Appendices

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* Identical Final Judgment and Bar Orders were entered in *Nuila, et al v. Willis Group Holdings Public Ltd. Co., et al.*, No. 3:13-CV-02572-N (Aug. 23, 2017) and *Tisminesky, et al v. Willis Group Holdings Public Ltd. Co., et al.*, No. :13-CV-02573-N (Aug. 23, 2017).

Appendix A

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 17-11073

December 19, 2019

ANTONIO JUBIS ZACARIAS; ROBERTO BARBAR

Plaintiffs-Appellants

v.

STANFORD INTERNATIONAL BANK, LIMITED

Defendant

BARRY L. RUPERT; CAROL RUPERT;. MICHAEL RISHMAGUE; LIONEL ALESSIO; DAN AULI PANOS, et al

Movants-Appellants

v.

OFFICIAL STANFORD INVESTORS COMMITTEE; MANUEL CANABAL; WILLIS , LIMITED; WILLIS OF COLORADO, INCORPORATED,

Interested Parties-Appellees

WILLIS GROUP HOLDINGS LIMITED; WILLIS NORTH AMERICA, INCORPORATED; AMY S. BARANOUCKY; BOWEN MICLETTE & BRITT, INCORPORATED; RALPHS. JANVEY; SAMUEL TROICE,

Appellees

v.

EDNA ABLE,

Interested Party-Appellant

CONSOLIDATED WITH 17-11114

THE OFFICIAL STANFORD INVESTORS COMMITTEE; SAMUEL TROICE, on their own behalf and on behalf of a class of all others similarly situated; MANUEL CANABAL, on their own behalf and · on behalf of a class of all others similarly situated,

Plaintiffs-Appellees

v.

CARLOS TISMINESKY; ROBERTO BARBAR; ANA LORENA NUILA DE GADALA-MARIA,

Plaintiffs-Appellants

v.

WILLIS OF COLORADO, INCORPORATED; WILLIS LIMITED; WILLIS GROUP HOLDINGS LIMITED; WILLIS NORTH AMERICA, INCORPORATED; AMY S. BARANOUCKY; BOWEN, MICLETTE & BRITT, INCORPORATED,

Defendants-Appellees

v.

BARRY L. RUPERT; CAROL RUPERT; MICHAEL RISHMAGUE; LIONEL ALESSIO; DAN AULI PANOS, EDNA ABLE; et al,

Appellants

v.

RALPH S. JANVEY, in his Capacity as Court-Appointed Receiver for Stanford Receivership Estate,

Appellee

CONSOLIDATED WITH 17-11122

EDNA ABLE; ROBERT C. AHDERS; RODRIGO RIVERA ALCAYAGA; DAVID ARNTSEN; CARLIE ARNTSEN; ET AL,

Plaintiff-Appellants

v.

WILLIS OF COLORADO, INCORPORATED; WGH HOLDINGS, LTD.; WILLIS LTD.,

Defendants-Appellees

CONSOLIDATED WITH 17-11127

ANTONIO JUBIS ZACARIAS. , Individual; ANA VIRGINIA GONZALEZ DE JUBIS, Individual; GLADIS JUBIS DE ACUNA, Individual; ERIC ACUNA JU BIS, Individual; TULIO CAPRILES, Individual; JORGE CASAUS HERRERO, Indi vidual; MARTHA BLANCHET, Individual; LUIS ZABALA, Individual; EMMA LOPEZ, Individual; ELBA DE LA TORRE, Individual,

Plaintiffs-Appellants

v.

WILLIS LIMITED; WILLIS OF COLORADO, INCORPORATED,

Defendants-Appellees

CONSOLIDATED WITH 17-11128

ANA LORENA NUILA DE GADALA-MARIA, Individual; JOSE NUILA, Individual; JOSE NUILA FUENTES, individual; GLADYS BO LLA DE

NUILA, Individual; GLADYS ELENA NUILA DE PONCE , Individual, et al

Plaintiffs-Appellants

v.

WILLIS LIMITED, a United Kingdom Company; WILLIS OF COLORADO, INCORPORATED, a Colorado Corporation

Defendants-Appellees

CONSOLIDATED WITH 17-11129

CARLOS TISMINESKY, Individual; RACHEL TISMINESKY, Individual; FELIPE BRONSTEIN, Individual; ETHEL TISMINESKY DE BRONSTEIN, Individual; GUY GERBY, Individual; VICENTE JUARISTI SUAREZ, Individual; AMPARO MATEO LONGARELA, Individual; SALVADOR GAVILAN, Individual; LARRY FRANK, Individual; MERCEDES BITTAN, Individual; OMAIRA BERMUDEZ, Individual,

Plaintiffs-Appellants

v.

WILLIS LIMITED; WILLIS OF COLORADO, INCORPORATED,

Defendants-Appellees

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

PETITION FOR REHEARING

Before HIGGINBOTHAM, GRAVES, and WILLETT, Circuit Judges.

PATRICK E. HIGGINBOTHAM, Circuit Judge:

Treating the Petition for Rehearing En Banc as a petition for panel rehearing, the petition is GRANTED. We withdraw the opinions of July 22, 2019,[1] and substitute the following opinions:

I.

The Securities and Exchange Commission filed a complaint in the Northern District of Texas against Robert Allen Stanford, the Stanford International Bank, and other Stanford entities, alleging "a massive, ongoing fraud." Invoking the court's long-held statutory authority, the Commission requested that the district court take custody of the troubled Stanford entities and delegate control to an appointed officer of the court. The court did so, appointing Ralph Janvey as receiver to "collect" and "marshal" assets owed to the Stanford entities, and to distribute these funds to their defrauded investors to honor commitments to the extent the receiver's efforts recouped monies from the Ponzi-scheme players.

The receiver has pursued persons and entities allegedly complicit in Stanford's Ponzi scheme. Through settlements with these third parties, the receiver retrieved investment losses, which it then distributed pro rata to investors through a court-supervised distribution process. Four years into this ongoing process, the receiver sued two insurance brokers, not upon contracts of insurance, but for participating in the Ponzi scheme. As with the receiver's other suits, monies it recovered from this suit would be distributed by the receiver pro rata to investor claimants. After years of litigation, the two companies, negotiating for complete peace, agreed to

[1] 931 F.3d 382.

settle conditioned on bar orders enjoining further Ponzi-scheme suits filed against them. The district court entered the bar orders and approved the settlements. Certain objectors bring this appeal challenging the district court's jurisdiction and discretion to enter the bar orders. We affirm.

II.

A.

The story is well known. Under the operation of Robert Allen Stanford, the Antigua-based Stanford International Bank issued certificates of deposit (SIB CDs) and marketed them throughout the United States and Latin America.[2] Stanford's financial advisors promoted SIB CDs by blurring the line between the Antiguan bank and Stanford's United States-based financial advisors, creating the impression that SIB CDs were better protected than similar investments backed by the Federal Deposit Insurance Corporation. Stanford trained its brokers to assure potential investors that the Bank's investments were highly liquid and achieved consistent double-digit annual returns, all under the protection of extensive insurance coverage.

Here, the receiver alleges that, to support their marketing activities, the Stanford entities purchased insurance policies with the assistance of their insurance brokers, Bowen, Miclette & Britt, Inc. (BMB) from the 1990s and Willis from 2004. In their marketing materials, Stanford entities then touted insurance policies covering the Bank presenting the Bank's unique insurance coverage, describing a gauntlet of audits and risk analyses the Bank passed to satisfy its insurers, and perpetuating the

[2] *United States v. Stanford*, 805 F.3d 557, 563–65 (5th Cir. 2015).

impression that Bank deposits were fully insured. They were distributed widely and sent routinely to Stanford's client base.

BMB and Willis also provided letters for Stanford financial advisors. These letters described the Stanford International Bank's management as "first class business people" and claimed the brokers "placed" Lloyd's of London insurance policies for the Bank. The letters and promotional materials did not disclose the policies' true coverage. These were the joint product of Stanford and the insurance brokers. Stanford employees drafted the letters, which Willis and BMB then placed on their own letterhead. The connections between Stanford and the defendants ran deep: BMB's letters were signed by a BMB "financial specialist" who was also a Stanford board member.[3] Stanford brokers then sent these letters to current and prospective investors.

The letters were a key part of the successful marketing efforts that drove the Ponzi scheme, as insurance played a central role in the Bank's overall attractiveness to investors. Prospective investors who viewed the letters, as well as the Bank's client base more generally, were drawn to the combination of relatively high rates of return and purportedly comprehensive insurance coverage. Over two decades, the Bank issued more than $7 billion in SIB CDs to investors.

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[3] *See, e.g.*, BMB Letter at 7–8, *Sec. & Exch. Comm'n v. Stanford Int'l Bank Ltd.*, No. 3:09-CV-00298-N (N.D. Tex. Dec. 29, 2016), ECF No. 2465-6 (signed by Robert S. Winter); *see also Certain Underwriters at Lloyd's of London v. Winter*, No. 3:15-CV-01997-N, 2015 WL 12732628, at *1 (N.D. Tex. Nov. 4, 2015) ("Before his death in 2014, Robert S. Winter was a Director of Stanford International Bank, Ltd. ('SIBL') from 1998 to 2009.").

Maturing CDs were redeemed with the funds of new investors.[4] Deposits were meanwhile commingled and allocated to illiquid investments, primarily in Antiguan real estate—a portfolio monitored not by a team of professional analysts, but by only two individuals, Robert Allen Stanford and James Davis, the Bank's chief financial officer. BMB and Willis had performed insurance assessments on all aspects of Stanford's businesses, such that they enjoyed full understanding of operations. As a result, the brokers knew that SIB CDs financed an illiquid real-estate fund and that the quality and risk of the underlying investments had not been disclosed to investors. Moreover, on the Bank's behalf, the brokers had procured insurance policies that provided no meaningful coverage of deposits in the Bank. When the Ponzi scheme collapsed, $7 billion in deposits were protected by $50 million in insurance coverage. Presenting as a legitimate enterprise, it was nothing but a single, massive fraudulent scheme.

B.

The Stanford Ponzi scheme collapsed in the wake of the 2008 financial crisis, when the stream of new depositors ran dry.[5] 18,000 investors in SIB CDs lost around $5 billion. On February 17, 2009, the SEC filed a complaint against Robert Allen Stanford, the Bank, and other Stanford entities, alleging, inter alia, violations of the Securities Act of 1933, the Securities Exchange Act of 1934 and Rule 10b-5, and the Investment Company Act of 1940. The SEC sought an injunction against continued violations of the securities laws, disgorgement of illegal proceeds of the

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[4] *Stanford*, 805 F.3d at 564.

[5] *Id*.

fraudulent scheme, a freeze of Stanford assets, and a federal court order placing the Stanford entities into a receivership.

The district court appointed Ralph Janvey as receiver, with authority to take immediate, complete, and exclusive control of the Stanford entities and to recover assets "in furtherance of maximum and timely disbursement . . . to claimants."[6] The district court's Receivership Order enjoined all persons from "[t]he commencement or continuation . . . of any judicial, administrative, or other proceeding against the Receiver, any of the defendants [in the SEC action, such as Robert Allen Stanford and the Bank], the Receivership Estate, or any agent, officer, or employee related to the Receivership Estate, arising from the subject matter of this civil action," as well as from "[a]ny act to collect, assess, or recover a claim against the Receiver or that would attach to or encumber the Receivership Estate." The district court appointed an examiner to investigate and "convey to the Court such information as . . . would be helpful to the Court in considering the interests of the investors in any financial products, accounts, vehicles or ventures sponsored, promoted or sold by" the Stanford entities, and to serve as chair of the Official Stanford Investors' Committee to represent investors in the Stanford International Bank and to prosecute claims against third parties as assigned by the receiver.

The district court approved a process by which Stanford investors could file claims against the Stanford entities with the receiver and, if approved, participate in distributions of the receivership's assets. The order set a deadline of 120 days for

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[6] The 2009 Receivership Order was subsequently amended in 2010 and remained identical in all relevant parts.

claimants to submit proofs of claim against the receivership entities. The receiver would evaluate the claims, subject to an appeal process and judicial review in the district court. Would-be claimants who failed to submit claims by the deadline were enjoined from later asserting claims against the receivership and its property. The court ordered the receiver to provide notice of the deadline to all "Stanford International Bank, Ltd. certificate of deposit account holders who had open accounts as of February 16, 2009 and for whom the Receiver has physical addresses from the books and records of Stanford International Bank, Ltd." The court also ordered the receiver to publish notice on its website and in the *New York Times*, *Wall Street Journal*, *Financial Times*, *Houston Chronicle*, and newspapers in the British Virgin Islands, Antigua, and Aruba.

Of the Plaintiffs-Objectors, 477 of 509—approximately 94 percent—have and will continue to recover as claimants in the receivership's distribution process.[7] While the record does not reflect why the remaining 32 Plaintiffs- Objectors did not timely submit claims, they constitute less than two-tenths of one percent of the total 18,000 defrauded SIB CD investors.[8]

C.

The receiver identified and pursued persons and entities as participants in the Ponzi scheme to recover funds for distribution to investor-claimants. Armed

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[7] Of the 509 Plaintiffs-Objectors, 455 are confirmed claimants; 22 are claimants with the Antiguan liquidators and by agreement are treated as claimants by the receiver.

[8] Many of these 32 could not be confirmed as SIB CD investors by the receiver.

with a receiver's authority to provide total peace, it sued and settled with, among others, an accounting firm, BDO USA LLC, for $40 million; the Adams & Reese law firm and other individuals for around $4 million; and consultant Kroll LLC and its affiliate for $24 million. With each settlement, the district court entered a bar order requested by the parties, enjoining related claims against the defendants arising out of the Stanford Ponzi scheme. Receivership claimants, including Plaintiffs-Objectors, with approved claims recovered pro rata from the funds gathered in these receivership actions without challenge to the bar orders.

Five months after the appointment of the receiver, individual investor Samuel Troice and other investors sued in the district court seeking certification of a class of SIB CD investors against BMB and Willis of Colorado and related entities ("the Original Troice Action").[9] The action sought recovery of their losses from the Ponzi scheme under the Texas Securities Act and theories of negligence and fraud. In 2011, the district court dismissed the case, holding that the claims were precluded by the Securities Litigation Uniform Standards Act (SLUSA). This Court reversed in a consolidated appeal,[10] and the Supreme Court affirmed in *Chadbourne & Parke LLP v. Troice.*[11] The Supreme Court held that SLUSA's prohibition on state-law class actions alleging fraud in "the purchase or sale of a covered security" did not preclude the claims regarding the purchase or sale of SIB CDs, which were not publicly traded and thus not "covered"

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[9] In December 2009, the Troice Plaintiffs' case was consolidated with a similar action filed by SIB CD investor Manuel Canabal.

[10] *Roland v. Green*, 675 F.3d 503, 524 (5th Cir. 2012).

[11] 571 U.S. 377, 395–97 (2014).

for SLUSA purposes.[12] The case was remanded to district court for further proceedings.[13]

In October 2013, Troice and another individual investor, Manuel Canabal, joined the receiver's prosecution of a case against the same insurance brokers. Together with these two individuals and the Investors' Committee, the receiver filed a complaint against Willis of Colorado and its affiliates[14] and a month later amended the complaint to add claims against BMB.[15] The receiver and the Investors'

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[12] *Id.*

[13] In November 2012, Troice and two other individual investors joined the receiver and Investors' Committee in an action bringing investor class claims and receivership estate claims against Stanford's lawyers at the Greenberg Traurig firm. Complaint, *Janvey v. Greenberg Traurig, LLP*, No. 3:12-cv-04641-N-BQ (N.D. Tex. Nov. 15, 2012), ECF No. 1. On the defendants' motion for judgment on the pleadings, the district court held that under Texas's attorney-immunity doctrine it lacked jurisdiction over the investor-plaintiffs' class claims, since these plaintiffs were non-clients and the conduct at issue occurred within the scope of the attorney's representation of a client. *Official Stanford Investors Comm. v. Greenberg Traurig, LLP*, 2017 WL 6761765, at *3 (N.D. Tex. Dec. 5, 2017). The district court dismissed Troice's and the other investor plaintiffs' claims against Greenberg Traurig, allowing the receiver and Investors' Committee to proceed on the estate claims. *Id.* Troice and the investor plaintiffs appealed, and this court affirmed. *Troice v. Greenberg Traurig, LLP*, 2019 WL 1648932, at *1 (5th Cir. Apr. 17, 2019). The receiver and Investors' Committee did not participate in the appeal.

[14] In a related case, the plaintiffs also brought and settled claims against Amy Baranoucky, the Stanford entities' Client Advocate within Willis. *Janvey v. Willis of Colo., Inc.*, No. 3:113-cv-03980-N-BQ (N.D. Tex. Aug. 23, 2017), ECF No. 134.

[15] They also brought and settled claims against Robert Winter, the BMB insurance specialist who served on the board of the Stanford International Bank. Notice of Settlement, *Janvey v.*

Committee sought to recover losses from the Ponzi-scheme on behalf of the estate under six theories:[16]

1) that Willis and BMB knowingly or recklessly aided, abetted, or participated in the Stanford directors' and officers' breaches of fiduciary duties towards the receivership entities, resulting in exponentially increased liabilities and the misappropriation of billions of dollars;

2) that Willis and BMB violated their duty of care towards the receivership entities by enabling and participating in the Stanford directors' and officers' Ponzi scheme, resulting in exponentially increased liabilities and the misappropriation of billions of dollars;

3) that Willis and BMB were unjustly enriched by proceeds of the Ponzi scheme paid out to them by Stanford's directors and officers—transfers made with the intent to hinder, delay, or defraud the receivership entities;[17]

4) that Willis and BMB knowingly or recklessly aided, abetted, or participated in the Stanford directors' and officers' fraudulent transfers of receivership entities' assets to third parties, including Stanford's insurers, the recipients of

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Greenberg Traurig, LLP, No. 3:12-cv-04641-N-BQ (N.D. Tex. Nov. 7, 2016), ECF No. 220.

[16] The Troice Plaintiffs attacked the Ponzi scheme with claims for violations of the Texas Securities Act ("TSA"); aiding and abetting violations of the TSA; participation in a fraudulent scheme; civil conspiracy; violations of the Texas Insurance Code ("Insurance Code"); common law fraud; negligent misrepresentation; negligence/gross negligence; and negligent retention/negligent supervision.

[17] This claim is asserted by the Investors' Committee.

Stanford's investments in ventures and real estate, and Allen Stanford himself, with the intent to hinder, delay, or defraud the receivership entities;

5) that Willis and BMB breached their duties of care to the receivership entities in their hiring, supervision, and retention of employees who issued comfort letters in furtherance of the Stanford Ponzi scheme, causing exponentially increased liabilities and the misappropriation of billions of dollars;

6) that Willis and BMB conspired with Stanford directors and officers to use insurance as a marketing tool to sell SIB CDs in furtherance of the Ponzi scheme, harming the receivership entities. The district court dismissed this civil conspiracy claim, however, holding that the receiver and the Investors' Committee failed to allege the requisite state of mind to sustain the claim.

In March 2014, the district court consolidated the Receivership Action and the Original Troice Action for purposes of discovery, keeping the cases on separate dockets.

D.

Individual investors filed three separate lawsuits against BMB and Willis, seeking to recover their Ponzi scheme losses. On February 14, 2013, five groups of individual investors (collectively "the Florida Plaintiffs-Objectors") filed lawsuits against Willis in a Florida state court, seeking compensation for their alleged Ponzi-scheme losses, in excess of $130 million, under common law theories of negligence and fraud. Willis removed these cases to federal court, where they were transferred to Judge Godbey in the

Northern District of Texas. The district court remanded one of the cases to Florida state court for lack of diversity, subject to a stay, and kept the remaining cases.

In 2009 and 2011, two groups of individual investors ("the Texas Plaintiffs-Objectors" collectively) filed lawsuits against Willis and BMB in Texas state court,[18] seeking recovery of their alleged Ponzi-scheme losses, in excess of $88 million under the Securities Act of 1933, the Texas Insurance Code, the Texas Securities Act, the Colorado Consumer Protection Act, and common-law theories of negligence and fraud. Willis and BMB removed these cases to federal court, where they were transferred to Judge Godbey. In both cases, the district court granted plaintiffs' motions for remand based on procedural defects in removal,[19] but also held that the plaintiffs had violated the Receivership Order's injunction against suits encumbering receivership assets.[20] It held that the cases would remain stayed on remand under the terms of the Receivership Order because, "to the extent Defendants are ever held liable, any proceeds of the claim are potential receivership assets The Court will not condone or allow Stanford investors to race for Receivership assets as the Plaintiffs attempt to do here."[21] In the second of these cases, the

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[18] *Rupert v. Winter*, 2012 WL 13102348, at *1 (N.D. Tex. Jan. 24, 2012); *Rishmague v.Winter*, 2014 WL 11633690, at *1 (N.D. Tex. Sept. 9, 2014), aff'd, 616 F. App'x 138 (5th Cir. 2015).

[19] *Rupert*, 2012 WL 13102348 at *3–4; *Rishmague*, 2014 WL 11633690 at *2.

[20] *Rupert*, 2012 WL 13102348 at *7; *Rishmague*, 2014 WL 11633690 at *3.

[21] *Rupert*, 2012 WL 13102348 at *9; *Rishmague*, 2014 WL 11633690 at *4.

plaintiffs appealed the district court's refusal to lift the litigation stay, and this Court affirmed, recognizing "[']the importance of preserving a receivership court's ability to issue orders preventing interference with its administration of the receivership property.'"[22]

Finally, in 2016, a group of Stanford investors ("the Able Plaintiffs- Objectors") filed a suit against Willis in the Northern District of Texas under common law and statutory theories, seeking recovery of their alleged Ponzi- scheme losses in excess of $135 million.[23]

E.

Meanwhile, the receiver and Investors' Committee continued prosecuting their claims against Willis and BMB. After years of litigation, thousands of hours of investigating the claims, and two mediations, the parties to the Receivership Action agreed to terms of settlement—a release of claims against BMB for $12.85 million and Willis for $120 million, all to be paid into the receivership and distributed to receivership claimants who held SIB CDs as of February 2009. Both BMB and Willis conditioned their agreement on global resolution of claims arising out of the Stanford Ponzi scheme. Specifically, they conditioned agreement on the district court entering bar orders enjoining Stanford-Ponzi-scheme-related claims against them. Troice and Canabal do not

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[22] *Rishmague v. Winter*, 616 F. App'x 138, 139 (5th Cir. 2015) (unpublished) (quoting *Schauss v. Metals Depository Corp.*, 757 F.2d 649, 654 (5th Cir.1985)).

[23] The Able Plaintiffs-Objectors also included five individual investors who would have destroyed diversity in the litigation in the Northern District of Texas. Those five investors therefore joined an existing suit by Stanford investors against Willis in Harris County, Texas.

challenge the settlement, and release any claims except their right to participate in the distribution of the receivership.

In November 2016, the district court gave notice of the settlement to interested parties. In August 2017, the district court approved the settlements and entered the bar orders over the objections of the Florida, Texas, and Able Plaintiffs-Objectors. The Plaintiffs-Objectors appeal.

III.

A.

The Plaintiffs-Objectors argue that the district court lacked subject matter jurisdiction to bar claims not before the court. Alternatively, they argue the bar orders were an improper exercise of the district court's power over the receivership. We review the district court's subject matter jurisdiction de novo[24] and review the settlement for abuse of discretion.[25]

1.

a.

Equity receiverships are older than this country and were looked to in the aftermath of the 1929 financial crash, when Congress created the SEC to protect investors and financial markets. Drawing upon the explicit provisions of Article III, in turn drawn from England's Chancery Court, Congress conferred jurisdiction on the district courts over SEC enforcement actions, including both "suits in equity" and actions at law.[26] In so doing, it granted the SEC

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[24] *See Crane v. Johnson*, 783 F.3d 244, 250 (5th Cir. 2015).

[25] *SEC v. Safety Fin. Serv., Inc.*, 674 F.2d 368, 373 (5th Cir. 1982).

[26] 15 U.S.C. § 77v(a) ("The district courts of the United States . . . shall have jurisdiction of offenses and violations under this

access to the courts' full powers, including use of the traditional equity receivership, to coordinate the interests in a troubled entity and to ensure that its assets are fairly distributed to investors.[27] These implicit authorizations of receiverships are consistent with the more general express authorization Congress provided in 28 U.S.C. § 3103. Otherwise stated, the

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subchapter and under the rules and regulations promulgated by the Commission in respect thereto of all suits in equity and actions at law brought to enforce any liability or duty created by this subchapter."); *Id.* § 78aa(a) ("The district courts of the United States . . . shall have exclusive jurisdiction of violations of this chapter or the rules and regulations thereunder, and of all suits in equity and actions at law brought to enforce any liability or duty created by this chapter or the rules and regulations thereunder."); *see also* James R. Farrand, *Ancillary Remedies in SEC Civil Enforcement Suits*, 89 HARV. L. REV. 1779, 1782 (1976) ("[T]he 1933 and 1934 Securities Acts[] have specifically conferred equity jurisdiction on the courts").

[27] *SEC v. Wencke*, 783 F.2d 829, 837 n.9 (9th Cir. 1986) ("Our court, like many others, has recognized that as part of courts' equitable powers under the Securities Acts of 1933 and 1934, it may impose receiverships in securities fraud actions to prevent further dissipation of defrauded investors' assets."); *cf. SEC v. Manor Nursing Centers, Inc.*, 458 F.2d 1082, 1103 (2d Cir. 1972) ("It is now well established that Section 22(a) of the 1933 Act, 15 U.S.C. § 77v(a) (1970), and Section 27 of the 1934 Act, 15 U.S.C. § 78aa (1970), confer general equity powers upon the district courts."); *Janvey v. Alguire*, No. 3:09-CV-0724-N, 2014 WL 12654910, at *16 (N.D. Tex. July 30, 2014) (collecting cases); *id.* at *17 ("The purpose of federal equity receiverships is . . . to marshal assets, preserve value, equitably distribute to creditors, and, either reorganize, if possible, or orderly liquidate."); *see also* Farrand, *Ancillary Remedies, supra* note 25, at 1788 (observing that the equity receivership has been recognized "as one means to effectuate the purposes of a statutory scheme of regulation.").

deploy of "[f]ederal equity receiverships, despite the name," nests in "a federal statutory framework."[28]

Exercising their jurisdiction under the securities laws, federal district courts can utilize a receivership where a troubled entity, bedeviled by their violation, will be unable to satisfy all of its liabilities to similarly situated investors in its securities.[29] Without a receiver, investors encounter a collective-action problem: each has the incentive to bring its own claims against the entity, hoping for full recovery; but if allinvestors take this course of action, latecomers will be left empty-handed. A disorderly race to the courthouse ensues, resulting in inefficiency as assets are dissipated in piecemeal and duplicative litigation. The results are also potentially iniquitous, with vastly divergent results for similarly situated investors.

So it is that at the behest of the SEC the district court may take possession of the entity and its assets and vest control in a receiver.[30] The receiver is not an agent of the parties, nor is he like any other party affected by the wrongdoing of the entity's leaders—in this case, by way of a classic Ponzi scheme. He is "an officer or arm of the court . . . appointed to assist the court in protecting and preserving, for the benefit of all parties concerned, the properties in the court's custody[.]"[31]

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[28] *Alguire*, 2014 WL 12654910 at *14.

[29] *Liberte Capital Grp., LLC v. Capwill*, 462 F.3d 543, 552–53 (6th Cir. 2006) ("The inability of a receivership estate to meet all of its obligations is typically the sine qua non of the receivership.").

[30] *Atl. Tr. Co. v. Chapman*, 208 U.S. 360, 370–71 (1908).

[31] *Crites, Inc. v. Prudential Ins. Co. of Am.*, 322 U.S. 408, 414 (1944); *see Certain Underwriters at Lloyds London v. Perraud*, 623 F. App'x 628, 637 (5th Cir. 2015) (unpublished) ("[A] receiver

Once a receiver takes control of a corporation whose officers ran a Ponzi scheme, the corporation is liberated from the control of those wrongdoers. As Judge Posner put it, the corporation is no longer the "evil zombie[]" of the malefactors.[32] The corporation is now "[f]reed from [their] spell" and is under the receiver's control.[33] The receiver, standing in the shoes of the injured corporations,[34] is entitled to pursue the corporation's claims "for the benefit not of [the wrongdoers] but of innocent investors."[35] The receiver is therefore allowed to curb investors' individual advantage-seeking in order to reach settlements for the aggregate benefit of investors under the court's supervision. As directed by the court, a receiver may systematically use ancillary litigation against third-party defendants to gather the entity's assets. Once gathered, these assets are distributed through a court-supervised administrative process.[36]

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is 'not an agent of the parties,' and is instead 'considered to be an officer of the court.'" (quoting 12 CHARLES A. WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 2981 (2d ed. 2015)).

[32] *Scholes v. Lehmann*, 56 F.3d 750, 754 (7th Cir. 1995).

[33] Id.

[34] *Matter of Still*, 963 F.2d 75, 77 (5th Cir. 1992) (explaining that a receiver "stands in the shoes of the failed bank, marshals the assets, and administers a fund"). Here, the receiver asserts the Stanford entities' claims against BMB and Willis. Through their misrepresentations, the insurers actively participated in Robert Allen Stanford's scheme to unlawfully employ the Stanford entities in the Ponzi scheme. In so doing, BMB and Willis breached their fiduciary duties to the Stanford entities.

[35] *Scholes*, 56 F.3d at 754.

[36] *Liberte*, 462 F.3d at 551 ("The receiver's role, and the district court's purpose in the appointment, is to safeguard the disputed assets, administer the property as suitable, and to assist the

For this exercise, the federal district courts draw upon "the power . . . [to] impose a receivership free of interference in other court proceedings."[37] The receivership's role is undermined if investor-claimants jump the queue, circumventing the receivership in an attempt to recover beyond their pro rata share. The court's powers include "orders preventing interference with its administration of the receivership property."[38] As we have stated:

> Courts of Appeals have upheld orders enjoining broad classes of individuals from taking any action regarding receivership property. Such orders can serve as an important tool permitting a district court to prevent dissipation of property or assets subject to multiple claims in various locales, as well as preventing piecemeal resolution of issues that call for a uniform result.[39]

These can include both stays of claims in other courts against the receivership[40] and bar orders foreclosing suit against third-party defendants with

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district court in achieving a final, equitable distribution of the assets if necessary.").

[37] *SEC v. Wencke*, 622 F.2d 1363, 1372 (9th Cir. 1980).

[38] *Schauss v. Metals Depository Corp.*, 757 F.2d 649, 654 (5th Cir. 1985); *SEC v. Stanford Int'l Bank, Ltd.*, 424 F. App'x 338, 340 (5th Cir. 2011) (unpublished) ("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 action.").

[39] *Schauss*, 757 F.2d at 654 (internal quotation mark and citation omitted); *see also SEC v. Byers*, 609 F.3d 87, 92 (2d Cir. 2010) ("An anti-litigation injunction is simply one of the tools available to courts to help further the goals of the receivership.").

[40] *See Schauss*, 757 F.2d at 653; *Byers*, 609 F.3d at 93; *Liberte,* 462 F.3d at 551–52.

whom the receiver is also engaged in litigation.[41] Accordingly, at an earlier stage in the litigation we affirmed the district court's order enjoining the Texas Plaintiffs-Objectors from prosecuting claims against Willis during the pendency of the receiver's action.[42]

b.

Of course, there are limits to a receivership court's power, here limits that inhere in the focused mission of the Securities Acts, and born of this reality—at its core—the receivership court cannot reach claims that are independent and non-derivative and that do not involve assets claimed by the receivership.[43] As we will explain, the bar orders here, as applied to the objecting investors, fall squarely within these limits: The objecting investors can participate in the receivership process, their claims are derivative of and dependent on the receiver's claims, and their suits directly affect the receiver's assets.

SEC v. Kaleta and *SEC v. DeYoung* are fact-bound cases that illustrate both the central role of the federal district court and the limits on that court's authority. In *Kaleta*, the SEC initiated an enforcement action against Kaleta Capital Management and related entities, alleging a fraudulent scheme.[44] As here, the district court appointed a receiver to take custody of

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[41] *SEC v. Kaleta*, 530 F. App'x 360, 362 (5th Cir. 2013) (unpublished).

[42] *Rishmague v. Winter*, 616 F. App'x 138 (5th Cir. 2015) (unpublished).

[43] *SEC v. Stanford Int'l Bank*, 927 F.3d 830 (5th Cir. 2019) (hereinafter *Lloyds*).

[44] *See* 530 F. App'x 360 (5th Cir. 2013) (unpublished); *SEC v. Kaleta*, 2012 WL 401069, at *1 (S.D. Tex. Feb. 7, 2012).

and represent the troubled Kaleta entities.[45] Pursuant to its appointment order, the Kaleta receiver sued the third-party Wallace Bajjali Entities to recoup proceeds of Kaleta's alleged violation of the federal securities laws. After months of investigation and negotiation, the parties reached a proposed settlement, under which the defendants would exchange payment for the receiver's release of claims,[46] conditioned on a bar order enjoining all other claims against the Wallace Bajjali Entities by Kaleta's investors—non-parties—arising out of the fraudulent scheme.[47] A number of Kaleta investors objected to the settlement, arguing the district court lacked authority to bar claims not before the court.[48] When the district court approved the settlement and entered the bar order, the objectors appealed.

We upheld the bar order, explaining that it was necessary to guarantee settlement and to ensure that key members of the fraudulent scheme paid the receivership.[49] The bar order's scope was limited, reaching only those claims arising from the allegedly fraudulent notes issued by the settling parties.[50]

That is, it was limited to duplicative claims arising from the same fraudulent scheme. And the

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[45] *Id.*

[46] *Id.* at *2.

[47] *Id.* at *3.

[48] *Id.* at *7.

[49] *Kaleta*, 530 F. App'x at 362–63; *Lloyds*, 927 F.3d at 843 (noting that the bar order in *Kaleta* "protected the assets of the receivership estate" by "forestalling a race to judgment that would have diminished the recovery of all creditors against receivership assets").

[50] *Kaleta*, 530 F. App'x at 362–63.

settlement permitted the objecting investors to participate in the receiver's distribution process.[51]

In *SEC v. DeYoung*, the SEC sued retirement-account administrator APS, and, as here, the district court took custody of the troubled company and appointed a receiver.[52] The receiver then pursued a third party, First Utah Bank, seeking recovery for the Bank's failure to protect APS account holders.[53] The suit between the receiver and First Utah Bank settled,[54] conditioned on the district court's approval of a bar order that would enjoin suits by non-party APS account holders against First Utah Bank.[55] Individual APS account holders objected, arguing the district court exceeded its authority because it barred claims "belong[ing] exclusively to the individual Account Holders" not before the court; the receiver, they argued, lacked standing to assert these claims.[56] The Tenth Circuit disagreed, finding that the receiver had standing to sue First Utah Bank on behalf of the receivership entity and that the court had subject matter jurisdiction to enter the bar order.[57] The court's equitable powers authorized it to bar claims "substantially identical" to those brought by the receiver.[58] The account holders' and receiver's claims were said to be "substantially identical" because they

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[51] *Id.*

[52] 850 F.3d 1172, 1175 (10th Cir. 2017).

[53] *Id.* at 1176.

[54] *Id.* at 1175.

[55] *Id.* at 1178.

[56] *Id.* at 1180–81.

[57] *Id.* at 1181–82.

[58] *Id.* at 1176–83.

involved "the same loss, from the same entities, related to the same conduct, and arising out of the same transactions and occurrences by the same actors."[59]

c.

The case at hand is one of several ancillary suits under the primary SEC action to enforce the federal securities laws against Robert Allen Stanford and his Ponzi-scheme co-conspirators.[60] There is no dispute that the receiver and Investors' Committee had standing to bring their claims against Willis and BMB. They bring only the claims of the Stanford entities—not of their investors[61]—alleging injury to the Stanford entities, including the unsustainable

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[59] *Id*. at 1176. As pointed out in *Lloyds*, the *DeYoung* Court also gave significant weight to First Utah's contractual right to indemnification from APS. *Id.* at 1183. This right meant that APS, now controlled by the receiver, could be required to indemnify First Utah for claims brought by the objecting account holders. This was significant because the barred claimants would have been paid by the Bank, draining the receiver's assets as a result of the indemnification. *Id.*

[60] *Janvey v. Reeves-Stanford*, 2010 WL 11463486, at *3 (N.D. Tex. Nov. 18, 2010) (quoting *Crawford v. Silette*, 608 F.3d 275, 278 (5th Cir. 2010) ("[T]he initial suit which results in the appointment of the receiver is the primary action and . . . any suit which the receiver thereafter brings in the appointment court in order to execute such duties is ancillary to the main suit ").

[61] *Janvey v. Democratic Senatorial Campaign Comm., Inc.*, 712 F.3d 185, 190 (5th Cir. 2013) ("[A] federal equity receiver has standing to assert only the claims of the entities in receivership, and not the claims of the entities' investor-creditors."); *Scholes*, 56 F.3d at 753 ("[A] receiver does not have standing to sue on behalf of the creditors of the entity in receivership. Like 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.").

liabilities inflicted by the Ponzi scheme. The receiver and Investors' Committee "allege that Defendants' participation in a fraudulent marketing scheme increased the sale of Stanford's CDs, ultimately resulting in greater liability for the Receivership Estate," and that defendants "harmed the Stanford Entities' ability to repay their investors." The receiver and Investors' Committee sought to recover for the Stanford entities' Ponzi-scheme harms, monies the receiver will distribute to investor-claimants. The district court had subject matter jurisdiction over these claims.

d.

The Plaintiffs-Objectors urge that their claims are independent and distinct from those asserted by the receiver and Investors' Committee. Some argue that the bar orders entail the district court's assertion of jurisdiction to settle their claims pending in other judicial proceedings and that their claims sound in tort or contract. They are mistaken. It is necessarily the case that where a district court appoints a receiver to coordinate interests in a troubled entity, that entity's investors will have hypothetical claims they could independently bring but for the receivership: the receivership exists precisely to gather such interests in the service of equity and aggregate recovery.

A few Plaintiffs-Objectors also assert that the bar orders cannot apply to their misrepresentation claims because the settling defendants had direct contact with them by way of letters misrepresenting Stanford's financial soundness. There are two problems with this argument. First, they do not cite, and we have not found, case law supporting this direct-versus indirect-contact distinction. Second, the unchallenged findings of the district court show that their contact—letters on the letterhead of the

defendant companies—was mediated by Stanford executives:

> The Willis and BMB Defendants allegedly aided Stanford's fraud by misrepresenting the safety and security of the SIBL CDs. In particular, they allegedly allowed Stanford employees to draft insurance endorsement letters that the Willis and BMB Defendants then placed on their own letterhead. Prospective Stanford investors received these letters as marketing tools designed to generate more investments in SIBL CDs. The Willis and BMB Defendants provided these letters despite allegedly knowing that Stanford was defrauding.[62]

Indeed, the letters provided at the hearing on the objectors' claims were signed by either a Stanford board member or a Willis employee.[63] Both were named in the Receiver's suit as participants in the Ponzi scheme, and both settled with the Receiver.[64] Other Plaintiffs-Objectors attempt to distinguish themselves with different theories of liability for the Ponzi scheme. They say, "Well, our suit is for fraud under state law," or, "We had direct contact."

This is word play. The only contact the objectors had was with the scheme in operation—the Ponzi scheme is a tissue of myriad lies and misrepresentations; a "direct contact" by receipt of a

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[62] *Zacarias*, No. 3:09-CV-00298-N, 2017 WL 9989250, at *1 (N.D. Tex. Aug. 23, 2017).

[63] *See* Defendants' Letters, *Zacarias*, No. 3:09-CV-00298-N, ECF Nos. 2465-2 to 4, 6, 14 to 16.

[64] *Janvey v. Willis*, 3:09-cv-01274-N-BQ (N.D. Tex. Nov. 7, 2016), ECF Nos. 279, 280.

letter framed by Bank employees and certified by either or both of the two defendant companies says nothing. The objectors were injured by the Ponzi scheme. These objecting investors rode the Receiver train until the end and then decided to hold up a settlement with a deep pocket.[65]

By entering the bar orders, the district court recognized the reality that, given the finite resources at issue in this litigation, Stanford's investors must recover Ponzi-scheme losses through the receivership distribution process. Stanford, Willis, and BMB are alleged to be co-conspirators in the Ponzi scheme. The receiver is suing them to recover for the additional liability Stanford incurred to its investors, allegedly by virtue of Willis's and BMB's participation in the scheme. In other words, Plaintiffs-Objectors' suits are derivative of and dependent on the receiver's claims and compete with the receiver for the dollars in Willis's and BMB's pockets. The Plaintiffs-Objectors'

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[65] It has been argued that our case is analogous to the Sixth Circuit's unpublished opinion in *Liberte Capital Grp., LLC v. Capwill*, 248 F. App'x 650 (6th Cir. 2007) (unpublished). In *Liberte*, the district court appointed a receiver to marshal the assets of two companies that had invested and served as escrow agents for funds obtained through the sale of fraudulent insurance policies. *Id.* at 651–52. Later, individual purchasers of those policies filed arbitration claims against their broker-dealers for fraudulently inducing them to buy the policies. The Sixth Circuit held that the receiver could not swallow individual purchasers' claims as part of the receivership estate because the receivership entities did not suffer any injury from the broker-dealers' conduct. *Id.* at 656. This is in stark contrast to our case, where the Stanford entities and individual investors were indisputably harmed by the insurers' misrepresentations of the Bank's financial soundness—they were part of the Ponzi scheme.

claims affect receivership assets because every dollar the Plaintiffs-Objectors recover from Willis and BMB is a dollar that the receiver cannot, frustrating the receiver's pro rata distribution to investors—a core element of its draw upon equity.

Willis and BMB negotiated for the bar orders as preconditions of their respective settlements. The brokers' incentives to settle are reduced—likely eliminated—if each SIB CD investor retains an option to pursue full recovery in individual satellite litigation. Such resolution is no resolution. And the costs of undermining this settlement are potentially large. The receivership—and thus qualifying investor claimants—would be deprived of $132 million in settlement proceeds. Continued prosecution of the receiver and Investors' Committee's suit against Willis and BMB could result in the same if not greater recovery, but this is speculation. Further, any potential value of the receiver's ultimate recovery must be reduced by the costs of prolonged litigation over the same assets, not only in the receiver's own action but also in the Plaintiffs-Objectors' myriad satellite suits, into which the receivership is likely to be drawn. Supposing that Willis, an allegedly deep-pocketed defendant, remains able to satisfy any judgment against it, the same cannot be said of BMB: continued litigation would eat away at the limited funds available under its "wasting" insurance policy.[66]

e.

Zacarias and *Lloyds* do not conflict. Each responded to distinct, critical differences in fact. *Lloyds* reviewed bar orders entered by the same

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[66] A "wasting" insurance policy has coverage limits that are reduced as defense costs are incurred.

receivership court in connection with the Stanford receiver's $65 million settlement with Lloyds and Arch Specialty Insurance Co.[67] The *Lloyds* bar orders enjoined third-party litigation against the defendant underwriters who had settled with the receiver.[68] These underwriters, unlike BMB and Willis, did not participate in the Ponzi scheme. And it was under those insurance policies that the receiver in *Lloyds* sued them. In response to the settlement, objectors challenged the bar orders. Two sets of objectors are relevant here: (1) former Stanford employees who were coinsured with Stanford by Lloyds and Arch; and (2) a group of Louisiana retirees—former investors defrauded by the Ponzi scheme—claiming a right to direct action under a state statute.

The first group, the former Stanford employees, sought coverage under the Lloyds and Arch policies to defend against the receiver's clawback suits.[69] They also brought state-law claims resulting from Lloyd's handling of their claims for coverage.[70] *Lloyds* held that the receivership court abused its discretion by barring the contractual claims without channeling them into the receivership trust's distribution process.[71]

Lloyds held that the extracontractual claims, on the other hand, could not properly be reached by the bar orders at all, as they were based on the insurers' conduct in denying the Stanford employees' claims for policy proceeds, a distinct tort injury not based on any

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[67] *Lloyds*, 927 F.3d 830 (5th Cir. 2019).

[68] *Id*. at 838.

[69] *See id*. at 845–47.

[70] *See id*. at 847–48.

[71] *Id*. at 847.

conduct in furtherance of the Ponzi scheme. These claims were independent of the receiver's claims and belonged only to the officers.

As to the Louisiana investors, *Lloyds* upheld the bar order, explaining that though styled as statutory claims under Louisiana's direct action law, their claims "amount[ed] to a redundant claim on receivership assets."[72] Further, because the investors had the opportunity to participate in the distribution of the receivership estate, their claims were adequately channeled. Much of *Lloyds* dealt with issues not presented in this case. The defendants in *Lloyds* did not participate in the Ponzi scheme; they only insured the Stanford entities. But the defendants here were active co-conspirators in the Ponzi scheme. Likewise, many of the *Lloyds* objectors were former Stanford employees suing to enforce insurance policies.[73] By contrast, the objectors here are defrauded investors. Once these facts are understood, the compatibility of the opinions is plain, for where these cases addressed analogous claims, they reached the same conclusion for the same reasons: Both affirm the receivership court's power to bar investors' claims for injuries they suffered as a direct result of the Ponzi scheme.[74] And we address only investors.[75]

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[72] *Id*. at 850.

[73] The employees' claims could not be asserted by the receiver. Indeed, they arose only after the Ponzi scheme had been detected and the receiver had commenced clawback suits against the objecting Stanford employees.

[74] The Louisiana retirees in *Lloyds* and all objectors here are Stanford investors.

[75] *Lloyds* noted that the receiver may not bar investor claims that do not implicate the policy proceeds because such claims would

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In this appeal we address only the effect of the Willis and BMB bar orders enjoining third-party investors' claims. The receiver initiated the suit, negotiated, and settled with Willis and BMB while empowered to deal with potential investor holdouts like the Plaintiffs-Objectors. These holdouts have been content for the receiver to pursue litigation for their benefit, then to participate as receivership claimants, collecting pro rata. Now, however, they ask to jump the queue, come what may to their fellow claimants who remain within the receivership distribution process. At bottom, the Plaintiffs-Objectors seek special treatment: their efforts to escape pro rata distribution, if successful, would recreate the collective-action problem that Congress sought to eliminate. The bar orders enjoining these investors' third-party claims fall well within the broad jurisdiction of the district court to protect the receivership res. The exercise of jurisdiction over a receivership is not an exercise of jurisdiction over other judicial proceedings. Rather, it permits the barring of such proceedings where they would undermine the receivership's operation.

2.

Again, the receivership solves a collective-action problem among the Stanford entities' defrauded investors, all suffering losses from the same Ponzi scheme. It maximizes assets available to them and facilitates an orderly and equitable distribution of

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not affect the receivership estate. *Id.* at 849. But this principle has no application here, where the objecting investors' claims have nothing to do with insurance policies but rather with the insurers' conduct as participants in the fraud and, as discussed above, would affect the receivership.

those assets. Allowing investors to circumvent the receivership would dissolve this orderly process—circumvention that must be foreclosed for the receivership to work. It was no abuse of discretion for the district court to enter the bar orders to effectuate and preserve the coordinating function of the receivership.

B.

Under the Anti-Injunction Act, "[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."[76] That is, "federal injunctive relief may be necessary to prevent a state court from so interfering with a federal court's consideration or disposition of a case as to seriously impair the federal court's flexibility and authority to decide that case."[77] Guided by principles of federalism, we "find[] a threat to the court's jurisdiction" where "a state proceeding threatens to dispose of property that forms the basis for federal in rem jurisdiction."[78]

The district court exercises jurisdiction over the receivership estate. The particular part of that res at issue here is $132 million receivable owed to the receivership, conditioned upon the BMB and Willis bar orders. When in 2009 the district court took the receivership estate into its custody, the res "[wa]s as much withdrawn from the judicial power of the other

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[76] 28 U.S.C. § 2283.

[77] Atl. Coast Line R. Co. v. Bhd. of Locomotive Engineers, 398 U.S. 281, 295 (1970).

[78] *Texas v. United States*, 837 F.2d 184, 186 n.4 (5th Cir. 1988); *see Newby v. Enron Corp.*, 302 F.3d 295, 301 (5th Cir. 2002).

[courts], as if it had been carried physically into a different territorial sovereignty."[79] The Plaintiffs-Objectors' suits in state court implicate that same res. The formal distinction between the Plaintiffs-Objectors' and the receivers' claims against the brokers arises from the receivership's mediating role, interposed by the district court between the investors and the assets belonging to the Stanford entities. The receiver sues the two brokers, as participants in the Ponzi scheme, on behalf of the Stanford entities so that assets owed to investors can be distributed to them administratively, through the distribution process rather than through their own piecemeal satellite litigations: "any proceeds of the [Plaintiffs-Objectors'] claim are potential receivership assets, falling squarely within the bounds of the Receivership Order."[80]

The bar orders here prevent Florida and Texas state-court proceedings from interfering with the res in custody of the federal district court. The bar orders aided the court's jurisdiction over the receivership entities, which remain in the custody of the court. The bar orders negotiated here were a legitimate exercises of the receiver's authority—indeed, the receiver's duty, all under the aegis of an Article III court.

C.

The Texas and Florida Plaintiffs-Objectors argue that the Willis bar order deprived them of their property (that is, their claims) without due process and without just compensation. This is a recasting of the jurisdictional argument we have rejected. The district

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[79] *Covell v. Heyman*, 111 U.S. 176, 182 (1884).

[80] *Rupert*, 2012 WL 13102348 at *7; *see also Rishmague*, 2014 WL 11633690 at *3.

court was empowered to bar judicial proceedings not before it to protect the receivership. In so doing, the court afforded the Plaintiffs-Objectors all the process due: notice and opportunity to be heard on the proposed settlement and bar orders—an opportunity they seized. They were not deprived of any entitlement to recovery: the bar orders channel investors' recovery associated with BMB and Willis through the receivership's distribution process. As SIB CD investors, Plaintiffs-Objectors were provided notice of the receivership's distribution process; they were afforded an opportunity to submit proofs of claim, and to dispute the receiver's disposition of their entitlements within the receivership's administrative distribution process, including judicial review. The district court's decision to channel the Texas and Florida Plaintiffs-Objectors' recovery into that receivership process does not deprive them of an entitlement to recover for Ponzi-scheme losses. All due process has been afforded.

D.

The Plaintiffs-Objectors challenge the settlement agreements and bar orders, inferring from the large settlement sums that these are "de facto class settlements" entered unlawfully without certification of a settlement class.[81] There is a kinship—at a high level—in function between the receivership and a hypothetical certified SIB CD investor class action: both offer means to pursue litigation in an aggregative form. In the former, the court channels recovery through its officer, the receiver, and retains power to

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[81] The Able Plaintiffs-Objectors also argue that in entering the Willis settlement, the Troice Parties violated their fiduciary duties to members of the putative class of SIB CD investors. The claim fails for the same reason as the other Rule 23 challenges.

bar parallel proceedings that would interfere. In the latter, investors pursue their entitlements via class representatives under the requirements of Rule 23. But, as Congress authorized in protection of its security markets, the district court appointed a receiver and did not certify an investor class. The Willis and BMB settlements bring monies ultimately to be distributed to all SIB CD investor-claimants through the receivership. There was no illicit class settlement, and the bar orders do not offend Rule 23.

E.

The Texas Plaintiffs-Objectors argue that the bar orders deny their right to a jury trial, retreading the jurisdictional argument we have addressed. Their argument presumes the Objector-Plaintiffs were otherwise entitled to pursue their independent action in state court unconstrained by the receivership court's bar order. We have explained why they have no such entitlement. The right to a jury does not create a right to proceed outside the receivership proceeding.

F.

The district court did not abuse its discretion in approving the BMB and Willis settlement agreements. The Texas Plaintiffs-Objectors argue that a "far greater recovery was possible," that the settlement was premature, and that SIB CD investors could have recovered 100 percent of their investments. This is at best speculative. The settlement was reached after years of investigation and litigation. There was no certainty in the outcome of the Receivership Action. The defendant brokers contested liability and insist they would continue to do so if the settlements are terminated, including a defensive narrative that they, like so many other persons and businesses, were

duped. It remained for the plaintiffs to prove their claims at trial, including proving the brokers' role in the Ponzi scheme without the benefit of an aiding and abetting violation under Rule 10b-5. The potential benefits of continued litigation must be discounted by the risk of failing in that proof or in overcoming defenses, together with attendant costs, mindful that to succeed it would not be enough for these private litigants to prove that the brokers "aided and abetted."[82] The district court considered tradeoffs the parties faced with the prospect of settlement and found the settlements "consistent with interests of both the receivership and the investors." The district court found no evidence of fraud or collusion and did not abuse its discretion in approving the settlements.

IV.

The core difficulty with Plaintiffs-Objectors' efforts to go it alone is that it would frustrate the central purposes of the receivership and confound the SEC's mission to achieve maximum recovery from the malefactors for distribution pro rata to all investors. We affirm the district court's approval of the BMB and Willis settlements and its entry of the corresponding bar orders enjoining the Plaintiffs-Objectors' third-party investor claims.

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[82] The SEC has the unique authority to use aider-and-abettor liability under § 10(b) of the Securities Exchange Act of 1934. *See Cent. Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164 (1994) (holding a private party may not maintain an aider-and-abettor suit under § 10(b)), *overridden in part by* Private Securities Litigation Reform Act of 1995, § 104, Pub. L. No. 104–67, 109 Stat. 737, 757 (reaffirming the SEC's authority to bring civil enforcement actions against aiders and abettors).

DON R. WILLETT, Circuit Judge, dissenting:

I share the majority's appreciation for this settlement's practical value. We agree too that for a receiver to have standing to resolve creditors' claims and for the district court to have subject-matter jurisdiction to issue a bar order, the creditors' claims must be "substantially identical" to the receiver's claims.[1] Our disagreement concerns a narrow issue: whether the Objectors' claims were the same as the Receiver's just because they both have origins in the same Ponzi scheme. In my judgment, the claims are distinct and thus beyond the district court's power.

* * *

Willis of Colorado, Inc., its affiliates, and Bowen, Miclette and Britt, Inc. injured the Stanford entities by failing to thwart the Ponzi scheme.[2] They turned a blind eye to Stanford officers' misdeeds—*inaction*. So the Receiver asserted breach of fiduciary duty and negligence claims against them. But Willis and BMB separately injured the Objectors. They sent the Objectors letters misrepresenting Stanford's soundness and its insurance coverage— *action*. So the

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[1] *See SEC v. Stanford International Bank, Ltd.*, 927 F.3d 830, 835–36 (5th Cir. 2019) ("The prohibition on enjoining unrelated, third-party claims without the third parties' consent . . . is a maxim of law not abrogated by the district court's equitable power to fashion ancillary relief measures."); *SEC v. DeYoung*, 850 F.3d 1172, 1178–79 (10th Cir. 2017) (finding that receiver had standing to settle individual victims' claims through a bar order where their claims involved "the same parties, the same conduct, the same actors, the same transactions and occurrences, the same existence of indemnity claims[,] . . . and the claims [were] all from the same loss" (quoting district court findings)).

[2] These facts are taken from the Receiver's and Objectors' pleadings. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992).

Objectors asserted fraud and negligent misrepresentation against them. The Objectors' injuries are separate from Stanford's, and they resulted from separate action—or inaction—by Willis and BMB.

The Receiver contends that the Objectors' claims are "factually intertwined" with its own. But having defendants in common (Willis and BMB) or having a common destination for the plunder (Stanford officers) does not make claims the same.[3] And the Objectors' right to participate in the receivership claims process does not change this. That process pays for *Stanford's* liability out of *Stanford's* assets. It will not and cannot cover *Willis and BMB*'s distinct liability to the Objector's for their separate, affirmative actions against the individual Objectors.

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Federal courts cannot decide a claim's fate outside the "honest and actual antagonistic assertion of rights."[4] For better or worse, the Objectors' claims are distinct from the Receiver's, meaning the district court lacked jurisdiction to adjudicate them, or to enjoin them. I would thus vacate the bar orders. As the majority does otherwise, I respectfully dissent.

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[3] *See, e.g.*, *N.Y. Life Ins. Co. v. Gillispie*, 203 F.3d 384, 387 (5th Cir. 2000) (requiring same "nucleus of operative fact" for claim identity).

[4] *United States v. Johnson*, 319 U.S. 302, 305 (1943) (quoting *Chi. & G.T. Ry. Co. v. Wellman*, 143 U.S. 339, 345 (1892)).

Appendix B

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 17-11073

July 22, 2019

ANTONIO JUBIS ZACARIAS; ROBERTO BARBAR

Plaintiffs-Appellants

v.

STANFORD INTERNATIONAL BANK, LIMITED

Defendant

BARRY L. RUPERT; CAROL RUPERT;. MICHAEL RISHMAGUE; LIONEL ALESSIO; DAN AULI PANOS, et al

Movants-Appellants

v.

OFFICIAL STANFORD INVESTORS COMMITTEE; MANUEL CANABAL; WILLIS , LIMITED; WILLIS OF COLORADO, INCORPORATED,

Interested Parties-Appellees

WILLIS GROUP HOLDINGS LIMITED; WILLIS NORTH AMERICA, INCORPORATED; AMY S. BARANOUCKY; BOWEN MICLETTE & BRITT, INCORPORATED; RALPHS. JANVEY; SAMUEL TROICE,

Appellees

v.

EDNA ABLE,

Interested Party-Appellant

CONSOLIDATED WITH 17-11114

THE OFFICIAL STANFORD INVESTORS COMMITTEE; SAMUEL TROICE, on their own behalf and on behalf of a class of all others similarly situated; MANUEL CANABAL, on their own behalf and · on behalf of a class of all others similarly situated,

Plaintiffs-Appellees

v.

CARLOS TISMINESKY; ROBERTO BARBAR; ANA LORENA NUILA DE GADALA-MARIA,

Plaintiffs-Appellants

v.

WILLIS OF COLORADO, INCORPORATED; WILLIS LIMITED; WILLIS GROUP HOLDINGS LIMITED; WILLIS NORTH AMERICA, INCORPORATED; AMY S. BARANOUCKY; BOWEN, MICLETTE & BRITT, INCORPORATED,

Defendants-Appellees

v.

BARRY L. RUPERT; CAROL RUPERT; MICHAEL RISHMAGUE; LIONEL ALESSIO; DAN AULI PANOS, EDNA ABLE; et al,

Appellants

v.

RALPH S. JANVEY, in his Capacity as Court-Appointed Receiver for Stanford Receivership Estate,

Appellee

CONSOLIDATED WITH 17-11122

EDNA ABLE; ROBERT C. AHDERS; RODRIGO RIVERA ALCAYAGA; DAVID ARNTSEN; CARLIE ARNTSEN; ET AL,

Plaintiff-Appellants

v.

WILLIS OF COLORADO, INCORPORATED; WGH HOLDINGS, LTD.; WILLIS LTD.,

Defendants-Appellees

CONSOLIDATED WITH 17-11127

ANTONIO JUBIS ZACARIAS. , Individual; ANA VIRGINIA GONZALEZ DE JUBIS, Individual; GLADIS JUBIS DE ACUNA, Individual; ERIC ACUNA JU BIS, Individual; TULIO CAPRILES, Individual; JORGE CASAUS HERRERO, Indi vidual; MARTHA BLANCHET, Individual; LUIS ZABALA, Individual; EMMA LOPEZ, Individual; ELBA DE LA TORRE, Individual,

Plaintiffs-Appellants

v.

WILLIS LIMITED; WILLIS OF COLORADO, INCORPORATED,

Defendants-Appellees

CONSOLIDATED WITH 17-11128

ANA LORENA NUILA DE GADALA-MARIA, Individual; JOSE NUILA, Individual; JOSE NUILA FUENTES, individual; GLADYS BO LLA DE

NUILA, Individual; GLADYS ELENA NUILA DE PONCE , Individual, et al

Plaintiffs-Appellants

v.

WILLIS LIMITED, a United Kingdom Company; WILLIS OF COLORADO, INCORPORATED, a Colorado Corporation

Defendants-Appellees

CONSOLIDATED WITH 17-11129

CARLOS TISMINESKY, Individual; RACHEL TISMINESKY, Individual; FELIPE BRONSTEIN, Individual; ETHEL TISMINESKY DE BRONSTEIN, Individual; GUY GERBY, Individual; VICENTE JUARISTI SUAREZ, Individual; AMPARO MATEO LONGARELA, Individual; SALVADOR GAVILAN, Individual; LARRY FRANK, Individual; MERCEDES BITTAN, Individual; OMAIRA BERMUDEZ, Individual,

Plaintiffs-Appellants

v.

WILLIS LIMITED; WILLIS OF COLORADO, INCORPORATED,

Defendants-Appellees

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

Before HIGGINBOTHAM, GRAVES, and WILLETT, Circuit Judges.

PATRICK E. HIGGINBOTHAM, Circuit Judge:

The Securities and Exchange Commission filed a complaint in the Northern District of Texas against Robert Allen Stanford, the Stanford International Bank, and other Stanford entities, alleging "a massive, ongoing fraud." Invoking the court's long-held statutory authority, the Commission requested that the district court take custody of the troubled Stanford entities and delegate control to an appointed officer of the court. The court did so, appointing Ralph Janvey as receiver to "collect" and "marshal" assets owed to the Stanford entities, and to distribute these funds to their defrauded investors to honor commitments to the extent the receiver's efforts recouped monies from the Ponzi-scheme players.

The receiver has pursued persons and entities allegedly complicit in Stanford's Ponzi scheme. Through settlements with these third parties, the receiver retrieved investment losses, which it then distributed pro rata to investors through a court-supervised claims process. Four years into this ongoing process, the receiver sued two of Stanford's insurance brokers as participants in the fraudulent scheme. As with the receiver's other suits, monies it recovered from this suit would be distributed by the receiver pro rata to investor claimants. After years of litigation, the insurance brokers, negotiating for complete peace, agreed to settle conditioned on bar orders enjoining related Ponzi-scheme suits filed against the brokers. The district court entered the bar orders and approved the settlements. Certain objectors bring this appeal challenging the district court's jurisdiction and discretion to enter the bar orders. We affirm.

I.

A.

The story is well known. Under the operation of Robert Allen Stanford, the Antigua-based Stanford International Bank issued certificates of deposit, (SIB CDs) and marketed them throughout the United States and Latin America.[1] Stanford's financial advisors promoted SIB CDs by blurring the line between the Antiguan bank and Stanford's United States-based financial advisors, creating the impression that SIB CDs were better protected than similar investments backed by the Federal Deposit Insurance Corporation. Stanford trained its brokers to assure potential investors that the Bank's investments were highly liquid and achieved consistent double-digit annual returns, all under the protection of extensive insurance coverage.

Here, the receiver alleges that, to support their marketing activities, the Stanford entities purchased insurance policies through their insurance brokers, Bowen, Miclette & Britt, Inc. (BMB) from the 1990s and Willis from 2004. As the receiver describes their role, the Stanford entities then touted insurance policies covering the Bank in its marketing materials. Promotional materials presented the Bank's unique insurance coverage, describing a gauntlet of audits and risk analyses the Bank passed to satisfy its insurers, perpetuating the impression that Bank deposits were fully insured. They were distributed widely and were routinely distributed to Stanford's client base. BMB and later Willis also provided letters of coverage to Stanford financial advisors, often originally drafted by Stanford personnel. These letters

[1] *United States v. Stanford*, 805 F.3d 557, 563–65 (5th Cir. 2015).

described the Stanford International Bank's management as "first class business people," and described how the brokers "placed" Lloyd's of London insurance policies for the Bank. Letters and promotional materials did not disclose the policies' true coverage.

Stanford's marketing efforts succeeded. Insurance played a central role in the Bank's overall attractiveness to investors. Not only prospective investors who directly viewed the brokers' letters, but also the Bank's client base more generally, were drawn to the combination of relatively high rates of return and purportedly comprehensive insurance coverage. Over two decades, the Bank issued more than $7 billion in SIB CDs to investors.

Maturing CDs were redeemed with new investors' principal payments.[2] Deposits were meanwhile commingled and allocated to illiquid investments, primarily in Antiguan real estate—a portfolio monitored not by a team of professional analysts, but by only two individuals, Robert Allen Stanford and James Davis, the Bank's chief financial officer. BMB and Willis performed insurance assessments on all aspects of Stanford's businesses, such that they enjoyed full understanding of operations. In the process, the brokers learned that SIB CDs financed an illiquid real-estate fund, and that the quality and risk of the underlying investments had not been disclosed to investors. Moreover, the brokers procured policies that provided no meaningful coverage of deposits in the Bank. When the Ponzi scheme collapsed, $7 billion in deposits were protected by $50 million in insurance

[2] *Id.* at 564.

coverage. Presenting as a legitimate enterprise, it was nothing but a single, massive fraudulent scheme.

B.

The Stanford Ponzi scheme collapsed in the wake of the 2008 financial crisis, when the stream of new depositors ran dry.[3] Among the defrauded investors, 18,000 SIB CD holders lost around $5 billion. On February 17, 2009, the SEC filed its complaint against Robert Allen Stanford, the Bank, and other Stanford entities, alleging, inter alia, violations of the Securities Act of 1933, the Securities Exchange Act of 1934 and Rule 10b-5, and the Investment Company Act of 1940. The SEC sought an injunction against continued violations of the securities laws, disgorgement of illegal proceeds of the fraudulent scheme, a freeze of the Stanford assets, and a federal court order placing the Stanford entities into a receivership.

The district court appointed Ralph Janvey as receiver, with authority to take immediate, complete, and exclusive control of the Stanford entities, and to recover assets "in furtherance of maximum and timely disbursement . . . to claimants."[4] The district court's Receivership Order enjoined all persons from "[t]he commencement or continuation . . . of any judicial, administrative, or other proceeding against the Receiver, any of the defendants [in the SEC action, such as Robert Allen Stanford and the Bank], the Receivership Estate, or any agent, officer, or employee related to the Receivership Estate, arising from the subject matter of this civil action," as well as from

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[3] *Id.*

[4] The 2009 Receivership Order was subsequently amended in 2010 and remained identical in all relevant parts.

"[a]ny act to collect, assess, or recover a claim against the Receiver or that would attach to or encumber the Receivership Estate." The district court appointed an examiner to investigate and "convey to the Court such information as . . . would be helpful to the Court in considering the interests of the investors in any financial products, accounts, vehicles or ventures sponsored, promoted or sold by" the Stanford entities, and to serve as chair of the Official Stanford Investors' Committee (the "Investors' Committee") to represent investors in the Stanford International Bank and to prosecute claims against third parties as assigned by the receiver.

The district court approved a process by which Stanford investors, including investors in SIB CDs, could file claims against the Stanford entities with the receiver, and, if approved, participate in distributions of the receivership's assets. The order set a deadline of 120 days for claimants to submit proofs of claim against the receivership entities. The receiver would evaluate the claims, subject to an appeal process and judicial review in the district court. Would-be claimants who failed to submit claims by the deadline were enjoined from later asserting claims against the receivership and its property. The court ordered the receiver to provide notice of the deadline to all "Stanford International Bank, Ltd. certificate of deposit account holders who had open accounts as of February 16, 2009 and for whom the Receiver has physical addresses from the books and records of Stanford International Bank, Ltd." The court also ordered the receiver to publish notice on its website and in the *New York Times*, *Wall Street Journal*, *Financial Times*, *Houston Chronicle*, and newspapers in the British Virgin Islands, Antigua, and Aruba.

Of the Plaintiffs-Objectors, 477 of 509—approximately 94 percent—have and will continue to recover as claimants in the receivership's distribution process.[5] While the record does not reflect why the remaining 32 Plaintiffs- Objectors did not timely submit claims, they constitute less than two-tenths of one percent of the total 18,000 defrauded SIB CD investors. And many of these 32 could not be confirmed as SIB CD investors by the receiver.

C.

The receiver identified and pursued persons and entities as participants in the Ponzi scheme to recover funds for distribution to investor-claimants. Armed with a receiver's authority to provide total peace, it sued, among others, an accounting firm, BDO USA LLC, ultimately settling the suit for $40 million, the Adam & Reese law firm and other individuals and settling for around $4 million, and consultant Kroll LLC and its affiliate, settling for $24 million. In each of these suits, the district court entered a bar order requested by the parties, enjoining related claims against the defendants arising out of the Stanford Ponzi scheme. Receivership claimants including Plaintiffs-Objectors with approved claims recovered pro rata from the funds gathered in these receivership actions without challenge to the bar orders.

Five months after the appointment of the receiver, individual investor Samuel Troice and other investors filed a putative class action in the district court on behalf of a class of SIB CD investors against BMB and Willis of Colorado and related entities ("the Original

[5] Of the 509 Plaintiffs-Objectors, 455 are confirmed claimants; 22 are claimants with the Antiguan liquidators and by agreement are treated as claimants by the receiver.

Troice Action").[6] The action sought recovery of their losses from the Ponzi scheme under the Texas Securities Act, theories of negligence and fraud. In 2011, the district court dismissed the case, holding that the claims were precluded by the Securities Litigation Uniform Standards Act (SLUSA). This court reversed in a consolidated appeal,[7] and the Supreme Court affirmed in *Chadbourne & Parke LLP v. Troice*.[8] The Court held that SLUSA's prohibition on state-law class actions alleging fraud in "the purchase or sale of a covered security" did not preclude the claims regarding the purchase or sale of SIB CDs, which were not publicly traded and thus not "covered" for SLUSA purposes.[9] The case was remanded to district court for further proceedings.[10]

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[6] In December 2009, the Troice Plaintiffs' case was consolidated with a similar action filed by SIB CD investor Manuel Canabal.

[7] *Roland v. Green*, 675 F.3d 503, 524 (5th Cir. 2012).

[8] 571 U.S. 377, 395–97 (2014).

[9] *Id.*

[10] In November 2012, Troice and two other individual investors joined the receiver and Investors' Committee in an action bringing investor class claims and receivership estate claims against Stanford's lawyers at the Greenberg Traurig firm. Complaint, *Janvey v. Greenberg Traurig, LLP*, No. 3:12-cv-04641-N-BQ (N.D. Tex. Nov. 15, 2012) Dkt. 1. On the defendants' motion for judgment on the pleadings, the district court held that under Texas's attorney-immunity doctrine it lacked jurisdiction over the investor-plaintiffs' class claims, since these plaintiffs were non-clients and the conduct at issue occurred within the scope of the attorney's representation of a client. *Official Stanford Investors Comm. v. Greenberg Traurig, LLP*, 2017 WL 6761765, at *3 (N.D. Tex. Dec. 5, 2017). The district court dismissed Troice's and the other investor plaintiffs' claims against Greenberg Traurig, allowing the receiver and Investors Committee to proceed on the estate claims. *Id.* Troice and the investors plaintiffs appealed, and this court affirmed. *Troice v.*

In October 2013, Troice and another individual investor, Manuel Canabal, joined the receiver's prosecution of a case against the same insurance brokers. Together with these two individuals and the Investors' Committee, the receiver filed a complaint against Willis of Colorado and its affiliates (collectively "the Willis Defendants"),[11] and a month later amended the complaint to add claims against BMB.[12] In this suit ("the Receivership Action"), Troice and Canabal asserted claims individually and on behalf of a putative class of SIB CD investors. The receiver and the Investors' Committee sought to recover Ponzi-scheme losses on behalf of the estate under six theories:[13]

1) that Willis and BMB knowingly or recklessly aided, abetted, or participated in the Stanford directors' and officers' breaches of fiduciary duties towards the receivership entities, resulting in exponentially increased liabilities and the misappropriation of billions of dollars;

Greenberg Traurig, LLP, 2019 WL 1648932, at *1 (5th Cir. Apr. 17, 2019). The receiver and Investors Committee did not participate in the appeal.

[11] The plaintiffs also brought claims against Amy Baranoucky, the Stanford entities' Client Advocate within Willis.

[12] The plaintiffs also brought claims against Robert Winter, the BMB insurance specialist who served on the board of the Stanford International Bank.

[13] The Troice Plaintiffs attacked the Ponzi scheme with claims for violations of the Texas Securities Act ("TSA"); aiding and abetting violations of the TSA; participation in a fraudulent scheme; civil conspiracy; violations of the Texas Insurance Code ("Insurance Code"); common law fraud; negligent misrepresentation; negligence/gross negligence; and negligent retention/negligent supervision.

2) that Willis and BMB violated their duty of care towards the receivership entities by enabling and participating in the Stanford directors' and officers' Ponzi scheme, resulting in exponentially increased liabilities and the misappropriation of billions of dollars;

3) that Willis and BMB were unjustly enriched by proceeds of the Ponzi scheme, paid out to the defendants by Stanford's directors and officers, transfers made with the intent to hinder, delay or defraud the receivership entities; [14]

4) that Willis and BMB knowingly or recklessly aided, abetted, or participated in the Stanford directors' and officers' fraudulent transfers of receivership entities' assets to third parties, including Stanford's insurers, the recipients of Stanford's investments in ventures and real estate, and Allen Stanford himself, with the intent to hinder, delay, or defraud the receivership entities;

5) that Willis and BMB breached their duties of care to the receivership entities in their hiring, supervision, and retention of employees who issued comfort letters in furtherance of the Stanford Ponzi scheme, causing exponentially increased liabilities and the misappropriation of billions of dollars;

6) that Willis and BMB conspired with Stanford directors and officers to use insurance as a marketing tool to sell SIB CDs in furtherance of the Ponzi scheme, harming the receivership entities. The district court dismissed this civil conspiracy claim, however, holding that the

[14] This claim is asserted by the Investors' Committee.

receiver and the Investors' Committee failed to allege the requisite state of mind to sustain the claim.

In March 2014, the district court consolidated the Receivership Action and the Original Troice Action for purposes of discovery, keeping the cases on separate dockets.

D.

On February 14, 2013, five groups of individual investors (collectively "the Florida Plaintiffs-Objectors") filed lawsuits against Willis entities in Florida state court, seeking compensation for the plaintiffs' alleged Ponzi- scheme losses, in excess of $130 million, under common law theories of negligence and fraud. Willis removed these cases to federal court, where they were transferred to Judge Godbey in the Northern District of Texas. The district court remanded one of the cases to Florida state court for lack of diversity, subject to a stay, and kept the remaining cases.

In 2009 and 2011, two groups of individual investors ("the Texas Plaintiffs-Objectors" collectively) filed lawsuits against Willis entities and BMB in Texas state court,[15] seeking recovery of their alleged Ponzi-scheme losses, in excess of $88 million under the Securities Act of 1933, the Texas Insurance Code, the Texas Securities Act, the Colorado Consumer Protection Act, and common law theories of negligence and fraud. Willis and BMB removed these cases to federal court, where they were transferred to Judge Godbey. In both cases, the district court granted

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[15] *Rupert v. Winter*, 2012 WL 13102348, at *1 (N.D. Tex. Jan. 24, 2012); *Rishmague v. Winter*, 2014 WL 11633690, at *1 (N.D. Tex. Sept. 9, 2014), *aff'd*, 616 F. App'x 138 (5th Cir. 2015).

plaintiffs' motions for remand based on procedural defects in removal,[16] but also held that the plaintiffs had violated the Receivership Order's injunction against suits encumbering receivership assets.[17] It held that the cases would remain stayed on remand under the terms of the Receivership Order because, "to the extent Defendants are ever held liable, any proceeds of the claim are potential receivership assets . . . . The Court will not condone or allow Stanford investors to race for Receivership assets as the Plaintiffs attempt to do here."[18] In the second of these cases, the plaintiffs appealed the district court's refusal to lift the litigation stay, and this court affirmed, recognizing "[']the importance of preserving a receivership court's ability to issue orders preventing interference with its administration of the receivership property.'"[19]

In 2016, a group of Stanford investors ("the Able Plaintiffs-Objectors") filed a suit against Willis in the district court for the Northern District of Texas under common law and statutory theories, seeking recovery of their alleged Ponzi-scheme losses in excess of $135 million.[20]

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[16] *Rupert*, 2012 WL 13102348 at *3–4; *Rishmague*, 2014 WL 11633690 at *2.

[17] *Rupert*, 2012 WL 13102348 at *7; *Rishmague*, 2014 WL 11633690 at *3.

[18] *Rupert*, 2012 WL 13102348 at *9; *Rishmague*, 2014 WL 11633690 at *4.

[19] *Rishmague v. Winter*, 616 F. App'x 138, 139 (5th Cir. 2015) (unpublished) (quoting *Schauss v. Metals Depository Corp.*, 757 F.2d 649, 654 (5th Cir.1985)).

[20] The Able Plaintiffs-Objectors also include five individual investors, who would have destroyed diversity in the litigation in the Northern District of Texas, and therefore joined an existing

E.

Meanwhile, the receiver and Investors' Committee continued prosecuting their claims against the Willis Defendants and BMB. After years of litigation, thousands of hours of investigating the claims, and two mediations, the parties to the Receivership Action agreed to terms of settlement—a release of claims against BMB for $12.85 million, to be paid into the receivership and distributed to receivership claimants who held SIB CDs as of February 2009, and a release of claims against the Willis Defendants in exchange for $120 million, also to be paid into the receivership and distributed to claimants holding SIB CDs as of February 2009. Both BMB and the Willis Defendants conditioned their agreement on global resolution of claims arising out of the Stanford Ponzi scheme. Specifically, they conditioned agreement on the district court entering bar orders enjoining Stanford-Ponzi-scheme-related claims against them. Troice and Canabal do not challenge the settlement, and release any claims except their right to participate in the distribution of the receivership.

In November 2016, the district court gave notice of the settlement to interested parties. In August 2017, the district court approved the settlements and entered the bar orders over the objections of the Florida, Texas, and Able Plaintiffs-Objectors. The Plaintiffs-Objectors appealed.

II.

A.

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suit by Stanford investors against Willis in Harris County, Texas.

The Plaintiffs-Objectors argue that the district court lacked subject matter jurisdiction to bar claims not before the court. Alternatively, they argue the bar orders were an improper exercise of the district court's power over the receivership. We review the district court's subject matter jurisdiction de novo,[21] and review the settlement for abuse of discretion.[22]

1.

In the aftermath of the 1929 financial crash, Congress passed a number of statutes to promote competition and free exchange in our country's securities exchanges and the market for unlisted securities.[23] The "basic purpose" of these laws was "to insure honest securities markets and thereby promote investor confidence."[24] These laws established the SEC, an agency armed "with an arsenal of flexible enforcement powers" to uphold the integrity of securities markets.[25] These same statutes also authorize federal courts' jurisdiction over actions protecting the markets. Specifically, Section 22 of the 1933 Act and Section 27 of the 1934 Act confer jurisdiction on the district courts over enforcement actions, including "suits in equity."[26] The acts grant

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[21] *See Crane v. Johnson*, 783 F.3d 244, 250 (5th Cir. 2015).

[22] *SEC v. Safety Fin. Serv., Inc.*, 674 F.2d 368, 373 (5th Cir. 1982).

[23] *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 195 (1976).

[24] *Chadbourne & Parke LLP v. Troice*, 571 U.S. 377, 390 (2014) (quoting *United States v. O'Hagan*, 521 U.S. 642, 658 (1997)).

[25] *Ernst & Ernst*, 425 U.S. at 195.

[26] 15 U.S.C. § 77v(a) ("The district courts of the United States . . . shall have jurisdiction of offenses and violations under this subchapter and under the rules and regulations promulgated by the Commission in respect thereto of all suits in equity and actions at law brought to enforce any liability or duty created by

the SEC access to the courts' full powers, including use of the traditional equity receivership, to coordinate the interests in a troubled entity and ensure that its assets are fairly distributed to investor creditors.[27] These implicit authorizations of receiverships are consistent with the more general express authorization Congress provided in 28 U.S.C. § 3103. Otherwise stated, "[f]ederal equity receiverships, despite the name, have a federal statutory framework."[28]

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this subchapter."); 15 U.S.C. § 78aa(a) ("The district courts of the United States shall have exclusive jurisdiction of violations of this chapter or the rules and regulations thereunder, and of all suits in equity and actions at law brought to enforce any liability or duty created by this chapter or the rules and regulations thereunder."); *see also* James R. Farrand, *Ancillary Remedies in SEC Civil Enforcement Suits*, 89 HARV. L. REV. 1779, 1782 (1976) ("[T]he 1933 and 1934 Securities Acts[] have specifically conferred equity jurisdiction on the courts").

[27] *SEC v. Wencke*, 783 F.2d 829, 837 n.9 (9th Cir. 1986) ("Our court, like many others, has recognized that as part of courts' equitable powers under the Securities Acts of 1933 and 1934, it may impose receiverships in securities fraud actions to prevent further dissipation of defrauded investors' assets."); *cf. SEC v. Manor Nursing Centers, Inc.*, 458 F.2d 1082, 1103 (2d Cir. 1972) ("It is now well established that Section 22(a) of the 1933 Act, 15 U.S.C. § 77v(a) (1970), and Section 27 of the 1934 Act, 15 U.S.C. § 78aa (1970), confer general equity powers upon the district courts."); *Janvey v. Alguire*, 2014 WL 12654910, at *16 (N.D. Tex. July 30, 2014) (collecting cases); *id.* at *17 ("The purpose of federal equity receiverships is . . . to marshal assets, preserve value, equitably distribute to creditors, and, either reorganize, if possible, or orderly liquidate."); *see also* Farrand, *Ancillary Remedies, supra* at 1788 (observing that the equity receivership has been recognized "as one means to effectuate the purposes of a statutory scheme of regulation.").

[28] *Alguire*, 2014 WL 12654910 at *14.

Exercising their jurisdiction under the securities laws, federal district courts can utilize the receivership mechanism where a troubled entity will not be able to satisfy all of its liabilities to similarly situated creditors.[29] Where the troubled entity is unable to meet its obligations, creditor-investors encounter a collective-action problem: each has the incentive to bring its own claims against the entity, hoping for full recovery; but if all creditor-investors take this course of action, latecomers will be left empty-handed. A disorderly race to the courthouse ensues, resulting in inefficiency as assets are dissipated in piecemeal and duplicative litigation. The results are also potentially iniquitous, with vastly divergent results for similarly situated creditors. So it is that at the behest of the SEC the district court may take possession of the entity and its assets, and vest control in its officer, the receiver.[30] The court empowers the receiver to "stand[] in the shoes" of the

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[29] *Liberte Capital Grp., LLC v. Capwill*, 462 F.3d 543, 552–53 (6th Cir. 2006) ("The inability of a receivership estate to meet all of its obligations is typically the sine qua non of the receivership.").

[30] *Atl. Tr. Co. v. Chapman*, 208 U.S. 360, 370–71 (1908); *Crites, Inc. v. Prudential Ins. Co. of Am.*, 322 U.S. 408, 414 (1944) (holding that a receiver is "an officer or arm of thecourt . . . . appointed to assist the court in protecting and preserving, for the benefit of all parties concerned, the properties in the court's custody pending the foreclosure proceedings"); *Certain Underwriters at Lloyds London v. Perraud*, 623 F. App'x 628, 637 (5th Cir. 2015) (unpublished) ("[A] receiver is 'not an agent of the parties,' and is instead 'considered to be an officer of the court'" (quoting 12 CHARLES A. WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 2981 (2d ed. 2015)).

troubled entity,[31] allowing him to override holdout creditors and reach decisions for the aggregate benefit of creditors under the court's supervision. If so directed by the court, the receiver will systematically use ancillary litigation against third- party defendants to gather the entity's assets. Once gathered, these assets are used to satisfy liabilities to the entity's creditors, not in a disorderly creditor feeding frenzy, but through a court-supervised administrative distribution process.[32] Receivership is thus a substitution of orderly, equitable creditor recovery for the chaos and inefficiency of individualized creditor litigation with its irrational allocation of recoveries—one born of necessity.

For this exercise, the federal district courts draw upon "the power . . . [to] impose a receivership free of interference in other court proceedings."[33] The receivership's role is undermined if creditor-claimants jump the queue, circumventing the receivership in an attempt to recover beyond their pro rata share. Under the securities laws, the district court's power to determine appropriate relief for a receivership is broad.[34] The court's powers include "orders preventing

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[31] *Matter of Still*, 963 F.2d 75, 77 (5th Cir. 1992) (describing that a "receiver, stands in the shoes of the failed bank, marshals the assets, and administers a fund").

[32] *Liberte Capital Grp.*, 462 F.3d at 551 ("The receiver's role, and the district court's purpose in the appointment, is to safeguard the disputed assets, administer the property as suitable, and to assist the district court in achieving a final, equitable distribution of the assets if necessary.").

[33] *SEC v. Wencke*, 622 F.2d 1363, 1372 (9th Cir. 1980).

[34] *SEC v. Capital Consultants, LLC*, 397 F.3d 733, 738 (9th Cir. 2005) ("A district court's power to supervise an equity receivership and to determine the appropriate action to be taken

interference with its administration of the receivership property."[35] As we have stated:

> Courts of Appeals have upheld orders enjoining broad classes of individuals from taking any action regarding receivership property. Such orders can serve as an important tool permitting a district court to prevent dissipation of property or assets subject to multiple claims in various locales, as well as preventing piecemeal resolution of issues that call for a uniform result.[36]

These can include stays of claims in other courts against the receivership,[37] and bar orders foreclosing suit against third-party defendants with whom the receiver is also engaged in litigation.[38] Accordingly, at an earlier stage in the litigation we affirmed the district court's order enjoining the Texas Plaintiffs-Objectors' from prosecuting claims against Willis

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in the administration of the receivership is extremely broad." (quoting *SEC v. Hardy*, 803 F.2d 1034, 1037 (9th Cir. 1986))).

[35] *Schauss v. Metals Depository Corp.*, 757 F.2d 649, 654 (5th Cir. 1985); *SEC v. Stanford Int'l Bank, Ltd.*, 424 F. App'x 338, 340 (5th Cir. 2011) (unpublished) ("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 action.").

[36] *Schauss*, 757 F.2d at 654 (internal quotation mark and citation omitted); *see also SEC v. Byers*, 609 F.3d 87, 92 (2d Cir. 2010) ("An anti-litigation injunction is simply one of the tools available to courts to help further the goals of the receivership.").

[37] *See Schauss*, 757 F.2d at 653; *Byers*, 609 F.3d at 93; *Liberte Capital Grp.,* 462 F.3d at 551–52.

[38] *SEC v. Kaleta*, 530 F. App'x 360, 362 (5th Cir. 2013) (unpublished).

during the pendency of the receiver's action.[39] While that stay was temporary and the bar orders at issue here are permanent, it is of no moment here in the calculus of the court's powers. Indeed, in both cases the district court, through its control of the receivership, enjoins non-party claims in another court—without exercising jurisdiction over them—to protect the receivership.[40]

SEC v. Kaleta illustrates this central role of the federal district court.[41] In *Kaleta*, the SEC initiated an enforcement action against Kaleta Capital Management and related entities, alleging a fraudulent scheme.[42] As here, the district court appointed a receiver to take custody of and represent the troubled Kaleta entities.[43] Pursuant to its appointment order, the Kaleta receiver sued the third-party Wallace Bajjali Entities to recoup proceeds of Kaleta's alleged violation of the federal securities laws. After months of investigation and negotiation, the parties reached a proposed settlement, under which the defendants would exchange payment for the receiver's release of claims,[44] conditioned on a bar order enjoining all other claims against the Wallace Bajjali Entities by Kaleta's investor-creditors—non-parties—arising out of the fraudulent scheme.[45] A

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[39] *Rishmague v. Winter*, 616 F. App'x 138 (5th Cir. 2015) (unpublished).

[40] *Rishmague*, 2014 WL 11633690 at *3.

[41] 530 F. App'x 360 (5th Cir. 2013) (unpublished).

[42] *SEC v. Kaleta*, 2012 WL 401069, at *1 (S.D. Tex. Feb. 7, 2012).

[43] *Id.*

[44] *Id.* at *2.

[45] *Id.* at *3.

number of Kaleta investor-creditors objected to the settlement, arguing the district court lacked authority to bar claims not before the court.[46] When the district court approved the settlement and entered the bar order, the objectors appealed. In an opinion drawing upon principles so commonplace that it was not published, we affirmed, holding that the district court's broad powers to fashion relief in the receivership context included the power to enjoin other proceedings by non-parties.[47]

The Tenth Circuit reached a similar conclusion. In *SEC v. DeYoung*, the SEC sued retirement-account administrator APS, and, as here, the district court took custody of the troubled company and appointed a receiver.[48] The receiver then pursued a third party, First Utah Bank, seeking recovery for the Bank's failure to protect APS account holders.[49] The suit between the receiver and First Utah Bank settled,[50] conditioned on the district court's approval of a bar order that would enjoin suits by non-party APS account holders against First Utah Bank.[51] Individual APS account holders objected, arguing the district court exceeded its authority because it barred claims "belong[ing] exclusively to the individual Account Holders" not before the court; the receiver,

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[46] *Id*. at *7.

[47] *Kaleta*, 530 F. App'x at 362 ("Such 'ancillary relief' includes injunctions to stay proceedings by non-parties to the receivership.").

[48] 850 F.3d 1172, 1175 (10th Cir. 2017).

[49] *Id*. at 1176.

[50] *Id*. at 1175.

[51] *Id*. at 1178.

they argued, lacked standing to assert these claims.[52] The Tenth Circuit disagreed, finding that the receiver had standing to sue First Utah Bank on behalf of the receivership entity and that the court had subject matter jurisdiction to enter the bar order.[53] The court's equitable powers authorized it to bar claims "substantially identical" to those brought by the receiver.[54] The account holders' and receiver's claims were substantially identical because they involved "the same loss, from the same entities, related to the same conduct, and arising out of the same transactions and occurrences by the same actors." [55]

The district court will exercise its "broad equitable power in this area"[56] in accord with the needs of receivership on the particular facts of each case. *Rishmague*, *Kaleta*, and *DeYoung* clarify the breadth and reach of the district court's power to protect the operation of the receivership and its custody of the receivership res. We find them persuasive.

This litigation is one of several ancillary suits under the primary SEC action that enforces the federal securities laws against Robert Allen Stanford and his Ponzi-scheme co-conspirators.[57] There is no

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[52] *Id*. at 1180–81.

[53] *Id*. at 1181–82.

[54] *Id*. at 1176–83.

[55] *Id*. at 1176.

[56] *SEC v. Posner*, 16 F.3d 520, 521 (2d Cir. 1994).

[57] *Janvey v. Reeves-Stanford*, 2010 WL 11463486, at *3 (N.D. Tex. Nov. 18, 2010) ("[T]he initial suit which results in the appointment of the receiver is the primary action and . . . any suit which the receiver thereafter brings in the appointment court in order to execute such duties is ancillary to the main suit . . ." (quoting *Crawford v. Silette*, 608 F.3d 275, 278 (5th Cir. 2010)).

dispute that the receiver and Investors' Committee had standing to bring their claims against the Willis Defendants and BMB. They bring only the claims of the Stanford entities—not of their creditors[58]—alleging injuries only to the Stanford entities, including from the increase in their unsustainable liabilities resulting from the Ponzi scheme. The receiver and Investors' Committee "allege that Defendants' participation in a fraudulent marketing scheme increased the sale of Stanford's CDs, ultimately resulting in greater liability for the Receivership Estate," and that defendants' "harmed the Stanford Entities' ability to repay their creditor investors." The receiver and Investors' Committee sought to recover for the Stanford entities' Ponzi-scheme harms, monies the receiver will distribute to investor-claimants. The district court had subject matter jurisdiction over these claims.

The Plaintiffs-Objectors repeatedly urge that their claims are independent and distinct from those asserted by the receiver and Investors' Committee. The Plaintiffs-Objectors argue that the bar orders entail the district court's assertion of jurisdiction to settle their claims pending in other judicial proceedings. They are mistaken. It is necessarily the case that where a district court appoints a receiver to coordinate interests in a troubled entity, that entity's

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[58] *Janvey v. Democratic Senatorial Campaign Comm., Inc.*, 712 F.3d 185, 190 (5th Cir. 2013) ("[A] federal equity receiver has standing to assert only the claims of the entities in receivership, and not the claims of the entities' investor-creditors"); *Scholes v. Lehmann*, 56 F.3d 750, 753 (7th Cir. 1995) ("[A] receiver does not have standing to sue on behalf of the creditors of the entity in receivership. Like 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.").

creditors will have hypothetical claims they could independently bring but for the receivership: the receivership exists precisely to gather such interests in the service of equity and aggregate recovery. While claims seeking recovery for Ponzi-scheme harms can sound in tort, contract, or numerous other causes of action, the harms arise from a singular scheme, not isolated acts—that is, from a composite of conduct by numerous conspirators taken over years, collectively establishing and perpetuating the fraud.

The Stanford Ponzi scheme, and Willis and BMB's participation in it, increased the receivership entities' liabilities and misappropriated its funds, such that those liabilities could not be satisfied; SIB CD investors were saddled with the corresponding lost investments. The Stanford International Bank, and hence SIB CD investors—attracted by the promise of high returns plus comprehensive insurance—were injured by these alleged Ponzi players who created, amplified, and maintained the fraud. The Plaintiffs-Objectors seek to recover assets directly from Willis and BMB to compensate lost investments in the Stanford entities; the receiver and Investors' Committee attempt to recover from the same defendants to satisfy corresponding liabilities to investors through the receivership's distribution process. To the point, the claims of the Plaintiffs-Objectors' and those of the receiver and Investors' Committee seek recovery to address the same harms sustained by the same conduct in the same Ponzi scheme.

By entering the bar orders, the district court recognizes the reality that, given the finite resources at issue in this litigation, Stanford's investors must recover Ponzi-scheme losses through the receivership distribution process. The Willis Defendants and BMB contend that the bar orders are preconditions of their

respective settlements. The brokers' incentives to settle are reduced— likely eliminated—if each SIB CD investor retains an option to pursue full recovery in individual satellite litigation. Such resolution is no resolution. And the costs of undermining this settlement are potentially large. The receivership—and thus qualifying investor claimants—will be deprived of $132 million in settlement proceeds. Continued prosecution of the receiver and Investors' Committee's suit against Willis and BMB could result in the same if not greater recovery, but this is sheer speculation. Further, any potential value of the receiver's ultimate recovery must be reduced by the costs of prolonged litigation over the same assets, not only in the receiver's own action but also in the Plaintiffs-Objectors' myriad satellite suits, into which the receivership is likely to be drawn. Supposing that Willis, an allegedly deep-pocketed defendant, remains able to satisfy any judgment against it, the same cannot be said of BMB: continued litigation would eat away at the limited funds available under its "wasting" insurance policy.

Our decision is consistent with this court's decision in *SEC v. Stanford International Bank, Limited*. (*Lloyds*) reviewing bar orders entered by the same receivership court in connection with the Stanford receiver's $65 million settlement with insurance underwriters.[59] The *Lloyds* bar orders enjoined third-party litigation against the defendant underwriters who had settled with the receiver.[60]60 Our court differentiated the bar orders' effect with

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[59] *SEC v. Stanford Int'l Bank, Ltd. (Lloyds)*, 2019 WL 2496901 (5th Cir. June 7, 2019).

[60] *Id*. at *3.

respect to two different categories of objectors.[61]61 While it held that the bar orders improperly enjoined co-insured Stanford officers' non-investment-related suits against the underwriters, the court approved the bar orders relative to investors in Stanford securities, as here.[62] Unlike the co-insured officers, the investors were able to participate in the receivership's distribution process— they "were afforded a means of filing claims apart from the direct action suit, and many . . . availed themselves of that opportunity."[63] The bar order functioned to channel investors' recovery into the receivership distribution process and "did not interfere with or improperly extinguish the [investors'] rights."[64]

In this appeal we address only the effect of the Willis and BMB bar orders enjoining third-party investors' claims. The receiver initiated suit, negotiated, and settled with the Willis Defendants and BMB while empowered to offer global peace, that is, to deal with potential investor holdouts like the Plaintiffs-Objectors. These holdouts have been content for the receiver to pursue litigation for their benefit, then to participate as receivership claimants, collecting pro rata. Now, however, they ask to jump the queue, come what may to their fellow claimants who remain within the receivership distribution process. At bottom, the Plaintiffs-Objectors seek special

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[61] The dissent fails to recognize this distinction in *Lloyds*, and overlooks the only parallel with the instant case: the court's approval of the bar orders as concerned investors who—like the Plaintiffs-Objectors before us—had opportunity to participate in the receivership distribution process.

[62] *Lloyds*, 2019 WL 2496901 at *3, *12.

[63] *Id.* at *12.

[64] *Id.* at *14.

treatment: they ask this court to recreate the collective-action problem that Congress sought to eliminate so that they—and no one else—can recover in full. We will not do so. The bar orders—enjoining these investors' third-party claims—fall well within the broad jurisdiction of the district court to protect the receivership res. The exercise of jurisdiction over a receivership is not an exercise of jurisdiction over other judicial proceedings. It rather permits the barring of such proceedings where they would undermine the receivership's operation.

2.

"'[T]he district court has . . . wide discretion to determine the appropriate relief in an equity receivership.'"[65] Again, the receivership solves a collective-action problem among the Stanford entities' defrauded creditors, all suffering losses in the same Ponzi scheme. It maximizes assets available to them and facilitates an orderly and equitable distribution of those assets. Allowing creditors to circumvent the receivership would dissolve this orderly process—circumvention must be foreclosed for the receivership to work. It was no abuse of discretion for the district court to enter the bar orders to effectuate and preserve the coordinating function of the receivership.

B.

Under the Anti-Injunction Act, "[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

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[65] *Kaleta*, 530 F. App'x at 362 (quoting *Safety Fin. Serv., Inc.*, 674 F.2d at 372–73).

judgments."[66] That is, "federal injunctive relief may be necessary to prevent a state court from so interfering with a federal court's consideration or disposition of a case as to seriously impair the federal court's flexibility and authority to decide that case."[67] Guided by principles of federalism, we "find[] a threat to the court's jurisdiction" where "a state proceeding threatens to dispose of property that forms the basis for federal in rem jurisdiction."[68]

The district court exercises jurisdiction over the receivership estate. The particular part of that res at issue here is $132 million receivable owed to the receivership, conditioned upon the BMB and Willis bar orders. When in 2009 the district court took the receivership estate into its custody, the res "[wa]s as much withdrawn from the judicial power of the other [courts], as if it had been carried physically into a different territorial sovereignty."[69] The Plaintiffs-Objectors' suits in state court implicate that same res. The formal distinction between the Plaintiffs-Objectors' and the receivers' claims against the brokers arises from the receivership's mediating role, interposed by the district court between the investor-creditors and the assets belonging to the Stanford entities. The receiver sues the brokers on behalf of the Stanford entities so that assets owed to creditors can be distributed to them administratively, through the distribution process rather than through their own

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[66] 28 U.S.C. § 2283.

[67] *Atl. Coast Line R. Co. v. Bhd. of Locomotive Engineers*, 398 U.S. 281, 295 (1970).

[68] *Tex. v. United States*, 837 F.2d 184, 186 n.4 (5th Cir. 1988); *see Newby v. Enron Corp.*, 302 F.3d 295, 301 (5th Cir. 2002).

[69] *Covell v. Heyman*, 111 U.S. 176, 182 (1884).

piecemeal satellite litigations: "any proceeds of the [Plaintiffs-Objectors'] claim are potential receivership assets, falling squarely within the bounds of the Receivership Order."[70]

The bar orders here prevent Florida and Texas state-court proceedings from interfering with the res in custody of the federal district court. The bar orders aided the court's jurisdiction over the receivership entities, which remain in the custody of the court. The bar orders do not violate the Act.

C.

The Texas and Florida Plaintiffs-Objectors argue that the Willis bar order deprived them of their property (that is, their claims) without due process and without just compensation. This is a recasting of the jurisdictional argument we have rejected. The district court was empowered to bar judicial proceedings not before it to protect the receivership. In so doing, the court afforded the Plaintiffs-Objectors all the process due, notice and opportunity to be heard on the proposed settlement and bar orders—an opportunity they seized. Moreover, they were not deprived of any entitlement to recovery: the bar orders channel investors' recovery associated with BMB and Willis through the receivership's distribution process. As SIB CD investors, Plaintiffs- Objectors were provided notice of the receivership's distribution process; they were afforded an opportunity to submit proofs of claim, and to dispute the receiver's disposition of their entitlements within the receivership's administrative distribution process, including judicial review. As described, almost all Plaintiffs-Objectors are

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[70] *Rupert*, 2012 WL 13102348 at *7; *see also Rishmague*, 2014 WL 11633690 at *3.

participants in that process. The district court's decision to channel the Texas and Florida Plaintiffs-Objectors' recovery into that receivership process as opposed to independent litigation does not deprive them of an entitlement to recover for Ponzi-scheme losses. All due process has been afforded.

D.

The Plaintiffs-Objectors challenge the settlement agreements and bar orders, inferring from the large settlement sums that these are "de facto class settlements" entered unlawfully without certification of a settlement class.[71] There is a likeness in function between the receivership and a hypothetical certified SIB CD investor class action: both offer means to pursue litigation in an aggregative form. In the former, the court channels recovery through its officer, the receiver, and retains power to bar parallel proceedings that would interfere. In the latter, creditors pursue their entitlements via class representatives under the requirements of Rule 23. But, as Congress authorizes, the district court appointed a receiver and did not certify an investor class. The Willis and BMB settlements bring monies ultimately to be distributed to all SIB CD investor-claimants through the receivership. There was no illicit class settlement, and the bar orders do not offend Rule 23.

E.

The Texas Plaintiffs-Objectors argue that the bar orders deny their right to a jury trial, retreading the

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[71] The Able Plaintiffs-Objectors also argue that in entering the Willis settlement, the Troice Parties violated their fiduciary duties to members of the putative class of SIB CD investors. The claim fails for the same reason as the other Rule 23 challenges.

jurisdictional argument we have addressed. Their argument presumes the Objector-Plaintiffs were otherwise entitled to pursue their independent action in state court unconstrained by the receivership court's bar order. We have explained why they have no such entitlement. The right to a jury does not create a right to proceed outside the receivership proceeding.

F.

The district court did not abuse its discretion in approving the BMB and Willis settlement agreements. The Texas Plaintiffs-Objectors argue that a "far greater recovery was possible," that the settlement was premature, and SIB CD investors could have recovered 100 percent of their investments. This is at best speculative. The settlement was reached after years of investigation and litigation. There was no certainty in the outcome of the Receivership Action. The defendant brokers contested liability and insist they would continue to do so if the settlements are terminated. It remained for the plaintiffs to prove their claims at trial, including proving the brokers' role in the Ponzi scheme. The potential benefits of continued litigation must be discounted by the risk of failing in that proof or in overcoming defenses, together with attendant costs, mindful that to succeed it would not be enough to prove that the brokers "aided and abetted." The district court considered tradeoffs the parties faced with the prospect of settlement and found the settlements "consistent with interests of both the receivership and the investors." The district court found no evidence of fraud or collusion and did not abuse its discretion in approving the settlements.

III.

The core difficulty with Plaintiffs-Objectors' challenge to the bar of their carve-out suits is that their theory would frustrate the central purposes of the receivership and confound the SEC mission to achieve maximum recovery from the malefactors for distribution pro rata to all investors. We AFFIRM the district court's approval of the BMB and Willis settlements and its entering of the corresponding bar orders enjoining the Plaintiffs-Objectors' third-party investor claims.

DON R. WILLETT, Circuit Judge, dissenting:

I share the majority's appreciation for this settlement's practical value. But in my view, the district court lacked jurisdiction to grant the bar orders. The Receiver only had standing to assert the Stanford entities' claims. It could not release other parties' claims, or have the court do so, in exchange for a payment to the Stanford estate. For better or worse, the objecting plaintiffs' claims were beyond the district court's power.

I

Willis of Colorado, Inc., its affiliates, and Bowen, Miclette and Britt, Inc. injured the Stanford entities by failing to thwart the Ponzi scheme.[1] They participated in, or turned a blind eye to, Stanford officers' misdeeds. So the Receiver asserted breach of fiduciary duty and negligence claims against them. But Willis and BMB separately injured the Objectors.

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[1] These facts are taken from the Receiver's and Objectors' pleadings. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992).

They sent the Objectors letters misrepresenting Stanford's soundness and its insurance coverage. So the Objectors asserted fraud and negligent misrepresentation against them. The Objectors' injuries are separate from Stanford's.

II

At its "irreducible constitutional minimum," standing requires that the plaintiff suffered an injury in fact, the injury is traceable to the defendant's actions, and the injury would likely be redressed by a favorable decision.[2] This adversity requirement applies whether the action is equitable or for damages.[3]

I believe the Receiver lacked standing to assert claims for the Objectors' separate injuries.[4] This standing defect is jurisdictional.[5] And it extends to relief like the bar orders. In another recent Stanford case, *SEC v. Stanford International Bank, Ltd. ("Lloyds")*, the Receiver had settled claims against Stanford's director-and-officer insurers.[6] But we vacated the associated bar orders.[7] The court

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[2] *Id.* at 560–61.

[3] *See Janvey v. Democratic Senatorial Campaign Comm., Inc.* ("*DSCC*"), 712 F.3d 185, 190 (5th Cir. 2013) (applying standing limitation to the Receiver).

[4] *Id.* ("[A] federal equity receiver has standing to assert only the claims of the entities in receivership, and not the claims of the entities' investor-creditors").

[5] *E.g., Warth v. Seldin*, 422 U.S. 490, 518 (1975) ("The rules of standing are threshold determinants of the propriety of judicial intervention.").

[6] __F.3d__, No. 17-10663, 2019 WL 2496901, at *1 (5th Cir. June 17, 2019).

[7] *Id.*

recognized that "[t]he prohibition on enjoining unrelated, third-party claims without the third parties' consent . . . is a maxim of law not abrogated by the district court's equitable power to fashion ancillary relief measures."[8] If no party before the court has standing to assert a claim, the court generally lacks power to dispose of it.[9] Here, the bar orders disposed of the Objectors' claims without their consent and without the procedural protections of a class action.

The Receiver contends that the Objectors' claims are "factually intertwined" with its own. But having defendants in common (Willis and BMB) or having a common destination for the plunder (Stanford officers) does not make claims the same.[10] And the Objectors' right to participate in the receivership claims process does not change this. The receivership claims process pays for Stanford's liability out of Stanford's assets. If third parties like Willis and BMB injured both the Objectors and Stanford, they are liable to each.

This case is distinguishable from decisions that approved bar orders. In *SEC v. DeYoung*, the Tenth Circuit affirmed a bar order after an investment firm's receiver settled with the firm's former bank.[11] Unlike this case, the receiver had standing to settle individual victims' claims because they were based on

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[8] *Id*. at *6.

[9] *Cf. Smith v. Bayer Corp.*, 564 U.S. 299, 315 (2011) (holding plaintiff's claim could not be enjoined because he was not a party to prior action).

[10] *See, e.g., N.Y. Life Ins. Co. v. Gillispie*, 203 F.3d 384, 387 (5th Cir. 2000) (requiring same "nucleus of operative fact" for claim identity).

[11] 850 F.3d 1172 (10th Cir. 2017).

the "same conduct" and the "same transactions"[12]—the bank's failure to monitor the firm's accounts.[13] The Tenth Circuit distinguished that situation from *Liberte Capital Group, LLC v. Capwill*, a case where the receivership entities lacked standing to sue a broker for its misrepresentations to investors.[14] In other words, *DeYoung* distinguished its holding from precisely this situation. Our decision in *SEC v. Kaleta* is also distinguishable.[15] It affirmed a bar order but didn't suggest that the settling defendants had made any representations directly to the victims.[16] The bar order was limited to claims from one set of fraudulent notes.[17] All to say, authority for the bar orders here is thin to none.

III

Besides the lack of standing, the bar orders also do not fit within any affirmative source of federal jurisdiction. At least some of the Objectors' claims are state-law claims that could not be removed to federal court.[18] The district court lacked in rem jurisdiction over these claims, as in rem jurisdiction extends only

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[12] *Id*. at 1179 (quoting district court findings).

[13] *Id*. at 1182.

[14] *Id*. at 1181 (distinguishing *Liberte*, 248 F. App'x 650 (6th Cir. 2007)).

[15] 530 F. App'x 360 (5th Cir. 2013).

[16] *See id*.

[17] *Id*. at 363 ("[T]he investors continue to retain all other putative claims against the Wallace Bajjali Parties that do not arise from the allegedly fraudulent notes that underlie this action.").

[18] *E.g.*, *Rishmague v. Winter*, No. 3:11-CV-2024-N, 2014 WL 11633690, at *1 (N.D. Tex. Sept. 9, 2014) (remanding some Rupert Parties' claims to state court).

to receivership property.[19] And receivership property consists of Stanford's assets, not its victims' claims.[20]

The district court had no ancillary jurisdiction either. Ancillary jurisdiction extends only to claims by or against the Receiver.[21] So the district court had no jurisdiction to adjudicate these claims. And in my view it had no jurisdiction to permanently enjoin them.[22]

IV

Federal courts cannot decide a claim's fate outside the "honest and actual antagonistic assertion of rights."[23] I would vacate the bar orders.

Respectfully, I dissent.

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[19] *Cf. Riehle v. Margolies*, 279 U.S. 218, 223–24 (1929) (distinguishing distribution of debtor's property from determination of claims against it).

[20] *See id.*; *Lloyds*, 2019 WL 2496901, at *6 ("[T]he court may not exercise unbridled authority over assets belonging to third parties to which the receivership estate has no claim."); *DSCC*, 712 F.3d at 190 ("[A] federal equity receiver has standing to assert only the claims of the entities in receivership, and not the claims of the entities' investor-creditors. . . .").

[21] *See* 12 CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE & PROCEDURE § 2985 (2d ed. 2018); *see also Lloyds*, 2019 WL 2496901, at *6 (stating power to fashion ancillary relief does not affect prohibition on enjoining unrelated claims).

[22] *See Lloyds*, 2019 WL 2496901, at *6.

[23] *United States v. Johnson*, 319 U.S. 302, 305 (1943) (quoting *Chi. & G.T. Ry. Co. v. Wellman*, 143 U.S. 339, 345 (1892)).

Appendix C

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

No. 3:09-CV-00298-N

SECURITIES AND EXCHANGE COMMISSION,

et al.,

Plaintiffs,

v.

STANFORD INTERNATIONAL BANK LTD., et al.,

Defendants.

ORDER

This Order addresses the objections[1] to the settlement between Plaintiffs Ralph S. Janvey (the "Receiver"), the Official Stanford Investors Committee ("OSIC"), and Samuel Troice, Martha Diaz, Paula Gilly Flores, Punga Punga Financial, Ltd., Manuel Canabal, Daniel Gomez Ferreiro, and Promotora Villa Marina, CA (collectively, the "Investor Plaintiffs") and Defendants Willis Towers Watson Public Limited Company f/k/a Willis Group Holdings Limited ("WTW"), Willis Limited, Willis North America, Inc. ("Willis NA"), Willis of Colorado, Inc. ("Willis-Colorado"), Willis of Texas, Inc. ("Willis-Texas"), and Amy S. Baranoucky (collectively, the "Willis Defendants"), and Bowen, Miclette & Britt, Inc. ("BMB") and Paul D. Winter, Dependent Executor of the Estate of Robert S. Winter ("Winter") (collectively, the "BMB Defendants"). [2369], [2383]. The Court

[1] Docs. 2464, 2466, 2467, 2468, 2469, 2470, and 2475.

overrules the objections and, by separate documents, approves the Settlements and enters the Bar Orders.

I. THE INSURANCE LETTER LITIGATION AND SETTLEMENT

This Order arises from the long-running litigation between the Receiver, OSIC, and the Investor Plaintiffs, and the Willis and BMB Defendants. This litigation stems from the Willis Defendants' and BMB's business relationships with the entities R. Allen Stanford used to carry out his far-reaching Ponzi scheme. 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 are not recounted in great depth here. Essentially, Stanford's scheme entailed the sale of fraudulent certificates of deposit ("CDs") by Stanford International Bank, Ltd. ("SIBL"), an offshore bank located in Antigua. 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 Willis and BMB Defendants allegedly aided Stanford's fraud by misrepresenting the safety and security of the SIBL CDs. In particular, they allegedly allowed Stanford employees to draft insurance endorsement letters that the Willis and BMB Defendants then placed on their own letterhead. Prospective Stanford investors received these letters as marketing tools designed to generate more investments in SIBL CDs. The Willis and BMB Defendants provided these letters despite allegedly knowing that Stanford was defrauding those investors. *Id.* at ,- 117.After Stanford's scheme came to light, the SEC brought a securities fraud action against SIBL. As part of that action, 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. To do so, the Receiver sued various individuals and entities for losses suffered by the Stanford entities and allegedly caused by those individuals or entities. The Court also appointed OSIC to represent the interests of Stanford investors and to bring claims on their behalf as assigned by the Receiver. The Receiver and OSIC sued the Willis and BMB Defendants for aiding, abetting, or participating in breaches of fiduciary duty; aiding, abetting, or participating in fraudulent transfers; negligence or gross negligence; negligent retention or supervision of personnel; and participation in a fraudulent scheme and a conspiracy.

Apart from the Receiver and OSIC, various Stanford investors sued numerous entities that they allege played a role in the success of Stanford's fraud. Among those lawsuits is the Investor Plaintiffs' action against the Willis and BMB Defendants. The Investor Plaintiffs sued the Willis and BMB Defendants on behalf of a putative class of similarly situated Stanford investors, alleging that the Willis and BMB Defendants aided and abetted Stanford's violations of the Texas Securities Act, participated in a fraudulent scheme or conspiracy, were negligent or grossly negligent, and negligently retained or supervised personnel.

Not all of the Stanford investors chose to pursue their potential claims against the Willis and BMB Defendants through the Investor Plaintiffs' litigation. Instead, some opted to sue the Willis or BMB Defendants in different courts, asserting different claims. After extensive litigation over the proper

forum for adjudicating those actions, this Court stayed the pending cases in other courts related to the Willis and BMB Defendants.

The settlements for which the Receiver, OSIC, the Investor Plaintiffs, and the Willis and BMB Defendants seek approval would provide a global resolution to all claims arising from the Willis and BMB Defendants' relationships with Stanford. In exchange for a $120 million payment from the Willis Defendants and a $12.5 million payment from the BMB Defendants - money that would be distributed through the Receiver's claims distribution process - the Receiver, OSIC, and Investor Plaintiffs would release all their claims against the Willis and BMB Defendants. More controversially, the Receiver also agreed to seek orders permanently enjoining any other pending or future claims against the Willis and BMB Defendants arising from their relationship with Stanford (the "Bar Orders"). If the Court does not enter the Bar Orders, the Settlements allow the Willis and BMB Defendants to terminate the agreements. The court-appointed Examiner supports the Settlements, and the SEC does not object. However, parties who asserted their own claims against the Willis and BMB Defendants in other courts - claims that the Bar Orders would permanently enjoin - filed several objections arguing that the Bar Orders are improper.

II. THE LAW GOVERNING BAR ORDERS IN EQUITABLE RECEIVERSHIPS

"[N]o federal rules prescribe a particular standard for approving settlements in the context of an equity receivership." *SEC 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." *SEC 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 *SEC 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; *SEC 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 "the value of the proposed settlement, the value and merits of the Receiver's potential claims,

the value and merits of any foreclosed parties' potential claims, the complexity and costs of future litigation, the risk that litigation costs would dissipate Receivership assets, the implications of any satisfaction of an award on other claimants, 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." *SEC 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 in order to protect the estate's choses of action . . . including any settlement reached in connection with those claims." *Id.*

The Tenth Circuit recently addressed objections to a claims bar order that was sought as part of a settlement between a receiver and a defendant. *SEC v. DeYoung*, 850 F.3d 1172 (10th Cir. 2017). There, the receiver settled with a third party and sought a bar order that would prohibit any claims against the settling defendant. *Id.* at 1175. The settling defendant allegedly played a part in the misappropriation of millions of dollars of investor money. *Id.* Some investors objected to the settlement and sought the right to pursue their own causes of action against the settling defendant. *Id.* The district court denied their objections, styled as motions to intervene, and approved the settlement. *Id.* Citing the Fifth Circuit's

decision in *Kaleta II*, the Tenth Circuit affirmed the district court's ruling that the settlement maximized the potential recovery for the receivership and that the bar order was necessary to that settlement. *Id.* at 1182-83. Moreover, the Tenth Circuit rejected the argument that the claims bar was improper because the Receiver lacked standing to assert investor claims that the bar order would enjoin. *Id.* at 1180-82. Noting that the Receiver had standing to bring his own claims, and that the bar order analysis was distinct from the standing question, the Tenth Circuit affirmed the district court's entry of the bar order. *Id.* at 1182.

III. THE OBJECTIONS TO THE WILLIS SETTLEMENT ARE UNAVAILING

Four groups of Stanford investors object to the Willis Settlement, arguing that the Court cannot or should not issue the Bar Orders that the Settlement requires. For the reasons explained below, the Court overrules the objections.

A. *The Receiver and OSIC Can Settle Their Claims Against the Willis Defendants*

The Objectors argue that the Receiver and OSIC have no standing to settle the universe of claims that the Bar Orders would enjoin. But the Receiver and OSIC need standing to assert and settle only the claims that they are releasing, not every possible barred claim arising out of the Willis Defendants' involvement in the Stanford scheme. In an equitable receivership, Courts have the power to bar those other claims in certain circumstances. By seeking a bar order the Receiver is not "settling" the barred claims but rather relying on the Court's equitable authority to reach an otherwise unobtainable settlement by enjoining other claims that would interfere with the receivership's

ability to achieve its purpose. Thus, the Receiver need not have standing to assert the universe of barred claims as long as he has standing to assert the claims he is settling and the settlement satisfies the requirements for barring other claims.

The Receiver and OSIC have standing to assert their claims against the Willis Defendants. The Receivership Estate has standing to bring only the claims of the entities in receivership. *DSCC*, 712 F.3d at 192. Here, the Stanford entities, through the Receiver, are asserting a variety of claims for losses allegedly caused by the Willis Defendants' participation in Stanford's scheme. OSIC is asserting Receivership Estate claims assigned to it by the Receiver, consistent with the Court's direction in the order forming OSIC and the Receiver's practice to date. The Investor Plaintiffs are settling their own individual claims based on losses they suffered from the same conduct. No party to the settlement lacks standing to assert and settle the claims that the settlement would release. Accordingly, the Objectors' standing argument presents no obstacle to settlement approval.

B. *The Court Can Bar Individual Investor Claims as Part of This Settlement*

The Objectors also raise several objections about the Court's authority to enter the Bar Orders as part of the Settlement based on the nature of the Objectors' claims and litigation posture. These objections do not affect the Court's power to bar claims where necessary to secure a fair, reasonable, and adequate settlement for the receivership estate.

1. ***Objectors' Claims and the Settled Claims Are Similar.***—The Objectors pose the question of whether, if the Court can bar their claims, there is any

meaningful limit on the Court's ability to bar claims as part of a receivership settlement. Their claims, however, are sufficiently similar to the settled claims that it is not unfair to bar them assuming the settlement as a whole is fair and the Bar Orders are necessary to the Settlement. Analyzing the fairness of the settlement and bar order in *DeYoung*, the district court noted that "the complex claims and the rights and obligations of the parties . . . are so inextricably intertwined that resolution of the claims independently . . . would be difficult and inefficient, would substantially increase the costs to the Receivership Estate, and would likely reduce the ultimate recovery" to investors. *DeYoung*, 850 F.3d at 1178-79 (quoting *SEC v. Am. Pension Svcs., Inc.*, 2015 WL 12860498, at *9 (D. Utah 2015)). The Court went on to note that "the claims involve the same parties, the same conduct, the same actors, [and] the same transactions and occurrences, . . . and the claims are all from the same loss." *Id.* So too here. The claims of the Objectors and those of the Receiver, OSIC, and the Investor Plaintiffs all involve "the same parties, the same conduct, the same actors, [and] the same transactions and occurrences, . . . and the claims are all from the same loss." *Id.* As the Receiver and the Willis Defendants note, even assuming that the Willis Defendants are liable, they will pursue contribution claims against Stanford. This will embroil the Receiver in continued litigation at the expense of the Receivership Estate, which will expend resources that could otherwise go to investors. Accordingly, the Bar Orders here are not a blank check to run roughshod over any and all independent rights as the Objectors depict.

2. ***The Anti-Injunction Act Does Not Prohibit the 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 Rupert Parties argue that the Bar Order would improperly enjoin their pending lawsuits in Texas 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 matter. *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.3d 220, 235 (3d Cir. 2002). In managing the 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. The possibility of state court judgments in favor of individual litigants or adverse to the Receivership Estate 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.

3. ***The Bar Orders Are Constitutional.***—The Objectors argue that enjoining their claims amounts to an unconstitutional taking and a violation of their constitutional right to a jury trial. The Court disagrees on both counts. First, "the Fifth Amendment

is triggered by governmental action, not the actions of a private receiver marshaling private assets to pay private parties." *SEC v. Nadel*, 2016 U.S. Dist. LEXIS 12240 (M.D. Fla. 2016), *rev'd on other grounds*, *SEC v. Wells Fargo Bank, NA*, 848 F.3d 1339 (11th Cir. 2017) (citing *United States v. Beszborn*, 21 F.3d 62, 68 (5th Cir. 1994)). Second, the Court is not adjudicating the foreclosed claims. Thus, no jury trial is necessary.

C. *Rule 23 Does Not Apply*

The Objectors also argue that because the Investor Plaintiffs, who were putative class representatives, asserted their claims on behalf of themselves and a putative class, the Court cannot bar claims of the absent class members without first certifying an opt-out class under Rule 23(b)(3). The Objectors further argue that because the Investor Plaintiffs cannot satisfy Rule 23(b)(3)'s certification requirements, the Court cannot certify such a class. The Objectors conclude that because class certification is impossible, barring claims by absent class members—including the Objectors—is also impossible. The Court disagrees.

1. ***OSIC and Investor Plaintiffs Can Settle Individually Without Rule 23.***—It is uncontroversial that named plaintiffs bringing putative class action lawsuits can settle their claims individually without class certification. The question of whether the circumstances justify a claims bar is a distinct inquiry that turns on a standard unrelated to Rule 23. The value of foreclosed claims and fairness to nonsettling parties can be factors in that analysis, and Rule 23 can impact those factors; however, that does not require the Court to graft Rule 23's requirements onto the claims bar analysis.

2. ***Investor Plaintiffs' Settlement Does Not Breach Their Duty to the Class.***—The Investor Plaintiffs' decision to settle their individual claims concurrent with the Receiver and OSIC in exchange for a claims bar does not render the settlement illegal. Objectors argue that doing so constitutes a breach of the Investor Plaintiffs' duty to act in the best interests of the class because some class members will lose the ability to pursue their claims individually. But the settlement obtains a final resolution and substantial payment for the class as they sought to define it, including most of the Objectors. That the Objectors are losing their ability to seek a greater payout for themselves through individual litigation does not render improper the settling Investor Plaintiffs' decision to participate in a settlement that includes a bar order.

3. ***This is Not An Improper Aggregate Settlement.***—The Able Parties urge the Court to reject this settlement as an improper aggregate settlement because it groups distinct claims into one settlement with no allocation between different groups. They argue that the Receiver is being paid for the Investor Plaintiffs' claims, claims for which they have no right to payment. This argument mischaracterizes the settlement based on an incorrect premise about the interests of the Receiver and the Investor Plaintiffs. As noted below, the Receiver and the Investor Plaintiffs are acting for the benefit of the same group of Stanford victims. There is no basis for the Court to conclude that this Settlement is an improper means to wrongfully capture value for the Receiver that belongs to the investors. The Receiver exists to maximize the value of the Receivership Estate and to distribute that value fairly among Stanford's defrauded investors.

D. *The Settlement is Fair, Reasonable, and Adequate*

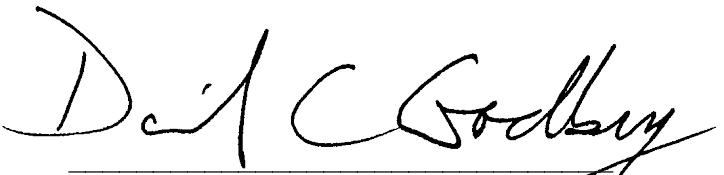
Finally, the Objectors contend that the Court should reject the Settlement and Bar Orders because they do not satisfy the factors that would justify barring nonsettled claims.

The Court's orders approving the Settlement and Bar Orders address the fairness of the Settlement in greater depth. The Court notes, however, that it finds no basis to conclude that the Settlement is the product of fraud or collusion. The Court credits the declarations of the settling parties and its own experience regarding the hard-fought nature of this litigation. The Court also agrees with the Movants that the settlement they have reached is consistent with interests of both the Receivership and the investors. Each has acted to obtain the maximum recovery for the broadest class of injured Stanford victims in the most efficient way possible. Accordingly, the Court does not find any conflict that would hinder settlement approval.

CONCLUSION

The Court denies the objections and, by separate documents, approves the Settlements and enters the Bar Orders.

Signed August 23, 2017.



David C. Godbey
United States District Judge

Appendix D

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

No. 3:09-CV-00298-N

SECURITIES AND EXCHANGE COMMISSION,

et al.,

Plaintiffs,

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 the Willis Defendants,[1] to Enter the Bar Order, and to Enter the Final Judgment and Bar Orders (the "Motion") of Ralph S. Janvey, the Receiver for the Receivership Estate (the "Receiver") and a plaintiff in *Janvey, et al. v. Willis of Colorado Inc., et al.*, Civil Action No. 3 13-cv-03980-N-BG (the "Janvey Litigation"); the Court-appointed Official Stanford Investors Committee (the "Committee"), as a party to this action and a plaintiff in the Janvey Litigation; and Samuel Troice, Martha Diaz, Paula Gilly-Flores, Punga Punga Financial, Ltd., Manuel Canabal, Daniel Gomez Ferreiro and Promotora Villa

[1] The "Willis Defendants" refers, collectively, to Willis Towers Watson Public Limited Company (f/k/a Willis Group Holdings Limited), Willis Limited, Willis North America Inc. ("Willis NA"), Willis of Colorado, Inc., Willis of Texas, Inc., and Amy S. Baranoucky.

Marino, C.A. (collectively, the "Investor Plaintiffs"), plaintiffs in the Janvey Litigation (Messrs. Troice and Canabal only) and in *Troice, et al. v. Willis of Colorado Inc., et al.*, Civil Action No. 3 09-cv- 01274-L (the "Troice Litigation") (collectively, the Receiver, Committee and the Investor Plaintiffs are the "Plaintiffs"). [ECF No. 2369]. The Motion concerns a proposed settlement (the "Willis Settlement") among and between the Plaintiffs and the Willis Defendants. The Court-appointed Examiner signed the Willis Settlement Agreement[2] as chair of the Committee, and as Examiner solely to evidence his support and approval of the Willis Settlement and to confirm his obligations to post the Notice on his website, but is not otherwise individually a party to the Willis Settlement, the Janvey Litigation, or the Troice Litigation.

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

I. INTRODUCTION

The Troice Litigation, the Janvey Litigation, and this case all arise from a series of events leading to the collapse of Stanford International Bank, Ltd. ("SIBL"). On February 16, 2009, this Court appointed Ralph S. Janvey to be the Receiver for SIBL and related parties (the "Stanford Entities"). [ECF No. 10]. After years of diligent investigation, the Plaintiffs believe that they have identified claims against a number of third parties, including the Willis Defendants, that Plaintiffs claim enabled the

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

Stanford Ponzi scheme. In the Troice Litigation and the Janvey Litigation, the Investor Plaintiffs allege, *inter alia*, that the Willis Defendants aided and abetted violations of the Texas Securities Act and aided, abetted or participated in a fraudulent scheme and a conspiracy. In addition, in the Janvey Litigation, the Receiver and the Committee allege, *inter alia*, that the Willis Defendants aided, abetted or participated in breaches of fiduciary duty, aided, abetted or participated in a fraudulent scheme, and aided, abetted or participated in fraudulent transfers. The Willis Defendants have always denied and continue to expressly deny any and all allegations of wrongdoing.

Lengthy, multiparty negotiations led to the Willis Settlement. In these negotiations, potential victims of the Stanford Ponzi scheme were well-represented. The Investor Plaintiffs, 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 deposit issued by SIBL (the 'Stanford Investors')" [ECF No. 1149]-the Receiver, and the Examiner-who the Court appointed to advocate on behalf of "investors in any financial products, accounts, vehicles or ventures sponsored, promoted or sold by any Defendant in this action" [ECF No. 322]-all participated in the extensive, arm's-length negotiations that ultimately resulted in the Willis Settlement and the Willis Settlement Agreement. The parties reached an agreement-in-principle at a mediation with the retired Honorable Layn R. Phillips on March 31, 2016, and the parties executed the Willis Settlement Agreement in August 2016.

Under the terms of the Willis Settlement, Willis NA will pay $120,000,000 to the Receivership Estate, which (less attorneys' fees and expenses) will be distributed to Stanford Investors. In return, the Willis Defendants seek global peace with respect to all claims that have been, could have been, or could be asserted against any of the Willis Defendants and any of the Willis Released Parties by any Person arising out of or related to the events leading to these proceedings, and with respect to all claims that have been, could have been, or could be asserted against any of the Willis Defendants and any of the Willis Released Parties by any Person arising from or related to the Willis Defendants' relationship with the Stanford Entities. Obtaining such global peace is a critical and material component of the Settlement. Accordingly, the Willis Settlement is conditioned on, among other things, the Court's approval and entry of this Final Bar Order enjoining any Person from asserting, maintaining or prosecuting claims against any of the Willis Defendants or any of the Willis Released Parties.

On September 28, 2016, Plaintiffs filed the Motion. [ECF No. 2369]. The Court thereafter entered a Scheduling Order on October 10, 2016 [ECF No. 2409], which, *inter alia*, authorized the Receiver to provide notice of the Willis Settlement, established a briefing schedule on the Motion, and set the date for a hearing. On January 20, 2017, the Court held the scheduled hearing. For the reasons set forth herein, the Court finds that the terms of the Willis Settlement Agreement are adequate, fair, reasonable, and equitable, and that the Willis Settlement 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 Willis Settlement Agreement, unless expressly otherwise defined herein, have the same meaning as in the Willis Settlement 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); *see also SEC v. Parish*, 2010 WL 8347143 (D.S.C. Feb. 10, 2010). Moreover, the Court has jurisdiction over the subject matter of this action, and Plaintiffs are proper parties 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 Parties of the Willis Settlement, the Willis Settlement Agreement, the releases therein, and the injunctions provided for in this Final Bar Order and in the Final Judgment and Bar Orders to be entered in the Janvey Litigation and the Other Willis Litigation (to the extent pending before the Court);[3] (iv) were

[3] The "Other Willis Litigation" is defined in the Willis Settlement Agreement to include the 11 additional actions relating to the same subject matter as the Troice Litigation and the Janvey Litigation (i) *Ranni v. Willis of Colorado, Inc., et al.*, C.A. No. 9-22085, filed on July 17, 2009 in the United States District Court for the Southern District of Florida; (ii) *Rupert v. Winter, et al.*,

reasonably calculated, under the circumstances, to apprise all Interested Parties of the right to object to the Willis Settlement, the Willis Settlement Agreement, this Final Bar Order, and the Final Judgment and Bar Orders to be entered in the Janvey Litigation and the Other Willis Litigation (to the extent pending before the Court), and to appear at the Final Approval Hearing; (v) were reasonable and constituted due, adequate, and sufficient notice; (vi)

Case No. 20090C116137, filed on September 14, 2009 in Texas state court (Bexar County)(the "Rupert Action"); (iii) *Casanova v. Willis of Colorado, Inc., et al.*, C.A. No. 3 10-CV-1862-O, filed on September 16, 2010 in the United States District Court for the Northern District of Texas; (iv) *Rishmague v. Winter, et al.*, Case No. 2011C12585, filed on March 11, 2011 in Texas state court (Bexar County)(the "Rishmague Action"); (v) *MacArthur v. Winter, et al.*, Case No. 2013-07840, filed on February 8, 2013 in Texas state court (Harris County)(the "MacArthur Action"); (vi) *Barbar v. Willis Group Holdings Public Limited Company, et al.*, Case No. 13-05666CA27, filed on February 14, 2013 in Florida state court (Miami-Dade County)(the "Barbar Action"); (vii) *de Gadala-Maria v. Willis Group Holdings Public Limited Company*, et al., Case No. 13- 05669CA30, filed on February 14, 2013 in Florida state court (Miami-Dade County); (viii) *Ranni v. Willis Group Holdings Public Limited Company, et al.*, Case No. 13-05673CA06, filed on February 14, 2013 in Florida state court (Miami-Dade County)(the "Ranni Action"); (ix) *Tisminesky v. Willis Group Holdings Public Limited Company, et al.*, Case No. 13-05676CA09, filed on February 14, 2013 in Florida state court (Miami-Dade County); (x) *Zacarias v. Willis Group Holdings Public Limited Company, et al.*, Case No. 13-05678CA11, filed on February 14, 2013 in Florida state court (Miami-Dade County); and (xi) *Martin v. Willis of Colorado, Inc., et al.*, Case No. 2016-52115, filed on August 5, 2016 in Texas state court (Harris County).

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 Willis Settlement was reached following an extensive investigation of the facts and resulted from vigorous, good faith, arm's-length, mediated negotiations involving experienced and competent counsel. The claims asserted against the Willis Defendants contain complex and novel issues of law and fact that would require a substantial amount of time and expense to litigate, with a significant risk that Plaintiffs may not ultimately prevail on their claims. By the same token, it is clear that the Willis Defendants would never agree to the terms of the Willis Settlement unless they were assured of global peace with respect to all claims that have been, could have been, or could be asserted against any of the Willis Defendants and any of the Willis Released Parties by any Person arising out of or related to the events leading to these proceedings, and with respect to all claims that have been, could have been, or could be asserted against any of the Willis Defendants and any of the Willis Released Parties by any Person arising from or related to the Willis Defendants' relationship with the Stanford Entities. The injunction against such claims is therefore a necessary and appropriate order ancillary to the relief obtained for victims of the Stanford Ponzi scheme pursuant to the Willis Settlement. *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); *Parish*, 2010 WL 8347143 (similar).

5. Pursuant to the Willis Settlement 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 Willis Settlement 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 Willis Settlement 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].

6. 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.

7. Accordingly, the Court finds that the Willis Settlement 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 any of the Willis Defendants and any of the Willis Released Parties, the Stanford Entities or the Receivership Estate, including but not limited to the Plaintiffs, the Claimants, the Stanford Investors, the Interested Parties, the Receiver, and the Committee. The Willis Settlement, the terms of which are set forth in the Willis Settlement Agreement, is hereby fully and finally approved. The Parties are directed to implement and consummate the Willis Settlement in accordance with the terms and provisions of the Willis Settlement Agreement and this Final Bar Order.

8. Pursuant to the provisions of Paragraph 38 of the Willis Settlement Agreement, as of the Settlement Effective Date, each of Plaintiffs, including, without limitation, the Receiver on behalf of the Receivership

Estate and each of Plaintiffs' respective past and present, direct and indirect, parent entities, subsidiaries, affiliates, heirs, executors, administrators, predecessors, successors and assigns, in their capacities as such, and anyone who can claim through any of them, fully, finally, and forever release, relinquish, and discharge, with prejudice, all Settled Claims against the Willis Defendants and the Willis Released Parties. Further pursuant to the provisions of Paragraph 38 of the Willis Settlement Agreement, as of the Settlement Effective Date, each of the Willis Defendants, including, without limitation, the Willis Defendants' respective past and present, direct and indirect, parent entities, subsidiaries, affiliates, heirs, executors, administrators, predecessors, successors and assigns, in their capacities as such, and anyone who can claim through any of them, fully, finally, and forever release, relinquish, and discharge, with prejudice, all Settled Claims against Plaintiffs, the Plaintiffs Released Parties, and each of the other Willis Defendants.

9. Notwithstanding anything to the contrary in this Final Bar Order, the foregoing releases do not release the Parties' rights and obligations under the Willis Settlement or the Willis Settlement Agreement or bar the Parties from seeking to enforce or effectuate the terms of the Willis Settlement or the Willis Settlement Agreement. Further, the foregoing releases do not bar or release any claims, including but not limited to the Settled Claims, that any of the Willis Defendants may have against any Willis Released Party (other than any of the other Willis Defendants), including but not limited to its insurers, reinsurers, employees and agents.

10. The Court hereby permanently bars, restrains and enjoins the Receiver, the Plaintiffs, the Claimants, 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 Willis Defendants or any of the Willis Released Parties, now or at any time in the future, 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, or is connected with the Stanford Entities; this case; the Troice Litigation; the Janvey Litigation; the Other Willis Litigation; or the subject matter of this case, the Troice Litigation, the Janvey Litigation, the Other Willis Litigation or any Settled Claim. The foregoing specifically includes, but is not limited to, any claim, however denominated, seeking contribution, indemnity, damages, or other remedy where the alleged injury to such Person, entity, or Interested Party, or the claim asserted by such Person, entity, or Interested Party, is based upon such Person's, entity's, or Interested Party's liability to any Plaintiff, Claimant, or Interested Party arising out of, relating to, or based in whole or in part upon money owed, demanded, requested, offered, paid, agreed to be paid, or required to be paid to any Plaintiff, Claimant, Interested Party, or other Person or entity, whether

pursuant to a demand, judgment, claim, agreement, settlement or otherwise. Notwithstanding the foregoing, there shall be no bar of any claims, including but not limited to the Settled Claims, that any of the Willis Defendants may have against any Willis Released Party (other than any of the other Willis Defendants), including but not limited to its insurers, reinsurers, employees and agents. Further, the Parties retain the right to sue for alleged breaches of the Willis Settlement Agreement.

11. The Willis Defendants shall file motions to dismiss with prejudice all claims against all Willis Defendants in all of the Other Willis Litigation not pending before this Court,[4] which motions shall include this Final Bar Order as an exhibit. The plaintiffs in the Other Willis Litigation shall not oppose such motions to dismiss, and are hereby enjoined and barred from continuing to prosecute the Other Willis Litigation against any of the Willis Defendants.

12. Nothing in this Final Bar Order shall impair or affect or be construed to impair or affect in any way whatsoever, any right of any Person, entity, or Interested Party to (a) claim a credit or offset, however determined or quantified, if and to the extent provided by any applicable statute, code, or rule of law, against any judgment amount, based upon the Willis Settlement or payment of the Settlement Amount by or on behalf of the Willis Defendants and the Willis Released Parties; (b) designate a "responsible third

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[4] This includes the *Rupert* Action, the *Rishmague* Action, the *MacArthur* Action, the *Barbar* Action, the *Ranni* Action, and the *Martin* action. *See* p. 5, n. 3, *supra*, for the full captions and case numbers of these actions and the courts in which they are pending.

party" or "settling person" under Chapter 33 of the Texas Civil Practice and Remedies Code; or (c) take discovery under applicable rules in other litigation; provided for the avoidance of doubt that nothing in this paragraph shall be interpreted to permit or authorize (x) any action or claim seeking to recover any monetary or other relief from any of the Willis Defendants or the Willis Released Parties, or (y) the commencement, assertion or continuation of any action or claim against any of the Willis Defendants or the Willis Released Parties, including any action or claim seeking to impose any liability of any kind (including but not limited to liability for contribution, indemnification or otherwise) upon any of the Willis Defendants or Willis Released Parties.

13. The Willis Defendants and the Willis Released Parties have no responsibility, obligation, or liability whatsoever with respect to the cost associated with or the content of the Notice; the notice process; the Distribution Plan; the implementation of the Distribution Plan; the administration of the Willis Settlement; the management, investment, disbursement, allocation, or other administration or oversight of the Settlement Amount, any other funds paid or received in connection with the Willis Settlement, 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 Willis Settlement or the Willis Settlement 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, cancel or modify the Willis Settlement, the Willis Settlement Agreement or this Final Bar Order.

14. Nothing in this Final Bar Order or the Willis Settlement Agreement and no aspect of the Willis Settlement 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 Troice Litigation, the Janvey Litigation, the Other Willis Litigation, or any other proceeding. The Willis Defendants have always denied and continue to expressly deny any liability or wrongdoing with respect to the matters alleged in the complaints in the Troice Litigation, the Janvey Litigation, the Other Willis Litigation and any other claims related to the Stanford Entities.

15. Willis NA is hereby ordered to deliver or cause to be delivered the Settlement Amount ($120 million) as described in Paragraph 25 of the Willis Settlement Agreement. Further, the Parties are ordered to act in conformity with all other provisions of the Willis Settlement Agreement.

16. 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 Willis Settlement, the Willis Settlement 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 Willis Settlement, the Willis Settlement Agreement, the Distribution

Plan, and any payment of attorneys' fees and expenses to Plaintiffs' counsel.

17. 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.

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

Signed on August 23, 2017.

David C. Godbey
United States District Judge

Appendix E

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

No. 3:13-CV-02570-N

ANTONIO JUBIS ZACARIAS, *et al.*,

Plaintiffs,

v.

WILLIS GROUP HOLDINGS PUBLIC LIMITED COMPANY, *et al.*,

Defendants.

FINAL JUDGMENT AND BAR ORDER

By Order entered August 23, 2017 (the "Final Bar Order"), this Court approved a proposed settlement (the "Willis Settlement") among and between Ralph S. Janvey, the Receiver for the Stanford Receivership Estate in *SEC v. Stanford International Bank, Ltd., et al.*, Civil Action No. 3:09-CV-0298-N (the "SEC Action") and a plaintiff in *Janvey, et al. v. Willis of Colorado Inc., et al.*, Civil Action No. 3:13-cv-03980-N-BG (the "Janvey Litigation"); the Court-appointed Official Stanford Investors Committee (the "Committee") as a party to the SEC Action and a plaintiff in the Janvey Litigation; and Samuel Troice, Martha Diaz, Paula Gilly- Flores, Punga Punga Financial, Ltd., Manuel Canabal, Daniel Gomez Ferreiro and Promotora Villa Marino, C.A. (collectively, the "Investor Plaintiffs"), plaintiffs in the Janvey Litigation (Messrs. Troice and Canabal only) and in *Troice, et al. v. Willis of Colorado Inc., et al.*, Civil Action No. 3:09-cv-01274-L (the "Troice

Litigation");[1] and the Willis Defendants.[2] The Court-appointed Examiner signed the Willis Settlement Agreement[3] as chair of the Committee, and as Examiner solely to evidence his support and approval of the Willis Settlement and to confirm his obligations to post the Notice on his website, but is not otherwise individually a party to the Willis Settlement, the Janvey Litigation, or the Troice Litigation.

I. INTRODUCTION

The SEC Action, the Troice Litigation, the Janvey Litigation, and this case all arise from a series of events relating to the collapse of Stanford International Bank, Ltd. ("SIBL"). On February 16, 2009, this Court appointed Ralph S. Janvey to be the Receiver for SIBL and related parties (the "Stanford Entities"). [SEC Action ECF No. 10]. After years of diligent investigation, the Troice-Janvey Plaintiffs believe that they have identified claims against a number of third parties, including the Willis Defendants, that the Troice-Janvey Plaintiffs claim enabled the Stanford Ponzi scheme. The Troice-Janvey Plaintiffs and the plaintiffs in this action

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[1] The Receiver, the Committee, and the Investor Plaintiffs are referred to collectively as the "Troice-Janvey Plaintiffs."

[2] The "Willis Defendants" refers, collectively, to Willis Towers Watson Public Limited Company (f/k/a Willis Group Holdings Limited), Willis Limited, Willis North America Inc. ("Willis NA"), Willis of Colorado, Inc., Willis of Texas, Inc., and Amy S. Baranoucky.

[3] The "Willis Settlement Agreement" refers to the Settlement Agreement that is attached as Exhibit 1 of the Appendix to the Expedited Request for Entry of Scheduling Order and Motion to Approve Proposed Settlement with Willis, to Approve the Proposed Notice of Settlement with Willis, to Enter the Bar Order, and to Enter the Final Judgment and Bar Orders (the "Motion") filed in the SEC Action and the Janvey Litigation.

allege, *inter alia*, that certain of the Willis Defendants aided and abetted the Stanford Ponzi scheme. In addition, in the Janvey Litigation, the Receiver and the Committee allege, *inter alia*, that certain of the Willis Defendants aided, abetted or participated in breaches of fiduciary duty, aided, abetted or participated in a fraudulent scheme, and aided, abetted or participated in fraudulent transfers. The Willis Defendants have always denied and continue to expressly deny any and all allegations of wrongdoing.

Lengthy, multiparty negotiations led to the Willis Settlement. In these negotiations, potential victims of the Stanford Ponzi scheme were well-represented. The Investor Plaintiffs, 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 deposit issued by SIBL (the 'Stanford Investors')" [SEC Action ECF No. 1149]-the Receiver, and the Examiner-who the Court appointed to advocate on behalf of "investors in any financial products, accounts, vehicles or ventures sponsored, promoted or sold by any Defendant in this action" [SEC Action ECF No. 322]-all participated in the extensive, arm's-length negotiations that ultimately resulted in the Willis Settlement and the Willis Settlement Agreement. The parties reached an agreement-in-principle at a mediation with the retired Honorable Layn R. Phillips on March 31, 2016, and the parties executed the Willis Settlement Agreement in August 2016.

Under the terms of the Willis Settlement, Willis NA will pay $120,000,000 to the Receivership Estate, which (less attorneys' fees and expenses) will be distributed to Stanford Investors. In return, the Willis Defendants seek global peace with respect to all

claims that have been, could have been, or could be asserted against any of the Willis Defendants and any of the Willis Released Parties by any Person arising out of or related to the events leading to these proceedings, and with respect to all claims that have been, could have been, or could be asserted against any of the Willis Defendants and any of the Willis Released Parties by any Person arising from or related to the Willis Defendants' relationship with the Stanford Entities. Obtaining such global peace is a critical and material component of the Settlement. Accordingly, the Willis Settlement is conditioned on, among other things, the Court's approval and entry of final bar orders enjoining any Person from asserting, maintaining or prosecuting claims against any of the Willis Defendants or any of the Willis Released Parties.

On September 28, 2016, the Troice-Janvey Plaintiffs filed the Motion in the SEC Action and the Janvey Litigation. [SEC Action ECF No. 2369]. The Court thereafter entered a Scheduling Order on October 19, 2016 [SEC Action ECF No. 2409], which, *inter alia*, authorized the Receiver to provide Notice of the Willis Settlement, established a briefing schedule on the Motion, and set the date for a hearing. On January 20, 2017, the Court held the scheduled hearing. For the reasons set forth in the Final Bar Order and herein, the Court finds that the terms of the Willis Settlement Agreement are adequate, fair, reasonable, and equitable; and the Court approves the Willis Settlement. The Court further finds that entry of this Final Judgment and Bar Order is appropriate.

II. ORDER

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

1. Terms used in this Final Judgment and Bar Order that are defined in the Willis Settlement Agreement, unless expressly otherwise defined herein, have the same meaning as in the Willis Settlement 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); *see also SEC v. Parish*, 2010 WL 8347143 (D.S.C. Feb. 10, 2010). Moreover, the Court has jurisdiction over the subject matter of this action, and the Troice-Janvey Plaintiffs are proper parties to seek entry of this Final Judgment and 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 Parties of the Willis Settlement, the Willis Settlement Agreement, the releases therein, and the injunctions provided for in this Final Judgment and Bar Order, the Final Bar Order to be entered in the SEC Action, and the Final Judgment and Bar Orders to be entered in the Janvey Litigation and the Other Willis Litigation (to the extent pending before the Court);[4]

[4] The "Other Willis Litigation" is defined in the Willis Settlement Agreement to include the 11 additional actions (including this action) relating to the same subject matter as the Troice Litigation and the Janvey Litigation: (i) *Ranni v. Willis of Colorado, Inc., et al.*, C.A. No. 9-22085, filed on July 17, 2009 in the United States District Court for the Southern District of Florida; (ii) *Rupert v. Winter, et al.*, Case No. 20090C116137, filed on September 14, 2009 in Texas state court (Bexar County); (iii)

(iv) were reasonably calculated, under the circumstances, to apprise all Interested Parties of the right to object to the Willis Settlement, the Willis Settlement Agreement, this Final Judgment and Bar Order, the Final Bar Order to be entered in the SEC Action, and the Final Judgment and Bar Orders to be entered in the Janvey Litigation and the Other Willis Litigation (to the extent pending before the Court), 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.

Casanova v. Willis of Colorado, Inc., et al., C.A. No. 3:10-CV-1862-O, filed on September 16, 2010 in the United States District Court for the Northern District of Texas; (iv) *Rishmague v. Winter, et al.*, Case No. 2011C12585, filed on March 11, 2011 in Texas state court (Bexar County); (v) *MacArthur v. Winter, et al.*, Case No. 2013-07840, filed on February 8, 2013 in Texas state court (Harris County); (vi) *Barbar v. Willis Group Holdings Public Limited Company, et al.*, Case No. 13-05666CA27, filed on February 14, 2013 in Florida state court (Miami-Dade County); (vii) *de Gadala-Maria v. Willis Group Holdings Public Limited Company, et al.*, Case No. 13-05669CA30, filed on February 14, 2013 in Florida state court (Miami-Dade County); (viii) *Ranni v. Willis Group Holdings Public Limited Company, et al.*, Case No. 13- 05673CA06, filed on February 14, 2013 in Florida state court (Miami-Dade County); (ix) *Tisminesky v. Willis Group Holdings Public Limited Company, et al.*, Case No. 13-05676CA09, filed on February 14, 2013 in Florida state court (Miami-Dade County); (x) *Zacarias v. Willis Group Holdings Public Limited Company, et al.,* Case No. 13-05678CA11, filed on February 14, 2013 in Florida state court (Miami-Dade County); and (xi) *Martin v. Willis of Colorado, Inc., et al.*, Case No. 2016-52115, filed on August 5, 2016 in Texas state court (Harris County).

4. The Court finds that the Willis Settlement was reached following an extensive investigation of the facts and resulted from vigorous, good faith, arm's-length, mediated negotiations involving experienced and competent counsel. The claims asserted against the Willis Defendants contain complex and novel issues of law and fact that would require a substantial amount of time and expense to litigate, with a significant risk that the Troice-Janvey Plaintiffs and the plaintiffs herein may not ultimately prevail on their claims. By the same token, it is clear that the Willis Defendants would never agree to the terms of the Willis Settlement unless they were assured of global peace with respect to all claims that have been, could have been, or could be asserted against any of the Willis Defendants and any of the Willis Released Parties by any Person arising out of or related to the events leading to these proceedings, and with respect to all claims that have been, could have been, or could be asserted against any of the Willis Defendants and any of the Willis Released Parties by any Person arising from or related to the Willis Defendants' relationship with the Stanford Entities. The injunction against such claims is therefore a necessary and appropriate order ancillary to the relief obtained for victims of the Stanford Ponzi scheme pursuant to the Willis Settlement. *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); *Parish*, 2010 WL 8347143 (similar).

5. Pursuant to the Willis Settlement Agreement and upon motion by the Receiver in the SEC Action, this Court will approve a Distribution Plan that will fairly and reasonably distribute the net proceeds of the Willis Settlement 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 Willis Settlement 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 [SEC Action ECF No. 1584].

6. Accordingly, the Court finds that the Willis Settlement 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 any of the Willis Defendants and any of the Willis Released Parties, the Stanford Entities or the Receivership Estate, including but not limited to the plaintiffs in this action, the Troice-Janvey Plaintiffs, the Claimants, the Stanford Investors, the Interested Parties, the Receiver, and the Committee.

7. The Court hereby permanently bars, restrains and enjoins the plaintiffs in this action, the Receiver, the Troice-Janvey Plaintiffs, the Claimants, 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 Willis Defendants or any of the Willis Released Parties, now or at any time in the future, 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, or is connected with the Stanford Entities; this case; the Troice Litigation; the Janvey Litigation; the Other Willis Litigation; or the subject matter of this case, the Troice Litigation, the Janvey Litigation, the Other Willis Litigation or any Settled Claim. The foregoing specifically includes, but is not limited to, any claim, however denominated, seeking contribution, indemnity, damages, or other remedy where the alleged injury to such Person, entity, or Interested Party, or the claim asserted by such Person, entity, or Interested Party, is based upon such Person's, entity's, or Interested Party's liability to any plaintiff, Claimant, or Interested Party arising out of, relating to, or based in whole or in part upon money owed, demanded, requested, offered, paid, agreed to be paid, or required to be paid to any plaintiff, Claimant, Interested Party, or other Person or entity, whether pursuant to a demand, judgment, claim, agreement, settlement or otherwise. Notwithstanding the foregoing, there shall be no bar of any claims, including but not limited to the Settled Claims, that any of the Willis Defendants may have against any Willis Released Party (other than any of the other Willis Defendants), including but not limited to its insurers, reinsurers, employees and agents. Further, the Parties to the Willis Settlement Agreement retain the right to sue for alleged breaches of the Willis Settlement Agreement.

8. Nothing in this Final Judgment and Bar Order shall impair or affect or be construed to impair or affect in any way whatsoever, any right of any Person, entity, or Interested Party to (a) claim a credit or offset, however determined or quantified, if and to

the extent provided by any applicable statute, code, or rule of law, against any judgment amount, based upon the Willis Settlement or payment of the Settlement Amount by or on behalf of the Willis Defendants and the Willis Released Parties; (b) designate a "responsible third party" or "settling person" under Chapter 33 of the Texas Civil Practice and Remedies Code; or (c) take discovery under applicable rules in other litigation; provided for the avoidance of doubt that nothing in this paragraph shall be interpreted to permit or authorize (x) any action or claim seeking to recover any monetary or other relief from any of the Willis Defendants or any of the Willis Released Parties, or (y) the commencement, assertion or continuation of any action or claim against any of the Willis Defendants or any of the Willis Released Parties, including any action or claim seeking to impose any liability of any kind (including but not limited to liability for contribution, indemnification or otherwise) upon any of the Willis Defendants or any of the Willis Released Parties.

9. The Willis Defendants and the Willis Released Parties have no responsibility, obligation, or liability whatsoever with respect to the cost associated with or the content of the Notice; the notice process; the Distribution Plan; the implementation of the Distribution Plan; the administration of the Willis Settlement; the management, investment, disbursement, allocation, or other administration or oversight of the Settlement Amount, any other funds paid or received in connection with the Willis Settlement, 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 Willis Settlement or the Willis Settlement 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, cancel or modify the Willis Settlement, the Willis Settlement Agreement or this Final Judgment and Bar Order.

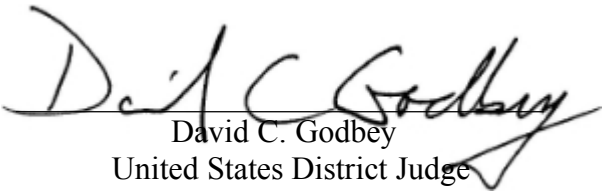
10. Nothing in this Final Judgment and Bar Order, the Final Bar Order or the Willis Settlement Agreement and no aspect of the Willis Settlement or negotiation thereof is or shall be construed to be an admission or concession of any violation of any statute or law, of any fault, liability or wrongdoing, or of any infirmity in the claims or defenses of the parties with regard to any of the complaints, claims, allegations or defenses in this action, the Troice Litigation, the Janvey Litigation, the Other Willis Litigation, or any other proceeding. The Willis Defendants have always denied and continue to expressly deny any liability or wrongdoing with respect to the matters alleged in the complaints in this action, the Troice Litigation, the Janvey Litigation, the Other Willis Litigation, and any other claims related to the Stanford Entities.

11. Without in any way affecting the finality of this Final Judgment and Bar Order, the Court retains continuing and exclusive jurisdiction over the parties to this action for purposes of, among other things, the administration, interpretation, consummation, and enforcement of the Willis Settlement, the Willis Settlement Agreement, the Scheduling Order, the Final Bar Order and this Final Judgment and Bar Order, including, without limitation, the injunctions, bar orders, and releases herein, and to enter orders

concerning implementation of the Willis Settlement, the Willis Settlement Agreement, and the Distribution Plan.

12. All relief that is not expressly granted herein is denied. This is a final judgment. The Clerk of the Court is directed to enter Judgment in conformity herewith.

Signed on August 23, 2017.



David C. Godbey
United States District Judge

Appendix F

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 17-11073

Date Filed: 01/21/2020

ANTONIO JUBIS ZACARIAS; ROBERTO BARBAR

Plaintiffs-Appellants

v.

STANFORD INTERNATIONAL BANK, LIMITED

Defendant

BARRY L. RUPERT; CAROL RUPERT;. MICHAEL RISHMAGUE; LIONEL ALESSIO; DAN AULI PANOS, et al

Movants-Appellants

v.

OFFICIAL STANFORD INVESTORS COMMITTEE; MANUEL CANABAL; WILLIS , LIMITED; WILLIS OF COLORADO, INCORPORATED,

Interested Parties-Appellees

WILLIS GROUP HOLDINGS LIMITED; WILLIS NORTH AMERICA, INCORPORATED; AMY S. BARANOUCKY; BOWEN MICLETTE & BRITT, INCORPORATED; RALPHS. JANVEY; SAMUEL TROICE,

Appellees

v.

EDNA ABLE,

Interested Party-Appellant

CONSOLIDATED WITH 17-11114

THE OFFICIAL STANFORD INVESTORS COMMITTEE; SAMUEL TROICE, on their own behalf and on behalf of a class of all others similarly situated; MANUEL CANABAL, on their own behalf and · on behalf of a class of all others similarly situated,

Plaintiffs-Appellees

v.

CARLOS TISMINESKY; ROBERTO BARBAR; ANA LORENA NUILA DE GADALA-MARIA,

Plaintiffs-Appellants

v.

WILLIS OF COLORADO, INCORPORATED; WILLIS LIMITED; WILLIS GROUP HOLDINGS LIMITED; WILLIS NORTH AMERICA, INCORPORATED; AMY S. BARANOUCKY; BOWEN, MICLETTE & BRITT, INCORPORATED,

Defendants-Appellees

v.

BARRY L. RUPERT; CAROL RUPERT; MICHAEL RISHMAGUE; LIONEL ALESSIO; DAN AULI PANOS, EDNA ABLE; et al,

Appellants

v.

RALPH S. JANVEY, in his Capacity as Court-Appointed Receiver for Stanford Receivership Estate,

Appellee

CONSOLIDATED WITH 17-11122

EDNA ABLE; ROBERT C. AHDERS; RODRIGO RIVERA ALCAYAGA; DAVID ARNTSEN; CARLIE ARNTSEN; ET AL,

Plaintiff-Appellants

v.

WILLIS OF COLORADO, INCORPORATED; WGH HOLDINGS, LTD.; WILLIS LTD.,

Defendants-Appellees

CONSOLIDATED WITH 17-11127

ANTONIO JUBIS ZACARIAS. , Individual; ANA VIRGINIA GONZALEZ DE JUBIS, Individual; GLADIS JUBIS DE ACUNA, Individual; ERIC ACUNA JU BIS, Individual; TULIO CAPRILES, Individual; JORGE CASAUS HERRERO, Indi vidual; MARTHA BLANCHET, Individual; LUIS ZABALA, Individual; EMMA LOPEZ, Individual; ELBA DE LA TORRE, Individual,

Plaintiffs-Appellants

v.

WILLIS LIMITED; WILLIS OF COLORADO, INCORPORATED,

Defendants-Appellees

CONSOLIDATED WITH 17-11128

ANA LORENA NUILA DE GADALA-MARIA, Individual; JOSE NUILA, Individual; JOSE NUILA

FUENTES, individual; GLADYS BO LLA DE NUILA, Individual; GLADYS ELENA NUILA DE PONCE , Individual, et al

Plaintiffs-Appellants

v.

WILLIS LIMITED, a United Kingdom Company; WILLIS OF COLORADO, INCORPORATED, a Colorado Corporation

Defendants-Appellees

CONSOLIDATED WITH 17-11129

CARLOS TISMINESKY, Individual; RACHEL TISMINESKY, Individual; FELIPE BRONSTEIN, Individual; ETHEL TISMINESKY DE BRONSTEIN, Individual; GUY GERBY, Individual; VICENTE JUARISTI SUAREZ, Individual; AMPARO MATEO LONGARELA, Individual; SALVADOR GAVILAN, Individual; LARRY FRANK, Individual; MERCEDES BITTAN, Individual; OMAIRA BERMUDEZ, Individual,

Plaintiffs-Appellants

v.

WILLIS LIMITED; WILLIS OF COLORADO, INCORPORATED,

Defendants-Appellees

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

ON PETITION FOR REHEARING EN BANC

(Opinion: December 19, 2019, 5 Cir., ___, __, F.3d__)

Before: HIGGINBOTHAM, GRAVES, and WILLETT, Circuit Judges.

PER CURIAM.

(✓) Treating the Petition for Rehearing En Banc as a Petition for Panel Rehearing, the Petition for Panel Rehearing is DENIED. No member of the panel nor judge in regular active service of the court having requested that the court be polled on Rehearing En Banc (FED. R. APP. P. and 5TH CIR. R. 35), the Petition for Rehearing En Banc is DENIED.

( ) Treating the Petition for Rehearing En Banc as a Petition for Panel Rehearing, the Petition for Panel Rehearing is DENIED. 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 Petition for Rehearing En Banc is DENIED.

ENTERED FOR THE COURT:

/s/ Patrick Higginbotham

UNITED STATES CIRCUIT JUDGE

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*Judges James L. Dennis, Catharina Haynes, and Gregg J. Costa, did not participate in the consideration of the rehearing en banc.

Appendix G

15 U.S.C. §77v

(a) Federal and State courts; venue; service of process; review; removal; costs

The district courts of the United States and the United States courts of any Territory shall have jurisdiction of offenses and violations under this subchapter and under the rules and regulations promulgated by the Commission in respect thereto, and, concurrent with State and Territorial courts, except as provided in section 77p of this title with respect to covered class actions, of all suits in equity and actions at law brought to enforce any liability or duty created by this subchapter.

* * *

15 U.S.C. § 78aa

(a) In general

The district courts of the United States and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have exclusive jurisdiction of violations of this chapter or the rules and regulations thereunder, and of all suits in equity and actions at law brought to enforce any liability or duty created by this chapter or the rules and regulations thereunder. Any criminal proceeding may be brought in the district wherein any act or transaction constituting the violation occurred. Any suit or action to enforce any liability or duty created by this chapter or rules and regulations thereunder, or to enjoin any violation of such chapter or rules and regulations, may be brought in any such district or in the district wherein the defendant is found or is an inhabitant or transacts business, and process in such

cases may be served in any other district of which the defendant is an inhabitant or wherever the defendant may be found. In any action or proceeding instituted by the Commission under this chapter in a United States district court for any judicial district, a subpoena issued to compel the attendance of a witness or the production of documents or tangible things (or both) at a hearing or trial may be served at any place within the United States. Rule 45(c)(3)(A)(ii) of the Federal Rules of Civil Procedure shall not apply to a subpoena issued under the preceding sentence. Judgments and decrees so rendered shall be subject to review as provided in sections 1254, 1291, 1292, and 1294 of title 28. No costs shall be assessed for or against the Commission in any proceeding under this chapter brought by or against it in the Supreme Court or such other courts.

Appendix H

Zacarias Parties

Antonio Jubis Zacarias, Ana Victoria Gonzalez De Jubis, Gladis Jubis De Actuna, Eric Acuna Jubis, Tujlio Capriles, Jorge Casaus Herrero, Martha Blanchet, Luis Zabala, Elma Lopez, Elba De La Torre, Carlos Tisminesky, Rachel Tisminesky, Felipe Bronstein, Ethel Tisminesky De Bronstein, Guy Gerby, Yicente. Juaristi Suarez, Amparo Mateo Longarela, Salvador Gavilan, Larry Frank, Mercedes Bittan, Omaira Bermudez, Reinaldo Ranni, Jorge Tome, Roberto Barbar, Isabel Molero, Samir Barbar, Salma Hanna De Barbar, Alberto Barbar, R & A Consulting Ltd., Beatriz E. Perez, Carmine Antonio Belmonte, Eduardo Belmonte, Maria Teresa Cellini, Mauro Belmonte, Laura Ruiz De Belmonte, Gianpaolo Belmonte, Jesus Emiro Chacon, Imelda A. De Chacon, Margarita Maria Velez, José E. Colmenares, Martha Hernández, Raul Colmenares, Maria Helena Jaramillo De Moreno, Paula Maria Moreno Jaramillo, Juan Felipe Moreno Jaramillo, Ruben Duarte, Julieta Palau, Mario Ruben Ferrufino Alba, Claudia Andrea Ferrufino, Ligia Echeverri De Ferrufino, Ruben Mario Ferrufino Goitia, Mario Ruben Ferrufino Alba, Juana Camila Ferrufino, Aydee Ferrufino Vda. De Rojas, Camila Ana Maria Harb, Patricia D. Harb Luis Vidal, Jesus Enriquez Villamizar, Jorge Tome, Ana Lorena Nuila De Gadala-Maria, Jose Nuila, Jose Nuila Fuentes, Gladys Bonilla De Nuila, Gladys Elena Nuila De Ponce, Jose Ricardo Nuila Bonilla, Victor Jorge Saca Tueme, Catalina Nustas De Saca, Claudia Lizete Saca De Gallegos, Jorge Victor Saca Nustas, Monica Emely Saca Nustas, Katia Maria Ghattas De Saca, Monica Emely Saca, Elias Saca Tueme, Eileen Nicolle Saca De Giacoman, Edith Marleyn Saca Ballesteros, Jenny Sorel Saca

Ballesteros, Oscar Kafati, Mauricio Bigit Posada, Jose Antonio Miguel Bandek, Eduardo Elias Miguel Giha, Ernesto Urcuyo Abarca, Lorna Maria Lacayo De Urcuyo, Stemich International Holdings Corp., Jose Ofilio Lacayo Perez, Celia Josefina Vivas De Lacayo, Ariel Lacayo, Leonel Lacayo, Mercedes Arguello De Lacayo, Inizia Holdings, S.A., Ocean Waters Holdings, S.A., Bernardo Ramon Chamorro Cuadra, Rhina Auxiliadora Urcuyo De Chamorro, Braulio Vargas, Francisco Roberto Dueñas Fortuna, Guillermo Aceto Marini, Marta Oriani De Gutierrez Lopez, Jose Rolando Gutierrez Oriani, Carlos Armando Gutierrez Oriani, Arely Arguello De Gutierrez, Dora Ernestina Echevarria Cañas De Gutierrez, Jose Rolando Gutierrez Oriani, Anabella Viaud Vda. De Arias, Gina Maria Umana De Morales, Gina Dordelly De Umana, Tom Hawk, Claude Dumont De Hawk, Mylena Del Socorro Icaza De Lacayo, Humberto Jose Lacayo Dubon, Maria Auxiliadora Herdocia, Filiberto Antonio Herdocia Lacayo, Maria Nora Icaza De Herdocia, Juan Jose Domenech, Javier Cabrera, Judith Cabrera, Jose Luis Cabrera, Roberto Dumont Alvarez, Claude Dumont Alvarez, Roberto Dumont, Catia Eserski De Dumont, Jose Adolfo Rubio, Maria Teresa Olmos, and Vivian Tatiana Molins De Laennec.

Appendix I

RELATED PROCEEDINGS

Proceedings in the Supreme Court of the United States of America

Chadbourne & Parke LLP v. Troice, Nos. 12–79, 12–86, 12–88 (Feb. 26, 2014)

Proceedings in the United States Court of Appeals for the Fifth Circuit

Zacarias, et al. v. Stanford Int'l Bank, Ltd., et al., Case No. 17-11073 (substituted opinion issued on December 19, 2019)

Official Stanford Investors Committee, et al. v. Carlos Tisminesky, et al v. Willis of Colorado, Inc., et al. v. Barry L. Rupert, et al., No. 17-11114 (substituted opinion issued on December 19, 2019)

Edna Able, et al. v. Willis of Colorado, Inc., No. 17-11122 (substituted opinion issued on December 19, 2019)

Antonio Jubis Zacarias, et al. v. Willis Limited, et al., No. 17-11127 (substituted opinion issued on December 19, 2019)

Ana Lorena Nuila de Gadala-Maria, Individual, et al. v. Willis Limited, a United Kingdom Company, et al., No. 17-11128, (substituted opinion issued on December 19, 2019)

Carlos Tisminesky, et al. v. Willis Limited, et al., No. 17-11129 (substituted opinion issued on December 19, 2019).

SEC v. Stanford Int'l Bank, Ltd., No. 17-10663 (June 17, 2019)

Rishmague v. Winter, Nos. 14–11118, 14–11119 (September 16, 2015)

Janvey v. Alguire, No. 11-10838 (August 30, 2013)

Janvey v. Democratic Senatorial Campaign Comm., Inc., No. 11-10704 (March 18, 2013)

Proceedings in United States District Courts

SEC v. Stanford International Bank, Inc., Case No. 3:09-cv-00298-N (N.D. Tex.)

Ralph S. Janvey, Receiver for the Receivership Estate of Stanford International Bank, Ltd., et al. v. Willis of Colorado Inc., et al., Case No. 3:13-cv-3980-N (N.D. Tex.) (bar order entered on August 23, 2017).

Able et al. v. Willis of Colorado Inc et al., Case No. 3:09-md-02099-N-BQ (N.D. Tex.) (bar order entered on August 23, 2017).

Ana Lorena Nuila de Gadala-Maria, et al v. Willis Group Holdings Public, et al., Case No. 3:13-cv-2572 (N.D. Tex.) (final judgment and bar order entered on August 23, 2017).

Antonio Zacarias, et al. v. Willis Group Holdings Public, et al., Case No. 3:13-cv-2570 (N.D. Tex.) (final judgment and bar order entered on August 23, 2017).

Carlos Tisminesky, et al. v. Willis Group Holdings Public, et al., No. 3:13-cv-2573

(N.D. Tex.) (final judgment and bar order entered on August 23, 2017).

Troice et al v. Willis of Colorado, Inc. et al., No. 3:09-CV-01274 (N.D. Tex.) (bar order entered on August 23, 2017).

Ranni v. Willis of Colorado, Inc., et al., No. 9-22085 (S.D. Fla.) (bar order entered on August 23, 2017)

Casanova v. Willis of Colorado, Inc., et al., No. 3 10-CV-1862-O (N.D. Tex.) (bar order entered on August 23, 2017)

Roberto Barbar et al, v. Willis Group Holdings Public, et al, No. 17-11073 (N.D. Tex.) (bar order entered on August 23, 2017)

State Trial Court Proceedings

Rupert v. Winter, et al., No. 20090C116137 (Bexar County, Tex.) (bar order entered on August 23, 2017)

Rishmague v. Winter, et al., No. 2011C12585 (Bexar County, Tex.) (bar order entered on August 23, 2017)

MacArthur v. Winter, et al., No. 2013-07840 (Harris County, Tex.) (bar order entered on August 23, 2017)

Barbar v. Willis Group Holdings Public Limited Company, et al., No. 13-05666CA27 (Miami-Dade County, Fla.) (bar order entered on August 23, 2017)

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