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

In re: HIGHLAND CAPITAL MANAGEMENT, L.P.,[1] Reorganized Debtor.	Chapter 11 Case No. 19-34054-sgj11
HUNTER MOUNTAIN INVESTMENT TRUST, Appellant, v. HIGHLAND CAPITAL MANAGEMENT, L.P. and JAMES P. SEERY, JR., Appellees.	Civil Case No. 3:24-cv-01787-L

THE HIGHLAND PARTIES' JOINT OPPOSITION TO HUNTER MOUNTAIN INVESTMENT TRUST'S MOTION FOR LEAVE TO FILE AN INTERLOCUTORY APPEAL

[1] The Reorganized Debtor's last four digits of its taxpayer identification number are (8357). The headquarters and service address for the above-captioned Reorganized Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

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Highland Capital Management, L.P. ("HCMLP" or, as applicable, the "Debtor"), the reorganized debtor in the above-referenced bankruptcy case, the Highland Claimant Trust (the "Claimant Trust"; together with HCMLP, "Highland"), and James P. Seery, Jr., HCMLP's Chief Executive Officer and the Trustee of the Claimant Trust ("Mr. Seery"; together with Highland, the "Highland Parties"), by and through their undersigned counsel, hereby file this opposition (the "Opposition") to Hunter Mountain Investment Trust's ("HMIT") *Motion for Leave to File an Interlocutory Appeal* ("Interlocutory Motion" or "Mot."; Dkt. No. 1-7). In support of their Opposition, the Highland Parties state as follows:

PRELIMINARY STATEMENT[2]

1. The Bankruptcy Court has held ***three times*** that HMIT is not a "beneficiary" under the Claimant Trust and therefore lacks standing to bring claims on behalf of, or arising in connection with, the Claimant Trust. The Bankruptcy Court's exhaustive rulings were based on the plain and unambiguous terms of the Claimant Trust Agreement and the Plan and were therefore mandated by applicable Delaware law. HMIT has appealed each of the Bankruptcy Court's Standing Decisions to the District Court where the Appeals (one of which is fully briefed and *sub judice*) are currently pending.

2. While the matters giving rise to the Standing Decisions were being litigated and decided, HMIT sought leave from the Bankruptcy Court under the Gatekeeper to commence yet another action—this time to seek Mr. Seery's removal as the Trustee of the Claimant Trust. Like HMIT's prior matters, a threshold issue in the Underlying Motion is whether HMIT is a "beneficiary" under the Claimant Trust with standing to seek Mr. Seery's removal. To avoid the

[2] Capitalized terms not defined above or in this Preliminary Statement have the meanings ascribed to them below.

inefficiencies, expenses, and delays of briefing and deciding the same issue for a fourth time, the Bankruptcy Court sensibly stayed HMIT's Underlying Motion "until a court of competent jurisdiction enters final, nonappealable orders resolving the Appeals." (Stay Order at 3.)

3. Seeking to undo the very efficiencies and expense savings that the Bankruptcy Court captured, HMIT now seeks leave to take an interlocutory appeal of the Stay Order. HMIT admits that it must establish each of three factors: there is "(1) a controlling question of law; (2) to which there is substantial ground for difference of opinion; and (3) that an immediate appeal from the order may materially advance the ultimate termination of the litigation." (Mot. at 8.) HMIT cannot satisfy any of them.

4. ***First***, there is no "controlling question of law" underlying this limited stay pending the resolution of the related Appeals. It is a case-specific, discretionary decision by the Bankruptcy Court to manage its own docket, and a "court is within its discretion to grant a stay when a related case with substantially similar issues is pending before a court of appeals." *Greco v. Nat'l Football League*, 116 F. Supp. 3d 744, 761 (N.D. Tex. 2015) (collecting cases). Tellingly, HMIT is unable to identify a single case holding that granting such a stay presents a controlling question of law. HMIT instead falsely asserts ***20 times*** that the Bankruptcy Court granted "an indefinite stay" when, by the express terms of the Stay Order, the Bankruptcy Court prudently granted a stay pending the resolution of the Appeals in related cases. (Mot. at 1, 3–6, 8–10, 17.)

5. ***Second***, HMIT fails to identify a difference of opinion about whether a stay is appropriate on these facts and circumstances, let alone a "substantial" difference. Courts routinely stay cases pending appeals in related cases (*see infra* at note 13 (collecting cases)). While

sometimes courts decline to grant such relief, those different outcomes reflect the particular facts and circumstances of each case, as well as each court's exercise of discretion; those outcomes do not establish a substantial difference of opinion about whether a stay was within the Court's discretion in this case. HMIT otherwise repeats the same arguments it raised against granting the stay, but mere "discontent by the appealing party" that "a case has been wrongly decided is not enough to justify an interlocutory appeal." *Lapham v. Kaye (In re Avado Brands, Inc.)*, 2007 WL 2241660, at *3 (N.D. Tex. Aug. 3, 2007).

6. ***Finally***, HMIT is unable to explain how interlocutory appeal will materially advance this litigation. There are already two pending Appeals in the District Court in which HMIT argues that it has standing to bring claims on behalf of, or in connection with, the Claimant Trust. Any additional interlocutory appeal in this litigation will be months behind those Appeals, which will fully resolve the question of whether HMIT has standing.[3] Granting an interlocutory appeal therefore will not speed up this litigation and will serve only to unnecessarily burden the parties and the courts.

7. Accordingly, this Court should deny HMIT's Interlocutory Motion.

[3] Even if HMIT had standing— it does not—it would still have to prove that its proposed claims to remove Mr. Seery as the Trustee of the Claimant Trust were "colorable" under the Gatekeeper. The Highland Parties reserve all rights to contest the "colorability" of HMIT's proposed claims in the unlikely event a court of competent jurisdiction finds that HMIT has standing to bring them *before* it has a vested interest in the Claimant Trust.

STATEMENT OF FACTS

A. HMIT Is Not a "Beneficiary" of the Claimant Trust but Nevertheless Seeks Leave to Try to Remove Mr. Seery as the Trustee.

8. On January 1, 2024, HMIT filed a *Motion for Leave to File a Delaware Complaint*. (B.D.I. 4000 (the "Underlying Motion").)[4]

9. HMIT was required to seek leave of the Bankruptcy Court before commencing its proposed lawsuit because Highland's confirmed Plan of Reorganization includes a "gatekeeper" provision (the "Gatekeeper"). (*See Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* [B.D.I. 1943-1] (the "Plan"), Art. IX.F.)[5] The Gatekeeper prohibits certain parties (including those affiliated with James Dondero, such as HMIT) from bringing claims against, among others, the Claimant Trust or Mr. Seery, the Trustee of the Claimant Trust, unless the Bankruptcy Court finds the proposed claims "colorable."

10. In the Underlying Motion, HMIT seeks permission to commence an action in Delaware intended to remove Mr. Seery as the Claimant Trustee. HMIT's ability to seek Mr. Seery's removal depends on (among other things) whether HMIT is a "beneficiary" under the Claimant Trust.[6]

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[4] Citations to "B.D.I. __" are to entries on the docket maintained by the Bankruptcy Court in HCMLP's bankruptcy case, 19-34054-sgj11.

[5] The Bankruptcy Court found the Gatekeeper was "necessary and appropriate in light of the history of the continued litigiousness of Mr. Dondero and his related entities in this Chapter 11 Case and necessary to the effective and efficient administration, implementation and consummation of the Plan …." *Order (I) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (II) Granting Related Relief* [B.D.I. 1943] ("Confirmation Order") ¶ 79.

[6] The Claimant Trust is a Delaware statutory trust governed by the Delaware Statutory Trust Act. The Claimant Trust Agreement (the "CTA") is the Claimant Trust's governing document. The CTA was (a) publicly filed as part of the Debtor's Plan Supplement (B.D.I. 1811 (Exhibit R), 1875 (Exhibit EE); Confirmation Order ¶ D), (b) expressly incorporated into the Plan (Plan, Art. IV.J; Confirmation Order ¶ A), and (c) approved as part of the Plan by 99.8% (in amount) of Highland's creditors and the Bankruptcy Court (Confirmation Order ¶ 3).

11. The Bankruptcy Court has already determined in several lengthy, well-reasoned opinions that HMIT is not a "beneficiary" under the Claimant Trust and therefore lacks standing to seek any relief in relation to the Trust. HMIT has appealed the prior decisions.

12. As described in more detail below, in a proper exercise of discretion, the Bankruptcy Court prudently decided to stay adjudication of the Underlying Motion until HMIT's appeals were finally determined in order to avoid having a third District Court judge weigh in on the same issue for the same entity (*i.e.*, whether HMIT is a "beneficiary" under the Claimant Trust).

B. The Bankruptcy Court Determines That HMIT Lacks Standing to Bring Derivative Claims on Behalf of the Claimant Trust.

13. On March 28, 2023, HMIT sought leave under the Gatekeeper to bring certain claims on its own behalf and purportedly on behalf of the Claimant Trust against Mr. Seery and others. (*See Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adversary Proceeding*. B.D.I. 3699 ("HMIT's Affirmative Claims").)

14. On August 25, 2023, after discovery and an evidentiary hearing, the Bankruptcy Court issued a 105-page decision holding, among other things, that HMIT (i) failed to prove that it had "colorable" claims, and (ii) otherwise lacked standing to sue derivatively on behalf of the Claimant Trust. *See In re Highland Cap. Mgmt., L.P.*, 2023 Bankr. LEXIS 2104 (Bankr. N.D. Tex. Aug. 25, 2023). On the standing issue, the Bankruptcy Court determined that HMIT was *not* a beneficiary of the Claimant Trust:

> HMIT's status as a "beneficiary" of the Claimant Trust is defined by the CTA itself, pure and simple. The CTA specifically provides that "Contingent Trust Interests" "shall not have any rights under this Agreement" and will not "be deemed 'Beneficiaries' under this Agreement," "unless and until" they vest in accordance with the Plan and the CTA. It is undisputed that HMIT's Contingent Trust Interest has not vested . . . and the court does not have the power to equitably deem HMIT's

> Contingent Trust Interest to be vested . . . . Thus, the court finds that HMIT is not a "beneficial owner" of the Claimant Trust . . . .

Id. at *118–19 (the "Initial Standing Decision").

15. Unsatisfied, on September 8, 2023, HMIT filed its *Motion to Alter or Amend Order, to Amend or Make Additional Findings, for Relief from Order, or, Alternatively, for New Trial Under Federal Rules of Bankruptcy Procedure 7052, 9023, and 9024 and Incorporated Brief* [B.D.I. 3905] ("HMIT's Post-Hearing Motion") in which HMIT sought to persuade the Bankruptcy Court that it had standing to bring derivative claims because certain financial disclosures allegedly "demonstrate[d] that [HMIT's] Contingent Claimant Trust Interest will vest, or put colloquially, it is 'in the money.'" (HMIT's Post-Hearing Motion ¶ 5.)

16. On October 5, 2023, the Bankruptcy Court denied HMIT's Post-Hearing Motion, flatly rejecting HMIT's argument that the financial disclosures showed HMIT was "in the money" or that HMIT otherwise had standing to bring derivative claims. (*See Order Denying Motion of Hunter Mountain Investment Trust Seeking Relief Pursuant to Federal Rules of Bankruptcy Procedure 7052, 9023, and 9024* [B.D.I. 3936] (the "Follow Up Standing Decision" and together with the Initial Standing Decision, the "First Standing Decision").)

17. HMIT appealed virtually every aspect of the Bankruptcy Court's adjudication of HMIT's Affirmative Claims (the "First Appeal"), including the Initial Standing Decision and the Follow Up Standing Decision. (*See Appellant Hunter Mountain Investment Trust's Second Supplemental Statement of the Issues and Designation of Items for Inclusion in the Appellate Record* [B.D.I. 3951], Statement of Issues B and P.)

18. The First Appeal, including the appeal of the First Standing Decision, was assigned to District Judge Ada Brown, has been fully briefed, and is *sub judice*. *See generally Hunter Mountain Inv. Tr. v. Highland Cap. Mgmt., L.P.*, Case No. 3:23-cv-02071-E (N.D. Tex.).

C. HMIT Sues to Obtain Financial Information Concerning the Claimant Trust.

19. On May 10, 2023, HMIT and Dugaboy[7] commenced a new adversary proceeding by filing the *Complaint to (i) Compel Disclosures About the Assets of the Highland Claimant Trust and (ii) Determine (a) Relative Value of Those Assets, and (b) Nature of Plaintiff's Interests in the Claimant Trust* [Adv. Proc. No. 23-03038-sgj, Dkt. No. 1] (the "Valuation Complaint").[8] In the Valuation Complaint, the plaintiffs sought financial information concerning the Claimant Trust (to which they were not entitled) and declarations that they should be deemed to be Claimant Trust Beneficiaries notwithstanding the plan language of the CTA and Delaware law. (*See, e.g.*, Valuation Complaint ¶¶ 82–88, 93–95 ("Plaintiffs seek a declaration and determination that the conditions are such that their Contingent Trust Interests are likely to vest into Claimant Trust Interests, making them Claimant Trust Beneficiaries.").)

20. On November 22, 2023, Highland moved to dismiss the Valuation Complaint [Adv. Proc. No. 23-03038, Dkt. No. 13] (the "MTD"), asserting, among other things, that—consistent

[7] "Dugaboy" refers to the Dugaboy Investment Trust, a trust that Mr. Dondero controls and for which he is the sole beneficiary during his lifetime. Dugaboy holds an *unvested and contingent* interest in Class 11 of the Highland Claimant Trust, and it is *de minimis*. Dugaboy obtained that interest because it held a pre-bankruptcy fractional 0.1866% limited partnership interest in Highland Capital Management, L.P., an interest so small and speculative that the Fifth Circuit Court of Appeals twice dismissed Dugaboy's appeals for lack of prudential (or bankruptcy) standing. *See Dugaboy v. Highland Cap. Mgmt., L.P.*, Case No. 22-10831, Dkt. No. 46; *Dugaboy v. Highland Cap. Mgmt., L.P.*, Case No. 22-10960, Dkt. No. 68.

[8] The Valuation Complaint was filed after Dugaboy failed to obtain substantially the same relief through the *Motion for Determination of the Value of the Estate and Assets Held by the Claimant Trust* [B.D.I. 3382], which was denied as procedurally deficient. [B.D.I. 3645].

with the First Standing Decision—neither HMIT nor Dugaboy are beneficiaries of the Claimant Trust or otherwise entitled to seek the relief sought in the Valuation Complaint.

21. On December 29, 2023, HMIT and Dugaboy filed their response [Adv. Proc. No. 23-03038, Dkt. No. 17] (the "Response") in which they argued that HMIT and Dugaboy should be deemed Claimant Trust Beneficiaries and granted all accompanying rights. (*See, e.g.*, Response ¶¶ 40–46.)[9]

D. The Bankruptcy Court Temporarily Stays the Underlying Motion.

22. HMIT filed the Underlying Motion three days later, on January 1, 2024, seeking leave under the Gatekeeper to file a complaint in Delaware Chancery Court to remove Seery as the Trustee of the Claimant Trust. Ignoring the First Standing Decision, HMIT's proposed claims are based on its allegation that it is somehow a beneficiary of the Claimant Trust. (*See, e.g.*, Underlying Motion ¶¶ 29–30 ("Movant should be recognized as being 'in the money' and a vested beneficiary with the associated standing to pursue the proposed Delaware complaint . . . . Movant also has standing to seek removal of Mr. Seery because Movant is an intended (albeit contingent) beneficiary of the Claimant Trust under the CTA.").)

23. HMIT's arguments in support of the Underlying Motion regarding its alleged status as a beneficiary of the Claimant Trust are nearly identical to its arguments in the Response filed in opposition to Highland's MTD the Valuation Complaint. (*Compare* Response ¶¶ 40–46, *with* Underlying Motion ¶¶ 31–37.)

[9] On January 19, 2024, Highland replied to the Response, arguing, *inter alia*, that (i) neither HMIT nor Dugaboy were Claimant Trust Beneficiaries under the Delaware Statutory Trust Act and the CTA, and (ii) the Bankruptcy Court had previously ruled on the issue in First Standing Decision. (Adv. Proc. No. 23-03038, Dkt. No. 21 ¶¶ 5–9, 13.)

24. On January 16, 2024, Highland moved to stay the Underlying Motion pending resolution of its MTD the Valuation Complaint, [B.D.I. 4013] (the "Motion to Stay"),[10] arguing that it "would be needlessly duplicative and wasteful of judicial resources to litigate the same threshold issue"—whether HMIT and Dugaboy were beneficiaries of the Claimant Trust—"in the Valuation Proceeding and again in [the Underlying Motion], particularly since the issue will be *sub judice* in the Valuation Proceeding in several weeks [after the February 14 oral argument on the MTD]." (Motion to Stay ¶ 2.) The Motion to Stay relied on clear Supreme Court and Fifth Circuit precedent: "the power to stay proceedings is incidental to the power inherent in every court to control the disposition of causes of action on its docket with economy of time and effort for itself, for counsel, and for litigants." *Clinton v. Jones*, 520 U.S. 681, 706–07 (1997) (cleaned up); *see also United States v. Rainey*, 757 F.3d 234, 241 (5th Cir. 2014) (same).

25. HMIT opposed the Motion to Stay arguing that (i) the Bankruptcy Court should ignore *Clinton v. Jones* and instead apply the four-part test for a stay pending appeal or injunctive relief (B.D.I. 4022 ¶¶ 6–18, 22–23), and (ii) its argument as to its beneficiary status in the Valuation Complaint somehow differed from its argument as to its beneficiary status in the Underlying Motion (*id.* ¶ 19–21).

26. On January 24, 2024, the Bankruptcy Court held a hearing on the Motion to Stay during which it noted that (i) the First Standing Decision held that HMIT was *not* a beneficiary of

[10] Mr. Seery joined in HCMLP's Motion to Stay. [B.D.I. 4019].

the Claimant Trust,[11] and (ii) the Bankruptcy Court had the inherent authority to police its own docket in the interest of judicial economy.[12] Ultimately, on January 31, 2024, the Bankruptcy Court entered an order temporarily staying the Underlying Motion until it (a) determined the MTD and (b) thereafter held a status conference to consider whether to terminate or extend the stay. [B.D.I. 4033] ("the "Temporary Stay Order").

E. The Bankruptcy Court Grants the MTD Holding (Again) That HMIT Lacks Standing Because It Is Not a "Beneficiary."

27. On May 24, 2024, the Bankruptcy Court granted the MTD and dismissed the Valuation Complaint. *Dugaboy Inv. Tr. v. Highland Cap. Mgmt., L.P. (In re Highland Cap. Mgmt., L.P.)*, 2024 Bankr. LEXIS 1217 (Bankr. N.D. Tex. May 24, 2024) (the "Second Standing Decision"; together with the First Standing Decision, the "Standing Decisions"). In the Second Standing Decision, the Bankruptcy Court reiterated its ruling that neither HMIT nor Dugaboy were beneficiaries of the Claimant Trust and had no rights as beneficiaries:

> The court takes judicial notice of its [First Standing Decision], in which the court found that HMIT, as a holder of a "Contingent Claimant Trust Interest" was not a Claimant Trust Beneficiary . . . and rejected HMIT's argument that its Contingent Claimant Trust Interest makes it a contingent beneficiary of the Claimant Trust, which, in turn, makes it a present "beneficial owner" under Delaware trust law . . . .
>
> Now, as before, the court finds and concludes that under the terms of the CTA and Delaware law, Plaintiffs are not beneficiaries or "beneficial owners" of the Claimant Trust . . . . The court specifically rejects an argument of Plaintiffs that . . . the court should ignore . . . the CTA and look to the definition of "beneficiary" under the Restatement (Third) of Trusts . . . . The Claimant Trust

[11] (*See, e.g.*, Jan. 24, 2024 Conf. Tr. at 38:9–16, 39:21–25 ("As I've noted, and I'm saying this for the record in case there's an appeal of this order granting stay today, in the 105-page [Initial Standing Decision] . . . . I did spend 23 pages . . . explaining why I thought in that context [HMIT] has no constitutional standing as well as no prudential standing . . . I don't know why anyone would reasonably think I would go down this trail a third time for the same party. . . . I went down it *ad nauseam* [in the First Standing Decision]. It sounds like I'm going to go down it *ad nauseam* again February 14 [in connection with the MTD] . . . .")

[12] (*Id.* at 37:14–23 ("I don't think the four-prong TRO standard applies here . . . . I do think this is just policing the Court's own docket, which, or course any court has the discretion to police its own docket, in the interest of judicial economy and reducing expense.").)

> is . . . governed by the Delaware Statutory Trust Act . . . and the Trust Act does define "beneficial owner" and uses that term exclusively to refer to the beneficiaries of a Delaware statutory trust . . . . [A] statutory trust's "beneficial owners" are "any owner[s] of a beneficial interest in a statutory trust, the fact of ownership ***to be determined and*** *evidenced . . . in conformity to the applicable provisions of the governing instrument of the statutory trust*." Thus, the question of whether Plaintiffs are "beneficiaries" of the Claimant Trust is (as the court concluded in the [First Standing Decision]) determined "by the CTA itself, pure and simple."

Dugaboy, 2024 Bankr. LEXIS 1217, at *44–45 (emphasis in original). Dugaboy and HMIT appealed the Second Standing Decision (the "Second Appeal"; together with the First Appeal, the "Appeals"). The Second Appeal has been assigned to District Judge Brantley Starr, but a briefing schedule has not yet been set. Case No. 3:24-cv-01531-X.

F. The Bankruptcy Court Extends the Stay Until Final, Non-Appealable Orders Are Entered with Respect to the Appeals.

28. On June 12, 2024, consistent with the Temporary Stay Order, the Bankruptcy Court held a status conference to determine whether to terminate or extend the stay of the Underlying Motion. The Bankruptcy Court noted that, with the Second Standing Decision, it has "[t]wice now . . . ruled that [HMIT] does not have standing to pursue litigation" (June 12, 2024 Conf. Tr. at 42:13–14) and that the standing issues in the Underlying Motion are not "sufficiently different" than those adjudicated in the prior Standing Decisions (*id.* at 43:6–9). Accordingly, the Bankruptcy Court held the stay should be extended "in the interests of judicial economy and the efficient administration of justice and in the interest of the parties," and that "collateral estoppel and law of the case and other sorts of estoppel issues . . . would even preclude me . . . from looking at" the Underlying Motion. (*Id.* at 43:10–17.)

29. In response to HMIT's arguments, the Bankruptcy Court also analyzed whether to extend the stay under the "four-prong test" (wrongly) advocated by HMIT and Dugaboy. The Bankruptcy Court specifically found that:

- **Prong 1 (Likelihood of Success on the Merits)** weighed in favor of extending the stay because the Bankruptcy Court had already twice held that HMIT was not a beneficiary and had no rights as beneficiaries, and the Bankruptcy Court would rule the same in connection with the Underlying Motion (June 12, 2024 Conf. Tr. at 43:18–25);

- **Prongs 2 and 3 (Irreparable Injury)** weighed in favor of extending the stay because litigating the issue for a third time would injure both Highland and HMIT since it would require them to expend resources litigating an issue that had already been twice litigated to conclusion (*id.* at 44:1–45:1); and

- **Prong 4 (Public Interest)** weighed in favor of extending the stay as judicial economy favored allowing an appellate judge to rule on the substantive issue without the additional cost of a third, duplicative litigation in the Bankruptcy Court (*id.* at 45:1–3).

Ultimately, after assessing the four factors, the Bankruptcy Court held that a further stay was warranted. (*Id.* at 45:4–5.) On June 24, 2024, the Bankruptcy Court entered its Order extending the stay—not indefinitely—but only until a court of competent jurisdiction enters final, non-appealable orders resolving the Appeals. [B.D.I. 4104] (the "Stay Order").

30. On July 8, 2024, HMIT and Dugaboy filed the Interlocutory Motion seeking leave to appeal the Stay Order under 28 U.S.C. § 158 [B.D.I. 4115]. In doing so, HMIT and Dugaboy ask this Court to force the Bankruptcy Court to rule—for a third time—on whether they are beneficiaries of the Claimant Trust, the exact issue currently on appeal before District Judge Brown and District Judge Starr.

LEGAL STANDARD

31. "The Fifth Circuit disfavors interlocutory appeals and leave to appeal is sparingly granted." *In re Highland Cap. Mgmt.*, 2021 WL 3772690, at *2 (N.D. Tex. Feb. 11, 2021) (cleaned up) (citing *United States v. Garner*, 749 F.2d 281, 286 (5th Cir. 1985)). "Because the basic policy of appellate jurisdiction strongly disfavors piecemeal appeals," "appellants bear 'the burden of persuading the court . . . that exceptional circumstances justify a departure from the basic policy of postponing appellate review until after the entry of a final judgment.'" *Crestview Cap. Master, LLP v. Floyd (In re Red River Energy, Inc.)*, 415 B.R. 280, 284 (S.D. Tex. 2009) (quoting *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 475 (1978)). Bankruptcy interlocutory appeals are particularly "disfavored because they interfere with the overriding goal of the bankruptcy system, expeditious resolution of pressing economic difficulties." *Spencer Ad Hoc Equity Comm. v. Idearc, Inc.*, 2010 WL 11618165, at *2 (N.D. Tex. May 14, 2010) (cleaned up); *see also Lapham*, 2007 WL 2241660, at *2 ("[B]ankruptcy interlocutory appeals are generally not favored because they disrupt the bankruptcy proceedings") (collecting cases).

32. HMIT seeks interlocutory appeal pursuant to 28 U.S.C. § 158, which "expressly requires leave of the district court to appeal an interlocutory bankruptcy order" so "'courts have generally looked to the standard that applies for circuit court review of interlocutory district court orders' found in 28 U.S.C. § 1292." (Mot. at 7 (quoting *Highland*, 2021 WL 3772690, at *1).) Under Section 1292(b), HMIT must show that "the Bankruptcy Court Stay Order involves (1) a controlling question of law; (2) to which there is substantial ground for difference of opinion; and (3) that an immediate appeal from the order may materially advance the ultimate termination of

the litigation." (*Id.* at 7–8.) "All three of the statutory criteria must be met before an interlocutory appeal is proper." *Highland*, 2021 WL 3772690, at *2 (citing *Arparicio v. Swan Lake*, 643 F.2d 1109, 1110 n.2 (5th Cir. 1981)). HMIT fails to satisfy any of them.

ARGUMENT

A. The Stay Order Does Not Involve Any Controlling Questions of Law.

33. "Whether an issue of law is controlling generally hinges upon its potential to have some impact on the course of the litigation," such as "if reversal of the [bankruptcy] court's opinion would result in dismissal of the action." (Mot. at 8 (quoting *Ryan v. Flowserve Corp.*, 444 F. Supp. 2d 718, 723 (N.D. Tex. 2006)).) "An issue of law" may also be "controlling where the certified issue has precedential value for a large number of cases," but "an issue is not seen as controlling if its resolution on appeal would have little or no effect on subsequent proceedings." *Ryan*, 444 F. Supp. 2d at 718 (cleaned up; collecting cases); *see also Lapham*, 2007 WL 2241660, at *2 ("A controlling question of law arises only if it may contribute to the determination, at an early stage, of a wide spectrum of cases") (cleaned up; collecting cases).

34. The Stay Order does not address the merits of the Underlying Motion and therefore does not raise any controlling questions of law. The Stay Order merely pauses the litigation while appellate courts consider whether HMIT has standing to bring claims on behalf of, or in connection with, the Claimant Trust, so "reversal of the bankruptcy court's order" will not "terminate the action or [] materially affect the outcome of litigation." (Mot. at 10 (quoting *In re Cent. La. Grain Co-op., Inc.*, 489 B.R. 403, 411–12 (W.D. La. 2013)).) *Central Louisiana*, upon which HMIT relies, stands in sharp contrast to this case. There, the court considered the "interpretation of an

insurance contract" exclusion on summary judgment, which is a pure "question of law" that would "materially affect" the "availability of funds from which to replenish the bankruptcy estate." 489 B.R. at 411–12. Here, the narrow question HMIT seeks to appeal is whether the Bankruptcy Court acted within its discretion in concluding that it would be highly inefficient to move forward where it has thrice held that HMIT lacks standing to pursue such claims and HMIT is actively appealing those holdings. There is no question of law lurking in the Bankruptcy Court's fact-bound, highly discretionary determination.

35. Interlocutory appeal of the Stay Order also "would have little or no effect on subsequent proceedings." (Mot. at 8 (quoting *Ryan*, 444 F. Supp. 2d at 718).) The "decision to grant a stay" is grounded in courts' "inherent power to control the progress of the case" and "manage their dockets," and is therefore "left to the sound discretion of the [bankruptcy] courts." *Ryan v. Gonzales*, 568 U.S. 57, 76 (2013) (cleaned up; collecting cases); *see also Gigi's Cupcakes, LLC v. 4Box LLC*, 2019 WL 1767003, at *1 (N.D. Tex. Apr. 22, 2019) ("[Bankruptcy] courts have broad, but not unlimited, discretion to stay proceedings in the interest of justice and in control of their dockets") (cleaned up; collecting cases). Thus, the Bankruptcy Court's discretionary Stay Order is "limited to this case and these defendants," "does not involve a wide spectrum of cases," and "is inappropriate for interlocutory appeal." *Lapham*, 2007 WL 2241660, at *2–3. Indeed, HMIT is unable to identify a single case in which a court has held that whether to grant such a stay presents a controlling question of law under Section 1292(b). (*See* Mot. at 8–11.)

36. HMIT also asserts that the Bankruptcy Court issued an "indefinite stay" and warns that the "Fifth Circuit has cautioned against granting indefinite stays." (*Id.* at 9.) The Bankruptcy

Court did no such thing. Rather, the Bankruptcy Court entered a stay "until a court of competent jurisdiction enters final, non-appealable orders resolving the Appeals" in the directly related cases and ordered HMIT "to seek a further status conference in connection with the Motion for Leave within ten (10) days of the entry" of such orders. (Stay Order at 3; *see also supra* ¶¶ 28–30.) This limited Stay Order thus bears no resemblance to HMIT's authority (*see* Mot. at 9 nn.30–33) in which courts "stayed proceedings as to all of the defendants" pending "completion of" all "bankruptcy proceedings," *In re Davis*, 730 F.2d 176, 178–79 (5th Cir. 1984), and "sua sponte stayed all proceedings with respect to all parties" "pending arbitration," which was "automatically stayed" by a Chapter 11 bankruptcy filing, *Coastal (Berm.) Ltd. v. E.W. Saybolt & Co.*, 761 F.2d 198, 200–01 (5th Cir. 1983). Courts in this Circuit routinely "grant a stay when a related case with substantially similar issues is pending before a court of appeals." *Greco*, 116 F. Supp. 3d at 761 (staying "case pending resolution of the appeal filed" in "a related case" that "will very likely bear on this case").[13]

[13] *See also Acceptance Indem. Ins. Co. v. Frankford Farms, LLC*, 2024 WL 1595757, at *5–7 (N.D. Ill. Mar. 12, 2024) (recommending to "stay the present case until the Fifth Circuit enters an opinion in the *Sentry Insurance* appeal"), *report and recommendation adopted by* 2024 WL 1597752 (N.D. Tex. Apr. 12, 2024); *Second Amend. Found., Inc. v. Bureau of Alcohol, Firearms, & Explosives*, 2023 WL 4497266, at *1 (N.D. Tex. July 10, 2023) (staying "this case pending the Fifth Circuit's decision in *Mock v. Garland*"); *United States v. Planned Parenthood Fed. of Am., Inc.*, 2023 WL 2491453, at *2 (N.D. Tex. Feb. 23, 2023) (ordering "that the case be stayed until the Supreme Court decides *SuperValu* and *Safeway*"); *Trinity Indus., Inc. v. 188 L.L.C.*, 2002 WL 1315743, at *3 (N.D. Tex. June 13, 2002) ("[T]his Court will exercise its discretion and stay proceedings in this case only until a ruling of the Seventh Circuit so that this Court may efficiently manage its docket"); *Nairne v. Ardoin*, 2022 WL 3756195, at *2 (M.D. La. Aug. 30, 2022); *Alford v. Moulder*, 2016 WL 6088489, at *1–3 (S.D. Miss. Oct. 17, 2016); *cf. Nelson v. Grooms*, 307 F.2d 76, 78 (5th Cir. 1962) ("When two actions involving the same parties and the same issues are pending before two federal courts it has been held that the court in which the second proceeding is initiated will normally, in the absence of countervailing factors, stay the proceeding pending the outcome of the prior similar suit between the same parties in the other federal court").

B. There Is No Substantial Difference of Opinion Regarding the Bankruptcy Court's Stay Order.

37. A "substantial ground for difference of opinion[] refers to an unsettled state of law or judicial opinion, not mere discontent by the appealing party." *Lapham*, 2007 WL 2241660, at *1. Thus, "there is a substantial ground for difference of opinion" only "if 'a trial court rules in a manner which appears contrary to the rulings of all Courts of Appeals which have reached the issue, if the circuits are in dispute on the question and the Court of Appeals of the circuit has not spoken on the point, if complicated questions arise under foreign law, or if novel and difficult questions of first impression are presented.'" (Mot. at 11 n.39 (quoting *Balestri v. Hunton & Williams, LLP (In re Hallwood Energy, L.P.)*, 2013 WL 524418, at *3 (N.D. Tex. Feb. 11, 2013)).) This high standard ensures that interlocutory appeal "is not a vehicle to question the correctness of a [bankruptcy] court's ruling or to obtain a second, more favorable opinion." *Ryan*, 444 F. Supp. 2d at 722.

38. As discussed above (*see supra* ¶¶ 28–30), the record is clear that the Bankruptcy Court considered "the appropriate standard applied to granting a stay" under Supreme Court and Fifth Circuit precedent (Mot. at 11). There is also overwhelming case law supporting staying a case pending an appeal in a related case (*see supra* n.13), and HMIT is unable to identify any contrary ruling by a Circuit Court (much less a clear Circuit split) or any novel or difficult issue of first impression regarding staying a case pending related appeals (*see* Mot. at 11–16). At best, HMIT cites two unpublished district court decisions that declined requests to "stay proceeding pending resolution" of a separate "U.S. Supreme Court case." (*Id.* at 14 & nn. 51–54 (citing *Jamison v. Esurance Ins. Servs., Inc.*, 2016 WL 320646, at *4 (N.D. Tex. Jan. 27, 2016); *Alexander*

v. Navient Sols., Inc., 2016 WL 11588317, at *2 (W.D. Tex. Feb. 19, 2016)).) A stay pending resolution of an appeal in another case is markedly different from a stay pending resolution of ***the very same party's own appeals concerning the very same dispositive issue***. In any event, whether or not to grant a stay is a case-specific decision "left to the sound discretion of the district courts." *Ryan*, 568 U.S. at 76 (cleaned up; collecting cases). Thus, even if the facts and circumstances here were identical to the examples HMIT cites (and they are not), a different outcome could not begin to constitute a "difference of opinion" unless a court had held that it would be an abuse of discretion if a stay *were* granted.

39. HMIT otherwise complains that the Bankruptcy Court "erred in failing to (1) analyze all of the arguments and authority presented by HMIT in its briefing and at the hearing, and (2) hold Highland to its burden on a motion for stay." (Mot. at 12.) Specifically, HMIT argues that granting a "stay to resolve an issue of standing is inappropriate" because the Highland Parties could "raise the standing issue" at "any time." (*Id.* at 10, 14 (cleaned up).) This simply repeats the same arguments HMIT raised in opposition to the Stay Order, which is a blatant attempt "to obtain a second, more favorable opinion" on interlocutory appeal. *Ryan*, 444 F. Supp. 2d at 722. "The claim that a case has been wrongly decided is not enough to justify an interlocutory appeal." *Lapham*, 2007 WL 2241660, at *3.

C. Interlocutory Appeal of the Bankruptcy Court's Stay Order Would Not Materially Advance the Ultimate Termination of This Litigation.

40. A "key concern consistently underlying § 1292(b) decisions is whether permitting an interlocutory appeal will speed up the litigation," "thereby saving time and expense for the court and the litigants." *Ryan*, 444 F. Supp. 2d at 723 (cleaned up). Accordingly, the "institutional

efficiency of the federal court system is among the chief concerns motivating § 1292(b)." *Id.* (cleaned up); (Mot. at 16 (cleaned up)); *see also Lapham*, 2007 WL 2241660, at *3 (analyzing this factor "from a judicial economy perspective").

41. Here, just as in HMIT's own authority (*see* Mot. at 10 & nn.36–37), "permitting the appeal to proceed at this juncture would merely serve to prolong the case." *Cent. La.*, 489 B.R. at 414. With the stay in place, the parties can continue to litigate HMIT's standing in the Appeals pending before the District Court, one of which is already fully briefed. (*See supra* ¶¶18, 27.) Those decisions will control whether this litigation proceeds. Granting interlocutory appeal, by contrast, will require additional, unnecessary briefing about the Stay Order itself. If the stay is lifted, then the Bankruptcy Court will likely hold for the fourth time that HMIT lacks standing and dismiss the case. (*See supra* ¶¶ 28-30.) HMIT has represented that it will appeal such dismissal, which will force the parties to again brief the same standing issues to the District Court and potentially the Fifth Circuit on a schedule months behind the already filed appeals, which will significantly increase expenses and consume scarce judicial resources. Worse, any interlocutory appeal in this litigation will serve no purpose because the already filed Appeals will be decided first and resolve the question of HMIT's standing. Accordingly, "the more just and efficient course would be for the case to play in the Bankruptcy Court and then, should any party wish to appeal, appeal the entire matter to the appropriate venue." *Cent. La.*, 489 B.R. at 414.

42. HMIT argues that interlocutory appeal will "materially advanc[e]" the litigation "because in the years it may take to resolve the pending appeals," the Trust may "be dissolved and Seery's duties as Trustee complete," so "the relief sought by HMIT" will "no longer be available."

(Mot. at 10–11.) This makes no sense. If it will take years to resolve appeals that were filed months ago, then it will take even longer to complete a new appeal. Interlocutory appeal in this litigation will therefore serve no purpose other than to impose expenses on the parties, clog the dockets of the District Court and Fifth Circuit, and damage the "institutional efficiency of the federal court system." (*Id.* at 16 (cleaned up).)

CONCLUSION

43. For the foregoing reasons, this Court should deny HMIT's Interlocutory Motion.

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