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

19th JUDICIAL DISTRICT COURT

VERSUS

PARISH OF EAST BATON ROUGE

STANFORD TRUST COMPANY, ET AL. **STATE OF LOUISIANA**

****

WRITTEN REASONS FOR GRANTING NEW TRIAL PURSUANT TO LSA-C.C.P. ART. 1972 AND 1973

This case was tried to a jury commencing on July 22, 2024. The jury rendered a verdict on August 9, 2024. The judgment evidencing the verdict was filed on August 20, 2024, in accordance with La. Code Civ. Proc. art. 1812 (D) and signed by the Court on August 23, 2024. The Jury determined that the State of Louisiana, Office of Financial Institutions ("OFI") had a legal duty to the Class Members to enforce the policies, procedures, and directives of OFI established by former OFI Commissioner, John Travis. However, the jury determined that OFI was not reckless in enforcing the Travis Policy Directives. This was a complex case involving the operation of the Louisiana-based and regulated Stanford Trust between 2001 and 2007. The theory of the case is very straight forward. If John Ducrest, the Commissioner of OFI from June 2004 to Stanford Trust's closing in 2009, and Sid Seymour, the Chief Examiner, had enforced the Travis Policy Directives prior to January 1, 2007, none of the class members would have purchased the SIB CDs and suffered a financial loss. During the three-week trial, no written evidence or expert testimony was introduced by OFI concerning the existence and scope of the written Travis Policy Directives.

Class Members filed a Motion for New Trial on the Verdict in accordance with LSA-C.C.P. ART. 1972 and1973 on August 26, 2024 and a supporting memorandum, which set forth in detail why this Court should grant a New Trial based upon La. C.C.P. art. 1972 and 1973. Class Members

have requested this Court to review the evidence and law in this case in accordance with *Martin v. Heritage Manor S. Nursing Home*, 2000-1023 (La. 4/3/01), 784 So. 2d 627, 631 and to grant a New Trial.

A contradictory hearing was held on the Motion for New Trial on October 22, 2024. Present were Phillip W. Preis and Caroline P. Graham, counsel for Plaintiffs TROY LILLIE, *ET AL.* (“Plaintiffs” or "Class Members"); and Shelton Dennis Blunt, and Nena M. Eddy, counsel for Defendant Louisiana office of financial institution (“OFI”).

After hearing oral arguments, and consideration of the motions and memorandums in support of the motions prepared by counsel and review of the testimony presented at trial, and review of the documents introduced at trial,

IT IS ORDERED, ADJUDGED AND DECREED that a New Trial is hereby granted in this matter on Jury Interrogatory No. 2 in accordance with LSA-C.C.P. art. 1972(a) and 1973 for the following reasons:

STANDARD OF REVIEW

1. In considering the motion for new trial, the court has the discretion to evaluate witness *reliability and credibility* to determine whether the jury erred in giving too much credence to an unreliable witness. *Davis v. Wal–Mart Stores, Inc.*, 00–0445 (La. 11/28/00), 774 So.2d 84, 93.

> [T]he trial judge may evaluate evidence without favoring any party and draw his own inferences and conclusions. Perhaps the significant authority is the ability to assess the credibility of witnesses when determining whether to grant or deny the motion for a new trial. *Wyatt v. Red Stick Services, Inc., et al.,* 97–1345 (La.App. 3 Cir. 4/1/98), 711 So.2d 745 citing *Morehead v. Ford Motor. Co.,* 29,299 (La.App. 2 Cir. 5/21/97), 694 So.2d 650, *writ denied,* 97–1865 (La.11/7/97), 703 So.2d 1265. The trial court's discretion in ruling on a motion for new trial is great, and its decision will not be disturbed on appeal absent an abuse of that discretion. *Id.* Furthermore, this court has held that “when the trial judge is convinced by his examination of the facts that the judgment would result in a miscarriage of justice, a new trial should be ordered.” *Lamb v. Lamb,* 430 So.2d 51 (La.1983).

Davis v. Wal-Mart Stores, Inc., 2000-0445 (La. 11/28/00), 774 So. 2d 84, 93.

2. 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.

3. A new trial is different from a Judgment Notwithstanding the Verdict.

> Although the language is similar between the standards for a JNOV and new trial, there is a real difference between a finding that no evidence existed for a rational jury to reach a particular result and a finding that a jury could not have reached its conclusion on any fair interpretation of the evidence." *Gibson, supra* at 1336. Notably, in 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.

Martin v. Heritage Manor S. Nursing Home, 2000-1023 (La. 4/3/01), 784 So. 2d 627, 631.

4. 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 the recollection of events that occurred twenty years ago. This same rule of the United States Supreme Court in "*Gypsum*" was followed by the Louisiana Supreme Court in *Rosell v. ESCO*, 549 So. 2d 840, 844–45 (La. 1989) which allows a new trial when " "documents or objective evidence so contradict the witness's story". See also *Jones v. Mkt. Basket Stores, Inc.*, 2022-00841 (La. 3/17/23), 359 So. 3d 452, 463; *Hebert v. Superior Rental Properties, LLC*, 2023-1015 (La. App. 1 Cir. 9/25/24). The *Rosell* rule has been adopted by every circuit court in the state in multiple decisions.

5. A court may consider the cumulative effect of the errors and how the errors as a whole tainted the proceedings and made it impossible for the Class Members to obtain a fair trial. A moving party, like the Class Members, may establish that individual miscues, while insufficient by itself to warrant a New Trial, have an aggregate effect that impugns the fairness of the proceedings and thus undermines the trustworthiness of the verdict. The Class Members are entitled to a New Trial.

6. John Travis implemented the Travis Policy Directives to regulate the sale of SIB CDs to the Stanford Trust prior to his termination in 2004. These Directives were known as the Travis SIB Unsafe and Unsound Directive, the Travis No Fee Policy, and the Travis Valuation Policy. (collectively the "Travis Policy Directives").

7. John Ducrest succeeded John Travis as the Commissioner of OFI from 2004 until Stanford Trust closed on February 17, 2009. The uncontested testimony of John Ducrest was that he had no knowledge of the Travis Policy Directives prior to 2008 and made no attempt to enforce the Travis Policy Directives to regulate the operation of Stanford Trust even though John Travis as Commissioner of OFI implemented this Stanford Trust regulatory plan between 2001 and 2004

prior to his termination. Ducrest admitted that the Travis Policy Directives were never amended between 2004 and 2007.

8. Exhibits were introduced into evidence at the trial by the Class Members clearly established the Travis Policy Directives

Travis SIB Unsafe and Unsound Directive (Ex. 1169);

the Travis No Fee Policy (Ex.1067); and

the Travis Valuation Policy (Ex. 132).

Not one written document was introduced into evidence by OFI which amended, limited the scope, or refuted the Travis Policy Directives between 2004 and 2008. After Travis was terminated as commissioner in 2004, the scope of all of the directives and the risk of the Stanford Trust operation were ignored by John Ducrest and Sidney Seymour.

9. His successor, John Ducrest admitted that he had no knowledge of the Travis Policy Directives and how they were enforced from the time he became commissioner in 2004 until 2008.

10. OFI presented no expert testimony on the scope of the Travis Policy Directives or how they were complied with between 2004 and 2008.

11. The only oral testimony introduced into evidence to contradict the Travis Policy Directives was the testimony of Sid Seymour who was the chief examiner. Mr. Seymour admitted that he knew about the undisclosed fees being the primary source of income for Stanford Trust. Seymour further testified that he knew of no documents to show that the SIB CDs held by the IRA accounts were exempt from valuation. Mr. Seymour initially testified that OFI had no authority to issue a cease-and-desist order against Stanford Trust to prevent Stanford Trust from violating the Travis Policy Directives. After the impeachment questions were asked by Plaintiff's counsel after showing the witness OFI Exhibit 4, the testimony of Seymour changed and he was forced to admit that he had been wrong on this scope of the authority of OFI to regulate Stanford Trust.

12. John Travis apparently appreciated the risks associated with Allen Stanford and the retirees' investment in the SIB CDs by using the Louisiana based Stanford Trust as the custodian of the IRA Accounts and John Ducrest did not.

13. Mr. Seymour was the only supervisory witness with personal knowledge to testify to the scope of the Travis Policy Directives. Despite repeated requests, Mr. Seymour never provided one document to support his oral testimony or his view to limit the scope of the Travis Policy Directives or why the Travis Policy Directives were not enforced by OFI. Further, his testimony showed he had no understanding of OFI's ability to issue a cease-and-desist order against Stanford Trust to enforce the Travis Policy Directives or OFI's ability to investigate the source of the fees at affiliate operations.

14. OFI called Joseph Borg as their expert witness. What was unusual and self-serving is that OFI asked Mr. Borg not to opine as to whether OFI reasonably enforced the Travis Policy Directives between 2004 and 2008 associated with Stanford Trust. It was one of the most important issues in the case and Mr. Borg stated he was not retained to give an opinion on that issue.

15. OFI's primary defense during the trial was that it was not required to enforce the Travis Policy Directives until they discovered the Ponzi Scheme in June 2008. This argument was made over and over by OFI in opening arguments and closing arguments.

16. Mr. Ducrest, the Commissioner of Financial Institutions from 2004 to 2009, testified he had no knowledge of the operation of Stanford Trust between 2004 and 2008 or the Travis Policy Directives issued by former Commissioner John Travis regulating the enforcement of the Travis Policies.

17. The Travis Policy Directives state the following:

Travis SIB Unsafe and Unsound Directive Dated April 2, 2004. (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.*

Travis No Fee Policy Dated February 26, 2002. (Class Member Ex. 1067).

If Stanford Trust receives a fee for placing accountholders funds 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 to Motion for New Trial-Excerpts from the Examination Reports on prohibitions on the payment of Fees.).

Travis IRA Valuation Policy dated June 30, 2006. (Class Member Ex. 132).

Deficiencies noted in the accounts related to the updating of current market value of assets held in the accounts. Regulation 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.).

18. Mr. Seymour testified that Travis never determined that the SIB CDs were "unsafe and unsound" despite the specific language of the written directive. Mr. Seymour agreed that millions of dollars in fees were received by Stanford Trust from the placement of the SIB CD's. Mr. Seymour's testimony acknowledged that IRS Form 5498 (Ex. 1038) required the SIB CDs to be valued but stated that a special category of assets known as "non-unique assets" provides OFI an exemption from reporting the value of the assets. No written document was ever presented to the jury that established the "non-unique asset" exemption for reporting the fair market value of the SIB CDs and he never provided an industry literature that exempts "non-unique assets" from valuation.

History of the Travis Policy Directives relating to Stanford Trust

19. 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 explained why the "unsafe and unsound" designation did not apply to the IRA SIB CDs ("Travis SIB Unsafe and Unsound Directive"). Class Member Ex. 1169.

20. 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 of the Motion for New Trial). Even though the Travis No Fee Policy was in place, the evidence overwhelmingly showed that Ducrest, Seymour, and OFI allowed Stanford Trust to receive millions of dollars of fees between 2004 and January 1, 2007 to fund the overhead of Stanford Trust.

21. Ducrest testified that the Fee Policy remained in effect through 2008. OFI never introduced any written document that contradicted the fee documents (Ex. 1067) introduced by the Class Members or introduced any documents to show that the millions of dollars of fees were not in violation of the Travis No Fee Policy.

22. Ducrest, Seymour, and OFI never contested their knowledge of these fees because the fees were reported every three months on the twenty-eight call reports filed with OFI from 2001 to 2007. ("Call Reports[1]").

OFI UNSAFE AND UNSOUND DIRECTIVE

23. Seymour was confronted with and surprised by Exhibit 1169 when confronted with Travis SIB Unsafe and Unsound Directive during cross examination that stated the SIB CDs were unsafe and unsound. 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.

24. Exhibit 1169 unambiguously states that Commissioner Travis determined that the SIB CDs were unsafe and unsound. Despite the specific terms of the document, Seymour attempted to explain why the language did not mean "unsafe and unsound." Seymour had multiple excuses for not barring Stanford Trust from serving as custodian of millions of dollars of unsafe and unsound SIB CDS which were not credible.

25. Seymour attempted to explain that the words "unsafe and unsound" in Exhibit 1169 did not mean what it said and that other reasons existed as to why banks could not invest in the SIB CDs. No documents were introduced by OFI and shown to Seymour to explain to the jury why “safety and soundness concerns” did not translate to "unsafe and unsound". Commissioner Travis had safety and soundness concerns about the SIB CDs---precisely what Ex. 1169 stated on this critical point.

26. Seymour further testified that OFI had no authority to issue a cease-and-desist order to Stanford Trust even if the SIB CDS of which Stanford Trust was serving as custodian were unsafe and unsound. After having made this statement, Seymour was shown the law by Plaintiff counsel during cross examination that showed OFI could issue a cease and desist order against a trust company, and after cross examination, agreed he was wrong on that point for twenty years.

Tr. 8/1/24, Pg. 62, ln. 1-5

Mr. Preis: So if I understand your testimony, this 6:123 does not apply to Trust Companies?
Mr. Seymour: No.
Mr. Preis. It does not apply to trust companies?
Mr. Seymour: It does not.

27. As Chief Examiner, not knowing that the scope of LSA-R.S. 6:123 applied to Stanford Trust was clearly uncontested evidence of Seymour's malfeasance in examining and supervising Stanford Trust between 2004 until the date of trial. When show OFI Exhibit 4, which states LSA-R.S. 6:123 is applicable to trust companies like Stanford Trust, Seymour was forced to admit his shortcoming in understanding his and OFI's duty to regulate Stanford Trust by issuing a cease and desist.

Tr. 8/1/24, Pg. 62, ln. 22 to pg. 63, ln. 11

Reviewing OFI Exhibit 4.
Mr. Seymour: It says Louisiana Revised Statutes Annotated, Revised Statutes Six, which is Title VI, Section 123(A)(1); and then, Louisiana Meditated Code, Section 110, 201, 203, LAC 10, 55101 LR December 20th 1993.
Mr. Preis: So does it say you were wrong, because it does say that this provision is applicable to the trust company, correct?
Mr. Seymour: At this time, the policy was written in, or dated, June 24, 1998. Prior to 2003 we did not have the Louisiana Trust company law in place so we considered independent trust companies to fall into the category of banks limited to fiduciary activities and that is where we included that limited purpose bank in that particular policy.
Mr. Preis: Yes, sir, well, I'm --
Mr. Seymour: -- and then after 2003 the format for handling an independent trust companies came under the Louisiana trust Company law.
Mr. Preis: Well, you were the one that said this was what was in effect.
When your counsel asked you about it; isn't that correct?
Mr. Seymour: That's correct.
Mr. Preis: And it says that it's based on 6:123 a (1) that's what we just showed you; isn't it?
Mr. Seymour: It is.

28. The admission of Seymour that he and OFI misunderstood their ability to issue a cease and desist order against Stanford Trust relating to serving as custodian of the retirees IRA retirement accounts was a critical fact in the case largely ignored by the jury. His failure to understand that point from 2004 to August of 2024 (date he testified at trial), for 20 years, that he could in fact issue a cease and desist order against a trust company for unsafe and unsound practices is an uncontested fact ignored by the jury.

29. La. R.S. 6:123, which Seymour initially denied as being applicable to a trust company, clearly showed that OFI had the authority to examine any affiliate of Stanford Trust despite repeated insistence that OFI did not have that right to determine the source of the millions of dollars of fees that Stanford Trust was receiving. This apparently explains why Commissioner Ducrest and Chief Examiner Travis elected not to go to Antiqua in 2005. (Ex. 117).

Physical Demeanor-Only the Court Can Determine

30. One of the items that the District Court is tasked with during trial is to listen to the testimony of a witness, reviewing the demeanor of the witness during the live testimony and determining whether the testimony is reliable and credible. In considering the motion for new trial, the court has the discretion to evaluate witness *reliability and credibility* based upon the witness's demeanor and responses in light of the written documents to determine whether the jury erred in giving too much credence to the unsupported oral testimony of a witness when considering a motion for new trial. *Martin v. Heritage Manor S. Nursing Home*, 2000-1023 (La. 4/3/01), 784 So. 2d 627, 631. *Davis v. Wal–Mart Stores, Inc.*, 00–0445 (La. 11/28/00), 774 So.2d 84, 93. The demeanor and responses of Sid Seymour, the only witness with knowledge of the Travis Policy Directives during 2004 to 2007, were not credible or reliable.

31. The trial judge is 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. The district court has authority 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.

32. La. 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 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.

33. Further, La. R.S. 6:123 provides that 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." This would include Stanford International Bank ("SIB") and Stanford Group Companies, the entities wholly owned by Allen Stanford employing the brokers and hiding the fees. LSA-R.S. 6:121.1.

34. Seymour's testimony reflects he did not understand the "duties" that he and OFI owed to the Class Members based upon his erroneous understanding of the Louisiana statutory law. La. R.S. 6:123. 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 statutory right 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 of which he said that there were none. The plaintiffs' counsel referred him to OFI Ex. 4, his own document that he testified about, to show that his understanding of his duty is incorrect and unreliable.

TRAVIS VALUATION DIRECTIVE

35. IRS from 5498 required that the SIB CDs be valued. (Ex. 1038).

36. The facts were uncontested that OFI never valued the SIB CDs despite the requirement of the IRS form 5498. Class Member Ex. 1038.

37. The written evidence overwhelmingly showed that Class Member Ex. 132 and each of the annual examination reports between 2001 and January 1, 2007 required all assets owned by an IRA account to be valued annually.

38. No written document was ever introduced into evidence by OFI which 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.

39. Ducrest and Seymour attempted to testify that the valuation of the SIB CDs was not required because the SIB CDs were what they labeled as a "non-unique asset." No written document was ever produced or introduced into evidence by OFI that created a classification for a "unique" or "non-unique asset" that would not require valuation of the assets despite repeated requests.

Tr. 8/1/24, Pg. 57, ln. 32-pg. 58, ln. 2.

Mr. Preis: So, when you went home last night, did you find any written documents that would show that a CD is not a unique asset?
Mr. Seymour: I did not.

Tr. 8/1/24, Pg. 58, ln. 10-12

Mr. Seymour: Nothing that I'm aware of in any manual or anywhere else that contains or identifies a CD as being a unique asset.

Tr. 8/1/24, Pg. 58, ln. 23-27

Mr. Preis: But as of today, there's nothing in writing that says it SIB CDs a unique asset?
Mr. Seymour: That's correct, and there's nothing in writing that says it's not. It's just not included in the list that we normally use for examination purposes.

7/30/24, pg. 11, ln. 28- pg. 12, ln. 1 (John Ducrest)

Mr. Preis: And if I heard your testimony yesterday there's nothing in writing that either, that a SIB CD is not a unique asset?
Mr. Ducrest: I'm not aware if it's in writing or not but there's nothing that I'm aware of that saying it should be treated as a unique asset.

40. OFI attempted to justify its conduct in not valuing millions of dollars of the SIB CDS held by Stanford Trust by stating that a classification existed that SIB CDs were "non unique assets." No written documents or treatises were ever introduced as to this classification of assets or the meaning of a "non-unique" asset or why any valuation exemption would be applicable to the valuation of the SIB CDS.

41. OFI never asked their expert, Joe Borg, to give an opinion of whether the "non unique assets" exempted the SIB CDs from valuation.

42. There was no written policy stated in the exam reports or elsewhere that the SIB CDs did not have to be valued, especially in light of the IRS Form 5498 which requires a valuation (**Class Member Ex. 1038**).

43. No written evidence existed on why all assets held as custodian by the Stanford Trust, including the SIB CDs, should not be valued, or the source of the label "non unique assets" as a basis for ignoring the obligation of Stanford Trust to value the SIB CDs.

44. The facts were uncontested that the SIB 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.

TRAVIS NO FEE POLICY

45. 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 to Motion for New Trial). OFI never introduced any written document that established the Travis No Fee Policy had been amended. In fact, Commissioner Ducrest testified that the Travis No Fee Policy remained in effect until 2008.

46. 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.

47. OFI never contested their knowledge of these fees from Allen Stanford because the fees were reported on 24 quarterly call reports between 2002 and 2007.

48. 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.

49. Seymour admitted they were receiving fees from Stanford. On page 3 of the OFI brief, OFI incorrectly argued they had no knowledge of fees.

Tr. 8/1/24, Pg. 66, ln.12-15

Mr. Preis: And you also knew that a substantial portion of the income of Stanford Trust company was relying on the fees from those CDs, correct?
Mr. Seymour: Yes.

50. It was uncontested that the Chief Examiner, Sidney Seymour, had knowledge of these fees because the fees were reported every three months on the 28 call reports filed with OFI from 2001 to 2007.

51. Further, John Ducrest, Commissioner of OFI admitted that the Internal Revenue Code prevented the payment of these fees to Stanford Trust.

7/30/24, pg. 13, ln. 9-21 (John Ducrest)

Mr. Preis: Now it says the Internal Revenue Code prohibits Stanford Trust from charging fees to the account because of its affiliation with SIB; Do you see that?
Mr. Ducrest: Yes, Sir.
Mr. Preis: And once again, that's- that was the policy of OFI during this time period?
Mr. Ducrest: More of a directive, I think. It was not a policy, it was a directive.
Mr. Preis: It was a directive of OFI during this time period
Mr. Ducrest: of Commissioner Travis in 2002.
Mr. Preis: And up until 2008 it remained a directive; is that correct?
Mr. Ducrest: Correct. As far as I know I don't remember it being repealed subsequent to that.

52. Further, former Commissioner John Ducrest admitted that he never checked, or asked anyone else to check, whether these fees being paid to Stanford Trust, were disclosed to the plaintiff investors as required by law.

7/30/24, pg. 29, ln. 32 to pg. 30, ln. 8 (John Ducrest)

Mr. Preis: Well, did you ever check to see where those fees were being disclosed to those investors by the Stanford Trust?
Mr. Ducrest: I don't know what the examiners looked at on that.
Mr. Preis: No, I am asking you-
Mr. Ducrest: Did I, know, I did not.

53. Approximately 84% of the income of Stanford Trust was generated from the sale of the SIB CDs and OFI was never checked to see whether the fees were being disclosed to the account holders.

7/30/24, pg. 28, ln. 5-9 (John Ducrest)

Mr. Preis: Okay, in the fourth line it says, as of June 30th gross revenues totaled $1,348,750.00 of which $1,120,946 or 84 percent is fees from custodial accounts. And that's what it says as of June 30, 2007; right?
Mr. Ducrest: Yes, sir.

54. The evidence is credible, overwhelming, and compelling of OFI's inaction in enforcing the Travis No Fee Policy based upon Seymour's admitted knowledge of the source of the fee and OFI's knowledge of the Stanford Fees is disclosed on 24 call reports and the fact it never checked to see whether these fees were disclosed to the Class Members.

55. The terms of the Travis No Fee Policy from 2001 to 2008 were never contradicted. Seymour testified that he was aware the fees were being received from Stanford and its affiliates. Ducrest testified that he was not aware of anyone checking whether the fees had been disclosed to the investors to avoid a conflict of interest. The 28 call reports showed the fees. Further, the examinations reports show that the fees were the primary source of the funding of the overhead of

the Stanford Trust to fund the overhead for the diversion of the 900 Class Members retirement funds to Antiqua. These facts were never contested by OFI.

SCOPE OF OFI's EXPERT TESTIMONY

56. Both OFI experts, Boren and Van Tassel, stated they were never asked by OFI to review the Examination Reports of OFI for the 2001 to 2007 time period and determine whether OFI violated their duty to the Class Members based upon the Travis SIB Unsafe and Unsound Directive, Travis No Fee Policy, and Travis Valuation Policy. Specifically, no expert testimony was offered on the following questions:

a. The meaning of the unsafe and unsound directive;
b. The right of OFI to examine the affiliates of Stanford Trust to determine the source of the fees based upon LSA-R.S. 6:123;
c. Whether the SIB CDs should have been annually valued as required by the IRS Form 5498; or
d. Whether the payment of the fees violated the regulations of the IRS and the Travis Fee Directive.

NO WRITTEN EVIDENCE.

57. The weight of the evidence 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 CD was "unsafe and unsound." 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. No written evidence was introduced to contradict the literal terms of the Travis No Fee Policy and Examination Reports. Twenty-eight multiple call reports filed by Stanford Trust with OFI showed the actual receipt of fees in violation of the Travis No Fee Policy. It was uncontested based upon the 24 call reports introduced into evidence that between the date of this directive and January 1, 2007, 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. No witness ever explained or contradicted, that OFI had knowledge of the fees based upon page 6 of each quarterly call report or explain 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 Valuation Policy**. The Travis Valuation Policy stated that valuation reports were required on all IRA Assets. This was stated in writing in the examination reports and the IRS Form 5498. OFI attempt to label the SIB CDs as being "non unique assets" as a basis for not requiring an annual valuation. Neither this existence of the label, or that this label excluded the SIB CDs was supported by any written evidence. No written evidence was introduced by OFI that the SIB CDs were excluded from the valuation process requirement because OFI failed to show any written documents that created the existence of a "non-unique asset" exemption from valuation and provided no expert testimony on this issue.

THE JURY DETERMINED OFI HAD A DUTY TO THE CLASS MEMBERS

58. Jury Interrogatory No. 1 stated the following:

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

59. The jury unanimously determined that OFI had a duty to the Class Members to enforce the Travis Policy Directives. Once that the Jury determined that OFI had a duty to the Class Members to enforce the Travis Policy Directives, the response to Interrogatory No. Two should have been very straightforward because of OFI's admitted "inaction" in enforcing the Travis Policy Directives and their lack of expert testimony and written documents to support their position. The facts were uncontested that OFI violated the Travis Policy Directives and did nothing from 2001 to 2007 despite the existence of the Travis Policy Directives.

60. Two legal issues resulted in an improper jury verdict relating to interrogatory no. two. First, the jury response to Jury Interrogatory No. 2 ignored the fact "inaction" in the face of a violation of the Travis Policy Directives giving rise to liability. Secondly, the jury erroneously concluded that the performance of the duties set forth in the Travis Policy Directives was conditioned upon OFI's discovery of the Ponzi Scheme---an argument OFI made over and over in this trial.

61. First, the reasonableness of the failure of OFI to discover the Ponzi scheme was the central defense theme of OFI in this case. As a matter of law, the jury erred when it determined that the duty to enforce the Travis Policy Directives was conditioned on OFI's discovery of the Ponzi Scheme. As a matter of law, 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 Travis Policy Directives. The jury was in error in making this determination.

62. Secondly, the jury erred, based upon the uncontested facts proven in the case by the Class Members in not holding that OFI's "inaction" was reckless based upon 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 jury failed to follow the law concerning duty that was established in the 12-month briefing cycle in 2021 and 2022 by this Court, the First Circuit and Louisiana Supreme Court where all courts agreed with 2021 MSJ Written Reasons of this Court that "inaction" by OFI gives rise to a claim. In those briefings, it was conclusively determined that "inaction" in the face of a known duty gives rise to damages.[1] Further, all of the courts that reviewed the 2021 Written

[1] 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 yearlong appeals process. OFI desired that this year lengthy process of establishing the law in this case be ignored.

Reasons rejected OFI's argument that OFI had no legal duty to enforce the Three Policy Directives because it did not have knowledge of the Ponzi Scheme. The "inactions" standards set forth by this court and affirmed by the First Circuit and Louisiana Supreme Court were ignored and erroneously applied by the jury.

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

> *"[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.*
>
> *******
>
> *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. There was never any mention of OFI's argument that it was required to discover the Ponzi scheme before OFI was required to enforce the Travis Policy Directives was conditioned upon.

64. 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 Travis Policy Directives.

EXPERT REPORTS ARE HEARSY

65. The issue of whether Ms. Karyl Van Tassel's Expert Report was admissible was presented to this court on multiple occasions. Prior to trial, the court ruled that the Affidavit's and Expert Reports of Ms. Karla Van Tassel were not admissible into evidence. Ms. Van Tassel's testimony related to the Ponzi scheme of Allen Stanford. Despite the ruling of this court, OFI introduced the expert reports of Ms. Van Tassel into evidence.

66. Reports prepared by experts are inadmissible as hearsay. *See* La. Code Evid. art. 801(c). *Veronie v. Mireles*, 2022-105 (La. App. 3 Cir. 6/8/22), 344 So. 3d 210, 214; "A report prepared by an expert is not admissible because it is hearsay." *See Guzzardo v. Town of Greensburg,* 563 So.2d 424, 426 (La.App. 1st Cir.1990); *Hohensee v. Turner*, 2014-0796 (La. App.

4 Cir. 4/22/15), 216 So. 3d 883, 886. *Brown v. Chategnier*, 2016-0373 (La. App. 4 Cir. 12/14/16), 208 So. 3d 410, 413 (""Generally, a report prepared by an expert is not admissible because it is hearsay."); *Kerek v. Crawford Elec. Supply Co., Inc.*, No. CV 18-76-RLB, 2019 WL 6311365, at *2 (M.D. La. Nov. 25, 2019) (' "[A]s a general rule, expert reports ... are hearsay, and therefore generally not admissible as exhibits, although they may be the subject of testimony and might be used to impeach a witness or refresh a witness' recollection." *Fobbs v. Davis*, No. 3:11-CV-00700, 2015 WL 3682375, at *2 (M.D. La. June 12, 2015). The expert reports are hearsay and inadmissible.

67. 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 violation of the order of the court.

COVID

68. 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 the 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.

69. Many of the older people serving the jury were concerned about their health as a result of their exposure to COVID by the confinement in a 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 were 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 and further delayed a long trial.

CUMMULATIVE EFFECTS

70. 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 are grounds for a new trial. If it had occurred on one occasion, it may have been acceptable. The evidentiary weight of the multiple written documents introduced into evidence by the Class Members concerning the 2001 to 2007 time frame as opposed to the self-serving testimony of culpable officials of OFI should result in the granting of a new trial.

71. In the case at hand, the jury was presented with written documents that outlined the Travis Policy Directives that were in existence 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. Not one written

document was presented to contest the scope of the Travis Policy Directives during the Three-Week Trial. Not one expert of OFI testified as to the scope of the Travis Policy Directives that were in existence from 2001 to 2007. The totality of the evidence overwhelmingly favored the Class Members by clearly demonstrating (i) the existence of the Travis Policy Directives and (ii) OFI's liability for reckless conduct due to its "inaction" after being acutely aware the Travis Policy Directives were violated between 2001 and 2007.

72. The law is universal that "oral testimony which is in conflict with contemporaneous documents is entitled to little evidentiary weight. "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. This coupled with the jury confusion that they obviously believed OFI was not required to implement the Travis Policy Directives from 2004 to 2008 if no Ponzi Scheme had been discovered by OFI resulted in an improper verdict and should result in a new trial.

CROSS REFERENCE TO BASIS FOR NEW TRIAL UNDER LSA-C.C.P. ART. 1972(A) AND 1973

73. The weight of the evidence of the written evidence presented at trial overwhelmingly supported a verdict in favor of the Class Members.

74. The oral testimony based upon a twenty-year-old self-serving memory was the only testimony that attempted to limit the written Travis Policy Directives. The oral testimony was not credible in light of the overwhelming documentary evidence introduced into evidence by the Class Members, and its credibility was tainted by Seymour's mannerism, demeanor, and tone when he was confronted with these issues during his testimony.

A. LSA-C.C.P. ART. 1972(A)- Fact

1. Uncontested Facts concerning the Scope of the Policy Directives;

   Travis SIB Unsafe and Unsound Directive (Ex. 1169) (Par. 23-34);

   Travis No Fee Policy (Ex.1067) (Par. 45-55); and

   Travis Valuation Policy (Ex. 132) (Par. 35-44).

2. No written documents to contest Scope of Travis Policy Directives (Par. 57);

3. No expert testimony to contest Travis Policy Directives. (Par. 56);

4. Only oral testimony on Scope of OFI Policy Directives was Sidney Seymour who was not reliable based upon twenty year old memory who was forced to admit he did not have a proper understanding of his regulatory authority pursuant to 6:123 and his ability to issue a cease and desist to Stanford Trust, he admitted that the substantial fees were being paid by Allen Stanford despite the Travis No Fee Policy, not able to produce any documents or audit procedure that creates an exemption for value IRA assets because it is defined as a "unique "or "non unique" or that states

they are not required to be annually valued in accordance with the IRS Form 5498. (Par. 30-34, Par. 1, 4, 11, 13, 18, 22, 49).

B. <u>LSA-C.C.P. ART. 1972(A) -Law</u>

1. Scope of the Trial based Upon *Lillie v. Stanford Tr. Co.*, 2013-1995 (La. App. 1 Cir. 11/1/17), 235 So. 3d 1139, 1152 (Par. 62);
2. Twenty-year-old oral testimony in conflict with all written Travis Policy Directives; (Par. 4, 57).
3. Duty of OFI pursuant LSA-R.S. 6:123 to investigate and exam Stanford Trust (Par. 23-29);
4. Inconsistent determination in Jury Interrogatory No. One and No. 2 (Par. 58-64);
5. IRS Form 5948 requiring valuation of IRA assets (Par. 35);
6. No category of unique or non-unique assets excusing conduct of no valuation (Par. 38-43);
7. Inaction in enforcement of a known policy directive based upon MSJ Briefing (Par. 62);
8. Discovery of the Ponzi scheme was not a condition of the enforcement of the Travis Policy Directives. (Par. 61); or
9. Violation of Court Order barring introduction of Van Tassel Expert Report into Evidence of Expert Report (Par. 65-67);

C. <u>LSA-C.C.P. ART 1973-Discretionary.</u>

1. Cumulative Issues (Par.5, Par. 70-72); all of the cumulative or individual LSA-C.C.P. Art 1972(A) issues of law and Fact set forth In A and B above;
2. Fair Trial- COVID; (Par. 68-69);
3. Miscarriage of Justice- all of the cumulative or individual LSA-C.C.P. Art 1972(A) issues of law and Fact set forth in A and B above; or
4. Fairness- all of the cumulative or individual LSA-C.C.P. Art 1972(A) issues of law and Fact set forth in A and B above.

For the above reasons set for in Par. 1 to 74,

IT IS ORDERED, ADJUDGED AND DECREED that a New Trial is hereby granted in this matter on Jury Interrogatory No. 2 in accordance with LSA-C.C.P. art. 1972(A) and1973.

Baton Rouge, Louisiana, this _____ day of _____, 2024.

_____

THE HONORABLE DONALD R. JOHNSON
19TH JUDICIAL DISTRICT JUDGE