TROY LILLIE, ET AL. **DOCKET NO. 581670 SECTION 24**

VERSUS **19th JUDICIAL DISTRICT COURT**

STANFORD TRUST COMPANY AND STATE OF LOUISIANA, THE OFFICE OF FINANCIAL INSTITUTIONS **PARISH OF EAST BATON ROUGE**

STATE OF LOUISIANA

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CLASS MEMBERS' MEMORANDUM IN SUPPORT OF A MOTION FOR NEW TRIAL (LSA-C.C.P. ART. 1972 and 1973)

Now before this Court comes undersigned Counsel on behalf of the Class Members who hereby file the Motion for New Trial pursuant to LSA-C.C.P. Art. 1972 and 1973. A jury trial in the case commenced on July 22, 2024. A verdict was rendered on August 9, 2024. (Exhibit A). The judgment evidencing the verdict was filed on August 20, 2024 in accordance with La. Code Civ. Proc. Ann. art. 1812 (D) and signed by the Court on August 23, 2024. (**Exhibit A**) A trial court has the discretion to grant a new trial if the verdict is against the weight of the evidence. The trial court also has the discretion to order a new trial whenever, in its judgment, a new trial is required in order to prevent injustice. *Martin v. Heritage Manor S. Nursing Home*, 2000-1023 (La. 4/3/01), 784 So. 2d 627, 631. The court has the discretion to evaluate witness credibility to determine whether the jury erred in giving too much credence to an unreliable witness when considering a motion for new trial. *Davis v. Wal–Mart Stores, Inc.*, 00–0445 (La. 11/28/00), 774 So.2d 84, 93. Oral testimony which is in conflict with contemporaneous documents is entitled to little evidentiary weight. *United States v. U.S. Gypsum Co.*, 333 U.S. 364, 395, 68 S. Ct. 525, 542, 92 L. Ed. 746 (1948). This is especially true when the oral testimony relates to the recollection of events that occurred twenty years ago.

The Class Members introduced the written policies of OFI in effect between 2001 and January 1, 2007 that related to the regulation of Stanford Trust into evidence during the trial. Class Members argued and proved at trial that OFI knew of these written policy directives and did not enforce them during this time period. The evidence overwhelming show that OFI should have barred Stanford Trust from serving as custodian of IRA Accounts that purchased the SIB CDs prior to January 2, 2007, for the following reasons:

1. On April 2, 2004, former Commissioner Travis determined that the SIB CDs were "unsafe and unsound". No written document was ever introduced into evidence by OFI that the "unsafe and unsound" designation did not apply to the IRA SIB CDs ("Travis SIB Unsafe and Unsound Directive"). Class Member Ex. 1169.

2. On February 26, 2002, Former Commissioner Travis barred Stanford Trust from receiving any fees from Allen Stanford in connection with the IRA SIB CD sales because of conflicts of interest. ("Travis No Fee Policy"). (Class Member Ex. 1067 and **Exhibit D**). OFI never

introduced any written document that established the Travis No Fee Policy had been amended. Even though Travis No Fee Policy was in place, the evidence overwhelmingly showed that OFI allowed Stanford Trust to receive millions of dollars of fees between 2004 and January 1, 2007 to fund the overhead of Stanford Trust. OFI never contested their knowledge of these illicit fees because the fees were reported every three months on the 28 call reports filed with OFI from 2001 to 2007. ("Call Reports[1]"). OFI had a duty to the Class Members to bar the sale of the SIB CDs to accounts which Stanford Trust served as custodian because the millions of dollars of undisclosed fees where paid in direct violation of the Travis No Fee Policy.

3. The written evidence overwhelmingly showed that Class Member Ex. 132 and each of the annual examination reports between 2001 and January 1, 2007 (**Exhibit C)**, required all assets owned by an IRA account to be valued annually. ("Travis IRA Valuation Policy"). This was also required by IRS Form 5498. No written document was ever introduced into evidence by OFI that stated that SIB CDs were **not** required to be annually valued. OFI had a duty to the Class Members to bar the sale of these SIB CDs prior to January 1, 2007, based upon OFI uncontested knowledge that no valuations existed.

The Travis SIB Unsafe and Unsound Directive, the Travis No Fee Policy, and the Travis IRA Valuation Policy have been introduced into evidence during the trial as Class Member Ex. 132, Class Member Ex. 1067, Class Member Ex. 1169 and are collectively referred to herein as the "Three OFI Policy Directives."

Prior to his replacement by John Ducrest in 2004, John Travis created the Three OFI Policy Directives to protect the Class Members/ Retirees doing business with Stanford Trust. After the retirement of Travis as commissioner of OFI in 2004, OFI immediately became the land of milk and honey for Allen Stanford based upon the new regulatory environment. Allen Stanford used the Stanford Trust Company to solicit retiree funds because he needed an entity to target retirees and their IRA accounts to pay off the previous investors and keep the Ponzi Scheme afloat. And he needed a lax regulatory environment that would let his fraud flourish with a disinterested and lax regulator like Ducrest. And that is precisely what happened. Allen Stanford chose Louisiana to charter Stanford Trust Company as a state-regulated entity right here in Baton Rouge for a reason. He didn't choose Texas. He didn't choose Florida. He chose Baton Rouge, Louisiana, and he did that because he knew the lax regulatory environment created by Ducrest and his staff after Travis' retirement. Ducrest, as Commissioner of OFI, failed to enforce the Three OFI Policy Directives. This failure allowed Allen Stanford and the Stanford Trust to flourish with little regulatory oversight and a "rapid proliferation" of the number of victims that would be impacted by the second largest Ponzi Scheme in the nation. (See Discussion at p. 15).

[1] Call Reports collectively refer to the year-end Stanford Trust Call Reports admitted into evidence for the years ending 2002, 2003, 2004, 2005, 2006, and 2007. (**Class Member Ex. 1036, 1059, 1063, 1075, 2002, 2003, and 2004**).

The law is clear that "oral testimony which is in conflict with "contemporaneous documents" like the Travis SIB Unsafe and Unsound Directive, Travis No Fee Policy, and Travis IRA Valuation Policy "are entitled to little evidentiary weight." *United States v. U.S. Gypsum Co.*, 333 U.S. 364, 395, 68 S. Ct. 525, 542, 92 L. Ed. 746 (1948); *Shapiro v. Sec'y of Health & Hum. Servs.*, 101 Fed. Cl. 532, 538 (2011); *Switzer v. Sec'y of Health & Hum. Servs.*, No. 18-1418V, 2022 WL 4482721, at *13 (Fed. Cl. Aug. 29, 2022).[2] OFI never introduced one document that contradicted or reversed the scope of the Three OFI Policy Directives. The uncontested written documentary evidence overwhelmingly established the following:

1. OFI determined the SIB CDs were unsafe and unsound as of April 2, 2004. (**Class Member Ex. 1169**)
2. Stanford Trust was prohibited from receiving fees from Allen Stanford and his companies in connection with the IRA Accounts that held the SIB CDs. (*See* **Exhibit D**[3]; **Class Member Ex. 1067**)
3. Stanford Trust was required to value the SIB CDs annually that were held in the IRA Accounts. (*See* **Exhibit C**[4]; *See* **Class Member Ex. 123**).

Based upon the overwhelming weight of the written documents introduced into evidence at the trial by the Class Members relating to the Three OFI Policy Directives, the jury determined that OFI had a duty to enforce the written policies set forth in the Three OFI Policy Directives. OFI had an affirmative duty to act and should have barred Stanford Trust from serving as a custodian of the IRA accounts that held the SIB CDs. The failure of the jury to arrive at this same conclusion based upon the overwhelming weight of the evidence of the written documents introduced into evidence is the basis for a New Trial. The weight of the evidence overwhelmingly supported a verdict in favor of the Class Members. This rule is especially true when the only evidence that supported the OFI verdict was based upon the self-serving oral testimony of Sideny Seymour and John Ducrest involving unreliable memories of events that occurred over twenty years ago relating to the Three OFI Policy Directives.

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[2] Louisiana Rules of Evidence are based upon the federal rules and the absence of jurisprudence in this state results in the application of federal law. See LSA-C.E. Art. 101.

[3] **Exhibit D** is a detailed list of the excerpts from 2001-2007 Examination Reports introduced into evidence at the trial relating to the prohibition on payment of fees from Allen Stanford or his affiliates.

[4] **Exhibit C** is a detailed list of the excerpts from 2001-2007 Examination Reports introduced into evidence at the trial relating to the requirement to value the SIB CDs held in the IRA Accounts at Stanford Trust.

The jury found a duty was owed by OFI to the Class Members based upon the Three OFI Policy Directives. (*See* **Exhibit A**, Judgment and Jury Form dated August 9, 2024). However, the jury inexplicably ignored the fact that the Three OFI Policy Directives were never enforced by OFI from 2004-2007. The weight of the evidence overwhelmingly supported a verdict in favor of the Class Members due to OFI's lack of enforcement of the duties established by the Three Policy Directives. The New Trial should be granted because the only evidence that supported the OFI verdict was based upon the self-serving oral testimony of Sideny Seymour and John Ducrest based on unreliable memories of events that occurred over twenty years ago complimented by an elaborate explanation as to why a plain reading of the Three OFI Policy Directives is not really what the Three OFI Policy Directives meant to say. In other words, OFI did not introduce one document to refute the Three OFI Policy Directives.

The jury's finding in Interrogatory No. 2 that no fault existed in light of the substantial weight of the evidence that OFI did not enforce the Three OFI Policy Directives is inherently inconsistent with the finding by the jury in Interrogatory No. 1 of the existence of an affirmative duty to the Class Members to enforce the Three OFI Policy Directives. This Court has previously stated that OFI's "Inaction" in the face of a known risk is recklessness when a person has a "duty" to act.[5] The Court has further stated "Inaction" in the face of a violation of a known policy is recklessness when a person has a "duty" to act. That failed duty to enforce a known policy and known risk involving hundreds of millions of dollars belonging to thousands of seniors who spent the entire course of their careers building those retirement accounts is nothing short of recklessness The Travis SIB Unsafe and Unsound Directive established the known risk as of April 2, 2004 that the SIB CDs were 'unsafe and unsound," yet OFI sat on their hands and did nothing to protect the Class Members that purchased the SIBs starting January 1, 2007. Page 6 of each of the 28 call reports that were filed with OFI by Stanford Trust between 2001 and 2007 established OFI's knowledge of the known risk related to violation of the Travis No Fee Policy, yet OFI sat on their hands and did nothing. The examination reports[6] and IRS Form 5498 (**Class Member Ex. 1038**) established a duty to the Class Members requiring that the SIB CDs be annually valued given their

[5] See FN. 8 for a full statement of the Written Reasons on "inaction."

[6] The OFI Examination Reports introduced into evidence and referenced in Exhibit C and Exhibit D herein are **Class Member Ex. 1070, 1073, 1076, 1078, 58, 64, 120, and 130.**

"proliferation" at Stanford Trust and the fact they were being sold to unsophisticated retirees, but OFI ignored this requirement.

The Jury found that OFI had a duty to the Class Members to be vigilant and act in accordance with the Class Members' best interest, and to enforce the Three OFI Policy Directives. The facts were uncontested that OFI violated the Three OFI Policy Directives between 2001 and January 1, 2007 and were not vigilant and did not act in the best interests of the Class Members. Rather than barring Stanford Trust from serving as a custodian on the IRA accounts that purchased the SIB CDs, OFI made a conscious choice to do nothing. OFI had a legal duty to enforce the Three OFI Policy Directives based upon the jury's response to Interrogatory No. 1.

Prejudicial Admission of Evidence.

OFI introduced multiple documents into evidence that individually and cumulatively prejudiced the Class Members' case. These evidentiary errors serve as the basis for the granting of a New Trial because of the prejudice and unfairness suffered by the Class Members. These OFI documents include:

A. **Inadmissible Reports of Experts.** After this issue was brought before the Court on multiple occasions, the Court ruled that the Affidavits and Expert Reports of Ms. Karyl Van Tassel were not admissible. (**OFI Ex. 62-66**) This was consistent with multiple cases in the Louisiana jurisprudence. Notwithstanding the order of the Court on the inadmissibility of the Van Tassel affidavits and reports, expert reports and affidavits of Ms. Van Tassel were published to the jury on a 70-inch TV screen when the Van Tassel Video was played. The size of these inadmissible documents represented in most instances 75% of the screen with a small box appearing of her talking. This was highly prejudicial to Class Members case and was a willful and intentional violation of the order of the Court by OFI counsel.

B. **Presentation of the Receivership Claims.** The Receivership Complaints (**OFI Ex. 33-38**) were not relevant to the issue of whether OFI violated its duty to the Class Members in not enforcing the Three OFI Policy Directives between 2001 and January 1, 2007 and were nothing more than a Red Herring. Over the objection of the Class Members**,** OFI was allowed to admit the Receivership Complaints. The Receivership Complaints were hearsay and irrevocably confirmed the Strawman Case (see page 27 herein), which was not the subject of this proceeding. The Strawman Case was not the subject of the 2021 MSJ and the Pretrial Order and were irrelevant to proving the violations of the Three OFI Policy Directives between 2001 and January 1, 2007.

C. **Admission of Criminal Convictions and Plea Agreements.** OFI admitted into evidence certain documents relating to the criminal convictions and plea bargain agreements of the Stanford employees.[7] The admissions of the Criminal Convictions and Plea Agreements were highly prejudicial and not relevant to a determination of whether OFI was reckless in failing to enforce the violations in the Travis Unsafe and Unsound Directive (**Ex. 1169**), the Travis No Fee Policy (Ex. 1067), and the Travis IRA Valuation Policy (**Ex. 132**) between 2001 and January 1, 2007.

D. **Presentation of Strawman Claim**. OFI argued over and over that OFI was not reckless in not discovering the SIB Ponzi Scheme. ("Strawman Claim"). **As a matter of law, the performance of the duties set forth in the Travis SIB Unsafe and Unsound Directive, the Travis No Fee Policy, and the Travis IRA Valuation Policy are not conditioned upon OFI's discovery of the Ponzi Scheme.** This was a Strawman Claim concocted by OFI and was never the theory of the case asserted by the Class Members. Prejudice and confusion was created by OFI trying the Strawman Case which was not the basis for Liability as set forth in the 2021 MSJ or the Pretrial Order. The Class Members case solely related to OFI's conduct in violating the Travis SIB Unsafe and Unsound Directive, Travis No Fee Policy, and Travis IRA Valuation Policy between 2001 and January 1, 2007.

The recurring pattern in the presentation of evidence in this case was the Class Members introducing written documents that established the OFI policies between 2001 to 2007, and over a week later, OFI attempting to rebut the written documents without *one written document to support their position*, but through self-serving oral testimony from the "memories" of Ducrest and Seymour of events that occurred 20 years ago. The written evidence as a whole was so overwhelmingly in favor of the Class Members in establishing the liability of OFI for reckless conduct in doing nothing after being aware the Three OFI Policy Directives were violated between 2001 and 2007. For this reason, the Court should grant a new trial in accordance with LSA-C.C.P. Art. 1972 and 1973. In addition, the bias and prejudice created by OFI in presenting (i) the Strawman Case, (ii) violating the order of the Court in showing the jury the Van Tassel Reports and Affidavits, (iii) OFI showing the jury documents from the Receivership proceedings that were inadmissible hearsay and not relevant to the claims of the Class Members and (iv) OFI introducing

[7] OFI Exhibit Nos. 26(a)(c)(f.ii) regarding Robert Allen Stanford; OFI Ex. Nos. 27(a)(b)(e)(g)(i)(j) regarding James Davis; OFI Ex. 28(c) regarding Laura Pendergast-Holt; OFI Ex. Nos. 29(a)(d) regarding Leroy King; OFI Ex. Nos. 30(a)(c)(d) regarding Gilberto Lopez; and OFI Ex. Nos. 31(a)(c) regarding Mark Kuhrt.

documents that show the criminal convictions of the key persons at Stanford cannot be overstated. This bias and prejudice should be the basis for a new trial.

STANDARD OF REVIEW FOR GRANTING A NEW TRIAL

The Class Members have filed this Motion for New Trial in accordance with La. C.C.P. art. 1972 and 1973. Unlike a Motion for a Judgment Notwithstanding the Verdict, a motion for a new trial allows the Court to exercise discretion and to "*weigh the evidence and make credibility determinations and is not required to view the evidence in the light most favorable to the non-movant as on a JNOV motion*". As stated in the Louisiana Supreme Court case of *Martín v. Heritage Manor S. Nursing Home*, 2000-1023 (La. 4/3/01), 784 So. 2d 627, 631.

> [I]n considering whether the verdict was supported by any "fair interpretation of the evidence" on a motion for new trial, ***the trial judge is free to weigh the evidence and make credibility determinations and is not required to view the evidence in the light most favorable to the non-movant as on a JNOV motion.***
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> [T]he trial court may evaluate the evidence without favoring either party; it may draw its own inferences and conclusions; and evaluate witness credibility to determine whether the jury had erred in giving too much credence to an unreliable witness." *Joseph v. Broussard Rice Mill, Inc.,* 00–0628 (La.10/30/00), 772 So.2d 94 ."
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Martin v. Heritage Manor S. Nursing Home, 2000-1023 (La. 4/3/01), 784 So. 2d 627, 631. *Warren v. Shelter Mut. Ins. Co.*, 2016-1647 (La. 10/18/17), 233 So. 3d 568, 579 ("Most significantly, the district court has authority to evaluate witness credibility to determine whether the jury erred in giving too much credence to an unreliable witness.").

It is totally within the discretion of the district court to grant a new trial. In fact, the applicable standard of review in reviewing a ruling by a district court judge to grant a new trial is whether the district court abused its discretion in granting the new trial. *Martin v. Heritage Manor S. Nursing Home*, 2000-1023 (La. 4/3/01), 784 So. 2d 627, 632; *Davis v. Witt*, 02–3102 (La. 7/2/03), 851 So.2d 1119, 1131; *Martin*, 784 So.2d at 632. *Warren v. Shelter Mut. Ins. Co.*, 2016-1647 (La. 10/18/17), 233 So. 3d 568, 579. *Joseph, supra* at p. 15, 772 So.2d at 104–05 (citing *Anthony v. Davis Lumber,* 629 So.2d 329 (La.1993)); *Davis, supra* at p. 10, 774 So.2d at 93 (citing *Wyatt v. Red Stick Services, Inc.,* 97–1345 (La.App. 3 Cir. 4/1/98), 711 So.2d 745). This same rule obviously is followed by the First Circuit. *Zavala v. Dover Constr. USA, LLC*, 2017-0001 (La. App. 1 Cir. 4/11/18), 249 So. 3d 24, 28 (" In ruling on a motion for new trial, the applicable standard of review is whether the trial court abused its discretion."). See *Stevens v. St. Tammany Par. Gov't*, 2021-0686 (La. App. 1 Cir. 2/25/22).

In rendering the judgment to grant a new trial, the district court is required to state in detail the basis for the granting of the new trial. As the court stated in *Martin v. Heritage Manor S. Nursing Home*, 2000-1023 (La. 4/3/01), 784 So. 2d 627,

> Because the trial judge gave no reasons why he ruled that the jury's verdict was contrary to the law and the evidence, it is more difficult to determine if he abused his discretion in so ruling. A ruling that simply says, "a new trial is warranted because the jury's verdict is contrary to the law and the evidence," gives no guidance to the appellate court as to the trial judge's reasoning in granting a new trial and requires the appellate court in its record review to determine what evidence or what law the trial court thought the verdict was contrary.

Martin v. Heritage Manor S. Nursing Home, 2000-1023 (La. 4/3/01), 784 So. 2d 627, 632–33.

THE JURY DETERMINED OFI HAD A DUTY TO THE CLASS MEMBERS

Jury Interrogatory No. 1 (Exhibit A) stated the following:

1. *Do you find by a preponderance of the evidence that OFI had a duty to the Class Members?*

This interrogatory was based upon the Louisiana Supreme Court case of *Fowler v. Roberts*, 556 So.2d 1, 7 (La. 1989) which held that "[t]he existence of a duty and the scope of liability resulting from a breach of that duty must be decided according to the facts and circumstances of the particular case." (*See* Written Reasons at Par. 5 of this Court's Order dated October 22, 2021. (**Exhibit B**). The jury unanimously determined that OFI had a duty to the Class Members to enforce the Three OFI Policy Directives. Secondly, the jury determined that the duty to enforce the Travis SIB Unsafe and Unsound Directive, the Travis No Fee Policy and the Travis IRA Valuation Policy was **not** conditioned upon OFI discovering the existence of Stanford Ponzi Scheme. Therefore, once the Jury determined that OFI had a duty to enforce the Three OFI Policy Directives, the question presented by Interrogatory No. 2 was whether OFI was reckless in not enforcing the Three OFI Policy Directives despite their uncontested knowledge of the violation of these policies by Stanford Trust. The jury determined that a duty existed to the Class Members based upon the **written** policies of OFI. In responding affirmatively to Interrogatory No. 1, the jury determined the scope of the legal duty was created by the Three OFI Policy Directives. Once that the Jury determined that OFI had a duty to the Class Members to enforce the Three OFI Policy Directives, the response to Interrogatory No. Two should have been very straightforward---- Was OFI reckless in not enforcing the duty created by the **written** Travis SIB Unsafe and Unsound Directive, the Travis No Fee Policy policies and the Travis IRA Valuation Policy. The response of the jury to interrogatory No. 2 is inexplicable. The facts were uncontested that OFI violated the Three OFI

Policy Directives and sat on its hands and did nothing from 2001 to 2007 despite the existence of the Three OFI Policy Directives.

OFI argued over and over at trial that their duty to perform the Three OFI Policy directives was conditioned upon their discovery of the Stanford Ponzi Scheme. In another words, if they never discovered the Stanford Ponzi scheme, they had not duty to enforce the he Travis SIB Unsafe and Unsound Directive, the Travis No Fee Policy and the Travis IRA Valuation Policy. As a matter of law, the performance of the duties set forth in the Three OFI Policy Directives is not conditioned upon OFI's discovery of the Ponzi Scheme. This irrelevant argument was the central theme of OFI's case. In a 12-month briefing cycle in 2021 and 2022, the District Court, First Circuit and Louisiana Supreme Court declared in the 2021 MSJ Written Reasons that "inaction" in the face of a known duty gives rise to damages.[8] The law of the case doctrine is set forth in the *Day v. Campbell-Grosjean Roofing & Sheet Metal Corp.*, 256 So.2d 105 (1971). The *Grosjean* "law of the case doctrine" mandates that this principle of law established by this Court in the Written Reasons and reviewed by the First Circuit and Louisiana Supreme Court in a year-long writ application process should be followed in this case. OFI attempts to reverse the holding of the District Court set forth in the Written Reasons is contrary to the law of the case doctrine. The law set forth in the Written Reasons is the law that should have been applied by the jury in this case. This did not occur.

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[8] The statement of law in the 2021 Written Reasons of the District Court ordered in connection with the 2021 MSJ Proceeding established that OFI had a legal duty to the Class Members if the Class Members proved OFI's "inaction" at trial in enforcing OFI Policy. The determination of the existence of a duty was appealed by OFI to the First Circuit and Louisiana Supreme Court as being in error. The First Circuit and Louisiana Supreme Court denied OFI's Writ Application and essentially affirmed the District Court's determination that (i) OFI had a duty to the Class Members and (ii) inaction of a state agency in enforcing the duty gives rise to a breach of legal duty. This briefing process took over one year. OFI has attempted to repeatedly minimize the Court's findings of law in this year long appeals process. OFI desired that this year lengthy process of establishing the law in this case be ignored.

Par. 36. "Inaction on behalf of an agency is not a discretionary duty. *Gregor v. Argenot Great Cent. Ins. Co.*, 2002-1138 (La. 2003), 851 So.2d 959, 967 ("DHH had a mandatory duty to properly enforce the sanitary code"); *Watters v. Department of Social Services*, 2008-0977, 47 (La. App. 4th Cir. 6/17/09), 15 So.3d 1128, 1160; (We find, as in *Gregor, supra,* that the State had a mandatory statutory duty to provide a safe workplace for its employees under La. R.S. 23:13 and thus was not entitled to immunity under La. R.S. 9:2798.1"); *Crump v. Sabine River Authority*, 1997-1572, 10 (La. App. 3rd Cir.1998), 715 So.2d 762, 769 ("Authority's inaction in this matter was not discretionary, given the duties described above"); *Johnson v. Orleans Parish School Bd.*, 2006-1223 (La. App. 4th Cir. 1/30/08), 975 So.2d 698."

Par. 37. "The failure to inspect is not a "policy decision" for which a state agency could claim immunity under La. R.S. 9:2798.1. *Mercadel v. State Through Dep't of Pub. Safety & Corr.*, 2018-0415 (La. App. 1 Cir. 5/15/19, 10–11), 2019 WL 2234404; *Crump v. Sabine River Authority*, 1997-1572, 10 (La. App. 3rd Cir. 1998), 715 So.2d 762, 769 ("However, La. R.S. 9:2798.1(B) is inapplicable in this case because the Authority's ***inaction*** in this matter was not discretionary, given the duties described above") (Emphasis added)."

So, four things are abundantly clear. **Firstly**, the jury determined that OFI had a duty to the Class Members to enforce the Travis SIB Unsafe and Unsound Directive, the Travis No Fee Policy and the Travis IRA Valuation Policy. **Secondly**, the duty set forth by the Jury was not conditioned on OFI's discovery of the Ponzi Scheme. **Thirdly**, the law of the case doctrine of *Grosjean* mandates that "inaction" in the enforcement of the Three OFI Policy Directives is not discretionary, and "inaction" is a breach of the duty owed to the Class Members to enforce the Three OFI Policy Directives. **Fourthly**, no principal of law excuses OFI from the performance of a known duty based upon the Three OFI Policy Directives by ignoring the directives. The failure to timely discover the Ponzi scheme, as argued by OFI, is not an excuse for the non-performance of the duties to enforce the Three OFI Policy Directives.

VIOLATION OF WRITTEN POLICIES BY OFI

The Three OFI Policy Directives state the following:

> **Travis SIB Unsafe and Unsound Directive Dated April 2, 2004. (Class Member Ex. 1169)**
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> "*Commissioner Travis has determined that a state chartered Bank may not invest in Stanford International Bank (SIB) CDs due to certain safety and soundness concerns." Ex. 1169.*
>
> **Travis No Fee Policy Dated February 26, 2002. (Class Member Ex. 1067).**
>
> *If Stanford Trust receives a fee for placing accountholders fund in the SIB CDs in the future, you can expect this to be a violation in the examination report.* Exhibit 1067. (See also Exhibit D-Excerpts from the Examination Reports on prohibitions on the payment of Fees.).
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> **Travis IRA Valuation Policy dated June 30, 2006. (Class Member Ex. 132).**
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> *Deficiencies noted in the accounts related to the updating of current market value of assets held in the accounts. Regulations LRS 9:2088 requires the "accurate annual accounting to clients"; and IRC 408 requires reporting current market value on form 5498.* (See also Exhibit C-Excerpts from the Examination Reports on required Valuations.).

Firstly, after the jury determined that OFI owed a special duty to the Class Members based upon the evidence presented in the three-week trial relating to the Travis SIB Unsafe and Unsound Directive, the Travis No Fee Policy, and the Travis IRA Valuation Policy, the Jury inexplicably determined that OFI was not reckless (Jury Interrogatory No. 2) (**Exhibit A**) even though the uncontested evidence was that (i) the Travis SIB Unsafe and Unsound Directive determined that the SIB CD's were "unsafe and unsound" as of April 2, 2004, and (ii) OFI and John Ducrest never barred the SIB CDs despite the April 2, 2004 designation that the SIB CDs were "unsafe and unsound." OFI and Ducrest recklessly ignored the Travis SIB Unsafe and Unsound Directive.

Secondly, the evidence showed that the Travis No Fee Policy prohibited Stanford Trust from receiving illicit fees from Allen Stanford based upon the written policy statement. Once again,

the Jury inexplicably determined that OFI was not reckless (Jury Interrogatory No. 2) (**Exhibit A**) even though the uncontested evidence proved OFI ignored the Travis No Fee Policy Statements even though it had knowledge of the illicit fees based upon the 28 call reports that were filed every three months with OFI by Stanford Trust between 2001 and January 1, 2007 that listed out the amount of the illicit fees from Allen Stanford and his companies. OFI ignored the fact that the millions of dollars of illicit fees were used to pay the overhead of Stanford Trust to serve as a funnel for retiree funds from all over the United States and to send the funds to Antigua via Baton Rouge, Louisiana.

Thirdly, Class Member Ex.132 and the exam reports (**Exhibit C**) clearly established in writing the Travis IRA Valuation Policy which required valuations on all assets held by IRA Account to be performed on an annual basis. The policy clearly stated that *Regulations LRS 9:2088 requires the "accurate annual accounting to clients"; and IRC 408 requires reporting current market value on form 5498."* There is nothing ambiguous about this policy statement and it certainly does not exclude the valuation of the SIB CDs. The Travis IRA Valuation Policy was in writing in multiple places in the examination reports (*See* Class Member Ex. 132; *See* **Exhibit C** attached herein) and was in place from 2001 to January 1, 2007. The facts were also uncontested at trial that no valuations were required by OFI until June of 2008. The Jury inexplicably determined that OFI was not reckless (Jury Interrogatory No. 2) (**Exhibit A**) even though the uncontested evidence was that it is illogical and defies common sense for OFI not to require a valuation of the SIB CDs which comprised over 50% of the assets of Stanford Trust in the amount of approximately $200 million dollars as of the end of 2006. Requiring the annual valuations of the SIB CDs was not in any way conditioned on OFI discovering the existence of the Stanford Ponzi Scheme.

Commissioner John Ducrest admitted in both his testimony and the affidavit that he signed before the trial that he knew nothing about Stanford Trust Company prior to 2008 and specifically the scope of the Travis SIB Unsafe and Unsound Directive, Travis No Fee Policy, and Travis IRA Valuation Policy. The uncontested facts establish that Stanford Trust funneled in excess of $200 million dollars of retiree funds from all over the United States through Baton Rouge to Antigua before January 1, 2007, yet Ducrest conceded and admitted he never paid any attention to it until 2008. This one admission is sufficient to establish recklessness on Commissioner Ducrest's behalf based upon the facts of the case. The overwhelming uncontested facts show that between 2001 and 2007, OFI failed to knowingly act to bar the Stanford Trust from serving as custodian to purchase

the SIB CDs on behalf of retirees despite its knowledge that former OFI Commissioner John Travis had previously ordered that the SIB CDs were "unsafe and unsound." Further, the overwhelming uncontested facts showed that between 2001 and 2007, Allen Stanford paid millions of dollars of undisclosed illicit fees to Stanford Trust in violation of the Travis No Fee Policy to pay for the overhead of running the nationwide retiree funnel. Yet, OFI knowingly failed to act to bar the Stanford Trust from serving as custodian to purchase the SIB CDs on behalf of retirees despite its knowledge of these illicit fees as disclosed on page 6 of each of the 28 call reports filed with OFI quarterly for five years starting in 2001. OFI and Ducrest ignored the Travis No Fee Policy and failed to act to bar the Stanford Trust from serving as custodian to purchase the SIB CDs on behalf of the Class Members after Commissioner Travis had issue a directive dated February 26, 2002 forbidding these fees. (Class Member Ex. 1067) The "inaction" of OFI in failing to bar the SIB CD purchases after Stanford Trust's violation of the Three OFI Policy Directives was in violation of the known policies of OFI, was reckless, and constituted a willful indifference to the duty it owed the Class Members who purchased the SIB CDs after January 1, 2007. The "inaction" of OFI in failing to annually value the SIB CD held by Stanford Trust as Custodian, after Commissioner Travis determined on April 2, 2004, that the SIB CDs were unsafe and unsound, was reckless and constituted a deliberate willful indifference to the duty it owed the Class Members who purchased the SIB CDs after January 1, 2007. If OFI had enforced the known Three OFI Policy Directives, Stanford Trust would have been barred from serving as custodian of the IRA accounts that purchased the SIB CDs prior to 2007 and the Class Members would still have their money.

The facts proven at trial overwhelmingly showed OFI violated Three OFI Policy Directives. Notwithstanding the fact that the evidence overwhelmingly established the existence of a legal duty (**Exhibit A**, Jury Verdict Form at Interrogatory No. 1) and the violation of the legal duty by not enforcing the Travis SIB Unsafe and Unsound Directive, the Travis No Fee Policy and the Travis IRA Valuation Policy, the jury determined that the "inaction" of OFI in violating known written policies of OFI was not reckless conduct in the performance duties owed to the Class Members (**Exhibit A**, Interrogatory No. 2). While the jury correctly determined that the Three OFI Policy Directives created a duty to follow the written policies of OFI and OFI had a duty to comply with these policies on behalf of the Class Members, the jury inexplicably determined that OFI's inaction in enforcing the policy established in the Three OFI Policy Directives was not reckless in the performance of their duties. As a matter of law, inaction, in the face of known risks and violation

of known written policies is reckless and gives rise to liability. The verdict was contrary to the law and evidence as set forth in the Three Policy Directives.

OFI based its entire case on whether it should have discovered the Stanford Ponzi Scheme as a way of avoiding and confronting their "inactions" in violating the Three OFI Policy Directives between 2001 and 2007. The "Strawman Case" concocted by OFI created jury confusion and resulted in the jury focusing on an argument that was never part of the case as illustrated in the 2021 MSJ and the Pretrial Order. (Par. 65-97). The jury erroneously focused on the irrelevant question of whether OFI was reckless in not discovering the Ponzi scheme in 2008 and not on the real issue in the case-- OFI's actions between 2001 to 2007 which allowed the Class Members who purchased the SIB CDs after January 1, 2007.

The Three OFI Policy Directives are over twenty-years old. Surprisingly, the literal terms of these documents were ignored by the jury in determining whether the inaction of OFI was reckless. Rather, each of the supervisory persons at OFI who were responsible for not "calling a timeout" on the sale of the SIB CDs to Stanford Trust prior to 2007 had self-serving memories of the meaning of the 20-year-old documents and of the events that occurred over 20 years ago, after they were confronted with these documents in court. Despite their lack of memory of the existence of these documents when initially being questioned about the subject matter of the documents on July 29, 2024 (Ducrest) and July 30, 2024 (Ducrest) and July 31, 2024 (Seymour), OFI attempted to rehabilitate Seymour's testimony on the Travis SIB Unsafe and Unsound Directive by recalling Ducrest. When Ducrest was called on August 6, 2024, Mr. Ducrest had sudden recall of a contradictory meaning of the Three OFI Policy Directives from 20 years ago. Notably, his explanation was not found in any document and was contrary to the face of the Three OFI Policy Directives. Ducrest's "enlightened 20-year-old memories" were never supported by any written documents-- not one. Twenty-year-old self-serving memories were used repeatedly by OFI to contradict the literal and specific terms of the Three OFI Policy Directives and in all cases, no written documents were delivered by the OFI witnesses to contradict the Three OFI Policy Directives introduced into evidence by the Class Members. The fact that OFI had no written documents to contradict the Travis SIB Unsafe and Unsound Directive, the Travis No Fee Policy and the Travis IRA Valuation Policy but was forced to rely on the 20-year-old memory of Ducrest and Seymour and their sudden recall of their meaning 20 years later, was suspicious and unreliable. The oral testimony based upon a twenty-year-old self-serving memory was not credible, was biased

testimony, and lacked any pretense of objectivity because in all cases, it was given by the supervisory person at OFI, Ducrest and Seymour, who were responsible for the catastrophe with the IRA retirees. Ducrest and Seymour did everything possible at trial to deflect the blame placed upon them for this financial catastrophe. Ducrest and Seymour had no memories of the documents before both were confronted with the OFI Three Policy Directives. After being shown the documents to refute their oral testimony after repeated denials they did not exist, both Ducrest and Seymour testified again to attempt to explain their way out the specific terms of the documents, with their self-serving explanation without one iota of a written document to support their testimony. This did not only happen once--- but it was also a pattern that happened over and over in the three-week trial.

Ducrest testified on multiple occasions that he had no knowledge of the Stanford Trust operations until 2008. Notwithstanding his categorical statement when he was re-called to the witness stand on August 6, 2024 OFI after testifying on cross examination in Plaintiffs' case, Ducrest's suddenly had renewed memory of the 2004 time period as to scope of the Travis SIB Unsafe and Unsound Directive and the Travis No Fee Policy. Ducrest's "amnesia" concerning the April 2, 2004 Travis Unsafe and Unsound Directive dissipated and he explained, with no documentary support, how the Travis Unsafe and Unsound Directive was not really labeling the SIB CDs owned by the IRA Accounts as unsafe and unsound.

Ducrest's testimony should have little or no credibility for three reasons. **Firstly**, he testified he did not have knowledge of Stanford Trust in plaintiff's case before 2008. **Secondly**, even if he all of a sudden had memory after 20 years of the 2004 Travis SIB Unsafe and Unsound Directive, he presented no written documents to support his version of the Travis SIB Unsafe and Unsound Directive. He was asked over and over in front of the jury to bring these documents to Court to show to the jury if they existed during Plaintiff's case. No documents were ever presented. **Thirdly**, at best it was self-serving testimony, because the violation of the literal language of the Travis SIB Unsafe and Unsound Directive would make Ducrest and his regime responsible for $343 million in losses.

OFI counsel knew Ducrest testified in his initial testimony on July 29 and July 30, 2024, when Plaintiffs called him on cross examination, that Ducrest had no knowledge of the activities of Stanford Trust prior to 2008. But because the Seymour testimony went a long ways in helping Plaintiffs meet their burden of proof on liability relating to the Three OFI Policy Directives, OFI

was forced to re-call Ducrest to the stand on August 6, 2024 and explain, without any evidentiary support, what Commissioner Travis meant by the OFI Three Policy Directives.

THE LEGACY OF JOHN TRAVIS -- THE WRITTEN POLICES OF OFI

John Travis served as Commissioner of Financial Institutions until the middle of 2004. As stated previously, Travis put in place the Travis SIB Unsafe and Unsound Directive, the Travis No Fee Policy, and the Travis IRA Valuation Policy prior to the time John Ducrest replaced him. What is equally clear is the insight former commissioner John Travis had as commissioner during 2001 to 2004 about the high risks of the SIB CDs, the way Stanford Trust was being operated and his insights in imposing of common-sense restrictions set forth in the Three OFI Policy Directives. What is equally evident is that Ducrest, his successor, was a political appointment with no experience in "smelling a rat," and despite having served as commissioner of OFI from 2005 to 2008, Ducrest ignored the policies put in writing in the Three OFI Policy Directives. Ducrest and his staff followed a reckless policy of inaction in connection with the Three OFI Policy Directives.

Travis's understanding of the risk the SIB CDs created for the retirees and the operation of Stanford Trust was evidenced by the written documents relating to his issuance of the Travis SIB Unsafe and Unsound Directive, the Travis No Fee Policy and the Travis IRA Valuation Policy. Mr. Travis' attention to putting these policies in writing to control the risk associated with Stanford Trust is a sharp contrast to Ducrest's lack of understanding of the risk and lack of focus in enforcing the Three OFI Policy Directives prior to 2008. The jury failed to grasp the importance of the OFI Three Policy Directives aimed at regulating the Stanford Trust, of which the enforcement of the Travis policies would have prevented this financial catastrophe at Stanford Trust compared to the recklessness of Ducrest and his total unawareness of Stanford Trust being the epicenter in the United States for the funneling of retiree funds to Antigua during his term as commissioner from 2004 to 2008 based upon Ducrest's own testimony. The comparison of the insight of Travis in implementing and enforcing the Three OFI Policy Directives and Ducrest ignorance of the issues until 2008 could not be any starker, and was one totally ignored by the Jury.

The testimony of Ducrest vividly showed the difference between an experienced regulator like John Travis and a political appointee like Ducrest. Travis knew a high-risk venture when he saw it and designated it as unsafe and unsound on April 2, 2004 (Class Member Ex. 1169) immediately before John Ducrest replaced him. Further, Travis knew that he did not want a nationwide retiree "funnel" operating in Baton Rouge for all of the retiree funds in the United States

to be invested in Antigua if no valuation existed. Travis recognized this risk between 2002 to 2004 and issued written directives and policy statements to protect the citizens of this state and the Customers of Stanford Trust from unsafe and unsound practices. Travis' foresight and regulation was on point *without ever knowing it was a Ponzi scheme*. He just knew something was not right. On the other hand, Ducrest admitted that he ignored the Stanford Trust's operation from 2004 until 2008, which is per se reckless, when it involved the magnitude of millions of dollars of SIB CDs. Ducrest really never addressed why he ignored Allen Stanford with millions of dollars of retiree funds from all over the country coming into Baton Rouge. One can only guess. If OFI, Seymour, and Ducrest had followed the Three OFI Policy Directives based upon Travis' foresight, the catastrophic failure at Stanford Trust and the loss to the Class Members would not have occurred at Stanford Trust and the Class Members would not have lost their money. This case was that plain and simple.

A. The Travis SIB Unsafe and Unsound Directive. The Travis SIB Unsafe and Unsound Directive stated the following:

> **Travis SIB Unsafe and Unsound Directive (Class Member Ex. 1169)**
>
> "Commissioner Travis has determined that a state-chartered Bank may not invest in Stanford International Bank (SIB) CDs due to certain safety and soundness concerns." Ex. 1169.

It is implausible to argue that large banks could not invest in the SIB CDs, but that unsophisticated retirees could. The Travis SIB Unsafe and Unsound Directive conclusively established two vital facts. First, Commissioner Travis believed the SIB CDs were "unsafe and unsound." Secondly, commercial banks could not invest in the SIB CDs because they were "unsafe and unsound." This directive was premised upon the same language in the statute governing the Cease -and-Desist Orders in La. R.S. 6:122 that mandates that OFI prevent or stop "unsafe and unsound" practices and conditions. That is the literal language of a document that is twenty years old and which no OFI witness refuted until it was brought to the attention of Seymour late in his deposition after he had testified it did not exist. This document is dated April 2, 2004, which was three years prior to the class period starting January 1, 2007. Would any Class Members have invested after January 1, 2007 if they knew that OFI had determined that banks could not invest in the SIB CDs because they were "unsafe and unsound?" Was it truly reasonable to allow unsophisticated Exxon retirees to invest in the SIB CDs, yet bar banks from investing in the SIB CDs because they were "unsafe and unsound?" Once the Travis SIB Unsafe and Unsound Policy document came out late in Seymour's testimony, and there was the "Seymour Scramble" which was an obvious witness meltdown on the

stand while trying to create an oral justification for this document saying something other than the SIB CD's were "unsafe and unsound." Seymour's testimony was not credible.

Ducrest was required to make a second appearance late at the trial to explain away the testimony of Seymour on the Travis SIB Unsafe and Unsound Directive. The evidentiary weight of Ducrest testimony to explain the Travis SIB Unsafe and Unsound Directive in his second appearance before the jury is zero given the fact that it dogmatically stated in his original testimony that he had no knowledge of Stanford Trust prior to 2008. **Secondly**, the evidentiary weight is zero based upon his oral testimony relating to events 20 years ago and is not supported by one iota of a written document. **Thirdly**, his self-serving testimony has no evidentiary weight based upon the fact that he was responsible for the SIB CD catastrophe at Stanford Trust, and he did nothing about it resulting in losses of $350 million. Ducrest's testimony was self-serving and biased to deflect the blame from himself for this catastrophic financial event.

B. Travis No Fee Policy. Former Commissioner Travis had put in place a policy prohibiting the payment of fees from Stanford and his related companies because of the undisclosed conflicts of interest on February 26, 2002. (Class Member Ex. 1067). The Fee Prohibition Directive stated the following:

> **Travis No Fee Policy. (Exhibit 1067).**
>
> *If Stanford Trust receives a fee for placing accountholders fund in the SIB CDs in the future, you can expect this to be a violation in the examination report.* Class Member Ex. 1067.

This policy was also reiterated in OFI examination reports between 2001 and January 1, 2007. (See Exhibit D). Once again, the Travis Fee Directive was ignored from 2001 to 2008, and the OFI allowed Stanford Trust to receive millions of dollars of undisclosed fees from Allen Stanford to pay the overhead of Stanford Trust and to fund the cost and run the "Antigua Funnel" to funnel retiree funds from all over the United States thru the Baton Rouge based Stanford Trust and on to Antigua. Despite repeated requests to Ducrest and Seymour in front of the jury to bring in any document that reversed the Travis No Fee Policy, none was ever presented.

Stanford Trust filed call reports with OFI every three months between 2001 and January 1, 2007.[9] Each of these 28 call reports showed the payment of these illicit fees from Stanford that were prohibited by the Travis No Fee Policy on page six of the form Call Report. See following page for an example of Class Member Ex. identified in fn. 9.

[9] Class Members Ex. 1036, 1059, 1063, 1075, 2002, 2003, and 2004).

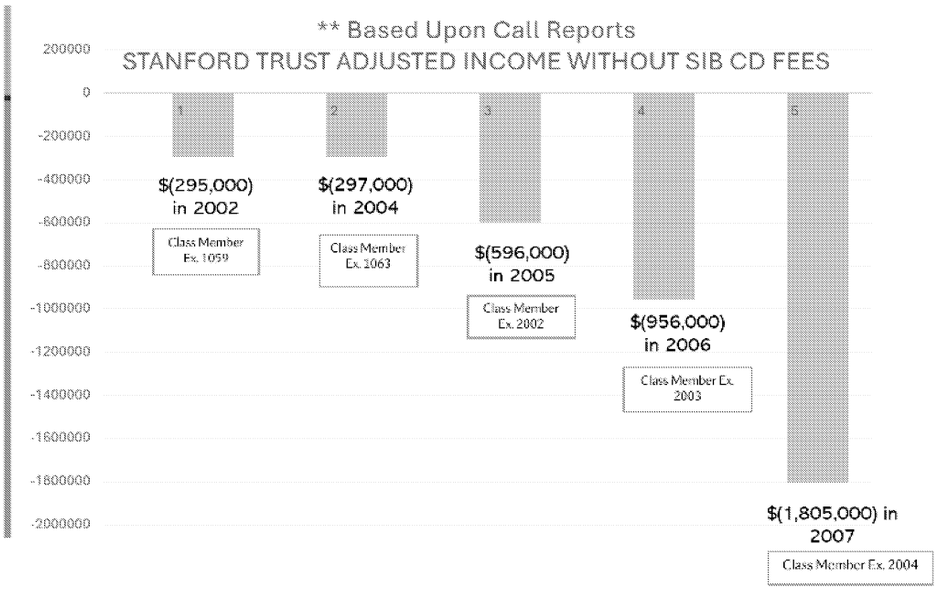
Class Member Ex. 2003
OFI2527

SCHEDULE RI-A - INCOME FROM FIDUCIARY ACTIVITIES

1. Estates		57
2. Personal Trusts	338	225
3. Investment Advisory		72
4. Managed Employee Benefit		125
5. Non-Managed Employee Benefit		1817
6. Custodian		
7. Corporate Services		
8. Termination Fees		
9. All Other		
10. Total (Sum of Items 1 through 9) (Must equal Schedule RI - Item 4)	2,404	2401

The payments of the custodian fees shown on page 6 of each of the 28 call reports filed regularly with OFI were ignored by OFI from 2001 to 2007 in violation of the Travis No Fee Policy. Further, the facts were uncontested that the prohibited Stanford Fees represented a substantial part of the income of Stanford Trust and Stanford Trust could not have continued operation and would have incurred substantial losses except for this illicit income from Allen Stanford. (*See* Demonstrative Ex. 2, Class Member Ex. 1036, 1059, 1063, 1075, 2002, 2003, and 2004 ("Call Reports"), and **Exhibit D**). This was never addressed, contested, or refuted by OFI. Never.

DEMONSTRATIVE EXHIBIT ONE: (See Exhibit F)



By allowing these fees to be received, OFI directly acquiesced to the "rapid proliferation" of the growth of the SIB CDs at Stanford Trust from the purchase by unsophisticated retirees living all over the United States. See Exhibit G, Demonstrative Ex. 2, Rapid Proliferation of SIB CDs 2004-2008. The evidence was uncontested that by allowing the illicit fees to fund the overhead and cost of operation of the Baton Rouge based Stanford Trust, a nationwide funnel was created in Baton Rouge that resulted in IRA victims from all over the country sending their retirement funds

to Baton Rouge with the Baton Rouge based Stanford Trust Company funneling the money to Antigua. Baton Rouge was the epicenter of the IRA retiree “funnel” and OFI knew it because OFI was aware of the proliferation in the sale of the SIB CDs and the undisclosed fee income being received by Stanford Trust from Allen Stanford as illicit fees from the proliferation in the sale of the SIB CDs based upon the quarterly call reports. The facts are uncontested that OFI knew (i) the source of the fees from Allen Stanford to fund the operation of the funnel at Stanford Trust in Baton Rouge was in violation of the Travis No Fee Policy; (ii) the illicit undisclosed fees from Allen Stanford represented substantially all of the income necessary to pay the overhead for the operations of Stanford Trust; and (iii) the illicit fees were being used to pay the overhead of the operation to funnel the retiree money to Antigua. By OFI allowing these illicit fees to be received by Stanford Trust in violation of the Travis No Fee Policy, OFI's inaction made OFI complicit in the funding the overhead and expenses of the entity used to funnel of the funds to Antigua. If OFI had prohibited the fees in accordance with the Travis No Fee Policy when it was fully disclosed on page 6 of 28 call reports filed quarterly with OFI from 2001 to 2007, the funnel would not have existed in Baton Rouge and the Class Members would still have their money. Inaction by OFI in light of the Stanford Trust's violation of the known Travis No Fee Directive is reckless. OFI's allowance of the payment of the substantial amount of illicit fees to Stanford Trust was the uncontested sole cause of allowing Stanford Trust to continue to serve as the nerve center and funnel of the IRA Funds to Antigua. If OFI had stopped the payment of the fees in accordance with the Travis No Fee Policy, the facts presented at trial conclusively showed that the Baton Rouge funnel to Antigua would have ceased to exist, and the Class Members would still have their money.

OFI's inaction relating to the Travis No Fee Policy allowed Stanford Trust to continue serving as the nerve center through the illicit undisclosed funding of Allen Stanford and as custodian for retirees from all over the United States, allowed Stanford Trust to continue to provide innocent unsophisticated retirees a mechanism to purchase SIB CDs and funnel the fund to Antigua, despite former Commissioner Travis' determination that Louisiana Banks could not invest in them because they were "unsafe and unsound". Ducrest's self-serving testimony that it was “okay” for the unsophisticated Exxon retirees to invest in the SIB CDs, but it was not “okay” for Louisiana Banks to invest in them is incredulous. This is not credible and self-serving.

It was never contested by OFI that Stanford Trust was the epicenter for all CDS sales in the United States for Retiree IRA Accounts. All Funds for IRA retirement accounts came through Baton

Rouge. The examination reports from 2001 to 2007 repeatedly state the policy that Allen Stanford was not allowed to pay any fees to Stanford Trust because of the potential conflict of interest. This was stated over and over in the exam reports and was the policy of OFI. (*See* **Exhibit D** for a summary of the language in the examination report which enforces the Travis No Fee Policy.) Notwithstanding this clear statement that Travis No Fee Policy was the policy in place in the exam reports, the 28 call reports showed a completely different story. Millions of dollars of fees were coming into Stanford Trust to pay for the overhead of the Baton Rouge Funnel of retiree's funds from all over the United States going to Antigua. The known conflict in the existence of the Travis No Fee Policy and the disclosure of the million dollars of fees paid on page 6 of 28 call reports filed with OFI during the period of 2001 to 2007 is inexplicable. There is absolutely no stronger evidence that could exist of OFI's inaction in enforcing the Travis No Fee Policy when their knowledge of the Stanford Fees is disclosed on the call reports. Not one witness from OFI refuted the Travis No Fee Policy or the fact the illicit fees were disclosed on the 28 call reports. This is a classic illustration of "inaction" in the face of the Travis No Fee Policy being reckless misconduct. (*See* Class Members Demonstrative Exhibit 1 on Fees and losses that Stanford Trust would have incurred if the Stanford Fees were not allowed).

C. **Travis No Valuation Policy**

The examination reports for five years between 2001 and January 1, 2007, all categorically, without exception, stated that the assets in the IRA Account had to be valued. This was required by the IRS Form 5498. (Class Member Ex. 1038). Further, the language in each exam report for the time periods in question specifically did not exclude the SIB CDs from valuation. (**Exhibit C**). Further OFI could not produce one document that said the SIB CDs should not be valued despite repeated requests before the jury. Finally, the letter dated July 22, 2008 showed that OFI Banking could require Stanford Trust to value the assets at Stanford Trust without anyone's approval. (Class Member Ex. 122). OFI tried to convenience the jury that the valuation of the SIB CDs was not required. No document was ever provided by OFI, despite the request before the jury for this written change in policy. There was certainly no written policy that stated that in the exam reports or elsewhere that the SIB CDs did not have to be valued, especially in light of the Travis SIB Unsafe and Unsound Directive. It would be illogical based upon the Travis SIB Unsafe and Unsound Directive that determined the SIB CDs were unsafe and unsound not to require a valuation for the investors and the IRS pursuant to form 5498. (Class Member Ex. 1038). Ducrest required in 2008

what should have been required in 2001 to 2007--require a valuation on the SIB CDs.[10] (*See* **Exhibit C** for a summary of the examination reports valuation language). The 2008 requirement of a valuation of the SIB CDs as set forth in Exhibit 122, the July 22, 2008 letter, is an admission as to what OFI should and could have been done much quicker if Ducrest had followed the Travis IRA Valuation Policy. (Class Member Ex. 123).

The examination reports clearly show a "proliferation in the growth in the SIB CDs" from year and each year from 2001 to 2007. (*See* Class Member Demonstrative Exhibit 2). This growth, in light of the Travis SIB Unsafe and Unsound Directive and Travis No Fee Policy is absolutely astounding and was ignored by OFI. Despite the "proliferation," OFI ignored the Travis SIB Unsafe and Unsound Directive and Travis No Fee Policy. OFI never contested the unbridled proliferation prior to January 1, 2007, or attempted to explain why there was inaction on the Travis SIB Unsafe and Unsound Directive and Travis No Fee Policy. OFI never explained why it thought in 2008 the face amount of the SIB CD did not represents its value, when before that date, the fact amount was the fair market value even though Travis had determined in the Travis SIB Unsafe and Unsound Directive on April 2, 2004 in the Travis SIB Unsafe and Unsound Directive that the SIB CD was "unsafe and unsound." It is illogical for a jury to conclude that the SIB CD was unsafe and unsound based upon the Travis SIB Unsafe and Unsound Directive, but to also believe OFI self-serving versions of the fact that the value of the SIB CD did not have to be ascertained because the face value was the fair market value. There is an inexplicable inconsistency between Travis's determination on April 2, 2004, that the SIB CD was "unsafe and unsound" and the testimony that OFI's acted reasonably in accepting the face value of the SIB CD as its fair market value. The oral testimony is self-serving, illogical, not supported by the facts, has no credibility, is biased, no written documents support it, and should be rejected as unreliable and untrustworthy as a matter of law. It simply does not pass the "red face" test.

All of the examination reports from 2001 to 2007 indicated that valuations were required on the SIB CDs. The literal language of the reports did not exclude the SIB CDs. Further, despite repeated requests to Ducrest and Seymour, no written document appeared at the trial before the jury that stated that the SIB CDs should not be valued. To further confirm the fact that they should be valued, Ducrest ordered the valuation in 2008 once he reviewed Stanford trust and became aware

[10] See **Class Member Ex. 122**, July 22, 2008 Ducrest Directive Requiring Independent Valuation of the SIB CDs.

of the proliferation. (Class Member Ex. 122). This is in fact an admission that the same CDs should have been valued back in 2002 as set forth in the exam reports. This was especially important in light of Travis' determination of the fact that the SIB CDs were "unsafe and unsound" on April 2, 2004. Further a valuation was required by the IRS on form 5498. (Class Member Ex. 1038) The facts were uncontested that despite the language in the examination reports, the CDs were never valued and there is not one document in writing that states they were not required to be valued in accordance with the multiple examination reports. OFI's defense was comprised of self-serving oral testimony on the issue by the people who were trying to justify that conduct in not requiring a valuation, but not one written document exists supporting their concocted version of why a valuation was not required prior to 2008 when the SIB CDs constituted more that 50% of the assets of Stanford Trust.

Finally, it is important to note that OFI did not provide one iota of written evidence on the question of the reasonableness of OFI's "inaction" in not following the Three OFI Policy Directives during the time period 2001 to 2007. Ducrest testified he had no knowledge of any information relating to Stanford Trust prior to 2008. Joeseph Borg, the expert for OFI, stated that the scope of his opinion did not include the Three OFI Policy Directives during the time period 2001 to 2007 documents. OFI fell woefully short of contradicting the written terms of the Travis SIB Unsafe and Unsound Directive, Travis No Fee Policy, and Travis IRA Valuation Policy and this fact should be the basis for the granting of the motion for new trial.

Other Documents

In addition to the Three OFI Policy Directives, two other documents independently establish the risk that existed at Stanford trust in 2004 and 2005.

Whitney Termination Letter (Class Member Ex. 1036). The next piece of uncontradicted objective documentary evidence that objectively establishes the unsafe and unsound operation of Stanford Trust is what is referred to as the Whitney Letter. (See Exhibit 1036). Whitney Bank, without access to the examination reports concluded independently that the relationship with Stanford Trust was too high risk and terminated their relationship with Stanford Trust in 2004. The January 7, 2004 Whitney Bank Letter (Class Members Ex. 1036) stated, "Whitney's executive management has decided to end Whitney's relationship with Stanford Trust Company, Inc." and "risk management staff noted for the first time the relationship between Stanford Trust Company, Inc. and Stanford Financial Group. They evaluated the funds flow through the Stanford Trust

Company." Without ever having access to the same type of information that OFI had, Whitney determined this was an unsafe and unsound operation and terminated its' relationship with Stanford Trust. Not because of bad loans but because Whitney did not want the deposits of Stanford Trust. Whoever heard of a bank not wanting deposits in the banking industry? Whitney did not want Stanford Trust's deposits or any Stanford affiliate using Whitney Bank accounts as a flow through for potential money laundering. This is once again confirmation of the known objective determination by a party not hired as an expert, that their independent review contemporaneously showed Stanford Trust was high risk and likely operating in an unsafe and unsound manner in 2004. It is a contemporaneous event by an independent third party in 2004 that confirmed the unsafe and unsound operation of Stanford Trust (without the payment of any expert fees like those paid to Borg). It is interesting to note that this is within three months of the date of April 4, 2004 in which Travis designated the SIB CDs as "unsafe and unsound". The evidentiary weight of the facts and conclusion in the Whitney Letter ranks extremely high on the reliability and credibility scale for evidence, particularly, when it is coupled with the April 4, 2004 Travis SIB Unsafe and Unsound Directive.

E. <u>Trip to Antigua</u>

On November 9, 2005, Commissioner Ducrest or a member of his staff was invited to tour Stanford International Bank in Antiqua , and the Commissioner declined the invitation to examine the affiliate of Stanford Trust Company expressly authorized by La. R.S. 6:123. Class Member Ex. 117. This was approximately 20 months before the Class Members began purchasing their SIB CDs. Two things are important about this exhibit. It is an admission that OFI knew that the proliferation of the CDs was occurring in 2005, and OFI staff felt it was important enough to make a request to go to Antigua to find out what was going on because of the proliferation of fees and the dollar amount of retiree funds invested in the SIB CDs. Secondly, it was "reckless" not to go to Antigua and investigate the source of the CDs and determine whether they were truly unsafe and unsound as determined by Travis in the Travis SIB Unsafe and Unsound Directive, find out the basis for the valuations of SIB's assets, and to find out whether the fees were being disclosed to the investors, and what amount of money was actually going to Stanford Trust because of the undisclosed conflict of interest. Despite OFI's knowledge of the Travis SIB Unsafe and Unsound Directive and their knowledge of the receipt of fees as indicated on the multiple call reports all in

violation of the Travis No Fee Policy, OFI once again sat on their hands, did nothing and did not go to Antigua.

DISCOVERY OF THE PONZI SCHEME BY OFI WAS NOT A CONDITION TO THE PERFORMANCE OF THE DUTIES FOUND BY THE JURY IN INTERROGATORY NO. 1

Because OFI could not defend their "inaction" and reckless conduct relating to the Three OFI Policy Directives, OFI was forced to redefine the case outside the scope of the Pretrial Order creating what is called a Strawman Case-creating your own Strawman in an argument is generally defined as intentionally misrepresenting your opponent's argument in a way that makes it easier to knock down the Class Members Case. OFI's Strawman Case was quite simple. "OFI was not reckless by not discovering the Ponzi Scheme." Their entire case focused on their argument that OFI was not reckless in not discovering the Ponzi Scheme. This is the only issue that their highly paid expert testified to. There was just two major problems with this argument. **First**, as a matter of law, the performance of the duties set forth in the Three OFI Policy Directives are not conditioned upon OFI's discovery of the Ponzi Scheme. **Secondly**, the Strawman Case was not the case before the Court and was not the Class Members case set forth in the Pretrial Order or the 2021 MSJ. OFI willfully and intentionally misrepresented the Strawman Case to this to the jury every day for the three-week trial yet all the time knowing that it was not the case set forth in the Pretrial Order, the 2021 MSJ or the holding in the *Lillie* case. The willful and intentional presentation by OFI of the Strawman Case, including the testimony of its expert, Joe Borg was highly prejudicial to the real case of the Class Members set forth in the Pretrial Order-- the inaction of OFI between 2001 to 2007 in connection with the Three OFI Policy Directives. The failure to timely discover the Ponzi scheme, as argued by OFI, does not excuse OFI from the performance of their duties to protect the Class Members from 2001 to January 1, 2007 and enforce the Three OFI Policy Directives.

Pretrial Order and Prior Rulings of the First Circuit

The Class Members prepared the Pretrial Order, and it was executed on July 15, 2024. The Claims being made by the Class Members in the Pretrial Order (Par. 65 to 97) were exactly the same claims as those set forth in the 2021 MSJ. Look no further that the facts set forth in the 2021 MSJ and the Pretrial Order. OFI created a Strawman Argument which was not in the 2021 MSJ Order, the Pretrial Order so they could focus the case on an irrelevant issue and knocked the Strawman argument down before the jury. The question of whether OFI acted reasonably in discovering the Ponzi scheme was never the issue in the 2021 MSJ, the Pretrial Order or the ruling of the First Circuit in 2017 in *Lillie*.

La. C. C. P. art. 1551(b) provides:

> The court shall render an order which recites the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties as to any of the matters considered, and which limits the issues for trial to those not disposed of by admissions or agreements of counsel. **Such order controls the subsequent course of the action**, unless modified at the trial to prevent manifest injustice.

La. C. C. P. art. 1551(b). (Emphasis added.) The pre-trial order "controls the subsequent course of the action, unless modified at the trial to prevent manifest injustice." *Boudreaux v. State, Dept. of Transp. and Development*, 00-0050 (La. App. 1st Cir. 2/16/01), 780 So.2d 1163, 1166-1167.

In 2017, the First Circuit in *Lillie* clearly ruled that the focus of the case was OFI's Pre-2007 Conduct. Further, the Pretrial Order cites *Lillie* and states the following:

Par. One of the Pretrial Order. "The question presented for trial is whether OFI should have barred Stanford Trust from serving as a custodian of the IRA accounts to prevent the purchase of the SIB CDs on behalf of the Class Members, when it had knowledge of the payment of these illegal fees and lack of valuations of the Stanford International Bank CDs ("SIB CDs") for a five-year time period prior to January 1, 2007."

Par. Two of the Pretrial Order. "As stated by the First Circuit, this lawsuit is limited to:

> "[T]he questions of whether the OFI had a duty to disclose suspected risks and concerns regarding the soundness of the CDs and whether such disclosure would have impacted the identified investors' decision to have acquired or renewed SIB CDs between January 1, 2007, and February 13, 2009." *Lillie v. Stanford Tr. Co.*, 2013-1995 (La. App. 1 Cir. 11/1/17), 235 So. 3d 1139, 1152.

The First Circuit Court unequivocally stated the scope of the claims in this case as follows:

> *With respect to the OFI, plaintiffs asserted that the agency wrongly allowed the SIB CDs to be marketed and sold to Stanford Trust* ***without proper examination of the risk profile*** *of the CDs or* ***assurance that such information was being disclosed to investors****. Moreover, despite examinations that eventually caused the OFI to first restrict the sales of SIB CDs, and later order the removal of SIB CDs from Stanford Trust, plaintiffs alleged that the* ***OFI failed to disclose the perceived risks*** *that prompted its actions to investors who purchased or renewed SIB CDs from January 1, 2007 to February 13, 2009,* ***or to suspend the sale of the CDs in the state after discovering the risk associated with the CDs****.*

Lillie v. Stanford Tr. Co., 2013-1995 (La. App. 1 Cir. 11/1/17), 235 So. 3d 1139, 1152 .

Nowhere in the Pretrial Order do the Class Members contend that OFI should have discovered the Ponzi scheme. That is and never was the Class Members theory of the case. This was their own Strawman that they built and then knocked down over the period of the trial so OFI could compare its conduct to the conduct of the SEC in discovering the Ponzi Scheme. The Strawman theory of the case was the sole subject of the expert testimony even though it was irrelevant to the Pre-2007 conduct case. The Strawman Case had nothing to do with their Pre-2007

Conduct which was the focus of the 2021 MSJ and Par. 65 to 97 of the Pretrial Order and the holding in *Lillie* at the First Circuit.

Creation of the Strawman Case was Prejudicial

Creating your own Strawman in an argument is generally defined as intentionally misrepresenting your opponent's argument in a way that makes it easier to refute. That is precisely what OFI and the Louisiana Attorney General willfully and intentionally did in this case. By making the "discovery of the Ponzi" the claim they presented to the jury that they were defending, they could easily circumvent the Class Members arguments relating to Travis SIB Unsafe and Unsound Directive, Travis No Fee Policy, and the other 2001 to 2007 Claims by disproving or discrediting this misrepresented version of Plaintiff's case as relating to the discovery of the Ponzi Scheme. Instead of engaging in the actual argument relating to the 2001 to 2007 Conduct, OFI and the AG created a "Strawman" argument" that was easier to knock down. Their distorted version of the case was much easier to defend with experts like Borg. Their posing of the issue as to whether OFI should have discovered the Ponzi scheme created the illusion of having actually won the case without addressing the Travis SIB Unsafe and Unsound Directive and Travis No Fee Policy and other arguments in the Pretrial Order. The "discovery of the Ponzi scheme" argument was more straight forward than attempting to defend their conduct in not enforcing the Three OFI Policy Directives and appealed to those jurors who may not fully understand the complexities of the real argument relating to the Travis SIB Unsafe and Unsound Directive and Travis No Fee Policy. The use of the Strawman argument by OFI undermined the critical analysis by the jury of the Class Members case set forth in the Pretrial Order.

OFI's expert, Joseph Borg, only testified to these Strawman Case issues. He never rendered any opinion on whether Stanford was at fault or whether the inaction of Stanford between 2001 to 2004 constituted reckless conduct. It turned out the Jury voted in favor of the OFI Strawman version of the case=----no duty to know the Ponzi scheme as of 2008-- not why they did not bar the SIB CDs prior to 2007 based upon their knowledge of no valuation and the receipt of illegal fees.

This was OFI's theme in the opening statement, their expert's testimony for an entire day, and their closing statement. "OFI was not reckless by not discovering the Ponzi Scheme." It **highly** prejudiced the jury's review of the Pre-2007 conduct. The jury erroneously focused on whether OFI was reckless in not discovering the Ponzi scheme. The jury never determined the issue of whether

OFI was reckless in not barring the sale of the SIBs to Stanford Trust prior to 2007 because of the known violations in the Three OFI Policy Directives.

OFI presented the only defense they could to their Pre-2007 conduct--focusing on other issues to create confusion on the real issue. Their expert, Borg, did not have any knowledge about OFI's Pre-2007 Conduct of OFI Banking. Ducrest had no knowledge of any facts prior to 2008. OFI never introduced any facts to contest their Pre-2007 Conduct. They focused solely on whether they should have discovered the Ponzi scheme in 2008. It was highly prejudicial to the real issue in the case-the uncontested admission of recklessness before 2007 for inaction in connection with the known violation of Travis SIB Unsafe and Unsound Directive and Travis No Fee Policy as set forth in the preceding pages of this brief. It was highly prejudicial to the Class Members case.

Criminal Convictions, Plea Agreements, Official Stanford Investor Committee Complaints

As a part of the Strawman Case that had no relevancy to the case being tried by Class Members, OFI admitted into evidence two sets of documents. The first set of documents introduced into evidence in support of the Strawman Case was the multiple Receivership Complaints. These documents were hearsay and prejudicial to the Class Members Case.[11] The Second group of documents introduced into evidence were the Plea Agreements or Convictions of Allen Stanford, Laura Holt, James Davis and other parties that had nothing to do whether OFI was reckless in not enforcing the Three OFI Policy Directives.[12] The admission of these documents was irrelevant and highly prejudicial to the Class Members case and substantially contributed to the response by the jury to Interrogatory No. 2. (**Exhibit A**).

ORAL TESTIMONY BASED UPON OFI WITNESSES MEMORY OF EVENTS OCCURING 20 YEARS AGO WAS NOT CREDIBLE OR RELIABLE DUE TO THE LACK OF ANY DOCUMENTS TO SUPPORT THEIR TESTIMONY

Sid Seymour

The only supervisory witness tendered by OFI in this case that had knowledge of the Travis SIB Unsafe and Unsound Directive, was Sid Seymour. Seymour was the Chief Examiner for OFI. Seymour was confronted with the Travis SIB Unsafe and Unsound Directive late in his testimony after he had categorically stated they had no knowledge of the risk associated with the SIB CDs. After Seymour was confronted with this document late in his testimony after denying there were unsafe and unsound SIB CDs, he clearly wanted to crawl under the chair when he was shown the

[11] The Receivership Complaints are marked as **OFI Ex. Nos. 33-38**.

[12] OFI Exhibits Nos. 26, 27, 28, 29, 30 and 31.

Travis SIB Unsafe and Unsound Directive. (**Class Member Ex. 1169**). The credibility of Seymour's responses to the Travis SIB Unsafe and Unsound Directive must be examined in light of his physical appearance after being shown the document and the change in his mannerism and voice. He stammered and did not know what to say. He was red-faced and contrite. Seymour's mannerism demonstrated he had misrepresented facts in his testimony prior to seeing the Travis SIB Unsafe and Unsound Directive. This was one of the most important documents in the case and his mannerism stated he was at loss for what to do given his prior false testimony. He was not credible, and his mannerism showed it and everyone in the court room knew it.

It was obvious that OFI had violated the order relating to discussing his testimony with Seymour when he showed up the next morning smiling with a refreshed perky outlook. OFI called him to the stand to present a whole updated version of the Travis SIB Unsafe and Unsound Directive. The difference was night and day in his mannerism and responses. Given the fact this key witness would be blamed for the loss and stain on his career, Seymour took a second bite at the apple and got into the mode of parroting the arguments of his lawyers when he came back on the stand with a new recollection of events. **But despite his renewed vigor the next morning as compared to this contrite acknowledgment the afternoon before that he had been caught in a falsehood, he still did not produce one document that supported his oral explanation of the Travis SIB Unsafe and Unsound Directive.**

Based upon the authority granted to the Court under *Martin v. Heritage Manor S. Nursing Home*, 2000-1023 (La. 4/3/01), 784 So. 2d 627, this Court should conclude that Seymour's response the second time around had no credibility, and that his response the first afternoon and the terms of the written document should control the interpretation of the Travis SIB Unsafe and Unsound Directive. The Court saw his mannerisms up close when he was confronted with the document the first time and he wilted and turned red. His physical reaction to the document, including his demeanor and posture late in his testimony when he was impeached with the document cannot be duplicated in this memorandum. His testimony and demeanor in the court room showed he had been wrong on all of the facts he had testified to during his entire testimony. This issue alone should result in a New Trial. The credibility of his testimony can only be considered in light of his physical response to the document when it was first shown to him. It was one of the most dramatic and memorable parts of the trial. The fact that OFI had no written documents to back up their view of the world on the interpretation of Travis SIB Unsafe and Unsound Directive even though Counsel

for the Class Members asked Seymour in front of the jury to bring them in so the jury could see them. Crickets. The silence was deafening. Seymour stated at the beginning of the second day of his testimony that he "actually totally forgot" about the request to provide any documents disclosing illicit fees to Class Members. The fact that Seymour would "totally forget" to look for a document during the middle of a $343 Million Dollar lawsuit that puts his career under a microscope is indicative of Mr. Seymour's willingness to say anything for OFI's benefit and cover his tracks. No documents were brought in for one simple reason---they simply did not exist.

Only the Court can now determine whether Seymour's testimony was credible when viewed in light of his physical appearance, mannerisms, and the existence of no documents to support his oral rehabilitation of his prior day testimony on one of the most important documents in the case. The District Court's determinations of credibility are of course entitled to great deference. Only the trial judge can be aware of the variations in demeanor and tone of voice that bear so heavily on the listener's understanding of and belief in what is said for the purpose of granting a motion for new trial.

On re-direct, what was more astounding about Seymour's testimony was the lack of understanding by Seymour of the "duties" that he and OFI owed to the Class Members based upon the Louisiana statutory law. After Plaintiffs' counsel impeached Seymour with the Travis SIB Unsafe and Unsound Directive (**Ex. 1169**), he attempted to rehabilitate himself by stating that he had no duty under the law to investigate Stanford Trust for "unsafe and unsound" conditions referred to in the Travis SIB Unsafe and Unsound Directive. On re-direct, Plaintiffs' counsel asked him about particular statutes relating to Trust Companies to which he said that there were none. Plaintiff's counsel referred him to OFI Ex. 4, his own document that he testified about, to show that his understanding of his duty was not only incorrect but reckless and unreliable.

First, LSA-R.S. 6:123 states that "On every examination, inquiry shall be made as to the quality of the assets and the condition and resources of the financial institution." This obviously was not done by OFI when it failed to require the valuation of the SIB CDs. Further, no inquiry was made into the nature of the fees which were the primary income "resource" of Stanford Trust.

Secondly, the examinations may include an examination of the affairs of all of the "affiliates of the financial institution [Stanford Trust] as shall be necessary to fully disclose the relations between the financial institution and its affiliates." LSA-R.S.6:123. This would include SIB and Stanford Group Companies, the entity employing the brokers and hiding the fees. LSA-R.S. 6:121.1.

So much for expert Joe Borg's false assertion that OFI had no legal right to review the activities of the brokers in the state that was employed by the affiliates Stanford Group Company or to travel to Antigua to visit the Stanford International Bank, which Ducrest refused to do. (Class Member Ex. 117). Borg's testimony on this issue was intentionally wrong or at best ill informed. OFI had a statutory right to peak behind the curtain. Further, the law states the commissioner may "conduct such investigations as he deems necessary to ascertain possible violation" LSA-R.S. 6:121.1. Finally, the statute granting OFI the authority to regulate Stanford Trust provides that "[t]he commissioner shall have the power to issue cease and desist orders to prevent or terminate an unsafe or unsound practice or condition" LSA-R.S. 6:122. Seymour initially denied in his testimony that he had a right and a duty to issue a cease-and-desist order to a trust company until counsel for the Plaintiffs once again showed him the provision in the law.

It is incredulous and reckless that the Chief Examiner for OFI for the State of Louisiana would not know his right to investigate affiliates as well as determine the resources of entities like Stanford Trust and the right to issue cease and desist order to trusts regulated by OFI. The testimony of Seymour was either intentionally false or skewed in a manner to avoid ridicule for the $350 million loss relating to the Stanford Trust catastrophe. If he were truly ignorant of the law, this would prove beyond a doubt that he was reckless. In either event, his understanding of the scope of his duties as defined by law was unreliable and not credible and, at a minimum, reckless. His testimony was more likely a case of reputation survival where he was forced to state anything to protect his reputation regardless of the truth or regardless of the impact it had on the Class Members's case.

Joseph Borg (Expert)

Borg was the primary person to present the Strawman Case, even though it was irrelevant to the case and certainly was not a condition to OFI's exercise of the duty that the Jury found in response to Interrogatory No. 1. It was a smoke screen. Borg testified he had no opinion about any events prior to 2008, including the Travis SIB Unsafe and Unsound Directive, Travis No Fee Policy, and the Travis IRA Valuation Policy and what each document meant- the central issues in the Class Members Claim. (See Par. 65-97 of the Pretrial Order.) He gave an opinion on everything in the Western Hemisphere *other than* the Class Members version of the case between 2001 and 2007 as it related to the Three OFI Policy Directives. He gave no opinion on the most obvious issue--

inaction by OFI in the face of known risk and inaction with knowledge of the known violation of the Three OFI Policy Directives.

The second fatal issue with Borg's opinion related to his unconditional statement that OFI Securities did not have access to the records of OFI Banking in order to investigate the lack of disclosure of fees and the proliferation of the SIB CDs at Stanford Trust. This turned out to be materially false. Mr. Len Reviere, the representative of OFI Securities, parroted Mr. Borg's testimony that there was a Chinese Wall between OFI Banking and OFI Securities, and it would be a violation of law for OFI Securities to look at the documents of OFI Banking. Plaintiffs' counsel then asked Riviere how his testimony could be true when OFI designated Mr. Riviere and his boss, Ms. Rhonda Reeves (OFI Securities), as the document custodians in OFI's Discovery Responses dated June 24, 2010. (**Exhibit E**, Response to **Interrogatory No. 16**) at Response to Interrogatory No. 20). Mr. Riviere was stunned. He said he had no recollection of collecting documents on OFI Banking's behalf, despite a verification by OFI General Counsel which was notarized by the current commissioner of OFI. If it were a violation of law for Mr. Riviere to have access to OFI Banking documents, why would OFI in house counsel identify and designate him and his boss as the document custodians for OFI Banking with the current commissioner of OFI notarizing the verification? Is it because Mr. Borg and Mr. Riviere's testimony is not credible, and they were using this argument as a red herring? Was it because OFI Banking did not produce all of the required documents in this litigation and failed to inform Plaintiffs they were withholding documents based upon the newly created "Borg Privilege." If, as suspected, Mr. Borg and Mr. Riviere's testimony is found to be self-serving and not credible on the Chinese Wall issue, they both made willful and intentional misrepresentations to the Jury with full knowledge of OFI Counsel. Either their failure to fully produce documents as required by the discovery requests or Borg's and Riviere's misrepresentation of the existence of a Chinese Wall between OFI Securities and OFI Banking creates the same result-- A basis for the granting of a new trial. Which one is it?

OFI counsel willfully and intentionally allowed this misrepresentation to be made to the jury by Borg and Riviere on this critical element of the case despite the fact that Reviere was responsible for producing the OFI Banking documents as shown in the discovery responses in violation of federal law. That dog don't hunt. This willful and intentional mispresenting of the facts by both OFI and their expert was highly prejudicial to the case of the Class Members.

Karyl Van Tassel

Like Borg, Ms. Van Tassel testified about the history of the existence of the Stanford Ponzi scheme. Prior to the running of her video deposition, the Court ruled that her affidavits and expert reports were not admissible.[13] Like Borg, Van Tassel testimony did not testify about the Three OFI Policy Directives and what each document meant-- the central issues in the Class Members' Claims. The prejudicial issue with Ms. Van Tassel's video testimony came up in connection with the prior ruling of the Court that her expert reports and affidavits were not admissible evidence. Nonetheless, counsel for OFI published the Reports and Affidavits of Ms. Van Tassel on the video screen despite the order of the Court. The publication of the Affidavits and Expert Reports, while ignoring the order of the Court, highly prejudiced the jury. Three quarters of the pictures on the video screen shown to the jury were the Affidavits and Expert Reports that the Court had just ruled was not admissible. Only a small picture of Ms. Van Tassel appeared. The publication of the Affidavits and Expert Reports, while ignoring the order of the Court, highly prejudiced the jury. This one thing should be the basis for the granting of a new trial with sanction against OFI for the cost of the new trial.

EXTRANEOUS EVENTS AFFECTING THE JURY

In a rather unusual turn of events, COVID broke out on the jury on Monday August 5, 2024 right after the Class Members had completed the presentation of their case. This resulted in a two day delay of the trial between Plaintiffs' case and the presentation of OFI's case. After COVID was reported by one juror on Monday, August 5, 2024, the Court asked the members of the jury to come to the courthouse to be tested on August 6, 2024. This was a difficult decision by the Court given the desire to protect the jury on health issues versus the right of privacy of each juror not to be tested. No jurisprudence existed on this issue or the required testing issue. After losing two jurors from the backrow to COVID, another juror, who rendered the final verdict had to be escorted out from the Courthouse by a deputy because he became unruly when it was suggested he subject himself to a COVID test. On August 7, 2024, a third juror from the backrow was excused for COVID like symptoms. Having lost two days to COVID with no end in sight, and an additional ½ day because of an out of town doctor's appointment of one of the jurors on July 26, 2024, there

[13] *Templet v. State through Dep't of Pub. Safety & Corr.*, 2019-0037 (La. App. 1 Cir. 11/15/19), 290 So. 3d 187, 191. ("A sworn affidavit is hearsay and is not competent evidence"); *Guzzardo v. Town of Greensburg,* 563 So.2d 424, 426 (La.App. 1st Cir.1990) ("A report prepared by an expert is not admissible because it is hearsay").

were substantial breaks in the flow of trial due to the jury's health. These delays were unavoidable, but it did impact the jury confinement issue and the flow of trial for several days.

Additionally, the case experienced substantial delays because of the required commitments of the Court. First, Judge Johnson was required to hear the case involving the two candidates qualifying for the Louisiana Supreme Court race on July 30 2024, which only permitted 2 hours and 37 minutes of testimony in the *Lillie* case. Second, Judge Johnson was required to testify in another matter on July 23, 2024. These delays were unavoidable, but it did impact the jury confinement issue and the flow of trial.

Many of the older people serving on the jury were obviously concerned about their health as a result of their exposure to COVID by the confinement in small jury room with no windows for extended periods of time during the last week. The issues of jury confinement in this small jury room was further complicated by the extended delay resulting from the cyber-attack on the Courthouse on August 8, 2024 and August 9, 2024, which substantially curbed counsel, Chambers, and staff's ability to efficiently email and print various drafts of proposed jury instructions and jury verdict form. To say that the jurors were likely concerned about the spread of COVID caused by their sitting in a small jury room, with three members from the backrow disqualified because of COVID, with no windows for hours at a time occasioned by all of these delays outside the control of the Court would be an understatement. After all of the various delays had occurred, the jury knew the case had been bifurcated and the damages portion of the case was still to be heard if the jury found OFI had acted recklessly. The realization by the jury that there would likely be additional multiple weeks of confinement in the small jury room to hear the case on damages likely resulted in the jurors believing they were the victims and not the Class Members.

COVID exposure, a final juror being forcibly removed from courthouse, a cyber-attack, culminated in a three-week trial and a great deal of confinement. It is questionable whether the jury was in fact reasonable after three weeks of substantial and, in their view, an inexplicable confinement. The jury had little compassion by 4:00 P.M. Friday August 9, 2024 because they felt they were the ones owed compassion. An incredibly unique set of uncontrollable circumstances resulted in an unfair trial.

THE JURY VERDICT WAS FUNDAMENTALLY UNFAIR TO THE CLASS MEMBERS

The cumulative evidence of OFI not being able to produce written policies to contradict the written directives of Travis SIB Unsafe and Unsound Directive, Travis No Fee Policy, and Travis

IRA Valuation Policy is grounds for a new trial. If it had occurred on one occasion, it may have been acceptable. However, every time OFI was shown a document that established a policy that was not implemented, OFI would provide a counter oral explanation during a second round of testimony and no written document was ever presented to the jury to explain the issue. The evidentiary weight of the multiple written documents introduced into evidence by the Class Members concerning the 2001 to 2007 timeframe as opposed to the self-serving testimony of culpable officials of OFI should result in the granting of a new trial. The law is universal that "oral testimony which is in conflict with contemporaneous documents is entitled to little evidentiary weight."[14] In this case, the rule certainly applies given the unreliability and self-serving nature of the oral testimony of key OFI employees based upon the memory of events and facts that occurred 20 years by the very people who were responsible for regulating the Stanford Trust from 2001-2007 who were responsible for not preventing the Stanford Trust IRA retiree catastrophe.

1. NO WRITTEN EVIDENCE.

"Oral testimony which is in conflict with contemporaneous documents is entitled to little evidentiary weight". *United States v. U.S. Gypsum Co.*, 333 U.S. 364, 395, 68 S. Ct. 525, 542, 92 L. Ed. 746 (1948); *Shapiro v. Sec'y of Health & Hum. Servs.*, 101 Fed. Cl. 532, 538 (2011); *Switzer v. Sec'y of Health & Hum. Servs.*, No. 18-1418V, 2022 WL 4482721, at *13 (Fed. Cl. Aug. 29, 2022). This is especially true when the oral testimony relates to a witness's recollection of events that occurred twenty years ago. The weight of the written evidence presented at trial overwhelmingly supported a verdict in favor of the Class Members.

A. **Travis SIB Unsafe and Unsound Directive**. The Travis SIB Unsafe and Unsound Directive stated the SIB CDs were "unsafe and unsound." (Class Member Ex. 1169). No written evidence was introduced by OFI to contradict its terms.

B. **Travis No Fee Policy**. The Travis No Fee Policy stated that No SIB Fees could be paid. This was the same statement in the Examination Reports. (Class Member Ex. 1067). No written evidence was introduced to contradict the literal terms of the Travis No Fee Policy and Examination Reports. Twenty-eight call reports filed by Stanford Trust with OFI between 2001 and 2007 showed the actual receipt of fees in violation of the Travis No Fee Policy. It was uncontested that the call reports introduced into evidence between the date of the Travis No Fee Policy showed the illicit Stanford Fees, that Stanford Trust continued to receive undisclosed fees from Stanford that were reported to OFI on the quarterly call reports, and OFI did not do one thing about it. The inaction in the face of a continuing violation of a known directive is reckless. No witness ever explained or contradicted that OFI had knowledge of the illicit fees based upon page 6 of each quarterly call report or explained why OFI did not immediately contact Stanford Trust, issue a cease and desist order to stop the fees, make sure the fees were being disclosed to the Class Members, and then bar Stanford Trust for serving as a custodian of IRA accounts that purchased the SIB CDs.

C. **Travis IRA Valuation Policy**. The Travis IRA Valuation Policy stated that valuation reports were required on all IRA Assets. (Class Member Ex. 123) This was stated in writing in the examination reports and the IRS Form 5498. No written evidence was introduced by OFI that the SIB CDs were excluded from the valuation requirement.

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[14] *United States v. U.S. Gypsum Co.*, 333 U.S. 364, 395, 68 S. Ct. 525, 542, 92 L. Ed. 746 (1948).

D. **Whitney Document**. The Whitney Document was dated January 7, 2004. (Class Member Ex. 1036) It was the only independent contemporaneous third-party document introduced into evidence that showed the risk that a third party believed existed in January 7, 2004 at Stanford Trust. No written evidence was introduced by OFI to contradict this finding of high risk by Whitney Bank in 2004.

E. **2005 Antigua Trip**. The timing of the inquiry into the risk of the SIB CDs in relation to the request for the approval of the 2005 Antigua Trip to review SIBs operation established a firm date of when OFI became concerned about the risk associated with the SIB CDs and OFI's knowledge of the risk and their inaction in making the trip to Antigua to investigate. (Class Member Ex. 117). Otherwise, representatives of OFI would not have asked to make this trip. No written evidence was introduced by OFI to contradict the rational for asking to go to Antigua or why they were not reckless in not going to Antigua to investigate the proliferation of the SIB CDS.

2. <u>ORAL TESTIMONY</u>

It is within the discretion of the district court to review the oral testimony of witnesses who testified at trial when considering a motion for new trial and determine whether the court thought the oral testimony was credible. *Martin v. Heritage Manor S. Nursing Home*, 2000-1023 (La. 4/3/01), 784 So. 2d 627, 632–33.

A. **Contradiction of the terms of the Travis SIB Unsafe and Unsound Directive-** Borg did not contradict the terms because he did not testify to any event prior to 2007 relating to the Travis SIB Unsafe and Unsound Directive which was April 2, 2004. The terms of the SIB Unsafe and Unsound Directive were off limits for Ducrest because both his affidavit, his deposition testimony, and testimony at trial stated that he had no knowledge of Stanford Trust before 2008. The only testimony was by Seymour. It was not credible because he changed his testimony between the original confrontation and his renewed vigor the next morning, where he was still testifying incorrectly about the Louisiana statutes governing trust examinations and the power to issue a cease and desist order. (See p. 27).

B. **Contradiction of the Travis No Fee Policy**. The terms of the Travis No Fee Policy from 2001 to 2002 were never contradicted. There was testimony that OFI did not know about the fees. However, this was not credible testimony given the fact that the 28 call reports showed the fees. Further, the examinations reports show that the illicit fees were the primary source of the funding of the overhead of the Stanford Funnel and the use of the funds for this purpose was never contradicted by any written or oral testimony.

C. **Valuation of SIB CDs**. Ducrest and Seymour attempted to testify that the valuation of the SIB CDs was not required because the FMV was the face amount of the CD. This testimony was not credible in light of the literal language in all of the exam reports that required valuation of all IRA accounts, the IRS Form 5498, and Class Member Ex. 123 when the unvalued assets constituted more than 50% of the trust assets in 2006.

D. **Whitney Letter.** Class Member Ex. 1036. No oral testimony occurred by any witness or expert to contradict the validity of the accuracy of the independent third party finding of Whitney Bank as of January 7, 2004 that Stanford Trust was a risky operation and as a result of this known risk, Whitney terminated their deposit relationship with Stanford Trust.

E. **Antigua Trip**. No oral testimony occurred by any witness or expert as to why it was not reckless for OFI not to go to Antigua to investigate SIB given the proliferation of SIB CDs beginning in 2005. (Class Member Ex. 117). There was no oral testimony why the request itself in 2005 was not evidence of OFI knowledge in 2005 that the SIB CDs were “unsafe” and “unsound” investments, and they needed to be investigated. It certainly was not a vacation request.

3. JURY CONSIDERATION OF IMPROPER LEGAL STANDARD

A. The jury properly determined that a legal duty existed to the Class Members to enforce the Travis SIB Unsafe and Unsound Directive, the Travis No Fee Policy, and the Travis IRA Valuation Policy. (**Exhibit A**, Interrogatory No. 1).

B. As a matter of law, the performance of the duties set forth in the Three OFI Policy Directives are not "discretionary" and are not conditioned upon OFI's discovery of the Ponzi Scheme.

C. The proper legal standard for consideration of recklessness should have been "inaction" by OFI in connection with a known risk based upon the Written Reasons Par. 36 to 37_ as reviewed by both the First Circuit and the Louisiana Supreme Court. (Exhibit B; See FN 8).

D. "Inaction" in the face of a known risk is recklessness when a person has a duty to act. "Inaction" in the face of a violation of a known policy is recklessness when a person has a duty to act.

4. PREJUDICIAL EVIDENTIARY ADMISSIONS

A. **Inadmissible Reports of Experts.** After this issue was brought before the Court on multiple occasions, the Court ruled that the Affidavits and Expert Reports of Ms. Karyl Van Tassel were not admissible. In a willful violation of the order of the Court, the expert reports and affidavits of Ms. Van Tassel were published on a 70-inch TV screen to the jury when the Van Tassel Video was played. The size of these inadmissible documents represented in most instances 75% of the screen with a small box appearing of her talking. This was highly prejudicial to Class Members' case and was a willful and intentional violation of the order of the Court.

B. **Presentation of Claims from the Receivership Proceedings.** Class Members were allowed to introduce multiple lawsuits from the Receivership proceedings of which the Class Members were not a party.[15] It was hearsay and irrevocably confirmed the Strawman Case which was not the subject of this proceeding and highly prejudiced the jury to focus on issues that were not the subject of the 2021 MSJ and the Pretrial Order and Travis SIB Unsafe and Unsound Directive, the Travis No Fee Policy, and the Travis IRA Valuation Policy.

C. **Admission of Criminal Convictions and Plea Agreements.** The admissions of these documents were not relevant to a determination of whether OFI was reckless in the inaction of OFI in the enforcement of the Travis SIB Unsafe and Unsound Directive, the Travis No Fee Policy, and the Travis IRA Valuation Policy and were extremely prejudicial to the presentation of the Class Members Case. (See page 27 for a listing of Exhibits).

D. **Presentation of the Strawman Case**. Class Members' case was set forth in the 2021 MSJ and the Pretrial Order. OFI's Strawman Case focused on the date OFI should have reasonably discovered the Ponzi Scheme. (See page 24). This was the focus of expert Borg's testimony. The whole fact of the matter was that the Class Members' case as set forth in the 2021 MSJ and the Pretrial Order related to the Three OFI Policy Directives. This presentation by the Strawman Case by OFI and their expert was probably the most prejudicial thing that occurred in the presentation of the case to the jury.

E. **Testimony of Borg Regarding the Chinese Wall**. The critical issue in the case was whether OFI securities was reckless in not going down the hall to gather facts on the undisclosed fees paid to Stanford Trust and reviewing the risk associated with the proliferation of the SIB CDs occurring between January 1, 2005, and January 1, 2007. Borg testified the discussions between OFI Securities and OFI Banking could not occur as a matter of law. This was in error and prejudicial because no Chinese Wall exited between OFI Securities and OFI Banking to prevent OFI Banking from investigating Stanford by "going down the hall" because

1. Ducrest was both the Commissioner of Securities and the Commissioner of Banking.

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[15] *See* OFI Exhibits 32, 33, 34, 36, 37, and 38.

2. Reviere was the person designated as the corporate representative of OFI Banking to gather documents, yet per his testimony, which would have been in violation of federal law.

These errors in testimony created an unlevel playing field for the jury to determine when OFI Securities should have reasonably acted to prevent the SIB CD sales to the Class Members at Stanford Trust. The combination of these factors cast serious doubt on the fairness of OFI's presentation of the case.

5. BIASED AND PREJUDICIAL TESTIMONY THAT SHOULD BE GIVEN LITTLE OR NO WEIGHT

In the Motion for New Trial, the Court can consider the biased and prejudicial testimony and the effect it had on the jury in not rendering a fair verdict. It can also consider the credibility of the testimony offered and grant a new trial based upon oral testimony that it determines, in the Court's sole discretion, is not credible.

A. **Seymour Explanation of Travis SIB Unsafe and Unsound Directive**. When confronted the first time with the Travis SIB Unsafe and Unsound Directive document, he was at loss as to why it stated the SIB CDs were "unsafe" and unsound. His subsequent explanation the next morning was not credible. In fact, he stated that the law did not require OFI to examine the Trust Company to look for unsafe and unsound practices, a position he was required to retract when Plaintiff's counsel showed him the law that required otherwise. This testimony was not reliable or credible and bordered on being deceitful after he was confronted with the Travis SIB Unsafe and Unsound Directive.

B. **Ducrest Explanation of Travis SIB Unsafe and Unsound Directive.** Ducrest never discussed or disclosed the Travis SIB Unsafe and Unsound Directive in his testimony when called by the Plaintiffs in the first days of the case, and certainly never stated the SIBs in 2004 had been determined to be unsafe and unsound. After Seymour faltered on the issue scope of the Travis SIB Unsafe and Unsound Directive, OFI was forced to re-call Ducrest in the latter portion of the case to explain Seymour's horrible testimony on the 2004 Travis SIB Unsafe and Unsound Directive. The Ducrest explanation is not credible given the fact that he testified both in the Plaintiffs' case and his affidavit that he had **no** knowledge of any events at Stanford Trust prior to 2008 much less the scope of the Travis SIB Unsafe and Unsound Directive date April 2, 2004.

C. **Borg Testimony.** Borg never testified as to the inaction of OFI in connection with the Travis SIB Unsafe and Unsound Directive, the Travis No Fee Policy, and the Travis IRA Valuation Policy. Borg's testimony only related to the Strawman Case that was not in the 2021 MSJ or the Pretrial order and was extremely prejudicial and confusing to the Jury. (see page 30). Borg's testimony was irrelevant to the claims made by Class Members in the 2021 MSJ and the Pretrial Order. It was designed to confuse, obviate, and prejudice the jury on the central issues in the case relating to the Travis SIB Unsafe and Unsound Directive, the Travis No Fee Policy, and the Travis IRA Valuation Policy. Secondly, Borg's testimony had fatal flaws in it because it failed to consider that Mr. Reviere, the representative of OFI Securities was also the person responsible for producing the documents for OFI Banking in the discovery responses and that no Chinese Wall could possibly have existed to prevent OFI Securities from having access to the OFI Banking documents relating to the Three OFI Policy Directives. Either Reviere imposed a Chinese Wall in the production of documents to OFI and did produce all relevant documents in the discovery process to the Class Members or the Chinese Wall did not exist as testified by Borg, and Borg was in error and Reviere was in fact allowed access to the OFI Banking Documents. In both cases, OFI counsel willfully and intentionally allowed this misrepresentation to be made to the jury on this critical element of the case. Both events were highly prejudicial to the case of the Class Members.

6. COVID ON THE JURY

On top of everything else, the outbreak of COVID occurred at the beginning of the third week of the trial. This created its own set of issues after the Class Members had waited 15 years to try this case. It was like the "plague" had set in to prevent a fair trial in this case. (See__ at page 32).

CONCLUSION

In the case at hand, the jury was presented with written documents that outlined OFI policies from 2001 to 2007. In contrast, OFI attempted to counter these documents solely with oral testimony from Ducrest and Seymour, relying on their self-serving and unreliable recollections of events from two decades ago. The totality of the evidence overwhelmingly favored the Class Members by clearly demonstrating OFI's liability for reckless conduct due to its inaction after being acutely aware the Three OFI Policy Directives were violated between 2001 and 2007. For this reason, the Court should grant a new trial in accordance with LSA C.C.P. Art. 1972 and 1973.

Five things are abundantly clear. **Firstly**, the jury determined that OFI had a duty to the Class Members to enforce the Three OFI Policy Directives. **Secondly**, the duty set forth by the Jury was not conditioned on OFI's discovery of the Ponzi Scheme. **Thirdly**, the law of the case doctrine of *Grosjean* mandates that "inaction" in the enforcement of the Three OFI Policy Directives is not discretionary, and "inaction" is a breach of the duty owed to the Class Members to enforce the Three OFI Policy Directives. **Fourthly**, no principal of law excuses OFI from the performance of a known duty based upon the Three OFI Policy Directives by ignoring the directives. The failure to timely discover the Ponzi scheme, as argued by OFI, is not an excuse for the non-performance of the duties to protect the Class Members from 2001 to January 1, 2007 that that arose under the Three OFI Policy Directives. **Fifthly**, OFI never made any attempt to enforce the Three OFI Policy Directives or to bar the sale of the SIB CDs to Stanford Trust based upon Stanford Trust's known violation of the Three OFI Policy and Directives.

In closing, OFI stated "it did nothing wrong." The first three words in that statement are 100% true. "OFI did nothing". It was OFI's inaction (doing nothing) that caused Class Members to become Allen Stanford's victims. It was not a discretionary decision to "do nothing". OFI knew senior aged IRA Retirees were being preyed upon day in and day out. And did nothing. OFI should have had an elevated level of vigilance on the activities of OFI because of its knowledge that Stanford Trust Company's business model focused 100% on retirement accounts. The Three OFI Policy Directives prepared by former Commissioner John Travis were designed to prevent seniors from being preyed upon. But instead OFI's "inaction" during the time John Ducrest was commissioner, functioned as an enabler to Allen Stanford and made the Baton Rouge-based

Stanford Trust Company the epicenter of Stanford's fraud against thousands of senior retirees in the United States.

For all of the individual and cumulative reasons set forth herein, the Class Members hereby request the Court to grant the Class Members' Motion for New Trial for the reasons stated herein.

Respectfully submitted by:

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing pleading was this day forwarded to all counsel of record by e-mailing a copy of same properly addressed.

Baton Rouge, Louisiana, this 26th day of August, 2024.

/s/ Phillip W. Preis
Phillip W. Preis