refers to the spirit of cooperation in which a domestic tribunal approaches the resolution of cases touching the laws and interests of other sovereign states.)) Antigua's interest is apparent from the government and High Court of Antigua's decision to mandate Stanford Bank transfer the funds to the United States (Motion, p. 19).

This Court does not hold that Florida does not have any interest in litigating this case, but the Court does not find convincing the argument that Florida has an interest in litigating this dispute, which would outweigh the interests in litigating this case in Antigua.¹¹ Additionally, the

¹¹The Court admits Florida has an interest in ensuring Mr. Zepeda Mendez was not laundering money through American corporations; however, that is not the concern of this case, and that case was previously settled in this jurisdiction. Perhaps the public interest would weigh favorably in Plaintiffs' favor of litigating this dispute in Florida if Stanford Group had disobeyed this Court's Order, but neither is that the set of facts this Court faces. This Court is presented

forfeiture case has been settled. Had the forfeiture case been ongoing, the American interest in litigating this case might warrant a different balance. Here, as this case is currently presented, however, as the Supreme Court stated in Piper, "The American interest in this [case] is simply not sufficient to justify the enormous commitment of judicial time and resources that would inevitably be required if the case were to be tried here." 454 U.S. at 261. Therefore, public interest factors also favor dismissal; yet, case law has developed additional concerns that this Court must consider, which this Court shall do next.

E. Other Concerns

The Eleventh Circuit has provided "additional glosses on the forum non conveniens doctrine," which were recently summarized in the Ford case. 319 F.3d at 1307. As several of those additional concerns were relevant in the Ford case, many are relevant in the case at hand. "[T]he bias towards the plaintiff's choice of forum is much less pronounced when the plaintiff is not an American resident or citizen." Id. (citing Esfeld v. Costa Crociere, S.P.A., 289 F.3d 1300, 1312 n.15 (11th Cir. 2002)). Here, Plaintiffs are not American residents or citizens, therefore, Plaintiffs forum choice is entitled to less deference.

The court in the Esfeld case maintained that "foreign relations are implicated in the forum non conveniens calculus." 289 F.3d at 1313. "[F]ederal courts necessarily must analyze the interest that the foreign country has in the dispute, an analysis that may raise issues of international comity." Id. Here, the Antiguan government agreed with the government of the

with a Florida corporation that admittedly followed this Court's Order, thereby preventing an alleged money launderer, who is not a citizen of this jurisdiction or this country, from transferring assets that were potentially subject to forfeiture, thereby creating the alleged injury. Further, the injury may have occurred when the government of Antigua directed Stanford Bank to transfer the funds to the United States for forfeiture.

United States to transfer the accounts to the United States for the forfeiture proceeding.

Therefore, the alleged injury occurred when the Antiguan government ordered Stanford Bank to transfer the funds, and Stanford Bank complied. Plaintiffs also assert Stanford Bank improperly followed this Court's freeze order, because allegedly Stanford Bank followed the freeze order prior to receiving a mandate from the Antiguan government. However, Stanford Bank alleges Stanford Bank, under the requirements of Antiguan law, requested the assistance and guidance of the Antiguan government prior to the issuance of the freeze order (Motion, Exhibit H).

Therefore, this Court finds that the interest of the Antiguan government in litigating this dispute outweighs the interest of the United States.

The Eleventh Circuit has expressed additional concerns regarding cases of an international nature, such as this one. The court analyzed the choice-of-law factor, concluding it is "far better that the case be tried in [a foreign country] by one or ore jurists as familiar with [foreign] law as we are unfamiliar with it." Magnin, 91 F.3d at 1430. As was stated above, Stanford Bank claims to have been acting upon the requirements of Antiguan law (Motion, p.6). As this case relates to Stanford Bank, the depositor's agreement clearly requires the application of Antiguan law: "These Terms and Conditions shall be interpreted in accordancce with the laws of Antigua and Barbuda, W.I." (Motion, Exhibit T, ¶23). Although Antiguan law seems to apply to Plaintiffs' claims against Stanford Bank, Florida law may apply to Plaintiffs' claims against Stanford Group. A trial involving two sets of similar laws would be confusing to the jury. See Piper, 454 U.S. at 260 (stating the district court's consideration of the jury's confusion and its own unfamiliarity with Scottish law to be proper public interest considerations). The Supreme Court has further held the application of foreign law favors dismissal. Id.

Finally, the Eleventh Circuit has outlined the procedure a district court must typically follow in dismissing a case for *forum non conveniens*. "In order to avoid unnecessary prejudice to [plaintiffs], the district court can attach conditions to a dismissal with which the defendants must agree. In Magnin, for example, we observed that 'the defendants agreed to submit to the jurisdiction of the French court, waive any statute of limitations or jurisdictional defenses, and satisfy any final judgment.' " Ford, 319 F.3d at 1307 (internal citations omitted). As stated above, this Court shall apply appropriate conditions in order to lessen any prejudice to Plaintiffs as a result of their choice of this, an inconvenient forum.

IV. CONCLUSION

Antigua is both an available and adequate forum, based upon Stanford Group's submission to Antiguan jurisdiction and a conditional dismissal. The documentary evidence regarding Stanford Bank is located in Antigua, which favors dismissal. Documentary evidence about Stanford Group may be found in Miami, Florida, in this forum, based upon Zepeda Mendez's two meetings here, but documentary evidence just as well may be contained in Stanford Group's offices that are not located in this forum, for example, in its Texas headquarters, where Mr. Malvaez, Tony Perez, Alvaro Trullenque, and Lena Stinson currently work. However, the parties have already provided Fed.R.Civ.P. 26 Initial Disclosures, and a conditional dismissal based upon the production of documents and witnesses in this jurisdiction under the Federal Rules of Civil Procedure, indicates that the factor of the documentary evidence regarding Zepeda Mendez seems to tip the balance only slightly in favor of dismissal. The location of the relevant witnesses to proving Plaintiffs' claims heavily favors dismissal. Therefore, the private interests in this case favor dismissal.

The public interests in this case and additional concerns also favor dismissal. Antigua seems to have the greater interest in litigating this dispute, as the Antiguan government determined to mandate Stanford Bank should release the funds to the United States government for the forfeiture proceeding, which has been settled. Here, the relations between the United States' government and the Antiguan government, particularly where a decision of the Antiguan government is at issue, indicates dismissal is appropriate. Additionally, as it is possible that this Court might have to apply Antiguan law to Stanford Bank and Florida law to Stanford Group, dismissal is favored where the application of foreign law is appropriate. When balanced against Plaintiffs' choice of forum, which is not given great deference, since Plaintiffs did not choose their home forum, the public interests and private interests, taken together, when considering the courts of Antigua could hear this entire case, the factors in this case favor dismissal in favor of Antigua, based upon *forum non conveniens*. It is, therefore:

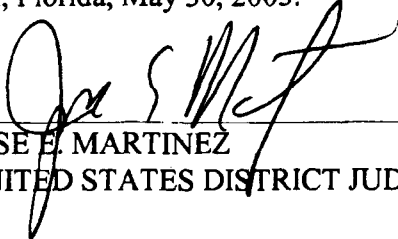
ORDERED AND ADJUDGED that

1. Defendant Stanford International Bank, Ltd's Motion to Dismiss for Improper Venue, *Forum Non Conveniens* and Comity (D.E. No. 50-1) is hereby GRANTED. This cause SHALL BE DISMISSED CONDITIONED UPON the following, which, if any of the following conditions are not met, this Court shall reinstate this cause:

- a. Stanford Group voluntarily submitting to Antiguan jurisdiction;
- b. The courts of Antigua entertaining this case;
- c. The judgment of the Antiguan courts being enforceable in this Court; and
- d. Defendants voluntarily conducting discovery, including the production of documentation and witnesses, in this jurisdiction under the Federal Rules of Civil Procedure.

2. The Clerk of the Court is DIRECTED to mark this case CLOSED and DENY ALL PENDING MOTIONS AS MOOT.

DONE AND ORDERED in Chambers at Miami, Florida, May 30, 2003.

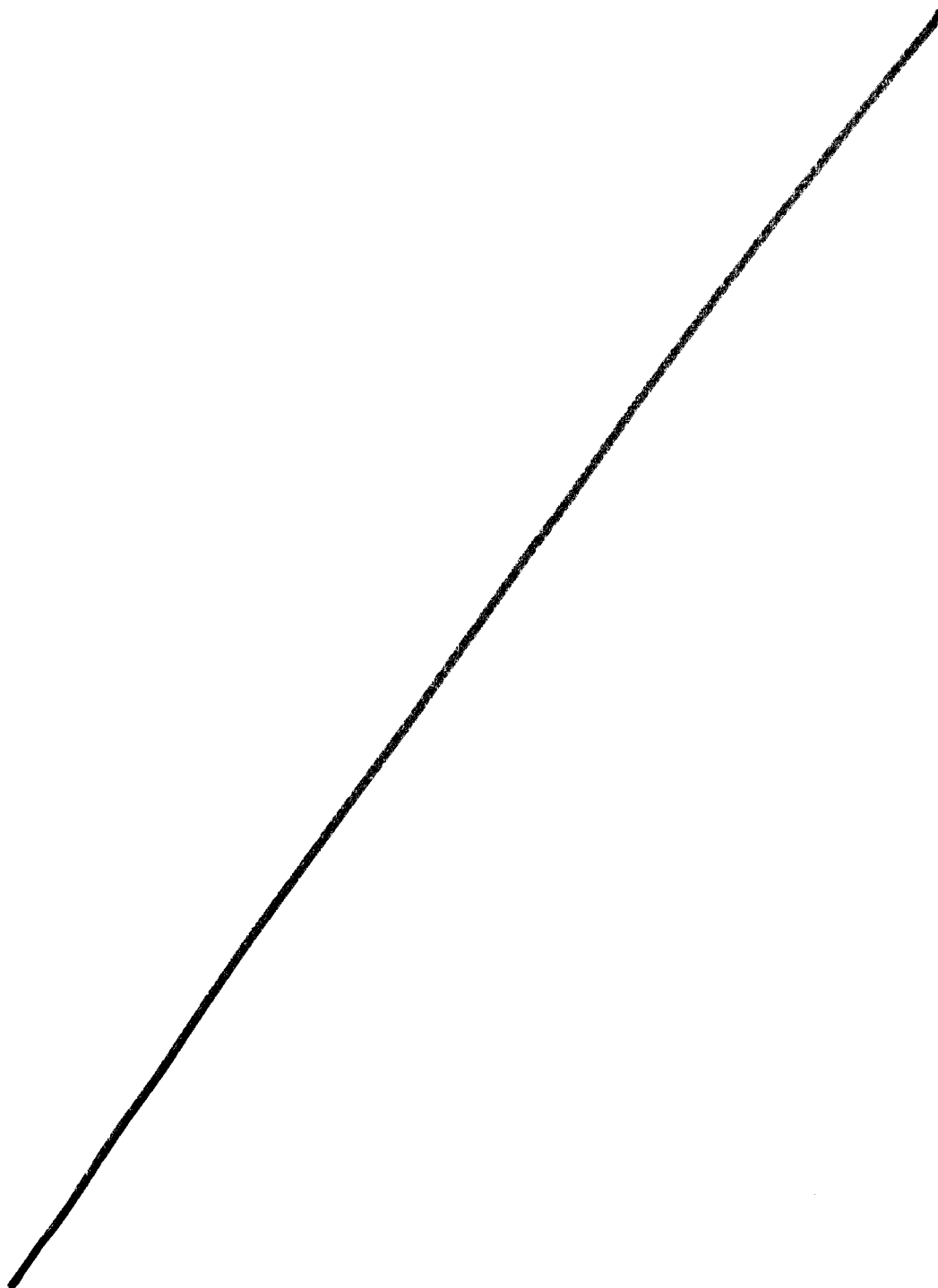


JOSE E. MARTINEZ
UNITED STATES DISTRICT JUDGE

Copies provided to:
Magistrate Judge Dubé
All Counsel of Record

EXHIBIT B

(Vingerhoedt Declaration)



**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

CASE NO. 02-22567-CIV-MARTINEZ/DUBE

**JUAN ALBERTO ZEPEDA MENDEZ and RADON
TRADING, LTD.,**

Plaintiffs,

vs.

**STANFORD INTERNATIONAL BANK, LTD. and
STANFORD GROUP COMPANY,**

Defendants.

DECLARATION OF FRANCISCUS P. VINGERHOEDT

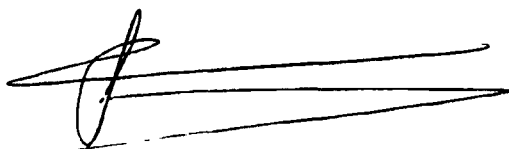
1. My name is Franciscus P Vingerhoedt. I serve as Stanford International Bank, Ltd.'s ("Stanford Bank") President and CEO.
2. Stanford Bank is a bank organized under the laws of Antigua.
3. Stanford Bank provides banking services to international clients from its offices located at 4000 Airport Boulevard, St. John's, Antigua, West Indies. This is the only office maintained by Stanford Bank. It is the office from which Stanford Bank conducts all of its business.
4. All accounts maintained by Stanford Bank are maintained at 4000 Airport Boulevard, St. John's, Antigua, West Indies.
5. All Stanford Bank client transactions are processed at the offices located at 4000 Airport Boulevard, St. John's, Antigua, West Indies.
6. All of Stanford Bank's corporate and business activities are conducted in Antigua.
7. Stanford Bank is a member of the Stanford Financial Group, an international network of affiliated companies that together form a powerful resource of financial opportunities -- from international private banking to brokerage and investment advisory services, trust administration, commercial banking and real estate investment. Although independent, each company within the Stanford Financial Group works in cooperation with other Stanford affiliates to provide a coordinated wealth management program for more than 34,000 investors in 60 countries..

EXHIBIT A

8. Defendant Stanford Group Company ("Stanford Group") is also a member of the Stanford Financial Group, and thus, Stanford Bank and Stanford Group are independent, but affiliated entities.
9. Stanford Bank is not a subsidiary of Stanford Group.
10. Stanford Group is not a subsidiary of Stanford Bank.
11. Stanford Group does not provide any accounting services to Stanford Bank.
12. Stanford Group does not manage any of Stanford Bank's bank accounts or other financial accounts.
13. Stanford Group and Stanford Bank have separate management policies, bank accounts, corporate books and records, income tax reports and financial statements.
14. Stanford Bank's books and records are maintained at 4000 Airport Boulevard, St. John's, Antigua, West Indies.
15. Stanford Group does not exercise day-to-day control over the business of Stanford Bank.
16. All bank account holders at Stanford Bank have an independent client relationship with Stanford Bank, even if they may also be clients of other Stanford Financial Group affiliates.
17. Stanford Bank is not licensed, registered or otherwise qualified to do business in Florida, or anywhere else in the United States.
18. Stanford Bank does not, and has never, operated, conducted, engaged in, or carried on any business or business venture in Florida, or anywhere else in the United States.
19. Stanford Bank does not have, and has never had, an office or branch in Florida, or anywhere else in the United States.
20. Stanford Bank does not have, and has never had, an office address or telephone number in Florida, or anywhere else in the United States.
21. Stanford Bank does not own property or real estate in Florida, or anywhere else in the United States.
22. Stanford Bank does not have a registered agent for service of process in Florida, or anywhere else in the United States, except as required by the USA Patriot Act.
23. Stanford Bank has no employees that reside in Florida.
24. Stanford Bank is not required to pay taxes in Florida, or anywhere else in the United States.
25. Stanford Bank, as an Antiguan corporation, is subject to and regulated by Antiguan law.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on December 11, 2002.



Franciscus P. Vingerhoedt