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4 Kirschner:

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2 THE COURT: All right. We have Highland matters set
3 this morning. We have what I'll call the 2004 Motion, which
4 I've heard from my staff we may have an agreed order, despite
5 the many, many objections. And then we have a motion to
6 further extend the stay in the Adversary 20-3195.

7 All right. So, rather than take dozens of appearances
8 right now, I'm going to start with Creditors' Committee
9 counsel on the 2004 Motion. Who do we have appearing for the
10 Creditors' Committee?

11 MR. POMERANTZ: Your Honor, actually, this is Jeff
12 Pomerantz. I thought it would be helpful to give Your Honor a
13 60-second update on the case, since we've had some
14 developments. We don't have anything on in the Debtor, but I
15 think Your Honor might appreciate a little update.

16 THE COURT: All right. Sure. Sure. So, Mr.
17 Pomerantz, good morning. How are you?

18 MR. POMERANTZ: Good morning. How are you, Your
19 Honor?

20 We are pleased to report that, after months of working
21 towards an effective date of the plan, the plan did go
22 effective on August 11th. Refinancing that Your Honor had
23 approved has actually closed. And we have new corporate
24 governance in place, as was contemplated under the plan. That
25 includes the Claimant Trust having been established, with Jim

1 Seery, who is well known to Your Honor, as the Claimant
2 Trustee. The Litigation Sub-Trust has been established. Marc
3 Kirschner is the Litigation Sub-Trustee. He is appearing I
4 believe today with his counsel, Quinn Emanuel, headed by
5 Deborah Newman. And we have a new Claimant Trust Oversight
6 Board.

7 The parties have been working well before the effective
8 date, and continue to work together towards the twin goals
9 that were set forth in the plan: one, to monetize assets as
10 reasonably and quickly as possible to maximize their value;
11 and second, to pursue any claims that the estate has, which,
12 of course, is the subject of today's hearings.

13 So, that's the update, Your Honor. We're very pleased,
14 after all these months, that it's occurred. We still, as Your
15 Honor is aware, have a whole bunch of litigation at various
16 places -- in the Fifth Circuit, the District Court, and Your
17 Honor -- and we will proceed with that and hopefully narrow
18 the issues as time goes by.

19 Thank you, Your Honor.

20 THE COURT: All right. Well, thank you, Mr.
21 Pomerantz. We appreciate hearing that news.

22 Well, now I'll turn -- I said, maybe incorrectly, to the
23 Creditors' Committee. Perhaps I should say I'm turning to
24 counsel for the former Committee and I presume now counsel for
25 the Litigation Trustee. Who is appearing for this client?

1 MS. MONTGOMERY: Yes, Your Honor. It's Paige
2 Montgomery from Sidley Austin. And you're accurate that we
3 are former counsel for the Committee and now represent the
4 Litigation Sub-Trust and the Trustee.

5 And appearing with me today is Deborah Newman of Quinn
6 Emanuel. And Ms. Newman also represents the Litigation Sub-
7 Trust and has recently filed her appearance *pro hac vice*.

8 THE COURT: All right. Well, I said I would wait
9 before asking for the dozens of appearances of Objectors on
10 this 2004 motion because my staff tells me there's an agreed
11 order, so let me hear about that and then I'll let the
12 Objectors chime in on their consents or any disagreements they
13 have. All right.

14 MS. MONTGOMERY: Yes, Your Honor. I believe that as
15 of midnight-ish last night we reached resolution with all of
16 the filed Objectors with regard to a form of order that we
17 submitted on -- by filing and also emailed to chambers last
18 night with -- I believe we had agreed signatures from everyone
19 except for counsel for Grant Scott. Mr. Scott's counsel has
20 now also informed us that he agrees to that form of order
21 officially, so I believe that that will completely resolve the
22 2004 motion today.

23 THE COURT: All right. Well, and I'm pulling up that
24 order now, just to see if I have any last-minute questions.
25 All right. Well, and just as I understood it, let me see how

1 I can paraphrase it, I mean, basically, it doesn't mean we're
2 not going to have any future disputes, shall we say, with
3 regard to production. Everybody sort of has reserved their
4 rights, when they ultimately get a subpoena, to make whatever
5 arguments they want to make about holding back documents and
6 -- so we may have motions to compel, you know, motions to
7 quash, motions for protective order down the line, but this is
8 just sort of setting the stage for this discovery that's going
9 to be sought, correct?

10 MS. MONTGOMERY: That's right, Your Honor. We
11 believe that it, you know, allows for the authorization of the
12 subpoenas, so that we can issue them. And then disputes with
13 regard to scope, timing, logistics, all of those sorts of
14 things, have been reserved by all the parties, and we hope to
15 be able to work those out individually and meet and confer.

16 THE COURT: All right. Well, I will ask. People,
17 speak now or forever hold your peace. If you are one of the
18 Objectors, it's been represented that all of you have signed
19 off on this order, except for maybe Grant Scott's counsel, but
20 Grant Scott, they have orally approved this form or order.
21 Speak now or forever hold your peace. If you are an Objector
22 and you want to say anything to the Court about this, please
23 do so now.

24 (No response.)

25 THE COURT: All right. I'm not hearing anyone, so if

1 you're trying to speak and you're on mute, I'm just letting
2 you know I'm not hearing anyone.

3 (No response.)

4 THE COURT: All right. Well, very well. I'm happy
5 to accept this agreed form of order. And so I assume that it
6 will be uploaded, if it hasn't been already, and I'll get it
7 signed today, Ms. Montgomery.

8 All right. Well, thank you. So we'll move on to the
9 other matter. And so, again, it's a motion to further extend
10 the stay in what I'll call the CLO Holdco adversary, Adversary
11 20-3195. Ms. Montgomery, will you be presenting that motion
12 as well?

13 MS. MONTGOMERY: No, Your Honor. Ms. Newman will be
14 presenting that motion on behalf of the Litigation Trust.

15 THE COURT: All right. Ms. Newman, would you like to
16 appear at this time?

17 MS. NEWMAN: Yes. Thank you, Your Honor. For the
18 record, Deborah Newman from Quinn Emanuel on behalf of Marc
19 Kirschner, the Litigation Trustee for the Litigation Sub-Trust
20 created under the plan, who, as noted, was -- well, I guess
21 who -- the Sub-Trust was created on the effective date, on
22 August 11th, and has now substituted in as the Plaintiff in
23 the adversary proceeding under the terms of the plan.

24 THE COURT: All right. Thank you, Ms. Newman.

25 I'll now take other appearances of the Defendants in that

1 matter. Who do we have appearing for Defendants in that
2 matter? CLO Holdco first.

3 (No response.)

4 THE COURT: All right. Is Mr. Phillips perhaps the
5 one?

6 THE CLERK: He's still on mute.

7 THE COURT: Mr. Phillips, if you're trying to speak
8 up, you're on mute.

9 MR. PHILLIPS: Sorry, Your Honor. Can you hear me
10 now?

11 THE COURT: I can, yes.

12 MR. PHILLIPS: Okay. Thank you. I apologize. I had
13 it on two sets of mute.

14 Louis M. Phillips on behalf of CLO Holdco, Ltd. and
15 Highland Dallas Foundation, who were the -- are the two
16 parties who have been served in the CLO enterprise group and
17 who were the prior Objectors to the first motion to stay, and
18 we are the Objectors to this second motion to stay.

19 THE COURT: All right. Thank you.

20 So, I assume we have no other appearances for Defendants.
21 If we do, by chance, please speak up.

22 (No response.)

23 THE COURT: All right. Well, Ms. Newman, you may
24 present the motion.

25 MR. PHILLIPS: You're on mute, Ms. Newman.

1 THE COURT: You're on mute.

2 MS. NEWMAN: Thank you. That seems to be a common
3 issue here.

4 OPENING STATEMENT ON BEHALF OF THE LITIGATION TRUSTEE

5 MS. NEWMAN: Again, for the record, Deborah Newman
6 from Quinn Emanuel on behalf of Marc Kirschner, the Trustee of
7 the Litigation Sub-Trust.

8 Your Honor, we're here today seeking a brief further
9 extension of the stay of Adversary Proceeding 20-3195 through
10 October 15, 2021.

11 Under the plan, Your Honor, the Litigation Trustee has
12 been tasked with investigating and monetizing estate causes of
13 action. As I understand it, the original expectation was that
14 the plan would be confirmed and go effective much sooner than
15 has actually occurred. In reality, as Your Honor knows, the
16 plan did not go effective and the Litigation Trust was not
17 formed until eight days ago.

18 Because of this delay and in recognition of the fact that
19 the statute of limitations for many estate causes of action is
20 set to expire in mid-October, in May the Committee moved to
21 retain the Litigation Trustee and his firm, Teneo Capital, as
22 Litigation Advisor to the Committee. The Committee also filed
23 the first motion to stay the adversary proceeding, seeking a
24 90-day stay in order to provide the Litigation Trustee and
25 Teneo with the necessary time to familiarize themselves with

1 the adversary proceeding and to effectively manage the
2 litigation of the adversary proceeding in its entirety.

3 Since that time, Your Honor, the Litigation Trustee and
4 Teneo have spent a tremendous amount of time investigating
5 potential estate causes of action and trying to understand the
6 structure of the Debtor and its many related entities and the
7 myriad of transactions between and among those entities. And
8 I and my colleagues at Quinn Emanuel have recently joined that
9 effort on the Litigation Trustee's behalf.

10 But to say that this is a Herculean task is to put it
11 mildly, Your Honor. As I believe Your Honor knows better than
12 I do, the Debtor's corporate structure is extremely complex,
13 involving more than 2,000 related entities, and there are
14 dozens and perhaps even hundreds of transactions in which
15 assets were transferred out of the Debtor seemingly for no
16 reason and in exchange for consideration that is of dubious
17 value or value that is very difficult to quantify.

18 And the complexity here is exacerbated by the fact that
19 virtually all of those transactions involved more than one
20 counterparty. Assets left the Debtor and then moved from one
21 entity to another, and sometimes from country to country,
22 before being transferred to the ultimate transferee.

23 For those types of transactions, the Debtor's records
24 include some information about the transfers, but piecing
25 together the entire chain of events is exceedingly difficult.

1 While it's true, as Mr. Phillips has pointed out in his
2 objection, that the Committee began taking discovery from the
3 Debtor in the fall of 2019, as I know the Court is aware, that
4 was a long and laborious process and required motions to
5 compel and a complex protocol that placed restrictions on the
6 information that the Committee was able to access.

7 Additionally, the bulk of the Committee's work in this
8 case focused on matters having nothing to do with the
9 investigation of estate causes of action. And the work of
10 that nature that the Committee did do focused primarily on
11 identifying large transfers, assessing what legal claims might
12 arise from them, and work relating to the claims asserted in
13 this action, given the deadline set by the Court to file
14 claims against CLO Holdco in order to prevent funds from being
15 released from the Court registry.

16 The Committee took no third party discovery of any entity
17 other than CLO Holdco, and no substantive witness interviews
18 with Debtor employees were conducted. And it was only
19 recently, upon the effective date, that the Litigation Trustee
20 received broader access to the Debtor's information, including
21 some of its detailed financial records.

22 In short, Your Honor, this is not a situation where the
23 Committee provided the Litigation Trustee with a detailed list
24 of claims, relevant facts, and potential legal theories that
25 would act as a roadmap for his work. The Litigation Trustee

1 is thus literally running up against a clock that is ticking
2 towards October 15th and is spending all of his time
3 investigating and preparing to litigate additional estate
4 causes of action and determining whether to amend the
5 complaint filed in the adversary proceeding.

6 As was just discussed, the Litigation Trustee also intends
7 to begin serving Rule 2004 discovery in order to aid in the
8 investigation of causes of action outside of those asserted in
9 this adversary proceeding. As we have made exceedingly clear,
10 however, the Litigation Trustee does not intend to take Rule
11 2004 discovery relating to the claims asserted in this action.
12 But we are continuing to analyze information in the Litigation
13 Trustee's possession, including the information that just
14 recently became available to him, and likely will be seeking
15 to amend the complaint as well as commencing additional estate
16 causes of action.

17 Accordingly, Your Honor, we are here today asking for a
18 brief additional stay of the adversary proceeding for 57 days,
19 through and including October 15th, 2021, so that the
20 Litigation Trustee may have the time necessary to determine
21 whether to seek leave to amend the complaint filed in this
22 action, to file additional estate causes of action, and to
23 ensure that the complaint or any amended complaint and any
24 additional causes of action that are filed may be litigated on
25 a consolidated basis.

1 As the Supreme Court held in the *Landis* case cited in our
2 motion, the power to stay proceedings is incidental to the
3 power inherent in every court to control the disposition of
4 the cases on its docket with economy of time and effort for
5 itself, for counsel, and for litigants. How this can be done
6 calls for the exercise of judgment which must weigh competing
7 interests and maintain an even balance.

8 Here, Your Honor, the balance weighs heavily and clearly
9 in favor of granting the Litigation Trustee's request. An
10 additional stay of the limited 57-day duration requested poses
11 no threat of harm to anyone and affords significant benefit to
12 all.

13 Of course, this stay will benefit the Litigation Trustee
14 and the beneficiaries on whose behalf he is acting by enabling
15 the Litigation Trustee to gain a better understanding of the
16 extremely opaque structure and transactions involving the
17 Debtor and its related entities. But it will also benefit the
18 Court and the Defendants by ensuring that the parties to the
19 adversary proceeding are not wasting time and money litigating
20 over a complaint that is shortly going to be superseded by an
21 amended complaint, and that the litigation commenced by the
22 Litigation Trustee may proceed in a uniform and consolidated
23 manner, thereby preserving both litigant and judicial
24 resources.

25 We thus respectfully request, Your Honor, that the Court

1 grant the requested additional stay.

2 THE COURT: All right. Ms. Newman, thank you.
3 Remind me of one thing. I didn't go back and study the docket
4 in this adversary. I meant to. There is obviously a motion
5 to withdraw the reference. I issued the previous stay before
6 the response deadline of the Plaintiff to that motion to
7 withdraw the reference; is that correct? So there's no
8 response --

9 MS. NEWMAN: Yes. Yes, Your Honor.

10 THE COURT: There's no response on file yet?

11 MS. NEWMAN: That's correct.

12 THE COURT: All right.

13 MS. NEWMAN: That's correct, Your Honor.

14 THE COURT: So are you of the position that a
15 morphing complaint, the potential for an amended complaint,
16 might affect what is the right thing for the District Court to
17 do on the motion to withdraw the reference?

18 MS. NEWMAN: Yes, Your Honor. I think that it's
19 important that the complaint be the actual complaint that we
20 intend to litigate before we litigate over the question of
21 whether the Bankruptcy Court or the District Court is the
22 appropriate court to hear that case.

23 THE COURT: All right. And this may seem like
24 minutiae, but it always matters on a motion to withdraw the
25 reference: Pending proofs of claim? Do we have pending

1 proofs of claim for any of these Defendants?

2 MS. NEWMAN: Yes, for one, Your Honor. For CLO
3 Holdco, I believe.

4 THE COURT: Okay.

5 MR. PHILLIPS: That is not correct, Your Honor.
6 There is no pending proofs of claim. The only proof of claim
7 on file is for zero amount on behalf of CLO Holdco because
8 the very interests that the complaint complains about having
9 been transferred to ultimately CLO Holdco were canceled;
10 therefore, of no value. And CLO Holdco had previously had a
11 proof of claim on file, but amended that proof of claim to
12 reflect a zero amount.

13 Highland Dallas Foundation had never made any appearance
14 in this bankruptcy case.

15 And so it's not correct to say that there -- I mean, a
16 pending zero proof of claim is, I guess, a pending proof of
17 claim, but it's for zero, and there's no --

18 THE COURT: I don't know that means. I don't know
19 what a proof of claim for zero --

20 MR. PHILLIPS: I don't, either, but I didn't do it.

21 THE COURT: I don't know why you wouldn't withdraw
22 --

23 MR. PHILLIPS: I didn't do it, but it's for zero.

24 THE COURT: I don't know why you wouldn't withdraw
25 the proof of claim.

1 MR. PHILLIPS: Well, I can withdraw it. It was done
2 before I got -- I became counsel here. And it was done to --
3 on the basis of a resolution of issues regarding the Crusader
4 Redeemer litigation and -- and because the ultimate result
5 was that the basis for the proof of claim was extinguished,
6 the proof of claim was either amended -- it was amended to
7 reflect a zero amount. And I can certainly withdraw it
8 because it is a zero amount.

9 These Defendants -- these two Defendants have no claims
10 pending that would require action by the Court or be
11 inextricably interrelated to any complaint against them. So,
12 and the --

13 THE COURT: All right. Well, we kind of -- do you
14 want to go ahead --

15 MR. PHILLIPS: I'll stop right now.

16 THE COURT: -- and make your argument at this time?
17 You can go ahead.

18 MR. PHILLIPS: Well, I wanted -- I'm a little
19 unclear if -- is -- is the Litigation Trust, is that the
20 Litigation Trustee's case, or was that an opening statement?
21 I'm not clear about that.

22 THE COURT: Well, I presumed it was an opening
23 statement, but I don't know if there's going to be evidence
24 on a motion to extend time. Ms. Newman, are you going to
25 have any evidence today?

1 MS. NEWMAN: Your Honor, we did file a declaration of
2 the Litigation Trustee and we would propose to proffer that as
3 the Litigation Trustee's direct testimony. The Litigation
4 Trustee is here to answer any questions that Your Honor may
5 have or for cross.

6 I understand that the Litigation Trustee was having some
7 technical difficulties with his video, but he has been -- I'm
8 not sure if that's been resolved, but he is at least here by
9 phone, and hopefully by video as well.

10 So we would propose to, as I said, proffer his direct --
11 excuse me, proffer his declaration as his direct testimony,
12 and ask simply to reserve for a brief redirect if necessary.

13 THE COURT: All right. Well, there's your answer,
14 Mr. Phillips. We have a --

15 MR. PHILLIPS: Thank you, Your Honor.

16 THE COURT: -- declaration that's going to be
17 proffered, and you would obviously have a chance to cross Mr.
18 Kirschner --

19 MR. PHILLIPS: I have reviewed --

20 THE COURT: -- if you so choose.

21 MR. PHILLIPS: I have reviewed the declaration and I
22 have some documentary evidence that we would like to submit,
23 and then I don't have any questions for Mr. Kirschner.

24 THE COURT: All right.

25 MR. PHILLIPS: So we -- I have no objection to the

1 introduction of the declaration, and I would not -- not
2 because of technical difficulties, but because I read it, he's
3 the greatest litigation trustee who ever existed, and that's
4 fine. We don't have any questions of him.

5 And so I just wanted to know, we have a brief opening,
6 certainly, but we also have some documentary evidence that we
7 would like to put in, Your Honor, and then we could argue from
8 that both opening and closing, I guess.

9 THE COURT: All right. Well, I've heard the opening
10 statement of Mr. Kirschner's counsel. I am accepting as
11 evidence his declaration, which appears at Docket Entry No. 70
12 in this adversary proceeding, starting at Page 18. And Mr.
13 Phillips, I'll hear your opening, and then -- and you can
14 offer your documents. All right?

15 MR. PHILLIPS: Okay. Well, Your Honor, I will do
16 that.

17 OPENING STATEMENT ON BEHALF OF THE DEFENDANTS

18 MR. PHILLIPS: We -- this motion is premised upon, we
19 think, the following assumption, which is, first of all, we
20 heard some -- almost 90 days ago that there was going to be --
21 we had to have more time to respond to legal questions, motion
22 to withdraw reference, and 12(b)(6) motion to dismiss, which
23 the Court had stayed pending its recommendation to the
24 District Court about withdrawal of the reference. We at that
25 point mentioned that, unlike the other Defendants in this

1 litigation, CLO Holdco has in excess of \$2 million hung up in
2 the registry of the Court. The Plaintiffs filed a -- we'll
3 call it utterly conclusory preliminary injunction request
4 which doesn't state a claim for preliminary injunction but has
5 really been given a preliminary injunction since March of 2020
6 when the Court's registry order said, file a complaint within
7 90 days. We know that didn't happen, it was filed in
8 December, and then amended, and we -- we got, I think, an
9 extension of approximately nine days to file our responses to
10 the complaint upon service. We did so on April 14th, 127 days
11 ago.

12 And what we have before the Court, by admission of the
13 Committee -- and we're concerned because this sounds to us
14 like a start-over -- the Committee in its reply at Page 5 says
15 that everybody's wrong when they say the Committee, from
16 January of 2020, had authority to investigate and prosecute
17 estate claims, because what the Committee did was look into
18 the CLO Holdco transaction -- the CLO Holdco action that is
19 now the subject of the pending complaint.

20 So, since January of '20, there has been discovery, there
21 has been document review, there's been investigation by the
22 Committee, who is at least co-counsel for the Litigation
23 Trustee, and now we hear that, notwithstanding FTI spending
24 \$1.7 or \$1.8 million in investigating and reviewing documents,
25 investigating avoidable transfers, the Committee spending some

1 number of millions of dollars in litigation, \$5 to \$6 million
2 in litigation over and including avoidance claims, the CLO
3 claim, we now hear that, really, everything that was done by
4 FTI and the Committee about causes of action was about this
5 lawsuit. And now we're hearing that the Litigation Trustee
6 needs to start over.

7 Well, that's what litigants are supposed to do through
8 discovery, and we're talking -- we hear that we need to have
9 enough time to make sure we amend the complaint. Well,
10 there's no provision in the Rules of Civil Procedure 7001 et
11 seq. that says that once you file a complaint you need to go
12 off and do a lot of different stuff to figure out whether or
13 not you need to amend your complaint. We have a motion to
14 dismiss. We have a motion to withdraw the reference. And the
15 Court made the decision not to proceed on the motion to
16 dismiss. We understand that. We thought we would have a
17 decision on the motion to withdraw reference so that we could
18 take action to get the preliminary injunction dissolved,
19 because they don't state a claim for preliminary injunction
20 and the Court is holding two million of our dollars or more,
21 two or more million of our dollars.

22 So what we have now is 127 days. The Court said at the
23 last hearing that it would probably be a 90-day process to get
24 the motion to withdraw reference resolved. So they're asking
25 for another, say, 60, plus 90, is 277 days before we'll know

1 what court is handling our litigation.

2 The -- we know if the District Court -- we think the
3 District Court is going to rule. We know that there is an
4 absolute right to an Article III adjudication of the claims in
5 the complaint. And the claims in the complaint are very
6 broad-based. They're not just a single transaction. They're
7 claims for alter ego, they're claims of corporate fiction,
8 they're claims of collapse, they're claims of civil
9 conspiracy, and they're claims about an avoidable transfer.
10 We responded to that with a motion to dismiss under 12(b) for
11 failure to state a claim, notwithstanding that for the last 20
12 months this apparently is what everybody was looking into,
13 this litigation.

14 And so, Your Honor, we have -- the 50-day -- the 57 days
15 is a circular problem. In the declaration, it's made very
16 clear that there'll be no discovery about this litigation.
17 All discovery will be exclusive of that related to this
18 litigation.

19 (Interruption.)

20 THE COURT: All right. Someone needs to put their
21 device on mute, please. Or was that the attendant?

22 (Clerk advises.)

23 THE COURT: Okay. Go ahead, Mr. Phillips.

24 MR. PHILLIPS: Okay. Thank you, Your Honor.

25 The declaration of Mr. Kirschner and the reply of the

1 Committee says that this 200... and this is why we came to an
2 agreement, because the pending proceeding rule assertions and
3 grounds are all preserved in connection with the 2004 to make
4 sure that the representations made are abided. There is going
5 to be no discovery under the 2004 process about this
6 litigation. And yet they say they need to finish all of this
7 so that they can make a decision about whether to amend this
8 complaint. But at the -- we -- we have, in our documents,
9 Exhibit 16 would be the FTI fee applications. In December of
10 2020, FTI was reviewing the 79th docket -- document production
11 from the Debtor. The 79th document production from the
12 Debtor, in December of '20. That is eight months ago.

13 In January of '21, the Committee began its knowledge
14 transfer to the future Litigation Trustee, Mr. Kirschner.
15 That's Exhibit 16 at Page 56.

16 In February of 2021, there were communications by FTI, by
17 Sidley & Austin, with Mr. Kirschner about the litigation,
18 about CLO Holdco, about analysis. There was knowledge
19 transfers. He reviewed -- his office or his firm reviewed the
20 complaint on April 21st. There was a -- and the 2004 motions
21 and process were under discussion on May 12th. That's Exhibit
22 17 at Page 110.

23 So the point that I'm trying to make is we have
24 representations from the Committee that all -- 79 document
25 requests by the Debtor or document productions by the Debtor,

1 we pointed out there were four separate document requests,
2 there was a document -- a broad-based document request to CLO
3 Holdco, and production, and the Debtor provided the Committee,
4 who is co-counsel to the Lit... and has been acting as counsel
5 to the Litigation Trustee person since February or even
6 January, when they started the information transfer. That was
7 eight months ago.

8 So, Your Honor, what we're being told is that you can't
9 move forward in a piece of litigation until you can move
10 forward in all litigation, and that's simply just not the way
11 litigation works. Once you file your lawsuit, you do
12 discovery. And if you lose on a 12(b)(6) motion, we all know
13 the Fifth Circuit's standard for authorizing amendments.
14 Unless an amendment would be entirely fruitful, the Fifth
15 Circuit grants the authority to amend. When will that happen?
16 This is a legal question. And the idea that you don't have
17 the right to a ruling on your reference withdrawal motion and
18 12(b)(6) motion until the Plaintiff has had plenty of time,
19 not to review, not to do extra discovery, but to review the
20 documents that the Committee has been dealing with since
21 January of 2020, just because you have a new person.

22 And we cited Your Honor to the case, *ADPT*, whatever, where
23 you were faced with the question, does a litigation trustee
24 get to start over or is the information imputed that the
25 committee holds and committee counsel holds, certainly when

1 committee counsel is going to be counsel to the litigation
2 trustee, is that imputed somewhat to the litigation trustee or
3 does the litigation trustee just get to start over?

4 We're told in the Committee's reply that it was always
5 thought that the investigation would be done by the Litigation
6 Trustee. But Your Honor, in January of 2020, presumably
7 because they wanted to do investigation, the Committee was
8 granted the authority to investigate and prosecute estate
9 claims, which included, for one, this one. This one was filed
10 twelve months after it got authority to investigate and
11 prosecute, after 79 document productions by the Debtor. And
12 now we need another -- we've already had another eight months
13 since it was filed. We can't -- we were given a nine-day
14 extension on our ability to respond, while at the same time,
15 without telling us, they had already retained the Litigation
16 Trustee and -- as a litigation consultant, and in about three
17 and a half or four months had commenced an information
18 transfer. And when we had our argument about the stay, they
19 were already contemplating the 2004, because they have
20 communications about the 2004 on May 12th, when our hearing, I
21 think, was on May 25th, or maybe June 3rd.

22 So, Your Honor, what we have -- excuse me -- is the
23 Committee saying, we investigated this and only this, and we
24 brought a complaint, and we had to respond to it -- I got an
25 extension, Your Honor. One client got served. Another client

1 got served some few days later. I got an extension to respond
2 that was the day the second client served was supposed to
3 respond, so I could file both responses at one time. Nine,
4 twelve days, something like that. That was my extension.
5 Then we granted a 30- to 45-day extension to the Committee,
6 and then, before that extension ran, they filed their first
7 stay motion.

8 So, Your Honor, we -- we have -- we have an injunction
9 that, in fact, has been in place for eighteen months without
10 the first showing or first assertion of fact showing that
11 there's any entitlement to an injunction. So what we -- we
12 understand the Court has discretion over its docket. We
13 understand that the Court can -- the Court can fashion a stay
14 if it wants to. We're just asking the Court, enough is
15 enough. Let us proceed. And if you want to stay it, let us
16 file a motion, because we think while the -- we have a right
17 to Article III decision over the ultimate claims made in the
18 complaint, Your Honor has jurisdiction and authority because
19 you have money in the registry of the Court, and the question
20 is whether a party would be able to get pre-judgment
21 attachment because of some estate interest. We have a right,
22 we think, to get that money back. We would like, if the Court
23 is going to stay this litigation, we would like the ability to
24 go in and get our money out. And if not, we understand that
25 the Court can hold up issuing its ruling and effectively grant

1 the stay -- grant -- grant the stay. We just want this to
2 proceed.

3 If they get their stay, it will be 277 days until -- if
4 the 90-day process is correct, before we get a ruling on our
5 motion to dismiss. And what we have heard, first stay
6 hearing, second stay hearing, is only: Once we come to
7 understand everything that the Committee got paid \$5 million
8 to investigate and FTI got paid a million eight to
9 investigate, once we understand it, we are liable to have an
10 amended complaint. There's no particulars. Why? Because
11 they say they don't understand it all. The information
12 transfer started in January of 2021. Retention, April 2021.
13 Twelve hundred hours spent, sixteen hours a day by the group
14 if you -- if you work on Saturday and Sunday, which I do. I
15 don't know if other people do. And Mr. Kirschner spent 2.4
16 hours a day doing his work from June through July. So, 2.4
17 hours, he's working hard on that. That's fine with us. He
18 can work all he wants to.

19 But, Judge, we -- we want to move forward. We want to
20 know where we are. And if they have a right to amend and
21 there's going to be a reference withdrawal recommendation by
22 this Court, a ruling by the District Court, a hearing on our
23 motion to dismiss under 12(b), won't they have time to do
24 that? Won't they have time to figure out whether they have a
25 right to amend?

1 We need to move forward. We need to try to get our money
2 back. There's been no showing that the Court ought to be
3 holding our money. That's why the Court said, file a lawsuit
4 and assert a claim if you think you have one. Here is their
5 injunction. We have an injunction right because we have filed
6 this complaint. They're holding two point something million
7 dollars of our money for -- since March of 2020, now nineteen,
8 eighteen months, and now they want another 60 days. I don't
9 even know when they want to get a response due if the stay
10 extends another 57 days. We haven't heard when they want
11 their response to be due to our motion. So I would assume
12 that what they want to do is have a new scheduling so they get
13 a new response date so we further out the 90 days, more than
14 90 days. So hopefully, from their standpoint, they can
15 stretch it out a year before we even get a ruling on our
16 motion to withdraw reference.

17 So, Your Honor, they can do whatever they want to do.
18 They have had plenty of time to do it. I don't -- I'm not
19 buying that the greatest litigation trustee in the history of
20 the world, given his declaration, can't go through a chart
21 that they have had since Document 2398 on my client. There
22 may be 2,200 entities, but there are not 2,200 defendants like
23 mine. There are five. There are four, in fact. And that's
24 not Byzantine, although it's everybody's favorite word. There
25 are four entities here. We have some charities that are now

1 going to be subject to 2004 exams, if they are going to
2 actually do them, but those charities aren't involved in this
3 transaction.

4 And so if they want to bring other lawsuits, let them
5 bring other lawsuits. They don't have to finish all their
6 investigation of all their lawsuits before they're obligated
7 to move forward on the lawsuit they filed back in December of
8 2020, eight months ago.

9 So, Your Honor, with that, I'll close, but I would like to
10 introduce -- I filed in an exhibit list and an amended exhibit
11 list yesterday evening. And this -- I have one declaration
12 from me just identifying documents that we received. I do
13 have a declaration of Mark Patrick that I'll withdraw and not
14 -- we'll just leave No. 2 blank. And then I have No. 3 -- 3
15 through 21, and all of -- all of these are pleadings on file,
16 and we would like Your Honor to allow us to introduce 1
17 through 21, with the exception of 2, on our amended list that
18 is filed in at Document 79 filed in yesterday afternoon.

19 THE COURT: All right. Ms. Newman, any objection to
20 Exhibits 1 and Exhibits 3 through 21?

21 MS. NEWMAN: No objection, Your Honor.

22 THE COURT: All right. They will be admitted.

23 (Defendants' Exhibit 1 and Exhibits 3 through 21 are
24 received into evidence.)

25 THE COURT: All right. Mr. Phillips, a couple of

1 follow-up questions.

2 MR. PHILLIPS: Yes, ma'am.

3 THE COURT: Is it more about the two-plus million
4 dollars in the registry of the Court that is your timing
5 concern here, or --

6 MR. PHILLIPS: I would -- I would say that that's --

7 THE COURT: -- moving forward with litigation sooner
8 rather than later, --

9 MR. PHILLIPS: Well, I would say --

10 THE COURT: -- generally?

11 MR. PHILLIPS: -- that they're -- they're connected,
12 Your Honor, because until we can move forward in the
13 litigation, we can't take an action -- if we can take an
14 action on the -- on the money that's in the registry of the
15 Court, I'm fine with staying the rest of it, although I don't
16 think the stay would really help them at all. It's not going
17 to -- look, if Quinn Emanuel and Sidley & Austin can't respond
18 to a Louis Phillips motion for withdrawal of the reference,
19 then they need to get another job. Because I am not --

20 THE COURT: Well, --

21 MR. PHILLIPS: They're -- they're the king of the --
22 they're the queens of the prom. I'm not. But we have a --
23 just a motion to withdraw reference, simple motion to withdraw
24 reference, and they have said all their discovery is going to
25 be outside this complaint and outside this litigation. So

1 they can't -- I can't figure how discovery outside the
2 litigation is going to help them figure out about amending the
3 complaint that's already on file. So they can't be saying
4 that.

5 And any litigant who files a complaint needs to stand
6 behind that complaint and can't say, I filed this complaint,
7 now I don't want to move forward until I'm sure I have all my
8 amendments and all of my facts straight. They've had millions
9 of pages of information.

10 So, in answer -- a longwinded answer, I'm sorry -- in
11 answer to your question, our prejudice is we can't do anything
12 to get our money until we get somewhere on the litigation.
13 And so if we can get that, I'm willing to make a deal. But I
14 need to be able to do that. And that's a simple -- they
15 haven't stated a claim for injunctive relief, and the Fifth
16 Circuit says you've got a claim, you can't get injunctive
17 relief. *Grupo* says you can't have pre-judgment attachments.
18 So we think we have a right to get it.

19 And you tried, you tried back in March to give them the
20 option and the opportunity to file something that gave them
21 the right. What they filed, I promise, didn't. And we just
22 want our day in court on that. And if they have -- they want
23 to -- we also want our day in court on our motion to dismiss,
24 because we don't think they've stated a claim. And we also
25 want our day in court on the motion to withdraw reference, but

1 we understand that the Court is busy and the Court has to do a
2 recommendation, and we don't have any control, even if you
3 denied the stay, we don't have any control over the
4 recommendation timeline or the District Court referral.

5 That said, that means that however long the stay goes, we
6 still don't have any authority -- any control over that time
7 period.

8 But to answer your question, my harm, my harm is twofold.
9 One, monetary. I can't get my money. Two, parties have the
10 right to get litigation tossed. We've withdrawn Mr. Patrick's
11 declaration, but this has consequences. We have a supporting
12 organization, the Highland Dallas Foundation, that was set up
13 by the Dallas Foundation, which I would assume Your Honor is
14 familiar with. It's the largest charity -- charitable entity
15 in Dallas. There's a pall over that. There's a pall over all
16 of these people who are being investigated, or have been
17 investigated for the last twenty months. But now we have one
18 supporting organization that is one of the many supporting
19 organizations for the Dallas Foundation, and we have -- we
20 need to get this resolved. They don't state a claim. We've
21 said that. We've briefed that.

22 So, Your Honor, I want our money. I want to be able to go
23 after my money. I'm a party. I am not a party who wants to
24 lay back and just hope for the best. We're ready to go. We
25 got a nine-day extension and filed two motions. And we're

1 being told by two international law firms that they need
2 another 60 days after 90 days to respond to our two motions.
3 And that's not fair. That's not fair.

4 THE COURT: All right. I'm thinking through this and
5 remembering the history. And I do remember that I ordered,
6 you know, you've got to file an adversary proceeding by x date
7 here because of concerns about money being held in the
8 registry of the Court without there being, you know, a lawsuit
9 or, you know, to support that type of injunctive relief. As
10 we all know, ordinarily, without the Court putting those
11 restrictions in place, the Plaintiff would have had until
12 October 15th of this year to bring this lawsuit. And absent
13 the Court's order speeding up the time frame, you know, we
14 wouldn't be here, possibly, the lawsuit wouldn't even be filed
15 yet.

16 But thinking back through that, a couple of things are on
17 my mind. One is it wasn't just CLO Holdco's money, as I
18 recall, originally put in the registry of the Court. I think
19 there was Mark Okada and maybe other parties. And that money
20 has since been freed up. Can you confirm my memory of that?

21 MR. PHILLIPS: Your Honor, all I know is that our
22 money has not been freed up. And it may very well be that you
23 freed up other people's money and I -- but I don't know. I
24 was not there at that point. I know ours is still there.

25 THE COURT: All right. I wonder, is there anyone on

1 the line -- maybe Ms. Montgomery -- who can confirm that?
2 Because, again, I'm just trying to put my brain back in the
3 mindset it was in when I imposed these, you know, tight
4 deadlines: You've got to file an adversary by x date. I feel
5 like it was multiple parties' money tied up, and since then
6 some of that was freed up. Can anyone confirm my memory? I
7 would have to scroll back through the bankruptcy docket, not
8 just this adversary docket. The adversary wasn't around.

9 MR. POMERANTZ: Your Honor, this is Jeff Pomerantz.
10 We're checking. But I believe Mark Okada's money was subject
11 to the initial order. We're not sure, and we're checking now,
12 whether that money actually went into the registry or what we
13 believe it may have been was offset against other obligations
14 that Mr. Okada owed. So, we're just confirming that, --

15 THE COURT: All right.

16 MR. POMERANTZ: -- but that was a second (audio
17 glitch), Your Honor.

18 THE COURT: Okay. So it may --

19 MR. KANE: Yeah.

20 THE COURT: Is someone speaking?

21 MR. KANE: Yeah, Your Honor. Hi. This is John Kane.

22 THE COURT: Uh-huh.

23 MR. KANE: I was previously representing CLO Holdco
24 at the time and participated in the approval of a number of
25 orders that included funds related to Mark Okada also or Okada

1 also.

2 It was my understanding over some period of time that Mr.
3 Okada's funds in the registry of the Court were resolved but
4 the money from CLO Holdco was never removed from the registry.
5 And there were a couple of deposits after our hearing of some
6 smaller amounts of CLO Holdco funds as well.

7 THE COURT: Okay. Thank you, Mr. Kane.

8 MR. POMERANTZ: Your Honor, also, I understand that
9 Highland Capital Management Services has a small amount of
10 money in the registry as well.

11 THE COURT: Okay. All right. Thank you.

12 Another thing on my mind, Mr. Phillips, is this: I mean,
13 you used the words, it's not fair, it's not fair, so I'm going
14 to go down this fairness/equitable trail with you. I mean,
15 I've heard in other contexts that there might be \$200 million
16 of assets in this charitable structure. And I don't mean to,
17 you know, dismiss \$2 million. That's a lot of money. But as
18 far as, is there some undue hardship here, are lives going to
19 be affected, --

20 MR. PHILLIPS: Well, --

21 THE COURT: -- what would you say if it kind of rings
22 hollow with me, knowing the size of the organization, which,
23 again, I'm not sure I appreciated way back when when I had
24 such huge concern about money in the registry of the Court for
25 a long term.

1 MR. PHILLIPS: Number one, Your Honor, I am not -- we
2 have -- CLO Holdco and the DAF which owns CLO Holdco have
3 investments, and those investments have value. But there's a
4 difference between value and cash. And so when you make
5 charitable contributions, when we make charitable
6 contributions, what we try to do is we try to get cash -- turn
7 investments into cash at the right time, and then the cash
8 goes to the -- through the supporting organizations to the
9 charities themselves.

10 And the problem I have, Your Honor, is that question you
11 just asked me flips the burden. I have to prove that I am not
12 unduly harmed by you holding money without a proceeding to
13 determine whether the other side is entitled to injunctive
14 relief.

15 Now, I'll say it says something else. I think your number
16 could be correct as far as mark-to-market, ultimate valuation,
17 that sort of thing, which, again, cuts against you having to
18 hold that money in the registry of the Court, because, first
19 of all, they've asserted a claim against my client, and the
20 claim is for far less than the amount that you've been talking
21 about. I'm not talking -- what I'm saying, to me, and maybe
22 I'm wrong, it doesn't ring hollow at all. Injunctive relief,
23 no matter what, has to be proven. You have to prove
24 irreparable harm. And this money has been held in the
25 registry of the Court for eighteen months without a showing of

1 any harm by -- that would be -- result from you releasing the
2 money.

3 So our point is I don't know how to get it in front of you
4 or -- and get it in front of a court if there's a stay in
5 place. I would like to be able to get it in front of a court.
6 We don't think there's any harm at all in releasing the money.
7 The estate had claims against other people; that money got
8 released. We don't have any liquidated claims against us. We
9 have a lawsuit against us, but we've filed a motion to dismiss
10 under 12(b) that they don't want to answer.

11 So, what is my -- what is it? Is it \$200 million? I
12 don't know if it's \$200 million, but it's -- it's substantial,
13 but it's in investments that you can't just turn to money by
14 the flip of a switch. And I don't -- I don't know that that's
15 an appropriate investigative question here, but I -- in
16 answering your question, CLO Holdco holds substantial
17 investments for the charitable enterprises, and they can say
18 whatever they want to, but at the end of the day we know how
19 this is going to turn out. And -- but if -- if they -- they
20 have a claim against us for \$24 million, and have admitted in
21 the lawsuit that they've already gotten paid \$8 million on the
22 note that they got for the alleged \$24 million in property,
23 most of which was extinguished by the settlement of the
24 Crusader interests.

25 So they've already been paid at least -- over 35 percent

1 of the \$24 million, and they still have a note that's paying
2 -- that is going to pay the full \$24 million.

3 But that's a -- that's a merits issue. We're -- we're on
4 an -- we're here trying to break through an injunction issue,
5 which hasn't ever been raised. Hasn't ever been raised. They
6 don't want to proceed on their preliminary injunction. Why?
7 It doesn't say anything. They know the Fifth Circuit won't
8 let a preliminary injunction go.

9 And what Your Honor is pointing out is there can be no
10 harm if you release the money to us. If you'll release the
11 money to us, you know, we can make -- we'll -- we'll quit
12 yammering and let you control your docket as you want to, and
13 -- we want to get the litigation resolved, but we recognize
14 that we have no control over how fast we get a recommendation
15 from this Court, and it won't be until after there's a
16 response to our motion to withdraw the reference. We
17 understand that we are subject to control of the Court,
18 authority of the Court. We just want to move forward. But we
19 can have our money, and they still have their claim, and that
20 resolves any injunction request.

21 And the injunction request, think about this, Your Honor,
22 you're holding -- not you, but the Court is holding the money.
23 What is the injunction request? Are they enjoining you from
24 distributing it to me if I ask for it? Or are they enjoining
25 me from asking you for it? There's no injunction right for

1 money that's being held in the registry of the Court. We --
2 anyway, I've beat it to death. I apologize if I've gone over.
3 But --

4 THE COURT: All right. Again, and I want to say that
5 the burden of proof flipping that you suggested might be going
6 on here, I'm not ignoring the burden of proof in a preliminary
7 injunction context. I'm not overlooking that. It's just what
8 I'm getting at is you don't like the stay, among other
9 reasons, because it delays your day in court, some court, this
10 one or the District Court, in arguing about getting that money
11 back. As long as there's a stay, we don't have a hearing, I
12 guess, is what you're saying, on that money.

13 MR. PHILLIPS: Yes, ma'am.

14 THE COURT: And so I'm just -- I was trying to
15 evaluate the fairness, the equities of delaying by another 57
16 days, perhaps, your chance to have your day in court on that.
17 So it wasn't about burden-flipping.

18 MR. PHILLIPS: I appreciate it.

19 THE COURT: Okay.

20 MR. PHILLIPS: I appreciate, Your Honor.

21 THE COURT: All right. So, I'll go back to Ms.
22 Newman. Do you have any rebuttal evidence or any rebuttal or
23 I guess closing argument at this point?

24 MS. NEWMAN: Thank you, Your Honor. No rebuttal
25 evidence. I'd like to just make a few remarks in response to

1 what Mr. Phillips has said, and I'll try to be brief.

2 First of all, Your Honor, Mr. Phillips' citations to the
3 time records I think in many ways supports what we've been
4 trying to -- telling you and Mr. Phillips, which is that, yes,
5 there is a lot of information here. And there's a lot of
6 information to synthesize. And while the Litigation Trustee
7 has begun that process, there is yet still very much work to
8 do.

9 And Mr. Phillips talked a lot about what happens with
10 ordinary litigation and how an ordinary litigation stay of
11 this nature isn't warranted. And that may be right, Your
12 Honor, but I would submit that this is not ordinary
13 litigation. This is litigation where we have a new plaintiff
14 substituting in. Yes, he has been around for some months, but
15 he has not been fully up and operational. Mr. Kirschner was
16 -- his -- the Litigation Sub-Trust that he represents didn't
17 even exist until August 11th. And so, in many ways, we think
18 that differentiates what we have here from ordinary litigation
19 and really -- really warrants the stay.

20 And, look, I sense -- I sense Mr. Phillips' frustration.
21 I think a lot of people were frustrated that the effective
22 date didn't happen earlier, that confirmation didn't happen
23 earlier, that things have taken so long. But -- and I'm sure
24 that the beneficiaries of this litigation are frustrated by
25 that. But denying the stay and forcing the parties to move

1 forward in litigation of a complaint that is very likely to be
2 amended and superseded is not going to save time or benefit
3 the parties. It's going to cause the parties to engage in
4 needless litigation over the next 57 days, and then at the end
5 of the day we will have -- we will -- we will likely move to
6 amend the complaint.

7 And, you know, also, as I've said, going -- there is --
8 undoubtedly, there will be additional estate causes of action.
9 This is going to be a long haul here, and we are going to do
10 our best to make it efficient for the parties and the Court,
11 and we think that the best -- and to save costs for the Trust
12 and its beneficiaries. And we submit that the best way to do
13 that is to grant a short reprieve for 57 days so that all of
14 this can proceed in a coordinated fashion and with the
15 complaint that's going to be operative.

16 THE COURT: All right. Ms. Newman, let me ask you to
17 respond to Mr. Phillips' argument that all of this 2004
18 discovery, you all have made clear that it wouldn't be aimed
19 at claims or causes of action that might be in this adversary
20 proceeding. So he says, what do you need 57 more days for if
21 it's not related at all to this discovery you're going to be
22 engaging in? What is your response to that?

23 MS. NEWMAN: So, two points on that, Your Honor.
24 First of all, the discovery that we're going to be taking
25 could potentially lead to additional causes of action against

1 the -- against the Defendants to this litigation. We think
2 that's -- that's well within the realm of possibility, and we
3 may amend the complaint to include those claims.

4 The Litigation Trustee, while we will continue -- is --
5 Mr. Kirschner is continuing to work with Sidley, look, he's
6 brought in new counsel, and we are looking at the causes of
7 action, we're doing all his legal analysis, and Sidley is
8 working with us to do that. And we're likely going to seek to
9 expand the causes of action that are in the complaint, having
10 nothing to do with the 2004 discovery, just based on the
11 information the Litigation Trustee has now. And so, as I
12 said, there is likely to be an amended complaint. There is
13 likely to be additional causes of action that are the result
14 of the 2004 discovery. And we believe all of that should go
15 forward together, as a piece.

16 THE COURT: Okay. So it's not *per se* aimed at
17 developing claims, causes of action, and theories in this
18 adversary, but it could lead to information that gives you
19 information to add claims or causes of action? That's what
20 you're saying?

21 MS. NEWMAN: I would say different claims or causes
22 of action, potentially, that are unrelated to the claims and
23 causes of action --

24 THE COURT: Okay.

25 MS. NEWMAN: -- that are currently asserted. But in

1 addition to that, Your Honor, to be clear, Mr. Kirschner just
2 obtained access to certain of the Debtor's financial
3 information, and is continuing to try to unravel the very
4 opaque transactions that are at the heart of this litigation.
5 And so there is still, within the information that we just
6 received, there is potential that we will be examining the
7 factual basis of the claims that are asserted, not based on
8 the 2004 discovery but based on the information that the
9 Litigation Trustee has only recently gained access to. And,
10 again, we are also continuing to analyze the legal -- the
11 legal claims.

12 THE COURT: All right.

13 MS. NEWMAN: Your Honor, what was the last twenty
14 months about, then?

15 And by the way, the frustrations of the hedge funds that
16 just bought into the claims, knowing what they were getting
17 into, do you -- are we really -- are we really going to
18 attribute new people who bought in at a discount frustration?
19 I don't think they're frustrated. I think they knew exactly
20 what they were getting into.

21 THE COURT: All right.

22 MR. PHILLIPS: Let's be real here.

23 THE COURT: Okay. Well, here are what I consider the
24 relevant facts here. We have a request for a 57-day further
25 stay in an adversary that is inside, obviously, the two-year

1 statute of limitations for the Plaintiff to bring claims and
2 causes of action. In fact, the 57-further-day stay would
3 coincide exactly with that two-year deadline to file claims
4 and causes of action. So that's number one.

5 Number two, the adversary -- this adversary was commenced
6 on December 17, 2020. And the timing was because of an order
7 that this Court imposed. As I said earlier, I was concerned
8 when I issued that December 20 deadline about tying up
9 people's money in the registry of the Court for a long time
10 before there was even any litigation to resolve claims against
11 them.

12 So that's the procedural backdrop for why we're here.
13 There might not even be an adversary proceeding filed yet
14 against these Defendants if not for the fact that there was
15 the request to put money in the registry of the Court, and I
16 thought, well, if you're going to do that, I understand your
17 concern, because the argument was there are claims against
18 these entities and, you know, obviously, some of them are
19 Cayman Island entities, --

20 (Interruption.)

21 THE COURT: Whoever is on -- not on mute, please put
22 it on mute.

23 So, anyway, that's the backdrop. I set a much earlier
24 deadline for bringing claims and causes of action against CLO
25 Holdco because of the registry, money in the registry of the

1 Court.

2 So, that's part of the backdrop that matters today. But I
3 can't ignore other big-picture facts, and that is that we
4 don't have a Plaintiff that's exactly sitting his hands here.
5 You know, among other things, I will point to the 40-page
6 motion to take the 2004 exam as some evidence that the
7 Plaintiff isn't exactly sitting on his hands. We have a 40-
8 page motion, dense with 62 footnotes, I would add, that shows
9 tons and tons of investigation, as Mr. Phillips alluded to.

10 So what are the other things that matter here? We have a
11 22-month-old case now. The case was filed in October 2019.
12 Since then, venue was transferred from Delaware to Texas.
13 That was a several-week contested matter. We had -- okay.
14 So, venue was transferred in December 2019. Then in January
15 2020, we had an entirely new board of directors installed and
16 the CEO, Mr. Dondero, ousted. And we had this corporate
17 governance arrangement put in place where the UCC got standing
18 to pursue estate causes of action.

19 Then in March 2020, two months later, we have a worldwide
20 pandemic declared, so the Court process went virtual. Safe to
21 say things kind of slowed down a little because of the
22 obstacles of that.

23 Then, in July 2020, we had a new CEO installed, Mr. Seery.
24 But, significantly, we also had what the Court perceived to be
25 the UCC beginning in earnest at trying to get document

1 discovery, and that came to light with an ESI motion where the
2 UCC was seeking to get protocols in place for the production
3 of ESI from different document custodians at Highland. And so
4 what I learned in that very lengthy hearing, with many, many
5 participants and objectors, was that the Committee had been
6 trying informally almost since day one, December 2019, to get
7 documents, to get documents, to get documents informally, and
8 then they brought this ESI motion.

9 Then, August 2020, I ordered global mediation, where I
10 pretty -- I didn't order people to stand down, but I almost
11 used those strong of terms. I want everyone focused on this
12 global mediation. And so we had two very prominent mediators
13 work several weeks, and major settlements were reached after
14 that effort.

15 Then, in the fall, we had the Debtor pursuing a plan
16 incorporating these settlements. All of a sudden, at that
17 point, in mid-fall, I would say, despite the mediation where
18 major global settlements were reached, we had Mr. Dondero
19 terminated in October 2020, and then we had lots of
20 litigation, a contested confirmation, adversaries seeking TROs
21 and injunctions against Mr. Dondero and certain of his related
22 entities.

23 Plan confirmed in February 2021. Appeals, appeals still
24 pending. And on the topic of appeals, we've had dozens,
25 dozens of -- I don't know if we've had dozens. We've had at

1 least a dozen appeals in this case of various orders. We've
2 had what this Court considered violation of its gatekeeping
3 orders and litigation over that. Then, of course, we've had
4 -- we had the Litigation Advisor and the Litigation Trustee
5 more recently get involved. And then the plan has now gone
6 effective August 11th.

7 You know, that's the history. And then, oh, I guess we
8 should mention that there are supposedly 2,000 or so companies
9 out there that the Committee and its professionals have had to
10 analyze and figure out inter -- I guess I should say
11 intercompany transfers and transactions. It doesn't get much
12 more complicated than this.

13 So all this to say that, against that backdrop, I don't
14 think 57 extra days seems that unreasonable.

15 And let's just further think through this. If I deny the
16 stay, what does it mean? It means, okay, the Plaintiff has to
17 respond, you know, let's say in 21 days to the motion to
18 withdraw the reference, and then I would give ten days to
19 reply, and then I would do my report and recommendation, but I
20 don't know when the Rule 15 motion to amend that's predicted
21 would be filed, and that would affect what I put in my report
22 and recommendation.

23 And as far as would they be given leave to amend, we all
24 know, as Mr. Phillips alluded to, very liberal standard, of
25 course they would be allowed to amend under the Fifth

1 Circuit's interpretation of Rule 15.

2 So, you know, I said 57 days doesn't seem that
3 unreasonable, number one, but I have to think about
4 efficiency. You know, the District Court doesn't want a
5 report and recommendation from me that is stale because now
6 there are five more causes of action, so I've got to
7 supplement that thing. But then maybe I don't. Maybe I have
8 to defer to the District Court to rule on the Rule 15 motion,
9 and then I've got to do an either/or: Right now, these are
10 the claims, but if you allow the leave to amend, then there
11 are going to be these others. So there's an efficiency thing
12 that's very troublesome here.

13 But it's frustrating also because I think the reference is
14 going to be withdrawn. I mean, it just sounds like we're
15 going to have non-core claims, and I don't know about this
16 zero proof of claim, but, you know, it just seems like we
17 might be delaying the inevitable. Okay.

18 So, all of that having said, I'm going to grant the motion
19 for a further 57-day stay in substantial part, but not
20 entirely. I am going to say there is no stay with regard to
21 motions, applications, pertaining to the money in the registry
22 of the Court. Okay? So I don't know who tees that up, but I
23 -- if Mr. Phillips wants to tee it up with an application, if,
24 you know, the Plaintiff thinks it's more correct for us to tee
25 it up. I can't remember the wording of the order, but it was

1 in the underlying bankruptcy case before there was the
2 adversary. So, obviously, we need to have, if we're going to
3 tee it up, applications in the adversary. So the stay will
4 not apply with regard to that being teed up.

5 Now, you know, then I'm going to have the dilemma,
6 assuming one of you tees it up: Well, is it proper for me to
7 consider it, or do I defer to the District Court, you know,
8 just like I'm deferring to it on the motion to dismiss, you
9 know, until there's an ruling on the motion to withdraw the
10 reference?

11 So I think, you know, I may be moving the ball here a tiny
12 bit, but I'm not sure I'm moving it that much, because even
13 though I am saying no stay as to litigation on the money in
14 the registry of the Court, I mean, you all have to take a
15 position: Do you consent to me ruling on it or not? And
16 then, if not, then --

17 MR. PHILLIPS: Your Honor, we will deal with that --

18 THE COURT: -- I guess I'll do a report and
19 recommendation on whatever I decide on that. It's messy.
20 Okay. Mr. Phillips?

21 MR. PHILLIPS: Your Honor, we appreciate that, and we
22 will -- will get with counsel and figure out who moves first.
23 We have no problem moving first, I promise.

24 THE COURT: Uh-huh.

25 MR. PHILLIPS: And we will deal with and brief how we

1 see the jurisdictional question. We're not going to -- we'll
2 do our best, with my feeble brain, to lead -- provide you with
3 a roadmap about what we think you should do. So we don't
4 think you need to spend any time trying to figure it out now,
5 because I think you need to put us to the test, and if we file
6 something, then you sure have the right to expect that we will
7 show you our best effort on how we think you ought to proceed
8 and what we think you ought to rule and what authority we
9 think you have with respect to this discrete issue. And we
10 propose -- we propose that we will do that to the best of our
11 ability.

12 THE COURT: All right. Well, thank you. And a
13 couple of follow-up thoughts on that. Do not seek an
14 emergency setting on this. Number one, COVID and --

15 MR. PHILLIPS: We won't.

16 THE COURT: COVID and other things allowing, I'm
17 planning on being out of the country August 25th through
18 September 5th. But I guess, more importantly, is it's waited
19 this long, it can wait, you know, 30 more days --

20 MR. PHILLIPS: Well, we --

21 THE COURT: -- or whatever.

22 MR. PHILLIPS: That's a sword -- that's a sword that
23 cuts both of our heads off, Judge: It's waited this long so
24 they can't have irreparable harm, and it's waited this long so
25 we will not -- we promise we will not notice it for hearing

1 before September 6th, the day you get back. How's that? That
2 was a joke.

3 THE COURT: Okay.

4 MR. PHILLIPS: That was a joke.

5 THE COURT: The last thing I want to say is
6 reasonable minds, I think, can work something out here.

7 MR. PHILLIPS: We think so, too.

8 THE COURT: I mean, the registry of the Court is not
9 a great place to have \$2 million sitting around earning no
10 interest, or interest that federal, whatever, you know,
11 federal employees generate for it. But we have a Cayman
12 Islands entity here, so I and any court is going to have that
13 going through my/its mind as far as --

14 MR. PHILLIPS: Your Honor? We understand the Court's
15 concern, and what -- what we are -- if the Court is right, and
16 I'm not going to say that it's not, that the value of -- they
17 are suing who they're suing, right? And we are who we are.
18 And if they win, this \$2 million has nothing to do with
19 whether or not they'll be able to collect their judgment. So
20 we understand the Court's concern, but we will deal with that
21 in our briefing and we will deal with that in whatever
22 proposition we make. And as well, what we will try to do is
23 we will try to resolve this in a way that does not involve the
24 Court, or at least in a way that involves the Court on an
25 approval basis. If we can't, then we'll take adversarial

1 action. But we will never -- we will not start with that.

2 THE COURT: All right. Thank you. All right. Ms.
3 Newman and Mr. Phillips, can you work together on an
4 appropriate form of order that reflects the Court's ruling?
5 And I'll look for it to be submitted shortly.

6 MR. PHILLIPS: I will certainly -- I will certainly
7 try, Your Honor. I've never met Ms. Newman, but she seems
8 very competent, way more than me, so I'll follow her lead.

9 THE COURT: All right.

10 MS. NEWMAN: Thank you, Mr. Phillips. Looking
11 forward to working together.

12 Thank you, Your Honor.

13 MR. PHILLIPS: Thank you. Thank you, Your Honor.

14 THE COURT: Thank you. We stand adjourned.

15 THE CLERK: All rise.

16 (Proceedings concluded at 10:59 a.m.)

17 --oOo--

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20 CERTIFICATE

21 I certify that the foregoing is a correct transcript from
22 the electronic sound recording of the proceedings in the
above-entitled matter.

23 **/s/ Kathy Rehling**

08/27/2021

24

25 _____
Kathy Rehling, CETD-444
Certified Electronic Court Transcriber

Date

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