

II.
SUMMARY JUDGMENT EVIDENCE

Defendants Malouf, Lynch, Jackson & Swinson, P.C., (“Malouf”) and Brenda Reynolds Adkinson submit the following summary judgment evidence, a true and correct copy of which are attached hereto and incorporated herein fully by reference:

- A) True and correct copy of the December 27, 2007 email from William Leighton to Judy and Jeff Kogutt, attached herein as Exhibit A;
- B) True and correct copy of December 27, 2007 email from Brenda Adkinson (then Reynolds) to Niloufer Mistry and the Kogutts, attached herein as Exhibit B;
- C) Deposition excerpts of Irene Kogutt, taken on July 20, 2010, attached herein as Exhibit C;
- D) True and correct copy of April 3, 2009 Wall Street Journal article entitled, “*Hard Sell Drove Stanford’s Rise and Fall.*” attached herein as Exhibit D;
- E) True and correct copy of Plaintiffs’ Original Petition, attached herein as Exhibit E; and
- F) Deposition excerpts of Samuel Kogutt, taken on July 20, 2010, attached herein as Exhibit F.

III.
BACKGROUND

Following the sale of Dart Manufacturing in November, 2007, at the request of Jeff Kogutt, Ms. Adkinson provided Plaintiffs with the names of several financial advisors. One of these financial advisors was the Stanford Group Company (“SGC”) and Ms. Adkinson’s brother, William Leighton.

This recommendation led to several meetings, one on November 27, 2007 and another on December 19, 2007, between representatives of SGC, Patrick Cruickshank and Leighton, and Plaintiffs. These meetings took place at Malouf, Lynch, Jackson, and Swinson, P.C.’s offices.

Plaintiffs did not ask Ms. Adkinson to attend either meeting but granted her request to do so on her own initiative and curiosity regarding SGC and her brother's role with his new employer.

During the course of the November 27, 2007 meeting, the SGC advisors provided the Kogutt family and Ms. Adkinson with documents concerning various SIB/SGC investments, including CDs issued by SIB. Following the December 19, 2007 meeting, Niloufer Mistry asked Ms. Adkinson to review the disclosure statement and certain other documents provided by the SGC representatives and to research former and current litigation involving SGC and SIB.

Following this second Stanford meeting, Judy and Jeff Kogutt sent Leighton two emails containing a list of questions. Leighton responded to Judy and Jeff on December 27th at 3:21 p.m.¹ All of the Kogutt family members, including Niloufer Mistry, were copied on the email. Cruickshank was also copied on the email. Notably, neither Ms. Adkinson nor any other member of Malouf, Lynch was copied on the email. The email contains the following questions/responses, in relevant part:

- Q:** When we buy a CD, what guarantee do we have that we get the money back if something happens to the Stanford Group or Stanford Bank? We want to be sure we don't just get a piece of paper saying we own a CD and that will be all we are left with. If insurance backs it how do we make a claim and get the money?
- A:** *The CD is reflected on account statements (with on-line access) similar to what you would receive with a domestic bank or brokerage company. The insurance that is maintained by the bank protects depositors against fraud and embezzlement, etc. by bank management. In addition, the money managers that invest the bank's money are covered by SIPC insurance and CAPCO, which protects all of the bank's investments from the insolvency of the money managers. I do not have copies of the claim forms but I*

¹ Exhibit A.

can try to obtain them from the bank's insurance brokers after the holidays.²

* * *

Q: During the meeting you said that Lloyds of London is the insurer on the international CDs. In the disclosure statement it doesn't list them as insurers. It also says: "This insurance does not insure customer deposits and is not the equivalent of the FDIC insurance on deposits at many institutions in the U.S." Does this mean principal and interest in the CD is not covered by insurance?

A: *No specific insurers are listed as the bank may choose to use different carriers over time. As we stated during the presentation and as described in [the answer above], the insurance is not FDIC insurance. First, FDIC insurance only applies to \$100,000 of deposits per social security number. The insurance at the Stanford International Bank insures against fraud and insolvency for the bank management and the money managers hired by the bank.³*

On the same day that the Kogutt family members received Leighton's responses, approximately 35 minutes later, Ms. Adkinson provided a one-page email to the Kogutts.⁴ The December 27, 2007 email details her review of the disclosure statement and other documents, along with the results of her Westlaw research of SGC and SIB. In this email, Ms. Adkinson also states:

I am not an investment advisor and I am not authorized to make statements on behalf of Stanford. What I have said here is from what I have read and researched.⁵

After receiving Ms. Adkinson's email, Irene Kogutt, the matriarch of the Kogutt family, concluded that Defendants' "investigation" of SGC was inadequate.⁶ According to Irene Kogutt, the rest of the Kogutt family was aware of and discussed Defendants' alleged sub-par due

² *Id.*

³ *Id.*

⁴ Exhibit B.

⁵ *Id.*

diligence analysis prior to investing with SGC.⁷ Despite their dissatisfaction with Defendants' allegedly incomplete analysis, Plaintiffs proceeded with their investment with SGC in January 2008, without asking Defendants for any clarification or further investigation of SIB or SGC. Over the course of the next year, Plaintiffs continued to invest heavily with SGC in SIB CDs, but failed to ever inform Ms. Adkinson of the amounts of these investments, the strategy behind them, or the status of their investments. Rather, these numerous investment discussions and decisions took place between and amongst Plaintiffs and their SGC financial advisors.

During early January 2009, while Plaintiffs were heavily invested in SIB CDs, they met with Cruickshank in SGC's office. Ms. Adkinson was not invited nor did she attend the meeting. The purpose of the meeting was to discuss the safety and security of the SIB CDs following the recent Madoff scandal. During the meeting, Niloufer Mistry recalls Cruickshank reassuring the family about their investments.

On February 17, 2009, the SEC filed its lawsuit against Allen Stanford and various other individuals and entities, alleging a massive on-going fraud. On April 3, 2009, the Wall Street Journal published an article entitled, "*Hard Sell Drove Stanford's Rise and Fall*."⁸ In the article, Michael Kogutt discusses seeking advice from Cruickshank and relying upon that advice to maintain his investment with SIB:

As recently as December [2008], in a report to clients following the Madoff scandal and global stock-market turmoil, Stanford Bank stated it was "strong, safe and fiscally sound." By then, serious pressure was building. Spooked by the global financial crises, clients had begun trying to pull money out. Around that time, Mr. [Michael] Kogutt, the investor from Texas, told a Stanford advisor, Patrick J. Cruickshank, that he wanted to do just that. 'I wanted to have more diversified investments, but he said

⁶ Exhibit C, pg. 37 ln. 5-7; pg. 39, ln. 15-21.

⁷ *Id.* at pg. 39, ln. 15-21; pg. 40, ln. 14-25.

⁸ Exhibit D.

these were the safest things you could do with that kind of return,' Mr. Kogutt recalls. 'He said, No. Leave it. Leave it.'"⁹

On August 25, 2009, Plaintiffs filed suit against Defendants alleging: negligence/legal malpractice, negligent misrepresentation, breach of fiduciary duty, and violations of the Texas Securities Act. All of these causes of action are negated by Plaintiffs' awareness of alleged omissions and/or deficiencies within Ms. Adkinson's "report" and Plaintiffs' decision to proceed with their investment with SGC, thereby waiving their right to assert claims against these Defendants.

IV. ARGUMENT AND AUTHORITIES

A. Plaintiffs Have Waived Their Right to Assert Claims Against Defendants Related to the SGC Investment.

Plaintiffs were aware of the alleged deficiencies in Defendants' December 27, 2007 e-mail report but failed to ever address these alleged deficiencies with Defendants. Instead, Plaintiffs proceeded with their initial investment. Therefore, Plaintiffs have waived their right to assert any claims against Defendants based on the alleged deficiencies.

The principle of waiver¹⁰ bars Plaintiffs' claims. Waiver is defined as "an intentional relinquishment of a known right or intentional conduct inconsistent with claiming that right." *Sun Exploration & Prod. Co. v. Benton*, 728 S.W.2d 35, 37 (Tex. 1987). Waiver is largely a matter of intent, and for implied waiver to be found through a party's actions, intent must be clearly demonstrated by the surrounding facts and circumstances. *Motor Vehicle Bd. v. El Paso Indep. Auto. Dealers Ass'n, Inc.*, 1 S.W.3d 108, 111 (Tex. 1999). A party's silence or inaction

⁹ *Id.*

¹⁰ Waiver is ordinarily a question of fact, but when the surrounding facts and circumstances are undisputed, the question becomes one of law. *Motor Vehicle Bd.*, 1 S.W.3d at 111.

for a period of time long enough to show an intention to yield the known right is also enough to prove a waiver. *Tenneco Inc. v. Enterprise Prods. Co.*, 925 S.W.2d 640, 643 (Tex. 1996).

Evidence of waiver generally takes one of three forms. First, there may be evidence of an express renunciation of the known right. *See* 60 TEX.JUR.2D WAIVER § 10 (1964). Second, there may be evidence of silence or inaction, coupled with knowledge of the known right, for such an unreasonable period of time as to indicate an intention to waive the right. *See, Furr v. Hall*, 553 S.W.2d 666, 674 (Tex.Civ.App.—Amarillo 1977, writ ref'd n. r. e.). Third, waiver may be evidenced by other conduct of the party knowingly possessing the right of such a nature as to mislead the opposite party into an honest belief that the waiver was intended. *See, e. g., Hemenway Co., Inc. v. Sequoia Pac. Realco*, 590 S.W.2d 545, 548-49 (Tex.Civ.App. San Antonio 1979, writ ref'd n. r. e.).

In *Tenneco*, plaintiff alleged that defendants breached various portions of an operating agreement, which included a requirement that defendant deliver 31,000 barrels of natural gas per day. *Id.* at 643. In response, defendants argued that plaintiff was aware of defendants' alleged breaches for three (3) years prior to filing suit but never complained about the breaches and instead, proceeded to sign several amendments and ratifications to the operating agreement. *Id.* Specifically, defendants included in their summary judgment evidence deposition excerpts from plaintiff's representatives demonstrating (in part) that plaintiff was aware that defendants were delivering substantially less than 31,000 barrels per day. *Id.* The *Tenneco* court ultimately held that "the extended inaction by the plant owners..." coupled with the other summary judgment evidence demonstrating plaintiff's knowledge of the alleged breaches "establishes an intentional waiver of any rights" concerning the operating agreement. *Id.*

Similarly, summary judgment is proper because Plaintiffs have waived their claims relating to these alleged deficiencies in Ms. Adkinson's report. It is undisputed that prior to investing, Plaintiffs were aware of the alleged deficiencies in Defendants' research.¹¹

Q: In your opinion, did Brenda perform an in-depth research?

A: No.¹²

Q: ...You and your husband were not in favor of investing the Family Limited Partnership's money with Stanford, correct?

A: Correct.

Q: And that was because you did not believe that Brenda Reynolds, Brenda Adkinson, performed a thorough investigation into Stanford, correct?

A: Part of it, yes.

In fact, Plaintiffs allege that Defendants' "report" was "strikingly deficient on its face for the lack of any specific factual foundation, its unsubstantiated conclusions, and its numerous erroneous statements."¹³ Not only were Plaintiffs aware of these alleged deficiencies *prior to investing*, but they discussed them amongst themselves.

Q: And you shared your views with other members of the Kogutt family, correct?

A: Yes.¹⁴

Q: So the family discussed Brenda Adkinson's investigation of Stanford and the fact that it was lacking, correct?

A: Yes.

Q: And that discussion took place prior to the decision being made to invest in Stanford, correct?

A: Yes.¹⁵

However, despite their alleged complaints with Defendants' work product in 2007, Plaintiffs decided to proceed with their investments in January, April, May, June, July, and September,

¹¹ Exhibit C, pg. 37 ln. 5-7; pg. 39, ln. 15-21.

¹² *Id.* at pg. 37, ln. 5-6.

¹³ Exhibit E.

¹⁴ Exhibit C, pg. 39, ln. 11-21.

2008.¹⁶ Like *Tenneco*, Defendants have presented undisputed summary judgment evidence that prior to investing with SGC, Plaintiffs were aware of Defendants' alleged malpractice and misrepresentations but failed to assert their rights until over a year later. Therefore, summary judgment should be granted in favor of Defendants because Plaintiffs have waived their right to assert claims against Defendants arising out of or related to the SGC investments.

B. No Reliance on Defendants

Plaintiffs acknowledge that they discussed the alleged inadequacies of Ms. Adkinson's report prior to making their investments. Despite their awareness and discussion of the alleged inadequacies, Plaintiffs contend that they relied upon Ms. Adkinson's report.

(1) *Plaintiffs did not rely on Defendants' representations*

Contrary to their allegations, Plaintiffs relied on SGC representatives regarding the SGC investment, not Defendants. In fact, following the second meeting with SGC representatives, Judy and Jeff Kogutt sent Leighton two emails containing a list of questions. Leighton responded to Judy and Jeff on December 27th at 3:21 p.m.¹⁷ All of the Kogutt family members, including Niloufer Mistry, were copied on the email.¹⁸ Cruickshank of SGC was also copied on the email.¹⁹

This email exchange concerning the "safety, security, and insured" nature of the investments underscores the significance of the reliance Plaintiffs placed on their investment advisors. The information contained in Leighton's response to the Kogutt family members, was particularly important to Sam Kogutt, who testified:

¹⁵ *Id.* at pg. 40, ln. 14-25.

¹⁶ *Id.* at pg. 39, ln. 15-21; pg. 40, ln. 14-25.

¹⁷ Exhibit A.

¹⁸ *Id.*

¹⁹ *Id.*

- Q: And that is what you and, to your knowledge, the other Kogutt family members were concerned about, the insurability or the insurance for customer deposits, correct?
- A: I don't – I don't know what their reasonings were.
- Q: What was your reason for wanting to make sure that insurance was being offered?
- A: By Lloyds of London?
- Q: By Lloyds of London or any insurer for that matter?
- A: Well, that's one way of knowing if it's safe.
- Q: And specifically that insurance, you were concerned that it related to customer deposits, correct?
- A: Right.
- Q: And clearly, it's stated in the disclosure statement that it did not insure customer deposits, correct?"?
- A: That – that's what I see now.²⁰

Admittedly, 35 minutes after the SGC advisors' email to Plaintiffs, Ms. Adkinson also emailed Plaintiffs with additional information regarding the SGC investment. However, it is undisputed that, prior to investing with SGC, Plaintiffs believed Ms. Adkinson's research was not thorough and did not address Plaintiffs' concerns regarding the SGC investment. Therefore, despite their self-serving allegations, it stands to reason that Plaintiffs did not rely on Ms. Adkinson's alleged deficient research regarding their investments.

(2) *Plaintiffs' reliance on Defendants' representations was not justified*

Texas law requires that a plaintiff claiming negligent misrepresentation prove that its reliance was justifiable. *Federal Land Bank Ass'n v. Sloane*, 825 S.W.2d 439, 442 (Tex. 1991). Justifiable reliance comprises two elements: (1) the plaintiff must in fact rely on the information; and (2) the reliance must be reasonable. *Id.* The justifiableness of the reliance is judged in light of the plaintiff's intelligence and experience. *McCamish, Martin, Brown & Loeffler v. F.E. Appling Interests*, 991 S.W.2d 787, 794 (Tex. 1999).

²⁰ See Exhibit F, pg. 64, ln. 23, pg. 65, ln. 19.

It is undisputed that Plaintiffs were aware of the alleged deficiencies within Defendants' 'due diligence report' prior to Plaintiffs' investment with SGC. Therefore, it stands to reason that Plaintiffs would not rely on Defendants' report, that any such reliance would not be reasonable or justified, nor could such reliance be the cause of Plaintiffs' damages. *See, e.g., Seneca Resources Corp. v. Marsh & McLennan, Inc.*, 911 S.W.2d 144 (Tex. App.—Houston [1st Dist. 1995, no writ) (errors and misrepresentations contained in agency-drafted insurance summaries relating to named peril redrill coverage did not cause harm to insured because insured knew that there was no coverage of that type in its policy and therefore, no proof of causation); *Wortman v. Young*, 235 S.W. 559, 560-61 (Tex.Comm'n App.1921, judgm't adopted) (there can be no reliance on representations when party has actual knowledge of falsity of those representations); *John Hancock Mut. Life Ins. Co. v. Brennan*, 324 S.W.2d 610, 614 (Tex.Civ.App.—San Antonio 1959, writ ref'd n.r.e.) (insurer that knew of falsity of deceased's answers as a result of its independent investigation cannot be said to have relied on those answers); *Caprito v. Grisham-Hunter Corp.*, 128 S.W.2d 149, 159 (Tex.Civ.App.—Eastland 1939, writ disp'd judgm't cor.) (one who discovers that representations were false cannot claim that he was deceived by those representations); *United States Fidelity & Guar. Co. v. McCollum*, 70 S.W.2d 751, 753 (Tex.Civ.App.—El Paso 1934, no writ) (if a party to a contract did not believe representations, he was not deceived and, therefore, cannot rescind the contract); *Allen v. Lasseter*, 35 S.W.2d 753, 757 (Tex.Civ.App.—Waco 1931, writ ref'd) (party to a contract who discovers falsity of representations cannot claim that he was deceived and cannot be said to have relied upon the truth of the representations).

Reliance is also unjustified when a plaintiff actually investigates the information at issue. *Bartlett v. Schmidt*, 33 S.W.3d 35, 38 (Tex. App.—Corpus Christi 2000, pet. denied). When a

plaintiff investigates the information it received from a defendant, there is a presumption the plaintiff made its decision based on its own investigation instead of on the defendant's allegedly false representation. *Id.*; see also, *Mason v. Mid-Continent Supply Company*, 374 S.W.2d 922, 924-5 (Tex. Civ. App.—Fort Worth 1964, writ ref'd n.r.e.) (if a plaintiff is aware of the facts and circumstances of a transaction, there can be no justifiable reliance).

As discussed above, following the second meeting with SGC representatives, Judy and Jeff Kogutt began their own investigation of the SGC investment opportunity by contacting Leighton of SGC with a list of questions. Although Plaintiffs also received information regarding the investment from Ms. Adkinson, the undisputed summary judgment evidence shows that Plaintiffs could not have relied on this information because they believed Ms. Adkinson's report was inadequate. Therefore, Plaintiffs' negligent misrepresentation claim should be dismissed as a matter of law.

C. Failure to Mitigate

The Texas Supreme Court has stated “[u]nder mitigation principles, the long-standing law of this state requires a claimant to mitigate damages if it can do so without trifling expense or with reasonable exertions.” *Gunn Infiniti, Inc. v. O’Byrne*, 996 S.W.2d 854, 857 (Tex. 1999) (internal quotations omitted). If the plaintiff does not exercise reasonable care in minimizing her damages, the plaintiff cannot recover those damages that could have been avoided. *Pinson v. Red Arrow Freight Lines*, 801 S.W.2d 14, 15, (Tex. App.—Austin 1990, no writ).

The crux of Plaintiffs' claims against Defendants is a one-page December 27, 2007 email from Ms. Adkinson to Plaintiffs regarding the SGC investment, which Plaintiffs refer to as the ‘report.’ Plaintiffs characterize the ‘report’ as “strikingly deficient on its face for the lack of any specific factual foundation, its unsubstantiated conclusions, and its numerous erroneous

statements.” Plaintiffs assert that Defendants’ failure “to conduct a thorough due diligence analysis...to discover...numerous ‘red flags’” caused Plaintiffs to lose their entire investment of approximately \$4.5 million. Specifically, Plaintiffs allege that if they had been informed of the deficiencies in Defendants’ ‘report,’ Plaintiffs would have rejected the SGC investment “as an unsuitable and inordinately risky investment.” However, by virtue of their own deposition testimony, Plaintiffs admit that they were aware of the deficiencies in Defendants’ “report” prior to deciding to invest with SGC. Therefore, it stands to reason that Plaintiffs, armed with the knowledge that Defendants’ due diligence analysis was deficient, could have mitigated all of their damages by deciding not to proceed with their investment in SGC. Their failure to do so bars them from seeking to recover any damages resulting from the SGC investment from Defendants.

D. Improper Fracturing

Plaintiffs’ characterization of their legal malpractice claim as a breach of fiduciary duty and negligent misrepresentation claim is not supported by Texas law. In *Willis v. Maverick*, 760 S.W.2d 642, 644 (Tex. 1988), the Texas Supreme Court held that “a cause of action for legal malpractice is in the nature of a tort.” *See also, Cosgrove v. Grimes*, 774 S.W.2d 662, 664 (Tex. 1989). Following *Willis*, Texas courts have consistently held that claims that arise from alleged malpractice by an attorney are tort claims and legal malpractice is not a breach of the contract giving rise to the attorney-client relationship. *See also, Duerr v. Brown*, 262 S.W.3d 63, 70 (Tex. App.—Houston [14th Dist.] 2008, no pet.)(claimant must do more than “merely reassert the same claim for legal malpractice under an alternative label”); *Deutsch v. Hoover, Bax & Slovacek, L.L.P.*, 97 S.W.3d 179, 189 (Tex. App.—Houston [14th Dist.] 2002, no pet.)(this rule serves to prevent legal malpractice plaintiffs from opportunistically transforming a claim that

sounds only in negligence into other claims” to avail themselves of longer limitations periods, less onerous proof requirements, or other tactical advantages).

The question of law for this Court, therefore, is whether “the crux of the complaint is that the plaintiff’s attorney did not provide adequate legal representation...” in which case the claim is one for legal malpractice.” *See Kimleco Petroleum, Inc. v. Morrison & Shelton*, 91 S.W.3d 921, 924 (Tex. App.—Fort Worth 2002, pet. denied). This analysis focuses primarily on ascertaining whether the facts that are the basis for an asserted cause of action implicate only the lawyer’s duty of ordinary care or independently actionable fiduciary, statutory, contractual, or other tort duties. In *Rodriguez v. Klein*, the court held that because plaintiff’s claims for breach of fiduciary duty, breach of the duty of good faith, and breach of implied warranty arose from the allegedly negligent creation of a bill of sale, the plaintiff was limited to asserting a tort claim for legal malpractice as opposed to splitting up that claim into multiple causes of action. 960 S.W.2d 179, 184 (Tex. App.—Corpus Christi 1997, no writ). In other words, when “the real issue remains one of whether the professional exercised that degree of care, skill, and diligence that professionals of ordinary skill and knowledge commonly possess and exercise,” that claim, regardless of how it is named or characterized by plaintiffs, is a legal malpractice claim. *Kimleco Petroleum, Inc.*, 91 S.W.3d at 923-24.

In this case, the crux of Plaintiffs’ complaint against Adkinson and Malouf is based on their alleged failure to conduct a thorough due diligence analysis of the transaction at issue in order to discover alleged “red flags” that would have convinced Plaintiffs not to invest.²¹ In other words, Plaintiffs allege that Adkinson and Malouf failed to handle a matter entrusted to them by Plaintiffs, and/or gave Plaintiffs erroneous legal advice. These allegations mimic

²¹ *See generally*, Exhibit E.

precisely the types of actions that form the bases of legal malpractice claims, not an independent cause of action for breach of fiduciary duty. *Ulrickson v. Hibbs*, No. 2-02-161-CV, 2003 Tex. App. LEXIS 9482 (Tex. App.—Fort Worth 2003, no pet. h.). Consequently, Plaintiffs' improperly fractured fiduciary duty claim fails as a matter of law.

V.

NO-EVIDENCE MOTION FOR SUMMARY JUDGMENT

Plaintiffs have filed the following claims against Defendants Malouf, Lynch, Jackson & Swinson, P.C., (“Malouf”) and Brenda Reynolds Adkinson (“Adkinson”): negligence/legal malpractice, negligent misrepresentation, breach of fiduciary duty, and violations of the Texas Securities Act. However, Plaintiffs are unable to establish each of the requisite elements of the claims against Malouf and Adkinson.

A. NO EVIDENCE OF BREACH OF FIDUCIARY DUTY

Plaintiffs have alleged that Defendants' acts and omissions during their representation of Plaintiffs in the underlying transaction constitute a breach of Defendants' fiduciary duty to Plaintiffs. In Texas, the necessary elements for a breach of fiduciary duty claim are the following:

- 1) The plaintiff and defendant had a fiduciary relationship;
- 2) The defendant breached its fiduciary duty to plaintiff; and
- 3) The defendant's breach resulted in:
 - a) injury to the plaintiff.

Burrow v. Arce, 997 S.W.2d 229, 237 (Tex. 1999); *Kelly v. Gaines*, 181 S.W.3d 394, 414 (Tex. App.—Waco 2005, n.p.h.).

In this case, Plaintiffs have no evidence to establish that Defendants breached their fiduciary duties to Plaintiffs or that any alleged breach of Defendants' fiduciary relationship to

Plaintiffs caused any injury or damage to Plaintiffs. Consequently, Plaintiffs' claim of breach of fiduciary duty against Defendants fails as a matter of law.

B. NO EVIDENCE OF NEGLIGENCE

The required elements to prove a cause of action for negligence are as follows:

- 1) The defendant owed a legal duty to the plaintiff;
- 2) The defendant breached the duty;
- 3) The breach proximately caused the plaintiff's injury; and
- 4) Plaintiff's suffered damages.

Western Invs., Ins. v. Urena, 162 S.W.3d 547, 550 (Tex. 2005).

Plaintiffs are unable to establish elements 2-4 of their negligence claim against the Defendants. Specifically, there is no evidence to support Plaintiffs' allegation that Defendants breached any duties owed to Plaintiffs or that any alleged breach of duties by Defendants proximately caused Plaintiffs to incur any damages. Therefore, Plaintiffs' claim of negligence against Defendants is unsupported and should be dismissed.

C. NO EVIDENCE OF NEGLIGENT MISREPRESENTATION

The five necessary elements that must be established to prove a cause of action for negligent misrepresentation are as follows:

- 1) The defendant made a representation to the plaintiff in the course of the defendant's business or in a transaction in which the defendant had an interest;
- 2) The defendant supplied false information for the guidance of others;
- 3) The defendant did not exercise reasonable care or competence in obtaining or communicating the information;
- 4) The plaintiff justifiably relied on the representation; and

- 5) The defendant's negligent misrepresentation proximately caused the plaintiff's injury.

McCamish, Martin, Brown & Loeffler v. F.E. Appling Interests, 991 S.W.2d 787, 791 (Tex. 1999).

Plaintiffs have no evidence to establish elements 2-5 above. Specifically, Plaintiffs have no evidence that Defendants ever supplied Plaintiffs or anyone else with false information regarding the transaction at issue, or that Defendants failed to exercise reasonable care or competence in obtaining or communicating information to Plaintiffs. Lastly, Plaintiffs have no evidence that they justifiably relied on any representations made by Defendants. Therefore, Plaintiffs' claim of negligent misrepresentation against Defendants is unsupportable and should be dismissed.

D. NO EVIDENCE OF VIOLATIONS OF THE TEXAS SECURITIES ACT

Pursuant to Tex. Rev. Civ. Stat. Ann. art. 581-33 (A)(2), “[a] person who offers or sells a security by means of an untrue statement of material fact or an omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading, is liable to the person buying the security from him...”. Thus, in order to recover under the Act, Plaintiffs have to prove that Defendants made an offer or sale of a security by means of either (1) an untrue statement of material fact or (2) an omission of a material fact which was necessary in order to make the statement made not misleading. *See Anderson v. Vinson Exploration, Inc.*, 832 S.W.2d 657, 661-62 (Tex. App.—El Paso 1992, writ denied).

Plaintiffs have no evidence that Defendants offered or sold a security or that Defendants made any untrue statements or omitted a material fact with regard to the transaction involving

securities made the basis of this lawsuit. Therefore, Plaintiffs' claim against Defendants for a violation of the Texas Securities Act is unsupportable and should be dismissed.

VI.
PRAYER

WHEREFORE, Defendants ask this Court to grant Defendants' Traditional and No-Evidence Motions for Summary Judgment, in whole or in part, and for any further relief to which Defendants may be justly entitled.

Respectfully submitted,

THOMPSON, COE, COUSINS & IRONS, L.L.P.

By: 

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CERTIFICATE OF SERVICE

I certify that on this 8th day of December, 2010, a true and correct copy of the foregoing document was served on the following counsel of record in accordance with the Texas Rules of Civil Procedure:

Ernest W. Leonard
Friedman & Feiger, LLP
5301 Spring Valley Road, Suite 200
Dallas, Texas 75254



Craig L. Dowis

EXHIBIT “A”

From: Leighton, William R. (WLeighton@StanfordEagle.com)
To: Judy and Jeff Kogutt; Cruickshank, Patrick
Date: Thursday, December 27, 2007 3:21:45 PM
Cc: Irene-Sam Kogutt; Michael Kogutt; Randy Kogutt; Niloufer Mistry
Subject: RE: More questions

Judy and Jeff,

Set forth below are the answers to the questions in your two emails to Patrick:

First email:

1. Does a client have to invest One Million dollars with Stanford Group in order to be able to participate in any of the investments? NO. WE PREFER TO HAVE RELATIONSHIPS THAT HAVE A MINIMUM OF ONE MILLION INVESTABLE ASSETS, BUT THAT IS NOT A STANFORD REQUIREMENT. IT IS A REQUIREMENT THAT U.S. INDIVIDUALS THAT INVEST IN THE INTERNATIONAL CD BE ACCREDITED INVESTORS, WHICH MEANS THAT THEY HAVE A NET WORTH OF ONE MILLION DOLLARS OR ANNUAL INCOME OF \$300,000 (FOR A MARRIED COUPLE).

2. You had talked about a AAA rating. What/who has that rating? The Bonds? The CDs? The Stanford group? The Stanford Bank? THE MUNICIPAL BONDS THAT WE DESCRIBED HAVE AAA RATINGS. THE PRIMARY INSURERS BEHIND SUCH RATINGS ARE THE AMERICAN MUNICIPAL BOND ASSURANCE CORPORATION (AMBAC), THE MUNICIPAL BOND INVESTORS ASSURANCE CORPORATION (MBIA) AND THE FINANCIAL GUARANTY INSURANCE COMPANY (FGIC).

3. I know you said you cannot provide us with references but surely you have a happy client willing to sing your praises. We do not need to know net worth or anything, just someone (preferably two) who have worked with you in this capacity.

MR. AND MRS. GRASSO (512-338-9104)

MR. AND MRS. KUBICK (512-246-1609)

4. When did you get your NFLPA? How often does it have to be renewed? 2001, RENEWED ANNUALLY

5. What are the actual underlying investments in the international CDs? What form of currency is it in? THE INTERNATIONAL CD MAY BE ISSUED IN DIFFERENT CURRENCIES, BUT OUR CLIENTS GENERALLY ACQUIRE US DOLLAR DENOMINATED CD'S. THE UNDERLYING INVESTMENTS CONSIST OF A GLOBAL PORTFOLIO OF FINANCIAL ASSETS AND NON-CORRELATED INVESTMENTS AS DETERMINED BY THE INVESTMENT COMMITTEE. A GENERAL BREAKDOWN OF THE INVESTMENTS IS SET FORTH ON PAGE 36 OF THE 2006 ANNUAL REPORT, WHICH WAS PREVIOUSLY PROVIDED TO YOU, AND IS ALSO DESCRIBED GENERALLY ON PAGE 16 OF THE DISCLOSURE STATEMENT.

6. When we buy a CD, what guarantee do we have that we get the money back if something happens to the Stanford Group or Stanford Bank? We want to be sure we don't just get a piece of paper saying we own a CD and that will be all we are left with. If insurance backs it how do we make a claim and get the money? THE CD IS REFLECTED ON ACCOUNT STATEMENTS (WITH ON-LINE ACCESS) SIMILAR TO WHAT YOU WOULD RECEIVE WITH A DOMESTIC BANK OR BROKERAGE COMPANY. THE INSURANCE THAT IS MAINTAINED BY THE BANK PROTECTS DEPOSITORS AGAINST FRAUD AND EMBEZZLEMENT, ETC. BY BANK MANAGEMENT. IN ADDITION, THE MONEY MANAGERS THAT INVEST THE BANK'S MONEY ARE COVERED BY SIPC INSURANCE AND CAPCO, WHICH PROTECTS ALL OF THE BANK'S INVESTMENTS FROM THE INSOLVENCY OF THE MONEY MANAGERS. I DO NOT HAVE COPIES OF THE CLAIM FORMS BUT I CAN TRY TO OBTAIN THEM FROM THE BANK'S INSURANCE BROKERS AFTER THE HOLIDAYS.

Second email:

1. During the meeting you said that Lloyds of London is the insurer on the international CDs. In the disclosure statement it doesn't list them as insurers. It also says: "This insurance does not insure customer deposits and is not the equivalent of the FDIC insurance on deposits at many institutions in the U.S. " Does this mean principal and interest in the CD is not covered by insurance? NO SPECIFIC INSURERS ARE LISTED AS THE BANK MAY CHOOSE TO USE DIFFERENT CARRIERS OVER TIME. AS WE STATED DURING THE PRESENTATION AND AS DESCRIBED IN THE ANSWER TO QUESTION 6 ABOVE, THE INSURANCE IS NOT FDIC INSURANCE. FIRST, FDIC INSURANCE

ONLY APPLIES TO \$100,000 OF DEPOSITS PER SOCIAL SECURITY NUMBER. THE INSURANCE AT THE STANFORD INTERNATIONAL BANK INSURES AGAINST FRAUD AND INSOLVENCY FOR THE BANK MANAGEMENT AND THE MONEY MANAGERS HIRED BY THE BANK.

2. Under the Investment Risk and Strategy statement, it says that "conservation of principal and interest rates on the CD Deposits are dependent upon returns in our investment portfolios.... If returns on the bank's portfolios negatively affect our financial condition then the same could negatively impact return of principal and interest on the U.S. Accredited Investor CD". Does this mean if the bank doesn't make the kind of return it wants/needs, we could loose principle and interest? The disclosure does not indicate the interest rate is guaranteed. INTEREST RATES ARE GUARANTEED. YOU ARE DIRECTED TO THE WEBSITE FOR THE BANK "WWW.STANFORDINTERNATIONALBANK.COM" FOR PRODUCT DESCRIPTIONS THAT INCLUDE THE FEATURES WE DISCUSSED. IF THE INVESTMENT COMMITTEE OF THE BANK DETERMINES THAT IT CANNOT EARN THE RATES THAT IT HAD PREVIOUSLY EXPECTED TO EARN, THEN THE BANK WILL REDUCE THE RATES ON NEW CD'S, BUT THE RATES ON EXISTING CD'S ARE FIXED FOR THE TERM.

3. You had also said that if the interest rate goes up, then our rate would go up but it won't go down, we did not see that in the disclosure. YOU WILL FIND THAT IN THE PRODUCT DESCRIPTIONS ON THE WEBSITE REFERENCED ABOVE.

4. Under the Early Withdrawal Penalty section it says "Withdrawals from the CD Deposits prior to their maturity date may not be made, except as allowed for the Flex CD. Any such withdrawal will be permitted only with SIBL's consent and will be subject to penalty for early withdrawal." This says SIBL can refuse to allow us to withdraw our money. That is worrisome. ALTHOUGH TO OUR KNOWLEDGE THE BANK HAS NEVER REFUSED A REQUEST FOR AN EARLY WITHDRAWAL, THAT PROVISION IS THERE TO PROTECT ALL OF THE DEPOSITORS. THE BANK'S INVESTMENT DECISIONS TAKE INTO ACCOUNT THE BANK'S LIQUIDITY NEEDS, WHICH INCLUDES ANTICIPATED WITHDRAWALS; THUS THE BANK MAINTAINS SOME CONTROL OVER UNANTICIPATED WITHDRAWAL REQUESTS TO PROPERLY MANAGE ITS LIQUIDITY NEEDS AND INVESTMENT TIMING.

5. Can you send us a 2 year projection on the Fixed and Flex CD's? SEE ATTACHED; THESE ARE 2 YEAR PROJECTIONS ON 5 YEAR FIXED AND FLEX CD'S, WITHOUT PENALTIES FOR EARLY WITHDRAWAL.

6. Was there information in the original packet about the Municipal Bonds you talked about in your last e mail? If not, can you send everyone that info? NO THERE WAS NOT SPECIFIC INFORMATION INCLUDED, ALTHOUGH I DID INCLUDE INFORMATION IN A PRIOR EMAIL TO NILOUFER ABOUT TWO SPECIFIC OPPORTUNITIES THAT WERE RECENTLY AVAILABLE.

7. The Disclosure Statement is from September 2005 and the Subscription agreement is from 2004. Are these the most up to date? YES THEY ARE.

I hope this adequately answers your questions. If not please let me know and I will try to respond where possible.

Thanks
Bill Leighton

William R. Leighton
Financial Advisor
Stanford Group Company
5001 Plaza on the Lake
Suite 105
Austin , Texas 78746

512.314.1917 Direct

512.314.1905 Fax

-----Original Message-----

From: Judy and Jeff Kogutt [mailto:jjkogutt@sbcglobal.net]

Sent: Wednesday, December 26, 2007 1:05 PM

To: Leighton, William R.; Cruickshank, Patrick

Cc: Irene-Sam Kogutt; Michael Kogutt; Randy Kogutt; Niloufer Mistry; Judy and Jeff Kogutt
User

Subject: More questions

Bill and Patrick,

We read through the disclosure statement and have several more questions:

1. During the meeting you said that Lloyds of London is the insurer on the international CDs. In the disclosure statement it doesn't list them as insurers. It also says: "This insurance does not insure customer deposits and is not the equivalent of the FDIC insurance on deposits at many institutions in the U.S. " Does this mean principal and interest in the CD is not covered by insurance?
2. Under the Investment Risk and Strategy statement, it says that "conservation of principal and interest rates on the CD Deposits are dependent upon returns in our investment portfolios.... If returns on the bank's portfolios negatively affect our financial condition then the same could negatively impact return of principal and interest on the U.S. Accredited Investor CD". Does this mean if the bank doesn't make the kind of return it wants/needs, we could lose principle and interest? The disclosure does not indicate the interest rate is guaranteed.
3. You had also said that if the interest rate goes up, then our rate would go up but it won't go down, we did not see that in the disclosure.
4. Under the Early Withdrawal Penalty section it says "Withdrawals from the CD Deposits prior to their maturity date may not be made, except as allowed for the Flex CD. Any such withdrawal will be permitted only with SIBL's consent and will be subject to penalty for early withdrawal." This says SIBL can refuse to allow us to withdraw our money. That is worrisome.
5. Can you send us a 2 year projection on the Fixed and Flex CD's?
6. Was there information in the original packet about the Municipal Bonds you talked about in your last e mail? If not, can you send everyone that info?
7. The Disclosure Statement is from September 2005 and the Subscription agreement is from 2004. Are these the most up to date?

Thanks for answering these questions. We also have not heard back on our first e mail with questions sent last week. We only sent it to Patrick so we will forward a copy to Bill today.

Judy and Jeff Kogutt

Any information or data provided in this message has been obtained from sources we believe to be reliable, but we do not guarantee its accuracy or completeness. Such information reflects current market conditions, is subject to change without notice and should not be relied upon for tax purposes. Any transactional details are provided at your request and do not supersede your normal trade confirmations or monthly statements. Any product recommended is subject to prior sale. Stanford Group Company, its affiliated companies, and/or officers, directors or employees, may at times have a position in or make a market in any security described above, and/or may act as an investment banker or advisor to any company referenced. Stanford Group Company reserves the right to monitor and review the content of all e-mail communications sent and/or received by its employees. Stanford Group Company does not accept time-sensitive transactional messages, including orders to buy and sell securities, via e-mail. This information is intended to be confidential and solely for the use of Stanford Group Company and those persons or entities to whom it is directed. It is not to be reproduced, retransmitted, or in any other manner redistributed. If you received this message in error, please contact Stanford Group Company immediately at 800-958-0009.

NO. DC-09-10931

RANDY KOGUTT, MICHAEL KOGUTT,) IN THE DISTRICT COURT
SAMUEL KOGUTT, AND IRENE)
KOGUTT,)
)
Plaintiffs,) DALLAS COUNTY, TEXAS
)
VS.)
)
MALOUF, LYNCH, JACKSON, AND)
SWINSON, P.C., AND BRENDA)
REYNOLDS ADKINSON,)
)
Defendants.) 298TH JUDICIAL DISTRICT

ORAL AND VIDEOTAPED DEPOSITION OF
JUDY KOGUTT
JULY 12, 2010
VOLUME 1

ORAL AND VIDEOTAPED DEPOSITION OF JUDY KOGUTT, produced as a witness at the instance of the DEFENDANTS, and duly sworn, was taken in the above-styled and numbered cause on July 12, 2010, from 2:06 p.m. to 5:50 p.m., before Lisa V. Jackson, CSR in and for the State of Texas, reported by machine shorthand, at the law offices of Freidman & Feiger, LLP, 5301 Spring Valley Road, Suite 200, Dallas, Texas, pursuant to the Texas Rules of Civil Procedure and the provisions stated on the record or attached hereto.

1 (Exhibit No. 61 marked.)

2 THE WITNESS: Do you want me to do that? Is
3 that what you're saying?

4 Q. (BY MR. DOWIS) Do you have the copy there of --
5 actually, no. Don't do it on yours. I'm going to do it here.
6 Sorry. Is Exhibit 61 a true and correct copy of the list of
7 questions that you're referring to that came from your file?

8 A. That also includes the E-mail from Brenda, and then
9 the CD information.

10 Q. And I think there might be another version of that.

11 A. Then there's another -- another E-mail.

12 MR. LEONARD: Looks like it's -- it's stapled
13 together but it's several documents.

14 THE WITNESS: Yeah. And some are copies and...

15 MR. DOWIS: Yeah. Let me see.

16 THE WITNESS: Yeah. This is a different -- from
17 Bill to Niloufer.

18 Q. (BY MR. DOWIS) The list of questions that you're
19 referring to that was sent to, uh, Patrick and Bill Layton --

20 A. -- was on 61.

21 Q. And it's, specifically, the first three pages of
22 Exhibit 61?

23 A. Yes. Well, the first page is, the more questions.
24 Well, there's three pages, yes.

25 Q. And it's the first 3 pages; correct?

1 A. Correct. Uh-huh.

2 MR. DOWIS: Mr. Leonard, if you think that's --
3 it appears to me like it might be a stapling error or --

4 MR. LEONARD: -- I think it is --

5 MR. DOWIS: -- are all of these documents
6 stapled in your -- I guess they are.

7 MR. LEONARD: I think they were stapled as we
8 got them, but.

9 THE WITNESS: Yeah. I think so.

10 MR. LEONARD: I think it's clear what the
11 documents are.

12 Q. (BY MR. DOWIS) The fourth page of Exhibit 61 is the
13 E-mail that you received from Brenda; correct?

14 A. Yes.

15 Q. And what is the fifth page of Exhibit 61? Ma'am,
16 that's the exhibit, specifically.

17 A. Oh. That's a CD certificate of deposit calculator.

18 Q. And just so we're clear, you were looking at the
19 original of Exhibit 61; correct?

20 A. In my file? Yes.

21 Q. And now you have in front of you the copy -- the true
22 and correct copy that's been marked as Exhibit 61; correct?

23 A. Yes.

24 Q. And can you identify for me the last page of
25 Exhibit 61?

1 NO. DC-09-10931
2 RANDY KOGUTT, MICHAEL KOGUTT,) IN THE DISTRICT COURT
3 SAMUEL KOGUTT, AND IRENE)
4 KOGUTT,)
5)
6 Plaintiffs,) DALLAS COUNTY, TEXAS
7)
8 VS.)
9)
10 MALOUF, LYNCH, JACKSON, AND)
11 SWINSON, P.C., AND BRENDA)
12 REYNOLDS ADKINSON,)
13)
14 Defendants.) 298TH JUDICIAL DISTRICT
15)

16 REPORTER'S CERTIFICATION
17 DEPOSITION OF JUDY KOGUTT
18 JULY 12, 2010
19

20 I, Lisa V. Jackson, Certified Shorthand Reporter in and
21 for the State of Texas, hereby certify to the following:

22 That the witness, JUDY KOGUTT, was duly sworn by the
23 officer and that the transcript of the oral deposition is a
24 true record of the testimony given by the witness;

25 That the deposition transcript was submitted on
^ date ^ _____ to the witness or to the attorney
for the witness for examination, signature and return to me by
^ date ^ _____;

That the amount of time used by each party at the
deposition is as follows:

MR. CRAIG DOWIS - 3 HOURS:15 MINUTES

That pursuant to information given to the

1 Deposition officer at the time said testimony was taken, the
2 following includes counsel for all parties of record:

3 MR. ERNEST LEONARD, Attorney for Plaintiffs
4 MR. CRAIG DOWIS, Attorney for Defendants

5 I further certify that I am neither counsel for, related
6 to, nor employed by any of the parties or attorneys in the
7 action in which this proceeding was taken, and further that I
8 am not financially or otherwise interested in the outcome of
9 the action.

10 Further certification requirements pursuant to Rule 203 of
11 TRCP will be certified to after they have occurred.

12 Certified to by me this day day of Month, 2010.

13

14

15

16

17

18

19

20

21

22

23

24

25

Lisa V. Jackson, Texas CSR 8254
Expiration Date: 12/31/10
Firm Registration NO. 586
First Choice Reporting
121 South Orange Avenue, Suite 800
Orlando, Florida 32801
Telephone (800) 939-0093

FURTHER CERTIFICATION UNDER RULE 203 TRCP

The original deposition was/was not returned to the deposition officer on _____;

If returned, the attached Changes and Signature page contains any changes and the reasons therefor;

If returned, the original deposition was delivered to _____, Custodial Attorney;

That \$ _____ is the deposition officer's charges to the Plaintiff for preparing the original deposition transcript and any copies of exhibits;

That the deposition was delivered in accordance with Rule 203.3, and that a copy of this certificate was served on all parties shown herein on and filed with the Clerk.

Certified to by me this _____ day of _____, 2010.



Lisa V. Jackson

Lisa V. Jackson, Texas CSR 8254
Expiration Date: 12/31/10
Firm Registration NO. 586
First Choice Reporting
121 South Orange Avenue, Suite 800
Orlando, Florida 32801
Telephone (800) 939-0093

EXHIBIT “B”

From: Brenda L. Reynolds (blr@mljs.net)
To: nilouferm; randyko@tx.rr.com; 'Michael Kogutt'; 'Judy and Jeff Kogutt'; 'Irene-Sam Kogutt'
Date: Thursday, December 27, 2007 3:56:47 PM
Subject: Stanford

Hi all,

I wanted to let you know that I have reviewed the disclosure statement and other documents you received from the Stanford Group. Although the CDs offered by the Stanford International Bank are most likely not "securities" subject to the US Securities laws, Stanford has complied with the SEC information and disclosure requirements for US securities. Those SEC rules require disclosure of all possible risks involved with an investment. Our law firm drafts similar disclosure statements for clients selling securities all the time, and we encourage (and require) the client to paint the worst possible picture for what may happen with an investor's money, even if the likelihood of any of those things happening is less than 1%. There is nothing in the Stanford disclosure that I did not fully anticipate seeing there. In fact, if it wasn't written as it is, I would be suspect. You will see similar (and even more dire) statements in any legitimate offering in the US, especially from a US bank. Generally, in the US you don't get those disclosures for CDs because they are "deposit accounts" and not securities – thus, the banks don't have to tell you the risks.

I also did research on the Stanford Group and the Stanford International Bank to see what litigation they have been involved in (or are currently involved in). In searching the entire US federal database for cases, there are less than 5 decided cases (and fewer than that pending) in which the issue was mismanagement or involved what the plaintiff considered bad advice. Of all the cases out there, there is not one in which the International Bank is sued or is in arbitration for any customer deposit. In the few cases where mismanagement was concerned, it was the securities broker portion of Stanford that was involved. The largest award that is recorded was for \$237,000, a couple of awards for \$10,000, and the rest of the cases were dismissed. There are other cases recorded regarding the Stanford group, but they almost all involved employee's not repaying loans made to them by Stanford, and there was one real estate-related case in Antigua. There are an 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.

I am not an investment advisor and I am not authorized to make statements on behalf of Stanford. What I have said here is from what I have read and researched. The Stanford bank is an entirely different banking model than what we are used to in the US. It is a private bank, based on the Swiss model of banking. No one outside the US would even question the legitimacy and safety of the bank, given that it is governed by British law. Most in the US do not know about the Stanford Group and the Stanford International Bank because it is relatively small compared to other banks, securities brokers, etc. and it caters to high wealth individuals and institutional investors. Other money managers do not know about (or recommend) Stanford International Bank or the Stanford Group portfolios because they do not get a commission for it – Stanford only pays commission for affiliate brokers (those with the Stanford Group). 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!

Brenda

Brenda L. Reynolds
Malouf Lynch Jackson & Swinson, PC
12222 Merit Drive, Suite 1000
Dallas, Texas 75251
phone: 214-273-0602
fax: 214-273-0603

NO. DC-09-10931

RANDY KOGUTT, MICHAEL KOGUTT,) IN THE DISTRICT COURT
SAMUEL KOGUTT, AND IRENE)
KOGUTT,)
)
Plaintiffs,) DALLAS COUNTY, TEXAS
)
VS.)
)
MALOUF, LYNCH, JACKSON, AND)
SWINSON, P.C., AND BRENDA)
REYNOLDS ADKINSON,)
)
Defendants.) 298TH JUDICIAL DISTRICT

ORAL AND VIDEOTAPED DEPOSITION OF

JUDY KOGUTT

JULY 12, 2010

VOLUME 1

ORAL AND VIDEOTAPED DEPOSITION OF JUDY KOGUTT, produced as a witness at the instance of the DEFENDANTS, and duly sworn, was taken in the above-styled and numbered cause on July 12, 2010, from 2:06 p.m. to 5:50 p.m., before Lisa V. Jackson, CSR in and for the State of Texas, reported by machine shorthand, at the law offices of Freidman & Feiger, LLP, 5301 Spring Valley Road, Suite 200, Dallas, Texas, pursuant to the Texas Rules of Civil Procedure and the provisions stated on the record or attached hereto.

1 (Exhibit No. 61 marked.)

2 THE WITNESS: Do you want me to do that? Is
3 that what you're saying?

4 Q. (BY MR. DOWIS) Do you have the copy there of --
5 actually, no. Don't do it on yours. I'm going to do it here.
6 Sorry. Is Exhibit 61 a true and correct copy of the list of
7 questions that you're referring to that came from your file?

8 A. That also includes the E-mail from Brenda, and then
9 the CD information.

10 Q. And I think there might be another version of that.

11 A. Then there's another -- another E-mail.

12 MR. LEONARD: Looks like it's -- it's stapled
13 together but it's several documents.

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15 MR. DOWIS: Yeah. Let me see.

16 THE WITNESS: Yeah. This is a different -- from
17 Bill to Niloufer.

18 Q. (BY MR. DOWIS) The list of questions that you're
19 referring to that was sent to, uh, Patrick and Bill Layton --

20 A. -- was on 61.

21 Q. And it's, specifically, the first three pages of
22 Exhibit 61?

23 A. Yes. Well, the first page is, the more questions.
24 Well, there's three pages, yes.

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1 A. Correct. Uh-huh.

2 MR. DOWIS: Mr. Leonard, if you think that's --
3 it appears to me like it might be a stapling error or --

4 MR. LEONARD: -- I think it is --

5 MR. DOWIS: -- are all of these documents
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8 got them, but.

9 THE WITNESS: Yeah. I think so.

10 MR. LEONARD: I think it's clear what the
11 documents are.

12 Q. (BY MR. DOWIS) The fourth page of Exhibit 61 is the
13 E-mail that you received from Brenda; correct?

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15 Q. And what is the fifth page of Exhibit 61? Ma'am,
16 that's the exhibit, specifically.

17 A. Oh. That's a CD certificate of deposit calculator.

18 Q. And just so we're clear, you were looking at the
19 original of Exhibit 61; correct?

20 A. In my file? Yes.

21 Q. And now you have in front of you the copy -- the true
22 and correct copy that's been marked as Exhibit 61; correct?

23 A. Yes.

24 Q. And can you identify for me the last page of
25 Exhibit 61?

1 NO. DC-09-10931

2 RANDY KOGUTT, MICHAEL KOGUTT,) IN THE DISTRICT COURT
3 SAMUEL KOGUTT, AND IRENE)
KOGUTT,)
4 Plaintiffs,) DALLAS COUNTY, TEXAS
5 VS.)
6 MALOUF, LYNCH, JACKSON, AND)
SWINSON, P.C., AND BRENDA)
7 REYNOLDS ADKINSON,)
8 Defendants.) 298TH JUDICIAL DISTRICT

9
10 REPORTER'S CERTIFICATION
11 DEPOSITION OF JUDY KOGUTT
12 JULY 12, 2010

13 I, Lisa V. Jackson, Certified Shorthand Reporter in and
14 for the State of Texas, hereby certify to the following:

15 That the witness, JUDY KOGUTT, was duly sworn by the
16 officer and that the transcript of the oral deposition is a
17 true record of the testimony given by the witness;

18 That the deposition transcript was submitted on
19 ^ date ^ _____ to the witness or to the attorney
20 for the witness for examination, signature and return to me by
21 ^ date ^ _____;

22 That the amount of time used by each party at the
23 deposition is as follows:

24 MR. CRAIG DOWIS - 3 HOURS:15 MINUTES

25 That pursuant to information given to the

1 Deposition officer at the time said testimony was taken, the
2 following includes counsel for all parties of record:

3 MR. ERNEST LEONARD, Attorney for Plaintiffs
4 MR. CRAIG DOWIS, Attorney for Defendants

5 I further certify that I am neither counsel for, related
6 to, nor employed by any of the parties or attorneys in the
7 action in which this proceeding was taken, and further that I
8 am not financially or otherwise interested in the outcome of
9 the action.

10 Further certification requirements pursuant to Rule 203 of
11 TRCP will be certified to after they have occurred.

12 Certified to by me this day day of Month, 2010.

13
14
15
16 Lisa V. Jackson, Texas CSR 8254
17 Expiration Date: 12/31/10
18 Firm Registration NO. 586
19 First Choice Reporting
20 121 South Orange Avenue, Suite 800
21 Orlando, Florida 32801
22 Telephone (800) 939-0093
23
24
25

FURTHER CERTIFICATION UNDER RULE 203 TRCP

The original deposition was/was not returned to the deposition officer on _____;

If returned, the attached Changes and Signature page contains any changes and the reasons therefor;

If returned, the original deposition was delivered to _____, Custodial Attorney;

That \$ _____ is the deposition officer's charges to the Plaintiff for preparing the original deposition transcript and any copies of exhibits;

That the deposition was delivered in accordance with Rule 203.3, and that a copy of this certificate was served on all parties shown herein on and filed with the Clerk.

Certified to by me this _____ day of _____, 2010.



Lisa V. Jackson

Lisa V. Jackson, Texas CSR 8254
Expiration Date: 12/31/10
Firm Registration NO. 586
First Choice Reporting
121 South Orange Avenue, Suite 800
Orlando, Florida 32801
Telephone (800) 939-0093

EXHIBIT “C”

CAUSE NO. DC-09-10931

RANDY KOGUTT, MICHAEL KOGUTT,)	IN THE DISTRICT COURT OF
SAMUEL KOGUTT, AND IRENE)	
KOGUTT,)	
)	
Plaintiffs,)	
)	
V.)	DALLAS COUNTY, TEXAS
)	
MALOUF, LYNCH, JACKSON, AND)	
SWINSON, P.C., AND BRENDA)	
REYNOLDS ADKINSON,)	
)	
Defendants.)	298TH JUDICIAL DISTRICT

 ORAL AND VIDEOTAPED DEPOSITION OF IRENE KOGUTT
 JULY 20TH, 2010

ORAL AND VIDEOTAPED DEPOSITION OF IRENE KOGUTT,
 produced as a witness at the instance of the
 Defendants, and duly sworn, was taken in the
 above-styled and above-numbered cause on the 20th day
 of July, 2010, from 1:26 p.m. to 3:03 p.m., before
 Amanda B. McGuire-Willis, CSR in and for the State of
 Texas, reported by machine shorthand, at the offices of
 Friedman & Feiger, LLP, 5301 Spring Valley Road, Suite
 200, located in the City of Dallas, State of Texas,
 pursuant to Notice, the Texas Rules of Civil Procedure,
 and the provisions stated on the record.

1 her statement including that if there was any dirt
2 associated with Stanford, it was made very clear that
3 it was to be a very in-depth research on her part,
4 which we assumed that was understood.

5 Q. In your opinion, did Brenda perform an
6 in-depth research?

7 A. No.

8 Q. And, in fact, her response was a one-page
9 e-mail, right?

10 A. Right.

11 Q. And when you received the one-page e-mail,
12 did you let Ms. Adkinson know that was not the in-depth
13 research you were looking for?

14 A. Yes.

15 Q. Did you communicate that via e-mail?

16 A. I don't remember.

17 Q. What did you -- what do you remember telling
18 Ms. Adkinson concerning her not addressing Stanford in
19 the in-depth manner in which you sought?

20 A. Restate the question, please.

21 Q. After you received Ms. Adkinson's
22 December 27, 2007, e-mail, you informed her that you
23 wanted additional research of Stanford, correct?

24 A. I think that's the way we stated it.

25 Q. That her e-mail and it's December -- let me

1 A. I don't like that question. I can't answer
2 it the way I want to, so try again.

3 Q. Now, you don't get to pick and chose the
4 questions, Mrs. Kogutt, with all due respect.

5 A. Well, then I'll have to say no.

6 Q. So you were -- you did vote in favor of
7 investing in the Family Limited Partnership?

8 A. No, I'm answering we wouldn't have.

9 Q. Let's try to start over on this --

10 A. Yeah, let's do.

11 Q. -- because now I'm confused. You and your
12 husband were not in favor of investing the Family
13 Limited Partnership's money with Stanford, correct?

14 A. Correct.

15 Q. And that was because you did not believe that
16 Brenda Reynolds, Brenda Adkinson, performed a thorough
17 investigation into Stanford, correct?

18 A. Part of it, yes.

19 Q. And you shared your views with other members
20 of the Kogutt family, correct?

21 A. Yes.

22 Q. And you also shared your views with Brenda
23 Adkinson, correct?

24 A. Yes.

25 Q. And you told Brenda Adkinson what was lacking

1 in her investigation of Stanford, correct?

2 A. I assume that was done.

3 MR. LEONARD: Don't guess.

4 A. No.

5 MR. LEONARD: He's asking you a
6 question.

7 Q. Yeah, I -- I'm not -- I do not want you
8 guessing.

9 A. Okay. Ask me again so I can answer yes or
10 no.

11 Q. You told Brenda Adkinson what was lacking in
12 her investigation of Stanford?

13 A. No.

14 Q. Who told, if anyone, Brenda Adkinson that her
15 investigation of Stanford contained in Exhibit 24 was
16 lacking?

17 A. The family discussed it. I don't know who
18 told her.

19 Q. So the family discussed Brenda Adkinson's
20 investigation of Stanford and the fact that it was
21 lacking, correct?

22 A. Yes.

23 Q. And that discussion took place prior to the
24 decision being made to invest in Stanford, correct?

25 A. Yes.

1 CAUSE NO. DC-09-10931
2 RANDY KOGUTT, MICHAEL KOGUTT,) IN THE DISTRICT COURT OF
SAMUEL KOGUTT, AND IRENE)
3 KOGUTT,)
4 Plaintiffs,)
5 V.) DALLAS COUNTY, TEXAS
6 MALOUF, LYNCH, JACKSON, AND)
SWINSON, P.C., AND BRENDA)
7 REYNOLDS ADKINSON,)
8 Defendants.) 298TH JUDICIAL DISTRICT

9
10

11 REPORTER'S CERTIFICATE
12 ORAL AND VIDEOTAPED DEPOSITION OF IRENE KOGUTT
13 JULY 20TH, 2010

14
15

16 I, Amanda B. McGuire-Willis, Certified Shorthand
17 Reporter in and for the State of Texas, hereby certify
to the following:

18 That the witness, Irene Kogutt, was duly sworn by
19 the officer and that the transcript of the oral
deposition is a true record of the testimony given by
the witness;

20

21 That the deposition transcript was submitted on
August 10, 2010, to counsel for the Plaintiffs,
Ernest W. Leonard, for the witness for examination,
signature, and return to me by September 1, 2010;

23 That the amount of time used by each party at the
24 deposition is as follows:

24

25 Craig L. Dowis - 1 hours, 27 minutes;

1 That pursuant to information given to the
2 deposition officer at the time said testimony was
3 taken, the following includes counsel for all parties
4 of record:

5 Ernest W. Leonard, Attorney for the Plaintiffs;
6 Craig L. Dowis, Attorney for the Defendants.

7 I further certify that I am neither counsel for,
8 related to, nor employed by any of the parties or
9 attorneys in the action in which this proceeding was
10 taken, and further that I am not financially or
11 otherwise interested in the outcome of the action.

12 Further certification requirements pursuant to
13 Rule 203 of TRCP will be certified to after they have
14 occurred.

15 Certified to by me this 10 day of
16 August, 2010.



17 Amanda B. McGuire-Willis

18 Amanda B. McGuire-Willis, CSR No. 8312
19 Expiration Date: 12-31-11
20 Firm Registration No. 526

21 Global Deposition Services
22 Corporate Plaza 1/Suite 152
23 4950 North O'Connor Road
24 Irving, Texas 75062
25 972.719.5000/972.717.3985 (fax)

EXHIBIT “D”

Hard Sell Drove Stanford's Rise and Fall



(General Analysis on Social and Economic Policy)

User Rating (0):

Poor Best

By Steve Stecklow

Wall Street Journal

April 3, 2009

Stanford Financial Group flew more than 200 overseas employees to Miami in January for a weekend meeting and yacht cruise. In a pep talk, the company's billionaire chairman, R. Allen Stanford, announced a quarterly sales contest called the Top Performers Club. Leading sellers of Stanford's certificates of deposit, he said, would compete for big bonuses, recalls an employee who was there. Attendees watched a video of a Stanford financial adviser in Switzerland who, during an earlier incarnation of the contest, received more than \$400,000 in pay for three months of sales. What Mr. Stanford didn't reveal, says the employee who attended, was that his financial empire desperately needed cash from the sales to survive. Clients recently had redeemed about \$500 million from the bank. Its assets were depleted and bills were piling up, federal court records indicate. Federal authorities now say much of the \$8 billion Stanford Financial raised selling CDs is missing. In court papers, the Securities and Exchange Commission has described Stanford Financial as "a massive Ponzi scheme" in which new investments were used to pay off early investors.

Interviews with numerous former employees and people involved in the investigation, along with internal Stanford documents, paint a picture of a turbocharged sales machine. Stanford pushed employees hard to sell CDs with an incentive program some of them called "bank crack," while simultaneously misleading investors who pressed for details about its investments. In the end, mounting pressure from the SEC triggered a series of tense internal meetings in which one top executive broke into tears and an outside lawyer suggested prayer. A rash of alleged Ponzi schemes have surfaced during the financial crisis, including Bernard Madoff's, but Mr. Stanford's operation stands out in one respect. It had a huge and conspicuous marketing presence -- a sprawling network of offices that made his company appear both legitimate and durable.

In February, the SEC filed a civil lawsuit accusing Mr. Stanford and two other executives -- James M. Davis and Laura Pendergest-Holt -- of engineering a massive fraud. A federal judge in Dallas has placed Mr. Stanford's companies in receivership, and their operations have ceased. Ms. Pendergest-Holt also faces a separate criminal complaint alleging obstruction of justice. Reached on his cellphone, Mr. Stanford, 59 years old, declined to comment. David Finn, a lawyer for Mr. Davis, Stanford Financial's chief financial officer, said, "We are fully cooperating with the federal investigation." Through an attorney, Ms. Pendergest-Holt, Stanford Financial's chief investment officer, denied wrongdoing.

Stanford Financial looked like a solid company. It had posh offices, many adorned with green marble and mahogany, throughout the U.S., in Switzerland and in Latin American nations including Mexico, Venezuela and Peru, staffed by about 430 financial advisers. It spent \$12 million last year to host the Stanford St. Jude Championship golf tournament in Memphis, Tenn., and \$2 million for an endorsement contract with golfer Vijay Singh, according to people familiar with the matter. Yet there were signs that Mr. Stanford, a Texas native, wasn't a typical banker. After graduating from Baylor University, where he roomed with Mr. Davis, he unsuccessfully tried his hand at running health clubs, then shifted to real-estate investing.

He set up a bank in 1985, on the Caribbean island of Montserrat, to hold funds for his real-estate investors. Five years later, amid a British crackdown on Montserrat's offshore-banking industry, he moved his bank to Antigua, another tax haven. U.S. regulators blacklisted Antigua for lax regulation in the late 1990s, then lifted the sanctions in 2001. The 6-foot-4-inch financier became a towering figure on the island, which granted him citizenship in 1999 and knighted him in 2006. He served as chairman of the government board that oversaw its offshore financial industry, was a major lender to the government, launched an airline and a construction firm, and purchased the island's biggest newspaper.

He poured considerable sums into West Indian cricket, hosting a tournament last fall that awarded the winning team \$20 million. He told people his life had been changed by an encounter with a local Catholic priest with wounds in his hands and feet that Mr. Stanford believed to be the stigmata of Jesus Christ. He began carrying with him a vial of congealed fluids from the priest's foot.

The core of his financial empire was his Antiguan bank, Stanford International Bank Ltd. The bank issued the CDs, many of which were sold in Latin America. In the U.S., the CDs were sold by a brokerage unit, Stanford Group Co. The brokerage targeted well-heeled clients and recruited financial advisers from the likes of Merrill Lynch & Co. and UBS AG. Its headquarters in Houston featured a concierge, a multimedia theater for client presentations and a half floor of private offices for Mr. Stanford. Employees say he hardly ever used them. The CDs promised yields several percentage points higher than U.S. bank CDs. Stanford said that was possible because of its offshore bank's tax advantages. They were pitched to clients as conservative instruments. "Our strategy is based on an investment methodology that seeks to minimize risk, and achieve liquidity," said a 2007 disclosure statement that came with the CDs.

Michael Kogutt, 51, of Coppell, Texas, says he and several relatives met with two Stanford financial advisers in November 2007 after a German company purchased his family's promotional-products business. "We told them that we were extremely risk-averse," he recalls. He says he initially invested about \$700,000 in several mutual-fund products, and about \$700,000 in five-year "flex" CDs, which allowed partial withdrawals up to four times a year. Last summer, after the stock market declined, he liquidated the mutual-fund products and invested most of his life savings -- \$2 million -- in the CDs. He said the Antiguan bank promised 9.87% compounded annual interest, about six percentage points higher than prevailing U.S. bank CD rates at the time.

Stanford financial advisers had incentive to push the CDs, which earned them higher commissions than other products -- a straight fee of 1%, plus a chance to earn an additional 1% a year over the term of the CD if they sold at least \$2 million worth in a quarter. Some Stanford employees referred internally to the CD compensation program as "bank crack," says former Stanford financial adviser Charles Rawl, "because it seemed to be addicting."

Advisers around the world belonged to CD sales teams with names like the "Superstars," "The Deal Hunters" and "Money Machine," according to internal emails reviewed by The Wall Street Journal. Spreadsheets and tables reported the latest sales, broken down by team, offices and individuals. Managers pushed advisers hard. "Unfortunately, the fourth quarter has gotten off to a REALLY SLOW start," stated a Nov. 3, 2005, email from Jason Green, then a managing director in the Baton Rouge, La., office. "We only have about \$1.7MM of production for October, well short of our \$21MM monthly goal! However, I'm counting on a really strong November and December!!!!" The email added, "Of course, as always, don't try to force it, if it's not the right thing for your clients/prospective clients." Mr. Green declined to comment.

Advisers sometimes accompanied wealthy potential CD buyers on all-expenses-paid, three-day trips to Antigua so they could meet bank officials. If the potential sales reached \$5 million, they flew by private jet, says D. Mark Tidwell, who worked from 2004 to 2007 as a financial adviser and sales manager in Stanford Group's Houston office. Mr. Tidwell says when one of his corporate clients once asked what the bank invested in, Juan Rodriguez-Tolentino, the bank's president, deflected the question, replying: "You don't ask what Bank of America is investing in." Mr. Rodriguez-Tolentino declined to comment.

The second most lucrative product for Stanford's U.S. operations was a mutual-fund product called Stanford Allocation Strategy, or SAS. It was made up of third-party funds purchased from companies like Putnam Investments and Vanguard Group Inc. In 2007 and 2008, Stanford's brokerage arm sold about \$1.2 billion of the products, according to the SEC. Charts shown to clients claimed the SAS funds beat the S&P 500 index year after year. One 2006 chart showed that over a five-year period, the SAS Growth fund posted a 13.82% annualized return, versus 6.19% for the S&P 500. In its lawsuit, the SEC calls the SAS performance results from 1999 to 2004 "fictional and/or inflated."

Steve Riordan, a Boston-based performance-measurement reporting consultant, says Stanford Group hired him in November 2006 to review the figures after some clients complained that they hadn't received the robust returns reported in the tables. "Nobody could tell me with certainty how these numbers were being calculated," Mr. Riordan recalls. "I didn't know how they were getting their returns. I just knew that they were wrong." He says he helped Stanford provide accurate returns, which were lower than suggested, for SAS funds from 2005 onward. He couldn't

correct the prior performance tables, he says, because Stanford told him it didn't have underlying data. Mr. Riordan says he also tried to calculate the returns on the CDs. But Stanford's Antigua bank, he says, refused to provide any information, citing client confidentiality.

Stanford Financial also exaggerated how much money it oversaw, according to several former employees. This year, the company's Web site claimed it had "over \$50 billion in assets under management or advisement." But several former employees say that number was inflated by including the total value of portfolios for which Stanford played only a minor role, such as providing brokerage services. For example, Stanford Group occasionally sold government securities to the Dallas Fort Worth International Airport Board, but it didn't manage the board's investments or provide it with advice, says a person familiar with the matter. "The airport manages its own money completely in house," says David Magana, a board spokesman. Nevertheless, Stanford counted the board's entire \$1 billion investment portfolio in its money-management total, says Charles Satterfield, who worked in Stanford Group's fixed-income unit. "My understanding was they were doing that," says Benjamin Finkelstein, Stanford Group's former senior managing director of public funds. "I was concerned about that, and I expressed those concerns, and I was told that they were not being used for that purpose."

Over the years, Mr. Stanford's operations attracted considerable attention from U.S. regulators and investigators. He is involved in a long-running dispute with the Internal Revenue Service over back taxes. The agency says he and his wife currently owe \$226.6 million, including penalties and interest. In 2007, the Financial Industry Regulatory Authority, Wall Street's self-policing body, fined Stanford Group for, among other things, using sales material that contained "misleading, unfair and unbalanced information" about the CDs. By June 2008, Mr. Stanford's companies were being investigated by the Federal Bureau of Investigation, the SEC, the IRS and the U.S. Postal Inspection Service for possible fraudulent CD sales, federal court records show. The U.S. brokerage unit grew rapidly, to more than 20 offices last year from a half-dozen in 2004. The costly operation, it now appears, was being kept afloat by revenue from CD sales. Deposits in Mr. Stanford's Antigua bank jumped to \$8 billion last year, from \$3 billion in 2004, internal Stanford documents indicate. The U.S. brokerage unit lost tens of millions of dollars over that period, according to the SEC. Over that time, the bank and Mr. Stanford transferred hundreds of millions of dollars to the unit, the SEC says.

As recently as December, in a report to clients following the Madoff scandal and global stock-market turmoil, the Stanford bank stated it was "strong, safe and fiscally sound." By then, serious pressure was building. Spooked by the global financial crisis, clients had begun trying to pull money out. Around that time, Mr. Kogutt, the investor from Texas, told a Stanford adviser, Patrick J. Cruickshank, that he wanted to do just that. "I wanted to have more diversified investments, but he said these were the safest things you could do with that kind of rate of return," Mr. Kogutt recalls. "He said, 'No. Leave it. Leave it.'" Mr. Cruickshank didn't return calls seeking comment. Between Jan. 21 and Feb. 6, top Stanford executives discussed the mounting problems in a series of meetings in Miami, according to an FBI affidavit included with the criminal complaint against Ms. Pendergest-Holt. The purpose of the meetings, the FBI says, was to prepare for testimony before the SEC, which was investigating Mr. Stanford's companies and seeking an accounting of the assets behind the CDs. During one meeting, Ms. Pendergest-Holt disclosed that one pool of assets had declined to \$350 million from \$850 million in June, the FBI says. She displayed a pie chart of a much larger pool that held more than \$3 billion in real estate and a \$1.6 billion loan to Mr. Stanford. The affidavit, which describes conversations that took place during the meetings, doesn't provide the names of the other executives involved. The Wall Street Journal identified them through interviews with people familiar with the matter.

In a subsequent telephone conversation, Stanford Financial's outside attorney, Thomas Sjoblom, told Stanford's general counsel, P. Mauricio Alvarado, "The assets may or may not be there," the affidavit said, without identifying the men by name. Mr. Rodriguez-Tolentino stated that if Ms. Pendergest-Holt's pie chart was accurate, then Stanford International Bank would be insolvent. Danny Bogar, Stanford Group's president "broke down crying" at one point, according to the affidavit, again without naming names. Mr. Sjoblom later "suggested they begin to pray together." The affidavit said Mr. Sjoblom told another executive, Lena Stinson, "The party is over." Mr. Sjoblom, who later withdrew as Stanford's attorney, didn't return calls seeking comment. Messrs. Bogar and Alvarado and Ms. Stinson all declined to comment.

On Feb. 19, two days after the SEC filed its civil lawsuit, Mr. Kogutt, his father and brother -- all three had invested in CDs -- boarded a plane to Antigua in hopes of retrieving their savings from Stanford International Bank. For two days,

says Mr. Kogutt, they joined about 30 other frantic people, mostly from Mexico and South America, inside the bank's lobby, with a single bank employee trying to handle the crowd. After learning the bank had been placed in receivership, they returned to Texas, leaving behind instructions to wire their money home. To date, they have received nothing. Investigators now estimate that less than half of the \$8 billion raised through CD sales will ever be recovered.

[More Information on Social and Economic Policy](#)
[More Information on Corporate Crisis and Corporate Malfeasance](#)
[More Information on the World Economic Crisis](#)
[More Information on Globalization of the Economy](#)

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CAUSE NO. DC-09-10931

RANDY KOGUTT, MICHAEL) IN THE DISTRICT COURT
KOGUTT, ANGELA KOGUTT,)
SAMUEL KOGUTT, AND)
IRENE KOGUTT,)
Plaintiffs,)

VS.) DALLAS COUNTY, TEXAS
)

MALOUF, LYNCH, JACKSON)
AND SWINSON, PC, and)
BRENDA REYNOLDS)
ADKINSON,)
Defendants.) 298TH JUDICIAL DISTRICT

ORAL AND VIDEOTAPED DEPOSITION OF

MICHAEL KOGUTT

March 11, 2010

VOLUME 1

ANSWERS AND DEPOSITION OF MICHAEL KOGUTT,
produced as a witness at the instance of the Defendants,
taken in the above-styled and -numbered cause on the
11th day of March, 2010, from 9:35 a.m. to 4:16 p.m.,
before Jamie K. Israelow, a Certified Shorthand Reporter
in and for the State of Texas, Registered Professional
Reporter, Certified Realtime Reporter and Certified
LiveNote Reporter, reported in machine shorthand at the
offices of Vincent Lopez Serafino Jenevein, PC, located
at Thanksgiving Tower, 1601 Elm Street, in the City of
Dallas, County of Dallas and State of Texas, and the
provisions stated on the record or attached hereto; that
the deposition shall be read and signed before any
notary public.

ORIGINAL

15:44:52 1 Q. And all of those funds were later withdrawn,
15:44:56 2 with the exception of the amount that was held by FLP as
15:44:59 3 nominee for Irene and Sam, right?

15:45:01 4 A. Correct.

15:45:04 5 Q. And that was before Stanford Bank failed,
15:45:08 6 right, the withdrawal of the funds?

15:45:11 7 A. Yes.

15:45:25 8 Q. Do you recall anything that Brenda Adkinson
15:45:31 9 said at that -- what I'll call the voting meeting?

15:45:39 10 A. No.

15:46:07 11 Q. What did I do with that -- I'm getting close.

15:46:14 12 MS. MOORE: It was with the petition.

15:46:18 13 MR. DOWIS: Hold on. Don't back up.

15:46:22 14 MS. MOORE: Is that it?

15:46:27 15 Thank you, sorry.

15:46:28 16 Q. (By Ms. Moore) Let me show you what I'm
15:46:31 17 marking as Exhibit 20 -- 34. Is that right?

15:46:31 18 (Deposition Exhibit 34
15:46:41 19 was marked.)

15:46:41 20 THE VIDEOGRAPHER: Ms. Moore, your
15:46:43 21 microphone fell off.

15:46:56 22 Q. (By Ms. Moore) Let me show you what I've
15:46:58 23 marked as Exhibit 34. Have you seen this before?

15:47:05 24 A. Yes.

15:47:06 25 Q. This is an article out of the "Wall Street

15:47:10 1 Journal," correct?

15:47:15 2 A. Yes.

15:47:21 3 Q. And on Page 2 of that article, the second
15:47:27 4 paragraph, this is reporting on event after Stanford
15:47:30 5 Bank failed, right?

15:47:31 6 A. Yes.

15:47:31 7 Q. And in fact, you got on the airplane and went
15:47:33 8 down to Antigua, did you not?

15:47:36 9 A. I did.

15:47:37 10 Q. Who else went with you?

15:47:38 11 A. My brother, my father and Niloufer's brother.

15:47:46 12 Q. Which brother? Which -- you said "my brother."
5:47:50 13 Which one?

15:47:50 14 A. Randy.

15:47:58 15 Q. And that -- at that time, you told the reporter
15:48:00 16 that you and several relatives met with two Stanford
15:48:03 17 financial advisors in November of 2007. Do you see
15:48:06 18 that?

15:48:06 19 A. Where are you?


15:48:07 20 Q. The second paragraph -- the second complete
15:48:11 21 paragraph on Page 2.

15:48:27 22 That's -- I'm sorry. This is -- I was
15:48:30 23 saying "complete," so 1, 2.

15:48:49 24 A. Oh, I'm sorry.

15:48:49 25 Q. Yeah.


1 I, MICHAEL KOGUTT, have read the foregoing
2 deposition and hereby affix my signature that same is
3 true and correct, except as noted on the previous
4 page(s), and that I am signing this before a Notary
5 Public.

6 
7 MICHAEL KOGUTT, VOLUME 1

8 STATE OF T E X A S *
9 COUNTY OF Dallas *

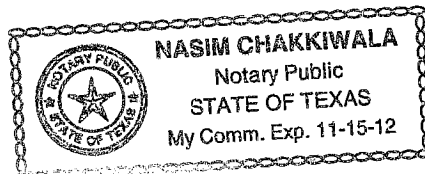
10 Before me, Nasim Chakkiwala, on
11 this day personally appeared MICHAEL KOGUTT, known to
12 me, or proved to me under oath or through
13 Texas Drivers License (description of identity card or
14 other document), to be the person whose name is
15 subscribed to the foregoing instrument and acknowledged
16 to me that they executed the same for the purposes and
17 consideration therein expressed.

18 Given under my hand and seal of office on
19 this, the 6 day of April, 2010.

20 
21 NOTARY PUBLIC IN AND FOR THE
22 STATE OF TEXAS

23 My Commission Expires: 11-15-12

24
25 JOB NO. 88743



1 CAUSE NO. DC-09-10931
2 RANDY KOGUTT, MICHAEL) IN THE DISTRICT COURT
KOGUTT, ANGELA KOGUTT,)
3 SAMUEL KOGUTT, AND)
IRENE KOGUTT,)
4 Plaintiffs,)
5 VS.) DALLAS COUNTY, TEXAS
6 MALOUF, LYNCH, JACKSON)
AND SWINSON, PC, and)
7 BRENDA REYNOLDS)
ADKINSON,)
8 Defendants.) 298TH JUDICIAL DISTRICT

9 REPORTER'S CERTIFICATION
ORAL AND VIDEOTAPED DEPOSITION OF MICHAEL KOGUTT
10 March 11, 2010

11 I, Jamie K. Israelow, a Certified Shorthand
12 Reporter in and for the State of Texas, hereby certify
13 to the following:

14 That the witness, MICHAEL KOGUTT, was duly sworn by
15 the officer and that the transcript of the oral
16 deposition is a true record of the testimony given by
17 the witness;

18 That the deposition transcript was submitted on
19 March 23, 2010, to the witness, or to the attorney
20 for the witness, for examination, signature, and return
21 to US Legal Support-Dallas, by April 12, 2010;

22 That the amount of time used by each party at the
23 deposition is as follows:

24 Alison H. Moore - 4:58
Mike O'Brien - 0
25 Craig L. Dowis - 0

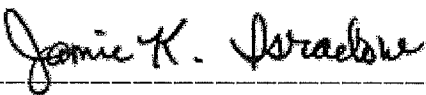

1 That pursuant to information given to the
2 deposition officer at the time said testimony was taken,
3 the following includes counsel for all parties of
4 record:

5
6 Mike O'Brien, Attorney for Plaintiffs.
7 Alison H. Moore, Attorney for Defendants.
8 Craig L. Dowis, Attorney for Defendants.

9 I further certify that I am neither counsel for,
10 related to, nor employed by any of the parties or
11 attorneys in the action in which this proceeding was
12 taken, and further that I am not financially or
13 otherwise interested in the outcome of the action.

14 Further certification requirements pursuant to Rule
15 203 of TRCP will be certified to after they have
16 occurred.

17 Certified to by me this 19th day of March, 2010.

18
19 
20 _____
21 Jamie K. Israelow, CSR, RPR, 
22 Texas CSR 3801
23 Expiration Date: 12/31/10
24 U.S. Legal Support-Dallas
25 CRCB Registration No. 343
100 Premier Place
5910 North Central Expressway
Dallas, Texas 75206
214.741.6001

1 FURTHER CERTIFICATION UNDER RULE 203 TRCP

2 The original deposition was ✓ was not
3 returned to the deposition officer on 4/07/10,
4 2010.

5 If returned, the attached Corrections and Signature
6 page contains any changes and the reasons therefor;

7 If returned, the original deposition was delivered
8 to Alison H. Moore, Custodial Attorney;

9 That \$1234.90 is the deposition officer's charges
10 to the Attorney for Defendants, Alison H. Moore,
11 TBA# 09836500, for preparing the original deposition
12 transcript and any copies of exhibits;

13 That the deposition was delivered in accordance
14 with Rule 203.3, and that a copy of this certificate was
15 served on all parties shown herein and filed with the
16 Clerk.

17 Certified to by me this 9 day of April,
18 2010.

19 Jamie K. Israelow

20 Jamie K. Israelow, CSR, RPR, CRR, CLR
21 Texas CSR 3801
22 Expiration Date: 12/31/10
23 U.S. Legal Support-Dallas
24 CRCB Registration No. 343
25 100 Premier Place
5910 North Central Expressway
Dallas, Texas 75206
214.741.6001

JOB NO. 88743

EXHIBIT “E”

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 § 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

EXHIBIT “F”

CAUSE NO. DC-09-10931

RANDY KOGUTT, MICHAEL KOGUTT,)	IN THE DISTRICT COURT OF
SAMUEL KOGUTT, AND IRENE)	
KOGUTT,)	
)	
Plaintiffs,)	
)	
V.)	DALLAS COUNTY, TEXAS
)	
MALOUF, LYNCH, JACKSON, AND)	
SWINSON, P.C., AND BRENDA)	
REYNOLDS ADKINSON,)	
)	
Defendants.)	298TH JUDICIAL DISTRICT

 ORAL AND VIDEOTAPED DEPOSITION OF SAMUEL KOGUTT
 JULY 20TH, 2010

ORAL AND VIDEOTAPED DEPOSITION OF SAMUEL KOGUTT,
 produced as a witness at the instance of the
 Defendants, and duly sworn, was taken in the
 above-styled and above-numbered cause on the 20th day
 of July, 2010, from 9:35 a.m. to 11:59 p.m., before
 Amanda B. McGuire-Willis, CSR in and for the State of
 Texas, reported by machine shorthand, at the offices of
 Friedman & Feiger, LLP, 5301 Spring Valley Road, Suite
 200, located in the City of Dallas, State of Texas,
 pursuant to Notice, the Texas Rules of Civil Procedure,
 and the provisions stated on the record.

1 A. Oh, oh, oh, okay.

2 Q. On the second page of Exhibit 23 under the
3 section entitled second e-mail, number one, it states,
4 "During the meeting, you said that Lloyd's of London is
5 the insurer on the international CDs. In the
6 disclosure statement, it doesn't list them as
7 insurers."

8 It also says, this is a quote from the
9 disclosure statement, "This insurance does not insure
10 customer deposits and is not the equivalent of the FDIC
11 insurance on deposits at many institutions in the US,"
12 close quote. Do you recall having that discussion with
13 the Kogutt family members prior to making a decision --

14 A. No.

15 Q. -- to invest in Stanford?

16 A. No.

17 Q. You would agree with me, though, that had the
18 other members of the Kogutt family read the disclosure
19 statement, as apparently Judy and Jeff did, they would
20 have learned that the insurance referenced in the
21 meetings did not insure customer deposits, correct?

22 A. That's what it says.

23 Q. And that is what you and, to your knowledge,
24 the other Kogutt family members were concerned about,
25 the insurability or the insurance for customer

1 deposits, correct?

2 A. I don't -- I don't know what their reasonings
3 were.

4 Q. What was your reason for wanting to make sure
5 that insurance was being offered?

6 A. By Lloyd's of London?

7 Q. I'm sorry?

8 A. By Lloyd's of London?

9 Q. By Lloyd's of London or any insurer for that
10 matter?

11 A. Well, that's one way of knowing it's safe.

12 Q. And specifically that insurance, you were
13 concerned that it related to customer deposits,
14 correct?

15 A. Right.

16 Q. And clearly, it's stated in the disclosure
17 statement that it did not insure customer deposits,
18 correct?

19 A. That -- that's what I see now.

20 Q. Do you have any reason to believe that was
21 not in the disclosure statement?

22 A. No.

23 Q. And you don't recall having that discussion
24 with Jeff and Judy Kogutt after they and you received
25 the response from Bill Layton, which is Exhibit 23?

1 CAUSE NO. DC-09-10931
2 RANDY KOGUTT, MICHAEL KOGUTT,) IN THE DISTRICT COURT OF
SAMUEL KOGUTT, AND IRENE)
3 KOGUTT,)
4 Plaintiffs,)
5 V.) DALLAS COUNTY, TEXAS
6 MALOUF, LYNCH, JACKSON, AND)
SWINSON, P.C., AND BRENDA)
7 REYNOLDS ADKINSON,)
8 Defendants.) 298TH JUDICIAL DISTRICT

9
10

11 REPORTER'S CERTIFICATE
12 ORAL AND VIDEOTAPED DEPOSITION OF SAMUEL KOGUTT
13 JULY 20TH, 2010

14
15

16 I, Amanda B. McGuire-Willis, Certified Shorthand
17 Reporter in and for the State of Texas, hereby certify
to the following:

18 That the witness, Samuel Kogutt, was duly sworn by
19 the officer and that the transcript of the oral
deposition is a true record of the testimony given by
20 the witness;

21 That the deposition transcript was submitted on
August 10, 2010, to counsel for the Plaintiffs,
Ernest W. Leonard, for the witness for examination,
22 signature, and return to me by September 1, 2010;

23 That the amount of time used by each party at the
24 deposition is as follows:

25 Craig L. Dowis - 2 hours, 0 minutes;

1 That pursuant to information given to the
2 deposition officer at the time said testimony was
3 taken, the following includes counsel for all parties
4 of record:

5 Ernest W. Leonard, Attorney for the Plaintiffs;
6 Craig L. Dowis, Attorney for the Defendants.

7 I further certify that I am neither counsel for,
8 related to, nor employed by any of the parties or
9 attorneys in the action in which this proceeding was
10 taken, and further that I am not financially or
11 otherwise interested in the outcome of the action.

12 Further certification requirements pursuant to
13 Rule 203 of TRCP will be certified to after they have
14 occurred.

15 Certified to by me this 10 day of
16 August, 2010.



17 Amanda B. McGuire-Willis

18 Amanda B. McGuire-Willis, CSR No. 8312
19 Expiration Date: 12-31-11
20 Firm Registration No. 526

21 Global Deposition Services
22 Corporate Plaza 1/Suite 152
23 4950 North O'Connor Road
24 Irving, Texas 75062
25 972.719.5000/972.717.3985 (fax)

1 FURTHER CERTIFICATION UNDER RULE 203 TRCP

2
3 The original deposition was/was not returned to
the deposition officer on _____;

4 If returned, the attached Changes and Signature
5 page contains any changes and the reasons therefor;

6 If returned, the original deposition was delivered
to Craig L. Dowis, Custodial Attorney;

7 That \$ _____ is the deposition officer's
8 charges to the attorney representing the Defendants for
preparing the original deposition transcript and any
9 copies of exhibits;

10 That the deposition was delivered in accordance
with Rule 203.3, and that a copy of this certificate
11 was served on all parties shown herein and filed with
the Clerk.

12 Certified to by me this _____ day of
13 _____, 2010.

14

15

16

17

18

Amanda B. McGuire-Willis

19

Amanda B. McGuire-Willis, CSR No. 8312

20

Expiration Date: 12-31-11

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