

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

SECURITIES AND EXCHANGE)	CIVIL ACTION NO.
COMMISSION,)	3:09-CV-0298-N
Plaintiff,)	
)	
VS.)	DALLAS, TEXAS
)	
STANFORD INTERNATIONAL BANK,)	
LTD., et al.,)	
Defendants.)	JULY 31, 2009

RALPH S. JANVEY, IN HIS)	
CAPACITY AS COURT-APPOINTED)	
RECEIVER FOR THE STANFORD)	
INTERNATIONAL BANK, LTD.,)	
et al.,)	CIVIL ACTION NO.
Plaintiff,)	3:09-CV-724-N
)	
VS.)	
)	
JAMES R. ALGUIRE, et al.,)	
Relief Defendants.)	

RALPH S. JANVEY, IN HIS)	
CAPACITY AS COURT-APPOINTED)	
RECEIVER FOR THE STANFORD)	
INTERNATIONAL BANK, LTD.,)	
et al.,)	
Plaintiff,)	CIVIL ACTION NO.
)	3:09-CV-1329-N
)	
VS.)	
)	
JIM LETSOS, et al.,)	
Relief Defendants.)	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE DAVID C. GODBEY
UNITED STATES DISTRICT JUDGE

1 APPEARANCES:

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EXCHANGE COMMISSION
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1 P R O C E E D I N G S

2 JULY 31, 2009

3 THE COURT: Be seated. Good afternoon.

4 MR. EDMUNDSON: Good afternoon.

5 MR. SADLER: Good afternoon, Your Honor.

6 THE COURT: Based on what I have read so far, my
7 inclination--and this is not a ruling; this is to let you
8 know my inclination so that you can have that in mind when
9 you're talking to me, to the extent I entertain that--is to
10 deny the SEC's motion to modify the Receivership Order; to
11 deny the Receiver's request for an asset freeze except to
12 the extent it would apply to interest, not to principal;
13 to stay the current Order that evaporates the asset freeze
14 as of noon Monday for one week to give the Receiver time,
15 if he chooses, to get a second opinion from the Circuit on
16 that.

17 So that's kind of where I am, having read what I have
18 read.

19 I think who I would like to hear from would be the
20 SEC first, then the Examiner, then the Receiver. And then
21 if there are other relief defendants who have something new
22 and different that they want to add, I will possibly listen
23 to that for a bit.

24 So having said that, is the SEC ready to talk to me?

25 MR. EDMUNDSON: Kevin Edmundson on behalf of the

1 SEC.

2 Your Honor, I think, in light of your leaning, I might
3 curb my arguments a great deal this evening.

4 We have made our request to modify the Receivership
5 Order simply because we don't believe that there's any
6 legal support to sue innocent investors for clawback claims
7 of principal amount.

8 And with respect to the remaining claims that might
9 be brought in the future against investors, the Commission
10 believes that we are in a position to pursue those claims as
11 plaintiff in this case, it would provide a cost savings to
12 the Receivership, and we believe it's appropriate to do so.

13 I don't know -- you know, we would have to evaluate
14 each claim on a case-by-case basis. If there were
15 preferences to investors, we would pursue them. If an
16 investor received money in bad faith, we would pursue them.
17 And -- and we would like, for the reasons stated in our
18 brief, for the authority to pursue that.

19 There are -- and I will be brief, Your Honor. There
20 are two reasons that we believe that the Receiver and the
21 Commission don't have the authority to pursue principal
22 amounts.

23 Number one, we don't believe that innocent investors
24 can be proper relief defendants in court for the return of
25 principal payments. To be a proper relief defendant, the

1 investor or -- or any person or entity must not have a
2 legitimate claim to hold that property. In this case, cash.
3 We believe in this case that these innocent investors have
4 the right to retain the principal amount of the money that
5 they have received.

6 And we believe that that is supported in the case law,
7 even some of the cases that have been cited by the Receiver
8 in this case, the Donell case and the Scholes case. And I
9 won't -- I won't belabor those cases, but we believe that
10 they stand for the proposition that you cannot -- even
11 though they were not in the context of whether or not it
12 was appropriate to name them as relief defendants, but they
13 stand for the proposition that you cannot seek the return
14 of principal.

15 And on the merits, those cases as well as others, I
16 might point the Court to two cases which are SIPC cases:
17 Universal Clearing House versus Abbott, which is found at
18 77 B.R. 843, and Bayou Superfund, which is at 396 B.R. 810.
19 Those cases also support the -- the idea that the Commission
20 and the Receiver cannot pursue an innocent -- purely
21 innocent investor for the return of payments.

22 If the Court is inclined to not -- to allow claims
23 only against interest, we believe that that -- that is an
24 appropriate ruling because we believe that -- that the
25 Receiver and the Commission could pursue those claims if

1 they wanted to.

2 THE COURT: Have you-all ever asked a court to
3 rein in a receiver before? You know, I certainly haven't
4 read every SEC case, but this was a little bit of a new one
5 for me.

6 MR. EDMUNDSON: I'm not aware of one. Certainly
7 we have asked the Court in -- in many time -- in -- on many
8 occasions, many different occasions to amend a receivership
9 order to conform the order to the facts and circumstances of
10 the case.

11 I am not aware of any time where the receiver has --
12 has -- or where the SEC has come in to try to curb some of
13 the authority of a receiver.

14 We -- we filed this motion after a great deliberation
15 internally and after a lot of discussions with the Examiner
16 and the Receiver.

17 THE COURT: Do you still want a receiver?

18 MR. EDMUNDSON: We still want the Receiver, yes.
19 And this is --

20 THE COURT: Okay.

21 MR. EDMUNDSON: Your Honor, we have our areas of
22 disagreement. But this is a -- this was an area that we
23 thought we had to bring to the Court's attention because we
24 don't believe that these claims -- the claims for principal
25 are supported by law. And we disagreed with the Receiver.

1 We had a great deal of discussions and tried to work
2 something out. We were unable to. So we had to bring our
3 views to the Court's attention pursuant to this motion.

4 We still want the Receiver. We support the Receiver.
5 We disagree with the clawback claims for principal.

6 THE COURT: Okay.

7 MR. EDMUNDSON: One other thing I -- and I'll --
8 I'll be brief, Your Honor. I -- I would point out that
9 in the Madoff case, the SIPC Trustee there has published
10 guidance with respect to the exercise of his discretion in
11 going after clawback claims against investors.

12 The Madoff Trustee acknowledges that it is within his
13 discretion to pursue those claims, but has issued -- and
14 I'm happy to provide this to the Court, it's on his website,
15 but has issued guidance as to when he would do that.

16 The guidance says that, as to transfers to an investor,
17 the SIPC Trustee will consider whether or not the investor
18 was a net winner or a net loser. If the investor is a net
19 loser, the SIPC Trustee is not likely to pursue that claim.

20 If the claim would create an undue hardship on the
21 customer, the SIPC Trustee in Madoff is not likely to pursue
22 that claim.

23 If the investor -- if there is some evidence of a lack
24 of good faith, which is not alleged in this case, but if
25 there -- but if there is evidence of a lack of good faith,

1 that would be an occasion when the Receiver might make a
2 claim against an innocent investor.

3 And the Trustee made clear that he would not initiate
4 any action against investors without exhausting discussions
5 with the investors and evaluating all other defenses that
6 they may assert and without an evaluation of the particular
7 facts and circumstances of the case.

8 We think that's -- we think that that's appropriate
9 guidance. We think that's consistent with the traditional
10 practice at the SEC. And -- and we think that the Receiver
11 does have the discretion in this case to consider those
12 factors before filing claims against innocent investors.

13 THE COURT: I certainly agree with you that the
14 Receiver has that discretion. I think here what I'm hearing
15 is he's exercised that discretion and decided, by golly, he
16 better go after those folks.

17 MR. EDMUNDSON: Well, I -- it's clear that that
18 is his determination. I think, in doing so, he's going
19 after a small pool of investors and -- and it does not
20 appear that he is going to go after the lion's share of
21 investors to try to recover for the Estate any types of
22 Ponzi payments. And we don't believe that that's -- that
23 that approach is equality.

24 So he is exercising his discretion, but we think that
25 the discretion ought to be -- he ought to be considering the

1 fact -- the same types of factors that are considered in --
2 the Madoff Trustee is considering.

3 THE COURT: We'll hear from the Receiver in a
4 moment. What I recall is the Receiver basically said he has
5 not given up on these other folks but it makes more sense
6 to go after the easy stuff first. I've never heard him
7 disclaim any interest in trying to recover proceeds where
8 it's economical from other investors.

9 MR. EDMUNDSON: And that's our understanding as
10 well.

11 THE COURT: Okay.

12 MR. EDMUNDSON: And we think for a going-forward
13 basis it would be appropriate for the Court to consider
14 giving all claims to the Commission.

15 There may be other claims that haven't been filed that
16 are not going to be subject to the -- the asset freeze
17 because the asset freeze is going to go away. But if there
18 are any remaining claims, our motion simply urges the Court
19 to give those claims over, potential claims, to -- to the
20 Commission.

21 THE COURT: Is there anything stopping you-all
22 from asserting those claims?

23 MR. EDMUNDSON: No, I don't think that there would
24 be. But certainly -- and the Receiver feels an obligation
25 to do it, the Receiver has done it, the Receiver presumably

1 is spending Receivership assets to pursue it. We would
2 like to amend the Order to make it clear who ought to be
3 responsible to do that.

4 THE COURT: I guess what I was trying to clarify
5 is not -- you don't want authority to go after those other
6 claims. You already have that authority. You want to
7 withdraw that authority from the Receiver so that they are
8 not playing as well.

9 MR. EDMUNDSON: That -- that's correct, with
10 respect to investor claims.

11 THE COURT: Okay.

12 MR. EDMUNDSON: Thank you.

13 THE COURT: Thanks.

14 Mr. Little. So here's my question for you, at least
15 one question for you. As sort of a friend of the Court,
16 you're here to speak on behalf of the -- the multitudes of
17 investors who can't all make it into the courtroom and so
18 on. I would guess that most of the people that you've been
19 hearing from are people whose accounts are frozen.

20 The Receiver, as I understand it, is saying there are
21 bunches of other investors whose accounts aren't frozen who
22 are taking a big hit and we're just trying to share the pain
23 a little bit more equitably.

24 So, in part, what I understand the Receiver's pitch to
25 be is, he's trying to get money to give to all the investors

1 that you probably haven't heard from yet but that in some
2 sense maybe you're supposed to be a voice for here today.
3 And I'm just curious to know what thoughts you've given
4 about the two subclasses of potential investors and their
5 conflicting interests and how that affects your views of
6 this.

7 MR. LITTLE: I'm happy to start there, Judge.

8 I actually do hear from those other folks fairly
9 regularly, the folks who -- the folks who got accounts
10 frozen are certainly folks who contact us a lot. But the
11 folks who are simply the folks who lost money on CDs also
12 contact me on a fairly regular basis, and I get a lot of
13 information from them as well.

14 Part of the problem here is that a vast number of those
15 folks are never going to be subject to those claims. There
16 are some 28,000 investors out there. About 4500 of those
17 are in the United States. There are 650 subject to these
18 claims and only -- subject to these claims with frozen
19 accounts.

20 There are some 20,000 who are beyond this Court's
21 jurisdiction. If they got CD proceeds, which surely a
22 goodly number of them did, the Receiver is never going to
23 be able to go after those folks.

24 The report of the Receiver's expert in his papers
25 says that between January of '08 and the inception of the

1 Receivership in February 17, '09, \$2 billion was redeemed,
2 was paid out in redemptions. He is suing as to the folks
3 who are frozen for some 300 million and change.

4 As to the folks who are not frozen, he's got another
5 500 million. I'd submit to the Court there are grave
6 questions about whether any of those are ever going to be
7 collectable. The Libyan government is probably not going
8 to write the Receiver a check or respond to this Court's
9 jurisdiction.

10 So therein is the problem. We have a very, very small
11 pool of folks who just by happenstance -- the Receiver talks
12 a lot in his papers about luck, chance, he got lucky, he
13 didn't. Well, these 650 folks are unlucky because they
14 happened to have their money where the Receiver could freeze
15 it and it has remained frozen. And they are the ones he's
16 going after.

17 He talks about going after other folks, but he has not
18 done so. He has not provided any information as where the
19 other 2 -- the rest of that 2 billion went out January '08
20 to February '09. And it is inequitable to go after this
21 very small pool to collect 300 million, if in fact you
22 prevail on the claim, as to which I have grave doubts.

23 But even if you could go after that and -- and recover
24 it, to go after 650 to get 300 million, to then spread it
25 out over the 28,000 who are never subject to that same claim

1 is inequitable. And it is recognized as inequitable by many
2 of the CD investors who would be advantaged by the claim
3 because they are not going to be subject to this Court,
4 they're not going to respond.

5 There are folks in the United States as to whom the
6 Receiver will probably never pursue a claim. All those
7 folks with \$250,000 below accounts who were released early
8 on, we don't worry about them or whether they had CD
9 proceeds. We just let them go.

10 That's the problem with these claims. It focuses on --
11 it continues to focus on a very, very narrow band, and the
12 Receiver has provided no information whatsoever about where
13 all these other billions went and what he purports to do
14 about that.

15 There are also folks, frankly, who are not investors
16 as to whom claims could be made. The Stanford entities
17 sponsored sporting events, athletes, gave to charities, did
18 all sorts of things. Those are classic relief defendants.
19 I don't see those claims. They are easy ones. These are
20 investors who took money out of their pocket, bought a CD,
21 got contract rights when they did it, received money back
22 pursuant to those rights, and they are being sued because
23 they're locked up at Pershing. And that's the only reason
24 they're in the crosshairs.

25 And that's why I think these are inequitable claims,

1 even though they might -- if they were successful, which I
2 do not think they can be, they might advantage some of
3 these other folks.

4 Again, the problem, as the SEC has alluded to, the
5 cases the Receiver cites do not support a recovery of
6 principal from innocent investors who took their money out
7 of their pocket and bought a CD. And if we go down the road
8 and we have 650 or more claims against these folks and at
9 the end of the day what the Court awards is the interest,
10 we are losing money in a major way, because there's not
11 that much interest. It's mostly principal.

12 We don't know what the breakdown is, candidly. The
13 Receiver has not shared that breakdown with me. But just
14 based on what we know about the way these CDs operated, the
15 interest is going to be a very small fraction of the total
16 amount at issue.

17 And so if at the end of this whole pursuit what the
18 Court rules is that they can clawback interest but not
19 principal, I will submit this Estate will have lost a large
20 amount of money which will benefit no investor and will
21 continue to impose hardships on these investors, this
22 little subset that's being sued.

23 I hope that answered the Court's question. I'm not
24 sure it did.

25 I was going to ask the Court to clarify exactly what

1 you were -- your leaning on the asset freeze. I think I
2 heard the Court say you would deny the motion to extend
3 the freeze but hold off on the August 3 termination of the
4 freeze for a week. And then I heard you say something about
5 continuing the freeze as to interest.

6 THE COURT: Yes.

7 MR. LITTLE: I guess at this point we don't know
8 the difference between those two -- the interest and the
9 principal as to the freeze. But --

10 THE COURT: That would be a problem. My
11 impression was that the Receiver knew that answer to that
12 question.

13 MR. LITTLE: He -- he may. He has not shared that
14 answer with me in any of the data he has ever given me. So
15 he may know the answer to that question. But I will submit
16 to the Court that the numbers that are attached to the
17 Receiver's Complaint are in many respects wrong.

18 So even his numbers are -- are challengeable by many of
19 the investors that I have heard from in the last 48 hours in
20 terms of the Receiver says, I have 500 million -- 500,000 in
21 CD proceeds. I don't. I've got \$125,000, or I've got some
22 other number, or I didn't have that account.

23 So there are going to be problems within those numbers
24 as they sit, at least based upon what I've heard to date.

25 THE COURT: Uh-huh. I would assume that that is

1 a determinable number. Maybe it's not, but I would assume
2 that it is a number that can be determined with access to
3 the records.

4 MR. LITTLE: It may be. I don't know, and I've
5 never seen a breakdown of the two --

6 THE COURT: Uh-huh.

7 MR. LITTLE: -- specifically by defendant or by
8 investor. I have certainly never seen a breakdown on that
9 basis.

10 I'd like to make a couple of other points for the Court
11 if I would. It may be unusual for the SEC to come in and --
12 and ask the Court to modify a receivership order, but the
13 SEC is the plaintiff and the SEC came in and asked for the
14 order in the first place.

15 And it seems to me that it's well within the SEC's
16 authority as the entity of the government charged with the
17 enforcement and regulation of this area to come in and say,
18 okay, Judge, we've asked for these orders in the first place
19 but now we'd like to trim them back because we don't believe
20 that what's happening is really in the best interest of our
21 enforcement activities, of our regulation of this area, and
22 of the public.

23 I think that's what the SEC is asking the Court to do
24 here. It's made the determination that these claims ought
25 not go forward as to principal against innocent investors.

1 The Receiver disagrees, but I'd suggest that the Chevron
2 doctrine instructs the Court that you ought to defer to the
3 SEC on this issue and not the Receiver. Contrary to the
4 Receiver's papers, he is not the guy best able to make that
5 decision.

6 The other thing I'd like to point out to the Court --
7 by the way, you did not indicate an inclination as to
8 whether you thought I was going to be the lawyer for all
9 650 of these folks. Not my favorite idea. I don't think I
10 can represent individual folks who have their property at
11 risk given the Court's Order appointing me, and I don't want
12 to.

13 But these folks are not one homogeneous blob who are
14 all the same. The SEC alluded to the distinction being
15 drawn in the Madoff proceeding between net losers, net
16 winners. Well, we have that distinction here.

17 Just for fun, I took about a half hour and pulled the
18 first 23 net losers I found out of the stipulations that
19 have been filed with the Court. Those folks are on the --
20 the number 5 exhibit. There are 40 of them, \$18 million.
21 Out of that group, there's 23 who are net losers. They lost
22 \$26.5 million. They are being sued for 2 million. Okay?

23 If the Receivership can return 7 cents on the dollar
24 to the investors, we can sue those people for 2 million and
25 give it back to them because that's about 7 cents on the

1 dollar on their loss.

2 That's the kind of problem we have with these claims.
3 We are just creating more victims, we're digging bigger
4 holes for those victims, and at the end of the day I don't
5 think we're going to advantage the Estate as a whole,
6 particularly if, as I believe, they can't make their case
7 for principal.

8 Now, the SEC talked a little bit about the relief
9 defendants. And I won't beat this horse too much, but we
10 have -- I have cited several times in my papers the cases
11 out of Florida from May and June, the Sun Capital case and
12 its companion case, that speak directly to what a relief
13 defendant is.

14 And say someone who gave money and received contract
15 rights and exercised those contract rights, even if they'd
16 received the proceeds of a fraud, you cannot say they don't
17 have an ownership interest. You cannot say they don't have
18 a legitimate claim. If you cannot say those things, they
19 are not relief defendants.

20 That is true of every one of these investors. They
21 are not relief defendants, so these proceedings as relief
22 defendants ought not go forward. I think that's the
23 conclusion the SEC also reached, and I think the Court ought
24 to adopt that conclusion and give deference to the SEC's
25 determination of that.

1 Anything else for you?

2 THE COURT: No.

3 MR. LITTLE: Thank you, Judge.

4 THE COURT: What says the Receiver?

5 MR. SADLER: Yes, Your Honor. Kevin Sadler, and
6 let me address several issues and --

7 THE COURT: You know everybody in the courtroom is
8 angry with you. That's kind of a weird deal. I wouldn't
9 have expected that when this started.

10 MR. SADLER: Well, I think this case has been a
11 surprise to everyone at a bunch of different levels, and
12 I -- I'm glad you asked that question because it -- it
13 really explains why we're here fighting over this very
14 important issue.

15 THE COURT: And by everyone, I did not mean to
16 include myself.

17 MR. SADLER: I understand.

18 THE COURT: Okay.

19 MR. SADLER: You are the referee. And, of course,
20 the Receiver works not for the SEC but works for the Court,
21 and we're very mindful of that in carrying out our duties.

22 I think it was a surprise to everyone how widespread
23 and how long this fraud had been allowed to go on. I think
24 the discovery that we had tens of thousands of investors,
25 that we had hundreds of entities spread all over creation,

1 that the money that had been taken in via fraud had been
2 spread over such a wide area, quite frankly, I think that
3 was a surprise to a lot of people. I think it was a
4 surprise to the government.

5 I think it was also a surprise to find that there
6 wasn't some Swiss bank account that had a billion dollars
7 sitting in it just waiting for the proper authority to take
8 control of it and then start making distributions. I think
9 many people thought that's what was going to be found. But
10 that's not what we found.

11 We found a few million here and a few million there.
12 There's a few million overseas that the Receiver is trying
13 to gain control of but has to fight not only with a
14 competing receiver but with foreign governments. So there
15 wasn't the giant billion dollars sitting in a Swiss bank
16 account that would have made this whole process so much
17 easier.

18 And I submit, Your Honor, if we had that, if we
19 had a billion dollars sitting in a bank account, if this
20 Receivership had been instituted, for example, a year
21 earlier than it was, a billion dollars that went out would
22 not have. I don't think we would have this fight that
23 we're having now.

24 We're having this fight because so many people have
25 been harmed and there's so little left to compensate people.

1 And that is why I want to crystallize for you because I hear
2 loud and clear when you -- when you came out and said, this
3 is what I'm thinking, this is how I'm inclined to go, I --
4 I hear what you're saying. But I want to focus Your Honor
5 on what we are focused on, which is where that will take us
6 if that's the path we move down.

7 I agree with one thing that my colleagues have said
8 before I stood up, which is, if this is an interest only,
9 recapture interest only, I doubt very much it will
10 ultimately be cost effective to pursue or will return very
11 much to anyone. That's not the way this fraud operated.

12 But let me crystallize for Your Honor what this means
13 if we draw a distinction between principal and interest. In
14 my reading of the case law--and to my knowledge only one new
15 case has been brought to your attention since we filed our
16 brief in May on clawbacks, either under an equitable theory
17 which we're pursuing, or statutory fraudulent transfer--the
18 difference between interest and principal is recognized in
19 fraudulent transfer cases. And you've read the cases and
20 I'm sure your law clerks have.

21 But even in fraudulent transfer cases, there's a
22 Ninth Circuit case from a year ago, Donell, which has been
23 cited to you, recognizes that even in statutory fraudulent
24 transfer cases, principal as well as profit can be recovered
25 subject to an affirmative defense. And, of course,

1 preference actions in bankruptcy can capture both.

2 So the idea that there are legal theories to capture
3 principal is not some concept we invented.

4 And there are cases out of this Circuit. We cited one,
5 Quilling versus 3D Marketing, which was a district court
6 case out of the Northern District where someone who had
7 invested \$100,000 in a Ponzi scheme got back \$150,000,
8 was ordered to repay \$150,000 plus interest.

9 Now, why is that important here? What's important
10 here, Your Honor, is crystallized by two facts that I'm
11 going to give you.

12 On January 23rd, one of the investors, Mr. Maddux that
13 we've asserted a claim against, received \$3.6 million paid
14 out of this Ponzi scheme--\$3 and a half million in principal
15 and about \$169,000 in interest.

16 January 23rd, three weeks before the Receivership was
17 put in place.

18 In that same time frame, 30 days before this
19 Receivership was put in place, the Ponzi scheme took in
20 \$70 million of new money. \$70 million. All of the people
21 that put in that \$70 million in that last 30 days right now
22 have absolutely nothing to show for it except a piece of
23 paper called a Stanford International Bank CD. They have
24 nothing. On the other hand, Mr. Maddux, has \$3.6 million.

25 And what is not disputed and what no one has brought a

1 case to Your Honor's attention to dispute is that if the
2 Receivership had been instituted on January 22nd, the day
3 before that payment was made, Mr. Maddux would be like those
4 others. He would not have his money. Case law is absolutely
5 clear, he would not be able to say, that's my \$3.6 million
6 redemption I ordered; I get that; everyone else can share
7 pro rata, but I get that money; that's my money.

8 He would not be able to do that, and no one has brought
9 a case to your attention that that says otherwise. And we
10 have brought the pro rata cases to your attention that show
11 you what the standard is.

12 Why is that important? Because in the Receiver's view,
13 Your Honor, we cannot accomplish at the end of this, and
14 there will be an end to it, a proper equitable pro rata
15 distribution if we have these kinds of preferences that are
16 allowed to stand.

17 And I don't care what you call it, but Mr. Maddux got a
18 preference. He was treated -- if his money is not returned
19 to the Estate, he is being treated preferentially based not
20 on any case that's been brought to Your Honor's attention
21 but based purely on luck and timing.

22 And we brought to Your Honor's attention the cases that
23 come up in pro rata distribution which say, that's not the
24 rule. Investors who put money into a Ponzi scheme cannot
25 later say, yes, that's my money, that's my hundred dollars,

1 I get it back, it doesn't go in the pro rata pool. Cases
2 from almost every circuit, I know the Fifth Circuit, the
3 Second Circuit, the Ninth Circuit that say, no, that's not
4 the way it works. Why? Because all investors should be
5 treated equally with respect to their recovery as being
6 defrauded by the person who ran the Ponzi scheme. And
7 Mr. Maddux will not be treated that way.

8 And look at the example that's being offered to you.
9 They are saying, all right, let's go ahead and pursue
10 Mr. Maddux. Let him keep his \$3 and a half million, and
11 he can give his interest back.

12 What is his pro rata compensation as a victim of fraud?
13 He gets a hundred cents on the dollar for his investment.
14 What do the people that put in the 70 million the last 30
15 days of the -- before the Receivership was instituted, what
16 do they get? I don't know what they get, but it's a far
17 cry from a hundred cents on the dollar. And, Your Honor,
18 it seems to us under the case law, we cannot let that kind
19 of inequity stand.

20 Now, does that present a difficult, challenging,
21 daunting, complex problem to try to return \$300 million
22 from one set of investors, \$500 million from another set of
23 investors to the Receivership Estate? Well, sure, it does.
24 Sure. It is very daunting and very complex.

25 But, Your Honor, the way we read the case law, there is

1 a clear set of principles that give this Court the mechanism
2 to accomplish that. And the mechanism is, if you were paid
3 as an investor with stolen money, you have to return it.

4 And the case law doesn't recognize stolen interest
5 versus stolen principal, not in the equitable relief basis
6 that we're pursuing it. Again, we're not pursuing statutory
7 fraudulent transfer claims, and for good reason. And for
8 good reason. Because in the equitable relief cases we have
9 brought to Your Honor, there is not a distinction made
10 between interest and principal and nor could there be
11 because the fundamental precept of this is it's all stolen
12 money.

13 And why should it make a difference that one investor
14 who was just quick enough that he got his money out on
15 Friday gets to keep all of his investment, but the people
16 who tried to get their money out on Monday were just one
17 day too late, I submit, Your Honor, that that's not equity
18 equals equality, that's not pro rata, that's just a
19 preference. And there are legal principles at our disposal
20 to correct that.

21 Now, some of the objections I've heard is, well, what
22 are you going to do about all these foreign investors? Are
23 you really going to chase after the foreign investors?

24 Well, in addition to the group at Pershing, we sued a
25 group of investors whose money did not go through Pershing.

1 The total amount of CD proceeds is almost \$500 million. How
2 much of that will we recover? I don't know. We just filed
3 the claim.

4 Do you know of any plaintiff's lawyer that you could
5 ask the day after he filed a lawsuit, you can say, predict
6 to me with a certainty how much you're going to collect on
7 that? We don't know. We just started. But the idea that
8 we are being inequitable by picking on one group or the
9 other just doesn't bear up.

10 Yes, we are going after the money that's frozen at
11 Pershing. A lot of time, effort, resources has gone into
12 segregating the amount at Pershing into recoverable amounts,
13 and that's what we're down to. And so are we going after
14 that? Absolutely we are. So that's \$300 million plus that
15 can be used to compensate a wider group.

16 I'm puzzled -- your -- your question at the beginning
17 reminded me, we have this very strong constituency that
18 argues against clawbacks on behalf of people who got their
19 money out. But, oddly enough, we don't hear the advocacy,
20 either by the government or by the Examiner, saying,
21 well, yes, let's bring that money in so we can help the
22 thousands -- help the people like the poor folks who put
23 that last 70 million in before the music stopped so that we
24 can help them recover something.

25 There is no one advocating for them, Your Honor, except

1 Mr. Janvey, who is saying, I am trying to bring into this
2 Receivership as much money as the law will allow me to so
3 that I can distribute as much as I can.

4 Now, there was another question raised about, well,
5 what about these -- the Libyans and the -- the foreign
6 people? I mean, you know, you're never going to be able to
7 go after what money they got.

8 Well, that's right if they're in Libya or some place
9 where we don't have access to. But that's a common feature
10 in all kinds of litigation--can you sue someone, can you
11 get jurisdiction, can you collect.

12 But you know what? One thing we do have control over
13 is the distribution process. And if someone thinks they can
14 put \$10 million into this scheme, cash out 5 million, and
15 think we're going to forget about that come distribution
16 time when they submit their claim for their additional
17 5 million, I think they're wrong.

18 Because think about that person, Your Honor. And
19 there's examples. I think Mr. Little was alluding to that,
20 someone who put in 10 million and only got out 5. Well,
21 he is labeled, as I hear, a net loser, a concept that I
22 couldn't find a case that identifies that either in the
23 fraudulent transfer or in the equitable relief context.

24 But let's just go ahead with that colloquial concept.
25 If nothing else was done, what does that person recover? He

1 recovers 50 cents on the dollar. That will be far and away
2 more than anybody else recovers.

3 So would we pursue a claim against such person to try
4 to return that 5 million out of the 10? Yes, we would
5 because if we just let that sit, then he will get a
6 disproportionate recovery. And I'll tell Your Honor all
7 we are trying to avoid is letting stand preferences,
8 preferential recoveries not based on the law but just based
9 on timing.

10 And we feel very strongly about that because, as I
11 said, no one really realized until we got into this how
12 widespread this fraud was, how many people it had harmed,
13 and how little was left. And we all wish now, knowing what
14 we know, that this fraud had been intercepted long before it
15 was. But we can't go back. We can only deal with what we
16 have now.

17 In this context, Your Honor, we would implore you to
18 proceed as we have suggested, which is allow the Receiver
19 to establish his claim against the money paid out, to hold
20 under a new freeze order based on the substantial showing we
21 have made, hold the money that is still at Pershing. There
22 can be a process for litigating the issue that's common to
23 all these claims, and we do believe the case law supports
24 what we're doing.

25 But, Your Honor, once that freeze is lifted and once

1 those accounts are released, it will be very impractical
2 and I think possibly cost prohibitive in many cases for
3 this Receiver to pursue those claims, especially if we are
4 limited to interest.

5 THE COURT: And my assumption is that you'll want
6 a second opinion if that in fact is my ruling.

7 MR. SADLER: Your Honor, I would like Mr. Janvey --
8 and I was going to ask at the end if you had any questions
9 for me. Mr. Janvey wanted to speak directly to the Court
10 with respect to the SEC's motion. And -- and your question,
11 I think, raises that issue because we work for you, the
12 Court. And so for us to disagree with Your Honor's rulings
13 and appeal those is -- is something that we do not take
14 lightly.

15 THE COURT: Here's the deal. I don't think your
16 arguments are stupid and it's a big pot of money and if
17 you're correct about the law, then Mr. Janvey is absolutely
18 righteous in trying to pull money into the Receivership to
19 be passed out. He's doing just exactly what he was
20 appointed to do.

21 The fact that I may disagree with you about the law
22 doesn't necessarily mean that I'm right. And if Mr. Janvey
23 and you are correct about the law, then by all means you
24 ought to be glomming onto those assets and sweeping them
25 back into the pot to be distributed to everybody else.

1 It would seem to me the prudent thing for you-all to
2 do, given the amount of money involved, is to appeal that
3 ruling and get at least a semifinal determination of that
4 legal question. It's not going to hurt my feelings if
5 that's what you're saying.

6 MR. SADLER: I -- I totally agree, Your Honor.
7 And let me do this. I've tried to address the various
8 points that were raised. I do want Mr. Janvey to -- to
9 address the Court because he's -- he's asked if he could do
10 that. Have I to your satisfaction answered the questions
11 that you have on -- on the legal points?

12 THE COURT: No. And here's my question. If
13 you-all are going to appeal and, as I say, I think you ought
14 to, I don't want it to become moot because all of the money
15 has wandered off where you can't get it before you have an
16 opportunity to present that argument.

17 So my intention in staying the evaporation of the
18 freeze for one week is to give you time to go to the Circuit
19 and request a stay from them and proceed then however they
20 want you to proceed.

21 Is that enough time for you to get down to New Orleans
22 and ask them for a stay?

23 MR. SADLER: If -- given where we're sitting now,
24 past business hours on a Friday, if -- if I could ask the
25 Court for a little more time, 10 days or 14 days, I think

1 I would -- I would really appreciate that extra time to --
2 because we're really going to have to put some papers
3 together obviously in a -- in a very big hurry which we
4 will start as soon as we see Your Honor's Order.

5 THE COURT: Yeah.

6 MR. SADLER: But if we could have something on
7 the order of 10 to 14 days, that would be appreciated.

8 THE COURT: Okay.

9 MR. SADLER: Is there anything else I can address
10 in terms of the questions or objections?

11 THE COURT: No. I'm happy to hear from Mr. Janvey
12 now.

13 MR. SADLER: Thank you very much, Your Honor.

14 MR. JANVEY: Thank you, Your Honor. I just want to
15 say a few remarks. I take your lead-in statement seriously,
16 and I think you are heading -- you told us where you are
17 heading so I don't want to waste the Court's time.

18 I think it's important for everyone to know, not just
19 you, Your Honor, but other people in this Receivership, I
20 work for you. I'm a Court-appointed Receiver. I do not
21 work for the SEC. I follow the orders of this Court and I
22 take them seriously.

23 I think it's important to realize why we have gone
24 against the SEC's wishes.

25 Your Honor, I've been a securities lawyer since 1976.

1 I learned securities law in D.C., not working for the SEC
2 but under the tutelage of the SEC. I was with a bank
3 agency. I worked with the brightest securities lawyers in
4 the country: Stanley Sporkin, Richard Rowe, Alan Levinson,
5 Harvey Pitt.

6 In private practice when I came in 1980, I've worked
7 with the SEC now for 29 years. I have been a defense lawyer.
8 I've also been for the SEC a master -- a special master, a
9 monitor, and a receiver. This is the first time in my
10 career I've ever had a dispute with the SEC about policy.
11 So I want you to understand I take it very seriously.

12 I'm an adjunct professor at the law school. I am a
13 first one to defend the SEC as probably the best agency in
14 the government. On this issue, Your Honor, I just disagree
15 with them.

16 The problem I have, Your Honor, is that -- and I'm glad
17 you're not going to amend the motion or modify it because I
18 think it sends a horrible message to future receivers, which
19 I probably will not be. I'm talking about amending the
20 motion, denying me the right to do clawbacks. I thought
21 that was your ruling. If I'm wrong, tell me.

22 THE COURT: Yes, and I just wanted to amplify on
23 that. One reason that I am not inclined to do that is I
24 think if I did that, it would be difficult for you to get a
25 second opinion from the Circuit, and I want you to have that

1 alternative available if -- if you choose to take advantage
2 of it.

3 MR. JANVEY: I appreciate that.

4 Also, Your Honor, I think from a policy standpoint it
5 would send a message to future receivers, which I doubt I
6 will ever be, that if you disagree with the SEC, there's a
7 danger they'll modify the order appointing you. I think
8 that's a policy issue which I think is very serious.

9 As a receiver, I answer to you. I follow your
10 instructions, your guidance. If the Court is telling me,
11 you should get a second opinion, I will certainly do that.
12 Your Honor, I'm concerned about spending Receivership
13 assets. This Receivership has a finite amount of assets.

14 We will follow that Order, and I certainly would like
15 the Fifth Circuit's opinion, but I want to be clear that
16 that's what you're instructing me to do because I am the
17 only one in this courtroom except for your reporter and the
18 clerks who work for you. I want to make sure I follow your
19 instructions and your orders.

20 THE COURT: I'm not instructing you to appeal.

21 MR. JANVEY: Uh-huh.

22 THE COURT: I think that that's your decision as
23 the Receiver to make -- and I'm not going to second guess
24 you on that decision.

25 I think it would be helpful to everybody involved in

1 this process to know sooner rather than later what the
2 Circuit's view of the substantive law is and whether you
3 are legally able to go after principal. And this appears
4 to me to be the earliest opportunity we have to get that
5 second opinion.

6 MR. JANVEY: Okay.

7 THE COURT: So I hope you decide to do it, but I
8 am not instructing you either to appeal or not to appeal.
9 That's what you get the big bucks for.

10 MR. JANVEY: Well, I hope that's true, Your
11 Honor. But I will certainly follow your guidance and your
12 instructions on that. And if that's what the Court's
13 inclinations are, I will certainly follow that. And I
14 appreciate your time, Your Honor. Thank you.

15 THE COURT: Thank you.

16 MS. ROMERO: Your Honor, may I be heard?

17 THE COURT: And you are?

18 MR. ROMERO: Rose Romero with the SEC. I just
19 wanted to clarify something. I think it's important, Your
20 Honor, that the Court have sort of a status report of -- of
21 what's going on with the foreign accounts that Mr. Sadler
22 referred to because I think if you have the whole picture,
23 that maybe --

24 THE COURT: Why don't you go on up to the mike.

25 MS. ROMERO: Okay, thanks.

1 Your Honor, Mr. Sadler referred to the work the
2 Receiver is doing in foreign jurisdictions with -- there's
3 a lot of money in Switzerland, the UK, and in Canada. But
4 what's going on there is the Department of Justice as a
5 result of their recent indictment have filed criminal MLATs
6 in these various jurisdictions. They now have control over
7 that money. That money is now frozen for their concern, for
8 the criminal case.

9 And what they have advised is they are going to ask
10 those foreign jurisdictions to -- to send that money to
11 the registry of the Court, the criminal court, not to the
12 Receivership.

13 And so this Receivership, as far as I understand what
14 they've reported to me, is they have about \$60 million as
15 we speak right now. That's before the bills are paid, their
16 fees and other bills that they have going. So it's really
17 finite. Those monies that are trapped in the foreign
18 jurisdictions are not going to come into the registry of the
19 Court until there's a final conviction, as the Court knows.

20 So what we were trying to do with our motion, Your
21 Honor, is to save the Receivership Estate some money
22 because, as you know, they have been burning quite a bit
23 of that money already. I mean, there's a \$20 fee app that's
24 before the Court. There's going to be another one that's a
25 little over 7 million for about seven weeks of work.

1 So the rate that they are billing or they're burning
2 right now is a little over a million a week. Just to review
3 these accounts at Pershing, Your Honor, they reported to me
4 that they were spending 4000 -- \$4500 an hour, each hour of
5 every day, for days and days and weeks and weeks to review
6 those accounts.

7 What we want to do is file the clawbacks where they're
8 appropriate without any cost, any more cost, any additional
9 cost to these investors. Because, you know, they've been
10 screwed by Stanford, they've lost that money. And -- and
11 every day that the Receiver is billing at that high rate to
12 do something that we can do, that as taxpayers they pay us
13 to do for no -- you know, at no cost to them, so then maybe
14 they will get more than that 7 or 8 or 10 cents on the
15 dollar back.

16 And that's kind of what we were trying to avoid is
17 spending -- like Mr. Janvey said, he doesn't want to spend
18 any more of the Receivership assets because those are the
19 investors' assets. And if we can do the clawbacks, which
20 we will do where appropriate, then we can put that money
21 back in the Receivership at no cost to the Receivership.

22 And that's what we were trying to accomplish here is
23 to try to save some of those monies that are dwindling
24 away every day.

25 THE COURT: I don't know this, but I suspect that

1 they would be happy to let you sue people if you want to
2 and would not sue those same people.

3 MS. ROMERO: Right. And what we're trying to
4 avoid is dual, double effort here. It -- it makes no sense
5 if we do it and they're doing it because they're spending
6 Receivership assets and we're spending taxpayer money. We
7 should -- we should do it at no cost to the investor, to the
8 already harmed investor.

9 THE COURT: And I guess what I'm saying is God
10 bless you, go sue some people if you want to, and I bet
11 that the Receiver won't sue those same people.

12 MS. ROMERO: And we talked -- yes, we talked to
13 them about that, that we would go ahead and do it and they
14 not do it so they don't spend those -- those resources,
15 those precious resources that they have and let us go
16 ahead and go forward.

17 And that's what we thought we were accomplishing with
18 our motion to the Court and that's what we -- I would like
19 you to consider is that, if we go forward, it doesn't cost
20 those investors any money. If the Receiver goes forward, it
21 costs them a whole lot of money. So --

22 THE COURT: I think the Receiver's response is so
23 far you're not suing anybody and don't indicate an interest
24 in suing the people they're suing and they've got the --

25 MS. ROMERO: Well, that's not exactly true, Your

1 Honor, because if there's 642 people that they've sued, or
2 whatever the number that is, there may be people within that
3 group that aren't innocent investors. In other words, they
4 could have acted in bad faith.

5 The example that Mr. Sadler presented to the Court,
6 certainly if that is a preference, if -- if he was treated
7 preferentially, we would definitely sue him and we are
8 prepared to do that. But -- but I don't think we can just
9 wholesale sue innocent investors. I mean, I think you've
10 already heard that argument, that we don't agree that an
11 innocent investor who's a net investor should, you know,
12 lose more and be added to a victim pot.

13 So that's what we've been trying to work with -- with
14 the Receiver to do. We had to bring it to the attention
15 of the correlate. We knew no other way but to file this
16 motion.

17 So I'd like the Court, I'd urge the Court strongly to
18 consider that fact that if we go forward with those claw-
19 backs that we think of, you know, those investors where we
20 think clawbacks are merited, it doesn't cost the investor any
21 money. If he goes forward, it's going to cost them a -- a
22 lot of money that they don't have.

23 I mean, they're going to be dwindling that \$60 million
24 or so, less than that, probably 40 million that they have.
25 It's just going to be eaten away and there's going to be

1 nothing and then everybody's a net loser and nobody gets
2 any money back until whenever there's a, you know, final
3 judgment in the criminal case. And, you know -- and then
4 that money is -- you know, the DOJ has that money under
5 their forfeiture -- under their forfeiture count in the
6 indictment.

7 So that's kind of where we are. I mean, it's much more
8 complicated than it appears initially.

9 THE COURT: Oh, it appears relatively complicated
10 initially.

11 MS. ROMERO: Well, now it's even more so. And
12 so that's kind of what I was hoping we could get across is
13 that if we do it, it costs the investors no money. If the
14 Receiver continues on this course, which he may not be
15 successful on, it's costing the investors money every day.

16 And there -- as you know, you've probably heard from
17 them as well as we have and everybody else has, there's a
18 lot of hardship stories out there, truly hardship stories
19 out there that, you know, that we want to try to -- to --
20 to limit as much as we can.

21 THE COURT: All right.

22 MR. ROMERO: Thank you, Your Honor.

23 MR. MALOUF: Your Honor, may I address the Court
24 briefly?

25 THE COURT: Yes. Tell me what hat you have on

1 today.

2 MR. MALOUF: Your Honor, I represent approximately
3 600 CIB -- SIB CD purchasers, domestic, South American, and
4 and European.

5 THE COURT: Okay.

6 MR. MALOUF: Your Honor, my name is Steve Malouf,
7 and I represent approximately 600 CD purchasers.

8 And I have a very simple request or recommendation.
9 And that is that the parties agree that the clawback action
10 or activities in the clawback action will be suspended
11 temporarily during the pendency of an appeal so that the
12 Estate is not spending money, the CD investors and all of
13 us can wait for the Fifth Circuit to give the Court and the
14 rest of us some guidance.

15 Thank you.

16 MR. EDMUNDSON: Your Honor, may I be heard for
17 maybe 20 seconds for the Commission?

18 THE COURT: Not yet.

19 MR. QUILLING: May I be heard, Your Honor? I
20 represent a number of relief defendants in this case. I
21 have filed a motion for appearance. I'll be brief. My
22 concerns are practical. I am not going to reiterate what's
23 been said.

24 THE COURT: Okay.

25 MR. QUILLING: Your Honor, I'm Mike Quilling. As

1 the Court has probably seen, I've been pretty active in this
2 case from the beginning. I represent a number of the relief
3 defendants.

4 I understand what the Court is saying with respect to
5 the rulings. I am a little bit still unsure as to if Mr.
6 Janvey appeals your ruling, exactly who is going to be on
7 the other side of that.

8 Do relief defendants who are adversely impacted get a
9 chance to respond so that your ruling can be upheld, if
10 indeed it is the proper law, point one, or is that going
11 to be delegated to the Examiner and will he undertake that
12 role?

13 THE COURT: I think -- and one reason that I
14 wanted to do it this way, I think at this point the relief
15 defendants are all named parties in the lawsuit and you
16 would have just as much right to participate in the appeal
17 as any other party would.

18 I don't think the Circuit really wants 600 briefs of
19 appellees. So I would hope that you-all and perhaps with
20 the Examiner can get together to consolidate the paper.
21 But -- and, of course, this is not my decision. It's up to
22 the Circuit to decide who's a proper party.

23 MR. QUILLING: And as the Court is aware, I --
24 and, again, I hope that the Court has the same deference
25 to the fact that you won't be mad at them for appealing. I

1 obviously filed a petition for writ of mandamus which was
2 denied summarily because I don't think we were really
3 parties. We won't ever know exactly.

4 But the Order that you are changing is in the main
5 case. None of us are parties in the main case. And,
6 therefore, I'm concerned that I have no voice on behalf of
7 my clients in the ancillary proceeding and on the appeal
8 on the appellate level.

9 THE COURT: I'm also contemplating one of those
10 orders being a ruling in the relief case on the Receiver's
11 motion for order freezing in the nature of an order
12 denying injunctive relief essentially, which I believe is
13 immediately appealable and to which I believe you would
14 be a party.

15 MR. QUILLING: Okay. Thank you, Your Honor, for
16 that clarification.

17 The second item is, if indeed the Fifth Circuit says,
18 we will not stay this, and your ruling to release principal
19 is upheld and only interest will be kept, I think it's
20 important for the Court to understand the practical
21 realities of what that would cause.

22 For instance, I have a client who has \$3.9 million
23 still trapped. The claim of the Receiver for principal and
24 interest is approximately \$1,100,000. He seized over
25 3 million or -- or almost 4 million. So he's holding a

1 great deal more.

2 He could have taken and kept frozen three accounts that
3 he released that would have equated pretty closely to what
4 his claim was, but he chose not to.

5 These accounts don't hold cash necessarily. Some of
6 them do. They have stocks, bonds, a lot of other
7 investments which will trigger tax issues in a down market
8 if they are liquidated.

9 And by virtue of a ruling from you that -- with respect
10 to this particular client, Mr. Janvey, you're to release
11 everything but the interest which is, let's say, \$200,000,
12 the balance of that 3.9 million which is to be released will
13 trigger a sale of the securities in that account, and it
14 will cause additional harm and impact on those investors.
15 So that's just a practical concern.

16 I made the point in my response that I'm not sure the
17 Court has had a chance to review, the people he's going
18 after in the United States are folks like me and
19 you--professionals, prominent business people. There is no
20 evidence that they won't have the ability to write a check
21 when he gets a judgment after due process is given all
22 parties and there's been an intelligent consideration of
23 all the issues.

24 He will still be able to go after Greg Maddux, I
25 submit. Greg's still a pitcher. Greg's a very wealthy man.

1 Those people will still be available. Certainly my clients
2 are all -- you're talking about doctors, lawyers. They'll
3 be there when he comes a knocking.

4 So release it all and let him do what I've done as a
5 receiver for 25 years: file your lawsuit, prevail on your
6 cause of action, and then go collect. It's all part of the
7 process.

8 Final point. Under the banner of equity is equality,
9 he can't get around that going after a small subset of
10 investors which are low-hanging fruit is equality.

11 Regardless of how much they think they can collect, when
12 they go down to Colombia, they're not going to collect
13 anything. And those folks are going to get the benefit of
14 my clients who are Americans dumping money back in.

15 And they can deal with it in the claims process, et
16 cetera, but we are never going to get back to level in this
17 case ever. We will never get there. There are going to be
18 some inequities. But we shouldn't make the inequity worse.

19 We have a level of stability right now. It's simply
20 not fair to the Americans. And they're the ones that are
21 being singled out. 113 countries, one country is going to
22 be victimized further.

23 And the final point -- and -- and this hasn't been a
24 focus, but it's been mentioned in the briefs. They say, it
25 doesn't matter what account the money that went into on your

1 CD redemptions and proceeds. As long as your account is
2 frozen, it doesn't matter, that's the exact same account.

3 Well, the problem is, Your Honor, these accounts in
4 many instances in fact aren't the accounts where the money
5 went back into. They're IRA accounts, SEP accounts. I
6 represent a pension fund out of Mississippi. 300 retirees
7 depend on their pension check, and that account is still
8 being frozen.

9 You can't ignore the fact that these accounts that they
10 have frozen are ineligible for attachment, garnishment, or
11 any other seizure within most of the states, certainly all
12 the ones I have looked at. And that's the inappropriate
13 asset to pursue.

14 But by keeping the freeze in place, you are basically
15 humoring their effort to do that when, even if you gave them
16 a judgment tomorrow, they could not go against that account.
17 They would have to go against one of Mr. Maddux's other
18 accounts or one of my clients' other accounts.

19 Thank you for allowing me to be heard.

20 THE COURT: Any other counsel for relief
21 defendants who think you have something new and different
22 to tell me?

23 (No response.)

24 No? Okay. Then I'm ruling as previously indicated. I
25 would like -- oh, I told you you could say something else,

1 didn't I?

2 MR. EDMUNDSON: 20 seconds.

3 THE COURT: Go ahead.

4 MR. EDMUNDSON: All right.

5 MR. SADLER: May I have ten seconds after Mr.
6 Edmundson? I just have a question about the procedure
7 related to the appeal, Your Honor.

8 THE COURT: Yeah.

9 MR. SADLER: Thank you.

10 THE COURT: Go ahead.

11 MR. EDMUNDSON: We know who the Receiver works
12 for and reports to and that's the Court, not the SEC.
13 That's why we're here.

14 We take exception to the Receiver's characterization
15 of -- of his own cases in support of the clawback claims
16 against -- for principal, in particular Scholes, Donell,
17 and the Quilling cases. In each of those cases they didn't
18 involve the clawback of principals. And in the Quilling
19 case, Quilling versus 3D Marketing, it didn't even involve
20 an investor.

21 I just wanted to make that clear.

22 THE COURT: Okay.

23 MR. SADLER: Your Honor, I -- I do think we --
24 we share your desire and concern to have the Fifth Circuit,
25 if an appeal is taken, rule squarely on the issue.

1 I think you're familiar, as am I, that most of the
2 cases that go up on a denial of injunctive relief are
3 reviewed on abuse of discretion where the district court
4 has granted very wide latitude, and even though there may
5 be disagreements, yet the ruling is upheld.

6 And so my question is, if what we're really trying to
7 accomplish is get a -- a very clear legal question to the
8 Fifth Circuit that they can rule on, my concern is that
9 if -- if your ruling that we would appeal is simply a
10 denial of request for injunctive relief, that may not be
11 the vehicle that -- that gets -- gets that done.

12 And so I'm really just asking the Court if -- if you
13 have some thoughts on that because my concern would be
14 that you have a desire, we have a desire to get the issue
15 resolved and --

16 THE COURT: Yeah. Here's my thought. My thought
17 is, to the extent I adequately understand the Fifth Circuit
18 law, if I deny injunctive relief because of a mistaken view
19 of the law, they consider that to be abusing my discretion.
20 It's not an issue of weighing the equities, do I just weigh
21 them differently from you. If I'm wrong on the law, I think
22 they view that as sufficient basis for reversing me.

23 That's their call, of course, and I am not presuming
24 to tell them what to do. But here I think there is a
25 relatively crisp legal question that's presented. You have

1 one view of the law; the Commission and the Examiner and
2 the relief defendants have a different view of the law.

3 For better or for worse for today, I'm agreeing with
4 them, although I do think your arguments are -- they're not
5 silly. They're certainly not silly arguments. Despite the
6 fact of the numerical mismatch in the courtroom, I think
7 you're making decent, legitimate, colorable arguments. I
8 understand your position about certain people having an
9 effect of preference. I don't think it's a stupid position.

10 I disagree with it ultimately and think that the
11 Commission's view is the better view of the law. But I do
12 think that that's a legal question that's appropriate for
13 disposition by the Circuit.

14 If I'm just making a legal ruling in a vacuum, I think
15 it's simply an interlocutory ruling and very likely is not
16 appealable of right and I don't think it's really postured
17 correctly for 1292(b), but I do think the denial of
18 injunctive relief is something that is appealable as of
19 right.

20 MR. SADLER: And -- and I agree with that and I
21 was really -- and I've taken far longer than my ten seconds
22 but this is so important because, of course, once Your
23 Honor's enters order, that's -- that's what we have to
24 deal with.

25 And -- and there were -- there were two thoughts I had

1 about that. One is simply it's very clear that whichever
2 way you rule today, there was going to be an appeal. I
3 mean, I think that's -- that's very clear.

4 One way would be, as we thought actually coming in here
5 today, that if there was going to be a ruling against our
6 position, that we would defer to you and not appeal. We
7 have heard your comments. We had a misapprehension coming
8 in here today. We now understand that you are interested
9 in having this issue resolved at the Fifth Circuit and --
10 and so are we.

11 The other way, perhaps, Your Honor, to address it is
12 for you to make some comment in your Order, your written
13 Order, to the effect of this presents an issue that the
14 district court is very much interested in -- in having
15 reviewed.

16 And far be it from me to -- to try to script your
17 Order. I -- I don't mean to be presumptions. But, again,
18 my concern is if all the Fifth Circuit sees is injunctive
19 relief denied, that that may get us in a situation where
20 it doesn't get the attention to focus on the issue that I
21 think we all want. And I -- I just wanted to share those
22 comments with you, Your Honor.

23 THE COURT: I'll just observe that Linda, our
24 court reporter, is here diligently writing down everything
25 that's been said.

1 MR. SADLER: Absolutely, Your Honor.

2 THE COURT: And perhaps someone might want to
3 acquire a copy of the transcript.

4 MR. SADLER: I'm sure many will make that request.
5 Thank you very much, Your Honor.

6 THE COURT: All right. Then I'm ruling as
7 previously indicated.

8 I would like for the SEC and the Receiver and the
9 Examiner and if any of the relief defendants care to
10 confer about that and see if you're able to submit orders
11 reflecting my oral ruling.

12 I will extend the stay, the oral stay of the unfreezing
13 order for ten days instead of one week. That will give you
14 at least another weekend to work on getting your papers
15 together.

16 MR. SADLER: Thank you, Your Honor.

17 THE COURT: All right. Thank you-all for coming
18 down. The Court will stand in recess.

19 (The proceedings were concluded.)

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CERTIFICATION

I certify that the foregoing is a true and correct transcript from the record of proceedings in the above-entitled matter. I further certify that the transcript fees format comply with those prescribed by the Court and the Judicial Conference of the United States.

s/Linda J. Robbins

Date: August 1, 2009