

CAUSE NO. DC-09-10931

RANDY KOGUTT; MICHAEL § IN THE DISTRICT COURT
KOGUTT; ANGELA KOGUTT; §
SAMUEL KOGUTT and IRENE KOGUTT §
§
VS. § DALLAS COUNTY, TEXAS
§
MALOUF, LYNCH, JACKSON AND §
SWINSON, P.C., and BRENDA §
REYNOLDS ADKINSON § M-298TH JUDICIAL DISTRICT

ORIGINAL PETITION

Plaintiffs, RANDY KOGUTT; MICHAEL KOGUTT AND ANGELA KOGUTT; and SAMUEL KOGUTT AND IRENE KOGUTT, file this Original Petition against Defendants, MALOUF, LYNCH, JACKSON AND SWINSON, P.C., and BRENDA REYNOLDS ADKINSON, and would respectfully show unto this Court the following:

I.

NATURE OF ACTION

1. This suit is brought by clients of a law firm for losses caused by the breach of the law firm's duties to adequately investigate and protect the clients in connection with their investment in a financial entity known as Stanford International Bank, Ltd. ("SIB"). SIB was an offshore bank, located on the tiny Caribbean island of Antigua, owned and controlled by R. Allen Stanford, who is reputed to be the master-mind of an eight billion dollar "Ponzi scheme" involving the sale of SIB Certificates of Deposit ("SIB CD"), and is currently being held in a jail in Conroe, Texas without bail awaiting trial. The law firm agreed to conduct a thorough due diligence analysis and produce a report on a series of factors which the clients could consider before purchasing the SIB CD. The investigation of Stanford conducted by the Defendants failed in many particulars to discover the numerous "red flags," which would have caused the

Plaintiffs to reject the SIB CD's as an unsuitable and inordinately risky investment. As a result of the Defendants' breach of their duties, the Plaintiffs have lost their entire investment and sustained other consequential losses for which they now sue.

II.

PARTIES

2. Plaintiff, Randy Kogutt is a resident of Dallas County, Texas.
3. Plaintiffs, Michael Kogutt and Angela Kogutt are residents of Dallas County, Texas.
4. Plaintiffs, Samuel Kogutt and Irene Kogutt are residents of Dallas County, Texas.
5. Defendant, Malouf, Lynch, Jackson & Swinson, P.C., is a Texas Professional Corporation, organized and existing under the laws of Texas, and may be served with process through its registered agent, Curtis R. Swinson, 12222 Merit Drive, Suite 1000, Dallas, Texas 75251.
6. Defendant, Brenda Reynolds Adkinson, is a licensed attorney in the State of Texas, and employed by the law firm of Malouf, Lynch, Jackson & Swinson, P.C., with a primary place of business in Dallas, Texas. She may be served with process at 12222 Merit Drive, Suite 1000, Dallas, Texas 75251.

III.

DISCOVERY PLAN

7. This lawsuit is filed pursuant to Rule 190.3 of the Texas Rules of Civil Procedure as a Level 3 Discovery Plan case.

IV.

JURISDICTION AND VENUE

8. Jurisdiction properly lies in the state district court because the claims arise under Texas law and the amount in controversy exceeds the minimum jurisdictional amount applicable to said court.

9. Venue is proper in Dallas County pursuant to § 15.002(a) of the Texas Civil Practice and Remedies Code because the Defendants' primary offices are located in said county, and a substantial portion of the events that form the basis for Plaintiffs' claims occurred in Dallas County, Texas.

V.

FACTUAL BACKGROUND

A. THE KOGUTT FAMILY BUSINESS

10. The Kogutt family business was started in 1965 by Samuel and Irene Kogutt under the name, DART MANUFACTURING COMPANY, ("DART" or "Company"). The Company, specializing in the sale and manufacture of promotional products, including leather and vinyl binders, was the professional centerpiece of the Kogutt family. Each of Samuel and Irene's sons, Randy, Jeff and Michael, took part in the business from an early age, and would eventually join DART as employees and shareholders.

11. When Samuel and Irene made plans for their retirement in the late 1990's, they hired a president to lead the business and assist them in the day-to-day operations. In 1999, Samuel and Irene retired. The president assumed the duties of running the Company and reported directly to the Board of Directors of DART composed entirely of the Kogutt family members. The shares of DART were also divided between the members of the Kogutt family so that the

three sons, Randy, Jeff and Michael, owned 49.5% of DART, and the remaining 50.5% was owned by the Kogutt Family Limited Partnership in which Randy, Jeff, and Michael were partners.

B. ATTORNEY-CLIENT RELATIONSHIP BETWEEN KOGUTT FAMILY AND BRENDA REYNOLDS ADKINSON AND MALOUF, LYNCH, JACKSON & SWINSON, P.C.

12. The Kogutt family began its attorney-client relationship with Brenda Reynolds Adkinson (“Adkinson”) and Malouf, Lynch, Jackson & Swinson, P.C. (“MLJ&S law firm”) in 2005 when the president of DART, proposed acquiring an ownership interest in the Company through the mechanism of an Employee Stock Purchase Plan (“ESOP”). Adkinson and the MLJ&S law firm conducted an analysis of the merits of the ESOP transaction, and provided the advice that the financial and tax benefits were not advantageous to the Kogutt family. Acting on the guidance received from Adkinson and the MLJ&S law firm, the Kogutt family rejected the ESOP proposal.

13. In 2006, a German company made overtures to purchase DART. These discussions led to further negotiations and the retention of Adkinson and the MLJ&S law firm to assist in protecting the Kogutt family interests.

14. In April 2007, Adkinson reviewed and advised the Kogutt family on the engagement letter between DART and a business broker facilitating the potential sale.

15. In August 2007, Adkinson and the MLJ&S law firm was actively touting its skill and competence to represent and protect the Kogutt family interests in the sale of DART. In an e-mail dated August 13, 2007, Adkinson states:

“We have helped many clients over the years with sales of their business, acquiring businesses, and merging with other companies. The value of the transactions ranged from \$1 million to over \$150 million”

16. Adkinson went on to assure the Kogutt family that she and the law firm would make sure “everything is complete and still protects you.”

17. In August through November 2007, Adkinson and the MLJ&S law firm represented and advised the Kogutt family on a multi-million dollar sale of DART to the German company, which was represented by Jones Day. The arms-length negotiations, and attendant legal documents, were complex and required the varied resources of the MLJ&S law firm. The terms of the purchase agreement had a holdback provision of \$1.5 million until May 2008, and an indemnification amount of \$3 million until November 12, 2009 that placed the Kogutt family under obligation to pay if certain conditions in the agreement came to pass. On November 12, 2007, the transaction was closed.

C. POST-SALE REPRESENTATION AND INTRODUCTION TO STANFORD

18. After the successful closing of the Purchase and Sale Agreement, Adkinson and the MLJ&S law firm agreed to continue representation of the Kogutt family in the areas of financial planning, investment and tax ramifications.

19. Although Adkinson recommended a small group of financial advisors to the Kogutt family, there was only one financial advisory company that received her personal attention and directed efforts. The firm was Stanford Group Company (SGC), and the financial products associated with the Stanford related companies. The Kogutt family had never heard of Stanford before the introduction by Adkinson. The Stanford entities were particularly attractive to Adkinson because her brother, William R. Leighton, had recently joined SGC as a financial advisor in Austin.

20. During the course of representing Plaintiffs, Adkinson took the lead in inducing the Kogutt family to meet with the financial advisors at SGC. She arranged the initial meeting

and recommended that Plaintiffs meet with her brother, William R. Leighton, and his partner, Patrick Cruickshank, in her e-mail of November 21, 2007.

21. Adkinson, and the MLJ&S law firm, never advised the Kogutt family throughout the course of their representation of the conflict of interest rules and ethical restraints related to an attorney's duty of disclosure and avoidance of conflicts of interest. Moreover, the familial connection with the financial advisor being promoted by Adkinson necessitated the obligation of disclosure, and mandated that she refrain from actively advancing the interests of her brother to the potential detriment of her clients.

22. Adkinson placed herself in a situation where she was not able to consider, recommend, or carry out an appropriate course of conduct even when faced with negative information which might weigh against Plaintiffs' investments in SIB or Stanford's affiliated companies. Rather than disclosing negative information, or undertaking a proper and thorough investigation, Adkinson recommended that the Plaintiffs invest millions of dollars with Stanford after only a cursory investigation because of her brother's status as a financial advisor at SGC. Moreover, at no time did Adkinson ever disclose to Plaintiffs that her brother stood to receive commissions on the Plaintiffs' investment, ranging from \$45,000 to \$90,000.

D. KOGUTT FAMILY MEETS WITH SGC ADVISORS

23. The initial meeting between the Kogutt family and the SGC financial advisors occurred on November 28, 2007 in the offices of the MLJ&S law firm. Adkinson represented the Kogutt family at this meeting where the SGC advisors made a series of representations about the safety of the investment in the SIB CD's, including, but not limited to, the following:

- a. SIB CD's are low risk and safe investments, even more so than U.S. CD's, because each and every dollar is insured through a combination of insurance coverages, including SIPC, CAPCO and Lloyd's of London;

- b. SIB portfolio of investments are highly liquid, and an investor could quickly redeem the principal and interest of the CD at their discretion, subject to an early withdrawal penalty;
- c. SIB had six (6) billion in deposits in SIB in Antigua;
- d. SIB portfolio adhered to Basel II standards;
- e. SIB was able to pay high returns on CD's because of the cost-savings due to having one office offshore in Antigua;
- f. SIB was governed by British banking law;
- g. SIB was subject to strict oversight and regulatory oversight by Antiguan regulators, and money laundering issues were not a concern;
- h. SGC complied with all broker dealer rules;
- i. Sir Allen Stanford was an extremely successful businessman involved in charities and sponsorship of many sporting events.

Adkinson was present when these representations were made, and she received the documents presented to her clients by the SGC advisors.

24. On December 19, 2007, a second meeting was held at the offices of MLJ&S. The SGC advisors, Leighton and Cruickshank, attended along with members of the Kogutt family. The representations made in the first meeting were repeated and reinforced by the SGC advisors. Adkinson again participated in the meeting in her capacity as attorney for the Kogutt family.

25. After the two meetings with the SGC advisors, the Kogutt family still had serious reservations about investing their life savings in an offshore bank. In order to insulate themselves against the "sales pitch" made by the SGC advisors, the Kogutt family requested that Adkinson and the MLJ&S law firm conduct a thorough due diligence analysis of the investments proposed by the SGC advisors. The Kogutt family advised Adkinson and MLJ&S law firm that they were "extremely risk adverse investors" and needed a safe, liquid and low-risk investment because the proceeds from the sale of the family business represented their entire life's work.

Moreover, low-risk and liquidity were needed in the event there was a need to liquidate the investment to satisfy the terms of the sales agreement. Adkinson and the MLJ&S law firm agreed to conduct a thorough due diligence report on SIB, and the Stanford affiliated companies, as well as accuracy of the promotional materials presented at the two meetings at the MLJ&S office. The Kogutt family expressed to Adkinson they wanted to know about “any hint of wrongdoing” on behalf of Allen Stanford, the Stanford financial companies, or Stanford International Bank, and that they would not make any investment until Adkinson and the MLJ&S law firm conducted their investigation, researched the investment, and notified the Kogutt family about any risk that could possibly jeopardize their need for a safe and low-risk investment of their life savings. The family specifically asked Adkinson and the MLJ&S law firm to utilize all resources to adequately assess the safety of their potential investments with SGC or SIB.

E. ADKINSON AND THE MLJ&S LAW FIRM ISSUED THEIR DUE DILIGENCE REPORT

26. On December 27, 2007, Adkinson and the MLJ&S law firm issued their due diligence report. The report is strikingly deficient on its face for the lack of any specific factual foundation, its unsubstantiated conclusions, and its numerous erroneous statements.

27. The report makes no reference to any negative information that was widely available if a reasonable investigation had been conducted by Adkinson and the MLJ&S law firm including, but not limited to:

- a. As early as 1999, the U.S. Treasury Department issued an advisory warning U.S. banks to scrutinize transactions involving Antigua due to corrupt regulation of offshore banks. While the advisories were later lifted, the strict Antiguan bank secrecy laws remained in place, and were routinely used by SIB to thwart any U.S. investigative inquiries;
- b. In 1999, SIB surrendered over \$3 million dollars to the U.S. Government when the Drug Enforcement Administration discovered that the Juárez drug cartel was laundering money through its accounts at SIB.

- c. SIB was created on the island of Antigua in 1991 from the vestiges of Guardian Bank which was under widely publicized suspicion in Montserrat for international money laundering activities;
- d. In 1984, Allen Stanford filed for personal bankruptcy with approximately \$13.6 million dollars in debt and had a previous bankruptcy over a failed business;
- e. SIB, an offshore bank reputed to have six (6) billion dollars in CD deposits, was audited by a small “one man shop,” with a very strong 25 year personal relationship with Allen Stanford and his companies;
- f. The SIB Board of Directors consisted of Stanford Financial Group insiders and close friends and family of Allen Stanford, including his elderly father and an 85-year-old cattle rancher and used car dealer from Stanford’s hometown, Mexia, Texas;
- g. Financial advisors at SGC selling the SIB CD’s were pressured to sell the product, and were rewarded exorbitantly through substantial bonus payments, trips, cars and other benefits. All through 2007 and 2008, while Plaintiffs were investing, SGC advisors, including William R. Leighton (Adkinson’ brother), were engaged in a “contest” to funnel their clients into SIB CD’s. The lure of easy money was so strong that some SGC advisors referred to the remuneration as “bank crack.”
- h. In the fall of 2005, SEC sent inquiries to U.S. investors concerning the sale of SIB CD’s. The inquiries suggested a fraud investigation;
- i. U.S. regulatory agency, Financial Industry Regulatory Authority (“FINRA”) cited and fined SGC in April 2007 for failing to maintain sufficient net capital to function properly as a securities brokerage firm;
- j. SGC had at least seven arbitration claims filed against it between 2001 and 2007. Contrary to Adkinson’ characterization in her report, the claims asserted included allegations of fraudulent misrepresentation, and even accused Stanford of running a Ponzi scheme;
- k. In 2006, a lawsuit was filed against the Stanford companies alleging fraudulent and misleading claims to garner new money from investors, falsifying its financial disclosures, and operating a Ponzi scheme which attracted clients with “artificially high yield on Certificates of Deposit;”
- l. In 2007, SIB was sued in Miami federal court in connection with an alleged customer dispute over the release of funds to U.S. authorities. SIB responded to the suit by alleging it was immune from suit in the U.S., and

the U.S. courts lacked jurisdiction over it due to its foreign status in the sovereign nation of Antigua;

- m. As indicated in SGC annual audits filed with the regulators, SGC was a mere conduit for SIB, and the major source of revenue for SGC's operations came from the commissions paid for selling the SIB CD's.

F. KOGUTT FAMILY MAKES ITS SIB INVESTMENT BASED ON THE "GREEN LIGHT" IN THE REPORT

28. The gravamen of the Adkinson and the MLJ&S law firm investigation painted an extremely positive picture totally devoid of any negative information about SIB, Stanford, or the affiliated companies. Adkinson's report was so glowing of Stanford that she remarked how most financial companies would not compare as favorably or have as few adverse items to report. For example, with respect to litigation, Adkinson states in her report:

"There are extremely few cases involving the Stanford Group, given their size and nature of their business. Any broker (and any bank, for that matter) of any size will generally have hundreds of cases pending at any one time."

29. After minimizing and deflating any criticism of Stanford or the offshore bank, Adkinson offers her final recommendation with unabashed enthusiasm and without any cautionary tone:

"For what it's worth, if (when?) I win the lottery, I will not hesitate to direct a very large portion of my winnings to the Stanford bank!"

30. After receiving the report, the Kogutt family met with SGC advisors and Adkinson a third time on January 9, 2008, at the offices of the MLJ&S law firm. Based on the positive due diligence report presented by Adkinson, the arrangements were made for the investment in the Stanford companies. By the end of January 2008, Randy Kogutt had invested \$1 million in SIB, and Michael and Angela Kogutt had invested \$700,000. Michael and Angela Kogutt made a further investment in SIB in April 2008 of \$300,000.

31. Throughout the entire period of investment in SIB, Adkinson and the MLJ&S law firm represented the Kogutt family concerning their investment of the proceeds from the sale of the family business and the obligations under the terms of the sales agreements of DART. Adkinson and the MLJ&S law firm agreed with the SGC advisors that the SIB CD's and tax-free municipal bonds were the safest, most liquid investments possible, which would provide easy and quick liquidation of the investment if needed to satisfy the holdback or indemnification provisions. The Kogutt Family Limited Partnership purchased \$1,800,000 of Auction Rate Securities, which are tax-free municipal bonds with a short liquidation period and similar rates as the SIB CDs after factoring in the tax consequences.

32. During the months of May, June, July and September 2008, additional investments in SIB were made by the Kogutt family. Randy Kogutt invested an additional \$700,000, and Michael and Angela Kogutt placed another \$764,000 with SIB. At this point, Randy Kogutt had invested a total of \$1.7 million, and Michael and Angela Kogutt had invested a total of \$1.764 million. The Kogutt Family Limited Partnership had invested \$800,000.

G. THE "RED FLAGS" ABOUT SIB CONTINUE TO GROW IN 2008

33. While the substantial negative information about the Stanford empire was available before the Plaintiffs made their initial investment, the allegations of misconduct, and regulatory concerns about Stanford, continued to grow at an even faster pace in 2008.

34. On January 30, 2008, just one day after the Kogutt family made their first investment with SIB, two former employees filed suit in state district court of Harris County alleging that they had to resign from Stanford because they could be subjected to criminal prosecution for complicity in "illegal and unethical business practices" which included destruction of documents despite an ongoing SEC investigation.

35. In July 2008, the suit was reported by Bloomberg News and specific mention was made of an SEC investigation into the CD practices at Stanford.

36. The existence of the suit, and the allegations of the two former employees, were widely known by financial advisors at SGC, and were easily obtainable from an electronic search of the public records in Harris County, Texas, the site of Stanford's headquarters.

37. In the fall of 2008, Bloomberg and Business Week, as well as other news agencies, reported an SEC investigation into the allegations of wrongdoing at SIB and SGC.

38. In August 2008, federal tax liens were filed against Allen Stanford in the amount of \$103 million.

39. In September 2008, without any notice to the Kogutt family, William Leighton, Adkinson's brother, resigned his position as a financial advisor at SGC. When questioned about his departure, Adkinson said she was unaware that her brother left Stanford.

40. In December 2008, Randy Kogutt transacted an intra-bank transfer of \$234,047.15 from the Family Limited Partnership SIB CD account to his personal SIB CD account. Michael and Angela Kogutt likewise transacted an intra-bank transfer in the amount of \$200,000 from the Family Limited Partnership SIB CD to their personal SIB CD account. Samuel and Irene Kogutt were then nominated as sole owners of the Kogutt Family Limited Partnership SIB CD account for the amount of \$389,960.17. The nominee agreements were drafted by the MLJ&S law firm. Throughout 2008, the MLJ&S law firm represented various members of the Kogutt family in estate and tax planning matters.

41. At no time during the representation of the Kogutt family in 2008 did Adkinson or the MLJ&S law firm warn Plaintiffs about the mounting concerns about Stanford. By the end of

2008, only 49 days before the collapse of Stanford's financial empire, the Kogutt family had invested a total of \$4,264,000 with SIB.

42. All of the sizable investments made by the Kogutt family in SIB were induced by their confidence in the competency and skill of Adkinson and the MLJ&S law firm to adequately advise and protect their interests. If the Defendants had conducted a reasonable investigation not only prior to the initial investment, but also during the course of their representation throughout 2008, Plaintiffs would not have invested the initial monies, or the additional investments in 2008.

H. STANFORD COMPANIES ARE SHUT DOWN AND PLAINTIFFS' INVESTMENT IS LOST

43. On or about February 17, 2009, the Securities and Exchange Commission (SEC) filed its complaint against SIB and SGC, as well as other Stanford entities and individuals, accusing them of participating in a "massive, ongoing fraud" ("SEC Action"). The SEC Action alleged that the Stanford defendants orchestrated an eight (8) billion dollar fraud based on false promises of guaranteed returns related to the SIB CD's. Pursuant to the SEC's request for emergency relief, the U.S. District Court for the Northern District of Dallas, issued a temporary restraining order, froze Stanford's assets, and appointed a Receiver to marshal those assets.

44. Since the appointment of the Receiver, the revelations about the state of Stanford's financial condition, and the level of fraud rising to its characterization as a "Ponzi scheme," has left little hope for investors. It appears that investors, like the Kogutt family, have lost their entire investment, and the chance of recouping their losses is unlikely.

VI.

CAUSES OF ACTION

A. NEGLIGENCE AND LEGAL MALPRACTICE

45. Plaintiffs incorporate by reference paragraphs 1 through 44 as though set out in full herein and recited verbatim.

46. Defendants, Adkinson and the law firm, MLJ&S, and its agents and employees, had an express duty to discharge the appropriate standards of care, and to use the utmost care in representing Plaintiffs, protecting and preserving their property interests and rights, as well as taking any and all action advisable and necessary in connection therewith, and advising Plaintiffs of same.

47. The Defendants breached the standard of care applicable to attorneys in the State of Texas in connection with their representation of Plaintiffs in one or more of the following particulars:

- a. Failed to investigate, or even comment, on the ability of SIB to offer a rate of return and pay interest rates in excess of interest rates offered by other banks;
- b. Failed to investigate, or disclose to Plaintiffs, the fact that litigation involving Stanford included allegations of misrepresentations in the sale of SIB CD's, and specifically, an allegation that SIB was running a "Ponzi scheme";
- c. Failed to investigate, or even query, Stanford employees on the methods or financial strategies which enabled SIB to offer a higher rate of return on the CD's compared to other banks;
- d. Failed to investigate, or event comment, on the small "one man shop" auditing firm purportedly capable of providing an accurate and independent audit of SIB's financial condition;
- e. Failed to conduct a reasonable investigation of the factors which a reasonable prudent investor would consider before deciding to make an investment in SIB or the Stanford related companies;

- f. Failed to apprise Plaintiffs of the numerous “red flags” about Allen Stanford, SIB and the Stanford affiliated companies;
- g. Recommending to Plaintiffs that they invest in the SIB CD’s based on a cursory investigation replete with numerous erroneous statements and unsubstantiated conclusions;
- h. Failed to investigate, or even comment, on the financial benefits received by Stanford’s broker for selling the SIB CD’s which were so exorbitant in the industry that it was internally referred to by SGC advisors as “bank crack”;
- i. Failed to advise Plaintiffs of the potential conflict of interest in referring Plaintiffs to her brother, William P. Leighton, who benefited significantly from the sale of SIB CD’s;
- j. Failed to investigate, or even comment, on the existence of regulatory citations and two ongoing investigations of SIB and its affiliates;
- k. Failing to devote sufficient time and effort to conduct a reasonable investigation into the factors to be considered by a reasonably prudent investor prior to deciding to invest;
- l. Failing to advise Plaintiffs in 2008 to withdraw their initial investment in SIB after additional “red flags” appeared;
- m. Failing to advise Plaintiffs not to make additional investments in 2008 after additional “red flags” appeared;
- n. Advising Plaintiffs that Stanford was going beyond the disclosures required by U.S. bank;
- o. Advising Plaintiffs that the disclosure of all possible risks was “boiler plate” language;
- p. Advising Plaintiffs that Stanford had complied with the SEC information and disclosure requirements for U.S. Securities;
- q. Advising Plaintiffs that the CD’s offered by SIB are most likely not “securities” subject to the U.S. Securities laws;
- r. Failing to advise Plaintiffs that the CD’s offered by SIB may be considered to be securities governed by either U.S. or State of Texas securities law;

- s. Advising that “each and every dollar” invested with SIB was covered by insurance issued by SIPC, CAPCO and/or Lloyd’s of London;
- t. Failing to investigate the actual existence and coverage of the insurance available to Plaintiffs in the event of a loss of their investment;
- u. Failed to investigate, or even comment, on the financial audits of Stanford Group Company, which would have shown the broker dealer was largely funded by the commissions of SIB CDs;
- v. Failed to investigate, or even comment, on the reputation of the offshore banking industry in Antigua, a known money laundering center;
- w. Failed to investigate, or even comment, on the Antiguan offshore bank regulator, Financial Services Regulatory Commission, which Allen Stanford previously served as president;
- x. Failed to investigate, or even comment, on the reputation of the government of Antigua, which the U.S. State Department had named a “country of interest” for corruption in 2006;
- y. Failure to accurately describe the governing legal system overseeing SIB by saying “it is governed by British law” when Antigua is a sovereign country operating under its own laws.

48. Each and every one of the foregoing acts and omissions, taken separately and collectively, constitute a direct and proximate cause of the damages sustained by the Kogutt family as more particularly set forth below.

49. Plaintiffs would further show that the conduct of the Defendants constitutes gross negligence as that term is understood in law. Defendants’ reckless and conscious indifference to the property rights and interests of Plaintiffs justifies an award of exemplary and punitive damages in an amount to be determined by the jury.

B. NEGLIGENT MISREPRESENTATION

50. Plaintiffs incorporate by reference paragraphs 1 through 49 as though set out in full herein, and recited verbatim.

51. Defendants, Adkinson and the MLJ&S law firm owed a duty to Plaintiffs to provide complete and accurate information, and to exercise reasonable care in conducting its due diligence investigation of Allen Stanford, SIB and the Stanford affiliated companies. Defendants, while engaged in a transaction in which they had a pecuniary interest, knew that the information supplied to Plaintiffs was being used in deciding to invest or purchase the SIB CD's.

52. The Defendants supplied incomplete and false information in its due diligence report to Plaintiffs.

53. The report contained numerous errors, false information, or half-truths concerning SIB and the Stanford affiliated companies, including but not limited to the following:

- a. No one outside the U.S. would even question the legitimacy and safety of the bank;
- b. SIB is governed by British banking laws;
- c. SIB is a private bank based on the Swiss banking model;
- d. SIB and SGC were involved in litigation of less than five (5) decided cases;
- e. The issues in the litigation involving SIB and/or SGC involved only management or the giving of bad advice;
- f. The cases against Stanford Group primarily involved employees not repaying loans made to them by Stanford;
- g. That the CD's offered by SIB are most likely not "securities" subject to the U.S. securities law;
- h. Stanford has complied with the SEC information and disclosure requirements for U.S. securities.

54. Each of these statements are false or inaccurate, and were, individually and collectively, made with an intent that Plaintiffs rely on the investigation, analysis, and report made by the Defendants.

55. Defendants, Adkinson and the MLJ&S law firm failed to exercise reasonable care in obtaining and/or communicating the false information as described above.

56. Plaintiffs justifiably relied on the false information and unsubstantiated recommendation made by Defendants in deciding to invest and/or purchase the SIB CD's.

57. As a direct and proximate cause of Defendants' negligent misrepresentation, Plaintiffs have lost their entire investment, suffered pecuniary loss and other consequential damages.

58. The conduct of Defendants was grossly negligent, and of a sufficiently aggravated nature as to give rise to exemplary damages for which Plaintiffs seek to recover against Defendants.

C. BREACH OF FIDUCIARY DUTIES

59. Plaintiffs incorporate by reference paragraphs 1 through 58 as though set out in full herein and recited verbatim.

60. By entering into the attorney-client relationship with Plaintiffs, and by entering into a contract to provide legal services, Defendants, Adkinson and the MLJ&S law firm, and its partners, assumed fiduciary duties and obligations to the Kogutt family. Defendants, Adkinson and the MLJ&S law firm, and its partners, owed the Kogutt family their utmost and undivided loyalty, free from any conflicts of interest. Similarly, the Defendants had a duty to disclose to Plaintiffs any and all information bearing on the Defendants' self-interest, which could impact on an objective assessment and performance of their duties.

61. Rule 1.06(b)(2) of State Bar Rules of Professional Conduct specifically provides that a lawyer shall not represent a person if the representation of that person reasonably appears to be or become adversely limited by the lawyer's responsibilities to a third person, or by the

lawyer's own interests. Rule 1.06(b)(2) addresses a situation where a lawyer may not be able to consider, recommend, or carry out an appropriate course of action for one client because of the lawyer's own self-interest or responsibilities to others. This rule takes into account the scenario where an attorney refers a client to a financial entity in which the lawyer has an undisclosed interest, indirect remuneration, or influences that might impact the lawyer's ability to give objective and detached advice.

62. Adkinson placed herself in a situation where she was not able to consider, recommend, or carry out an appropriate course of conduct when faced with negative information which might militate against Plaintiffs' investment in SIB or Stanford affiliated companies. Rather than disclosing negative information, or undertaking a proper and thorough investigation, Adkinson recommended that the Plaintiffs invest millions of dollars with Stanford, after only a cursory investigation, because of her brother's involvement as the SGC financial advisor. In addition, at no time did Adkinson ever disclose to Plaintiffs that her brother stood to receive commissions on the Plaintiffs' investment ranging from \$45,000 to \$90,000.

63. The Plaintiffs were entitled to, and did, place their trust and confidence in the Defendants, Adkinson and the MLJ&S law firm, and did expect that they would represent their clients completely and zealously within the bounds of the law, and in accordance with the Canons of Ethics and Disciplinary Rules applicable to attorneys licensed to practice in Texas.

64. Defendants, Adkinson and the MLJ&S law firm, breached their fiduciary duties to the Plaintiffs by violating the provisions of the Texas Disciplinary Rules of Professional Conduct, and by engaging in conduct, as more particularly described above, which constitutes multiple breaches of the fiduciary owed to Plaintiffs.

65. As a direct and proximate cause of Defendants' breach of its fiduciary duties, Plaintiffs have lost their entire investment, suffered pecuniary loss and other consequential damages.

66. The conduct of Defendants was intentional as that term is defined in law, and justifies an award of exemplary damages to punish and deter such conduct in the future.

D. VIOLATIONS OF THE TEXAS SECURITIES ACT

67. Plaintiffs incorporate by reference paragraphs 1 through 66 as though set out in full herein and recited verbatim.

68. The Texas Securities Act (TSA) provides civil liability for any person who directly or indirectly materially aids in the sale of an unregistered security in the State of Texas. The SIB CD's constitute a "security" as that term is defined under the TSA.

69. Defendants are liable as "aiders" for sales of unregistered securities to Plaintiffs. By their actions as described above, Defendants rendered substantial assistance to representatives of SGC and SIB to sell unregistered securities to Plaintiffs from, by and through Texas. Defendants arranged, facilitated, and promoted the same false misrepresentation, and material omissions, as made by the agents and employees of SGC, who was the seller of the unregistered securities to Plaintiffs.

70. The SIB CD's sold to Plaintiffs were never registered with the Texas Securities Commission as required by the Texas Securities Act. Moreover, the SIB CD's were not exempt from registration as a private placement under the TSA, but instead was in fact an unregistered public offering as sold to Plaintiffs. Moreover, the public offering did not comply with the limitations of the TSA. The offering was made through SGC advisors, who were paid excessive undisclosed commissions, to investors with whom SIB had no pre-existing relationship.

71. As a proximate cause and result of Defendants' conduct in materially aiding in the sale of unregistered securities in the State of Texas, Plaintiffs have lost their investments, and have sustained other consequential damages.

VI.

ACTUAL DAMAGES

72. Plaintiffs have suffered economic loss of their investment that was proximately caused by the wrongful conduct of Defendants described herein. In addition, Plaintiffs sustained incidental and consequential damages. Plaintiffs are also entitled to recover their just and reasonable attorneys' fees, for it would be inequitable not to award such fees to them. Plaintiffs have retained the undersigned attorneys and have agreed to pay them a reasonable attorneys' fee for their work.

73. The exact amount of maximum damages proximately caused by Defendants' wrongful conduct still remains to be quantified, but Plaintiffs believe that those damages exceed four and a half million dollars (\$4,500,000).

VII.

LIMITATIONS

74. Under the Texas Supreme Court holding in *Hughes* and *Apex Towing*, limitations were tolled as to all of Plaintiffs' claims against all Defendants so that this suit is being filed within the applicable statute of limitations.

VIII.

CONDITIONS PRECEDENT

75. All conditions precedent to filing this Petition have been met.

IX.

JURY TRIAL DEMAND

76. The Plaintiffs request a trial by jury on all issues that may be so tried.

WHEREFORE, Plaintiffs pray that Defendants be cited in terms of law to appear and answer herein, that upon final trial and hearing hereof, that Plaintiffs recover damages in accordance with the evidence, that Plaintiffs recover interest to which they are justly entitled under the law, and for such other and further relief, both general and special, both at law and in equity, to which Plaintiffs may be justly entitled.

Respectfully submitted,

MIKE O'BRIEN, P.C.



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ATTORNEY FOR PLAINTIFFS



DALLAS COUNTY CIVIL DISTRICT COURT COVER SHEET

STYLED Randy Kogutt, et al.

v. Malouf Lynch Jackson & Swinson, P.C., et al

This Civil Cover Sheet must be completed, filed and served with every petition. The information should be the best available at the time of filing, understanding that the information may change before trial. This information does not constitute a discovery request, response, or supplementation, and is not admissible at trial. Check (✓) all applicable boxes.

Plaintiff(s) <input type="checkbox"/> Pro Se Address _____ Telephone/Fax _____ E-mail _____ <input checked="" type="checkbox"/> Attorney for Plaintiff(s) State Bar No. 15170200 Address 14355 Highway 105 Washington, TX 77880 Telephone/Fax 713-222-0088/713-222-0888 E-mail mike@moblaw.com	Defendant(s) (list separately) <u>Malouf, Lynch, Jackson & Swinson, P.C., Brenda Reynolds Adkinson</u> _____ _____ _____ _____ _____ _____
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PARTIES MUST CHECK ONE CASE TYPE AND MAY CHECK ONE SUB-TOPIC

<input type="checkbox"/> Administrative Appeal <input type="checkbox"/> Bill of Review <input type="checkbox"/> Certiorari <input type="checkbox"/> Code Violations <input type="checkbox"/> Condemnation <input type="checkbox"/> Construction <input type="checkbox"/> Construction <input type="checkbox"/> Debt/Contract <input type="checkbox"/> Defamation <input type="checkbox"/> Other Commercial Dispute <input type="checkbox"/> Antitrust/Unfair Comp <input type="checkbox"/> Consumer/DTPA <input type="checkbox"/> Franchise <input type="checkbox"/> Fraud/Misrep <input type="checkbox"/> Intellectual Property <input type="checkbox"/> Non-Competes <input type="checkbox"/> Partnership <input type="checkbox"/> Securities/Stock <input type="checkbox"/> Tortious Interference <input type="checkbox"/> Other Commercial <input type="checkbox"/> Discipline <input type="checkbox"/> Discovery <input type="checkbox"/> Rule 202 Depositions <input type="checkbox"/> Commissions <input type="checkbox"/> Subpoena <input type="checkbox"/> Letters Rogatory <input type="checkbox"/> Other Discovery <input type="checkbox"/> Employment <input type="checkbox"/> Discrimination <input type="checkbox"/> Retaliation	<input type="checkbox"/> Termination <input type="checkbox"/> Other Employment <input type="checkbox"/> Foreclosure <input type="checkbox"/> R 736 <input type="checkbox"/> Other than R 736 <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Insurance <input type="checkbox"/> Mass Tort/MDL/Rule 11 <input type="checkbox"/> Asbestos <input type="checkbox"/> Baycol <input type="checkbox"/> Breast Implant <input type="checkbox"/> Firestone <input type="checkbox"/> Phen-Fen <input type="checkbox"/> Silica <input type="checkbox"/> Other Multi-Party <input type="checkbox"/> Motor Vehicle Accident <input type="checkbox"/> Other Personal Injury <input type="checkbox"/> Assault/Battery <input type="checkbox"/> Product <input type="checkbox"/> Premises <input type="checkbox"/> Other Personal Injury <input type="checkbox"/> Name Change <input type="checkbox"/> Post-Judgment <input type="checkbox"/> Professional Liability <input type="checkbox"/> Accounting <input checked="" type="checkbox"/> Legal <input type="checkbox"/> Med/Mal <input type="checkbox"/> Other Prof. Liab. <input type="checkbox"/> Property	<input type="checkbox"/> Partition <input type="checkbox"/> Quiet Title <input type="checkbox"/> Trespass/Try Title <input type="checkbox"/> Other Property <input type="checkbox"/> Prejudgment Remedy <input type="checkbox"/> Seizure/Forfeiture <input type="checkbox"/> Tax <input type="checkbox"/> Tax Appraisal <input type="checkbox"/> Tax Delinquency <input type="checkbox"/> Tax Land Bank <input type="checkbox"/> Tax Personal <input type="checkbox"/> Tax Real <input type="checkbox"/> Workers Comp <input type="checkbox"/> Other ADDITIONAL SUB-TOPICS <input type="checkbox"/> Attachment <input type="checkbox"/> Bill of Discovery <input type="checkbox"/> Class Action <input type="checkbox"/> Declaratory Judgment <input type="checkbox"/> Garnishment <input type="checkbox"/> Interpleader <input type="checkbox"/> License <input type="checkbox"/> Mandamus <input type="checkbox"/> Receiver <input type="checkbox"/> Sequestration <input type="checkbox"/> Severance <input type="checkbox"/> TRO/Injunction <input type="checkbox"/> Turnover
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DISCOVERY LEVEL Level 1 Level 2 Level 3

Local Rule 1.08 Certification (Must be completed and signed)

This case is not subject to transfer pursuant to Local Rule 1.07, or
 This case is related to another case filed or disposed of in Dallas County:
 Court: _____ Style: _____

Case No. _____

Mike [Signature]
 Attorney's Signature