APPENDIX

APPENDIX A

IN THE UNITED STATES
COURT OF APPEALS
FOR THE FIFTH CIRCUIT

[Filed June 17, 2019]

No. 17-10663

SECURITIES AND EXCHANGE COMMISSION
Plaintiff,

v.

STANFORD INTERNATIONAL BANK, LIMITED
Defendant

v.

JOSEPH BECKER; TERENCE BEVEN; WANDA BEVIS;
THOMAS EDDIE BOWDEN; TROY L. LILLIE, JR., *et al*
Movants-Appellants

DOUG MCDANIEL; SCOTT NOTOWICH;
EDDIE ROLLINS; CORDELL HAYMON; *et al*,
Objecting Parties-Appellants

v.

CERTAIN UNDERWRITERS AT LLOYD'S OF LONDON;
ARCH SPECIALTY INSURANCE COMPANY;
LEXINGTON INSURANCE COMPANY,
Interested Parties-Appellees

RALPH S. JANVEY,
Appellee

CERTAIN UNDERWRITERS AT LLOYD'S OF LONDON;
ARCH SPECIALTY INSURANCE COMPANY,
Plaintiffs-Appellees

v.

RALPH S. JANVEY, In his Capacity as Court Appointed Receiver for Stanford International Bank Limited, Stanford Group Company, Stanford Capital Managment L.L.C., Stanford Financial Group, and Stanford Financial Group Bldg,
Defendant-Appellee

v.

CORDELL HAYMON,
Intervenor-Appellant

———

CERTAIN UNDERWRITERS AT LLOYD'S OF LONDON;
ARCH SPECIALTY INSURANCE COMPANY;
LEXINGTON INSURANCE COMPANY,
Plaintiffs-Appellees

v.

CORDELL HAYMON,
Objecting Party-Appellant

v.

RALPH S. JANVEY,
Intervenor-Appellee

———

CERTAIN UNDERWRITERS AT LLOYD'S OF LONDON;
ARCH SPECIALTY INSURANCE COMPANY;
LEXINGTON INSURANCE COMPANY,
Plaintiffs-Appellees

v.

RALPH S. JANVEY,
Intervenor Defendant-Appellee

v.

CORDELL HAYMON,
Objecting Party-Appellant

CORDELL HAYMON,
Third Party Plaintiff-Appellant

v.

CERTAIN UNDERWRITERS OF LLOYD'S OF LONDON,
Claims asserted by Claude F. Reynaud, Jr.
Third Party Defendant-Appellee

v.

RALPH S. JANVEY,
Appellee

Appeals from the United States District Court
for the Northern District of Texas

Before JONES, CLEMENT, and SOUTHWICK, Circuit Judges.

EDITH H. JONES, Circuit Judge:

These appeals challenge the district court's approval of a global settlement between Ralph Janvey, the

Receiver for Stanford International Bank and related entities, and various insurance company Underwriters, who issued policies providing coverage for fidelity breaches, professional indemnity, directors and officers protection, and excess losses. The settlement yielded $65 million for the Receiver's claims against the insurance policy proceeds, but it wipes out, through "bar orders," claims by coinsureds to the policy proceeds and their extracontractual claims against the Underwriters even if such claims would not reduce or affect the policies' coverage limits. Among the parties whose claims were barred are Appellants comprising (a) two groups of former Stanford managers and employees; (b) Cordell Haymon, a Stanford entity director who settled with the Receiver for $2 million; and (c) a group of Louisiana retiree-investors.

A constellation of issues surrounding the global settlement is encapsulated in the question whether the district court abused its discretion in approving the settlement and bar orders. Based on the nature of *in rem* jurisdiction and the limitations on the court's and Receiver's equitable power, we conclude the district court lacked authority to approve the Receiver's settlement to the extent it (a) nullified the coinsureds' claims to the policy proceeds without an alternative compensation scheme; (b) released claims the Estate did not possess; and (c) barred suits that could not result in judgments against proceeds of the Underwriters' policies or other receivership assets. Accordingly, we VACATE the district court's order approving the settlement and bar orders and REMAND for further proceedings consistent with this opinion.

BACKGROUND

The massive Stanford Financial Ponzi scheme defrauded more than 18,000 investors who collectively

lost over $5 billion. As part of a securities fraud lawsuit brought by the SEC, the district court appointed the Receiver "to immediately take and have complete and exclusive control" of the receivership estate and "any assets traceable" to it. The court granted the Receiver "the full power of an equity receiver under common law," including the right to assert claims against third parties and "persons or entities who received assets or records traceable to the Receivership Estate." *SEC v. Stanford Int'l Bank, Ltd.*, 776 F. Supp. 2d 323, 326 (N.D. Tex. 2011). The district court also held that the court possessed exclusive jurisdiction over a group of insurance policies and their proceeds, at issue in this case, and ruled that, other than a lawsuit involving the Stanford criminal defendants, "[n]o persons or entities may bring further claims related to the [Proceeds] in any forum other than" the district court. Neither of these latter two orders was timely appealed.

The policies issued to the Stanford entities covered, in different arrangements, losses and defense costs for the entities and their officers, directors and certain employees. At issue are the following policies: a Directors' and Officers' Liability and Company Indemnity Policy ("D&O"); a Financial Institutions Crime and Professional Indemnity Policy, including (a) first-party fidelity coverage for employee theft ("Fidelity Bond") and "[l]oss resulting directly from dishonest, malicious or fraudulent acts committed by an Employee," and (b) third-party coverage for professional indemnity ("PI Policy"); and an Excess Blended "Wrap" Policy ("Excess Policy"). The policy limits are as follows:

	Stanford Bank Entities	Stanford Brokerage Entities
D&O Policy	$5 million	$5 million
PI Policy	$5 million per Claim $10 million aggregate	$5 million per Claim $10 million aggregate
Fidelity Bond	$5 million per Loss $10 million aggregate	$5 million per Loss $10 million aggregate
Excess Policy	$45 million each Claim or Loss/ $90 million aggregate	

The maximum amount of remaining coverage is disputed. According to the district court, the Underwriters have paid some $30 million in claims under the policies for insureds' defense costs. Underwriters contend that only $46 million remains available because the losses resulted from a single event – the Ponzi scheme. The Receiver argues that the conduct implicates the aggregate loss limits up to $101 million of remaining coverage. The questions of coverage ultimately depend on the identity of the insureds under each policy and the nature of the claims, and these issues are hotly contested. The Stanford corporate entities are insured under all of the policies, but Stanford directors, officers, and employees are coinsureds only under the D&O, PI, and Excess policies.[1] Each policy is subject to multiple definitions and

[1] There is no dispute that the Appellants here are coinsured under the noted policies, but *not* coinsured under the Fidelity bond. The chief dispute is about the effect of certain limitations and exclusions within the policies.

exclusions. After the Receiver made numerous claims for coverage under the policies (the "Direct Claims") that were met with Underwriters' denial based on policy exclusions, several lawsuits ensued.

The Receiver also pursued the policy proceeds indirectly by filing lawsuits (the "Indirect Claims") against hundreds of former Stanford directors, officers, and employees, alleging fraudulent transfers and unjust enrichment and/or breach of fiduciary duty. The Receiver obtained a $2 billion judgment against one former Stanford International Bank director and a $57 million judgment against a former Bank treasurer, both of whom were potentially covered under the policies. The Receiver continues to litigate similar claims against the coinsured Appellants who were Stanford managers and employees. *See, e.g.*, *Stanford International Bank, Ltd., et al., v. James R. Alguire, et al.*, No. 3:09-CV-0724-N (N.D. Tex., filed Dec. 18, 2019).

After eight years of sparring, the Receiver and Underwriters, together with the court-appointed Examiner on behalf of Stanford investors, mediated their disputes for several months in 2015. Mediation initially resulted in a Settlement Proposal under which the Underwriters agreed to pay the Receiver $65 million, and in return the Receiver would "fully release any and all insureds under the relevant policies." The purpose of the complete release was to shield the Underwriters from any policy obligations to defend or indemnify former Stanford personnel, including the employee Appellants, in the Receiver's Indirect Claim lawsuits. The parties almost immediately disagreed about the content of the settlement, however, and the Underwriters filed an Expedited Motion to Enforce the Settlement Agreement. The

district court denied the motion and instructed the parties to continue negotiating. On June 27, 2016, the Receiver and Underwriters notified the court that they had entered into a new settlement agreement, which the Examiner supported.

Under this new settlement, the Underwriters again agreed to pay $65 million into the receivership estate, but the settlement required orders barring all actions against Underwriters relating to the policies or the Stanford Entities. Paragraph 35 of the settlement provides Underwriters the unqualified right to withdraw from the settlement if the court refuses to issue the bar orders. The bar orders were necessary because, unlike the terms of the first proposed settlement, the Receiver is required to release only the Estate's claims against 16 directors and officers (rather than all insureds), as well as the judgments already obtained against certain directors and officers.[2] All other former Stanford employees, officers and directors, including Appellants, remain subject to ongoing or potential litigation by the Receiver once the litigation stay against them is lifted. Some Appellants assert that their individual costs of defending the Receiver's ongoing actions already exceed $10,000. But the bar orders prevent them from suing the Underwriters for their costs of defense and indemnity under the insurance policies, even though they are coinsured, or for extra-contractual or statutory claims.

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[2] Oddly, the settlement releases claims only against those directors and officers who were among the most culpable for the Ponzi scheme. And it releases Underwriters from any obligation in connection with the aforementioned judgments for $2 billion and $57 million. This oddity should have been considered when assessing the fairness of the settlement.

The Receiver moved for approval of the settlement and entry of the bar orders. The district court directed notice to all interested parties, and received objections from several third parties, including Appellants. The court heard arguments of counsel regarding the settlement, but it refused to allow parties to offer evidence or live testimony or engage in cross-examination. After the hearing, parties were permitted to file additional declarations or affidavits.

The district court approved the settlement and bar orders, denied all objections, and approved the payment of $14 million of attorney fees to Receiver's counsel. Separate Final Judgments and Bar Orders were entered in each action pending before it relating to the Stanford Entities and in Appellant Haymon's and Appellant Alvarado's separate lawsuits against the Underwriters. The district court rejected all post-trial motions.

A more complete discussion of the court's findings will follow, but in general, the court found that the settlement resulted from "vigorous, good faith, arm's-length, mediated negotiations" and concluded that the settlement was "in all respects, fair, reasonable, and adequate, and in the best interests of all Persons claiming an interest in, having authority over, or asserting a claim against Underwriters, Underwriters' Insureds, the Stanford Entities, the Receiver, or the Receivership Estate." The court further found that the settlement and bar orders were "fair, just, and equitable," and it rejected the Appellants' due process claims based on their exclusion from settlement talks and the lack of an evidentiary hearing. While the court recognized that the bar orders discriminate between a few Stanford officers and the Appellants, it reasoned that "on balance the unfairness alleged by the Objectors is

either mitigated by other circumstances or simply outweighed by the benefit of the settlement in terms of fairness, equity, reasonableness, and the best interests of the receivership."

The Appellants fall into three categories. The McDaniel Appellants and "Alvarado"[3] Appellants are former Stanford managers or employees from offices around the country ("Employees") who seek contractual coverage under the insurance policies and press extra-contractual claims against the Underwriters, including for bad faith and statutory violations of the Texas Insurance Code. Appellant Cordell Haymon ("Haymon") was a member of Stanford Trust Company's Board of Directors who settled the Receiver's claims against him for $2 million before the instant global settlement was reached, and in return received the express right to pursue Underwriters for policy coverage and extra-contractual claims. Finally, the Louisiana Retirees/Becker Appellants ("Retirees") are former Stanford investors who sued Stanford brokers covered by the insurance policies and seek to recover from the Underwriters directly pursuant to the Louisiana Direct Action Statute, La. Rev. Stat. 22:1269.

Each group of Appellants raises different challenges to the court's approval of the settlement and bar orders. They appeal from the district court's order denying their objections to the proposed settlement, the Final Bar Order, and the Order Approving

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[3] While Alvarado was originally a party to this appeal, he withdrew his individual appeal on April 19, 2018. The other employees to that action remain as appellants and will be denominated, for the sake of convenience, Alvarado Appellants.

Attorneys' Fees[4] for the Receiver's counsel. The Stanford Employees additionally appeal the Order denying their new trial motion, and Haymon appeals from the Order denying his motion for reconsideration. After explaining the principles that govern the court's management of the Receivership, we will analyze each set of Appellants' objections.

STANDARD OF REVIEW

A district court's entry of a bar order, like other actions in supervising an equity receivership, is reviewed for abuse of discretion. *SEC v. Safety Fin. Serv., Inc.*, 674 F.2d 368, 373 (5th Cir. 1982); *Newby v. Enron Corp.*, 542 F.3d 463, 468 (5th Cir. 2008). A district court's determination of the fairness of a settlement in an equity receivership proceeding is reviewed for an abuse of discretion. *Sterling v. Stewart*, 158 F.3d 1199, 1202 (11th Cir. 1998) ("Determining the fairness of the settlement [in an equity receivership] is left to the sound discretion of the trial court and we will not overturn the court's decision absent a clear showing of abuse of that discretion."). There is no abuse of discretion where factual findings are not clearly erroneous and rulings are without legal error. *Marlin v. Moody Nat. Bank, N.A.*, 533 F.3d 374, 377 (5th Cir. 2008). A district court's denial of a Rule 59 motion for a new trial or to alter or amend a judgment also is reviewed for an abuse of discretion. *St. Paul Mercury Ins. Co. v. Fair Grounds Corp.*, 123 F.3d 336, 339 (5th Cir. 1997). This Court reviews *de novo* a district court's application of exceptions to the Anti–Injunction Act as a

[4] The amount and propriety of the Receiver's very high fee request is not substantively briefed by any party and is therefore waived, except to the extent that on remand the fee ought to be reconsidered in light of this opinion.

question of law. *Moore v. State Farm Fire & Cas. Co.*, 556 F.3d 264, 269 (5th Cir. 2009).

DISCUSSION

I. General Receivership Principles

A district court has broad authority to place assets into receivership "to preserve and protect the property pending its final disposition." *Gordon v. Washington*, 295 U.S. 30, 37, 55 S. Ct. 584 (1935); *see also Gilchrist v. Gen. Elec. Capital Corp.*, 262 F.3d 295, 302 (4th Cir. 2001) ("the district court has within its equity power the authority to appoint receivers and to administer receiverships") (citing Fed. R. Civ. P. 66). The primary purpose of the equitable receivership is the marshaling of the estate's assets for the benefit of aggrieved investors and other creditors of the receivership entities. *See SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir. 1986). Receivers appointed by a federal court are directed to "manage and operate" the receivership estate "according to the requirements of the valid laws of the State in which such property is situated, in the same manner that the owner or possessor thereof would be bound to do if in possession thereof." 28 U.S.C. § 959(b).

In general, the Receiver has wide powers to acquire, organize and distribute the property of the receivership. A properly appointed receiver is "vested with complete jurisdiction and control of all [receivership] property with the right to take possession thereof." 28 U.S.C. § 754. The Receiver is obliged to allocate receivership assets among the competing claimants according to their respective rights and, in this case, under the laws of Texas, where the Stanford Financial Group was headquartered. The district court ruled, in a 2009 order that was not appealed, that the insurance

policies and proceeds are property of the estate subject to the court's exclusive *in rem* jurisdiction.

Once assets have been placed in receivership, "[i]t is a recognized principle of law that the district court has broad powers and wide discretion to determine the appropriate relief in an equity receivership." *Safety Fin.*, 674 F.2d at 372–73 (citing *SEC v. Lincoln Thrift Assoc.*, 577 F.2d 600, 606 (9th Cir. 1978)). This discretion derives not only from the statutory grant of power, but also the court's equitable power to fashion appropriate remedies as "ancillary relief" measures. *See SEC v. Wencke*, 622 F.2d 1363, 1369 (9th Cir. 1980). Courts have accordingly exercised their discretion to issue bar orders to prevent parties from initiating or continuing lawsuits that would dissipate receivership assets or otherwise interfere with the collection and distribution of the assets. *See SEC v. Stanford Int'l Bank Ltd.*, 424 F. App'x 338, 340 (5th Cir. 2011) ("It is axiomatic that a district court has broad authority to issue blanket stays of litigation to preserve the property placed in receivership pursuant to SEC actions."). Receivership courts, like bankruptcy courts, may also exercise discretion to approve settlements of disputed claims to receivership assets, provided that the settlements are "fair and equitable and in the best interests of the estate." *Ritchie Capital Mgmt., L.L.C. v. Kelley*, 785 F.3d 273, 278 (8th Cir. 2015) (citing *Tri–State Fin., LLC v. Lovald*, 525 F.3d 649, 654 (8th Cir. 2008)).

Neither a receiver's nor a receivership court's power is unlimited, however. *See Whitcomb v. Chavis,* 403 U.S. 124, 161, 91 S. Ct. 1858, 1878 (1971) ("The remedial powers of an equity court must be adequate to the task, but they are not unlimited."). Courts often look to the related context of bankruptcy when deciding

cases involving receivership estates. The district court here acknowledged that the purpose of bankruptcy receiverships and equity receiverships is "essentially the same—to marshal assets, preserve value, equally distribute to creditors, and, either reorganize, if possible, or orderly liquidate." *Janvey v. Alquire*, No. 3:09-cv-0724, 2014 WL 12654910, at *17 (N.D. Tex. July 30, 2014); *see also SEC v. Wealth Mgmt. LLC*, 628 F.3d 323, 334 (7th Cir. 2010) ("The goal in both securities-fraud receiverships and liquidation bankruptcy is identical—the fair distribution of the liquidated assets"). That their purpose is the same "makes sense" and reflects their shared legal heritage, since "federal equity receiverships were the predecessor to Chapter 7 liquidations and Chapter 11 reorganizations." *Alquire*, 2014 WL 12654910, at *17 (citing *Duparquet Huot & Moneuse Co. v. Evans*, 297 U.S. 216, 221, 56 S. Ct. 412, 414 (1936)). The district court also recognized that "[i]n this particular case, the purpose and objectives of the receivership, as delineated in the Receivership Order, closely reflect the general purpose shared by the Bankruptcy Code and federal equity receiverships," and it concluded that "[u]ltimately, this particular receivership is the essential equivalent of a Chapter 7 bankruptcy." *Id.* at *18.

Unfortunately, two interrelated limitations on the Stanford receivership were downplayed by the district court in its approval of the settlement and bar orders. Both derive from the broader principle that the receiver collects and distributes only assets of the entity in receivership. The first applies to the Receiver's standing: "[l]ike a trustee in bankruptcy or for that matter the plaintiff in a derivative suit, an equity receiver may sue *only to redress injuries to the entity in receivership*, corresponding to the debtor in bankruptcy and the corporation of which the plaintiffs are

shareholders in the derivative suit." *Scholes v. Lehmann*, 56 F.3d 750, 753 (7th Cir. 1995) (emphasis added) (citing, *inter alia*, *Caplin v. Marine Midland Grace Trust Co.*, 406 U.S. 416, 92 S. Ct. 1678 (1972)). The *Scholes* case involved an SEC receivership, but *Caplin*, on which it relied, was a Supreme Court decision in a Chapter X reorganization case. This court endorsed the *Scholes* limitation as applied to this receivership in *Janvey v. Democratic Senatorial Campaign Comm., Inc.* ("*DSCC*"), 712 F.3d 185, 190–93 (5th Cir. 2013). And following *Caplin,* a sister circuit held, "a trustee, who lacks standing to assert the claims of creditors, equally lacks standing to settle them." *DSQ Prop. Co., Ltd. v. DeLorean,* 891 F.2d 128, 131 (6th Cir. 1989); s*ee also Wuliger v. Mfr's. Life Ins. Co.,* 567 F.3d 787, 794 (6th Cir. 2009) ("Because the receivership entities all would have lacked standing, and because of the rule that receivers' rights are limited to those of the receivership entities, the Receiver also lacked standing [to sue for misrepresentations by brokers to defrauded investors].").

The second limitation, arising from the district court's *in rem* jurisdiction, is that the court may not exercise unbridled authority over assets belonging to third parties to which the receivership estate has no claim. Put another way, in the course of administering this receivership, this district court previously rejected a broad reading of 28 U.S.C. § 754 that suggested the court's *in rem* jurisdiction over the property would necessarily reach every *claim* relating to that property. *See Rishmague v. Winter*, No. 3:11-cv-2024-N, 2014 WL 11633690, at *2 (N.D. Tex. Sept. 9, 2014).

Thus, this court and others have held that a bankruptcy court may not authorize a debtor to enter into a settlement with liability insurers that enjoins

independent third-party claims against the insurers. *See*, *e.g.*, *Matter of Zale Corp.*, 62 F.3d 746 (5th Cir. 1995) (refusing to countenance a bankruptcy court's authority to enforce a settlement prohibiting third-party bad faith insurance claims because the claims were not property of the bankruptcy estate). Similarly, "if [the coinsureds'] portion of the [insurance] Proceeds is truly *not* property of the Estate, then the bankruptcy court has no authority to enjoin suits against the [coinsureds]." *In re Vitek*, 51 F.3d 530, 536 (5th Cir. 1995); s*ee also In re SportStuff, Inc.,* 430 B.R. 170, 175 (B.A.P. 8th Cir. 2010) (bankruptcy court lacked jurisdiction or authority to impair or extinguish independent contractual rights of vendors that were additional insureds under the debtor's policies). As these cases illustrate, bankruptcy courts lack "jurisdiction" to enjoin such claims.

The prohibition on enjoining unrelated, third-party claims without the third parties' consent does not depend on the Bankruptcy Code, but is a maxim of law not abrogated by the district court's equitable power to fashion ancillary relief measures. Contrary to the Receiver's assertion, the fact that the bankruptcy statute, 28 U.S.C. § 1334(b), limits jurisdiction to proceedings "arising in or related to" bankruptcy cases does not diminish the application of *Zale* or *Vitek* to equity receiverships. As noted, bankruptcy and equity receiverships share common legal roots.[5] *See In re*

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[5] Modern bankruptcy reorganization law originated with Section 77B of the Bankruptcy Act of 1934, the purpose of which was to codify best practices in what had formerly been known as equity receiverships. *See Duparquet Huot & Moneuse Co. v. Evans,* 297 U.S. 216, 222–24, 56 S. Ct. 412, 415–17 (1936). Section 77B(a), in turn, stated that the bankruptcy court's powers are those "which a Federal court would have had it appointed a

Davis, 730 F.2d 176, 183–84 (5th Cir. 1984) (the Bankruptcy Code arms bankruptcy courts with broad powers analogous to a court in equity). Moreover, to justify its decision denying bankruptcy court jurisdiction over third-party claims, the court in *Zale* quoted the Supreme Court in a civil rights class action case: "[o]f course, parties who choose to resolve litigation through settlement may not dispose of the claims of a third party, and *a fortiori* may not impose duties or obligations on a third party, without that party's agreement. A court's approval of a consent decree between some of the parties therefore cannot dispose of the valid claims of nonconsenting intervenors . . . ." *Zale*, 62 F.3d at 757 n.26 (citing *Local No. 93 v. City of Cleveland*, 478 U.S. 501, 529, 106 S. Ct. 3063, 3079, (1986)).[6] All of this makes clear that it is not the subject matter or statutory limitations driving this limitation, and federal district courts have no greater authority in equity receiverships to ignore these bedrock propositions, because a "court in equity may not do that which the law forbids." *United States v.*

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receiver in equity of the property of the debtor . . . ." *Id.* at 221, 56 S. Ct. at 415.

[6] *Local No. 93* is merely one example of the Supreme Court's rejection of the use of consent decrees to extinguish the claims of non-consenting third-parties, for "[a] voluntary settlement in the form of a consent decree between one [party] and [another party] cannot possibly 'settle,' voluntarily or otherwise, the conflicting claims of another group of [parties] who do not join in the agreement. This is true even if the second group of [parties] is a party to the litigation." *Martin v. Wilks*, 490 U.S. 755, 755–68, 109 S. Ct. 2180, 2181–88 (1989). Indeed, "[a]ll agree" that "[i]t is a principle of general application in Anglo-American jurisprudence that one is not bound by a judgment *in personam* in a litigation in which he is not designated as a party or to which he has not been made a party by service of process." *Id.* (citing *Hansberry v. Lee*, 311 U.S. 32, 40, 61 S. Ct. 115, 117 (1940)).

Coastal Ref. & Mktg., Inc., 911 F.2d 1036, 1043 (5th Cir. 1990).

Rather than reckon with the limits on the Receiver's standing and the court's equitable power, the district court here cited an unpublished Fifth Circuit case, *SEC v. Kaleta*, No. 4:09-cv-3674, 2012 WL 401069, at *4 (S.D. Tex. Feb. 7, 2012), aff'd., 530 F. App'x. 360 (5th Cir. 2013), to support both the settlement and bar orders. Importantly, *Kaleta* is an unpublished, non-precedential decision of this court. Not only that, but reading it as the district court and Appellees here advocate would mean investing the Receiver with unbridled discretion to terminate the third-party claims against a settling party that are unconnected to the *res* establishing jurisdiction. That is unprecedented. But *Kaleta* is in any event distinguishable and not inconsistent with the above-stated principles. In *Kaleta*, the bar order prevented defrauded investors from suing parties closely affiliated with the entity in receivership after the parties had agreed to make good on their guarantees to the receiver. Moreover, the settling parties would have been codefendants with receivership entities, leading to the possibility of their asserting indemnity or contribution from the estate. The court was forestalling a race to judgment that would have diminished the recovery of all creditors against receivership assets. That bar order protected the assets of the receivership estate, whereas the bar orders before us extend beyond receivership assets.

The Receiver also contends that the district court may permanently enjoin the claims of non-consenting third parties based on general statements about ancillary powers found in SEC cases such as *Wencke* and *Safety Financial Services*. We disagree. These cases stand only for the proposition that, in some circum-

stances, federal courts may use injunctive measures, such as stays, "where necessary to protect the federal receivership." *See Wencke*, 622 F.2d at 1370; *Safety Fin. Serv.*, 674 F.2d at 372 n.5 (distinguishing *Wencke*, which "involved the much broader question of a federal court's power to enjoin nonparty state actions *against receivership assets*.") (emphasis added). In fact, the court in *Wencke* recognized that its holding was limited to the propriety of staying third-party "proceedings *against a court-imposed receivership*." *Wencke*, 622 F.2d at 1371 (emphasis added). Correctly read, these cases explain that *in rem* jurisdiction over the receivership estate imbues the district court with broad discretion to shape equitable remedies necessary to protect the *estate*.[7] They do not support that a district court's *in rem* jurisdiction over the estate may serve as a basis to permanently bar and extinguish independent, non-derivative third-party claims that do not affect the *res* of the receivership estate.

The Appellees emphasize the recent decision *SEC v. DeYoung,* 850 F.3d 1172 (10th Cir. 2017), as supporting their argument that an equity court's permanent bar order against third parties is appropriate when tied to a settlement that secures receivership assets. Like many of their arguments, however, this assertion proves too much. *DeYoung* is a narrow and deliberately fact-specific opinion. *See DeYoung*, 850 F.3d at 1182–83. The court approved a bar order preventing three defrauded IRA Account holders (out of over 5,500 victims) from pursuing claims against the depos-

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[7] *See also SEC v. Stanford Int'l Bank, Ltd.,* 424 F. App'x. 338, 340 (5th Cir. 2011) ("It is axiomatic that a district court has broad authority to issue blanket stays of litigation *to preserve the property placed in receivership* pursuant to SEC actions.") (emphasis added).

itory bank in which the accounts had been illegally commingled. Notably, however, the court demonstrated that (1) the claims of the barred investors precisely mirrored claims that had been asserted and settled by the receiver; (2) averted a duplicative lawsuit whereby the bank could have asserted its contract right to indemnity from the receivership assets; and (3) provided the account holders with a claim against the receivership estate. The court simply channeled redundant claims into the receivership while preventing diminution of receivership assets.

Returning to the broad issue in this case, whether the district court abused its discretion in approving the settlement and bar orders, there are two subparts to the question. The first is whether the district court's equitable power to fashion ancillary relief could be used to bar claims by insureds to proceeds of the Underwriters' policies, which are property within the receivership estate. The second is whether the court's equitable power may be used to bar third-party claims, like tort or statutory claims, against the Underwriters but unconnected to the property of the Receivership. The answers to these questions vary according to the Appellants' claims. Texas law, unless otherwise noted, applies by virtue of 28 U.S.C. § 959(b).

II. Party Contentions

a. Appellants Alvarado and McDaniel

The McDaniel and Alvarado Appellants are all former Stanford managers or employees who are being sued by the Receiver for clawbacks of their compensation via the Receiver's Indirect Claims on the Underwriters' policies. Appellants seek coverage under the insurance policies, which Underwriters have denied, to defend against these lawsuits and indemnify their

losses. Appellants object to the settlement and bar orders on numerous grounds. From a practical standpoint, the settlement will exhaust the Underwriters' policy proceeds, leaving these Appellants wholly uninsured against the Receiver's lawsuits. The bar orders, moreover, prevent them from pursuing against the Underwriters not only breach of contract claims for violating the duties to defend and indemnify, but also statutory and tort claims that, if successful, would not be paid from policy proceeds and would not reduce Receivership assets.

The district court's rejection of Appellants' objections rested generally on its conclusion that the settlement and bar orders are fair, equitable, reasonable and in the best interests of the receivership estate. As has been noted, the court cited only the *Kaleta* case, affirmed by a non-precedential decision of this court, in support of its conclusions. The court's reasoning invoked the perceived necessity of a settlement, together with the bar orders, to resolve fairly and efficiently the competing claims of the Receiver and Underwriters about policy coverage and assure the maximum recovery for Stanford's defrauded investors. Without the bar orders, the court stated, Underwriters would not settle. The court pointedly refused to decide whether policy exclusions apply to the Appellants' coverage claims. Even if such exclusions barred coverage, the court added, then the Receiver might also be barred by the same exclusions and all potential benefit of the settlement would be lost. In sum, the Appellants would lose out no matter what: their claims could be barred by exclusions, held uninsurable, or the Receiver, having the right to settle, would exhaust the

proceeds first.[8] The balance of benefits to the receivership estate against Appellants' admitted losses weighed in favor of the court's approving the settlement and bar orders.

In the course of explaining its decision, however, the court made some errors. First, its broad statement that the settlement would fail without the bar orders did not account for the fact that the parties had mediated a prior settlement that required no bar orders against these Appellants because the Receiver had agreed to release all of its claims against them. "Global peace" there was achieved not by bar orders, but by the Receiver's agreeing to drop the Indirect Claim suits. The final settlement required the broad bar orders only because the Receiver, for whatever reason, insisted that it must continue to pursue hundreds of clawback actions.[9] The court's broad statement also neglected to note that, despite the Receiver's overall insistence to the contrary, the Receiver nonetheless

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[8] Implicit in the district court's reference to the Receiver's right to settle and exhaust all the policy proceeds is apparently its reliance on Texas law, which allows an insurer to settle with fewer than all of its co-insureds when the policy proceeds are insufficient to satisfy all of the claims. *See G.A. Stowers Furniture Co. v. Am. Indem. Co.*, 15 S.W.2d 544 (Tex. 1929); *Pride Transp. v. Cont'l Cas. Co.*, 511 F. App'x 347, 351 (5th Cir. 2013); *Travelers Indem. Co. v. Citgo Petroleum Corp.*, 166 F.3d 761, 765–68 (5th Cir. 1999); *see also Tex. Farmers Ins. Co. v. Soriano*, 881 S.W.2d 312, 315 (Tex. 1994). The court, however, never referenced these cases.

[9] Indeed, when the Underwriters moved the district court to enforce the terms of the mediated settlement, their motion queried the benefits to be reaped, other than in the Receiver's legal fees, from these time-consuming suits against relatively poor former employees targeted by the Receiver.

released its claims against sixteen former Stanford officers and employees in the final settlement.

Second, the court, perhaps inadvertently, did not address the fact that Appellants were foreclosed from sharing in the assets recovered by the Receiver by filing claims against the estate.

Third, the court failed to distinguish between the Appellants' two separate types of claims – contractual claims for defense and indemnity payable (if successful) from policy proceeds in competition with investors' claims to the Receivership assets; and independent, non-derivative, third-party claims for tort and statutory violations, which would be satisfied (if successful) out of Underwriters' assets. In this connection, the court also undervalued the Appellants' claims for indemnity by disregarding *Pendergest-Holt*. In that case, this court held that the D&O policies should provide up-front reimbursement of defense costs in Stanford insureds' criminal cases pending a separate judicial proceeding to resolve the coverage question. *Pendergest-Holt v. Certain Und. at Lloyd's of London,* 600 F.3d 562, 572–74 (5th Cir. 2010). Although carefully hedged, this decision offered Appellants the prospect of possible, temporary relief for their mounting defense costs and was not "wholly inapplicable" to the decision concerning the settlement and bar orders. But in any event, the court did not analyze the ramifications of Appellants' distinct claims against Receivership assets and claims wholly independent of receivership assets.

i. Contractual Claims for Defense and Indemnity

Reviewing first the settlement and bar of Appellants' contractual claims against the policy proceeds

that are property of the receivership estate, we find that the court abused its discretion by extinguishing Appellants' claims to the policy proceeds, while making no provision for them to access the proceeds through the Receiver's claims process. This undermines the fairness of the settlement.

As the district court observed, some settlement with the Underwriters was prudent because of the sheer magnitude of claims far beyond the policies' coverage, and because the scope of coverage, dependent on multiple, insured-specific factual and legal questions, is unclear. What is clear in Texas law, as conceded by Appellants, is that an insurer may settle with fewer than all of its co-insureds when the policy proceeds are insufficient to satisfy all of the claims. *See G.A. Stowers Furniture Co. v. American Indem. Co.*, 15 S.W.2d 544 (Tex. 1929); *Pride Transp. v. Continental Cas. Co.*, 511 F. App'x 347, 351 (5th Circuit 2013); *Travelers Indem. Co. v. Citgo Petroleum Corp.*, 166 F.3d 761, 765–68 (5th Cir. 1999); *see also Farmers Insurance Co. v. Soriano*, 881 S.W.2d 312, 315 (Tex. 1994).[10] Although the district court did not cite these cases, its ruling squares with them and supports its cost/benefit calculation for the Receiver/Underwriters' settlement to the detriment of Appellants' contractual claims.

But not only did the settlement expressly foreclose the Appellants from sharing in the insurance policy proceeds of which they are coinsureds, the Appellants are not even allowed to file claims against the

[10] *Soriano* may not squarely apply to the extent that the settlement does not, on its face, exhaust the policy limits. But this uncertainty in the law meant that settlement between the Receiver and the Underwriters was fair game.

Receivership estate. Unlike the Stanford investors and the Receiver's attorneys, who can pursue restitution through the Receiver's claims process, Appellants have no access to the claims process. The Settlement Agreement specifically restricts payment of the Proceeds to the Receivers' attorneys and the Stanford investors and specifically excludes Stanford employees and management, including Appellants. For these Appellants, should the Receiver continue to pursue them, their claims against the Underwriters offer the only avenue of recovery. This alone serves to distinguish this case from *Kaleta*, which approved the settlement because, inter alia, the settlement agreement "expressly permits" those affected by the bar order "to pursue their claims by 'participat[ing] in the claims process for the Receiver's ultimate plan of distribution for the Receivership Estate.'" *See Kaleta*, 530 F. App'x at 362–63 (alteration in original). Barring Appellants' claims to coverage under their insurance policies by claiming the proceeds of these policies as property of the Receivership, *and then* barring Appellants' from accessing even a portion of these proceeds through the Receivership claim process, undermines the fairness of the settlement.

The district court and Receiver lacked authority to dispossess claimants of their legal rights to share in receivership assets "for the sake of the greater good." The court's duty, as previously described, is to assure that all claimants against the Receivership have a reasonable opportunity to share in the estate's assets. Given the numerous exclusions to policy coverage,[11] the Appellants' entitlement to proceeds may appear

[11] The myriad of contested policy exclusions include the insured versus insured, money laundering, fraud, intentional corporate or business policy, and prior knowledge exclusions.

weak, but the court disclaimed deciding coverage issues, and the Appellants have identified several reasons, in addition to *Pendergest-Holt*, why their contractual claims might prevail on final adjudication.[12]

Rather than extinguish the Appellants' contractual claims, the court could have authorized them to be filed against the Receivership in tandem with the Stanford investors' claims. Such "channeling orders" are often employed to afford alternative satisfaction to competing claimants to receivership assets while limiting their rights of legal recourse against the assets. *See, e.g., DeYoung*, 850 F.3d at 1182; *see also Kaleta*, 530 F. App'x at 360 (approving claims filing in receivership for barred litigants). In any event, the court may have intended to channel the Appellants' claims here but simply overlooked their omission from the extant procedures.[13]

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[12] Appellants explain that a significant number of their group have no personal liability, and, inferentially, should not be subject to policy exclusions, because they did not sell Stanford CDs to investors. Further, because the Receiver's claims against the Appellants are not derivative, any recovery from the proceeds would not at all reduce or offset the Appellants' liability for fraudulent transfers. Finally, Appellants assert viable defenses to the clawback actions based, in part, on Texas law in this Receivership. *See Janvey v. Golf Channel, Inc.*, 487 S.W.3d 581, 582 (Tex. 2016) (recognizing defense to fraudulent transfer of reasonably equivalent value received).

[13] The Receiver and Underwriters contend that in lieu of other modes of compensation through the receivership, these Appellants have received "benefits," however small, from the settlement because the insurance proceeds that have gone into the receivership estate offset their potential liability in the Receiver's and other suits. The district court made no such finding, and we see no basis in the record for it.

ii. Extracontractual Claims for Tort and Statutory Violations

By ignoring the distinction between Appellants' contractual and extracontractual claims against Underwriters, the district court erred legally and abused its discretion in approving the bar orders.[14] These claims, including common law bad faith breach of duty and claims under the Texas Insurance Code, lie directly against the Underwriters and do not involve proceeds from the insurance policies or other receivership assets.[15] These damage claims against the Underwriters exist independently; they do not arise from derivative liability nor do they seek contribution or indemnity from the estate.[16] As the preceding discussion

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[14] The Receiver and Underwriters would pretermit any such distinction by contending that unless the Appellants had valid contractual claims for insurance from the Underwriters' policies, they could not bring extracontractual claims. This may well be accurate. The district court, however, refused to rule on the viability of Appellants' contractual claims, and we need not undertake that task here. The basis of settlement for all concerned is to avoid tedious litigation of insurance coverage claims.

[15] This principle has been described above in the related context of bankruptcy. *See Matter of Zale Corp*., 62 F.3d 746, 756–57 (5th Cir. 1995); *Matter of Vitek, Inc.*, 51 F.3d 530, 538 (5th Cir. 1995); *In re Sportstuff, Inc.*, 430 B.R. 170, 178–79 (B.A.P. 8th Cir. 2010); *see also Matter of Buccaneer Res., LLC*, 912 F.3d 291, 293–97 (5th Cir. 2019) (explicating the difference between derivative and non-derivative injuries and holding that a tortious interference claim by a former company president against the outside lenders is non-derivative and separate from the bankruptcy estate).

[16] *See SEC v. DeYoung*, 850 F.3d 1172; *In re Heritage Bond Litig.,* 546 F.3d 667, 680 (9th Cir. 2008) (discussing settlement of a securities class action and distinguishing between claims for codefendant contribution and independent claims against settling defendants; former could be dismissed by bar order, but latter claims could not be).

explains in detail, receivership courts have no authority to dismiss claims that are unrelated to the receivership estate. That the district court was "looking only to the fairness of the settlement as between the debtor and the settling claimant [and ignoring third-party rights] contravenes a basic notion of fairness." *Zale*, 62 F.3d at 754 (alteration in original) (citing *United States v. AWECO, Inc.*, 725 F.2d 293, 298 (5th Cir.)).

As discussed above, the Receiver lacked standing to settle independent, non-derivative, non-contractual claims of these Appellants against the Underwriters. *See DSCC,* 712 F.3d at 190, 193 (receiver "has standing to assert only the claims of the entities in receivership, not the claims of the entities' investor-creditors [coinsureds] . . ."). Of course, the Receiver and Underwriters were, as Appellants' counsel colorfully described, all too happy to compromise at the expense of Appellants' rights. The court purported to justify this result by claiming that "the bar orders are not settling claims, they are enjoining them." No matter the euphemism, a permanent bar order is a death knell intended to extinguish the claims, which are a property interest, however valued, of the Appellants.

Moreover, in approving the settlement and bar orders against these Appellants, the district court overlooked problems inherent in the settling parties' positions. The Underwriters' position was in conflict with the Appellants: by means of the bar orders, the Underwriters limited their exposure to further costly and time-consuming litigation over Appellants' non-derivative extracontractual claims against them. The Receiver was enabled by the settlement and bar orders to place Appellants in a vise: preserving his ability to sue Appellants for clawbacks even as the agreement stripped Appellants' access to any recompense from

the Underwriters.[17] These problems cast grave doubt on the fairness and equity of the settlement and bar orders reached without Appellants' participation.[18]

In sum, although we sympathize with the impetus to settle difficult and atomized issues of insurance coverage rather than dissipate receivership assets in litigation, the settlement and bar orders violated fundamental limits on the authority of the court and Receiver. The court and Receiver could not abrogate contractual claims of these Appellants to proceeds of Underwriters' policies without affording them an alternative compensation scheme similar, if not identical, to the claims process for Stanford investors. The court could not authorize the Receiver and Underwriters to compromise their differences while extinguishing the Appellants' extracontractual claims against Underwriters. Equity must follow the law, which here constrains the court's and Receiver's authority to protecting the assets of the receivership and claims directly affecting those assets.[19]

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[17] The mediated settlement, in contrast, averted these conflicts of interest with the Receiver's release of claims against Appellants offsetting the Underwriters' potential extracontractual liability.

[18] When compared with *DeYoung,* 850 F.3d at 1182–83, the unsustainability of the settlement and bar orders here is manifest. Unlike that case, the extracontractual claims of these Appellants do not parallel those of the Receiver, Underwriters possess no contribution/indemnity claim against the receivership estate, and Appellants have been provided no channel to assert claims in the receivership.

[19] We reject Appellants' due process claims against the settlement and bar orders. They contend that because they "had an interest in" the outcome of the settlement, and the Bar Order "fully and finally adjudicates Appellants' independent state law contract and tort claims," due process required at least the ability to introduce evidence at the hearing. McDaniel presses other

b. Appellant Cordell Haymon

Like the Alvarado and McDaniel Appellants, Appellant Cordell Haymon, a member of Stanford Trust Company's board of Directors, was targeted by the Receiver and sought coverage of his defense costs under the insurance policies. After the Underwriters denied his claim for coverage, he settled the Receiver's fiduciary duty breach suit for $2 million. Haymon asserts that he relied on the language of his settlement agreement, which specifically authorized the continuation of his suit against the Underwriters. Only a few months later, however, the final proposed settlement undid his expectations of recovery from the Underwriters. Haymon requested to intervene in the initial coverage dispute between Underwriters and the Receiver, and he filed objections to the proposed settlement. He argues now that the district court erred in barring all of his contractual and extracontractual tort and statutory claims against the Underwriters.

To the extent that Haymon's claims mirror those of Alvarado and McDaniel, the same results follow. The district court acted within its authority to bar Haymon's claim for contractual defense and indemnity under the insurance policies, but some alternate compensation mode from the receivership estate is required, and the

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constitutional claims. But Appellants were provided notice of the settlement hearing, were able to fully brief their position and provide affidavits, and they have offered nothing more on appeal. Although excluded from the settlement negotiations, they have shown no legal requirement that they be allowed to participate in a settlement resolving claims for reimbursement against the limited policy proceeds. The applicable Texas law allows insurers to settle with fewer than all of the insureds in such circumstances. Appellants' due process arguments fail, and McDaniel's other claims are meritless.

court could not bar his extracontractual claims against the Underwriters. However, the ultimate evaluation of Haymon's claims may differ from that of the other Appellants for two reasons, which the district court should assess on remand. First, because his insurance coverage claim was liquidated before the final settlement ($2 million potential indemnity and $1.5 million defense costs) it was ripe for judicial determination under *Pendergest-Holt*.[20] Second, Haymon received a bar order, perhaps valuable to him, against any further litigation concerning his involvement with Stanford entities.

c. Appellant Louisiana Retirees

Unlike the foregoing Appellants, the Louisiana Retirees are not coinsureds under the insurance policies, and they are not being pursued in Indirect Claim actions by the Receiver. Retirees have assiduously pursued securities law claims against certain Stanford brokers and the Underwriters, as insurers for those brokers, under the Louisiana Direct Action Statute, La. R.S. 22:1269.

First, the parties dispute the meaning of the bar order and the extent to which it bars the Retirees' claims. The Receiver argues that the bar order applies only to claims against the Underwriters and the Underwriters' *Released Parties*, defined as the officers, agents, etc. of Underwriters, and expressly excluding the officers, directors, or employees of Stanford Entities. Retirees argue that it enjoins them from pur-

[20] Finally, as noted in regard to the other Appellants, Haymon was afforded the opportunity, and availed himself of the ability to press his constitutional objections to the settlement and bar orders. There was no failure of due process and his other vaguely identified constitutional objections are meritless.

suing the Stanford Claims, defined as "any action, lawsuit or claims brought by any Stanford Investor against Underwriters [or] . . . *Underwriter's Insureds*." In turn, Underwriters' Insureds are defined as "any person that shall be an officer and director of any Stanford Entities . . . [or] any employee of any Stanford Entities." On remand, it would be appropriate for the district court to determine and clarify the meaning of the bar order as to the Retirees, keeping in mind that the district court may not enjoin any claims by Retirees against the brokers that do not implicate the policy proceeds.

Second, the Retirees' claims under the Louisiana direct action statute unequivocally implicate the policy proceeds and therefore assets of the receivership. The statute specifies that an action can be brought "within the terms and limits of the policy by the injured person." La. Rev. Stat. 22:1269(A), (C), (D). It "does not create an independent cause of action against the insurer[;] it merely grants a procedural right of action against an insurer where the plaintiff has a substantive cause of action against the insured." *Soileau v. Smith True Value & Rental*, 144 So. 3d 771, 780 (La. 2013). As such, the Receiver could settle with the Underwriters notwithstanding the direct action claim just as he could settle regardless of the Employee Appellants' contractual claims to policy proceeds. Further, as former investors in the Stanford entities, the Retirees were afforded a means of filing claims apart from the direct action suit, and many have availed themselves of that opportunity. Consequently, the Retirees' direct action suit against the Underwriters amounts to a redundant claim on receivership assets.

Nevertheless, the Retirees assert several arguments that have no bearing on the permissibility of the settlement and bar order as to them. They contend first that the settlement and bar order conflict with the Supreme Court's decision in *Chadbourne & Parke LLP v. Troice*, 134 S. Ct. 1058 (2014), which they characterize as "acknowledg[ing] the Louisiana Retirees' rights to bring their state law securities claims in Louisiana state court." But *Troice* held only that the Securities Litigation Uniform Standards Act did not preempt the Louisiana Appellants' state court claims. The Court's ruling did not bear on the merits of or procedure for the Retirees' state law case.

Second, they contend that *DSCC*, 712 F.3d at 185, forbids giving the receiver the right to "control the settlement of a claim it does not own." That is certainly correct according to our previous discussion, but here, the Receiver had standing to pursue *its own* claims as coinsured under the Underwriters' policies, such claims perfected the Receiver's interest in a valuable asset, and Texas law provided the right to settle them even at the expense of the Retirees' direct action claims.

The Retirees argue that the district court should have first determined the disputed legal questions about the magnitude of, and legal rights to, the policy proceeds before approving the settlement and bar orders under *In re Louisiana World Exposition, Inc.,* 832 F.2d 1391 (5th Cir. 1987). This argument simply misreads that case. The court in *Louisiana World* explicitly distinguished the facts before it from cases involving coinsureds with equal claims to the policy proceeds. Moreover, at least one disputed policy – the

Fidelity Bond – covers only the Receivership entities.[21] It was not an abuse of discretion for the district court to hold that equity favored avoiding costly litigation and dissipation of receivership assets by allowing the Receiver, a coinsured with equal claim to the policy proceeds, to settle with the Underwriters. Avoiding protracted legal examination of the policy exclusions, which could just as easily bar Retirees and others from the policy proceeds, was precisely the point of the settlement.

Fourth, Retirees assert that the Anti-Injunction Act, 28 U.S.C. § 2283 ("AIA"), prevented the court from issuing its bar orders. This argument has no merit. Under the AIA, "any injunction against state court proceedings otherwise proper under general equitable principles must be based on one of the specific statutory exceptions to [the Anti-Injunction Act] if it is to be upheld." *Atl. Coast Line R.R. Co. v. Bhd. of Locomotive Eng'rs*, 398 U.S. 281, 287, 90 S. Ct. 1739, 1743 (1970). The specific exceptions are express authorization by an Act of Congress, where necessary in aid of the court's jurisdiction, or to protect or effectuate the court's judgments. *Id.* at 288, 90 S. Ct. at 1743–44. The AIA does not prohibit the settlement and bar order because, pertinent to the Retirees, they cover only those claims implicating the insurance policy proceeds and so were necessary in aid of the district court's jurisdiction over those proceeds. The district court has exclusive *in rem* jurisdiction over the policy proceeds and permanent bar orders have been approved as parts of settlements to secure receivership assets. *See*,

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[21] As with the other policies, the Underwriters and Receiver dispute the scope of coverage and exclusions of the Fidelity Bond, and whether the Receiver may access the proceeds, but there is no argument that the Retirees may access these proceeds.

e.g., S*EC v. Parish*, No. 2:07-CV-00919-DCN, 2010 WL 8347143 (D.S.C. Feb. 10, 2010) ("[T]he bar order is necessary to preserve and aid this court's jurisdiction over the receivership estate, such that the Anti-Injunction Act would not prohibit the bar order even if there were pending state court actions, which there are not.").

For these reasons, the settlement and bar orders did not interfere with or improperly extinguish the Retirees' rights.

CONCLUSION

For the foregoing reasons, we VACATE the district court's orders approving the settlement and bar orders and REMAND for further proceedings consistent with this opinion.[22]

[22] Vacatur and remand will probably necessitate the court's reconsideration of the attorneys' fee award to the Receiver's counsel.

APPENDIX B

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

[Filed October 23, 2019]

No. 17-10663

SECURITIES AND EXCHANGE COMMISSION
Plaintiff

v.

STANFORD INTERNATIONAL BANK, LIMITED
Defendant

v.

JOSEPH BECKER; TERENCE BEVEN; WANDA BEVIS; THOMAS EDDIE BOWDEN; TROY L. LILLIE, JR., *et al*
Movants-Appellants

DOUG MCDANIEL; SCOTT NOTOWICH; EDDIE ROLLINS; CORDELL HAYMON; *et al*,
Objecting Parties-Appellants

v.

CERTAIN UNDERWRITERS AT LLOYD'S OF LONDON; ARCH SPECIALTY INSURANCE COMPANY; LEXINGTON INSURANCE COMPANY,
Interested Parties-Appellees

RALPH S. JANVEY,
Appellee

CERTAIN UNDERWRITERS AT LLOYD'S OF LONDON;
ARCH SPECIALTY INSURANCE COMPANY,
Plaintiffs-Appellees

v.

RALPH S. JANVEY, In his Capacity as Court Appointed Receiver for Stanford International Bank Limited, Stanford Group Company, Stanford Capital Managment L.L.C., Stanford Financial Group, and Stanford Financial Group Bldg,
Defendant-Appellee

v.

CORDELL HAYMON,
Intervenor-Appellant

———

CERTAIN UNDERWRITERS AT LLOYD'S OF LONDON;
ARCH SPECIALTY INSURANCE COMPANY;
LEXINGTON INSURANCE COMPANY,
Plaintiffs-Appellees

v.

CORDELL HAYMON,
Objecting Party-Appellant

v.

RALPH S. JANVEY,
Intervenor-Appellee

———

CERTAIN UNDERWRITERS AT LLOYD'S OF LONDON;
ARCH SPECIALTY INSURANCE COMPANY;
LEXINGTON INSURANCE COMPANY,
Plaintiffs-Appellees

v.

RALPH S. JANVEY,
Intervenor Defendant-Appellant

v.

CORDELL HAYMON,
Objecting Party-Appellant

CORDELL HAYMON,
Third Party Plaintiff-Appellant

v.

CERTAIN UNDERWRITERS OF LLOYD'S OF LONDON,
Claims asserted by Claude F. Raynaud, Jr.
Third Party Defendant-Appellee

v.

RALPH S. JANVEY,
Appellee

Appeals from the United States
District Court for the
Northern District of Texas

ON PETITIONS FOR REHEARING AND
REHEARING EN BANC

(Opinion 6/17/19, 5 Cir., ___ , ___ F.3d ___)

Before JONES, CLEMENT, and SOUTHWICK, Circuit Judges.

PER CURIAM:

(X) The Petitions for Rehearing are DENIED and no member of this panel for judge in regular active service on the court having requested that the court be polled on Rehearing En Banc, (FED. R. APP. P. and 5TH CIR. R. 35) the Petitions for Rehearing En Banc are also DENIED.

( ) The Petitions for Rehearing are DENIED and the court having been polled at the request of one of the members of the court and a majority of the judges who are in regular active service and not disqualified not having voted in favor, (FED. R. APP. P. and 5TH CIR. R. 35) the Petitions for Rehearing En Banc are also DENIED.

( ) A member of the court in active service having requested a poll on the reconsiderations of this cause en banc, and a majority of judges in active service and not disqualified not having voted in favor, Rehearings En Banc are DENIED.

ENTERED FOR THE COURT:

/s/ Edith H. Jones
UNITED STATES CIRCUIT JUDGE

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* Judge James L. Dennis, Catherina Haynes, and Gregg J. Costa, did not participate in the consideration of the rehearings en banc.

APPENDIX C

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

[Filed June 17, 2019]

No. 17-10663

D.C. Docket No. 3:09-CV-298
D.C. Docket No. 3:09-CV-1736
D.C. Docket No. 3:13-CV-2226
D.C. Docket No. 3:15-CV-1997
D.C. Docket No. 3:14-CV-3731

SECURITIES AND EXCHANGE COMMISSION
Plaintiff

v.

STANFORD INTERNATIONAL BANK, LIMITED
Defendant

v.

JOSEPH BECKER; TERENCE BEVEN; WANDA BEVIS; THOMAS EDDIE BOWDEN; TROY L. LILLIE, JR., *et al*,
Movants-Appellants

DOUG MCDANIEL; SCOTT NOTOWICH; EDDIE ROLLINS; CORDELL HAYMON; *et al*,
Objecting Parties-Appellants

v.

CERTAIN UNDERWRITERS AT LLOYD'S OF LONDON; ARCH SPECIALTY INSURANCE COMPANY; LEXINGTON INSURANCE COMPANY,
Interested Parties-Appellees

RALPH S. JANVEY,
Appellee

———

CERTAIN UNDERWRITERS AT LLOYD'S OF LONDON;
ARCH SPECIALTY INSURANCE COMPANY,
Plaintiffs-Appellees

v.

RALPH S. JANVEY, In his Capacity as Court Appointed Receiver for Stanford International Bank Limited, Stanford Group Company, Stanford Capital Managment L.L.C., Stanford Financial Group, and Stanford Financial Group Bldg,
Defendant-Appellee

v.

CORDELL HAYMON,
Intervenor-Appellant

———

CERTAIN UNDERWRITERS AT LLOYD'S OF LONDON;
ARCH SPECIALTY INSURANCE COMPANY;
LEXINGTON INSURANCE COMPANY,
Plaintiffs-Appellees

v.

CORDELL HAYMON,
Objecting Party-Appellant

v.

RALPH S. JANVEY,
Intervenor-Appellee

———

CERTAIN UNDERWRITERS AT LLOYD'S OF LONDON;
ARCH SPECIALTY INSURANCE COMPANY;
LEXINGTON INSURANCE COMPANY,
Plaintiffs-Appellees

v.

RALPH S. JANVEY,
Intervenor Defendant-Appellee

v.

CORDELL HAYMON,
Objecting Party-Appellant

CORDELL HAYMON,
Third Party Plaintiff-Appellant

v.

CERTAIN UNDERWRITERS OF LLOYD'S OF LONDON,
Claims asserted by Claude F. Reynaud, Jr.
Third Party Defendant-Appellee

v.

RALPH S. JANVEY,
Appellee

Appeals from the United States District Court for the
Northern District of Texas

Before JONES, CLEMENT, and SOUTHWICK, Circuit Judges.

JUDGMENT

This cause was considered on the record on appeal and was argued by counsel.

It is ordered and adjudged that the judgment of the District Court is vacated, and the cause is remanded to the District Court for further proceedings in accordance with the opinion of this Court.

[SEAL]

Certificate as a true copy
and issued as the mandate
on Oct. 31, 2019

Attest: /s/ Lyle W. Cayle
Clerk, U.S. Court of Appeals,
Fifth Circuit

APPENDIX D

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

[Filed May 16, 2017]

Civil Action No. 3:09-CV-0298-N

SECURITIES AND EXCHANGE COMMISSION,
Plaintiff,

v.

STANFORD INTERNATIONAL BANK, LTD., *et al.*,
Defendants

FINAL BAR ORDER

Before the Court is the Expedited Request for Entry of Scheduling Order and Motion to Approve Proposed Settlement with Certain Underwriters at Lloyd's of London,[1] Arch Specialty Insurance Company, and Lexington Insurance Company (collectively "Underwriters"), to Enter the Bar Order, to Enter the Final Judgments and Bar Orders, and for Attorneys' Fees (the "Motion"), filed by Ralph S. Janvey, in his capacity as court-appointed Receiver for Stanford International Bank, Ltd. et al. (the "Receiver"). Docket No. 2324. The

[1] "Certain Underwriters at Lloyd's of London" means Lloyd's of London Underwriting Members in Syndicates 2987, 2488, 1886, 1084, 4000, 1183, and 1274.

Motion concerns an Agreement (the "Agreement")[2] among and between Underwriters, the Official Stanford Investors Committee, and the Receiver. Underwriters and the Receiver are parties to *Certain Underwriters at Lloyd's of London, et al. v. Ralph S. Janvey, et al.*, Civil Action No. 3:09-CV-01736 (the "Coverage Action"). The Court-appointed Examiner signed the Agreement as Examiner solely to evidence his support and approval of the Agreement and to confirm his obligations to post the Notice on his website, but is not otherwise individually a party to the Coverage Action or the Agreement.

Following notice and a hearing, and having considered the filings and heard the arguments of counsel, the Court hereby GRANTS the Motion.

I. INTRODUCTION

On February 16, 2009, this Court appointed Ralph S. Janvey to be the Receiver for the Stanford Entities. Docket No. 10, *Securities and Exchange Commission v. Stanford International Bank, Ltd.*, No. 3:09-cv-298 (N.D. Tex.) (the "SEC Action"). Following his appointment, the Receiver made claims for coverage (the "Direct Claims") under three insurance policies issued by Underwriters to the Stanford Entities: (1) Financial Institutions Crime and Professional Indemnity Policy, Policy Number 576/MNA851300 (the "PI Policy"); (2) Directors' and Officers' Liability and Company Indemnity Policy, Policy Number 576/MNK558900 (the "D&O Policy"); and (3) Excess Blended Wrap Policy, Policy Number 576/MNA831400 (the "Excess Policy,"

[2] The term "Agreement" refers to the Settlement Agreement that is attached as Exhibit 1 of the Appendix to the Motion.

and collectively with the PI Policy and the D&O Policy, the "Insurance Policies" or the "Policies").

The Insurance Policies provide for certain limits of the amount of coverage available. The Parties dispute the available limits, the legal effect of the provisions governing the Policies' limits, and the amount of the Policies' remaining limits.

Underwriters dispute there is coverage for the Direct Claims and filed the Coverage Action, seeking a declaration of no coverage under the Insurance Policies. The Receiver counterclaimed, alleging, *inter alia*, breach of contract, breach of the duty of good faith and fair dealing, bad faith under the Texas Insurance Code, and violation of the Texas Deceptive Trade Practices Act.

Underwriters filed a motion for judgment on the pleadings, (Doc. 50, Coverage Action), to which the Receiver responded, (Doc. 58, Coverage Action), and which the Court denied, (Doc. 93, Coverage Action). Underwriters and the Receiver engaged in written discovery and electronic discovery, reviewing and analyzing voluminous Stanford documents maintained by the Receivership. Numerous depositions were taken in the United States, London, and Mexico.

In addition to the Coverage Action, the Insurance Policies are or may be implicated in numerous other disputes. The Receiver and the Committee filed numerous lawsuits against Underwriters' Insureds (the "Indirect Claims"),[3] who in turn made or may make claims for coverage under the Policies. Stanford Inves-

[3] The term "Underwriters' Insureds" is defined in Paragraph 25 of the Agreement. The term "Indirect Claims" is defined on page 3 of the Agreement.

tors[4] also made numerous claims against Underwriters Insureds (the "Stanford Investor Claims"),[5] who in turn made or may make claims for coverage under the Insurance Policies. Underwriters contend that the Insurance Policies do not provide coverage for the Indirect Claims or the Stanford Investor Claims, and they are involved in numerous lawsuits relating to the various claims for coverage under the Policies (the "Third-Party Coverage Actions").[6] Nonetheless, pursuant to the Policies and as permitted by this Court's prior order (Docket No. 831), Underwriters have paid approximately $30.3 million for the defense costs of various of Underwriters' Insureds. The Receiver has intervened or sought to intervene in the Third-Party Coverage Actions.

The litigated resolution of the Coverage Action and the Third-Party Coverage Actions would likely cost millions of dollars and the outcome is uncertain. Recognizing the uncertainties, risks, and costs of litigation, the Receiver and Underwriters entered into formal, mediated settlement negotiations beginning in June 2015. In addition to the Receiver and Underwriters, the Examiner participated in the settlement discussions, ensuring that the perspective of the Committee—which the Court appointed to "represent[] in this case and related matters" the "customers of SIBL who, as of February 16, 2009, had funds on deposit at SIBL and/or were holding certificates of

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[4] The term "Stanford Investors" is defined on pages 4-5 of the Agreement.

[5] The term "Stanford Investor Claims" is defined in Paragraph 21 of the Agreement.

[6] The term "Third-Party Coverage Actions" is defined in Paragraph 23 of the Agreement and Exhibit J to the Agreement.

deposit issued by SIBL" (Docket No. 1149)—would be heard in connection with any proposed settlement involving the Insurance Policies. Following the last day of mediation, the parties continued their negotiations and arrived at a settlement which the Agreement documents.

Under the terms of the Agreement, Underwriters will pay $65 million to the Receivership Estate, which (less attorneys' fees and expenses) will be distributed to Stanford Investors with allowed claims. In return, Underwriters seek global peace with respect to all claims that have been asserted, or could have been asserted, against Underwriters arising out of, in connection with, or relating to: the events leading to this Receivership, the Coverage Action, the Third-Party Coverage Actions, the Indirect Claims, and the Stanford Investor Claims; all matters that were or could have been asserted in the Coverage Action, the Third-Party Coverage Actions, the Indirect Claims, and the Stanford Investor Claims; the Insurance Policies; Underwriters' relationship with the Stanford Entities;[7] and any actual or potential claim of coverage under the Insurance Policies in connection with the SEC Action, the Receivership, the Indirect Claims, the Stanford Investor Claims, or any claim asserted against any person who has ever had any affiliation with any of the Stanford Entities. Accordingly, the Settlement is conditioned on the Court's approval and entry of this Final Bar Order.

On June 27, 2016, the Receiver filed the Motion. [ECF No. 2324]. The Court thereafter entered a Scheduling Order on July 11, 2016 [ECF No. 2333],

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[7] The term "Stanford Entities" is defined in Paragraph 20 of the Agreement and Exhibit H to the Agreement.

which, *inter alia*, authorized the Receiver to provide notice of the Agreement, established a briefing schedule on the Motion, and set the date for a hearing. On October 28, 2016, the Court held the scheduled hearing. For the reasons set forth herein, the Court finds that the terms of the Agreement are adequate, fair, reasonable, and equitable, and that it should be and is hereby APPROVED. The Court further finds that entry of this Final Bar Order is appropriate.

II. ORDER

It is hereby ORDERED, ADJUDGED, AND DECREED as follows:

1. Terms used in this Final Bar Order that are defined in the Agreement, unless expressly otherwise defined herein, have the same meaning as in the Agreement.

2. The Court has "broad powers and wide discretion to determine the appropriate relief in [this] equity receivership," including the authority to enter the Final Bar Order. *SEC v. Kaleta*, 530 F. App'x 360, 362 (5th Cir. 2013) (internal quotations omitted). Moreover, the Court has jurisdiction over the subject matter of this action, and the Receiver is the proper party to seek entry of this Final Bar Order.

3. The Court finds that the methodology, form, content and dissemination of the Notice: (i) were implemented in accordance with the requirements of the Scheduling Order; (ii) constituted the best practicable notice; (iii) were reasonably calculated, under the circumstances, to apprise all interested Persons of the Agreement, the releases therein, and the injunctions provided for in this Final Bar Order and in the Final Judgments and Bar Orders to be entered in the Coverage Action and the Third-Party Coverage Actions;

(iv) were reasonably calculated, under the circumstances, to apprise all interested Persons of the right to object to the Agreement, this Final Bar Order, and the Final Judgments and Bar Orders to be entered in the Coverage Action and the Third-Party Coverage Actions, and to appear at the Final Approval Hearing; (v) were reasonable and constituted due, adequate, and sufficient notice; (vi) met all applicable requirements of law, including, without limitation, the Federal Rules of Civil Procedure, the United States Constitution (including Due Process), and the Rules of the Court; and (vii) provided to all Persons a full and fair opportunity to be heard on these matters.

4. The Court finds that the Agreement was reached following substantial litigation and an extensive investigation of the facts and resulted from vigorous, good faith, arm's-length, mediated negotiations involving experienced and competent counsel. The competing claims in the Coverage Action and the Third-Party Coverage Actions involve complex legal and factual issues that would require a substantial amount of time and expense to litigate, with uncertainty as to the outcome. The range of possible outcomes includes that there may be no coverage of any kind under the Insurance Policies, that there may be less coverage than the amount provided for in the Agreement, or that there may be more coverage than the amount provided for in the Agreement. In any event, the proceeds of the Insurance Policies represent a finite pool of resources. In the absence of the Agreement, the proceeds of the Insurance Policies, to whatever extent they are available, would be dissipated through mere happenstance, rather than through consideration of equity or fairness.

5. Further, it is clear that Underwriters would never agree to the terms of the Agreement unless they were assured of "total peace" with respect to all claims that have been, or could be, asserted against Underwriters arising from, in connection with, or relating to the actual or alleged insurer-insured relationship between Underwriters, on the one hand, and Underwriters' Insureds, the Stanford Entities, and the Stanford Investors, on the other hand.

6. The injunction against any such claims against Underwriters is therefore a necessary and appropriate order ancillary to the relief obtained for the Stanford Entities, and by extension, the victims of the Stanford Ponzi scheme, pursuant to the Agreement. *See Kaleta*, 530 F. App'x at 362 (entering bar order and injunction against investor claims as "ancillary relief" to a settlement in an SEC receivership proceeding).

7. Pursuant to the Agreement and upon motion by the Receiver, this Court will approve a Distribution Plan that will fairly and reasonably distribute the net proceeds of the Settlement Amount (less attorneys' fees and expenses) to Stanford Investors who have claims approved by the Receiver. The Court finds that the Receiver's claims process and the Distribution Plan contemplated in the Agreement have been designed to ensure that all Stanford Investors have received an opportunity to pursue their claims through the Receiver's claims process previously approved by the Court (ECF No. 1584).

8. The Court further finds that the Parties and their counsel have at all times complied with the requirements of Rule 11 of the Federal Rules of Civil Procedure.

9. Accordingly, the Court finds that the Agreement is, in all respects, fair, reasonable, and adequate, and in the best interests of all Persons claiming an interest in, having authority over, or asserting a claim against Underwriters, Underwriters' Insureds, the Stanford Entities, the Receiver, or the Receivership Estate. The settlement, the terms of which are set forth in the Agreement, is hereby fully and finally approved. The Parties are directed to implement and consummate the Agreement in accordance with its terms and provisions and this Final Bar Order.

10. Based on the considerations outlined herein, the Court further finds that the Agreement and this Order are fair, just, and equitable, notwithstanding the fact that some individuals who may qualify as Underwriters' Insureds will no longer be in a position to seek insurance coverage from Underwriters for Stanford-related claims against them that are not resolved by the Agreement.

11. Pursuant to the provisions of Paragraph 39 of the Agreement, as of the Settlement Effective Date, Underwriters and the Underwriters Released Parties shall be completely released, acquitted, and forever discharged from all Settled Claims by the Receiver or the Committee, including any action, cause of action, suit, liability, claim, right of action, or demand whatsoever, whether or not currently asserted, known, suspected, existing, or discoverable, and whether based on federal law, state law, foreign law, common law, or otherwise, and whether based on contract, tort, statute, law, equity or otherwise, that the Receiver, the Receivership Estate, the Committee, the Claimants, Underwriters' Insureds, the Stanford Investors, and the Persons, entities and interests represented by those Persons ever had, now has, or hereafter can,

shall, or may have, directly, representatively, derivatively, or in any other capacity, for, upon, arising from, relating to, or by reason of any matter, cause, or thing whatsoever, that, in full or in part, concerns, relates to, arises out of, or is in any manner connected with (i) the Insurance Policies; (ii) the Stanford Entities; (iii) any certificate of deposit, CD, depository account, or investment of any type with any one or more of the Stanford Entities; (iv) any one or more of Underwriters' relationships with any one or more of the Stanford Entities; (v) any actual or potential claim of coverage under the Insurance Policies in connection with the SEC Action, the Receivership, the Indirect Claims, the Stanford Investor Claims, or any claim asserted against any Stanford Defendant or any other Person who has ever had any affiliation with any Stanford Defendant; (vi) the Coverage Action; (vii) the Third-Party Coverage Actions; (viii) the Indirect Claims; and (ix) all matters that were or could have been asserted in SEC Action, the Coverage Action, the Indirect Claims, the Stanford Investor Claims, and/or the Third-Party Coverage Actions, or any proceeding concerning the Stanford Entities pending or commenced in any Forum.

12. Pursuant to the provisions of Paragraph 40 of the Agreement, as of the Settlement Effective Date, the Receivership's Released Parties shall be completely released, acquitted, and forever discharged from all Settled Claims by Underwriters.

13. Notwithstanding anything to the contrary in this Final Bar Order, the foregoing releases do not release the Parties' rights and obligations under the Agreement or bar the Parties from enforcing or effectuating the terms of the Agreement.

14. The Court hereby permanently bars, restrains and enjoins the Receiver, the Receivership Estate, the Committee, the Claimants, the Stanford Investors, Underwriters' Insureds, the Interested Parties, and all other Persons or entities, whether acting in concert with the foregoing or claiming by, through, or under the foregoing, or otherwise, all and individually, from directly, indirectly, or through a third party, instituting, reinstituting, intervening in, initiating, commencing, maintaining, continuing, filing, encouraging, soliciting, supporting, participating in, collaborating in, or otherwise prosecuting, against any of the Underwriters or any of the Underwriters Released Parties, any action, lawsuit, cause of action, claim, investigation, demand, complaint, or proceeding of any nature, including but not limited to litigation, arbitration, or other proceeding, in any Forum, whether individually, derivatively, on behalf of a class, as a member of a class, or in any other capacity whatsoever, that in any way relates to, is based upon, arises from, related to, or is connected with (i) the Insurance Policies; (ii) the Stanford Entities; (iii) any certificate of deposit, CD, depository account, or investment of any type with any one or more of the Stanford Entities; (iv) any one or more of Underwriters' relationships with any one or more of the Stanford Entities; (v) any actual or potential claim of coverage under the Insurance Policies in connection with the SEC Action, the Receivership, the Indirect Claims, the Stanford Investor Claims, or any claim asserted against any Stanford Defendant or any other Person who has ever had any affiliation with any Stanford Defendant; (vi) the Coverage Action; (vii) the Third-Party Coverage Actions; (viii) the Indirect Claims; (ix) the Stanford Investor Claims; and (x) all matters that were or could have been asserted in SEC Action, the Coverage

Action, the Indirect Claims, the Stanford Investor Claims, and/or the Third-Party Coverage Actions, or any proceeding concerning the Stanford Entities pending or commenced in any Forum.

15. Underwriters and the Underwriters Released Parties have no responsibility, obligation, or liability whatsoever with respect to the content of the Notice; the notice process; the Distribution Plan; the implementation of the Distribution Plan; the management, investment, disbursement, allocation, or other administration or oversight of the Settlement Amount, any other funds paid or received in connection with the Agreement, or any portion thereof; the payment or withholding of Taxes; the determination, administration, calculation, review, or challenge of claims to the Settlement Amount, any portion of the Settlement Amount, or any other funds paid or received in connection with the Agreement; or any losses, attorneys' fees, expenses, vendor payments, expert payments, or other costs incurred in connection with any of the foregoing matters. No appeal, challenge, decision, or other matter concerning any subject set forth in this paragraph shall operate to terminate or cancel the Agreement or this Final Bar Order.

16. The Court finds entry of the bar order in exchange for the payment of the Settlement Amount in accordance with the terms of the Agreement is fair and reasonable based on at least the following considerations: (i) Underwriters are entitled to exhaust policy limits by settling with one but not all insureds; (ii) the insurance proceeds represent a finite pool of resources available to satisfy claims against Underwriters' Insureds; (iii) there is a substantial dispute over the amount of the proceeds available under the Insurance Policies; (iv) the proceeds of the Insurance

Policies may be less than the Settlement Amount, in which case the Agreement would result in the exhaustion of the proceeds under the Insurance Policies; (v) in the absence of a global settlement and bar order, Underwriters would be unwilling to pay the Settlement Amount and thus allowing any Person to retain the right to litigate the questions of coverage and available policy limits could work to the detriment of all persons interested in the Insurance Policies; (vi) in the absence of a settlement, the potential beneficiaries of the Insurance Policies might recover substantially less than is being made available pursuant to the Insurance Policies; (vii) the Settlement Amount is fair and equitable taking into account the merits of the claims and potential claims released and Underwriters' defenses to those claims and potential claims; and (viii) the Agreement represents a fair and reasonable balancing of the various interests implicated by the Insurance Policies and disputes and controversies related thereto.

17. Nothing in this Final Bar Order or the Agreement and no aspect of the Agreement or negotiation thereof is or shall be construed to be an admission or concession of any violation of any statute or law, of any fault, liability or wrongdoing, or of any infirmity in the claims or defenses of the Parties with regard to any of the complaints, claims, allegations or defenses in the Coverage Action, the Indirect Claims, the Stanford Investor Claims, the Third-Party Coverage Actions, or any other proceeding.

18. Nothing in this Final Bar Order is intended to release the Receiver or the Committee's claims in the proceedings identified in Exhibit B to the Agreement, or prevent, bar, restrain, or enjoin the continuation of such proceedings by the Receiver or the Committee.

19. Underwriters are hereby ordered to deliver the Settlement Amount ($65,000,000) as described in Paragraphs 19 and 26 of the Agreement. Further, the Parties are ordered to act in conformity with all other provisions the Agreement.

20. Without in any way affecting the finality of this Final Bar Order, the Court retains continuing and exclusive jurisdiction over the Parties for purposes of, among other things, the administration, interpretation, consummation, and enforcement of the Agreement, the Scheduling Order, and this Final Bar Order, including, without limitation, the injunctions, bar orders, and releases herein, and to enter orders concerning implementation of the Agreement, the Distribution Plan, and any payment of attorneys' fees and expenses to the Receiver's counsel.

21. The Court expressly finds and determines, pursuant to Federal Rule of Civil Procedure 54(b), that there is no just reason for any delay in the entry of this Final Bar Order, which is both final and appealable, and immediate entry by the Clerk of the Court is expressly directed.

22. This Final Bar Order shall be served by counsel for the Receiver, via email, first class mail or international delivery service, on any person or entity that filed an objection to approval of the Agreement, or this Final Bar Order.

SIGNED on May 16, 2017.

/s/ David C. Godbey
DAVID C. GODBEY
UNITED STATES DISTRICT JUDGE

APPENDIX E

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

[Filed May 16, 2017]

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Civil Action No. 3:09-CV-0298-N

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SECURITIES AND EXCHANGE COMMISSION,
Plaintiff,

v.

STANFORD INTERNATIONAL BANK, LTD. *et al.*,
Defendants.

———

Civil Action No. 3:09-CV-1736-N

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CERTAIN UNDERWRITERS AT LLOYD'S OF LONDON, *et al.*,
Plaintiffs,

v.

RALPH S. JANVEY, RECEIVER, *et al.*,
Defendants.

———

Civil Action No. 3:13-CV-2226-N

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CERTAIN UNDERWRITERS AT LLOYD'S OF LONDON, *et al.*,
Plaintiffs,

v.

PABLO M. ALVARADO, *et al.*,
Defendants.

Civil Action No. 3:15-CV-1997-N

CERTAIN UNDERWRITERS AT LLOYD'S OF LONDON, *et al.*,
Plaintiffs,

v.

PAUL D. WINTER, *et al.*,
Defendants.

Civil Action No. 3:14-CV-3731-N

CLAUDE F. REYNAUD, *et al.*,
Plaintiffs,

v.

CERTAIN UNDERWRITERS AT LLOYD'S OF LONDON, ET AL.,
Defendants.

ORDER

This Order addresses the objections[1] to the motion to approve the settlement between Plaintiffs Ralph S. Janvey (the "Receiver") and the Official Stanford Investors Committee ("OSIC") and Defendants Certain Underwriters at Lloyd's of London, Lexington Insurance Co., and Arch Specialty Insurance Co. (collectively, "Underwriters"). This Order also addresses the Objectors' motion to compel mediation related to the settlement. [2441] *in* the Receivership Action. Neither

[1] Docs. 2379, 2387, 2388, 2389, 2390, 2391, 2394, and 2397 *in SEC v. Stanford Int'l Bank, Ltd*, Case No. 3:09-CV-298-N (N.D. Tex.) (the "Receivership Action").

the objections nor the motion to compel justify rejecting the settlement or ordering additional mediation. Accordingly, the Court denies the objections and the motion to compel mediation.

I. THE INSURANCE DISPUTE AND SETTLEMENT

R. Allen Stanford's Ponzi scheme spawned extensive civil litgation, including the dispute over insurance proceeds underlying this proposed settlement. The facts of Stanford's scheme are well established, *see, e.g.*, *Janvey v. Democratic Senatorial Campaign Comm.*, 712 F.3d 185, 188–89 (5th Cir. 2013) ("*DSCC*"), and will not be recounted in great depth here. Essentially, Stanford's scheme entailed the sale of fraudulent certificates of deposit ("CDs") from an offshore bank located in Antigua known as Stanford International Bank Limited ("SIBL"). Although Stanford represented to investors that the CD proceeds were invested only in low-risk, high-return funds, in reality they were funneled into speculative private equity investments and used to fund Stanford's extravagant lifestyle.

The Court appointed the Receiver to take control of the various entities Stanford used to carry out his scheme. Among other duties, the Court charged the Receiver with recovering assets and distributing them to Stanford's victims. Those assets include the proceeds of the insurance policies at issue in this dispute.

The dispute over these proceeds began within months of the Receiver's appointment to take charge of the numerous entities in Stanford's empire. Underwriters issued three policies providing four types of insurance for the Stanford entities: (1) D & O coverage, (2) fidelity coverage, (3) professional indemnity cover-

age, and (4) excess wrap coverage (the "Policies"). The Receiver, on behalf of the insured Stanford entities, made claims against the Policies (the "Direct Claims"). Underwriters denied those claims on the basis of various coverage exclusions. Underwriters then sued the Receiver seeking a no-coverage declaratory judgment (the "Coverage Action"). The Receiver counterclaimed in the Coverage Action for breach of contract and other causes of action.

At the same time, the Receiver sued many of the Policies' insureds (the "Indirect Claims"). Some of the defendants in those cases have made or may make claims against the Policies. Underwriters resisted those claims as well, arguing that the Policies do not cover the defendants' losses or litigation costs. This has generated yet another set of lawsuits to resolve coverage issues between Underwriters and the putative insureds (the "Third-Party Coverage Actions"). To protect his claims to the Policies' proceeds, the Receiver has intervened or sought to intervene in the Third-Party Coverage Actions.

Attorney's fees and other costs began eroding the available proceeds as litigation progressed. The Receiver took the position that approximately $101 million remains under the policy limits; Underwriters say that only $46 million remains. After several years of combat and multiple mediation sessions, the Receiver, OSIC, the court-appointed Examiner, and Underwriters reached an agreement for a global settlement of the dispute over the amount of the policy limits and the extent of coverage for claims arising from Underwriters' relationship with Stanford.

The agreement resulting from these extended negotiations requires Underwriters to make a $65 million payment to the Receivership Estate, which would be

distributed through the Receiver's claims and distribution process. In exchange for the $65 million payment, Underwriters would obtain global peace related to Stanford claims by way of various releases, final judgments, and bar orders. These bar orders, which would enjoin all other Stanford-related claims against Underwriters, are at the heart of the objections to the settlement. The objections to the settlement all essentially posit that the Court cannot or should not bar the Objectors' claims in the proposed manner.

II. THE LAW GOVERNING SETTLEMENT APPROVAL IN EQUITABLE RECEIVERSHIPS

"[N]o federal rules prescribe a particular standard for approving settlements in the context of an equity receivership." *S.E.C. v. Kaleta,* 2012 WL 401069, at *4 (S.D. Tex. 2012) ("*Kaleta I*") (quoting *Gordon v. Dadante*, 336 F. App'x 338, 340 (6th Cir. 2009)). Instead, the Court "has broad powers and wide discretion to determine the appropriate relief." *S.E.C. v. Kaleta*, 530 F. App'x 360, 362 (5th Cir. 2013) ("*Kaleta II*") (quoting *SEC v. Safety Fin. Serv.*, 674 F.2d 368, 372–73 (5th Cir. 1982)).

Among a district court's powers related to administering an equity receivership is the power to issue ancillary relief measures. *Id.* (quoting *SEC v. Wencke*, 622 F.2d 1363, 1369 (9th Cir. 1980)). Ancillary relief in SEC enforcement actions may include "injunctions to stay proceedings by nonparties against the receivership." *Id.* Courts use ancillary relief in the form of bar orders to secure settlements in receivership proceedings and to "preserve the property placed in receivership pursuant to SEC actions." *Kaleta I*, 2012 WL 401069, at *3 (citing *S.E.C. v. Byers*, 609 F.3d 87, 92 (2d Cir. 2010)). Courts have not limited the use of bar orders to barring claims against receiverships only;

courts have also used bar orders to bar claims against third parties settling with receiverships. *See id.* at *8 (approving settlement and bar order prohibiting third-party claims against nonreceivership entities) (*aff'd Kaleta II*, 530 F. App'x at 362–63); *S.E.C. v. Kaleta*, 2013 WL 2408017, at *6–8 (S.D. Tex. 2013) ("*Kaleta III*") (approving bar order prohibiting third-party claims by insureds against insurance company that issued policies to defendant in receivership proceeding).

Courts utilize bar orders if they are both necessary to effectuate a settlement and "fair, equitable, reasonable, and in the best interest of the Receivership Estate." *Kaleta III*, 2013 WL 2408017, at *6. To determine whether it is necessary to stay proceedings by nonparties to a receivership settlement, courts consider a variety of factors, including "(1) the value of the proposed settlement, (2) the value and merits of the Receiver's potential claims, (3) the value and merits of any foreclosed parties' potential claims, the complexity and costs of future litigation, (4) the risk that litigation costs would dissipate Receivership assets, (5) the implications of any satisfaction of an award on other claimants, (6) and any other equities attendant to the situation." *Kaleta I*, 2012 WL 401069, at *4 (citing *Liberté Capital Grp., LLP v. Capwill*, 462 F.3d 543, 553 (6th Cir. 2006); *Wencke*, 622 F.2d at 1371; *Gordon*, 336 F. App'x at 544, 549).

The power to bar nonsettling-party litigation against nonreceiver settling parties is not unlimited. Rather, "the exercise of this authority is always subject to other limitations, statutory and constitutional, which limit the jurisdiction of federal courts." *S.E.C. v. Parish*, 2010 WL 8347143, at * 5 (D.S.C. 2010). But the Court's jurisdiction does extend to all assets of the receivership estate, giving the Court "power under the

All Writs Act to issue injunctions to protect the estate's choses of action . . . including any settlement reached in connection with those claims." *Id.*

III. THE OBJECTIONS TO THE INSURANCE SETTLEMENT ARE UNAVAILING

The Receiver and Underwriters invoke the authorities cited above to justify approval of the settlement and bar orders. The motion to approve the settlement drew objections from a number of individuals who fear the bar orders will cut off their claims to the Policies' proceeds. The Court denies the objections because the bar orders are necessary to effectuate a fair, reasonable, equitable settlement that is in the best interests of the Receivership Estate.

A. The Clawback Objections

The Clawback Objections[2] come from defendants in the Receiver's actions to recoup CD proceeds from former Stanford employees. The Clawback Objections argue that the Court lacks the power to bar their claims against Underwriters; that the settlement cannot be approved without the Court first holding an evidentiary hearing; and that the bar order is unfair to these defendants.

1. The Court Can Issue the Bar Orders. – A variety of authorities, noted above, allow the Court to issue bar orders as ancillary relief in administering a large and complex receivership such as this one. Some Objectors cite various distinctions between the present case and the cases relied upon to support the Court's authority to issue these bar orders. "However, receivership cases are highly fact-specific," and distinctions in prec-

[2] Docs. 2387, 2388, 2389, 2394, 2397.

edent do not necessarily mandate different outcomes. *Kaleta I*, 2012 WL 401069, at *7.

The circumstances here justify these bar orders for the same reasons that courts have used bar orders in similar circumstances. *See, e.g.*, *S.E.C. v. Parish*, 2010 WL 8347143, at *6–7 (D.S.C. 2010). The Receiver and the Objectors all claim entitlement to a limited pool of proceeds. Underwriters has resisted all of those claims as uninsurable or excluded from coverage under the Policies' terms. If the claims are excluded, then the Receivership Estate and the Objectors will both obtain nothing from the Policies. If the exclusions do not apply, many claims will still go unpaid because the dollar amount of claims against the Policies – in the billions of dollars – far exceeds the available amounts under the policy limits. The Receiver and Underwriters have reached this agreement to limit the risks to each of a litigated outcome. Both the Receiver and Underwriters have represented to the Court, and the Court accepts, that without the bar orders there is no settlement.

The settlement obtains a payment that represents at least a significant portion, if not more than, the available proceeds of the Policies. Distribution through the Receiver's claims process maximizes the recovery for the greatest number of injured parties. Some Objectors argue that the Stanford investors have no right to the proceeds, which should instead be distributed to the Policies' insureds. But the Court has previously held that the Policies and their proceeds are an asset of the Receivership Estate. Order 6 [926] *in* the Receivership Action. The Receivership Estate's claimants are entitled to their share of the Receivership Estate's assets, pursuant to Court-approved distribution plans. Thus, the injured Stanford investors,

as Receivership Estate claimants, are entitled to the proceeds from these policies as distributions of Receivership Estate assets. This would be true whether the proceeds were consumed by the Receiver obtaining a judgment for the full amount of the proceeds or by way of a settlement and bar order. Because the settlement advances the purpose of the Receivership and is the most fair and efficient way to distribute the Policies' proceeds to the broadest scope of claimants, and the bar orders are a necessary part of that settlement, the Court concludes that such orders are within its equity power.

2. The Objectors Are Not Entitled to an Evidentiary Hearing. – The authority the Clawback Objections rely upon for their claimed right to an evidentiary hearing is not applicable here. In *Pendergest-Holt v. Certain Underwriters at Lloyd's of London*, 600 F.3d 562 (5th Cir. 2010), the Fifth Circuit reviewed a District Court's preliminary injunction barring an insurer from refusing to pay an insured's defense costs. 600 F.3d at 565. The insurer denied coverage based on its assertion that the policy's money laundering exception applied to bar coverage. *Id.* at 566. The District Court found that the exclusion "most likely would not preclude coverage" and thus enjoined the insurer from withholding payment. *Id.* at 568. The insurer appealed, arguing that the exclusion precluded coverage. *Id.* The Fifth Circuit held that before it could determine if the exclusion applied, it must decide (1) whether only a court, as opposed to the insurer, can determine if the exclusion applied; and (2) whether that determination must be based on only the complaint and the policy as opposed to all admissible evidence. *Id.* at 570, 573–74. The Fifth Circuit concluded that the policy language required a judicial determination before the exclusion allowed the insurer

to withhold payment, and that a court making that determination may consider evidence beyond the "eight corners" of the policy and complaint. *Id.* at 574.

This authority has no bearing on whether the Court can approve the settlement and bar orders here. The Court is not determining whether exclusions apply under the Policies; it is deciding whether the settlement is fair, reasonable, equitable, and in the best interests of the receivership and whether the bar orders are necessary to secure that settlement. Even assuming that the exclusions do not apply, the Objectors are unlikely to recover any of the proceeds because the exclusions would likewise not apply to the Receiver, who has already obtained judgments and made demands in excess of the policy limits. These judgments would exhaust the policies and leave nothing for the Objectors. Thus, there need not be an evidentiary hearing and judicial exclusion determination as a predicate to approving the settlement and bar order.

3. Approving the Settlement and Bar Order is the Best Available Alternative. – The Court is not persuaded that the alleged harms suffered by the Clawback Objectors are sufficient to justify rejection of the settlement and bar orders. Resolving the Stanford receivership would undoubtedly be easier if there were sufficient assets to satisfy all of the claims resulting from Stanford's scheme. But that is not the reality in which the Court administers this receivership. Because on balance the unfairness alleged by the Objectors is either mitigated by other circumstances or simply outweighed by the benefit of the settlement in terms of fairness, equity, reasonableness, and the best interests of the receivership, the Court overrules the objec-

tions related to the fairness of the settlement and bar orders.

First, the practical value of the Objectors' foreclosed claims is not as great as they argue. As discussed above, these claims are unlikely to be realized regardless of whether the Court approves this settlement because either an exclusion will bar coverage, the Court will find the claims uninsurable, or the Receiver's judgments will consume the remaining coverage. Thus, barring the claims does not prejudice the Objectors in a meaningful way. Additionally, the Objectors are not completely losing access to the Policies' proceeds as they had the opportunity, seized by many Objectors, to file claims in the receivership. Thus, in considering the value of the foreclosed claims, these circumstances weigh significantly against the alleged unfairness.

Second, to the extent that the Objectors are suffering an injury from this settlement and the bar orders, that injury is but one factor in the analysis of the settlement and bar order. *See Kaleta I*, 2012 WL 401069, at *4 (listing factors considered in determining necessity of bar orders as part of receivership settlement). Based on these factors, finding the overall settlement fair, reasonable, equitable, and in the best interests of the Receivership Estate does not necessarily require that the Court find the settlement to be a net benefit to every nonsettling party. Indeed, given the limited assets available for distribution and the costs involved in obtaining them, it is hard to envision a significant settlement in the Stanford cases that would be viewed favorably by all interested parties. As detailed in the orders approving the settlement, issued on this same date, these factors weigh in favor of settlement approval.

Finally, the Objectors argue that the settlement not only harms them but does so in a procedurally-deficient manner. But the Court is acting within its powers in administering an equity receivership. Those powers are cabined by various rules and statutes, and the Court takes this action only after giving notice, a process for filing objections, and holding a hearing regarding the action under consideration. Additionally, the Objectors have long had notice that the Policies' proceeds were assets of the receivership estate and that the Receiver was actively pursuing recoveries in excess of the Policies coverage. Finally, the Objectors also had notice that if they thought they were entitled to a portion of the Receivership Estate, they could file a claim in the Receiver's claims and distribution process. Thus, the Court concludes that the Objectors had sufficient procedural protection in the determination of whether the bar orders are necessary to secure an equitable settlement.

B. The Breach of Fiduciary Duty Objections

The Breach of Fiduciary Duty Objections[3] assert some of the same fairness arguments as the Clawback Objectors, along with additional objections related to their specific situations. To the extent that their arguments overlap with the Clawback Objections, the Court denies their objections. The Court also denies the Breach of Fiduciary Duty Objections on their individual grounds.

Objector Cordell Haymon argues that barring his claims against Underwriters is unfair because he relied on previous court orders concerning payment of defense costs when he decided to settle the Stanford-related claims against him. The order Haymon relies

[3] Docs. 2379, 2394, and 2397.

on does not justify rejecting this settlement. In October 2009 the Court allowed, but did not mandate, access to the Policies' proceeds for insured Stanford directors and officers if they were entitled to access those proceeds. Order 8–9 [831] *in* the Receivership Action. The Court noted that its holding did not itself entitle anyone to the Policies' proceeds. *Id.* at 8. Underwriters denied Haymon's claim for coverage years before he settled with the Receiver and OSIC. Thus, Haymon could not have reasonably expected reimbursement as a condition precedent to his settlement with the Receiver and OSIC. Haymon continued to press his claims by suing Underwriters. However, to treat his claim to the proceeds differently based on how he pursued the proceeds would give him an unfair priority over the other claimants to the Policies. This would encourage a "race to the courthouse," an outcome less fair in the full context of this receivership than distributing the proceeds through the Receiver's distribution process.

C. The Louisiana Direct Action Objections

The Louisiana Direct Action Objections come from two groups of Stanford investors who are asserting direct claims against Underwriters in Louisiana state court through that state's direct action statute. These objections do not require that the Court reject the settlement and bar orders.

1. The Anti-Injunction Act Does Not Preclude These Bar Orders. – The Anti-Injunction Act prohibits a federal court from staying proceedings in a state court unless certain exceptions apply. 28 U.S.C. § 2283. The Louisiana objectors argue that the Bar Order would improperly enjoin their pending lawsuits in Louisiana state court without fitting into one of the statutory exceptions. The Movants dispute whether

the Anti-Injunction Act applies at all. The Court need not determine whether the Anti-Injunction Act applies, however, because even if it does, so does one of its exceptions.

The Anti-Injunction Act allows federal courts to enter injunctions against pending state court proceedings if doing so is necessary to aid the court's jurisdiction or to protect or effectuate the court's judgments. 28 U.S.C. § 2283. Enjoining related state court litigation is an important part of the Court's ability to effectively manage complex nationwide cases like the Stanford MDL. *See, e.g.*, *Three J Farms, Inc. v. Plaintiffs' Steering Comm.* (*In re Corrugated Container Antitrust Litig.*) 659 F.2d 1332, 1334–35 (5th Cir. 1981); *In re Diet Drugs*, 282 F.2d 220, 235–35 (3d Cir. 2002). In managing this receivership, the Court has already enjoined state court litigants from using state court proceedings to attempt to take control of assets of the Receivership Estate. Likewise here, the Court has already assumed exclusive jurisdiction over the proceeds of these insurance policies and required the Receiver to pursue them as assets of the Receivership Estate. The possibility of state court judgments favoring individual litigants has the potential to interfere with this Court's judgments about Receivership assets. Thus, the bar order is necessary to "preserve and aid this court's jurisdiction over the receivership estate." *Parish*, 2010 WL 8347143, at *7.

2. Louisiana World, DSCC, *and* Troice *Do Not Apply.* – The Louisiana Objectors argue that various mandatory authorities, Stanford-related and otherwise, prohibit the Court from entering the bar orders. First, they cite *Louisiana World Exposition, Inc. v. Federal Ins. Co.* (*In re Louisiana World*), 832 F.2d 1391 (5th Cir. 1987) for the proposition that a court may not enjoin an insured party from accessing a

policy's proceeds based on the debtor merely owning the policy. *Louisiana World* does not apply here, however, because in that case the debtor entity was not covered by the policy it owned. *Id.* at 1398. In that case, the policy "[did] not cover the liability exposure of the [entity] at all, but only of its directors and officers . . . ." *Id.* at 1401. Here, in contrast, the Receivership Estate has a right to the proceeds because the Policies insured the entities in receivership. As noted by the Fifth Circuit in *Louisiana World*, "[t]here are a great many bankruptcy cases holding that liability insurance policies that provide coverage for the bankrupt's liability belong to the bankrupt's estate." *Id.* at 1399. Because the proceeds are part of the Receivership Estate, *Louisiana World* does not prohibit the Court from entering the bar orders.

Second, the Louisiana Objectors cite *DSCC* for the proposition that the Receiver has standing to assert only the claims of the entities in receivership and not investor claims. *See DSCC*, 712 F.3d at 192. Because the investor claims do not belong to the Receiver, the Objectors argue, the Receiver has no standing to settle them. But that is not what is happening here. The bar orders are not settling claims, they are enjoining them. Based on the other authorities cited above, this is a permissible exercise of the Court's authority in administering a receivership. Thus, *DSCC* does not mandate rejection of the settlement and bar orders.

Finally, the Louisiana Objectors cite *Chadbourne & Parke, LLP v. Troice*, 134 S. Ct. 1058 (2014) for the proposition that the Objectors' state law claims, which were remanded to Louisiana state court, are beyond the reach of this Court's jurisdiction. The Supreme Court in *Troice* was addressing whether the Securities Litigation Uniform Standards Act prohibited the

Louisiana Objectors' state law claims. *Id.* at 1062. But the fact that a statute did not prohibit the assertion of state law claims has little bearing on the questions presented here about whether the Court can or should enjoin related litigation as part of a receivership settlement. Accordingly, *Troice* does not require rejection of the settlement and bar orders.

IV. THE COURT DENIES THE MOTION TO COMPEL

Some Objectors also filed a joint motion to compel mediation. The Receiver, Underwriters, OSIC, and the Examiner all oppose further mediation. Because ordering such mediation at this stage and on these issues is unlikely to resolve the Objectors' concerns while assuredly imposing significant additional costs on all parties involved, the Court denies the motion to compel mediation.

CONCLUSION

The Court denies the objections to the Insurance Settlement and denies the Objectors' motion to compel.

Signed May 16, 2017.

/s/ David C. Godbey
David C. Godbey
United States District Judge

APPENDIX F

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

[Filed May 16, 2017]

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Civil Action No. 3:09-CV-0298-N

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SECURITIES AND EXCHANGE COMMISSION,
Plaintiff,

v.

STANFORD INTERNATIONAL BANK, LTD., *et al.*,
Defendants.

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Civil Action No. 3:09-cv-01736-N

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CERTAIN UNDERWRITERS AT LLOYD'S OF LONDON, *et al.*,
Plaintiffs,

v.

RALPH S. JANVEY, IN HIS CAPACITY AS
COURT APPOINTED RECEIVER FOR STANFORD
INTERNATIONAL BANK, LTD., *et al.*,
Defendants.

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Civil Action No. 3:13-CV-2226-N

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CERTAIN UNDERWRITERS AT LLOYD'S OF LONDON, *et al.*,
Plaintiffs,

v.

PABLO M. ALVARADO, *et al.*,
Defendants.

Civil Action No. 3:15-cv-1997-N

CERTAIN UNDERWRITERS AT LLOYD'S OF LONDON, *et al.*,
Plaintiffs,

v.

PAUL D. WINTER, *et al.*,
Defendants.

Civil Action No. 3:14-CV-3731-N

CLAUDE F. REYNAUD, *et al.*,
Plaintiffs,

v.

CERTAIN UNDERWRITERS AT LLOYD'S OF LONDON, *et al.*,
Defendants.

ORDER APPROVING ATTORNEYS' FEES

Before the Court is the Expedited Request for Entry of Scheduling Order and to Stay Related Litigation and Motion to Approve Proposed Settlement with Certain Underwriters at Lloyd's of London, Lexington Insurance Company, and Arch Specialty Insurance Co., to Enter the Bar Order, to Enter the Coverage Action Judgment and Bar Order, to Enter the Third-Party Coverage Actions Judgments and Bar Orders, and for the Movants' Attorneys' Fees. [ECF No. 2324]. This Order addresses the request for approval of a $14 million attorneys' fee to Kuckelman Torline Kirkland & Lewis ("Kuckelman Torline") and $100,000 to Movants' counsel in the litigation against Claude

Reynaud contained within the Motion. All relief requested in the Motion other than the request for approval of attorneys' fees was addressed in the Court's Final Judgment and Bar Order entered on May 16, 2017 [ECF No. 2519].

With respect to Movants' request for approval of their attorneys' fees, the Court finds that the $14 million fee to Kuckelman Torline is reasonable and less than the percentage charged and approved by courts in other cases of this magnitude and complexity. The Stanford Receivership's insurance-related issues and claims are extraordinarily complex and time-consuming and have involved a great deal of risk and capital investment by Kuckelman Torline as evidenced by the Declaration of Michael J. Kuckelman, submitted in support of the request for approval of their fees. Both the Motion and the Declaration provide ample evidentiary support for the award of the Receiver's attorneys' fees set forth in this Order.

Trial courts can determine attorneys' fee awards in common fund cases such as this one using different methods. The common fund doctrine applies when a "litigant or lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *In re Harmon,* No. 10-33789, 2011 WL 1457236, at *7 (Bankr. S.D. Tex. Apr. 14, 2011) (quoting *Boeing Co. v. Van Gemert,* 444 U.S. 4721, 478 (1980)).

One method for analyzing an appropriate award for attorneys' fees is the percentage method, under which the court awards fees based on a percentage of the common fund. *Union Asset Management Holding A.G. v. Dell, Inc.* 669 F.3d 632, 642-43 (5th Cir. 2012). The Fifth Circuit is "amendable to [the percentage meth-

od's] use, as long as the *Johnson* framework is utilized to ensure that the fee award is reasonable." *Id.* At 643 (citing *Johnson v. Georgia Hwy. Express, Inc.,* 488 F.2d 714 (5th Cir. 1974)). The *Johnson* factors include: (1) time and labor required; (2) novelty and difficulty of the issues; (3) required skill; (4) whether other employment is precluded; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations; (8) the amount involved and the results obtained; (9) the attorneys' experience, reputation, and ability; (10) the "undesirability" of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. See *Johnson,* 488 F.2d at 717-9.

Thus, when considering fee awards in class action cases "district courts in [the Fifth] Circuit regularly use the percentage method blended with a *Johnson* reasonableness check." *Id,* (internal citations omitted); *see Schwartz v. TXU Corp.,* No. 3:02-CV-2243-K (lead case), 2005 WL 3148350, at *25 (N.D. Tex. Nov.8, -2005) (collecting cases). While the Fifth Circuit has also permitted analysis of fee awards under the lodestar method, both the Fifth Circuit and district courts in the Northern District have recognized that the percentage method is the preferred method of many courts. *Dell*, 669 F.3d at 643; *Schwartz,* 2005 WL 3148350, at *25. In *Schwartz,* the court observed that the percentage method is "vastly superior to the lodestar method for a variety of reasons, including the incentive for counsel to 'run up the bill' and the heavy burden that calculation under the lodestar method places upon the court." 2005 WL 3148350, at *25. The court also observed that, because it is calculated based on the number of attorney-hours spent on the case, the lodestar method deters early settlement of disputes. *Id.* Thus, there is a "strong consensus in favor of

awarding attorneys' fees in common fund cases as a percentage of the recovery." *Id.* At *26.

While the Insurance Settlement is not a class action settlement, because the settlement is structured as a settlement with the Receivership Estate, with Bar Orders, and dismissal of certain litigation and Judgments, this Court has analyzed the award of attorneys' fees to Kuckelman Torline under both the common fund and the *Johnson* approach. Whether analyzed under the common fund approach, the *Johnson* framework, or both, the $14 million fee sought by the Receiver's counsel pursuant to their Agreement with the Receiver Movant is reasonable and is hereby approved by the Court.

Having reviewed the Declaration of Michael J. Kuckelman and the thousands of hours invested in the insurance-related issues and litigation, the Court finds that the proposed $14 million fee for Kuckelman Torline is a reasonable percentage of the common fund (*i.e.* the $65 million settlement). "The vast majority of Texas federal courts and courts in this District have awarded fees of 25%-33% in securities class action." *Schwartz,* 2005 WL 3148350, at *31 (collecting cases). "Indeed, courts throughout this Circuit regularly award fees of 25% and more often 30% or more of the total recovery under the percentage-of-the-recovery method." *Id.* The requested fee is 21.5% of the settlement, so it is less than the 25%-33% commonly awarded by this Circuit and it is reasonable.

A review of the *Johnson* factors that are discussed at length in the Motion and supported by the Declarations also demonstrates that the proposed $14 million fee is reasonable and should be approved.

With respect to the time and labor required, Kuckelman Torline invested a tremendous amount of time and labor in this case, as reflected in the Kuckelman Declaration. Kuckelman Torline has spent over two years and thousands of hours investigating and pursuing claims against Underwriters on behalf of the Stanford Receivership Estate and the Stanford Investors.

The issues presented in the insurance litigation were novel, difficult, and complex. Several of the complex legal and factual issues are outlined in the Motion. Given the complexity of the factual and legal issues presented in this case, the preparation, prosecution, and settlement of this case required significant skill and effort on the part of Kuckelman Torline. Although participation in the insurance litigation did not necessarily preclude Kuckelman Torline from accepting other employment, the Declaration reveals that the sheer amount of time and resources involved in investigating, preparing, and prosecuting the coverage litigation, as reflected by the hours invested by Kuckelman Torline, significantly reduced Kuckelman Torline's ability to devote time and effort to other matters.

The $14 million fee requested is also well below the typical market rate contingency fee percentage of 33% to 40% that most law firms would demand to handle cases of this complexity and magnitude. *See Schwartz,* 2005 WL 3148350, at *31 (collecting cases and noting that 30% is standard fee in complex securities cases). It is also well below the 33 1/3% contracted for by the Receiver and Kuckelman Torline.

The $65 million to be paid by Underwriters represents a substantial settlement and value to the Receivership. This factor also supports approval of the

requested fee. The Declaration further reflects that Kuckelman Torline has represented numerous Lloyd's of London insurers in complex litigation matters. Thus, the attorneys' experience, reputation, and ability also supported the fee award. The nature and length of the professional relationship between the Receiver and his Counsel further supports the fee award, because Kuckelman Torline was retained to work on only insurance related issues and litigation. Unlike other counsel working for the Receivership on a contingency fee basis, this is Kuckelman Torline's only opportunity to recover its significant time investment.

Finally, awards in similar cases, with which this Court is familiar, as well as those discussed in the *Schwartz* opinion, all support the fee award. The Court also notes that a 25% contingency fee has previously been approved as reasonable by this Court for other counsel representing the Receiver. *See* SEC Action ECF No. 2231. Thus, the Court finds a fee of less than 25% is well within the range of reasonableness for cases of the magnitude and complexity of the insurance related issues and litigation.

For these reasons, the Court hereby approves the award of attorneys' fees in the amount of $14 million to Kuckelman Torline as requested in the Motion. The Receiver is, therefore, ORDERED to pay Kuckelman Torline Kirkland & Lewis attorneys' fees in the amount of $14 million upon receipt of the Settlement Amount in accordance with the terms of the Insurance Settlement Agreement.

The Court also finds that the $100,000 award of attorneys' fees to Movants' counsel in the Reynaud litigation is reasonable and approved for the reasons set forth in the Court's Order Approving Attorneys'

Fees in the Breazeale, Sachse & Wilson, LLP litigation. [SEC Action, ECF. No. 2231]. The Receiver is, therefore, ORDERED to pay Movants' counsel in the Reynaud litigation attorneys' fees in the amount of $100,000 upon receipt of the Settlement Amount.

SIGNED on May 16, 2017.

/s/ David C. Godbey
David C. Godbey
United States District Judge

APPENDIX G

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

[Filed October 3, 2017]

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Civil Action No. 3:09-CV-0298-N

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SECURITIES AND EXCHANGE COMMISSION,
Plaintiff,

v.

STANFORD INTERNATIONAL BANK, LTD., *et al.*,
Defendants.

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Civil Action No. 3:09-CV-1736-N

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CERTAIN UNDERWRITERS AT LLOYD'S OF LONDON, *et al.*,
Plaintiffs,

v.

RALPH S. JANVEY, RECEIVER, *et al.*,
Defendants.

———

Civil Action No. 3:13-CV-2226-N

———

CERTAIN UNDERWRITERS AT LLOYD'S OF LONDON, *et al.*,
Plaintiffs,

v.

PABLO M. ALVARADO, *et al.*,
Defendants.

———

Civil Action No. 3:15-CV-1997-N

CERTAIN UNDERWRITERS AT LLOYD'S OF LONDON, *et al.*,
Plaintiffs,

v.

PAUL D. WINTER, *et al.*,
Defendants.

Civil Action No. 3:14-CV-3731-N

CLAUDE F. REYNAUD, *et al.*,
Plaintiffs,

v.

CERTAIN UNDERWRITERS AT LLOYD'S OF LONDON, *et al.*,
Defendants.

ORDER

This Order addresses Objectors Former Employees' motion for new trial, [2530] *in SEC v. Stanford Int'l Bank, Ltd.*, Case No. 3:09-CV-298-N (N.D. Tex) (the "Receivership Action"); Objectors Scott Notowich, Eddie Rollins, and Doug McDaniels' motion for new trial, [2533] in the Receivership Action; and Objector Cordell Haymon's motion for reconsideration, [2539] in the Receivership Action (collectively, the "Rule 59 Motions"). Because either the Court has previously addressed Objectors' arguments or they have been waived, the Court denies the Rule 59 Motions.

Objectors Former Employees argue that their claims for losses against Certain Underwriters at Lloyd's of London, Lexington Insurance Co., and Arch Specialty

Insurance Co. (collectively, "Underwriters") are not property of the Receivership Estate. However, the Court previously addressed this argument when it held that the insurance policies and their proceeds are indeed an asset of the Receivership Estate. *See* Order 8 [2518] *in* the Receivership Action (citing Order 6 [926] *in* the Receivership Action). Objectors also argue that the Court does not have the authority to permanently bar independent rights between non-Receivership third parties without consent or just compensation. But, the Court previously addressed this argument when it determined that it does have the authority to issue the bar orders. *See id.* at 7–9. Objectors further argue that they receive no material benefit from the settlement and bar orders. However, the Court previously addressed this argument by explaining that distribution of the settlement amount through the Receiver's claims process maximizes recovery, a material benefit, for the greatest number of involved parties, including Objectors. *Id.* at 8–11. Objectors finally argue that the settlement is unfair and unnecessarily burdensome on Objectors. But, the Court previously addressed this argument by establishing that the settlement is the "most fair" means through which to distribute the policies' proceeds. *Id.* at 9; *see also id.* at 10–11.

Objectors Notowich, Rollins, and McDaniels argue that the settlement takes Objectors' contractual rights in insurance coverage for public use without just compensation. However, Objectors have not raised this argument until this stage in the litigation and have therefore waived it. Objectors also argue that the settlement violates principles of fairness, as Objectors' interests were not represented in the settlement negotiations and the Receiver's decision to exclude Objectors in these negotiations was arbitrary and capricious.

But, as already mentioned, the Court previously addressed this argument when it determined that the settlement is the "most fair" means through which to distribute the insurance policies' proceeds, even without Objectors' involvement in the negotiations. *Id.* at 9; *see also id.* at 10–11. Objectors further argue that the Due Process Clause entitles them to an adversarial adjudicative process that allows for cross-examination, which must take place before their vested rights can be extinguished. However, the Court previously addressed this argument when it deemed that the Objectors had been provided "sufficient procedural protection." *Id.* at 12; *see also id.* at 9–10. Objectors finally argue that the settlement deprives them of equal protection under the law. But, Objectors have not raised this argument until this stage in the litigation and have therefore waived it.

In addition to incorporating by reference other Objectors' previously addressed or waived arguments, Objector Cordell Haymon argues that Underwriters have a legal obligation to pay his losses and that the settlement unfairly rewards others at his expense. However, as already mentioned, the Court previously addressed this argument when it explained that distribution of the settlement amount through the Receiver's claims process maximizes recovery for the greatest number of involved parties, including Objector. *Id.* at 8–11.

Accordingly, the Court denies the Rule 59 motions.

Signed October 3, 2017.

/s/ David C. Godbey
David C. Godbey
United States District Judge

APPENDIX H

28 U.S.C.A. § 2283

§ 2283. Stay of State court proceedings

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.

APPENDIX I

La. R.S. 22:1269

Formerly cited as La. R.S. 22:655

§ 1269. Liability policy; insolvency or bankruptcy of insured and inability to effect service of citation or other process; direct action against insurer

A. No policy or contract of liability insurance shall be issued or delivered in this state, unless it contains provisions to the effect that the insolvency or bankruptcy of the insured shall not release the insurer from the payment of damages for injuries sustained or loss occasioned during the existence of the policy, and any judgment which may be rendered against the insured for which the insurer is liable which shall have become executory, shall be deemed prima facie evidence of the insolvency of the insured, and an action may thereafter be maintained within the terms and limits of the policy by the injured person, or his survivors, mentioned in Civil Code Art. 2315.1, or heirs against the insurer.

B. (1) The injured person or his survivors or heirs mentioned in Subsection A of this Section, at their option, shall have a right of direct action against the insurer within the terms and limits of the policy; and, such action may be brought against the insurer alone, or against both the insured and insurer jointly and in solido, in the parish in which the accident or injury occurred or in the parish in which an action could be brought against either the insured or the insurer under the general rules of venue prescribed by Code of Civil Procedure Art. 42 only; however, such action may be brought against the insurer alone only when at least one of the following applies:

(a) The insured has been adjudged bankrupt by a court of competent jurisdiction or when proceedings to adjudge an insured bankrupt have been commenced before a court of competent jurisdiction.

(b) The insured is insolvent.

(c) Service of citation or other process cannot be made on the insured.

(d) When the cause of action is for damages as a result of an offense or quasi-offense between children and their parents or between married persons.

(e) When the insurer is an uninsured motorist carrier.

(f) The insured is deceased.

(2) This right of direct action shall exist whether or not the policy of insurance sued upon was written or delivered in the state of Louisiana and whether or not such policy contains a provision forbidding such direct action, provided the accident or injury occurred within the state of Louisiana. Nothing contained in this Section shall be construed to affect the provisions of the policy or contract if such provisions are not in violation of the laws of this state.

C. It is the intent of this Section that any action brought under the provisions of this Section shall be subject to all of the lawful conditions of the policy or contract and the defenses which could be urged by the insurer to a direct action brought by the insured, provided the terms and conditions of such policy or contract are not in violation of the laws of this state.

D. It is also the intent of this Section that all liability policies within their terms and limits are executed for the benefit of all injured persons and their survivors or heirs to whom the insured is liable; and, that it is

the purpose of all liability policies to give protection and coverage to all insureds, whether they are named insured or additional insureds under the omnibus clause, for any legal liability the insured may have as or for a tortfeasor within the terms and limits of the policy.

APPENDIX J

La. R.S. 51:714

§ 714. Civil liability from sales of securities

A. Any person who violates R.S. 51:712(A) shall be liable to the person buying such security, and such buyer may sue in any court to recover the consideration paid in cash or, if such consideration was not paid in cash, the fair value thereof at the time such consideration was paid for the security with interest thereon from the date of payment down to the date of repayment as computed in R.S. 51:714(C)(1), less the amount of any income received thereon, together with all taxable court costs and reasonable attorney's fees, upon the tender, where practicable, of the security at any time before the entry of judgment, or for damages if he no longer owns the security. Damages are the amount which equals the difference between the fair value of the consideration the buyer gave for the security and the fair value of the security at the time the buyer disposed of it, plus interest thereon from the date of payment to the date of repayment as computed in R.S. 51:714(C)(2).

B. Every person who directly or indirectly controls a person liable under Subsection A of this Section, every general partner, executive officer, or director of such person liable under Subsection A of this Section, every person occupying a similar status or performing similar functions, and every dealer or salesman who participates in any material way in the sale is liable jointly and severally with and to the same extent as the person liable under Subsection A of this Section unless the person whose liability arises under this Subsection sustains the burden of proof that he did not know and in the exercise of reasonable care could not have

known of the existence of the facts by reason of which liability is alleged to exist. There is contribution as in the case of contract among several persons so liable.

C. (1) No person may sue under this Section more than two years from the date of the contract for sale or sale, if there is no contract for sale. No person may sue under this Section:

(a) If the buyer received a written offer, before suit and at a time when he owned the security, to repay in cash or by certified or official bank check, within thirty days from the date of acceptance of such offer in exchange for the securities, the fair value of the consideration paid, determined as of the date such payment was originally paid by the buyer, together with interest on such amount for the period from the date of payment to the date of repayment, such interest to be computed in case the security consists of an interest-bearing obligation, at the same rate as provided in the security or, in case the security consists of other than an interest-bearing obligation, at the applicable rate of legal interest, less, in every case, the amount of any income received on the security, and:

(i) Such offeree does not accept the offer within thirty days of its receipt or

(ii) If such offer was accepted, the terms thereof were complied with by the offeror;

(b) If the buyer received a written offer before suit and at a time when he did not own the security to repay in cash or by certified or official bank check, within thirty days from the date of acceptance of such offer, an amount equal to the difference between the fair value of the consideration the buyer gave for the security and the fair value of the security at the time the buyer disposed of it, together with interest on such

amount for the period from the date of payment down to the date of repayment, such interest to be computed in case the security consists of an interest-bearing obligation at the same rate as provided in the security or, in case the security consists of other than an interest-bearing obligation, at the applicable rate of legal interest, less, in every case, the amount of any income received on the security, and:

(i) Such offeree does not accept the offer within thirty days of its receipt or

(ii) If such offer was accepted, the terms thereof were complied with by the offeror;

(2) Provided, that no written offer shall be effective within the meaning of this Subsection unless, if it were an offer to sell securities, it would be exempt under R.S. 51:709 or, if registration would have been required, then unless such rescission offer has been registered and effected under R.S. 51:705. Any person who is paid for his security in the amount provided by this Subsection shall be foreclosed from asserting any remedies under this Part, regardless of whether the other requirements of this Subsection have been complied with.

D. Every cause of action under this Part survives the death of any person who might have been a plaintiff or defendant.

E. Nothing in this Part shall limit any statutory or civil right of any person to bring action in any court for any act involved in the sale of securities or the right of this state to punish any person for any violation of any law. The attorney general and each of the district attorneys throughout this state, with regard to violation of this Part in their respective districts, shall lend full assistance to the commissioner in any investiga-

tions or prosecutions that the commissioner may deem necessary under the provisions of this Part.