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

In Re:	)	**Case No. 19-34054-sgj-11**
	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,	)	Dallas, Texas
	)	September 3, 2025
	)	11:00 a.m. Docket
Reorganized Debtor.	)	
KIRSCHNER, et al.,	)	**Adversary Proc. 21-3076-sgj**
Plaintiffs,	)	MOTION FOR LEAVE TO SUBSTITUTE PLAINTIFF FILED BY PLAINTIFF MARC KIRSCHNER [357]
v.	)	
DONDERO, et al.,	)	
Defendants.	)	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE STACEY G.C. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE.

APPEARANCES:

For the Plaintiff:	Robert Scott Loigman QUINN EMANUEL URQUHART & SULLIVAN, LLP 295 5th Avenue New York, NY 10016 (212) 849-7000
For Hunter Mountain Investment Trust:	Sawnie A. McEntire Ian Salzer PARSONS MCENTIRE MCCLEARY, PLLC 1700 Pacific Avenue, Suite 4400 Dallas, TX 75201 (214) 237-4300
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APPEARANCES, cont'd.:

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Proceedings recorded by electronic sound recording; transcript produced by transcription service.

DALLAS, TEXAS - SEPTEMBER 3, 2025 - 11:02 A.M.

THE CLERK: All rise. The United States Bankruptcy Court for the Northern District of Texas, Dallas Division, is now in session, the Honorable Stacey Jernigan presiding.

THE COURT: Good morning. Please be seated.

MR. MCENTIRE: Good morning.

THE COURT: All right. We have a setting this morning in the adversary, Kirschner, et al. versus Dondero, et al., Adversary 21-3076.

This is a setting on a motion for substitution of the Plaintiff in the adversary. So I will take appearances, first in the courtroom.

MR. MCENTIRE: Your Honor, Sawnie McEntire and Ian Salzer on behalf of Hunter Mountain Investment Trust.

THE COURT: All right. Thank you.

We have other folks on the video. We had a few objectors. First, before that, I see Mr. Loigman. Would you like to make your appearances?

MR. LOIGMAN: Yeah. Yeah. Thank you, Your Honor. I appreciate that. Robert Loigman of Quinn Emanuel on behalf of Marc Kirschner as the Litigation Trustee of the Highland Litigation Subtrust. And we are, of course, the co-movant on this motion.

THE COURT: All right. Now I will hear from the objectors. Ms. Deitsch-Perez, I see your video. Would you

like to appear?

MS. DEITSCH-PEREZ: Yes. Good morning, Your Honor. This is Deborah Deitsch-Perez from Stinson. We're here on behalf of the Advisor Objectors, NexPoint and HCMFA.

THE COURT: Okay. Thank you.

All right. Ms. Dandeneau, who do you appear for today?

MS. DANDENEAU: Good morning, Your Honor. Debra Dandeneau from Baker & McKenzie. I'm here on behalf of the Individual Defendants, Scott Ellington and Isaac Leventon.

THE COURT: All right. Thank you.

All right. Mr. Sullivan, I see your video on. Who would you like to appear for?

MR. SULLIVAN: Good morning, Your Honor. Ryan Sullivan from Pillsbury for James Dondero, Dugaboy Investment Trust, GetGood Trust, and Strand.

THE COURT: Okay. Thank you. Does that cover all of our appearances?

All right. Well, as I said, we have a motion to substitute the Plaintiff party. I'll note for the record that we are in an adversary proceeding that has been stayed or abated since April 4th, 2023. It's never been unstayed, although we have had some ministerial activity that has occurred, and I guess at least one settlement, of the Okada Defendants. We have a lot of Defendants in this one.

All right. So all we have today is a motion to substitute

under Rule 25(c). So I will hear from the co-movants.

MR. MCENTIRE: May it please the Court?

THE COURT: Yes.

MR. MCENTIRE: My name is Sawnie McEntire. Again, for the record, I represent Hunter Mountain Investment Trust, who is the assignee of the claims that this Court approved as part of the settlement back in June, I think by court order dated June 30th.

My client became the assignee transferee of the claims that had been prosecuted by the Litigation Subtrust, Mr. Loigman's client.

At the outset, we have filed a witness list and exhibit list. Our exhibits are 1 through 6. They're all matters of record in these proceedings on the docket, including the settlement document, your orders, two of your orders approving the settlement, a motion and the order granting an extension on the term of the duration of the Litigation Subtrust, and also your Report and Recommendations which will be visited here today concerning the withdrawal of the reference that you entered on April 6, 2022, as well as the United States District Court's order in connection with the abatement of the federal court proceedings pending your pretrial rulings and the developments in this case, subject to the stay, of course.

Your Honor, I have a brief PowerPoint I'd like to present. And if you'd go on to the next slide.

MS. DEITSCH-PEREZ: I apologize, Your Honor. I just wanted to say we have no objection to the exhibits. I didn't hear Mr. McEntire mention the affidavit of Mr. Demo with the attached settlement. I wanted to make sure that was still an exhibit, because we would move it in if it wasn't.

MR. MCENTIRE: It is. It's our Exhibit No. 1 that contains and attaches the settlement agreement that the Court approved.

THE COURT: All right. Well, you asked me to take --

MS. DEITSCH-PEREZ: Thank you.

THE COURT: -- judicial notice of all of these items on the docket. So I guess, to be clear, I'll take judicial notice.

It seems like a lot for a motion to substitute. For example, the motion to withdraw the reference, I'm sure we'll talk about it at some point, but that's not what is --

MR. MCENTIRE: Well, --

THE COURT: It's not a renewed setting on that. Okay?

MR. MCENTIRE: That is -- you've -- you summarized my entire argument.

THE COURT: Oh.

MR. MCENTIRE: Your Honor, this is a real simple motion under Rule 25. The assignment of the claims to my client does not result in an amendment of the lawsuit. My

client steps into the shoes of the Litigation Subtrust. It should be as easy as that.

Go to the next slide, please, Ian.

In fact, their response and their objection, they don't challenge the assignment. There's nothing in their papers that Ms. Deitsch-Perez filed that challenges the assignment. There's no challenge that my client is now the real party in interest. There's no challenge under Rule 25(c) for substitution. The case law is clear that the proceedings move along unabated, subject obviously to the stay that is pending, which we will be giving notice to lift.

And so, really, their paper, in terms of their objection, was not responsive at all to the motion. They don't take issue with the singular purpose of this exercise, which is to substitute us in pursuant to Rule 25(c). Rather, they go off on other areas and other issues, but they don't have a motion before the Court. Nor did they file anything with the United States District Court, asking the District Court to unabate this proceeding so they could raise these issues with that court.

So, really, they have not joined issue with anything in our motion for substitution. That's just as plain and simple as that. They, rather, are trying to rehash an argument that's really not before the Court. There's no formal motion to reconsider your recommendations and your findings back in

April of 2022. You did withdraw the reference for trial, but you retained --

THE COURT: I recommended --

MR. MCENTIRE: Yes, that's correct, --

THE COURT: -- withdrawal of the reference.

MR. MCENTIRE: -- you recommended that, but you retained -- you recommended to retain jurisdiction over pretrial matters such as this. This is perhaps one of the most simple pretrial matters there could possibly be under Rule 25(c).

I find it also compelling that in their briefing they do cite two cases, which have been superseded by Fifth Circuit precedent in the *Double Eagle* case, clearly, a case that Ms. Deitsch-Perez could have located. It's almost on all fours with what we're dealing with here. And it stands for the proposition that jurisdiction is determined at the outset of the lawsuit and the claims that were existing at the outset of the lawsuit, not by something that is as ministerial as the substitution of an assignee into the Plaintiff's shoes. And that's all this is.

They also ignored Supreme Court precedent, as recently as a case that was decided by the U.S. Supreme Court in January of this year. And it is a case that we cited in our brief, in a footnote, because the Supreme Court in that particular case, it's the *Royal Canin* case, January of 2025, had to do with a

dismissal of federal claims.

The case was removed to federal court. The plaintiff really wanted the case remanded, so he dismissed the federal court claims and all he had was state law -- state common law claims. And the Court basically found no jurisdiction, but made it very clear in a footnote, in its Footnote No. 6, that that doesn't apply to the substitution of parties, because the substitution of parties is governed by what's called the First Time Rule. When -- the timing of the original pleadings, of the original claims.

We're not dealing with a change or an amendment of the relief being sought. We're not seeking at this time any change to the claims substantively. All we're doing is simply stepping into the shoes of the Litigation Subtrustee.

Next. Next chart, please. So here is the -- Rule 25 is procedural only. Let me -- okay. There we go. This is the essence of their objection. Again, I don't think they've joined issue. If they think they've joined issue, they haven't, and they have other redress. They can file something in the United States District Court. Or they could file a proper motion, which they haven't done. So I think, right there, this inquiry could stop and the Court could grant our substitution without further delay.

Next. This is simply a procedural matter. And this is a case that we cited in our briefing, in our reply brief. Rule

25(c) is not designed to create new relationships among the parties. It was designed to allow the action to continue unabated, unabated, when an interest in the lawsuit changes hands. And that's what we're talking about here, plain and simple.

The *Double Eagle* case is the Fifth Circuit case that Ms. Deitsch-Perez and other objecting parties totally ignored. It's decided in 2019. The cases they cite were back in the late '90s or the early 2006-2007 time frame. Clearly, this is the governing precedent for this Court. The Time-of-Filing Rule is dispositive. It's hornbook law.

This particular case actually involved a debtor who assigned claims to a creditor, and the objecting parties tried to take a position that that destroyed jurisdiction. And under the Time-of-Filing Rule, the Fifth Circuit said no, that's not correct.

And down at the lower cite, we have the Supreme Court case: Jurisdiction, once acquired, is not divested by a subsequent change in the citizenship of the parties. That is the leading principle which the Fifth Circuit in *Double Eagle* adopted and developed and applied in a bankruptcy context. The *Double Eagle* case is a bankruptcy case.

Next. The federal court case, and that is a plaintiff's and diversity case, transferred its interests in the underlying contract in a dispute, in a pending lawsuit that

was filed. The successor in interest substituted into the lawsuit as a plaintiff under Rule 25(c), which we are trying to do here. The U.S. Supreme Court applied the well-established rule, jurisdiction at the time the action is filed is not divested by subsequent events.

So there's nothing about our substitution that would support a challenge to the subject matter jurisdiction of this Court, which has already been determined by this Court in its recommendations to the United States District Court.

In that case, the trial court retained jurisdiction, notwithstanding the transfer. And this was reaffirmed, as I mentioned a moment ago, in January of this year, in Footnote No. 6.

Next. The *Double Eagle* case, which I mentioned, which we believe is dispositive, it's a Chapter 11 debtor. He's sued for breach of contract, gets sued for breach of contract. It's an oil and gas case. The Bankruptcy Court exercised related-to jurisdiction. As I understand, that's what this Court is doing in connection with its recommendations to the United States District Court.

The debtor -- in this case, Double Eagle -- assigned its claims to a creditor. They argue that the assignment divested the Bankruptcy Court of subject matter jurisdiction. The Fifth Circuit adopted the hornbook law of the Time-of-Filing Rule. That rule should be applied here. There is no fact in

this matter that would distinguish the result from the result found or held, obtained, in the *Double Eagle* case.

The two cases that Ms. Deitsch-Perez and others cited, the *Cadle* case and the *Cataldi* case, were superseded.

There's another case. Can you go back to the previous chart? All right. Rule 25 does not create a backdoor challenge to jurisdiction, and that's what they're trying to do here, without a proper motion before the Court or the United States District Court. It very clearly indicated that the *QuarterNorth* substitution as the plaintiff did not divest the court of subject matter jurisdiction. It was an adversary proceeding. It was designed, Rule 25 was designed to allow the action -- in this case, the Kirschner action, to continue unabated when an interest in the lawsuit changes.

Because the court had related-to jurisdiction pre-confirmation, neither plan confirmation nor the plaintiff's substitution divested the court of jurisdiction. The court maintains related-to jurisdiction over this post-confirmation adversary proceeding.

Next. This is the essence of the *QuarterNorth* case. The successor in interest substitution did not result in a divestiture of jurisdiction.

This is part of your Report and Recommendations. You had concluded in Docket No. 151 that the Bankruptcy Court concludes that the 36 counts in the Kirschner proceedings are

without -- pertain to the implementation, execution of the plan. That's because the plan actually envisioned and contemplated the creation of the Litigation Subtrust to pursue the estate claims, and that's what those claims are. And all they've done now and the only difference is they get assigned to my client in a court-approved settlement.

What they're really trying to do is they're trying to undermine the intent and the purpose of the settlement. That settlement has great benefits for the estate. It was heralded by Mr. Morris' firm as one of the greatest events in the history of this bankruptcy proceeding. It provides great benefit.

The Litigation Subtrust duration expires again every year, and was renewed until August of next year. Well, this way, we don't have to keep renewing it. That's number one.

Number two, the estate saves money. It doesn't have to pay Mr. Loigman's client fees to continue to prosecute the claim. And it allowed Hunter Mountain and the estate and the Claimant Trust to come together for the first time and resolve their differences with the blessing of the Court. And now they're basically trying to do a backdoor challenge by challenging the jurisdiction of this Court.

There's no reason to disturb your Report and Recommendations. You've already determined in your findings, which I've read now a couple of times, that when this case is

certified by you as trial-ready, it goes up to the U.S. District Court, goes over to the U.S. District Court. We're not amending the current claims. These claims arise largely from pre-confirmation conduct, as you found in your opinion, in your order. We're only dealing with the substitution of parties.

In addition to the economies that benefit the estate, you are already familiar with the parties. You are already familiar with the majority of these claims, perhaps all of the claims. So what we're really trying to do here is achieve some efficiencies. And your retention of pretrial matters and jurisdiction over the proceeding is the greatest way to enhance efficiency.

Starting all over again in the United States District Court with motions to reconsider this or that is just going to slow this process down, cause a lot of expense or wasted resources. And that's why I think it's important we resolve this, if possible, today.

That is my presentation. I know Mr. Loigman would like to say a few words on behalf of the Litigation Subtrust. Unless the Court has any questions of me, I'll sit down.

THE COURT: I do not. Thank you.

Mr. Loigman, anything? Let's try not to duplicate. Anything you want to add?

MR. LOIGMAN: Thank you, Your Honor. I certainly

will try not to duplicate, and I'll try not to take more than just a minute or two of your time.

There's really only three points that I wanted to hit upon today, some of which Mr. McEntire has already hit upon, so I'll do them summarily.

I think really the most important issue before the Court today is that this is a Rule 25 motion to substitute a party. The claims have been transferred to Hunter Mountain. There's no dispute about that. That should be the end of the inquiry, and that's exactly what Rule 25 is intended for. It's a simple procedural motion, and there's no challenge to the procedural basis for the motion.

The second point, as Mr. McEntire referenced and as the Court observed at the outset, is that Defendants are trying to reargue the motions to withdraw the reference. Your Honor has already held that there is bankruptcy jurisdiction and recommended that the Bankruptcy Court, though, will not make final determinations of the claim. Rather, the final determinations will be for the District Court to have in a trial. This Court is handling pretrial matters only, in the nature of a magistrate, as we discussed earlier, which is wholly appropriate. And the Defendants, in trying to re-raise that Report and Recommendation, are making much ado about nothing, really.

And the Defendants' argument, and this is the third point,

about jurisdiction -- last argument, anyway -- the Supreme Court decisions in *Freeport-McMoRan v. K N Energy*, and of course the very recent decision in the *Royal Canin* case, which cites to that case in its Footnote 6, make absolutely clear that the time of filing is used to determine jurisdiction, in all events, in the substitution of a party, which is exactly what's happening here.

So, to just return to where I started, again, this is a Rule 25 motion to substitute a party. Hunter Mountain now owns the claims in this case and should be the party to assert them. The Litigation Trust, my client, in contrast, no longer owns the claims. It should not have the continuing expense, expense to the Claimant Trust, of course, expense to the estate, expense to Highland Capital, that would be visited upon the Litigation Trust if it had to continue acting as a party in this case, had to continue to act as the Plaintiff in this case.

And that, Your Honor, I would submit should be the beginning and the end of this inquiry. This is perhaps a quintessential transfer of claims, and therefore an appropriate time to recognize the party that actually should act as Plaintiff.

If Your Honor has any questions, I'd be happy to address them. Otherwise, happy to turn over the "podium" here.

THE COURT: Okay. No questions. Thank you.

All right. I'll ask Ms. Deitsch-Perez to go next since it was really her objection, and we have a couple of joinders in it but she actually penned the objection. So, Ms. Deitsch-Perez, what say you?

(Pause.)

THE COURT: You're on mute.

MS. DEITSCH-PEREZ: Can you hear now?

THE COURT: Yes. Thank you.

MS. DEITSCH-PEREZ: Sorry, Your Honor. I think Your Honor hit on some of this this morning when you started to talk about the procedural posture we were in. And I think you can tell from our objection that we were facing something of a chicken-and-egg problem here. Because we had argued in the motion to dismiss and we had argued in the motion to withdraw the reference that there was no jurisdiction and we believed that events since then have caused that to be all the more so, we asked ourselves, well, can this Court even decide the motion to substitute, given those circumstances?

And then on top of that, this case and the District Court case was stayed, and so we thought to ourselves, should we go to the District -- and I think we mention it in the objection -- should we go to the District Court and ask to reargue or to rebrief the motion to withdraw the reference?

And by the way, none of the cases cited by HMIT and the Litigation Trustee deal with whether or not you can consider

subsequent events in determining the motion to withdraw the reference.

So, it is correct that our original thought was to go to the District Court, and Mr. McEntire points out that we haven't done that. And the reason is we waited to see the response and thought, is it really right to go to the District Court and ask -- and rebrief the issues, without having first asked this Court for the benefit of its thoughts on the real circumstances on the motion to withdraw the reference. And so shouldn't we address those issues in front of this Court first? And as I said, none of HMIT's cases address that.

And as for jurisdiction, Hunter Mountain admits that it relies on *Royal Eagle* [sic] and says it's relying on *Royal Canin*, but *Royal Canin* actually proves the Defendants' point. *Royal Canin* says three, four, maybe five times that changing the parties is an amendment. The plaintiff's change in the parties is an amendment, and so you look at the changed circumstances.

And it's pretty funny that they rely on the footnote, because in *Royal Canin* the Court itself says, gee, people shouldn't rely on footnotes, even in our cases, with respect to matters not before it because those are not well-reasoned. You should look at the text that is reasoned.

And what *Royal Canin* says is when there is what is effectively an amendment -- and clearly this is an amendment

because Hunter Mountain is not a successor in interest, it's a bare buyer of a claim, and all you have to do is look at the settlement to see that. Hunter Mountain does not succeed to the privilege. It's not getting any assistance from the Litigation Trustee. It just bought some claims.

And so even the language, if you look at *Royal Canin* and look at Footnote 6, even the language there, which talks about the time of filing applying to the substitution of a defendant, because what they -- I think what they were worried about is, well, what happens if in a case a defendant adds an additional limited partner that breaks diversity, should that really, particularly on the eve of trial, should that upend anything? Well, that's not the circumstance we have here. Is Hunter Mountain truly going to continue to pursue claims against itself and its affiliates? Clearly not. This is -- this is, whatever you call it, it is an amendment.

So what we think should happen here is, notwithstanding the chicken-and-egg problem, is if Your Honor allows Hunter Mountain to become the Plaintiff, it should be considered an amendment and Defendants should have all of the rights that defendants have when there's amendment. We will make a -- we will work with the Plaintiff on the timing to put out a schedule so as to not burden the Court with having to determine that. But to renew the motion to withdraw the reference in light of the changed circumstances, and to renew

the motion to dismiss in light of the changed circumstances. Because under *Royal Canin*, unlike *Double Eagle*, these changes do matter. And *Royal Canin* very clearly says change in the party, that's an amendment, and the court should take cognizance of it.

Because otherwise -- let me give you the simplest example. Plaintiff brings a claim where the parties are diverse because it wants to be in federal court, let's say, and federal court had some favorable decisions, but the next day sells the claims to a non-diverse party. Is there really still jurisdiction in that circumstance? I don't think so.

This is not a classic successor in interest where truly a party steps into the shoes of the other, where the attorney general is booted out and there's a new attorney general, or a trustee dies and another member of his firm takes over as trustee, or where a corporation merges into another corporation. They are truly the successor. They have the assets. They have the liabilities. They are, for all purposes, the same party. That's not the case here.

So, Your Honor, I apologize that the relief we're requesting was perhaps not entirely clear in our objection, because we were still pondering the chicken-and-egg problem. But we think the right answer here is for the Defendants to have all of the rights that accrue when a complaint has been amended.

And I see Ms. Dandeneau has jumped on, so if I have forgotten something, please jump in and assist.

Thank you.

THE COURT: Before that, I just want to be clear. I'm hearing arguments relevant to a motion to withdraw the reference, which, okay, I understand you're trying to set the stage, I suppose, but we're here under 25(c).

MS. DEITSCH-PEREZ: I understand --

THE COURT: What is my argument on why I should not apply 25(c)?

MS. DEITSCH-PEREZ: Because, in fact, Hunter Mountain is not a successor in interest. It's just a claims buyer. And so we're not saying you should not allow them to amend to become the Plaintiff, but truly it is an amendment, not a substitution under Rule 25.

THE COURT: All right. Thank you.

Ms. Dandeneau?

MS. DANDENEAU: Thank you, Your Honor. I think I would answer that question in a slightly different way. I don't think that the concepts of amendment and substitution are mutually exclusive. You can have a substitution of parties, as the Supreme Court recognized in *Royal Canin* -- and whether it's *Canin* or *Canine*, I know that it's a pet food company, so I kind of think it must be *Canine*. But you can have that -- you can have a substitution that constitutes an

amendment. And the rules provide for many things that a plaintiff can do with respect to its complaint. Substitution of a party -- in this case, substitution of a plaintiff -- is one of those things.

I really wanted to note there has been talk about the Supreme Court case *Royal Canin*, and I want to say what the Supreme Court -- just one of the quotes about this from the case. And I invite Your Honor to look at this case if you have not already done so.

The Supreme Court says, in a unanimous opinion, So changes in parties or changes in claims effectively remake the suit, and that includes its jurisdictional basis. The reconfiguration accomplished by an amendment may bring the suit either newly within or newly outside a federal court's jurisdiction.

So I don't view this as being about the motion to withdraw the reference. What I view this as is it's an amendment to a complaint which would -- which, if true, would give us the right to essentially respond anew to the complaint, either through an answer or through a renewed motion to dismiss, and for the Court to look at the jurisdictional basis anew as referenced by the Supreme Court.

I would also note that, to the extent we're going to give credence to the footnote referencing the *McMoRan* case, the court refers to successor in interest. And as Ms. Deitsch-

Perez pointed out, this is not a situation where there was a business combination or even some kind of -- in *McMoRan*, what happened was the court specifically noted that the plaintiff had transferred its interest in the underlying contract that was the subject of the dispute, not the claim, for business purposes that were unrelated to the lawsuit.

So there was some business transaction that occurred that had the effect of having the plaintiff -- having a new plaintiff have an interest in the lawsuit. This is very different.

And so I think the answer -- the question is whether this -- whether Hunter Mountain is a mere successor in interest that would fall, again, if you ignore the very, very clear language of the Supreme Court in *Royal Canine* or *Canin*, that would fall within the scope of that very limited exception.

So, Your Honor, I just wanted to -- I would also say there was some discussion about the settlement. Nobody objected to the settlement. Certainly, my clients did not object to the settlement. The settlement is done. We are not seeking to undo the settlement, nor can we undo the settlement, and nor can --

THE COURT: I'm just going to clarify, there was an objection to the settlement. And now there's an --

MS. DANDENEAU: Okay, Your Honor, --

THE COURT: Now there is an appeal of the approval of

the settlement.

MS. DANDENEAU: Yes, Your Honor. I -- that's, Your Honor, why I quickly corrected myself. I apol...

My clients certainly did not object to the settlement. But my point is that there's nothing that happens in this lawsuit; going forward, nothing can undo the settlement. That is done, and we are not seeking in this lawsuit -- in anything we do in this lawsuit to undo the effect of the settlement.

So, Your Honor, thank you for the time, and we join in the objection.

THE COURT: All right. Thank you.

All right. Who did I not hear from? There was one more joinder. Mr. Sullivan, I think?

MR. SULLIVAN: Yes. We join in all the excellent points raised by the esteemed Deborahs.

THE COURT: Okay. All right. Any rebuttal?

MR. MCENTIRE: Very brief, Your Honor. Again, Sawnie McEntire for the record.

I think a few things. It's clear that they're not challenging the Rule 25(c) substitution itself. I didn't hear anything in either of those two presentations to suggest that. And that's the only thing before the Court. That is the only issue before the Court.

Footnote 6 in the canine *Canin* case is very clear that you treat an assignment of an interest differently than adding in

a non-diverse party in a diversity jurisdiction case and things of that nature. Because when you assign a claim under Rule 25(c), the assignee, the successor in interest, whatever you want to call it, steps into the shoes of the original plaintiff. And that's what 25(c) is about.

If you indulge Ms. Deitsch-Perez in her argument, it renders 25(c) a nullity. There would be no purpose to it.

And I find it interesting that not once in any truly substantive or meaningful way did either Ms. Dandeneau or Ms. Deitsch-Perez address the *Double Eagle* case. That was a case where the debtor assigned it to a creditor. It wasn't a merger or an acquisition. They assigned the claim to a creditor. And that is prevailing dispositive Fifth Circuit precedent that this Court, I believe, respectfully, should follow.

Because that is, that is precisely what's happened here. Hunter Mountain was a Basket No. 10 contingent beneficiary. This is a way of resolving years of litigation. We're now an assignee. We're stepping into the shoes of the Litigation Trustee. And all they want is to delay, delay, and delay. And I would respectfully request that the Court allow the substitution at this time.

Thank you.

THE COURT: All right. Thank you.

MR. LOIGMAN: Your Honor, it's Robert Loigman.

THE COURT: Yes.

MR. LOIGMAN: If I may add just one word?

THE COURT: Uh, --

MR. LOIGMAN: Thank you.

THE COURT: Go ahead.

MR. LOIGMAN: Thank you, Your Honor.

I agree with the points that Mr. McEntire made about the jurisdictional points, and I won't revisit those. I think they're misreading the Supreme Court case law, which I think is very clear.

But I think the most important point, at least from my client's perspective -- that is, the Litigation Trust -- is that Rule 25(c) clearly applies. They haven't argued anything to the contrary.

And there was some mention about whether you had to be a successor in interest in a broader sense. And Rule 25(c) is very clear that's not the case for the rule to apply. It says if an interest is transferred. And that is when Rule 25(c) applies. And here, that's exactly what's happened. Interest in these claims has been transferred. And therefore it's appropriate to change the Plaintiff in this action.

Thank you, Your Honor.

THE COURT: All right. Thank you.

All right. As I indicated at the start of this hearing, I do think there is a fairly simple matter before me today,

although I can tell things will soon get complicated.

Rule 25(c) obviously permits a substitution of a party if an interest has been transferred, and that is precisely what we have as the underlying facts here. The Court approved a settlement, Docket No. 4297, a few weeks ago, where, among other things, the Litigation Trustee, Mr. Kirschner's claims were transferred, conveyed, assigned to Hunter Mountain.

So I do think, pursuant to that settlement agreement, Hunter Mountain is now the proper party in interest as Plaintiff in this Adversary 21-3076, and so substitution will be granted.

I note that a very short form of order was proposed, and I think it is appropriate. It simply addresses the substitution and nothing else. So I grant that motion.

I will say that, with this motion, there is much we have to think about on the horizon. And I'll start by saying that the order abating this adversary proceeding or staying this adversary proceeding which was entered April 4th, 2023 -- that's Docket No. 338; you're all familiar with it -- it is still in place.

I didn't think that order prevented me from ruling on this motion to substitute because this is administrative or ministerial in nature, not a substantive ruling on claims or defenses. But that order staying this adversary provides, and Mr. McEntire alluded to it, that any party who wishes to

resume the adversary must provide 30 days' written notice to all other parties and the Court, and that's set forth in Paragraph 1 of that order.

So I'm not doing anything else until that has happened, or anything of a substantive nature, shall we say, until that process happens. It's just a notice. It doesn't require an order.

But what I'm thinking is, after that happens, at a minimum, we need to have a status conference in this matter, or a scheduling conference. Now, that all may be superseded by motions. I don't know. But I am envisioning that I would need to do an amended or a supplement to the Report and Recommendation to Judge Scholer, letting her, at a minimum, know that there's no longer an abatement, and probably, at a minimum, updating her with regard to the substitution of party, Plaintiff, as well as letting her know what Defendants and claims have been dropped. And the only one I know of from scanning the docket is the Okada Parties, Mr. Okada and related entities. Maybe Mr. Loigman can apprise me. It looked like there was a dismissal, a settlement with those Defendants, correct?

MR. LOIGMAN: That's correct, Your Honor. There was also settlements and dismissals with the -- the HMIT, Hunter Mountain Parties, and then there was one with CLO Holdco and I believe its parent entity as well. Those are -- the reason

you may not have noticed those, Your Honor, is because they're not reflected in the caption, but they're -- but they have been filed with the Court on the docket, those withdrawals of claims against those parties.

THE COURT: Okay. Yes. I did not focus. But at a minimum, I think we need to have a status conference to let me be clear what the lay of the land is. We originally had 21 Defendants or something like that. Just updating Judge Scholer (a) this adversary has been unstayed pursuant to a notice I presume Hunter Mountain will be filing; (b) the Court has approved a substitution of Hunter Mountain pursuant to a settlement agreement and a motion; and then (c) here are the claims and parties remaining.

I can't remember, it's been so long since I did it, but I think in my Report and Recommendation I may have even put a handy-dandy chart in there of there are 36 counts and here are the Defendants associated with each count.

And then I don't know what she'll do. I have had situations in the past where it was questionable perhaps in my mind whether subject matter jurisdiction still existed, and the district judge followed the Time-of-Filing Rule. Like, shame on you, of course the Time-of-Filing Rule applies.

So I'm just letting you know, I would be -- well, I don't know, I don't know what she'll do. And of course, I have discretion to change my recommendation as well.

Again, today's arguments along those lines were premature in my mind. We'll do what we're going to do after this matter is unstayed.

I did not go back and scan the docket. Was there a motion to dismiss, a 12(b)(6) motion to dismiss by certain Defendants that was stayed by the stay order?

MS. DEITSCH-PEREZ: Your Honor, there was a motion to dismiss filed. And I think, even before it was stayed by the stay order, Your Honor had said that you would await doing anything substantive until the District Court had ruled on the motion to withdraw the reference in case the District Court was going to withdraw for all purposes.

THE COURT: That's what I usually do, so I'm not surprised that that's what I did.

So, anyway, we'll just need a status conference. What can I say? Are we going to allow -- I'm inclined to supplement my Report and Recommendation, and then parties can file whatever objections they want before the District Court, rather than having double, making arguments to me and then making arguments to her.

But then we will need, I'm sure, a scheduling order, at least an interim scheduling order, to talk about are you going to do an amended complaint, are the parties going to have a chance to do new motions to dismiss?

So, again, we'll do that after the 30 days run on the

notice I anticipate you're going to file.

MR. MCENTIRE: Certainly. But in all candor, for the benefit of the Court, we do intend to issue the notice to terminate the stay today.

THE COURT: Okay. All right.

MR. MCENTIRE: And we also anticipate -- yes. We also -- I'm sorry.

THE COURT: Just finish your sentence.

MR. MCENTIRE: We also anticipate the possibility of filing additional motions for equitable relief that various matters have come to our attention recently. And we would expect to be filing those motions in very short order, within the next 10 days to two weeks.

Otherwise, I absolutely do agree with you that we need a status conference, and we fully support that.

THE COURT: All right. Ms. Deitsch-Perez?

MS. DEITSCH-PEREZ: Yes. Two things, one in response to what Mr. McEntire just said. Since the complaint doesn't currently ask for equitable relief, filing motions for equitable relief only underscores our argument that this is truly an amendment, not simply a substitution.

And second, I was going to suggest that -- I understand Your Honor's inclination not to make the parties do additional work, but I do think it might be helpful for the Court to have the benefit of our thoughts on the changes -- on the way

change in circumstances have affected the motion to withdraw the reference.

And so I would urge, rather than just having a status conference without the benefit of that, that we think about and have a schedule for anyone who wants to weigh in on how the circumstances affect the motion to withdraw the reference, to do that before Your Honor issues a report to Judge Scholer.

THE COURT: All right. Well, again, I think maybe we're all in agreement it makes sense to have a status conference, and we'll flesh through what needs to happen before I make any kind of supplemental report to Judge Scholer.

All right. So I'll look for your order of substitution.

And I know, I had one question. Mr. Loigman had mentioned that there was a dismissal of CLO Holdco at one point. I know one of these Defendants that is connected with CLO Holdco is in a Chapter 15 in Delaware. I got notice. I don't know what's going on with it. I have no idea what's going on. But I think it was Charitable DAF Fund, LP. Does anyone know about that and has that party been dismissed?

MR. MCENTIRE: I believe the Charitable DAF has been dismissed. And I'm generally familiar with the Chapter 15 proceedings. I'm not an attorney in those proceedings.

THE COURT: Well, I'm only asking because there would be an automatic stay if that Chapter 15 is pending as to that

one Defendant.

MR. MCENTIRE: I don't think -- I don't think that Defendant -- I think that Defendant has been dismissed from this proceeding.

THE COURT: Okay.

MR. LOIGMAN: Your Honor, I can -- I could answer that question. At Docket No. 355, I believe, in this action, there's a notice of voluntary dismissal.

THE COURT: Okay.

MR. LOIGMAN: And that covers Charitable DAF Holdco, Charitable DAF Fund, LP, and CLO Holdco, Ltd.

THE COURT: Okay. Thank you. All right. So, again, it's been a few years now. I need and Judge Scholer will need clarity over what Defendants are still in and which are not.

All right. I'll look for the order and I'll stay tuned. Okay.

MR. MCENTIRE: Thank you.

THE COURT: Thank you.

(Proceedings concluded at 11:52 a.m.)

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CERTIFICATE

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

/s/ Kathy Rehling **09/03/2025**

Kathy Rehling, CETD-444 Date
Certified Electronic Court Transcriber

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