No. 21-110

IN THE
Supreme Court of the United States

GMAG, LLC, ET AL.,
Petitioners,
v.
RALPH S. JANVEY, AS RECEIVER FOR THE STANFORD INTERNATIONAL BANK LIMITED, ET AL.,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF IN OPPOSITION

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QUESTION PRESENTED

The trial in this case concerned only one issue—whether petitioners (collectively, Magness), the defendants below, could carry their burden to establish the good-faith affirmative defense under the Texas Uniform Fraudulent Transfer Act. It was uncontested that Magness received substantial fraudulent transfers from the Stanford Ponzi scheme. All parties also agreed that if Magness was on inquiry notice of Stanford's scheme at the time he accepted the transfers—as the jury found that he was—he had a duty to diligently investigate his suspicions before accepting the transfers. The trial record explored whether and to what extent Magness was aware of the Ponzi scheme and investigated any suspicions. The evidence established that there was no investigation, and the charge that the district court issued after the close of evidence granted Magness's request to ask the jury whether Magness's failure to investigate was excused by a so-called "futility" exception. That Magness did *not* diligently investigate was also the record-based factual predicate embedded in the Fifth Circuit's certified question to the Texas Supreme Court—a certification that Magness requested and the form of which he never challenged. Once the Texas Supreme Court confirmed that TUFTA contains no futility exception, it was no surprise that the Fifth Circuit concluded that further proceedings below would be pointless: the record left no factual question for a jury to resolve regarding whether Magness conducted a diligent investigation at the time the jury found that he was on inquiry notice.

The question presented is whether the Seventh Amendment or the Due Process Clause requires a new trial when the court of appeals determines that a party had every opportunity to present all relevant evidence and that the record provides no basis on which a reasonable jury could return a finding in that party's favor on an essential element of its defense.

PARTIES TO THE PROCEEDING AND CORPORATE DISCLOSURE STATEMENT

GMAG, LLC; Magness Securities, LLC; Gary D. Magness; and Mango Five Family, Inc., in its capacity as trustee of the Gary D. Magness Irrevocable Trust, are petitioners here and were the defendants-appellees below.

Respondent is Ralph S. Janvey, in his capacity as Court-Appointed Receiver for the Stanford Receivership Estate. He was the plaintiff-appellant below.

Respondent confirms that, as an individual and a court-appointed receiver, he has no further disclosure under this Court's Rule 29.6.

STATEMENT OF RELATED PROCEEDINGS

The petition for writ of certiorari accurately identifies the related proceedings at the time that the petition was filed. Since that date, petitioners have filed another notice of appeal arising from the same trial court case: *Janvey* v. *GMAG*, No. 21-10882 (5th Cir. docketed Sept. 7, 2021) (pending post-judgment appeal on discrete issue of attorney's fees awarded by the district court to the Receiver).

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BRIEF IN OPPOSITION

PRELIMINARY STATEMENT

This case is even less plausible a candidate for this Court's review than it was when Magness presented the same Seventh Amendment and Due Process Clause contentions in a petition for rehearing *en banc* to the Fifth Circuit. Not a single judge requested a poll—not because they all secretly oppose those constitutional provisions or (even less plausibly, given how often they sit *en banc*) because they resist rehearing. Instead, the problem for Magness is that he has no *legal* issues to press, much less issues that call out for further guidance. The opinion that Magness attacks with such animation *agrees* with Magness about what the Seventh Amendment and the Due Process Clause require. So does respondent (the Receiver).

The only disagreement is whether those uncontroversial and settled doctrines warrant a new trial under this particular record—a record that exceeded 20,000 pages

before appellate proceedings began. In exchange for scouring that record, Magness offers the Court no opportunity to resolve conflicts among the lower courts (which Magness does not even allege) or to clarify the governing standards (which no one disputes). Magness repeatedly points out that the requirements of the Seventh Amendment and Due Process Clause are "settled" and "established." *E.g.*, Pet. 1, 3, 15, 18-20, 28-29, 34. He sometimes adds "previously" or "until now," *e.g.*, Pet. 3, 15, 18, 34, and darkly intimates that the decision below might "open[] the door" to abuse, Pet. 32. But nothing in the opinion *could* "open" such a door; Magness fails to cite a single line that any court or litigant could deploy to violate these constitutional provisions. That opinion has been on the books for over a year, and thus far it's been crickets: no one has cited it for any proposition relevant to the Seventh Amendment or Due Process Clause. If those provisions were at stake, one would expect a host of *amici*. Not one has materialized.

The law, in other words, is just as "settled" now as it was before this decision. Even Magness admits that the Fifth Circuit identified the correct legal standards. Pet. 14. He wants this Court to grant certiorari to engage in pure error correction—and as unwilling as this Court is to do this in general, it should be especially hesitant here, where there clearly *was* no error. Magness repeatedly—endlessly—declares that the Fifth Circuit "reversed the jury's verdict," that the jury "ruled for Magness," that Magness had no "opportunity" to present relevant evidence, that the Texas Supreme Court's decision was an "intervening change in the law," and that the Fifth Circuit "took matters into its own hands" in resolving fact questions. Each point is false. The jury found Magness on inquiry notice and the Fifth Circuit respected that verdict. Magness knew that he could prevail by proving a diligent investigation and had every opportunity to do so. It was

at Magness's request that the jury charge—issued *after* the close of evidence, meaning that Magness could not have changed what evidence he presented in response to the charge's contents—asked only whether any failure to diligently investigate was excused by the futility exception. And the Fifth Circuit did not resolve a disputed question of fact—it found that there was no evidentiary basis on which a jury could find that Magness diligently investigated while on inquiry notice. That is why the certified question to the Texas Supreme Court—to which Magness *did not object*—embedded the absence of diligent investigation as a premise.

But there is no need to trust respondent or the lower court: Magness himself put it best. The jury found that Magness was on inquiry notice that SIB was a Ponzi scheme in October 2008. When asked when he "first started to think there might be some issues with [SIB]," however, Gary Magness testified that it "would have been in * * * January" 2009—months *after* the transfers. ROA.17884.[1] He had no "concern that there was something wrong with [SIB]" in October 2008, ROA.17880, and he did not believe he asked for any "additional information about [SIB's] operations or its investments" between October and December 2008, ROA.17881. To obtain a different outcome, Magness would have to tell a *different* story to a second jury—something neither the Seventh Amendment nor the Due Process Clause requires a court to permit.

STATEMENT

I. FACTUAL BACKGROUND

For nearly two decades, Robert Allen Stanford and his web of entities (collectively, Stanford) operated a multi-billion-dollar Ponzi scheme. Pet. App. 2. The fraud was

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[1] "ROA" refers to the Fifth Circuit's electronic Record on Appeal.

based on the sale of certificates of deposit (CDs) issued by the Stanford International Bank, Ltd. (SIB). *Ibid.* SIB attracted investors by promising above-market returns; in reality, these returns were stolen from new investors' deposits. *Ibid.* The scheme collapsed in February 2009, leaving 18,000 defrauded investors and $7 billion in liabilities. *Ibid.* The district court appointed respondent, Ralph Janvey, as Receiver for the Stanford Entities, and tasked him with recovering assets for Stanford's victims. *Ibid.*

II. Proceedings Below

A. The lawsuit

The Receiver discovered that billionaire Gary Magness—with several entities through which he maintained his wealth (collectively, Magness)—was one of SIB's largest investors. Pet. App. 2. In October 2008, four months before the Ponzi scheme collapsed, Magness used a series of "loans" to withdraw over $88.2 million—his principal investment ($79 million) plus interest. Pet. App. 2-3. Magness requested the loans after SIB refused to redeem his investments because, "given the general market decline, SIB[] wanted to keep the asset value of the CDs on its balance sheet." Pet. App. 3 (original modification). SIB's private statement to Magness "contradicted SIB's public claims of liquidity and strong financial health." *Ibid.*

The Receiver sued Magness to claw back SIB's transfers under the Texas Uniform Fraudulent Transfer Act (TUFTA). *Ibid.* Under TUFTA, a transfer made with "actual intent to hinder, delay, or defraud any creditor of the debtor" is voidable, Tex. Bus. & Com. Code § 24.005(a)(1), unless the recipient proves that it took the transfer both "in good faith and for a reasonably equivalent value," *id.* § 24.009(a). The Receiver obtained summary judgment that the transfers were fraudulent and the interest must be disgorged. Pet. App. 3.

B. Trial court proceedings

The only issue at trial was whether Magness took the fraudulent transfers in good faith. Pet. App. 4. Magness had the burden of proof on this affirmative defense and proceeded first at trial. *Ibid.*

1. Magness knew at trial that he could establish good faith by proving that he diligently investigated his suspicions

Central to Magness's petition is what he could have known about TUFTA's affirmative defense at the time of trial and whether he had an opportunity to prove that defense. Magness now claims an "intervening change in the law" because, within the ensuing appeal, the Texas Supreme Court held that a transferee must diligently investigate the facts that put it on inquiry notice. Pet. 16. Magness's own pre-trial submissions, however, demonstrate that this legal standard was known and central to the case all along.

Before trial, Magness asked the district court to instruct the jury that, if Magness was on inquiry notice that SIB was insolvent or acting with fraudulent intent, then Magness had a duty to diligently investigate his suspicions before accepting the transfers:

> There is no duty to conduct any inquiry into the challenged transfer(s) unless and until the recipient is on inquiry notice.
>
> * * * If you find that a recipient was on inquiry notice but did not conduct a diligent inquiry of the facts that put it on notice, and you further find that a diligent inquiry would have led to knowledge of SIB[]'s insolvency or fraudulent purpose in making the challenged transfer, your verdict must be for the Receiver with respect to that transfer.

App., *infra*, 14a.

Magness also requested a "futility" instruction excusing the duty to investigate:

> If, however, a diligent inquiry of the facts that put the recipient of a challenged transfer on inquiry notice would not have led to knowledge of SIB[]'s insolvency or fraudulent purpose in making the challenged transfer, then your verdict must be for the recipient of the transfer(s).

App., *infra*, 14a-15a.

Magness's proposed instructions identified *two* ways that he could prevail even if he had inquiry notice of SIB's fraud: (1) if he proved that he conducted a diligent investigation *or* (2) even with no investigation, if he could persuade a jury that a hypothetical investigation would not have uncovered the fraud. Magness proposed fourteen "special interrogatories" based on these instructions. App., *infra*, 19a-22a. Although Magness requested several interrogatories about the futility of a hypothetical "diligent inquiry," he requested no finding about *whether there had been* such an inquiry. *Ibid.*

Even though Magness's entire petition relies on the fact that "[t]he jury was not asked to determine whether Magness in fact conducted a diligent (but futile) investigation," Pet. 2, it ignores that the lack of any such question was *at Magness's own request*. Politicians dodge blame using similar passive constructions—"mistakes were made." Here, it was *Magness*, the party bearing the burden of proof, who requested that the jury be asked only whether his *failure* to investigate was *excused*. App., *infra*, 19a-22a.

Beyond understanding that he could prevail by proving a diligent investigation, Magness also knew that the futility exception had never been adopted by any Texas court or the Fifth Circuit and was disputed. The Receiver objected to the futility exception in Magness's proposed

instructions as unsupported under Texas law. ROA.9575. *Magness himself* identified the exception's applicability as a contested issue of law in the parties' proposed Joint Pretrial Order. ROA.9100. The only basis Magness had to hope for a futility exception was that the district court had stated in a related case that a transferee could rely on the futility exception to excuse its failure to diligently investigate. Yet even that order acknowledged that neither Texas courts nor the Fifth Circuit had embraced this exception, and that other courts applying other fraudulent-transfer statutes had "reached differing conclusions." *Janvey* v. *Alguire*, No. 3:09-CV-0724-N, 2016 WL 11271878, at *4, *7 (N.D. Tex. Dec. 21, 2016).

Magness's eyes were wide open, therefore—he *chose* not to request a finding about whether he diligently investigated, and to instead rely solely on the disputed futility exception. And because the district court did not issue the charge and rule on the parties' objections *until after the evidence closed*, ROA.19137, Magness did not know when the record was being created whether he would be able to rely on that futility exception.

2. At trial, Magness repeatedly denied having or investigating any suspicions in October 2008

Despite the futility exception's dubious legal moorings, it was not irrational for Magness to avoid asking the jury whether he diligently investigated. The evidence at trial showed the *absence* of any diligent investigation at the time of the transfers.

Magness claimed that he *had no suspicions* and thus conducted no investigation at the time of the transfers—and that this omission did not defeat his good-faith affirmative defense because a hypothetical investigation would have been futile. As Magness's counsel stated in his opening statement:

[I]n October of 2008 * * * [Magness] had no

> reason to know that there was something wrong, *no reason to ask any more questions* than they already asked, and that the types of things that we're looking at now, some of them you couldn't find out * * *.

ROA.17772 (emphasis added).

Magness repeatedly but inaccurately states that the trial record was directed at different issues than whether Magness diligently investigated his suspicions. *E.g.*, Pet. 24. What Magness knew and did when he took the transfers was a key focus of the trial—it *had* to be for the jury to answer questions about whether Magness was on actual or inquiry notice in October 2008 (and, if on inquiry notice, what a hypothetical investigation would have revealed).

The jury learned that after October 1, 2008, Magness approached SIB to redeem his CDs but was told that "redemption would not be possible at this time," ROA.20023, and that SIB "wanted to keep the asset value of the CDs on its balance sheet," ROA.19043. Magness then orchestrated the "loans," and by month-end received $88.2 million in cash from SIB. ROA.19059, 19924, 19928-19938.

SIB's private statements to Magness contradicted its public claims of liquidity and financial health. ROA.19044-19047. Yet Magness's witnesses uniformly told the jury that, even then, Magness had no concerns or suspicions to investigate:

- "In October of 2008, we [at Magness] didn't have any concerns about Stanford." ROA.18314.
- When Magness took transfers from SIB on October 10 and 14, 2008, none of Magness's advisors had "any suspicion that there might be some sort of fraudulent scheme going on" at SIB. ROA.18201-18202.
- As of October 14, 2008, Gary Magness had not

"been provided any factual information that led [him] to believe there might be some problem with the bank's ability to loan [him] money," nor had there been any change in his "risk assessment." ROA.17877.

When asked what he thought and did during this timeframe, Gary Magness reiterated that he had no suspicions and conducted no investigation:

- "Q: Was there anything about this conversation [with Magness's advisors] in the period after October 1st of 2008 that gave you a concern that there was something wrong with the bank?

  "A: There was nothing." ROA.17880.
- "Q: Did you at any point between October 1 and December 5 of 2008 ask the bank for additional information about its operations or its investments?

  "A: I don't think so." ROA.17881.
- "Q: So this investigation of Stanford which was active in 2008, the only investigation that any of us have talked about is that investigation that the SEC was doing?

  "A: Yes." ROA.18019.

Magness's witnesses instead all claimed that their suspicions, if any, were first triggered months *after* the transfers:

- Only in January 2009 did Gary Magness "start[] to think there might be some issues with [SIB]." ROA.17884.
- It was "not until 2009" that "anybody within the Magness organization referred to Stanford as a possible Ponzi scheme." ROA.18181.
- February 18, 2009 "was the first time [Gary Magness] had factual information that led [him] to believe there might be some sort of a problem with

[SIB]." ROA.17884.

The trial record was not silent about whether Magness diligently investigated his suspicions while on inquiry notice. It confirmed—including through multiple witnesses' sworn testimony—that Magness did not conduct *any* investigation during any relevant time.

3. The jury found Magness on inquiry notice, but the district court entered judgment for Magness based on an immaterial "futility" finding

After the close of the evidence, the district court issued—over the Receiver's objections, ROA.11660-11661—a charge that largely mirrored Magness's requests. The jury found that Magness was on inquiry notice of SIB's Ponzi scheme when he took the fraudulent transfers. App., *infra*, 6a. The jury also found that, *if* Magness had undertaken a hypothetical diligent investigation, he would not have uncovered the scheme. *Id.* at 7a. In accordance with Magness's requests and the evidence, the district court did not ask whether Magness actually had diligently investigated the facts that put him on inquiry notice. See *id.* at 6a-7a.

The Receiver moved for judgment on the verdict because the inquiry-notice finding meant that Magness could not have taken the transfers in good faith and the futility finding was legally irrelevant. ROA.11685-11693. The record likewise eliminated any basis to overcome that finding, and Magness did not attempt to secure any such finding (*i.e.*, that he diligently investigated his suspicions). Based on the district court's legal conclusion that the "diligent investigation requirement" could be "rebutted if the jury concluded that further investigation would be futile," ROA.11751, the court entered judgment for Magness, ROA.11753.

C. Proceedings on appeal

Few cases have occupied as much time in the appellate

courts as Magness's. Magness (1) lost the initial appeal before the Fifth Circuit; (2) persuaded the Fifth Circuit on rehearing to certify a question to the Texas Supreme Court; (3) lost in that court; (4) lost again in the Fifth Circuit following the answer from the Texas Supreme Court; (5) sought rehearing *en banc* again, but failed to persuade a single judge that the question presented even warranted a poll; and (6) now seeks certiorari (while simultaneously pursuing now-consolidated appeals in the Fifth Circuit challenging the district court's (7) prejudgment interest and (8) attorney's fees awards to the Receiver).

1. The Fifth Circuit and Texas Supreme Court confirmed that there is no futility exception

On appeal, Magness defended the judgment on the grounds that his failure to investigate was excused by the futility exception.[2] Despite the jury's finding that Magness was on inquiry notice of the Ponzi scheme in October 2008—a finding Magness never cross-appealed—Magness repeatedly told the Fifth Circuit that he never saw anything suspicious. Appellee's Opening Br. 11-19, *Janvey* v. *GMAG, L.L.C.*, No. 17-11526 (5th Cir. May 14, 2018).[3] Instead, according to Magness, "it was only in late 2008, after the mid-December Madoff revelations, or early 2009, that there was a perceived need to ask more questions."

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[2] Because the Receiver's argument that there is no futility exception is dispositive, the panel never reached the Receiver's three other appellate points. Pet. App. 22.

[3] At each stage of the appeal, and even now, Magness has vehemently denied having any reason to be suspicious at the time of the transfers—the exact opposite of the jury's inquiry-notice finding. Magness did not cross-appeal that finding, yet—in derogation of the most basic standard of review—continually depicts the case in a manner inconsistent with the verdict. Pet. 6-8; Appellees' Resp. Br. 17-18, *Janvey* v. *GMAG, L.L.C.*, No. 19-0452 (Tex. Aug. 27, 2019).

Id. at 17-18.[4]

The Fifth Circuit panel unanimously concluded that there is not and never has been a futility exception under Texas law. "[T]he fact that a fraud or scheme is later determined to be too complex for discovery does not excuse a finding of inquiry notice and does not warrant the application of TUFTA good faith." Pet. App. 29. The panel could find "[n]o prior court considering TUFTA good faith" that had "applied a futility exception," and reversed and rendered judgment for the Receiver. *Ibid.*

Magness sought panel and *en banc* rehearing, requesting as alternative relief that the court certify to the Texas Supreme Court the state-law question of whether TUFTA includes a futility exception. Pet. App. 31. The panel granted Magness's request, but emphasized that its original opinion "aligns with other decisions interpreting TUFTA good faith," and that it could find "no example of a court" holding "that a transferee retains good faith when he was on inquiry notice and did not investigate prior to accepting a transfer." Pet. App. 38, 41. Nonetheless, because the Texas Supreme Court had not previously considered the claimed exception, the panel certified the following question:

> Is [TUFTA]'s "good faith" defense against fraudulent transfer clawbacks * * * available to a transferee who had inquiry notice of the fraudulent behavior, *did not conduct a diligent inquiry*, but who would not have been reasonably able to discover that fraudulent activity through diligent inquiry?

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[4] Magness likewise referred to any investigation as a *hypothetical* inquiry that he did not actually conduct in numerous post-trial briefs to the district court. *E.g.*, ROA.11645 ("[A]ny diligent investigation [Magness] could have conducted of SIB[] in October 2008 * * *.").

Pet. App. 42 (emphasis added).

The certified question embedded the express premise that Magness "did not conduct a diligent inquiry." *Ibid.* Magness did not object.

Like the Fifth Circuit, the Texas Supreme Court found no support for Magness's futility exception in Texas law. Pet. App. 44. Because TUFTA does not separately define "good faith," the long-established plain meanings of good faith and inquiry notice resolved the certified question. Pet. App. 50-53. "When a transferee on inquiry notice attempts to use TUFTA's affirmative defense to shield the transfer from the statute's clawback provision, it must show *at a minimum* that it investigated its suspicions diligently." Pet. App. 44 (emphasis added). A transferee who does not diligently investigate cannot show good faith "because, irrespective of what a hypothetical investigation could reveal, the facts giving rise to a reasonable suspicion of fraud have not been confronted." Pet. App. 55. In other words, someone who is on inquiry notice cannot establish *good* faith by taking the transfer yet refusing even to inquire, which is an example of *bad* faith.

2. The Fifth Circuit again concluded that Magness cannot establish good faith

The Fifth Circuit invited the parties to submit supplemental briefing addressing the answer to the certified question. Magness argued that the Fifth Circuit should affirm the judgment below because the Receiver allegedly admitted that Magness had investigated, and the trial record showed that Magness investigated the SIB CDs in 2006 and 2007, had a phone conversation with SIB's president in March 2008, and met with Stanford executives in January 2009. Appellees' Letter Br. 2-3, *Janvey* v. *GMAG, L.L.C.*, No. 17-11526 (5th Cir. Jan. 21, 2020). Magness continued to deny he had any suspicions and did not identify any inquiry in (or even near) October 2008—

the time of the transfers. *Ibid.* As an alternative, Magness requested a second trial to ask a new jury whether the evidence reflected that he diligently investigated his suspicions while on inquiry notice. *Id.* at 6-9. Magness has never identified any new or different evidence that a jury would hear.

The Fifth Circuit's resulting opinion—its *third* published opinion in this case—examined Magness's summary of the evidence, and even included it verbatim in its decision. Pet. App. 8-9. That evidence showed only "inquir-[i]es by the investment committee to inform itself of the nature and health of Magness's investments"—not an investigation *into suspected fraud at the time of the transfers*, as required under TUFTA. Pet. App. 9. The Fifth Circuit denied Magness's alternative request for a new trial, explaining that "[n]ot only do the Magness Parties' citations to the record and the Receiver's statements not support a conclusion that [Magness] diligently investigated [his] initial suspicions of SIB's fraud while on inquiry notice, but other parts of the record also support an opposite conclusion." Pet. App. 10. In particular, "Magness's witnesses testified that they did not see a need to inquire into whether SIB was committing fraud until several months after [Magness was] found to be on inquiry notice," and Gary Magness testified that he did not think he had requested additional information from SIB between October and December 2008. Pet. App. 10-11. Given this, Magness had failed to show "that there is any evidentiary basis for a reasonable jury to find that [he] diligently investigated [his] initial suspicions of SIB's fraud while on inquiry notice." Pet. App. 11.

The panel also examined and rejected Magness's argument that failing to remand for a new trial would violate his Seventh Amendment and due-process rights. Although the Seventh Amendment assigns decisions on disputed questions of fact to the jury, there was "no disputed

question of fact on whether [Magness] diligently investigated [his] initial suspicions of SIB's fraud while on inquiry notice." Pet. App. 13-14. Nor was there any due process violation, because Magness "had an opportunity to establish the affirmative defense" of good faith. Pet. App. 14. "Curiously," the court observed, Magness "argue[s] that a new trial is needed because the district court erred in providing a futility instruction even though [Magness] requested that instruction." Pet. App. 10 n.2.[5]

Because "[Magness's] good faith defense must fail," the Fifth Circuit rendered judgment for the Receiver. Pet. App. 2. The court did not "reverse the jury's verdict," cf. Pet. i, 1, 3, 11-17, 22-23, 28—rather, by accepting the jury's findings and applying the law to them, in light of a full review of the record, it reversed the district judge's erroneous *judgment*, Pet. App. 7-10.

REASONS FOR DENYING THE PETITION

The judgment below turned on a factbound dispute about applying settled law to a complex record. Magness's petition attempts to portray this dispute as certworthy. To its credit, however, the petition never actually asserts that the dispute implicates the features of a case warranting inclusion on this Court's merits docket—it identifies no circuit splits, for example, and makes no claim that the lower courts are broadly confused about the Seventh

[5] Having received the instruction that he requested—over the Receiver's objection—Magness cannot now complain that the jury was improperly instructed. See *United States* v. *Wells*, 519 U.S. 482, 488 (1997) ("Courts of Appeals have stated more broadly under the 'invited error' doctrine 'that a party may not complain on appeal of errors that he himself invited or provoked the [district] court * * * to commit.'" (citation omitted) (original modification)); 9C Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2558 & n.28 (3d ed.), Westlaw (database updated Apr. 2021) (a party who requests a jury instruction cannot complain if the instruction, or one substantially like it, is given by the trial judge (citing cases)).

Amendment or the Due Process Clause. The petition even acknowledges that the Fifth Circuit (like the Receiver) *agrees* with Magness about what those constitutional provisions require. It is also clear that if the panel had agreed with Magness's *factual* arguments, then it would have remanded for a new trial. In other words, the *only* thing that the petition invites this Court to do is to engage in error correction, because the constitutional principles are—as the petition admits—settled and well-established. See *infra* Part I.

But there *is* no error below. Magness's whole petition amounts to endlessly repeating a list of mantras—that the "jury found for Magness," that Magness "prevailed" at trial, that the Fifth Circuit "reversed the jury's verdict," that there was "intervening law" that (absent a new trial) deprived Magness of an "opportunity" to present relevant evidence, that the Fifth Circuit "resolved the factual dispute itself," and the like. These contentions all reduce to attacks on the Fifth Circuit's assessment of the record, and not one withstands cursory scrutiny. With nothing to rectify, this case would be a particularly poor one to select even if the Court wished to correct a one-off error.

I. THE PETITION IDENTIFIES NO LEGAL CONFLICT THAT WARRANTS THIS COURT'S INTERVENTION

The petition asks this Court to resolve no disagreement about the law. Instead, Magness asks for another review of the *application* of settled legal principles to this case's record.

The court of appeals explained that its refusal to remand the case for a second jury trial turned on the record. It shared Magness's views of the Seventh Amendment—but found no violation because there was "no disputed question of fact" for a new jury to resolve. Pet. App. 13-14. The court likewise accepted Magness's Due Process Clause framework, but simply held that there was no

violation because Magness all along "had an opportunity to establish the [good-faith] affirmative defense." Pet. App. 14.

The petition confirms the lack of any legal disagreement with the Fifth Circuit. Magness recognizes that the panel "accepted" and "acknowledged" the constitutional principles on which Magness relies, Pet. 14, and does not claim that the Fifth Circuit articulated a standard that conflicts with this Court's or any Circuit's precedents. Instead, Magness disagrees that the panel's decision "satisfied" those principles. *Ibid.* As described in Part II, *infra*, the contention that the Fifth Circuit misapplied the law to this case's record is wrong. But even if it were right, it proves that this case is not worthy of certiorari review.

A. There is no dispute about either constitutional provision

1. Seventh Amendment

Magness correctly states that in civil cases at common law, there is a right to have a jury decide *disputed* questions of fact. Pet. 15, 18-19, 22-23. The Receiver does not dispute this basic and established Seventh Amendment principle. Neither did the Fifth Circuit.

Magness himself acknowledges that his disagreement with the Fifth Circuit is over that court's application of the settled Seventh Amendment jury standard. Magness does not identify or claim that the panel articulated any new standard. Rather, he complains that "the panel nevertheless asserted that its refusal to remand this case was proper because, in its view, no reasonable jury could have found that Magness 'diligently investigated [his] initial suspicions of SIB's Ponzi scheme during the time period—October 2008—the jury found [Magness] to be on inquiry notice.'" Pet. 24 (quoting Pet. App. 8).[6] According to

[6] To emphasize the jury's role in resolving disputes of fact, Magness

Magness, the Fifth Circuit focused on the wrong time period, failed to recognize that the trial record was directed at different legal issues, and overlooked evidence showing a diligent investigation. Pet. 24-27.

Crucially, it is only if the Fifth Circuit wrongly answered these *antecedent* record-based questions that the Seventh Amendment would be implicated. In that instance, there *would* be a factual dispute for a new jury to resolve. But the dilemma for Magness is that he had the opportunity to persuade the panel, and in fact directed it to the parts of the record that he claimed proved a diligent investigation or at least presented a factual dispute. Pet. App. 7-9. The panel was not persuaded; it found that the trial record addressed whether Magness had investigated and provided no "evidentiary basis for a reasonable jury to find that [Magness] diligently investigated." Pet. App. 11. To the contrary, the evidence showed that *no* investigation had occurred. Pet. App. 14-15. If Magness's alternative position that there was a factual dispute for a second jury to resolve *had* been supported by the record, the Fifth Circuit made clear that it would have ordered a new trial. Pet. App. 13.

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principally relies on *Slocum* v. *New York Life Insurance Co.*, 228 U.S. 364 (1913), *Baltimore & Carolina Line, Inc.* v. *Redman*, 295 U.S. 654 (1935), and their progeny. See Pet. 19. Those cases, however, concern the constitutionality of pre- and post-verdict motions. Magness does not dispute that the Seventh Amendment allows federal courts to direct verdicts for evidentiary insufficiency. See, *e.g.*, *Galloway* v. *United States*, 319 U.S. 372, 389 (1943); 9 Wright & Miller § 2302.4 (4th ed.) ("It is now well established that the jury trial right exists only when some genuine issue of material fact must be determined."); see also *Slocum*, 228 U.S. at 387-388 (Courts may "aid the jury in the right discharge of their duty" by "directing their verdict where the insufficiency or conclusive character of the evidence warrants such a direction."). And, as explained in Part II, *infra*, Magness's assertion that the Fifth Circuit resolved an issue of fact rather than decided the sufficiency of the evidence is unfounded.

Magness's complaint about the Fifth Circuit's alleged misinterpretation of the record and TUFTA are unfounded—but even if they were not, this Court does not grant certiorari to scour records in the off chance that it might resolve a fact issue differently from the court of appeals. That is particularly true when, as here, the court of appeals has already made clear that it is *only* the record—and not any disagreement about the proper legal standard—that led to its disposition.

2. Due Process Clause of the Fifth Amendment

Magness next urges this Court to grant certiorari to address the Due Process Clause. The legal standard here, too, is undisputed, and Magness's complaint boils down to a claim that the Fifth Circuit misapplied a well-established standard to the facts.

Magness states that "[f]or nearly a century, this Court has made crystal clear that due process guarantees defendants 'an opportunity to present every available defense.'" Pet. 28 (quoting *Philip Morris USA* v. *Williams*, 549 U.S. 346, 353 (2007)). Far from disputing this crystalline standard, the Fifth Circuit even used the same quotation and authority as Magness: "The third case upon which the Magness Parties rely—*Philip Morris USA v. Williams*—notes that due process provides parties with 'an opportunity to present every available defense.'" Pet. App. 14. That court simply concluded from its review of the record and Magness's briefing that Magness "had an opportunity to establish the affirmative defense available to them—good faith—and so we would not violate [Magness's] due-process rights in forgoing a second jury trial." *Ibid.*; see *Weisgram* v. *Marley Co.*, 528 U.S. 440, 444 (2000) ("[I]f, as in the instant case, the court of appeals concludes that further proceedings are unwarranted because the loser on appeal has had a full and fair opportunity to present the case, * * * the appellate court may

appropriately instruct the district court to enter judgment * * * .").

To support his argument, Magness reaches back more than sixty years to find two "instructive" cases. Pet. 30. Neither case is analogous to this one or even mentions due process.

In *Fountain* v. *Filson*, 336 U.S. 681, 681-682 (1949) (per curiam), the court of appeals agreed that a claim asserted by the plaintiff was invalid—but granted judgment for the plaintiff on an *entirely different and unpleaded* claim. This Court held that although summary judgment may be granted where "there is no dispute as to any material fact," the court of appeals erred by granting judgment "on a new issue as to which the opposite party had no opportunity to present a defense before the trial court." *Id.* at 683.

Similarly, in *Byrd* v. *Blue Ridge Rural Electric Cooperative, Inc.*, 356 U.S. 525, 528-529 (1958), a diversity action, the district court *dismissed* the defendant's affirmative defense prior to trial and the plaintiff thus did not introduce evidence to rebut it. The court of appeals in *Byrd* decided that the affirmative defense *did* apply, and rendered judgment for the defendant based on its "own determination on the record." *Id.* at 530. This Court made an *Erie* guess that state procedural rules would not require a judge to decide the affirmative defense, and consequently that a jury should determine the factual issues raised by the affirmative defense, as "the jury on the entire record * * * might reasonably reach an opposite conclusion from the Court of Appeals * * * ." *Id.* at 531-532.

Neither *Fountain* nor *Byrd* remotely establishes that the Fifth Circuit violated Magness's due process rights. The Fifth Circuit did not inject a new claim or defense into the proceedings—Magness's good faith was the *only trial issue*. Magness's pre-trial filings confirm that he knew

that proving a diligent investigation could establish his affirmative defense, App., *infra*, 14a, *and* that the futility exception was disputed, ROA.9100. Although Magness repeatedly emphasizes that the district court ultimately did not ask the jury whether Magness had conducted a diligent investigation, and suggests that this issue was consequently not addressed at trial, the district court issued its charge and instructions and ruled on the parties' objections to them *after* the evidence closed. Moreover, it was Magness who requested that the district court ask the jury *only* whether a failure to investigate was excused by the futility exception, and who failed to request a finding regarding whether he actually conducted a diligent investigation—even though he knew that he could prevail by proving such an investigation.

Magness's reliance on *Fountain* and *Byrd* also ignores the evidence. As the Fifth Circuit correctly observed, Magness presented no evidence that he investigated while on inquiry notice, and indeed provided evidence establishing that he did *not* investigate. Pet. App. 10-11. As Gary Magness told the jury, he had no "concern that there was something wrong with [SIB]" in October 2008, and did not think he requested any "additional information" about SIB during this time, ROA.17880-17881. He only became suspicious months *after* the transfers. ROA.17884.

Nor has Magness identified what different evidence he could and would present in a second trial. Magness has continued to claim that *he had no suspicions to investigate* in October 2008, and that any inquiries he conducted months and years earlier were about his investments rather than suspected fraud. See *supra* note 3. To persuade a new jury that he conducted the required investigation, Magness would have to present evidence contradicting his statements at trial and on appeal. Due process does not entitle a litigant to do any such thing.

Finally, Magness attempts to contort the court of appeals' decision into an error of constitutional significance by claiming that, although the panel used the correct due process standard, its factbound conclusion that Magness had the opportunity to establish his affirmative defense effectively "narrowed that right out of existence." Pet. 31. This argument is nothing more than a disagreement with the Fifth Circuit's reading of the record before it. Under Magness's characterization, *any* factbound issue could be considered legal or constitutional error.

B. Nothing about the judgment below presents a vehicle to resolve any question about the Seventh Amendment or Due Process Clause *even if* such a question otherwise existed

Magness peppers his petition with claims that the Fifth Circuit issued an opinion "undermining * * * fundamental constitutional protections," Pet. 3, "contraven[ing] decades of this Court's precedents," Pet. 15, and "eviscerating both the Seventh Amendment and due process," Pet. 18. Yet Magness fails to identify a single statement that a future litigant or court could deploy from the opinion to circumvent these provisions. Magness thus resorts to warning that the opinion "throws what was previously established law into serious confusion," Pet. 3, and that the court's "reasoning and result create conflict and disharmony in what was until now settled law," Pet. 18. But again, Magness cannot identify any litigant or court that, following the decision below, has been "confused" about the legal principles that Magness admits are well-established and that the Fifth Circuit acknowledged. The Receiver is aware of none, either.

Magness's petition thus includes none of the "compelling reasons" identified in this Court's Rule 10 as a basis to grant certiorari. Instead, "the asserted error consists of erroneous factual findings or the misapplication of a

properly stated rule of law"—a basis on which a "petition for a writ of certiorari is rarely granted." This Court's Rule 10; see also Stephen M. Shapiro et al., *Supreme Court Practice*, p. 1-69 (11th ed. 2019) ("It is futile to attempt to dress a factual case, one that affects only the petitioner, in the false garments of a case involving an important federal question of national import.").

Notably, even if this Court did grant certiorari, scoured the record, and resolved this factbound appeal that affects only these parties in Magness's favor (as unlikely as that would be), doing so still would not resolve the case. Before any new trial, the Fifth Circuit would have to resolve three previously unaddressed remand and new-trial points raised by the Receiver in his original appeal. See Pet. App. 22. Where, as here, (a) *only* Magness could benefit from this Court's intervention, given the lack of any real dispute about constitutional principles, and (b) there is a strong likelihood that *even* Magness would not ultimately benefit because of those as-yet-unresolved appellate points, there is even less reason for this Court to add this case to its merits docket.

II. Even Magness's Argument That The Fifth Circuit Misapplied Long-Settled Law Is Based On Oft-Repeated—But Unsupported, Mistaken, and Tendentious—Characterizations Of The Proceedings Below

Magness's petition is a request for a second bite at the apple, cloaked in unfounded assertions that the panel violated undisputed constitutional principles. To make this argument, Magness repeatedly claims that the Fifth Circuit erred in its reading of the record and understanding of the Texas Supreme Court's decision interpreting the fraudulent-transfer statute. Such alleged errors do not justify this Court's intervention. Nor can mere repetition make these claims true. The Texas Supreme Court's

decision marked no "intervening change in the law" that made the existence of a diligent investigation relevant for the first time,[7] and the trial record was not "directed" at other issues[8] such that Magness had no "opportunity" to present a full defense in the first trial.[9] Nor did Magness "prevail" at trial,[10] or the Fifth Circuit engage in its own fact-finding[11] to "reverse" a jury verdict in Magness's favor.[12]

In short, even if this Court were inclined to grant certiorari merely to correct error, this case does not present even *that* limited opportunity.

A. The Texas Supreme Court's decision was not an "intervening change in the law"

Magness repeatedly tells this Court that the diligent-investigation requirement was only made "relevant" by the Texas Supreme Court's decision, *e.g.*, Pet. 1, 3, 14, 17, 22-24, 26, 34—as if, before that thunderbolt from Austin, nobody thought of it. The Texas Supreme Court did not "change" the law; it merely confirmed the diligent-investigation duty that Magness acknowledged in his pre-trial filings, and that the novel futility exception urged by Magness was unsupported by Texas law.

Magness contends that there was an intervening change in the law, yet conspicuously omits that his own proposed jury instructions show that he understood that he could establish his affirmative defense by proving he diligently investigated the facts that put him on inquiry notice. See App., *infra*, 14a. Yet Magness did not request

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[7] See Pet. i, 1, 3, 16-17, 20, 22-24, 27, 29-32.

[8] See Pet. 16, 24-26, 30.

[9] See Pet. 14, 17, 22, 24-25, 28-33.

[10] See Pet. 3, 11, 20, 31-32, 34.

[11] See Pet. i, 1, 3, 13, 15-16, 21, 23-24, 28, 31.

[12] See Pet. i, 1, 3, 11-17, 21-23, 28-29.

a question or special interrogatory about whether he actually conducted that investigation. Instead, Magness requested questions asking whether an investigation would have been futile, *id.* at 19a-22a—thereby purportedly excusing Magness's *failure* to investigate.

In other words, at the time of trial in 2017, Magness was well aware of his duty to diligently investigate while on inquiry notice. It is hard to imagine how one could ask to be *excused* from a duty without recognizing that duty's existence. If the evidence had supported an affirmative answer to the question of whether Magness had investigated (which would have established his affirmative defense), Magness could—and presumably would—have requested it. He chose not to, which was his prerogative, and instead latched onto an *exception* to that rule—one that he knew was disputed.[13] In 2019, the Texas Supreme Court merely confirmed the duty of a transferee to diligently investigate the suspicious facts that put him on inquiry notice. It did not make an "intervening change in the law [that] presents new factual questions" that Magness had no occasion to present at the first trial. See Pet. 23.

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[13] To support his intervening-change-in-the-law theory of the Texas Supreme Court's decision, Magness reads that court's decision as having "rejected" *the Receiver's* position. Pet. 12. This contention is mistaken. Magness and the Receiver *agreed* that the test for good-faith was set forth in *In re American Housing Foundation*, see Pet. App. 37-38, which stated: "Once a transferee has been put on inquiry notice of either the transferor's possible insolvency or of the possibly fraudulent purpose of the transfer, the transferee must satisfy a 'diligent investigation' requirement." 785 F.3d 143, 164 (5th Cir. 2015) (citation omitted). The Receiver objected to Magness's request for a futility exception on the grounds that "*In Re American Housing* * * * makes no mention of any such exception." ROA.9575. This was consistent with the Texas Supreme Court's holding that a transferee on inquiry notice "must show at minimum that it investigated its suspicions diligently." Pet. App. 44. That decision was a complete win for the Receiver, as the Fifth Circuit's subsequent judgment confirmed.

The Texas Supreme Court's holding that there is no futility exception also did not represent an "intervening change" in the law. The Receiver objected to Magness's proposed jury instructions that the futility exception was unsupported by Texas law. ROA.9575. The Fifth Circuit likewise recognized in certifying its question to the Texas Supreme Court that no Texas court—indeed, no court applying *any* state's version of the Uniform Fraudulent Transfer Act (UFTA)—had *ever* adopted the futility exception. Pet. App. 41. The Texas Supreme Court agreed—it too could find no support for a futility exception, and relied on the long and well-established plain meaning of good faith and inquiry notice under Texas law to confirm that a transferee's failure to diligently investigate its suspicions when on inquiry notice does not constitute good faith. Pet. App. 50-58. Magness has identified *no* prior court decision (other than the erroneous decision by the federal district court *in this case*) that, as a result of this opinion, was overturned or abrogated or otherwise became bad law. The opinion merely reiterated a duty that Magness knew about all along and confirmed that the novel and disputed futility exception did not supplant it.

Magness leans on a few federal and state cases, all decades old, to buttress his "intervening change in the law" argument. See Pet. 23-24 (collecting cases). In each case, the law that the parties relied on at trial later changed. Because of the timing and nature of the change, the parties had no opportunity to request correct jury instructions, object to erroneous instructions, or present the evidence needed to prove their claims or defenses under the correct legal standard, and were thus entitled to a new trial.[14]

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[14] See *Zierke* v. *Agri-Systems*, 992 F.2d 276, 278-279 (10th Cir. 1993) (remanding case when intervening change in law, caused by an unrelated appeal, invalidated the law on which the jury instructions were

For these cases to be analogous to this one, a true and unforeseeable shift in the law would have had to occur. Had the Texas Supreme Court declared, for example, that a transferee can prove his good faith only by presenting character testimony from twenty bishops, that would have constituted an actual change in the law—the trial had not examined character evidence and the parties had not known to call any bishops. In the actual trial, however, Magness knew that he could prevail on his good-faith affirmative defense by proving a diligent investigation, *and* presented evidence expressly addressing this issue and showing that no investigation occurred.[15] Nor did the

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based and the plaintiff had no opportunity at trial to request the necessary findings from the jury); *Saunders* v. *Rhode Island*, 731 F.2d 81, 85 (1st Cir. 1984) (remanding based on state supreme court's answers to certified questions, because "the basis for objection [to the jury instructions] *only became known long after the charge was given*" (emphasis added)); *City of Miami* v. *Harris*, 490 So.2d 69, 74 (Fla. Dist. Ct. App. 1985) (remanding because while the appeal was pending, this Court, in unrelated litigation, changed the level of proof required to prove the city's liability under 42 U.S.C. § 1983, and it was unclear if the plaintiff had met the new and higher burden at trial).

[15] Other circuits have similarly declined to allow litigants a second opportunity to prove on remand that which could—or should—have been proved initially. See, *e.g.*, *EEOC* v. *Westinghouse Elec. Corp.*, 925 F.2d 619, 632-633 (3d Cir. 1991) (rejecting request, in light of new authority, to remand for additional proof because the court "cannot say that in this case the need for such evidence could not have been reasonably apparent to a prudent, resourceful, and experienced litigant"); *Castrignano* v. *E.R. Squibb & Sons, Inc.*, 900 F.2d 455, 458 (1st Cir. 1990) (courts of appeals consider whether purported "changes" in the law "could have led to a different outcome" and whether any differences "are properly considered sufficiently new law that [a party] should be exempted from the requirement of contemporaneous objection," and concluding that intervening Rhode Island judicial decision did not "state[] a sufficiently new proposition to require remand"). Magness could have established his good-faith defense *at trial* by presenting evidence of a diligent investigation; nothing in the

Texas Supreme Court's ruling create previously unknown grounds for objecting to the jury instructions; the Receiver objected to the futility exception's inclusion because it was unsupported by Texas law. If Magness could obtain a new trial simply because he chose—with open eyes—to rely on a disputed and novel legal theory and to present evidence *foreclosing* his ability to prevail under the correct legal standard, then nearly every reported appeal involving a challenge to jury instructions would involve an "intervening change" in the law and require a re-do for the appellee.

B. The trial record was not directed at other issues

Even if, solely for argument's sake, there *had* been an intervening change in law, a new trial would be warranted only if the result could change on remand—as Magness's authorities recognize. See *Am. Reciprocal Insurers* v. *Bessonette*, 405 P.2d 529, 531 (Or. 1965) (rendering judgment, despite an intervening change in the law, where a remand would "ma[k]e no difference" to the outcome and thus "there would be no useful purpose in sending the present case back for another trial"). Magness repeatedly claims that the trial was directed at "other issues," suggesting that if given a second trial he could fill a gap and present evidence of a diligent investigation. Pet. 24. This claim, too, is belied by the record.

The record was not silent about whether Magness investigated his suspicions in October 2008. Magness and his witnesses repeatedly and uniformly *denied* that Magness had any suspicions or conducted any investigation at this time, see *supra* pp. 7-10, and Gary Magness testified that he had "no concerns" and did not recall seeking "additional information" from SIB in October 2008, ROA.17880-17881. Instead, Magness insisted that he only

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Texas Supreme Court's opinion changes that proposition.

"started to have suspicions about Stanford" months *later*, around "the end of January [2009] area." ROA.18029. Magness has given no indication that there *is* a different story he could tell, but even if there were, he could hardly premise a demand for a second trial on the intent to contradict his sworn statements in the first one.[16]

Even now, Magness does not identify *any* evidence that he conducted a diligent investigation in October 2008. Magness points this Court to evidence of "a number of due diligence investigations" by Magness and discussions of "SIB's financial health." Pet. 7-8. The Fifth Circuit correctly rejected that argument. "[I]nquir[i]es by the investment committee to inform itself of the nature and health of Magness's investments" do not show an investigation "into suspected fraud," as required to establish good faith. Pet. App. 9. Moreover, those purported investigations happened months or years *before* the transfers and time period when the jury found Magness was on inquiry notice. See *ibid.*

Magness suggests that the Texas Supreme Court "recogniz[ed]" that its decision raised "unresolved factual issues" and chose to "leav[e] that issue open for retrial before a properly instructed jury." Pet. 21. That is patently false. The Texas Supreme Court expressly reserved the issue *for the Fifth Circuit* to decide, *not* a jury. Pet. App. 48 n.1. Under article V, section 3-c of the Texas

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[16] Magness claims that the Receiver agreed, in one line from a pre-trial filing, that Magness conducted the required investigation—and that this trumps Magness's testimony establishing the opposite. Pet. 9-10, 21, 25 (quoting ROA.9575). The evidence *at trial* was that Magness did not investigate the suspicious facts that put him on inquiry notice. Nothing in the pre-trial filing contradicts these facts. Indeed, the Receiver's argument at trial was that Magness never sought to investigate his suspicions but instead, when alerted to the Ponzi scheme's precarious circumstances, used his insider status to extract money as quickly as he could.

Constitution, the state supreme court has "jurisdiction to answer questions of state law certified from a federal appellate court"—not factual questions arising out of federal proceedings. Tex. Const. art. V, § 3-c; see also Tex. R. App. P. 58.1, 58.2(a) ("The Supreme Court of Texas may answer questions of law certified to it by any federal appellate court," and "the certifying court must set forth * * * a stipulated statement of all facts relevant to the question certified."). In accordance with this limited jurisdiction, the supreme court expressly *declined* to "express [an] opinion" on Magness's claim that "he actually investigated his suspicions," since "[h]ow our answer [to the certified question] is to be applied to the facts of this case *is the province of the certifying court*." Pet. App. 48 n.1 (emphasis added) (quoting *Interstate Contracting Corp.* v. *City of Dallas*, 135 S.W.3d 605, 620 (Tex. 2004)).

C. Magness did not "prevail at trial," nor did the Fifth Circuit "reverse" the jury's verdict

Finally, Magness's petition repeatedly and wrongly asserts that Magness prevailed at trial, and that the Fifth Circuit reversed the jury's verdict based on its own factual findings. None of these dramatic statements is true.

The jury disbelieved Magness's repeated testimony that he did not suspect, and had no reason to suspect, that SIB was a Ponzi scheme. It found that Magness *was* on inquiry notice of Stanford's Ponzi scheme but took the money anyway. App., *infra*, 6a. The jury separately found that *if* Magness had undertaken a diligent investigation, he would not have uncovered the Ponzi scheme. *Id.* at 7a. As the Receiver argued at the time, and the Fifth Circuit and Texas Supreme Court confirmed, this "futility" finding was immaterial because there is *no exception* to the diligent-investigation requirement. Pet. App. 7. Magness invited error by requesting that the jury answer this immaterial question over the Receiver's objections,

Pet. App. 10 n.2—but the error was harmless, because the jury simply answered that discrete factual question. It never agreed that the futility of a hypothetical investigation established Magness's good faith.

In erroneously congratulating himself on winning before the jury, Magness confuses the jury's *verdict* for the district court's *judgment*. The Receiver moved for judgment on the verdict, but the district court granted judgment to Magness instead based on the futility exception. ROA.11751-11753. On appeal, the Receiver did not ask the Fifth Circuit to reject the jury's factual finding of futility, but only that, as a matter of law, the district court erred by treating it as material. Likewise, the Fifth Circuit did not "reverse the jury's verdict," as Magness endlessly states, but reversed the district court's erroneous *judgment*. Pet. App. 15.

Magness's accusation that the Fifth Circuit failed to respect the jury's verdict is particularly ill-taken given Magness's repeated attacks on that verdict. The jury found that Magness was on inquiry notice of the Ponzi scheme when he took the transfers, App., *infra*, 6a, and Magness has never appealed that finding. Despite this, Magness has relentlessly denied that he was on inquiry notice, including in his petition to this Court. Magness's conduct surrounding the certified question is similarly instructive. The Fifth Circuit certified a question to the Texas Supreme Court at Magness's request, which expressly noted that "Magness did not undertake an investigation prior to accepting the transfers." Pet. App. 36. Magness did not object to that premise or ask that the question be reframed, yet now demands a second trial to attempt to persuade a jury that he investigated. Aside from the petition's many other defects, this Court should hesitate to take a case at the behest of a party purporting to vindicate the jury's role when that party cannot stop disputing the jury's actual verdict or the record.

CONCLUSION

Magness's petition should be denied.

Respectfully submitted.

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November 2021

APPENDIX

APPENDIX A

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

Case No. 3:15-cv-00401-N-BQ

(Filed 01/18/2017)

RALPH S. JANVEY, RECEIVER
Plaintiff,
v.
GMAG LLC, *et al.*,
Defendants.

COURT'S CHARGE TO THE JURY
[ROA.11667-11677]

MEMBERS OF THE JURY:

It is my duty and responsibility to instruct you on the law you are to apply in this case. The law contained in these instructions is the only law you may follow. It is your duty to follow what I instruct you the law is, regardless of any opinion that you might have as to what the law ought to be.

If I have given you the impression during the trial that I favor either party, you must disregard that impression. If I have given you the impression during the trial that I have an opinion about the facts of this case, you must disregard that impression. You are the sole judges of the facts of this case. Other than my instructions to you on the law, you should disregard anything I may have said or done during the trial in arriving at your verdict.

You should consider all of the instructions about the

law as a whole and regard each instruction in light of the others, without isolating a particular statement or paragraph.

The testimony of the witnesses and other exhibits introduced by the parties constitute the evidence. The statements of counsel are not evidence; they are only arguments. It is important for you to distinguish between the arguments of counsel and the evidence on which those arguments rest. What the lawyers say or do is not evidence. You may, however, consider their arguments in light of the evidence that has been admitted and determine whether the evidence admitted in this trial supports the arguments. You must determine the facts from all the testimony that you have heard and the other evidence submitted. You are the judges of the facts, but in finding those facts, you must apply the law as I instruct you.

Do not let bias, prejudice or sympathy play any part in your deliberations. This case should be considered and decided by you as an action between persons of equal standing in the community and holding the same or similar stations in life. The law does not give special treatment to any person. The Receiver and the Magness Parties are equal before the law and must be treated as equals in a court of justice.

Defendants have the burden of proving their defense by a preponderance of the evidence. To establish by a preponderance of the evidence means to prove something is more likely so than not so.

In determining whether any fact in issue has been proved by a preponderance of the evidence, you may consider the testimony of all the witnesses, regardless of who may have called them, and all the exhibits received in evidence, regardless of who may have produced them.

The evidence you are to consider consists of the testimony of the witnesses, the documents and other

exhibits admitted into evidence, and any fair inferences and reasonable conclusions you can draw from the facts and circumstances that have been proven.

Generally speaking, there are two types of evidence. One is direct evidence, such as testimony of an eyewitness. The other is indirect or circumstantial evidence. Circumstantial evidence is evidence that proves a fact from which you can logically conclude another fact exists. As a general rule, the law makes no distinction between direct and circumstantial evidence, but simply requires that you find the facts from a preponderance of all the evidence, both direct and circumstantial.

You are the sole judges of the credibility or believability of each witness and the weight or significance to be given to the witness's testimony. In weighing the testimony of a witness, you should consider the witness's relationship to a particular party; the witness's interest, if any, in the outcome of the case; the witness's manner of testifying; the witness's opportunity to observe or acquire knowledge concerning the facts about which the witness testified; the witness's candor, fairness, and intelligence; and the extent to which the witness's testimony has been supported or contradicted by other credible evidence. You may, in short, accept or reject the testimony of any witness, in whole or in part.

Even though a witness may be a party to the action and therefore interested in its outcome, the testimony may be accepted if it is not contradicted by direct evidence or by any inference that may be drawn from the evidence, if you believe the testimony.

You are not to decide this case by counting the number of witnesses who have testified on the opposing sides. Witness testimony is weighed; witnesses are not counted. The test is not the relative number of witnesses, but the relative convincing force of the evidence. The testimony

of a single witness is sufficient to prove any fact, even if a greater number of witnesses testified to the contrary, if after considering all of the other evidence, you believe that witness.

A witness may be "impeached" or discredited by contradictory evidence, by a showing that the witness testified falsely concerning a material matter, or by evidence that at some other time the witness said or did something, or failed to say or do something, that is inconsistent with the witness's present testimony. If you believe that any witness has been so impeached, it is your exclusive right to give the testimony of that witness whatever credibility or weight, if any, as you think it deserves.

A simple mistake by a witness does not necessarily mean that the witness did not tell the truth as he or she remembers it. People may forget some things or remember other things inaccurately. If a witness made a misstatement, consider whether that misstatement was an intentional falsehood or simply an innocent mistake. The significance of that may depend on whether it has to do with an important fact or with only an unimportant detail.

When knowledge of technical subject matter may be helpful to the jury, a person who has special training or experience in that technical field is permitted to state his or her opinion on those technical matters. However, you are not required to accept that opinion. As with any other witness, it is up to you to decide whether to rely on it.

Remember that the lawyers' statements, objections, or arguments — whether made during the trial or during their opening and closing statements — are not evidence in the case. The function of the lawyers is to point out those things that are most significant or most helpful to their side of the case and, in so doing, to call your attention to certain facts or inferences that might otherwise escape

your notice. However, it is your own recollection and interpretation of the evidence that controls in the case. What the lawyers say is not binding upon you. If an attorney's question assumes that some fact is true and the witness did not agree with that assumption, the question itself is not evidence that the assumed fact is true. You should not consider or be influenced by the fact that during the trial of this case, counsel have made objections to the testimony, as it is their duty to do so, and it is my duty to rule on those objections in accordance with the law.

The fact that a person brought a lawsuit and is in court seeking damages creates no inference that the person is entitled to a judgment. Anyone may make a claim and file a lawsuit. The act of making a claim in a lawsuit, by itself, does not in any way tend to establish that claim and is not evidence.

Answer each question from the facts as you find them. Do not decide who you think should win and then answer the questions accordingly. Your answers and your verdict must be unanimous.

"Stanford" means R. Allen Stanford and his associated entities including Stanford International Bank, Ltd., Stanford Group Company, and other related entities. The Court has previously determined that Stanford operated a Ponzi scheme.

The "Magness Parties" means GMAG LLC, Magness Securities LLC, Gary D Magness, and Mango Five Family, Inc., in its capacity as trustee for the Gary D. Magness Irrevocable Trust.

QUESTION NO. 1:

Did the Magness Parties act in good faith when they received the transfers from Stanford in October 2008?

Answer "Yes" or "No" for:

a. no actual notice

Yes

b. no inquiry notice

No

INSTRUCTIONS FOR QUESTION NO. 1:

The Magness Parties have the burden to prove good faith by a preponderance of the evidence.

The Magness Parties acted in good faith if they did not have actual notice or inquiry notice in October 2008 that Stanford was engaged in a Ponzi scheme.

Actual notice is based on what one actually knows. It also includes the knowledge of agents acting within the scope of their agency. An agent is a person who is authorized to act on behalf of another. Examples of agents include officers, directors, employees, and attorneys. A person has actual notice if the person has actually reached the conclusion that Stanford was engaged in a Ponzi scheme or if the person has knowledge of facts that would have led a reasonable person to reach that conclusion.

Inquiry notice is knowledge of facts relating to the transaction at issue that would have excited the suspicions of a reasonable person and led that person to investigate. Inquiry notice can be based on both facts that one actually knows and facts known by agents acting within the scope of their agency.

If your answer to Question No. 1.a is "yes" and your answer to Question No. 1.b is "no," then answer the following question. Otherwise do not answer the following question.

QUESTION NO.2:

Would an investigation have been futile?

Answer "yes" or "no":

Yes

INSTRUCTIONS FOR QUESTION NO.2:

The Magness Parties have the burden to prove futility by a preponderance of the evidence.

An investigation would be futile if a diligent inquiry would not have revealed to a reasonable person that Stanford was running a Ponzi scheme.

To establish futility the Magness Parties are not required to prove that they actually conducted a diligent inquiry.

JURY DELIBERATIONS

It will shortly be your duty to deliberate and to consult with one another in an effort to reach a verdict. Your verdict must be unanimous. Each of you must decide the case for yourself, but only after an impartial consideration of the evidence with your fellow jurors. During your deliberations, do not hesitate to reexamine your own opinions and change your mind if you are convinced that you were wrong. But do not give up on your honest beliefs because the other jurors think differently, or just to finish the case. Remember at all times, you are the judges of the facts.

You have been allowed to take notes during this trial. Any notes that you took during this trial are only aids to memory. If your memory differs from your notes, you

should rely on your memory and not on the notes. The notes are not evidence. If you did not take notes, rely on your independent recollection of the evidence and do not be unduly influenced by the notes of other jurors. Notes are not entitled to greater weight than the recollection or impression of each juror about the testimony.

Even though the court reporter is making stenographic notes of everything that is said, a typewritten copy of the testimony will not be available for your use during deliberations.

The fact that I have given you in this charge instructions about a particular claim or defense, or that I have not so instructed you, should not be interpreted in any way as an indication that I believe a particular party should, or should not, prevail in this case.

When you go into the jury room to deliberate, you may take with you a copy of this charge, the exhibits that I have admitted into evidence, and your notes. You must select a presiding juror to guide you in your deliberations and to speak for you here in the courtroom. After you have reached a unanimous verdict, your presiding juror must fill out the answers to the written questions on the verdict form and sign and date it.

Do not deliberate unless all members of the jury are present in the jury room. For example, if one or more of you go to lunch together or are together outside the jury room, do not discuss the case.

During your deliberations I will honor any reasonable work schedule you may set and will honor your reasonable requests regarding how frequently you wish to recess and for how long.

After you have concluded your service and I have discharged the jury, you are not required to talk with anyone about the case. If you need to communicate with me during your deliberations, the presiding juror should

write the inquiry and give it to the court security officer. After consulting with the attorneys, I will respond either in writing or by meeting with you in the courtroom. Keep in mind, however, that you must never disclose to anyone, not even to me, your numerical division on any question.

SIGNED this 18 day of January, 2017.

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

APPENDIX B

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

Case No. 3:15-cv-00401-N-BQ

(Filed 12/09/2016)

RALPH S. JANVEY, IN HIS CAPACITY AS COURT-APPOINTED RECEIVER FOR THE STANFORD INTERNATIONAL BANK, LTD., ET AL.
Plaintiff,

v.

GMAG LLC, MAGNESS SECURITIES, LLC, GARY D. MAGNESS, and MANGO FIVE FAMILY, INC., IN ITS CAPACITY AS TRUSTEE OF THE GARY D. MAGNESS IRREVOCABLE TRUST,
Defendants.

RELEVANT EXCERPT FROM THE MAGNESS PARTIES' PROPOSED PRELIMINARY INSTRUCTIONS AND JURY CHARGE [ROA.9127-9133]

* * *

THE RECEIVER'S CLAIMS UNDER THE TEXAS UNIFORM FRAUDULENT TRANSFER ACT ("TUFTA")

The issue you must decide is whether the Magness Parties received the challenged transfers from SIBL in

good faith. A transfer is not received in good faith if, at the time of the transfer, the recipient:

1. Knew that SIBL made the transfer with the intent to defraud its creditors; or

2. Was on "inquiry notice" of SIBL's fraudulent purpose in making the transfers and could have uncovered that intent through a diligent inquiry; or

3. Had actual knowledge that SIBL or was on "inquiry notice" of SIBL's insolvency at the time of the loan transfers; and had an agreement (other than the loan agreement), which agreement would benefit SIBL in some way other than by its repayment of the recipient's CD principal.

You will find further instructions regarding good faith below and will decide the issue of the Magness Parties' good faith by answering the questions on the Special Interrogatory Grid (the "Grid") attached to your Verdict form.

BURDEN OF PROOF

The Magness Parties have the burden of proving their good faith defense by a preponderance of the evidence. To establish by a preponderance of the evidence means to prove something is more likely so than not so. If you find the Magness Parties did not prove that it is more likely than not that they received a particular transfer in good faith, then the Receiver will prevail on his fraudulent transfer claim with respect to that transfer. If, on the other hand, you find that the Magness Parties have proved that it is more likely than not that they received a particular transfer in good faith, the Magness Parties will have defeated the Receiver's fraudulent transfer claim with respect to that transfer.[50]

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[50] PJI 5th 3.2 (modified)

INSTRUCTIONS FOR COLUMN 1 OF THE GRID – ACTUAL KNOWLEDGE:

Column 1 of the Grid asks whether the recipient of the transfer knew that either: (a) SIBL intended to defraud its creditors by making the challenged transfer; or (b) SIBL was insolvent at the time of the transfer. You should determine the answer to those questions by considering whether the recipient had actual knowledge at the time he or they received the challenged transfer(s).[51]

INSTRUCTIONS FOR COLUMN 2 OF THE GRID – INQUIRY NOTICE:

Column 2 of the Grid asks whether the recipient was on inquiry notice of SIBL's fraudulent purpose or insolvency. If the recipient did not know of SIBL's fraudulent intent in making the transfer or of SIBL's insolvency at the time of the transfer, it or he may nonetheless know of facts or circumstances that would lead a reasonably prudent person to inquire further into the transfer. A recipient with knowledge of such facts and circumstances is said to be "on inquiry notice" regarding the transfer.[52]

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[51] Christian Bros. High Sch. Endowment v. Bayou No Leverage Fund, LLC (In re Bayou Group, LLC), 439 B.R. 284, 311 (S.D.N.Y. 2010) ("The weight of the authority, however, indicates that a court should focus on the circumstances specific to the transfer at issue – that is, whether a transferee 'reasonably should have known . . . of the fraudulent intent underlying the transfer." (Emphasis added.)), quoted in Templeton v. O'Cheskey (In re Am. Housing Found.), 785 F.3d 143, 164 (5th Cir. 2015); O'Cheskey v. King (In re Am. Housing Found.), No. 09-20232, 2015 WL 1543585, at *18 (N.D. Tex. March 31, 2015) (Court should "consider the transferee's state of mind at the time of the [transfer].")

[52] In re Am. Housing Found., 785 F.3d at 164 (good faith analysis considers "whether the transferee had information that put it on inquiry notice that the transferor was insolvent or that the transfer might be made with a fraudulent purpose"); Hinds v Keith, 57 F. 10,

Information suggesting that there was something wrong with SIBL itself or with the integrity of its management does not trigger inquiry notice. However, if the Magness Parties knew of information suggesting that SIBL had a fraudulent purpose in making the challenged transfer(s) or that it was insolvent when it did so, the Magness Parties were on "inquiry notice" with respect to the transfer(s).[53]

You should determine the answer to the questions in Column 2 by considering whether the recipient was on inquiry notice at the time he or they received the challenged transfer(s).

INSTRUCTIONS FOR COLUMN 3 OF THE GRID – SECRET AGREEMENT:

Column 3 of the Grid asks whether SIBL and the Magness Parties had an agreement – other than the loan agreements – to benefit SIBL in some way other than paying back the Magness Parties' CD principal.[54]

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15 (5th Cir. 1893) (affirming finding of good faith where no evidence showed transferee had "knowledge of [transferor's] insolvency or fraudulent intent, or information of any suspicious fact or circumstance, which ought to have put him on inquiry, and which, if followed up, would have led to such knowledge at or prior to the [transfers]")

[53] In re Bayou Group, 439 B.R. at 314

[54] Hawes v. Central Texas Prod. Credit Ass'n, 503 S.W.2d 234, 235 (Tex. 1973) (decided under TEX. BUS. & COMM. CODE § 24.02 (TUFTA's predecessor; holding that a preference "is valid notwithstanding the [fraudulent conveyance] statute, if the value of the property does not exceed the amount of the debt and the [recipient of the transfer] receives the conveyance in good faith, meaning without a secret agreement to benefit the [transferor] in some way other than by discharge of his debt"); Adams v. Williams, 248 S.W. 673, 676 (Tex. Comm'n App. 1923) ("It is settled law in this state that a creditor may receive payment of an honest debt in property of his debtor, though he may know at the time that the debtor's intent in making the payment is to prefer him and to place the property beyond

INSTRUCTIONS FOR COLUMN 4 OF THE GRID – FUTILITY OF INQUIRY:

The recipient of a transfer is entitled to assume that SIBL made the transfer in good faith.[55] There is no duty to conduct any inquiry into the challenged transfer(s) unless and until the recipient is on inquiry notice.[56]

What constitutes a diligent inquiry may change over time.[57] If you find that a recipient was on inquiry notice but did not conduct a diligent inquiry of the facts that put it on notice, and you further find that a diligent inquiry would have led to knowledge of SIBL's insolvency or fraudulent purpose in making the challenged transfer, your verdict must be for the Receiver with respect to that transfer.[58] If,

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the reach of other creditors, provided that no more property is taken than is reasonably necessary to pay his debt."); see also Alexander v. Holden Bus. Forms, Inc., No. 4:08-CV-614, 2009 WL 2176582, at *7 (N.D. Tex. July 20, 2009) (unpublished op.) ("These principles remain valid notwithstanding the subsequent enactment of [TUFTA].")

[55] Pan Am. Petroleum Corp. v. Verde Oil Co., 367 F.2d 461, 464 (5th Cir. 1966) ("[G] ood faith on the part of the transferor may be assumed by the [recipient of the transfer.")

[56] Pan Am. Petroleum Corp., 367 F.2d at 464 ("There is no duty to exercise any diligence until the [recipient of the transfer] has such knowledge [of facts or circumstances that would lead a reasonably prudent person to inquire further] . . . .")

[57] Gredd v. Bear, Stearns Secs. Corp. (In re Manhattan Inv. Fund Ltd.), 359 B.R. 510 (Bankr. S.D.N.Y. 2007)(despite ready availability of information demonstrating transferor's fraud – it was jury question whether the recipient of the transfer conducted a "diligent investigation"; "we cannot conclude as a matter of law that [the recipient of the transfer] should have done in December 1998 what it eventually did in December 1999"), cited in In re Bayou Group, 439 B.R. at 329

[58] In re Bayou Group, 439 B.R. at 313 (citation and internal quotation marks omitted); see also Warfield v. Byron, 436 F.3d 551, 560 (5th Cir. 2006) (failure of transferee to inquire more closely about company operated as a Ponzi scheme, "in light of the abundant suspicious information he possessed about the people, the scheme, and the

however, a diligent inquiry of the facts that put the recipient of a challenged transfer on inquiry notice would not have led to knowledge of SIBL's insolvency or fraudulent purpose in making the challenged transfer, then your verdict must be for the recipient of the transfer(s).[59]

CLOSING INSTRUCTIONS

It is now your duty to deliberate and to consult with one another in an effort to reach a verdict. Each of you must decide the case for yourself, but only after an impartial consideration of the evidence with your fellow jurors. During your deliberations, do not hesitate to reexamine your own opinions and change your mind if you are convinced that you were wrong. But do not give up on

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previous schemes, raises serious questions about his good faith defense")

[59] Pan Am. Petroleum Corp., 367 F.2d at 464 ("A creditor of a transferor may successfully attack a conveyance by showing actual knowledge on the part of the purchaser of facts or circumstances sufficient to put a reasonably prudent person upon inquiry, which, by the use of diligence, will lead to knowledge of the intent on the part of the transferor to delay, hinder or defraud his creditors."); Hinds, 57 F. at 15 (affirming finding of good faith where no evidence showed transferee had "knowledge of [transferor's] insolvency or fraudulent intent, or information of any suspicious fact or circumstance, which ought to have put him on inquiry, and which, if followed up, would have led to such knowledge at or prior to the [transfers]"); In re Bayou Group, 439 B.R. at 317 ("given that part of the applicable standard is whether a 'diligent inquiry would have discovered the fraudulent purpose,' [recipients of the transfer] are entitled to argue, and the Court is required to consider, whether a diligent investigation would have led to the discovery of [the transferor's] fraudulent purpose and/or insolvency"); see also Wiand v. Waxenberg, 611 F. Supp. 2d at 1319 (once recipient is on inquiry notice, the "relevant question" is whether an "inquiry, if made with reasonable diligence, would have led to the discovery of the [transferor's] fraudulent purpose")

your honest beliefs because the other jurors think differently, or just to finish the case.[60]

Remember at all times, you are the judges of the facts. You have been allowed to take notes during this trial. Any notes that you took during this trial are only aids to memory. If your memory differs from your notes, you should rely on your memory and not on the notes. The notes are not evidence. If you did not take notes, rely on your independent recollection of the evidence and do not be unduly influenced by the notes of other jurors. Notes are not entitled to greater weight than the recollection or impression of each juror about the testimony.[61]

When you go into the jury room to deliberate, you may take with you a copy of this charge, the exhibits that I have admitted into evidence, and your notes. You must select a presiding juror to guide you in your deliberations and to speak for you here in the courtroom.[62]

Your verdict must be unanimous. After you have reached a unanimous verdict, your presiding juror must fill out the answer to the written question on the verdict form and sign and date it. After you have concluded your service and I have discharged the jury, you are not required to talk with anyone about the case.[63]

If you need to communicate with me during your deliberations, the presiding juror should write the inquiry and give it to the court security officer. After consulting with the attorneys, I will respond either in writing or by meeting with you in the courtroom. Keep in mind,

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[60] PJI 5th 3.7

[61] PJI 5th 3.7

[62] PJI 5th 3.7

[63] PJI 5th 3.7

however, that you must never disclose to anyone, not even to me, your numerical division on any question.[64]

You may now proceed to the jury room to begin your deliberations.[65]

SIGNED this _____ day of January, 2017.

David C. Godbey
United States District Judge

[64] PJI 5th 3.7

[65] PJI 5th 3.7

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

Case No. 3:15-cv-00401-N-BQ

RALPH S. JANVEY, IN HIS CAPACITY AS COURT-APPOINTED RECEIVER FOR THE STANFORD INTERNATIONAL BANK, LTD., ET AL.
Plaintiff,

v.

GMAG LLC, MAGNESS SECURITIES, LLC GARY D. MAGNESS, and MANGO FIVE FAMILY, INC., IN ITS CAPACITY AS TRUSTEE OF THE GARY D. MAGNESS IRREVOCABLE TRUST,
Defendants.

VERDICT OF THE JURY

We, the jury, have answered the questions on the attached Special Interrogatory Grid, which we now return to the Court as our verdict:

SIGNED this _____ day of _____, 2016.

_____
PRESIDING JUROR

SPECIAL INTERROGATORIES

A.	A1: Did Gary Magness have actual knowledge that SIBL transferred money to him in October 2008 with the intent to defraud SIBL's other creditors? Answer "yes" or "no." _____	A2: Was Gary Magness on inquiry notice that SIBL transferred money to him in October 2008 with the intent to defraud SIBL's other creditors? Answer "yes" or "no." _____		If you answered "yes" to A2, answer the following: Would a diligent inquiry have uncovered SIBL's intent to defraud its other creditors? Answer "yes" or "no." _____

B.	B1: Did the Magness Entities have actual knowledge that SIBL transferred money to them in October 2008 with the intent to defraud SIBL's other creditors? Answer "yes" or "no." _____	B2: Were the Magness Entities on inquiry notice that SIBL transferred money to them in October 2008 with the intent to defraud SIBL's other creditors? Answer "yes" or "no." _____		If you answered "yes" to B2, answer the following: Would a diligent inquiry have uncovered SIBL's intent to defraud its other creditors? Answer "yes" or "no." _____

C.	C1: Did Gary Magness have actual knowledge that SIBL was insolvent when it transferred money to him in October 2008? Answer "yes" or "no." _____	C2: Was Gary Magness on inquiry notice that SIBL was insolvent when it transferred money to him in October 2008? Answer "yes" or "no." _____	C3: Did Gary Magness have a secret agreement with SIBL to benefit it through the challenged transfer in some way other than by discharge of SIBL's debt to him? Answer "yes" or "no." _____	If you answered "yes" to both C2and C3, answer the following: Would a diligent inquiry have uncovered SIBL's insolvency at the time of the transfer? Answer "yes" or "no." _____

D.	D1: Did the Magness Entities have actual knowledge that SIBL was insolvent when it transferred money to them in October 2008? Answer "yes" or "no." _____	D2: Were the Magness Entities on actual knowledge that SIBL was insolvent when it transferred money to them in October 2008? Answer "yes" or "no." _____	D3: Did the Magness Entities have a secret agreement with SIBL to benefit it through the challenged transfers in some other than by discharge of SIBL's debt to them? Answer "yes" or "no." _____	If you answered "yes" to both D2 and D3, answer the following: Would a diligent inquiry have uncovered SIBL's insolvency at the time of the transfer? Answer "yes" or "no." _____