United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
May 29, 2025
Lyle W. Cayce
Clerk

No. 23-10534

IN THE MATTER OF HIGHLAND CAPITAL MANAGEMENT, L.P.

Debtor,

HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P., *now known as* NEXPOINT ASSET MANAGEMENT, L.P.; NEXPOINT ADVISORS, L.P.,

Appellants,

versus

HIGHLAND CAPITAL MANAGEMENT, L.P.,

Appellee.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:23-CV-573

ORDER RESPECTING DENIAL OF MOTION TO STAY ISSUANCE OF MANDATE PENDING PETITION FOR WRIT OF CERTIORARI

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Before ELROD, *Chief Judge*, and WILLETT and DUNCAN, *Circuit Judges*.
PER CURIAM:

It is not this court's usual practice to stay issuance of the mandate pending the filing and disposition of a petition for writ of certiorari. We do so only when a party shows that "the petition would present a substantial question and that there is good cause for a stay." Fed. R. App. P. 41(d)(1). Highland Capital has shown neither of these things.

Preliminarily, the questions that Highland Capital asserts it would include in its petition for certiorari do not appear to be reviewable because they were not the subject of this appeal. Highland Capital submits that it would ask the Supreme Court to consider: (1) whether this court correctly struck various non-debtors from the scope of the Gatekeeper Clause; and (2) whether the bankruptcy courts have authority to exculpate or release non-debtors from liability arising from the bankruptcy process. But in our opinion, we merely confirmed the instruction that we had previously given the bankruptcy court in *In re Highland Capital Management, L.P. (Highland I)*, 48 F.4th 419 (5th Cir. 2022): to narrow the definition of "Protected Parties" used in the Gatekeeper Clause. In doing so, we answered the question actually raised in the appeal: whether the bankruptcy court properly implemented *Highland I*. And that is hardly a substantial question.

Moreover, our opinion reiterated and followed principles that have been the law of this circuit for decades; it neither created nor deepened any circuit split. And denying Highland Capital's motion does not likely lead to irreparable harm. While Highland Capital fears that our decision could lead to significant future litigation, Highland Capital certainly knows how to bring its concerns to this court and other courts, given the voluminous litigation that has occurred between the parties thus far. In addition, even with the Gatekeeper Clause narrowed as required by both *Highland I* and our opinion

in the current appeal, Highland Capital has tools to seek relief from burdensome litigation, such as sanctions.

Highland Capital stressed repeatedly in its briefing on appeal that it was not asking for the moon and stars, agreeing with Appellants that the appeal was a "simple" one that asked us merely to clarify whether the bankruptcy court had properly implemented our instructions in *Highland I*. And our resulting opinion did exactly that, interpreting our own jurisprudence and requiring the bankruptcy court to comply with it. Now, Highland Capital complains that we failed to grant them the moon and stars by reinterpreting our bankruptcy jurisprudence to vastly extend the power of the bankruptcy courts.

Accordingly, denial of Highland Capital's motion to stay issuance of the mandate is appropriate here.

United States Court of Appeals

FIFTH CIRCUIT
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May 29, 2025

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 23-10534 Highland Captl Fund v. Highland Captl Mgmt
USDC No. 3:23-CV-573

Enclosed is an order entered in this case.

Sincerely,

LYLE W. CAYCE, Clerk

Christina Gardner

By: _____
Christina A. Gardner, Deputy Clerk
504-310-7684

Mr. Zachery Z. Annable
Mr. John D. Ashcroft
Mr. Gregory Vincent Demo
Mr. Jordan A. Kroop
Mr. John A. Morris
Mr. Jeffrey N. Pomerantz
Mr. Davor Rukavina
Mr. Johnny Sutton
Ms. Hayley R. Winograd