

TROY LILLIE, ET AL.

DOCKET NO. 581670 SECTION 24

VERSUS

19th JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA THROUGH THE
OFFICE OF FINANCIAL INSTITUTIONS

STATE OF LOUISIANA

ORDER ON MOTION TO COMPEL

This matter was set for a hearing on Monday, June 10, 2024 at 10:00 a.m. before the Honorable Donald R. Johnson on The State of Louisiana through the Office of Financial Institutions' Motion to Compel filed on April 23, 2024.

Appearing at the hearing were the following counsel:

- Phillip W. Preis and Caroline P. Graham for Plaintiffs IRA Class Members, Troy Lillie, *et al.*; and
- Michael Victorian and Dennis Blunt for Defendant, State of Louisiana through the Office of Financial Institutions. ("OFI").

After considering the pleadings, memoranda, evidence, the law, and oral arguments presented during the hearing,

Evidence Not the Subject of the Case and not Subject to Depositions and Document Production.

1. Based upon the legal briefing of the Class Members and based upon the ruling of multiple courts as follows:

- (i) the Class Members negligence in purchasing the SIB CDs is not part of the case; La. C.C. art. 2323;
- (ii) the conduct of the brokers in selling the SIB CDs is not the issue that is being tried in this case to the jury in the class action proceeding; *Lillie v. Stanford Tr. Co.*, 2013-1995 (La. App. 1 Cir. 11/1/17), 235 So. 3d 1139, 1152;
- (iii) the damages of each class member are res judicata because the amount of the loss has been determined in the Multi-District Litigation proceeds before the Honorable Judge David Godbey in the United States District Court for the Northern District of Texas. *Lillie v. Stanford Tr. Co.*, No. 3:13-CV-03127-N, 2016 WL 10591374, at *7 (N.D. Tex. May 2, 2016); and
- (iv) **Further, the conduct which is the subject of this lawsuit precedes the investment decision of every class member.** *Lillie v. Stanford Tr. Co.*, No. 3:13-CV-03127-N, 2016 WL 10591374, at *6 (N.D. Tex. May 2, 2016). (emphasis added).

The reasons for this determination are set forth below. For these reasons, the Class Members are not required to produce documents relating to these subjects and are not required to be deposed on these subject.

Evidence of Lack of Due Diligence of Class Member, Broker Misconduct, and the Scope of the Ponzi Scheme is not a Part of the Class Action.

2. La. C.C. art. 2323 excludes contributory negligence of the class members from the scope of discovery because Class Members filed a Voluntary Partially Dismiss Certain Claims

Against OFI alleging that the conduct of OFI was “acts or omissions which constitute criminal, fraudulent, malicious, intentional, willful, outrageous, reckless, or flagrant misconduct.” La. R.S. 9:2798.1(C). The Court granted the voluntary dismissal on July 22, 2021, which narrowed the scope of discovery as it relates to Class Members’ contributory negligence, broker contributory negligence, and other tortfeasors’ negligence.

3. Multiple rulings from this Court, the First Circuit, and the United States District Court for the Northern District of Texas have found that the question presented for trial in this Class Action 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. Excerpts from previous rulings include the following:

District Court Ruling:

“In this case, a class can result in one definitive adjudication of whether or not a duty to all claimants was owed by these defendants, whether or not any such duty was breached. If the answer to either of those questions is no, all claimants lose. If the answer to both questions is yes, all claimants win.” (12/5/12, Oral Reasons, pg. 16).

First Circuit Ruling:

“[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 .

“Proposed class is limited to the 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.

“[T]he common question as to the OFI found by the trial court was whether the agency had “a duty to independently determine the value of those CD’s, or at least force Stanford to come forth with some reliable evidence of [the CDs’] value, and had [the OFI] done so, [it] would have known [that the CDs were] a Ponzi scheme and [it] would at that time have a duty to tell [the plaintiffs] about it.” *Lillie v. Stanford Tr. Co.*, 2013-1995 (La. App. 1 Cir. 11/1/17), 235 So. 3d 1139, 1148.

The case that is being tried “is limited to the 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.

Thus, although the evidence shows that there were differences in the manner in which the various plaintiffs came to invest in the SIB CDs, we fail to see how these differences change the fact common to all the plaintiffs—that they invested in the CDs under a false understanding of the value and safety of the investment.” *Lillie v. Stanford Tr. Co.*, 2013-1995 (La. App. 1 Cir. 11/1/17), 235 So. 3d 1139, 1150.

“[T]he common question as to the OFI found by the trial court was whether the agency had “a duty to independently determine the value of those CD’s, or at least force Stanford to come forth with some reliable evidence of [the CDs’] value, and

had [the OFI] done so, [it] would have known [that the CDs were] a Ponzi scheme and [it] would at that time have a duty to tell [the plaintiffs] about it." *Lillie v. Stanford Tr. Co.*, 2013-1995 (La. App. 1 Cir. 11/1/17), 235 So. 3d 1139, 1148.

This discovery request seeks discovery on issues that are not pending in the Class Action and will to undermine the judicial efficiency and effectiveness of the class action process by focusing on individual Plaintiffs when the claim related to OFI's conduct. See also *Lillie v. Stanford Trust Company*, 2013-1995 (La. App. 1st Cir. 11/1/17), 235 So. 3d 1139, 1147, *writ denied sub nom.*, *Lillie v. Stanford Tr. Co.*, 2017-2010 (La. 2/2/18), 233 So. 3d 613.

United States District Court for the Northern District of Texas Ruling:

If OFI has "the right to request and put into evidence each of the 900 Class Members relationship with its brokers, or each of the facts and circumstances surrounding the due diligence of each Class Member in purchasing the SIB CDs, the facts and circumstances surrounding each investor's individual relationship with various Stanford financial advisors would render the misrepresentation or omission inquiry hopelessly individual and would not be triable as a class action." *Lillie v. Stanford Tr. Co.*, No. 3:13-CV-03127-N, 2016 WL 10591374, at *6 (N.D. Tex. May 2, 2016).

"OFI once again attempts to convince this Court to focus on the conduct of the non-defendant brokers as the cause of the loss, rather than its own conduct. If, as a matter of law, the focus for the class action was the misrepresentation of the individual non-defendant broker, and not the negligence of OFI, a securities law class action suit would never be tried. Specifically, each member of the class purchased or renewed a SIBL CD through STC. Evidence supporting that contention for each individual will not constitute a substantial portion of the litigation—STC's would show the extent of the relationship for each class member." *Lillie v. Stanford Tr. Co.*, No. 3:13-CV-03127-N, 2016 WL 10591374, at *6 (N.D. Tex. May 2, 2016).

OFI argues that each investor's individual relationship with various Stanford financial advisors renders the misrepresentation or omission inquiry hopelessly individual. **However, proof of those individual misrepresentations is unnecessary if Plaintiffs prove that OFI breached its duty to state material facts about the CDs:** facts such as the true nature of Stanford's financial scheme. Those alleged omissions are inherent in the scheme and thus common to each investor. *Lillie v. Stanford Tr. Co.*, No. 3:13-CV-03127-N, 2016 WL 10591374, at *6 (N.D. Tex. May 2, 2016). (Emphasis Added).

Amount of Damages Incurred by Each Class Member

4. The amount of damages incurred by each Class Member requested in Interrogatory No. 4 and Request for Production No. 4 is res judicata based upon the Notice of Determination issued by the Stanford Receivership to each Class Member for the amount of loss based upon the process approved by Judge David Godbey, United States District Court Judge for the Northern District of Texas in the Stanford Litigation Multi-District Litigation Proceeding. Ralph Janvey, the Stanford Receiver, has detailed records of the amount of loss of each Class Member. United States District Court for the Northern District of Texas in *Lillie v. Stanford Tr. Co.*, No. 3:13-CV-03127-N, 2016 WL 10591374, at *7 (N.D. Tex. May 2, 2016) stated,

"The losses to Stanford investors have been extensively analyzed by the Receiver and his experts, who have used that information in dozens of cases and the claims distribution process. With this information, proving damages will not turn the trial of common questions into a multitude of individual mini trials on damages."

5. OFI Requests for Production of Documents 17, 18, 19, 20, and 21 is DENIED. OFI Requests for Production of Documents 17, 18, 19, 20, and 21 request OFI Documents in OFI's exclusive possession, custody, and control, which OFI refuses to produce. Class Members have

produced all evidence in its custody, possession, and control reflecting OFI's RFP # 17, 18, 19, 20, 21 (No Documents), as stated in their Responses and Objections dated May 2, 2024. OFI cannot say the same.

6. OFI's Motion to Compel an Interrogatory Response No. 5 is **DENIED**. Interrogatory No. 5 seeks "all information of which you are aware regarding the refusal of any trust company or trust department to serve as the custodian of IRA accounts that purchased high risk SIB CDs." OFI Interrogatory No. 5 was copied from Class Members' discovery requests and OFI refused to answer the same interrogatory. Class Counsel disclosed the fact in the Responses and Objections dated May 2, 2024 that Pershing refused to serve as Custodian of IRA Accounts. This fact is derived from an FINRA arbitration that was initiated on June 6, 2013, four years after the filing of this lawsuit.

7. OFI's Motion to Compel Request for Production of Documents No. 5 is **DENIED**. OFI's Motion to Compel Request for Production of Documents No. 5 seeks "all documents reflecting or related to the refusal of any trust company or trust department to serve as the custodian of IRA accounts that purchased high risk SIB CDs" and Class Members responded in the Objections and Responses dated May 2, 2024 "Plaintiffs do not have any documents in their possession."

Depositions of Class Members

8. OFI was ordered to take the depositions of the Class Members. OFI delayed the Class Members' depositions and challenging Class Members' August 2023 Responses to OFI's Second Set of Discovery for seven months and OFI did not conduct any discovery between April of 2023 and March of 2024, despite the Order of this Court to conclude discovery by November 1, 2023.

- (i) Starting in March of 2024, OFI and Class Counsel cooperatively scheduled 14 depositions. On May 9, 2024, OFI notified counsel for the Class Members that it desires to take an additional 44 depositions at this late date.
- (ii) Any deposition ordered by this Court should specifically exclude the subject set forth in Par. 1,2,3, and 9 of this order.

9. OFI's deposition questioning is duplicative of the *in globo* affidavits of Class Members offered, filed, and introduced as Exhibit 2A and Exhibit 2B in the Class Certification Hearing on September 20-21, 2012 in this matter. The *in globo* affidavits of Class Members disclose job history, amount of principal invested in the Stanford International Bank Certificates of Deposit ("SIB CD"), any withdrawals made from the SIB CDs, and any third party advisors consulted prior to investing in the SIB CDs. Based on the *in globo* affidavits of Class Members marked as Exhibit 2A and Exhibit 2B in the Class Certification Hearing, OFI has the information it seeks in depositions in its possession and OFI has not established why depositions would not be duplicative, burdensome, and harassing Class Members.

READ, RENDERED, AND SIGNED at Baton Rouge, Louisiana this 11th day of June,
2024.


HONORABLE DONALD R. JOHNSON
CHIEF JUDGE 19th JUDICIAL DISTRICT COURT

PLEASE SERVE NOTICE ON ALL PARTIES.