

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:

HIGHLAND CAPITAL
MANAGEMENT, L.P.,

Reorganized Debtor.

Chapter 11

Case No. 19-34054-sgj11

MARK S. KIRSCHNER, AS LITIGATION TRUSTEE
OF THE LITIGATION SUB-TRUST

Plaintiff,

v.

JAMES D. DONDERO; SCOTT ELLINGTON; ISAAC
LEVENTON; GRANT JAMES SCOTT III; STRAND
ADVISORS, INC.; NEXPOINT ADVISORS, L.P.;
HIGHLAND CAPITAL MANAGEMENT FUND
ADVISORS, L.P.; DUGABOY INVESTMENT TRUST
AND NANCY DONDERO, AS TRUSTEE OF
DUGABOY INVESTMENT TRUST; GET GOOD
TRUST AND GRANT JAMES SCOTT III, AS
TRUSTEE OF GET GOOD TRUST; HUNTER
MOUNTAIN INVESTMENT TRUST; CLO
HOLDCO, LTD.; CHARITABLE DAF HOLDCO,
LTD.; CHARITABLE DAF FUND, LP; HIGHLAND
DALLAS FOUNDATION; RAND PE FUND I, LP,
SERIES 1; MASSAND CAPITAL, LLC; MASSAND
CAPITAL, INC.; AND SAS ASSET RECOVERY, LTD.

Defendants.

Adv. Pro. No. 21-03076-sgj

MOTION TO SUBSTITUTE



Mark S. Kirschner, as Litigation Trustee of the Highland Litigation Sub-Trust ("Litigation Trustee") and Hunter Mountain Investment Trust ("HMIT") (collectively "Movants") move the Court substitute HMIT as the Plaintiff of record in place of the Litigation Trustee pursuant to Federal Rule of Civil Procedure 25(c), and respectfully state as follows:

1. Pursuant to a settlement agreement recently approved by the Court [Doc. 4297] ("Settlement Agreement"), the Litigation Trustee's claims in this case have been transferred, conveyed, and assigned to HMIT. Rule 25(c) permits an action "to continue unabated when an interest in the lawsuit changes hands." *Christiana Tr. v. Riddle*, 819 F. App'x 255, 256 (5th Cir. 2020) (citation omitted); *see also Wilmington Sav. Fund Soc'y v. Barr*, No. 3:22-cv-735-S-BN, 2023 U.S. Dist. LEXIS 16653, at *2 (N.D. Tex. 2023); *IDQ Operating, Inc. v. Aero. Communs. Holdings Co.*, No. 6:15-CV-781, 2016 U.S. Dist. LEXIS 178210 (E.D. Tex. 2016).

2. "In deciding a motion to substitute, [the] primary considerations are whether substitution would simplify and expedite the case." *Huddleston v. FBI*, Civil Action No. 4:20-cv-447, 2025 U.S. Dist. LEXIS 111504, at *3 (E.D. Tex. 2025). "Courts have granted Rule 25(c) motions to substitute when the subject matter of the dispute dealt with a business acquisition or merger, a change in ownership of a promissory note or other financial instrument, or breach of contract." *Id.* (citations omitted). "In the bankruptcy context, Rule 25(c) has been used ... to allow a trustee in bankruptcy to be substituted for

the trustee of an inter-vivos trust created on behalf of the debtor in an action to set aside a voidable preference.” *In re Covington Grain Co.*, 638 F.2d 1357, 1361 n.3 (5th Cir. 1981).

3. This matter involves the transfer of claims from one trust to another trust. These claims originally accrued to the debtor, Highland Capital Management, L.P. (“Debtor”), and were transferred to the Highland Litigation Sub-Trust (“Litigation Sub-Trust”), which was created specifically for purposes of prosecuting this lawsuit and other claims held by the Debtor. HMIT is a trust that formerly held more than 99% of the equity interest in the Debtor, which was accounted for in the Settlement Agreement by allowing HMIT’s class 10 claim in excess of \$330 million. Pursuant to the Settlement Agreement, the claims in this lawsuit have been transferred to HMIT, and thus any recovery in this lawsuit will now flow directly to HMIT. Therefore, HMIT is now the true party-in-interest.

4. Substitution of HMIT in place of the Litigation Trustee will also simplify the litigation. The Litigation Sub-Trust is a trust of limited duration that requires this Court’s approval on a period basis in order to remain active. *See Order Extending Duration of the Trusts* [Doc 4298]. This lawsuit may take years to resolve, during which time the Litigation Sub-Trust may have completed its remaining tasks and be ready for wind up but for the pendency of this lawsuit. *See Motion for an Order Further Extending Duration of Trusts* [Doc. 4213], ¶¶ 2-3, 8, 12-13. Substitution of HMIT for the Litigation Trustee would

remove any need to seek continued extensions of the Litigation Sub-Trust just to prosecute this matter.

5. HMIT will be represented in this matter by Sawnie A. McEntire and Ian B. Salzer with Parsons McEntire McCleary PLLC, and requests all notices and filings addressed to HMIT in this matter be served on PMM as follows:

Sawnie A. McEntire
State Bar No. 13590100
smcentire@pmmlaw.com
Ian B. Salzer
State Bar No. 24110325
isalzer@pmmlaw.com
PARSONS MCENTIRE MCCLEARY PLLC
1700 Pacific Ave., Suite 4400
Dallas, Texas 75201
(214) 237-4300 (Telephone)
(214) 237-4340 (Facsimile)

6. Substitution of the Litigation Trustee for HMIT will not delay this matter in any way, and is sought solely so that justice may be done.

Respectfully Submitted,

/s/ Robert S. Loigman

Paige Holden Montgomery
SIDLEY AUSTIN LLP
2021 McKinney Avenue, Suite 2000
Dallas, Texas 75201
Telephone: (214) 981-3300
Facsimile: (214) 981-3400

Deboarh J. Newman (admitted *pro hac vice*)
Robert S. Loigman (admitted *pro hac vice*)
QUINN EMANUEL URQUHART &
SULLIVAN LLP
51 Madison Avenue, 22nd Floor
New York, NY 10010
Telephone: (212) 849-7000

**ATTORNEYS FOR MARK S. KIRSCHNER, AS
LITIGATION TRUSTEE OF THE HIGHLAND
LITIGATION SUB-TRUST**

/s/ Sawnie A. McEntire

Sawnie A. McEntire
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**ATTORNEYS FOR HUNTER
MOUNTAIN INVESTMENT TRUST**

CERTIFICATE OF CONFERENCE

I hereby certify that on July 23, 2025, I attempted to confer with counsel of record for all of the defendants via email. To date, none of defendants' counsel have responded. Therefore, Movants assume that all defendants oppose this Motion.

/s/ Ian B. Salzer

Ian B. Salzer

CERTIFICATE OF SERVICE

I hereby certify that on July 25, 2025, a true and correct copy of the foregoing document was served on all parties of record via the Court's ECF system.

/s/ Ian B. Salzer

Ian B. Salzer

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HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.; DUGABOY INVESTMENT TRUST AND NANCY DONDERO, AS TRUSTEE OF DUGABOY INVESTMENT TRUST; GET GOOD TRUST AND GRANT JAMES SCOTT III, AS TRUSTEE OF GET GOOD TRUST; HUNTER MOUNTAIN INVESTMENT TRUST; CLO HOLDCO, LTD.; CHARITABLE DAF HOLDCO, LTD.; CHARITABLE DAF FUND, LP; HIGHLAND DALLAS FOUNDATION; RAND PE FUND I, LP, SERIES 1; MASSAND CAPITAL, LLC; MASSAND CAPITAL, INC.; AND SAS ASSET RECOVERY, LTD.

Defendants.

ORDER GRANTING MOTION TO SUBSTITUTE

On this day, the Court considered Mark S. Kirschner's, as Litigation Trustee of the Highland Litigation Sub-Trust's ("Litigation Trustee") and Hunter Mountain Investment Trust's ("HMIT") (collectively "Movants") Motion to Substitute, requesting the Court permit HMIT to substitute as plaintiff in place of the Litigation Trustee. The Court, having considered the Motion, any response, reply, or arguments of counsel, finds that the Motion is well taken and should be **GRANTED**. It is, therefore, **ORDERED** as follows:

1. HMIT is hereby substituted in place of the Litigation Trustee for all purposes of this litigation, including as named plaintiff.
2. The Court Clerk shall amend the Court's docket identify Sawnie A. McEntire and Ian B. Salzer as counsel of record for HMIT. All parties are to make all

future notices to and service upon Sawnie A. McEntire and Ian B. Salzer as follows:

Sawnie A. McEntire
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Ian B. Salzer
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(214) 237-4300 (Telephone)
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END OF ORDER