

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

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)	Case No. 19-34054-sgj11
In Re:)	Chapter 11
)	
HIGHLAND CAPITAL)	Dallas, Texas
MANAGEMENT, L.P.,)	March 31, 2023
)	9:30 a.m. Docket
Reorganized Debtor.)	
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KIRSCHNER, et al.,)	Adversary Proceeding 21-3076-sgj
)	
Plaintiff,)	
)	MOTION FOR LEAVE TO STAY
v.)	ADVERSARY PROCEEDING [324]
)	
DONDERO, et al.,)	
)	
Defendants.)	
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TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE STACEY G.C. JERNIGAN,
UNITED STATES CHIEF BANKRUPTCY JUDGE.

APPEARANCES:

For the Plaintiffs:	Robert S. Loigman QUINN EMANUEL 51 Madison Avenue, 22nd Floor New York, NY 10010 (212) 849-7444
For Highland Capital Management Fund Advisors, LP and NexPoint Advisors:	Deborah Rose Deitsch-Perez STINSON LEONARD STREET 3102 Oak Lawn Avenue, Suite 777 Dallas, TX 75219 (214) 560-2201
For James Dondero, et al., Defendants:	Amy L. Ruhland DLA PIPER LLP (US) 303 Colorado Street, Suite 3000 Austin, TX 78701-4653 (512) 457-7220

1 APPEARANCE, cont'd.:

2 For the Charitable
3 Defendants:

Louis M. Phillips
KELLY HART
400 Poydras Street, Suite 1812
New Orleans, LA 70130
(504) 434-6742

5 For the Reorganized
6 Debtor:

John Morris
PACHULSKI STANG ZIEHL & JONES, LLP
780 Third Avenue, 34th Floor
New York, NY 10017-2024
(212) 561-7700

8 Recorded by:

Michael F. Edmond, Sr.
UNITED STATES BANKRUPTCY COURT
1100 Commerce Street, 12th Floor
Dallas, TX 75242
(214) 753-2062

10

11 Transcribed by:

Kathy Rehling
311 Paradise Cove
Shady Shores, TX 76208
(972) 786-3063

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1 DALLAS, TEXAS - MARCH 31, 2023 - 9:37 A.M.

2 THE COURT: All right. We are now going to convene
3 -- I forgot my reading glasses. Can you see if there's a pair
4 on my desk? Okay. We're about to convene our hearing in the
5 Highland adversary, Kirschner v. 23 or so Defendants. I have
6 walked out here without my reading glasses, so forgive me for
7 stumbling a bit.

8 All right. Well, let's start by getting appearances from
9 the lawyers who have filed pleadings this morning. First,
10 I'll hear from Plaintiffs' counsel.

11 MR. LOIGMAN: Good morning, Your Honor. It's Robert
12 Loigman of Quinn Emanuel on behalf of the Litigation Trustee.

13 And I want to apologize to the Court. For reasons totally
14 unbeknownst to me, I'm having technical issues, so that I am
15 appearing on the screen but on my phone at the same time, and
16 I seem to be able to unmute my phone to talk through that.
17 But I figured I'd kind of resolve that in the next minute or
18 so.

19 THE COURT: Okay. All right. So you're appearing
20 for Plaintiff.

21 And certain Defendants filed pleadings, so why don't we go
22 through those appearances. I'll just pull up the pleadings as
23 I have them in front of me. For the Charitable Defendants, I
24 think I see Mr. Phillips out there, correct?

25 MR. PHILLIPS: Good morning, Your Honor. Louis M.

1 Phillips on behalf of the Charitable Defendants.

2 THE COURT: All right. So do I have the right
3 pleading? The Highland parties did weigh in on -- no, that's
4 the different matter. All right. Who wants to go next?
5 Sorry I'm fumbling a little. Ms. Ruhland, do you want to
6 appear?

7 MS. RUHLAND: Yes. Thank you, Your Honor. Amy
8 Ruhland from DLA Piper on behalf of James Dondero, The Dugaboy
9 Investment Trust, Get Good Trust, and Strand Advisors, Inc.

10 THE COURT: All right. Thank you.

11 Other appearances from Defendants who have filed
12 pleadings?

13 MS. DEITSCH-PEREZ: Yes. Deborah Deitsch-Perez --
14 good morning, Your Honor -- from Stinson, representing
15 NexPoint Advisors and HCMFA.

16 THE COURT: Thank you. Anyone else wish to appear
17 who filed a pleading?

18 All right. Well, --

19 MR. MORRIS: Your Honor, it's John Morris. I didn't
20 formally file a pleading, but I do expect to be heard at the
21 end of this because there'll be some housekeeping and other
22 matters unrelated to the adversary proceeding.

23 THE COURT: Okay. Thank you. All right. Anyone
24 I've missed who wants to appear?

25 All right. Well, we set a hearing this morning on an

1 expedited motion for stay of this action. There were
2 pleadings filed. It looked like there might be opposition.
3 But as of about 5:00 o'clock Central Time last night, I think
4 I understood from my courtroom deputy that maybe there's not
5 opposition now. So why don't we start with Plaintiff/Movant
6 and tell me, am I correct in my understanding?

7 MR. LOIGMAN: Thank you, Your Honor. And I apologize
8 for these technical issues.

9 That's correct that there is no opposition at this point
10 in time. And I'm happy to walk Your Honor through what the
11 current situation is and what should be right now the only
12 motion before the Court.

13 THE COURT: Okay. Please do. Thank you.

14 MR. LOIGMAN: Okay. So, Your Honor, you have hit
15 upon the good news right from the beginning, which is that
16 over the past week there has been a flurry of filings. There
17 have been -- it started on Friday evening with our motion for
18 a stay, and then there were filings by various of the
19 Defendants, including their own motion for a stay and some
20 responses to our pleading.

21 The good news is that there's now only one filing
22 remaining before the Court. In the context of this adversary
23 proceeding, the Defendants have withdrawn their motion for a
24 competing stay, they have withdrawn their objections and
25 responses to the stay that has been proposed by the Trustee,

1 so now all that is before the Court at this morning's
2 conference is the Trustee's motion for a stay with respect to
3 just this adversary proceeding, the *Kirschner v. Dondero*
4 adversary proceeding.

5 Now, it may seem odd, Your Honor, that the Trustee has
6 moved to stay his own case. And I'll start by saying that --
7 first of all, remarks will be brief, given that there's no
8 opposition -- but I'll start by saying that the motion for
9 stay is not meant to be a commentary in any way on strengths
10 of the claims or our beliefs in the merits of the claims.
11 Those have not changed in any way.

12 Rather, we have proposed this stay for purely practical
13 reasons, and that is because, as we sit here today and over
14 the past many months and going forward, HCMLP has been
15 monetizing its assets, the proceeds of which are used to pay
16 the claims of the Claimant Trust beneficiaries and to fund the
17 other obligations of the Claimant Trust. And the Litigation
18 Trustee's understanding is that that process has been going
19 well.

20 So at this point, we don't know the extent to which the
21 proceeds from this case will be needed to satisfy the
22 beneficiaries' claims in the Claimant Trust.

23 Now, we have consulted with the Claimant Trustee, Mr.
24 Seery, and with his counsel, and we understand that there will
25 be much more clarity on this issue six months from now, after

1 further progress has been made on the monetization of those
2 assets.

3 And similarly, Your Honor, there'll be more clarity
4 regarding the Claimant Trust's other expenses. For example,
5 the expense of defending other litigation, its indemnification
6 obligations, and including litigation that we see was just
7 filed by Mr. Dondero recently, which we believe to be a
8 frivolous litigation, but that will be handled by the counsel
9 for the Claimant Trustee.

10 So, what we have proposed to the Court is to stay this
11 case, the Kirschner proceeding, for six months to allow that
12 process to proceed, to see what clarity it provides, and then
13 to determine whether this case needs to resume. And as we
14 have proposed, Your Honor, we suggest that after the six-month
15 period, that the stay continue at that point in time to
16 continue to allow that monetization process to continue, but
17 to be terminable at that point in time by any party to this
18 proceeding upon 30 days' notice to the Court and to the other
19 parties.

20 And with respect to where we stand now, Your Honor, as I
21 pointed out, Defendants do not oppose this stay. And we
22 believe, Your Honor, there's good reason for that, as we
23 believe that the stay is beneficial for all the parties and
24 for the Court. It will preserve party and judicial resources
25 over the next several months, and it will allow that

1 monetization process to proceed without the distraction of
2 this litigation. And this is, of course, as we pointed out in
3 our moving papers, a significant litigation which involves
4 significant cost.

5 And finally, before I stop, Your Honor, a few just quick
6 points I'd like to make about the stay that has been proposed
7 to the Court. And these points, by the way, Your Honor, have
8 been agreed upon with the Defendants as well at this point.

9 The first is that this stay will apply to all aspects of
10 this adversary proceeding. So it will include everything
11 that's open in this adversary proceeding right now, including
12 -- I would just point out because of the timing -- the motion
13 to recuse that has been filed in this case. That motion has
14 not yet been fully briefed. And the reason I mention that,
15 Your Honor, is because the Litigation Trustee's response to
16 that motion would be due this upcoming Friday. So if the stay
17 is granted, we would not be filing that opposition. So I just
18 wanted to point that out.

19 The one -- it's not really so much an exception, but the
20 one thing that will not be stayed which I should point out to
21 Your Honor is the District Court's consideration of the
22 objections to Your Honor's Report & Recommendation concerning
23 withdrawal of the reference. That's fully briefed, that's now
24 before the District Court, and so the parties do not
25 contemplate that that will be included within the stay.

1 And then, finally, as we pointed out in our moving papers,
2 Your Honor, there's been a lot of third-party discovery served
3 by the Defendants in this case, approximately 45 subpoenas on
4 third parties so far. The stay will apply to all discovery,
5 and that will include these subpoenas served on third parties.
6 The Defendants that have served the subpoenas will work with
7 the third parties to toll any responses, and that will be
8 subject to the recipients' agreements that they will preserve
9 documents so that Defendants are not prejudiced by that
10 tolling during the time period. And the Defendants have
11 agreed that if they run into any problems with that process,
12 if any of the subpoena recipients won't preserve documents
13 during the time period or whatever else may come up, that they
14 will advise us, and hopefully that can all be worked out
15 without the need to continue with the subpoenas. But we
16 understand that Defendants will reserve that possibility in
17 that instance.

18 So that's really the whole matter before the Court today,
19 Your Honor. I'm happy to address any questions the Court may
20 have. And if a stay is granted, the parties will submit an
21 order to the Court consistent with the Court's ruling. But at
22 the end of the day, this is really just a fairly
23 straightforward, notwithstanding all the back and forth this
24 week, a fairly straightforward motion just for a stay of this
25 action for a period of six months. And again, the way that we

1 envision it would work, subject to the Court's approval, of
2 course, is that it would be stayed during that six-month
3 period, and then, upon notice from any party to the Court, it
4 would be lifted upon 30 days' notice.

5 Thank you, Your Honor.

6 THE COURT: All right. One question, and then I'll
7 hear from others. The one aspect that would not be stayed as
8 I heard it was many months ago I sent a Report &
9 Recommendation -- and I think this is Judge Karen Scholer's
10 action, if I'm not mistaken -- I sent a Report &
11 Recommendation recommending withdrawal of the reference when
12 the action is trial-ready, with this Court acting as a
13 magistrate, what I call the usual protocol. And that Report &
14 Recommendation is still in front of Judge Scholer, not ruled
15 upon.

16 And so you're saying the parties don't want anything to
17 stay her ruling on that if she's going to be ruling on that in
18 the next six months. Is that correct, what I'm hearing?

19 MR. LOIGMAN: Thank you, Your Honor. Yes. That's
20 correct. The concept will be that's fully briefed, that's
21 before the District Court, so the stay would not affect the
22 District Court from ruling on the objections to that Report &
23 Recommendation.

24 THE COURT: Okay. Thank you.

25 Well, I'll hear from the Defendants who want to weigh in.

1 Can you confirm this is, in fact, what you're agreeable to?
2 Anything you would add or change about that?

3 MR. PHILLIPS: Your Honor, Louis M. Phillips on
4 behalf of the Charitable Defendants.

5 I'll point out one thing that I think we need to deal with
6 so that we don't have a cart/horse problem. The parties all
7 agreed to, in light of the motion that was going to be filed,
8 the discussions we were having, the parties submitted to the
9 Court a stipulation that extended deadlines. And that
10 stipulation, we think -- I don't pay close enough attention to
11 the docket -- but I think that everybody has agreed that Your
12 Honor has not ruled or actually signed that stipulation. And
13 I think, before the stay goes into effect, we would like -- we
14 would request that the Court consider the stipulation that was
15 submitted, I believe someone said today on the 24th, and it
16 was -- it was an agreed stipulation by all parties to the
17 litigation.

18 THE COURT: Okay. I actually --

19 MR. PHILLIPS: That way, --

20 THE COURT: -- have it orange-flagged in front of me.
21 It at Docket Entry 321. It was filed on March 24th. And yes,
22 I see the different scheduling deadlines in there, showing a
23 proposed docket call in November of 2024. So I've got it.
24 The parties are wanting me to go ahead and sign this proposed
25 Fourth Amended Scheduling Order?

1 MR. PHILLIPS: Your Honor, we think that -- that was
2 submitted to Your Honor in light of the notion that there
3 would be a stay of some sort. So I think getting that signed
4 first is our preference, and I think it removes a lot of
5 uncertainty about the effect of a stay, because it works hand-
6 in-glove with the proposed stay order that we've been working
7 on. I'd submit --

8 MR. LOIGMAN: Your Honor, if I may speak, --

9 MR. PHILLIPS: Go ahead.

10 MR. LOIGMAN: -- speak to that?

11 THE COURT: All right. Go ahead.

12 MR. LOIGMAN: We have no objection to entering that
13 order before the stay order. But I would clarify, I think, a
14 point that Mr. Phillips has made.

15 That order was submitted because we did not know whether
16 there would be a stay, and it was actually submitted before we
17 even moved for a stay in this case. And it was to extend
18 discovery by four months at a time when, if there wasn't a
19 stay, that extension would certainly be required in order to
20 complete discovery in the case.

21 Entering that stay, those deadlines -- I'm sorry.
22 Entering that order, those deadlines are no longer going to
23 make sense if there's a stay and then the case is resumed six
24 months from now. The parties will need to renegotiate a
25 schedule at that point in time that's acceptable to all of the

1 parties and the Court.

2 So it's fine to enter that order or not enter that order
3 from the Trustee's perspective, because, ultimately, once the
4 stay is lifted, if it's granted, there will need to be a
5 discussion about a schedule at that point in time. And I
6 think the Defendants would agree with us that the schedule in
7 place under that order would no longer be a viable schedule
8 after a stay.

9 MS. DEITSCH-PEREZ: That is correct, and I actually
10 was about to jump in and say that schedule reflects what we
11 needed before the stay and that it might be that if we -- if
12 we don't resolve matters within the period of the stay, that
13 we would need at least a commensurate extension if and when we
14 resumed.

15 MR. PHILLIPS: And that's fine. My suggestion about
16 that is that's what the parties thought we would need. We can
17 discuss it. But the point is, if we enter -- if the Court
18 enters this scheduling order, that -- those dates in the
19 scheduling order would reflect what the parties thought they
20 needed due to the current status, and I think it provides a
21 basis upon which we can discuss, because if the Court issues a
22 stay now without a scheduling order, the deadlines are either
23 right now or about to be past.

24 It just seems to me like -- and I'm not bound to this --
25 but the notion is that we agreed upon kind of a period --

1 different periods of time. They won't make sense from
2 September, but they do make sense about what the parties
3 thought they needed.

4 If -- I just don't -- I would not like for the stay to
5 terminate and then there be a big controversy about whether or
6 not any additional time was necessary, given that it was
7 almost over with as of the date of the entry of the stay.
8 That's my only concern.

9 THE COURT: All right. Well, looking at the
10 stipulation, there are two deadlines that would hit during
11 this six-month or so stay window. And that would be August 9,
12 2023, substantial completion of fact document discovery. And
13 then, well, start of fact depositions earlier of Wednesday,
14 September 6, 2023 or decision on last outstanding motion to
15 dismiss.

16 So what I'm hearing is no one would argue, if the stay of
17 the adversary lifts September 30th, oh, too late to do fact
18 discovery. Okay. No one would argue that. Yes? No?

19 MR. PHILLIPS: Correct.

20 MR. LOIGMAN: That's correct, Your Honor. And then
21 from the Litigation Trustee's perspective, I think what Mr.
22 Phillips was trying to say is that schedule sort of reflects
23 how much time we think we would need once the stay -- if the
24 stay were to be lifted, that schedule is sort of reflective of
25 how much more time would be --

1 MR. PHILLIPS: Right.

2 MR. LOIGMAN: -- needed for discovery. That's
3 probably correct. But that's probably something best left to
4 be discussed at that point in time.

5 THE COURT: Okay.

6 MR. PHILLIPS: If we can all agree on that, Your
7 Honor, that's fine with me. I just wanted -- Mr. Loigman is
8 right. What I'm saying is no one is going to talk about
9 September being over with, but what -- that schedule reflects
10 the consensus of the group that, if we were moving forward,
11 that's the time we would need.

12 So the stay is in effect through the date it's in effect
13 under the order to be submitted, and then it remains in effect
14 unless it's terminated upon 30 days' notice. So there's a
15 stay through September, and then it continues unless someone
16 terminates it. And all that scheduling order reflects is
17 that, when the stay is terminated -- well, right now, we think
18 we -- everybody thinks we would need x number of days, months,
19 whatever, from now or from the prior deadlines to complete
20 what the deadlines provide for. And if there's no dispute
21 about that and we have this record that there's no dispute
22 about that and we can start from -- not start from scratch but
23 kind of use that as a guide, then we're fine with using it as
24 a guide.

25 THE COURT: All right. Ms. Ruhland, I've not heard

1 from you. Anything you want to weigh in with?

2 MS. RUHLAND: Yes. Thank you, Your Honor.

3 I just want to make clear that one of the reasons that the
4 Dondero Parties filed a competing motion for stay is because
5 we were looking for a broader resolution of not just the
6 Kirschner adversary proceeding but also some of the
7 proceedings that are pending in the main bankruptcy case,
8 which is why we filed the motion both in the Kirschner
9 adversary proceeding and in the bankruptcy proceeding at
10 Docket 3702.

11 We are not withdrawing the motion from the bankruptcy
12 proceeding docket, and we are going to be working with the
13 Court to set that motion for hearing in the bankruptcy case,
14 as I discussed with Mr. Morris.

15 The reason, Your Honor, that we filed that competing
16 motion, in addition to thinking that there were ways that we
17 could effectuate a broader resolution, is because it's been my
18 clients' position -- I think Your Honor is aware -- for many
19 months now that this has always been a solvent estate, that
20 the enormous professional spend which is draining the estate
21 month over month is only impacting the residual equity holders
22 and what could be Claimant Trust beneficiaries that are now
23 contingent.

24 In addition, our motion in the bankruptcy case was seeking
25 mediation and a global resolution of the many issues that are

1 still pending between the parties that we don't think
2 monetization, even if successful, will impact. And so that
3 was the reason for our motion.

4 Mr. Loigman also mentioned the lawsuit that was just filed
5 against -- or, the motion seeking permission to file a lawsuit
6 against various parties. That was filed not by my client, Mr.
7 Dondero, but by counsel to Hunter Mountain Investment Trust.
8 And while I appreciate Mr. Loigman thinks that's frivolous,
9 obviously, counsel for Hunter Mountain Investment Trust thinks
10 there are meritorious claims there.

11 The whole point being, Your Honor, that we think that
12 there are broader issues that need to be resolved. Those
13 issues are appropriately resolved in mediation with all
14 parties and stakeholders, including parties that are potential
15 third parties with responsibility here.

16 But all that is to say we are in agreement with the stay
17 of the Kirschner litigation, which, frankly, is another piece
18 that is causing enormous drain on the resources of the estate
19 and the professionals. If they can put their pencils down for
20 a bit, I think that benefits everyone.

21 So we're in agreement with Mr. Loigman on the contours of
22 the stay. And, again, we've been working with Mr. Loigman,
23 Mr. Morris, and the Defense group for several days now, trying
24 to figure out the best way to put that stay in place. And so
25 we'll be presenting the Court with a mutually-agreed order to

1 that effect.

2 THE COURT: All right. Well, then is there anything
3 else anyone wants to say about the stay of this adversary
4 proceeding? I know we have some housekeeping matters in the
5 underlying bankruptcy case that Ms. Ruhland has just alluded
6 to some of them. So anything else with regard to the
7 adversary?

8 MR. LOIGMAN: Nothing further from the Litigation
9 Trustee, Your Honor.

10 THE COURT: Okay. And I see there are others on the
11 WebEx. I can't see the pictures. But we have lots of
12 Defendants. I presume there might be some observers. I'm
13 giving anyone a chance to weigh in at this point, even if you
14 didn't file a pleading, since we did this on pretty short
15 notice.

16 All right. Well, hearing no other comments, I am going to
17 accept the proposal for a stay of this adversary proceeding.
18 I hope this is a positive thing for every party concerned.

19 Just a moment.

20 (Pause.)

21 THE COURT: All right. So, as I understand it, the
22 parties all agree that the Court will first sign what I think
23 would be the Fourth Amended --

24 (Pause.)

25 THE COURT: Okay. Did I misunderstand? I thought

1 everyone wanted me to sign the Fourth Amended Scheduling
2 Order, even acknowledging that a new one will need to be
3 presented after the stay expires. Did I mishear that? I know
4 we --

5 MR. LOIGMAN: Your Honor, Robert Loigman for the
6 Trustee again.

7 We have no objection to that. As Your Honor has pointed
8 out, that schedule will be mooted by the stay, in effect. But
9 we have no objection to entering the order for a guide for
10 what might be a schedule when the stay lapses, if it does.

11 THE COURT: Okay. Thank you. I know we had lots of
12 back and forth about that, but I thought where we came out was
13 I'll go ahead and sign this, with everyone acknowledging that
14 if and when the stay expires, you'll immediately need a new
15 scheduling order.

16 So I'll sign that. I will sign the stay, understanding
17 that it's going to stay all aspects of this adversary
18 proceeding other than the District Judge's ultimate ruling on
19 the Report & Recommendation on Motion to Withdraw the
20 Reference.

21 So, I will look for that form of order, and I'll get both
22 of these orders signed today if they are in my queue to be
23 signed. Please let Ms. Ellison know if they're in my queue so
24 I can go ahead and get those signed.

25 All right.

1 MR. LOIGMAN: Thank you, Your Honor. I've been
2 advised that this order is not yet in your queue because we're
3 still sorting out the final language with the Defendants, but
4 we've made substantial progress from doing that.

5 THE COURT: All right. Well, I understand the
6 wordsmithing. So, again, I'll just wait for it to be in my
7 queue and I'll sign it promptly once it is.

8 All right. Well, if there's nothing else, then, to say
9 about the adversary, Mr. Morris, do you want to start us off
10 with the main case issues?

11 MR. MORRIS: I do. I do. Thank you very much, Your
12 Honor. John Morris; Pachulski Stang Ziehl & Jones; for the
13 Reorganized Debtor.

14 I know that Mr. Seery -- at least I believe Mr. Seery is
15 in your courtroom today. We weren't sure exactly --

16 THE COURT: He is, and I'll let people know he's
17 sitting out midway towards the back of the courtroom. And I
18 wasn't sure if more people were going to come in or not, but
19 we're always happy to have human beings live in our courtroom
20 these days. Any of you are always welcome to show up live and
21 in person if you want to.

22 MR. MORRIS: Thank you, Your Honor. We weren't sure
23 exactly what was going to happen in this matter when you
24 travel down to Dallas. And as I think the Court is aware
25 after three years, Mr. Seery takes all of these matters

1 extraordinarily seriously.

2 I was going to touch on some housekeeping, but I'm going
3 to have to say a little bit more, in light of Ms. Ruhland 's
4 commentary.

5 I want to begin by thanking Marc Kirschner and the Quinn
6 firm for their responsible leadership. We're here today to
7 stay the Kirschner litigation not because of anything Mr.
8 Dondero has done but because Mr. Kirschner, working with Mr.
9 Seery, made the responsible decision that at this moment in
10 time it would be prudent to seek a stay.

11 The notion that this case is being run for the purpose of
12 running up legal fees is completely destroyed by Quinn's
13 willingness to put down their swords, because they were
14 working very hard in response to gargantuan discovery
15 requests, including almost four dozen subpoenas, when they've
16 yet to receive a single document in return.

17 I think we need to have some context as to what we're
18 doing here. This is the result of a considered and deliberate
19 decision made by Mr. Kirschner, in consultation with Mr.
20 Seery, on the advice of counsel. So I really do thank them
21 for getting here.

22 I want to put the Kirschner lawsuit in some context in
23 light of what Ms. Ruhland just said. The solvency of the
24 estate will not be determined until indemnification
25 obligations are finally determined. That is what the plan

1 provides, and that is what the Fifth Circuit has ruled in the
2 appeal on the Indemnity Trust Agreement at Footnote 7.

3 So the soundbite of a solvent estate is a fallacy. Okay?
4 Creditors will not be paid anything as long as there are
5 indemnification obligations, because they come first. And
6 while it is unclear today how this estate will play out, and
7 it's unclear because we don't know what the yield will be on
8 the remaining asset monetizations, we don't know if we will be
9 able to collect on the \$70 million of notes once that judgment
10 is entered, we don't know what the indemnification obligations
11 will be going forward.

12 And at this point, I would remind the Court of Mr.
13 Dondero's threat to burn the house down. And I don't mean to
14 be inflammatory here, although I understand the irony of that
15 word in this context. But at this point, the Kirschner
16 lawsuit -- think of the Kirschner lawsuit as a water tower.
17 And we've turned off the spigot, even though the flames still
18 burn, because we're hoping that we have enough water in the
19 form of assets, cash, and the rest of it, to put the fire out.

20 But the problem, Your Honor, as much as we hear about the
21 burn rate and the desire for mediation, is that Mr. Dondero
22 keeps throwing logs on the fire. And so the fire continues to
23 not only burn but to expand. And I just want the Court to be
24 aware, because there's no way it could be aware, of the
25 totality of what's happened in simply the last 30 days.

1 On February 28, Dugaboy filed an action in the Southern
2 District of New York against the Highland Select Equity Master
3 Fund. We had the whole recusal beef. CLO Holdco went forward
4 with their unfair prejudice action in Guernsey. We have the
5 appeal of the order on the conforming of the plan. We have
6 this latest motion for leave by Hunter Mountain to commence
7 that lawsuit.

8 I will tell you, Your Honor, that we look forward to
9 litigating that case to a final judgment. It is without
10 foundation, it is without any factual or legal basis, and it
11 will be addressed in due course.

12 NexPoint Strategic Opportunities Fund filed an amended
13 complaint in New York State Supreme Court in a case where a
14 motion to dismiss is *sub judice*. They didn't seek permission.
15 But more nonsense to deal with.

16 All of these logs require water in order to be put out.
17 And under the plan, as confirmed by the Fifth Circuit, the
18 Indemnity Trust has to be funded in order to satisfy
19 indemnification obligations before anybody gets paid. Okay?

20 So there is no such thing as a solvent estate until the
21 question of indemnification gets resolved. And as long as Mr.
22 Dondero wants to continue to throw logs on the fire, we are
23 going to tap the water in order to put it out. And if at some
24 point in the future we need to tap the Kirschner litigation in
25 order to get more water to continue to put the fire out,

1 that's exactly what we're going to do.

2 So, you know, it's lovely that counsel says he'd really
3 like to have resolved this, but you can't -- we will -- you
4 can't do both things. You can't keep throwing logs on the
5 fire and then say you want the fire to be put out. Stop
6 throwing logs on the fire, withdraw all of this litigation,
7 and maybe, maybe, there would be room to have a discussion.
8 But as long as the attacks continue to come, personal and
9 otherwise, we're going to defend ourselves.

10 And so that's where we are, Your Honor. We did file
11 yesterday our opposition to the emergency motion for leave to
12 file that lawsuit by Hunter Mountain. We understand that
13 early next week Your Honor will issue an order, a scheduling
14 order. We'll deal with that as it comes.

15 And otherwise, when Ms. Ruhland files her motion or the
16 Court gives a date for her motion for mediation and other
17 relief, we'll address it. We'll just ask that, whatever that
18 date is, that we be given a reasonable period of time to
19 respond in writing.

20 That's all I have, Your Honor. Thank you.

21 THE COURT: All right. Well, I'm going to circle
22 back at this point to Ms. Ruhland. So, as I understand it,
23 you're seeking a stay in the underlying bankruptcy case, and
24 you're going to be seeking a setting on that. Correct?

25 MS. RUHLAND: Yes, Your Honor. If I may respond to

1 some of Mr. Morris's comments, which, frankly, I wasn't
2 anticipating dealing with today. I want to say a couple of
3 things. Let me respond to Your Honor's question first.

4 THE COURT: Uh-huh.

5 MS. RUHLAND: The answer is yes, we are going to be
6 seeking a setting on our motion to stay, which isn't a motion
7 to stay the bankruptcy proceedings in whole, it's a motion
8 directed at trying to obtain some of the information my
9 clients have been trying to get for a long time about the
10 value of the estate.

11 I mean, frankly, the fact that we have a different view of
12 solvency and believe that there is sufficient money in the
13 estate to pay creditors in full now, and Mr. Morris takes a
14 different view, speaks to the problems that we've been having
15 with transparency in the case and one of the reasons that
16 we're seeking some of the information we're seeking as part of
17 that competing motion to stay.

18 But I don't --

19 THE COURT: Can I --

20 MS. RUHLAND: I didn't come in intending to argue
21 that today. I am intending to set that for later hearing.

22 THE COURT: All right. Let me ask a question. Has
23 an adversary proceeding been filed yet with regard to the
24 valuation determination? Because we all will remember there
25 was a motion to determine valuation, and in December I ruled I

1 think this needs an adversary proceeding. And I was thinking
2 the adversary proceeding eventually got filed, but am I wrong?
3 Has it not been filed?

4 MS. RUHLAND: Yes, Your Honor. Deborah Deitsch-Perez
5 is on still, and she did file a motion for leave to file that
6 proceeding, out of an abundance of caution. So that is
7 already on the docket.

8 And that is actually one of the pieces we thought we might
9 be able to stay in exchange for some information from the
10 Debtor, which is part of our motion to stay that we will set
11 for hearing in your Court.

12 THE COURT: Okay. Not to split hairs, but is the
13 motion for leave pending or is the adversary actually filed?
14 Because I seem to remember that -- I do remember the motion
15 for leave.

16 MR. MORRIS: Go ahead, Ms. Deitsch-Perez.

17 THE COURT: Go ahead, yes. Ms. Perez? You're on
18 mute.

19 MR. MORRIS: I can't hear you.

20 MS. RUHLAND: Can't hear you.

21 MS. DEITSCH-PEREZ: The motion for leave is pending.
22 And I don't have it in front of me. Mr. Aigen is on the call
23 somewhere. He could probably say when it is set for.

24 MR. MORRIS: Your Honor, if I may. John Morris. I
25 believe that the reply is due on April 10th, and it's been set

1 for a hearing on April 24th.

2 THE COURT: Okay.

3 MR. MORRIS: And I will point out that, at the end of
4 the day, Your Honor, in our response, the Debtors (audio gap)
5 problem with them pursuing the relief that they seek. We do
6 have a problem with the substance of their complaint that's
7 laid out.

8 So the Movant can do with the response what it wishes, but
9 our position has been stated clearly on the record. They've
10 got until April 10th to reply. And this is currently set for
11 hearing on the 24th of April.

12 THE COURT: Okay. All right. So, Ms. Ruhland?

13 MS. DEITSCH-PEREZ: And I would --

14 THE COURT: Oh, go ahead, Ms. Perez.

15 MS. DEITSCH-PEREZ: I'm sorry. I just would note
16 that we did ask in advance whether the Debtor agreed that the
17 gatekeeper was unnecessary, so we could have proceeded
18 straight to the filing of a complaint. We couldn't reach an
19 agreement in advance, so we did make a gatekeeper motion.
20 Perhaps we'll be able to work it out so that we go straight to
21 the complaint, or Ms. Ruhland is correct, perhaps we can
22 short-circuit this all, as we've been discussing over the last
23 few weeks, for the Debtor and the Trustee to provide the
24 information sought, and then we would not have to take up more
25 time in Your Honor's court fighting over information that, on

1 our side, the parties have long thought we should have.

2 Thank you.

3 THE COURT: All right. Ms. Ruhland, so back to you.
4 I just wanted to clarify that.

5 But, anyway, so you were saying you're seeking a stay that
6 -- I want to hear again about the scope. You were kind of
7 starting to talk about the scope of the stay you're wanting.

8 MS. RUHLAND: Sure, Your Honor. We were seeking to
9 stay particular proceedings in the main bankruptcy case. One
10 was the valuation proceeding. But, again, that was hinged on
11 the hope that we could reach some agreement with the Debtor
12 for the provision of information so that we could short-
13 circuit that particular motion and adversary proceeding.

14 The other thing we were seeking to stay or will be seeking
15 to stay is the objection to the HCLOM claim.

16 And then, in addition, and maybe I should style the motion
17 slightly differently, we are seeking to compel mediation of
18 the remaining disputes between the parties. And Mr. Morris
19 just talked about all of the logs that my clients and other
20 entities in the case have thrown on the fire. I will mention
21 that Mr. Morris himself threw a log on the fire recently by
22 filing a vexatious litigant motion in the District Court where
23 the Notes cases have been submitted for review of the summary
24 judgment rulings issued by Your Honor. I have serious
25 questions about the validity of that motion from a

1 jurisdictional perspective, but also from a substantive
2 perspective.

3 But in any event, that motion will require not just my
4 clients but numerous other parties that have not even entered
5 appearances yet in these proceedings to spend potentially
6 hundreds of thousands of dollars dealing with the contents of
7 that motion.

8 So, listen, all parties are throwing logs on the fire.
9 And, again, we are trying with our motion in the Bankruptcy
10 Court to put a sort of end to the global issues that have been
11 percolating here, including the most recent lawsuit that's
12 been filed by Hunter Mountain Investment Trust.

13 I mean, look, just to respond to Mr. Morris's comments, my
14 client continues to believe that something really bad happened
15 here. And Mr. Morris may dispute that, Mr. Seery may dispute
16 that, but the fact remains that there is reason to believe
17 that there were transactions facilitated here that shouldn't
18 have been facilitated, that this bankruptcy has not been
19 transparent in the way it should have been. And that is a
20 narrative that my clients believe in strongly, that they have
21 a right to pursue until they can be proven otherwise. And,
22 again, I don't think that the goal is to pursue those things
23 if a global resolution can be facilitated, but that's
24 something that needs to be discussed seriously in the context
25 of the bankruptcy proceeding, to stop the bleed.

1 The other thing I will say, and I've seen this, and again,
2 Your Honor, I haven't been involved in these bankruptcy
3 proceedings, you know, and I know there's a lot of water under
4 the bridge there, but I've heard this accusation hurled on a
5 number of occasions, that my client, Mr. Dondero, has
6 threatened to burn down the house. He vehemently disputes
7 that he ever said that. And I haven't seen any evidence of
8 that, other than arguments made by counsel in the context of
9 the bankruptcy proceeding. So I just want to mention that.

10 And then, finally, Mr. Morris mentioned discovery.
11 Frankly, one of the reasons I think that Kirschner is seeking
12 a stay is to prevent some of the discovery that we've been
13 seeking. But the bulk of the documents here, just to be
14 clear, are in the hands of the Debtor and the Litigation
15 Trustee.

16 So, yes, we have not produced documents yet in the case.
17 We are in the process -- we were in the process of gathering
18 documents to produce in the Kirschner litigation. But the
19 number of documents held by the Defendants in that litigation
20 versus the number of documents held by the Reorganized Debtor
21 and the Litigation Trustee are -- that's a grossly
22 disproportionate number.

23 So, again, I didn't come here today to argue the merits of
24 our competing motion to stay in the bankruptcy proceedings or
25 about any of the other things that have happened here, but I

1 just wanted to respond to some of Mr. Morris's comments.

2 MR. MORRIS: Finally, and very briefly, Your Honor, I
3 forgive Ms. Ruhland because she has not been party to these
4 proceedings for very long. As Your Honor knows, Mr. Seery
5 testified to the burning-down-the-house comment years ago.
6 And this is actually the very first time, despite the fact
7 that it's been said probably dozens and dozens of times, that
8 anybody has had the audacity to try to contest it. It's
9 actually in the Fifth Circuit decision on confirmation. So,
10 you know, two years and dozens of assertions later is an
11 interesting time to try to dispute that particular fact. I
12 won't even call it an allegation at this point. It's in the
13 record. It's never been disputed under oath.

14 And, look, we'll respond to their motion when they make
15 their motion. Let's do it on a reasonable period of time.
16 The fact of the matter is, you know, any of this stuff could
17 have been done at any time. At this point, I'm going to hold
18 my gunpowder with respect to the efforts that we've actually
19 made to try to give them the very relief they want, with the
20 exception of mediation. It's very difficult to get to yes in
21 this matter. But we'll continue to try.

22 And if Ms. Deitsch-Perez, you know, has a proposal on a
23 form of complaint that strips out some of the vexatious
24 commentary and allegations and makes it more in line with what
25 Mr. Draper and Mr. Phillips had filed last year, you know, we

1 can proceed accordingly.

2 And it may be that -- you know, we have made an offer.
3 I'm not going to disclose anything of what it is. We've made
4 an offer to provide information. If we can reach an
5 agreement, fantastic.

6 But I don't want the Court to be left with any impression
7 at all that we've been intransigent. We've actually -- you
8 know, again, I'll just remind the Court that we're here today
9 on the Highland parties' motion for a stay. We have been
10 extraordinarily responsive, and if it ever gets disclosed, I'm
11 very confident the Court will agree we've been extraordinarily
12 responsive to the various requests that Ms. Ruhland is
13 referring to and that apparently is going to be subject to
14 another motion.

15 So, we remain committed to working constructively where we
16 can. We remain committed to fully implementing the plan,
17 which, you know, at the risk of repeating myself, requires
18 indemnification obligations to be satisfied before creditors
19 are paid. And we remain committed to defending, you know, all
20 charges against us.

21 And so if Mr. Dondero would like to pursue the Hunter
22 Mountain complaint, that is his prerogative, as Ms. Ruhland
23 said. If he wants those questions answered, we'll answer them
24 in a court of law.

25 Thank you very much, Your Honor.

1 THE COURT: All right. Well, I want to clarify
2 everything I do have pending before me. But before I do that,
3 is there anyone else who wanted to say something in the way of
4 housekeeping with regard to the underlying case?

5 All right. So what I have pending before me is the Hunter
6 Mountain motion for leave, which I communicated through my
7 courtroom deputy that I will decide by Monday something on
8 scheduling that. That was filed, I think, Monday evening. I
9 can't remember if it was Monday evening or I feel like I
10 became aware of it on Tuesday morning, maybe. But I don't
11 know if the attorney is on the WebEx who filed that. But as I
12 understood it, it was seeking an emergency hearing on three
13 days' notice, and I was in court many hours the next day. I
14 just haven't had a chance to go through it, with all the
15 attachments. So hopefully this afternoon and this weekend I
16 can do that, and look at now the newly-filed response and
17 communicate something regarding timing of that setting on
18 Monday.

19 Also, I understand I have a motion for leave to file what
20 I'll call the valuation complaint. And I understand that's
21 set for hearing late April, if you don't otherwise have some
22 sort of agreement on that.

23 And then, third, this motion for stay of the underlying
24 bankruptcy case Ms. Ruhland talked about.

25 I'm not sure if there's actually a motion on file at the

1 moment that you're going to seek a setting on, or you're going
2 to be filing it anew. I know there was something going on
3 about -- I can't remember if this is where the "incorrect
4 entry" showed up on the docket. But were you filing it in the
5 case? Were you filing it in the adversary? Is there
6 something you're going to do to refile that, or you're going
7 to seek a setting on the motion filed in the underlying
8 bankruptcy case?

9 MS. RUHLAND: Your Honor, we did file it in the
10 underlying bankruptcy case at the same time that we filed it
11 in the Kirschner adversary. So I don't think a new filing is
12 necessary, --

13 THE COURT: Okay.

14 MS. RUHLAND: -- but we will be reaching out to the
15 Court to set it for hearing.

16 THE COURT: Okay.

17 MR. MORRIS: And I would like to confer with Ms.
18 Ruhland about timing of briefing, because we would like a
19 reasonable opportunity to respond in writing.

20 THE COURT: Yes.

21 MS. RUHLAND: Yes. Understood.

22 THE COURT: And just for my own understanding, you've
23 dangled out there your client would like mediation compelled,
24 perhaps. Does your motion for stay contemplate everything
25 would be stayed, these different so-called logs on the fire?

1 I know there are many appeals out there. Is your client --

2 MS. RUHLAND: So, it's more -- it's more --

3 THE COURT: -- going to seek a stay of everything?

4 Everything? We have many adversaries.

5 MS. RUHLAND: Your Honor? Your Honor, our motion was
6 more limited than that. And this is something that Mr. Morris
7 and I can confer about. I think the answer is we would like a
8 mediation that is, you know, more global in scope than the
9 stay we're seeking, in the hopes that all of these "logs on
10 the fire" could be extinguished.

11 But I'm not sure that's possible in light of some of the
12 conversations I've had with Debtors' counsel. Again, I am
13 going to continue to confer with Mr. Morris on scope. But for
14 now, the stay that we're seeking is more limited in nature,
15 and I would say the mediation we're seeking is broader.

16 THE COURT: All right. Well, every judge loves to
17 hear the word "mediation" and "global mediation." But I don't
18 know how that works if you're wanting to stay some things but
19 not everything. So, food --

20 MS. RUHLAND: And Your Honor, we'll give that -- I
21 appreciate that. We'll give that some thought in terms of
22 whether we should, you know, we should file -- refile the
23 motion with a broader ask regarding stay.

24 For now, I think we'll leave it on file as is, but I will
25 confer with my clients and Mr. Morris and see if we can get to

1 a resolution -- you know, get to a place where a broader
2 resolution is possible.

3 THE COURT: Okay. And I guess the other thing I'll
4 say about that is we did do global mediation almost three
5 years ago. Summer of 2020. We had what I thought were two
6 tremendous mediators, co-mediators. And a lot of things were
7 resolved in that mediation, but of course there's still a lot
8 out there.

9 So, as wonderful as it sounds and as much as I would love
10 to place hope in that and might indeed be inclined to order it
11 under certain circumstances, I just don't know how in the
12 world it would work if there's still litigation moving forward
13 on so many fronts. So, again, food for thought for you all to
14 think about.

15 So, I don't know. From time to time we create lists back
16 in chambers of what's pending, adversaries, and what not, but
17 I don't even have the first clue. I didn't know about some of
18 these things that were mentioned today. I just know it's
19 darned hard to mediate if some things are going forward and
20 other things are not. So, think about that, but we'll give a
21 hearing on your motion, whether it's as is or amended.

22 Is there anything else in the way of a housekeeping matter
23 that people want to raise while we're --

24 MR. MORRIS: Not for the Highland parties, Your
25 Honor.

1 THE COURT: Okay.

2 MR. MORRIS: Not for the Highland parties. Thank you
3 very much, and have a good weekend.

4 THE COURT: Okay.

5 MS. RUHLAND: Not from us. Thank you, Your Honor.

6 THE COURT: All right.

7 MR. PHILLIPS: Thank you, Your Honor.

8 THE COURT: Okay.

9 MS. DEITSCH-PEREZ: Thank you.

10 (Proceedings concluded at 10:34 a.m.)

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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**

04/08/2023

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25

Kathy Rehling, CETD-444
Certified Electronic Court Transcriber

Date

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PROCEEDINGS

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RULING

Motion for Leave to Stay Adversary Proceeding [324] -
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