

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

3 In Re:) **Case No. 19-34054-sgj-11**
4) Chapter 11
5)
6 HIGHLAND CAPITAL) Dallas, Texas
7 MANAGEMENT, L.P.,) December 18, 2024
8) 9:00 a.m. Docket
9 Reorganized Debtor.)
10) - OBJECTION TO SCHEDULED
11) CLAIMS [3657]
12) - MOTION FOR A BAD FAITH
13) FINDING [4176]
14)

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

11 APPEARANCES:

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1 DALLAS, TEXAS - DECEMBER 18, 2024 - 9:05 A.M.

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

5 THE COURT: Good morning, everyone. Please be
6 seated.

7 All right. We have a hearing all day today scheduled for
8 Highland, an objection to the scheduled claim of what I'm
9 going to call HCLOM. You all tell me today if you want to
10 call it something different. For the record, this is Case No.
11 19-34054. So let's start out by getting appearances from our
12 lawyers.

13 MR. MORRIS: Good morning, Your Honor. It's been a
14 while. Nice to see you. John Morris from Pachulski Stang
15 Ziehl & Jones for Highland Capital Management, LP. I'm joined
16 here today by my colleagues, Jeffrey Pomerantz, Hayley
17 Winograd, and Zachery Annable.

18 THE COURT: Okay. Good morning to all.

19 MS. DEITSCH-PEREZ: Good morning, Your Honor. I'm
20 Deborah Deitsch-Perez from Stinson representing HCLOM, which I
21 will sometimes refer to as Limited to distinguish it from
22 HCLOM, LLC. So I'll call one Limited and the other LLC,
23 hopefully.

24 THE COURT: Okay.

25 MS. DEITSCH-PEREZ: I'm here with my colleague Mike

1 Aigen, and Patricia Tomasky, who's a paralegal, and Fred
2 Jones, who are assisting.

3 THE COURT: Okay.

4 MS. DEITSCH-PEREZ: Thank you.

5 THE COURT: Good morning to all.

6 All right. I presume those are the only appearances, and
7 anyone else on the WebEx is an observer.

8 Do we have a housekeeping matters or shall we go to
9 opening statements?

10 MS. DEITSCH-PEREZ: I have one housekeeping matter
11 I'd like to raise. And this is really because Your Honor has
12 on many occasions chided us and said, why are you here, have
13 you done anything to try not to be here?

14 And this is not in the nature of settlement, but certain
15 things happened last week. Last week, it became clear that
16 \$73-odd million is going to come out of the Registry of the
17 Court into the estate, and another several million dollars is
18 going to come out because of the administrative claims,
19 because the Fifth Circuit just ruled, so it's another roughly
20 \$80 million in the estate. And there's already \$80 million or
21 so in the estate, and there's \$80-ish million left in claims.

22 And so what we had proposed is that, rather than spending
23 time and money fighting about all of this, we would agree to
24 put HCLOM's claim behind Class 8, which I believe has
25 otherwise been fully paid, and Class 9, because otherwise what

1 the estate is doing here is bringing in money that's going to
2 be the residual left over for former equity, and we're willing
3 to put HCLOM back there anyway. And then we wouldn't be
4 spending your time and our time and money to fight this, and
5 particularly with a sanctions motion to try and get fees from
6 Mr. Dondero.

7 I mean, honestly, Your Honor, what is the point, when
8 there's enough money there to pay everyone and basically
9 you're moving it from one pocket to the other, because at the
10 end of the day there's going to be money left over for former
11 equity?

12 And so I would ask that you use your ability to control
13 your docket and send us all home.

14 THE COURT: Okay. And by the way, I neglected to
15 ask, does Mr. Dondero have separate counsel today --

16 MS. DEITSCH-PEREZ: No, I'm here --

17 THE COURT: -- or you are also his counsel?

18 MS. DEITSCH-PEREZ: Yes, I'm here for Mr. Dondero
19 also.

20 THE COURT: All right. So what I have heard is there
21 is an agreement by your client to essentially have a
22 subordinated claim behind all --

23 MS. DEITSCH-PEREZ: Yes.

24 THE COURT: -- Class 8, all Class 9?

25 MS. DEITSCH-PEREZ: Yep.

1 THE COURT: It would come above equity.

2 MS. DEITSCH-PEREZ: Uh-huh.

3 THE COURT: Strand, I guess, or --

4 MS. DEITSCH-PEREZ: Yeah, the 10 and 11, --

5 THE COURT: I think I still remember this --

6 MS. DEITSCH-PEREZ: Yeah.

7 THE COURT: -- organizational structure. And that,
8 of course, eliminates the sanction component of this.

9 What do you have to say, Mr. Morris?

10 MR. MORRIS: Sure. I'm just going to come to the
11 podium. I'm more comfortable there.

12 THE COURT: Uh-huh.

13 MR. MORRIS: I'm surprised and disappointed that
14 we're hearing this now. This is something that could have
15 been raised the day after we filed our objection. Instead of
16 raising this issue then, they filed a response, and we have
17 spent more than \$600,000 litigating this matter. She's opened
18 the door now. Before there was a deposition taken, Your
19 Honor, we offered to pay them a half a million dollars for the
20 withdrawal of this claim. That was not accepted.

21 Here we are now. When I received this missive on
22 Saturday, saying, gee, it's not -- not complete what's being
23 said here. She also directed us to pay the Class 8 and Class
24 9 in full, which we're not going to do unless and until the
25 Trustee determines that's in the estate's best interest. We

1 responded by saying, if that's what you want to do, then just
2 withdraw your claim with prejudice and we will withdraw our
3 bad faith motion.

4 So, instead of accepting that, they pushed on. Right?
5 Because it doesn't matter. If they're going to subordinate
6 that claim to 8 and 9, the claim becomes irrelevant, because
7 if there's ever a distribution to the Class 10, that's the
8 same person. It's Jim Dondero. Right? We don't have to play
9 games here.

10 So I said, withdraw your claim with prejudice, we'll
11 withdraw our bad faith motion with prejudice, and we will have
12 no trial. Not acceptable.

13 So here we are. We've now spent the time. They could
14 have made this proposal two years ago. They didn't. They
15 didn't accept the very generous offer that we made before a
16 deposition was taken in this case. They've got no case here.
17 There's no legal basis for this claim. There is no factual
18 basis for this claim. We were prepared to actually write a
19 meaningful check and avoid the whole thing. Not acceptable.
20 We're forced to go through it.

21 This is like HCRE all over again, where, like, I don't
22 know why we're here. I really don't know why we're here.
23 It's the same person. Right?

24 But they pushed me here, and I think we ought to, as long
25 as everybody's here, we ought to just get on with it and be

1 done today.

2 THE COURT: Well, I'm trying to figure out if it's
3 just a mechanical thing at this point. I mean, I'm hearing
4 that your proposal is the claim be subordinated.

5 MS. DEITSCH-PEREZ: Uh-huh.

6 THE COURT: And --

7 MS. DEITSCH-PEREZ: And the reason we don't agree
8 with Mr. Morris, and I'll correct a few of the things he said,
9 is there are some differences between HCLOM and former equity,
10 and we don't know what kind of tax or other implications there
11 would be from changing it from HCLOM's claim to dumping it
12 into some other category.

13 But as a practical and economic matter for the estate,
14 we're willing to have it at the back. So it's no difference
15 to the estate.

16 And the reason we didn't make this proposal initially and
17 we made it last week is because of the very material change
18 that the estate suddenly has \$80 million more. And it should
19 be clear to everybody that there's enough money to pay
20 everyone.

21 It is also not true that I said to Mr. Morris that he had
22 to pay everybody this minute to make this claim, because then
23 I would be saying, oh, pay me next week. That's not what I
24 said. What I said was we would agree that if it turns out, as
25 we firmly believe and we're putting our money where our mouth

1 is, that there's enough money to pay everyone, then pay HCLOM
2 then. They've already reserved the money for it.

3 And for them to say this is a ridiculous claim is itself
4 ridiculous. This is not a proof of claim. This is a claim
5 that Highland scheduled, not just when Mr. Dondero was at the
6 helm but when Mr. Seery was at the helm. And then he
7 reaffirmed it for years afterwards. It's only when they
8 realized that allowing the claim would benefit Mr. Dondero,
9 among others, that they did an about-face and said, oh, no,
10 now we object to the claim.

11 THE COURT: Okay. Now we're getting into argument.

12 MS. DEITSCH-PEREZ: Okay.

13 THE COURT: And I promise you, I've read every single

14 --

15 MS. DEITSCH-PEREZ: Okay.

16 THE COURT: -- sentence of every single pleading.

17 MR. MORRIS: Yeah.

18 THE COURT: So I know what the counter-arguments are.

19 MS. DEITSCH-PEREZ: And --

20 THE COURT: I'm going to suggest this. Can we take a
21 15-minute break? And we are pressed for time today, because I
22 think I told you all, or maybe, I mean, not me, but Traci
23 probably told you all that I have a presentation at 6:00
24 o'clock tonight. It's five minutes away, but --

25 MR. MORRIS: I think --

1 THE COURT: What I'm really afraid of is you
2 mentioned HCRE. I remember when we were in the devil-is-in-
3 the-details kind of situation there, where we didn't really
4 have a meeting of the minds on what might happen with a
5 withdrawal of that claim.

6 So might I suggest a 15-minute break, and you can write it
7 down and sign it in blood. I hate to say it. But if it's
8 something that you both can get to the same point on.

9 MR. MORRIS: I'm happy to do it, but I just want to
10 make this really clear on the record. The reason that we were
11 prepared to agree to withdrawal of our bad faith motion in
12 exchange for disallowance of the scheduled claim is because we
13 would have no theoretical let alone legal duty to HCLOM. And
14 that's where we need to get to. That's why we're going
15 forward today. That's why their settlement proposal was
16 unacceptable.

17 We probably -- I'd have to confer with my client, but we
18 probably would still be willing to withdraw the bad faith
19 motion with the disallowance of the scheduled claims. But the
20 subordination of it, to leave it hanging out there to create
21 new arguments that we owe some kind of duty is unacceptable.

22 MS. DEITSCH-PEREZ: And that --

23 THE COURT: All right. Wouldn't you know at this
24 point in time if there's a tax consequence or some sort of
25 negative consequence from withdrawal? Withdrawal seems weird

1 because it's a scheduled claim.

2 MR. MORRIS: That's why I say disallowance.

3 MS. DEITSCH-PEREZ: It's --

4 THE COURT: Disallowance versus subordination?

5 MS. DEITSCH-PEREZ: We don't know. And there's

6 really no --

7 THE COURT: Why wouldn't you, after all of this time?

8 MS. DEITSCH-PEREZ: Because this only came up last
9 week, and I don't know how many other things one would have to
10 look at to know that, Your Honor.

11 But the bottom line is we don't. And there's also no
12 reason, because it is economically no different for the Debtor
13 to put us behind 9 than to disallow it, because there's going
14 to be --

15 THE COURT: Oh, okay. Well, --

16 MS. DEITSCH-PEREZ: -- money left over.

17 THE COURT: -- I still want the 15-minute break, --

18 MR. MORRIS: Okay.

19 THE COURT: -- because it seems like there's a
20 mechanic, such as I think the HCRE issue was --

21 MR. MORRIS: They were saving claims for another day.

22 MS. DEITSCH-PEREZ: And --

23 MR. MORRIS: That's what we want to avoid doing here
24 today.

25 THE COURT: Yes. That this claim would never be used

1 --

2 MR. MORRIS: We want to make sure that we have
3 finality, --

4 THE COURT: -- in litigation.

5 MR. MORRIS: -- that we're never going to see this
6 again.

7 THE COURT: It would never be used in any future
8 litigation.

9 MS. DEITSCH-PEREZ: Right. That I could -- as I
10 stand here now, I don't know of any claims that HCLOM has
11 other than this. And the time to make them is long past. I
12 mean, the bar date has passed. The schedules are the
13 schedules.

14 THE COURT: But that would be against Highland, not
15 against who knows who else. I mean, I don't know.

16 MS. DEITSCH-PEREZ: But why does the Debtor -- I
17 mean, why does that matter to the Debtor?

18 THE COURT: Well, --

19 MS. DEITSCH-PEREZ: I mean, I also don't know of any
20 claims HCLOM has against anybody else, but why is --

21 THE COURT: Mr. Seery has been the subject of a lot
22 of claim litigation. Or trying to assert a claim.

23 MR. MORRIS: Your Honor?

24 THE COURT: Fifteen-minute break.

25 MS. DEITSCH-PEREZ: I'll give you an example.

1 MR. MORRIS: Can we take that 15-minute break?

2 THE COURT: Yes. Yes.

3 MR. MORRIS: Yes. Thank you.

4 THE COURT: All right. Thank you.

5 THE CLERK: All rise.

6 (A recess ensued from 9:18 a.m. until 9:47 a.m.)

7 THE CLERK: All rise.

8 THE COURT: All right. Please be seated.

9 All right. Do we have anything that looks like a
10 compromise and settlement, or no?

11 MS. DEITSCH-PEREZ: We do. Can I take your computer?

12 MR. MORRIS: Sure.

13 MS. DEITSCH-PEREZ: Or somebody's computer?

14 MR. MORRIS: It's Hayley's. But you can read it if
15 you want.

16 MS. DEITSCH-PEREZ: Okay.

17 MR. MORRIS: Your Honor, just context, we greatly
18 appreciate the Court's indulgence of time. It was used
19 constructively. I believe that we have reached an agreement
20 to resolve today's matter.

21 And with that, I'm going to have Ms. Deitsch-Perez read
22 the written terms that we have right now. Obviously, it'll be
23 subject to definitive documentation, which we would work on
24 promptly today.

25 But why don't you take it from here?

1 MS. DEITSCH-PEREZ: Okay.

2 THE COURT: Okay.

3 MS. DEITSCH-PEREZ: And I'm not going to include your
4 asterisks. The --

5 THE COURT: And can I ask you to come to the podium
6 and speak into the mic? I just want it crystal clear on the
7 record whatever is said.

8 MS. DEITSCH-PEREZ: Okay. Come. Yes. Come.

9 Okay. The HCLOM claim would be converted to a Class 10
10 interest in the same amount.

11 THE COURT: Okay.

12 MS. DEITSCH-PEREZ: Okay. HCLOM would release
13 protected parties.

14 MR. MORRIS: It would be a general release.

15 THE COURT: Uh-huh.

16 MS. DEITSCH-PEREZ: But only by HCLOM.

17 MR. MORRIS: Correct. Only HCLOM Limited.

18 MS. DEITSCH-PEREZ: HCLOM would not separately make
19 equity motions, like Hunter Mountain. However, because of the
20 change in circumstances, I just want this to be clear. Hunter
21 Mountain or Dugaboy may have -- may want to bring to the
22 Court's attention the change in the finances in the estate.

23 MR. MORRIS: Your Honor, --

24 MS. DEITSCH-PEREZ: But it would --

25 MR. MORRIS: -- I really would prefer that we just

1 read the terms of the agreement, and then she can put down the
2 commentary. I'm going to do this the way we have -- the way
3 we have it written, and then she can provide whatever
4 commentary she'd like.

5 There's five elements to this settlement.

6 THE COURT: Okay.

7 MR. MORRIS: HCLOM claim will be converted to a Class
8 10 interest in the amount of the claim.

9 Number 2, there shall be a general release of all
10 Protected Parties, as that term is defined in the plan.

11 There will be no "equity" type motion by HCLOM Limited.
12 HCLOM Limited shall take no position in connection with this
13 case, including but not limited to in connection with this
14 scheduled claim, as a holder of a Class 10 interest.

15 Number 4, no estate fiduciary, Highland Capital
16 Management, LP, will owe any duty of any kind, whether it's
17 contractual, fiduciary, or otherwise, now or forever.

18 And Number 5, there shall be no reserve established.

19 THE COURT: Let me -- let me --

20 MS. DEITSCH-PEREZ: Let --

21 THE COURT: -- make sure I heard that point.

22 MR. MORRIS: Uh-huh.

23 THE COURT: No estate fiduciary or Highland. What --

24 MS. DEITSCH-PEREZ: Other than this agreement. I

25 mean, --

1 MR. MORRIS: Sure.

2 THE COURT: Just, if you could just repeat what you
3 said.

4 MR. MORRIS: There -- no estate fiduciary or Highland
5 Capital Management or the Trust shall owe any duty of any kind
6 to HCLOM Limited, including but not limited to contractual,
7 fiduciary, or any other duty.

8 MS. DEITSCH-PEREZ: Except the duties owed as a
9 result of this agreement. In other words, you're not saying
10 we'll make this agreement but, ha ha, you can't enforce it?
11 That's all.

12 MR. MORRIS: The only thing that would be enforced is
13 they would have a Class 10 interest.

14 MS. DEITSCH-PEREZ: Right.

15 MR. MORRIS: Right?

16 MS. DEITSCH-PEREZ: It would have its Class 10
17 rights.

18 MR. MORRIS: Period, full stop. So that's fine.

19 And then no reserve shall be established.

20 There actually has been a reserve. That reserve can be
21 released. There will be no further reserve with respect to
22 this 10 interest.

23 And, you know, we need to make sure, and I don't know that
24 counsel has the authority to do that today, but we need to
25 make sure that neither HMIT nor Dugaboy, the Class 10 and

1 Class 11 interest holders, have any objection to this. It's
2 got to be subject to their consent.

3 MS. DEITSCH-PEREZ: Although I guess I still don't
4 quite understand, because right now HCLOM is ahead of them,
5 but I -- so now they're moving into --

6 MR. MORRIS: Because if we had the trial today, I'm
7 fairly confident that the claim would be disallowed.

8 MS. DEITSCH-PEREZ: And I'm equally confident that it
9 would not be --

10 MR. MORRIS: Okay. So --

11 MS. DEITSCH-PEREZ: -- and that it would be ahead.

12 MR. MORRIS: So we're having a settlement that could
13 impact them. So --

14 Just to state this really simply, Your Honor, because I
15 want intent to be really clear on the record: HCLOM Limited
16 is going to walk away with the economic interest of having an
17 allowed Class 10 interest in the amount of the claim and
18 nothing more, as if we actually tried the case today and the
19 scheduled claim was disallowed. That's the point that we
20 continue to make, that if we had this case, the reason why we
21 really wanted to push forward to this case today and really
22 what we were talking about before we took the break is we
23 didn't want any continuing duty of any kind.

24 So this is why -- this is the compromise here. Highland
25 gets what it wants, and that is, as a legal matter, the claim

1 has been effectively disallowed. HCLOM gets what it wants,
2 because, as an economic matter, when and if Class 10 claim --
3 interest holders get paid, they'll get a distribution,
4 presumably prorated with HMIT if HMIT is ultimately found to
5 have, you know, an allowed claim.

6 That's really it. We want the protection as if the claim
7 had been disallowed in full, no strings attached. And they're
8 going to get, in exchange for that, they're going to get the
9 economic benefit of holding a Class 10 interest.

10 THE COURT: Okay. Let me ask the obvious question.
11 It seemed to the Court that standing was the issue. When we
12 had this back and forth before the break, Highland wanted
13 disallowance. Your client wanted subordination. And we all
14 know that there have been many adversary proceedings and many
15 appeals where the standing of the plaintiff, the standing of
16 the appellant, was challenged. And some court, maybe this
17 one, maybe an appellate court, said no standing of Mr.
18 Dondero. Hunter Mountain. You know.

19 MS. DEITSCH-PEREZ: These are --

20 THE COURT: Is this the rub here, or are we in
21 agreement from these five elements that HCLOM will not have
22 standing to bring actions or to pursue appeals that involve --

23 MS. DEITSCH-PEREZ: We're --

24 THE COURT: -- somehow Highland?

25 MS. DEITSCH-PEREZ: We're basically -- and this is

1 why I was trying to give a little color earlier, which is to
2 say circumstances have changed.

3 So former equity, Classes 10 and 11, are in a position to
4 say, Your Honor, look, see how much money there is in the
5 estate. Now can you agree that we have standing? But we're
6 not going to rely on the addition of HCLOM to say it's somehow
7 different than if Hunter Mountain had done it or Dugaboy had
8 done it. Is that -- is that clear?

9 MR. MORRIS: Let me make sure that I understand.
10 This settlement has no impact on Dugaboy or HMIT. It doesn't.
11 They've done whatever they wanted. They'll continue to do
12 whatever they wanted, unfortunately. But what the third
13 bullet point says is that HCLOM Limited shall take no position
14 in connection with this case. Period, full stop.

15 MS. DEITSCH-PEREZ: Other than --

16 MR. MORRIS: Other than -- other than if, you know,
17 if we gave a distribution to HMIT but didn't give it to HCLOM
18 Limited, they can come in and complain about that. That's
19 their economic right.

20 MS. DEITSCH-PEREZ: Right. We could complain about
21 --

22 MR. MORRIS: Economic right.

23 MS. DEITSCH-PEREZ: -- the economic -- about whether
24 we get or don't get what we've just agreed to. I mean, we
25 have rights arising out of this agreement.

1 THE COURT: Okay. Would it be -- it might be
2 superfluous, but any problem with either one of you just
3 saying in this agreement, This compromise and settlement
4 agreement does not operate to give HCLOM standing in
5 connection with any adversary, any appeal?

6 MS. DEITSCH-PEREZ: Not if it related to a violation
7 of the settlement. So I think it's an unnecessary thing to
8 say.

9 THE COURT: Except to enforce the settlement
10 agreement? Could it have that proviso?

11 Because here's where I'm standing. Standing. No pun
12 intended, actually. I mean, you mentioned that I have an
13 obligation or duty to manage my docket. But I feel like I
14 also have a duty not to clog the court system, including the
15 appellate system, by entering an agreed order that might be
16 construed later, look, --

17 MS. DEITSCH-PEREZ: Well, --

18 THE COURT: -- she acknowledged we have a Class 10
19 interest and therefore we have standing. Okay?

20 MS. DEITSCH-PEREZ: Your Honor?

21 THE COURT: Do you see what I'm saying? I have some
22 duty here, too, to make sure I have not created a standing
23 argument where one --

24 MS. DEITSCH-PEREZ: There --

25 THE COURT: -- might not have existed.

1 MS. DEITSCH-PEREZ: There's nothing about this
2 agreement that creates any standing other than with respect to
3 the agreement itself. And I would be loath to say something
4 that might be misconstrued about that. It's simply
5 unnecessary.

6 And it's not, it's not clogging the courts for parties to
7 appeal those decisions with which they disagree. And this
8 settlement is actually efficient, in the sense that surely
9 everybody here is aware that if we went forward on this case,
10 whoever lost would appeal.

11 So this is managing both this docket and lessening the
12 flow of --

13 THE COURT: So, --

14 MS. DEITSCH-PEREZ: -- cases into the future.

15 THE COURT: -- to make me feel like I have done my
16 duty, you all would add a sentence that this order, this
17 agreed order, whatever you're calling the document, does not
18 operate to give standing to HCLOM for any purposes related to
19 the Highland estate except to allow it to enforce this order?

20 MS. DEITSCH-PEREZ: I mean, I'll have to go back and
21 ask, but that sounds -- that sounds okay. You know, as in
22 this case, you're right, the devil is always in the details,
23 but that sounds like what we've been saying.

24 THE COURT: Okay.

25 MR. MORRIS: I just --

1 THE COURT: You'll have to ask your client? I think
2 I saw him here earlier. Has he left?

3 MS. DEITSCH-PEREZ: If he is, I'll go -- I'll go and
4 call him in the hall.

5 THE COURT: Okay. Okay.

6 MR. MORRIS: I just added a sixth clause that says,
7 This order shall not operate -- does not and shall not operate
8 -- does not and shall not operate to give standing to HCLOM
9 Limited for any purpose against Highland -- against the
10 Highland estate except to enforce this order.

11 THE COURT: Uh-huh.

12 MR. MORRIS: And I just, I just need to respond to
13 that last comment. Right? We know they've appealed your
14 gatekeeper order. We know that they've, you know, we're in
15 the Fifth Circuit now on recusal. There's no indication
16 whatsoever that this case is nearing a conclusion. We have no
17 more contested matters before you, at least as of this moment,
18 Your Honor. There's no more adversary proceedings that I know
19 of at this moment. I'm going to cross my fingers and hope
20 that the appellate court upholds the orders of this Court, the
21 orders that have -- from the district court that affirmed your
22 orders.

23 But, clearly, Mr. Dondero still has an appetite for
24 litigation. He is still pursuing, you know, attacking the
25 gatekeeper. He's still pursuing your recusal. So I think --

1 I think the --

2 THE COURT: You know, I don't keep --

3 MR. MORRIS: Yeah.

4 THE COURT: -- as close tabs --

5 MR. MORRIS: Yeah.

6 THE COURT: -- as lawyers might think I --

7 MR. MORRIS: Right.

8 THE COURT: -- do on appeals.

9 MR. MORRIS: Uh-huh.

10 THE COURT: But I do think I read where the recusal
11 order was -- was --

12 MS. DEITSCH-PEREZ: It --

13 THE COURT: It's a done deal. They --

14 MS. DEITSCH-PEREZ: No, Your Honor.

15 MR. MORRIS: No. No, they brought in Jonathan
16 Mitchell, the former Solicitor General of the State of Texas,
17 and John Ashcroft, the former Attorney General of the United
18 States.

19 THE COURT: He's still alive? I don't mean to be
20 rude, but --

21 MR. MORRIS: I thought it was his son.

22 MS. DEITSCH-PEREZ: No, Your Honor.

23 MR. MORRIS: It's a great question. With all due
24 respect to Mr. Ashcroft, --

25 THE COURT: Yes?

1 MR. MORRIS: -- I mean no disrespect whatsoever, --

2 THE COURT: Uh-huh.

3 MR. MORRIS: -- but when I heard that I thought it
4 was his son, too. But yes, --

5 MS. DEITSCH-PEREZ: No.

6 MR. MORRIS: -- they're on the brief, and they filed
7 a motion for a petition for a rehearing *en banc*.

8 MS. DEITSCH-PEREZ: And --

9 MR. MORRIS: And our answer is due on December 26th.

10 MS. DEITSCH-PEREZ: Yeah. But --

11 MR. MORRIS: So we'll see where that goes. But the
12 point being that it validates Mr. Seery and Highland's
13 concerns that there be no ability to create another vehicle,
14 to create more litigation, and it validates the very concern
15 that Your Honor was addressing earlier on the same topic.

16 I think we're in agreement here, --

17 MS. DEITSCH-PEREZ: Right.

18 MR. MORRIS: -- but I want there to be context for
19 why we're so insistent that there be no duty of any kind and
20 no ability of HCLOM all of a sudden to start raising its hand
21 and commencing litigation.

22 MS. DEITSCH-PEREZ: Okay. And I do want to thank Mr.
23 Morris for bringing this up and making the recusal status --
24 correcting it.

25 And for all of the complaints and saying these appeals are

1 not well-founded, it is not often that the Fifth Circuit
2 actually asks a respondent to answer an *en banc* petition, much
3 less require them to do it the day after Christmas, which I am
4 sorry about. They're an equal opportunity lawyer
5 inconveniencer.

6 So I would just ask that we -- that Highland tone down the
7 attacks on the appeals, because there have been ones that have
8 been upheld.

9 THE COURT: Okay. I, you know, --

10 MS. DEITSCH-PEREZ: That's all.

11 THE COURT: -- I didn't think Highland's lawyer's
12 tone was at all, you know, angry or elevated or whatever
13 you're thinking.

14 MS. DEITSCH-PEREZ: I --

15 THE COURT: Okay? I have been approached by judge
16 colleagues in the circuit who have told me there have been
17 more appeals out of the Highland bankruptcy than any other
18 bankruptcy in Fifth Circuit history. Okay? So to say there
19 have been a whole lot of appeals is just factually correct. I
20 don't know the number.

21 MR. MORRIS: It's 15, Your Honor. And there's more
22 in the pipeline.

23 THE COURT: There -- what?

24 MR. MORRIS: There have been 15 so far. There's more
25 in the pipeline.

1 THE COURT: Wait, wait. Okay. You're talking at the
2 Fifth Circuit?

3 MR. MORRIS: Correct.

4 THE COURT: But --

5 MR. MORRIS: Oh, there has been dozens in the
6 district.

7 THE COURT: I think at one point a year or two ago
8 you told --

9 MR. MORRIS: Yeah.

10 THE COURT: -- me 50-plus.

11 MR. MORRIS: Right, right. I am just -- I am just
12 talking about the Fifth Circuit. I've never heard of a
13 circuit court in the United States of America that's had 15
14 appeals from any case, let alone a bankruptcy case.

15 MS. DEITSCH-PEREZ: Hmm.

16 THE COURT: So, anyway, it is what it is. But part
17 of the reason I'm engaging in this back and forth is, again,
18 we all have our duties. You have duties to your clients. I
19 have duties to the system, okay. And if I sign anything that
20 all of a sudden is going to create standing where it might not
21 have existed had I allowed this to be litigated today, then I
22 think I've been derelict in my duties. So it's essential, as
23 far as I'm concerned.

24 So do we need a five-minute break? I'm telling you, if we
25 have to go forward today, which it's looking like we won't,

1 but if we have to, it's going to be compressed, because we've
2 got to finish --

3 MR. MORRIS: Right.

4 THE COURT: -- by 5:30.

5 MR. MORRIS: I think the only thing I would request
6 is that Ms. Deitsch-Perez just confirm --

7 MS. DEITSCH-PEREZ: Ask about the sixth.

8 MR. MORRIS: -- that -- confirm that Number 6 is
9 acceptable.

10 THE COURT: Okay. She suggested she might need to
11 run it by --

12 MR. MORRIS: Yeah.

13 MS. DEITSCH-PEREZ: Yeah.

14 THE COURT: -- the client.

15 MS. DEITSCH-PEREZ: Let's -- can we take five
16 minutes?

17 THE COURT: Five minutes.

18 MR. MORRIS: Thank you, Your Honor.

19 THE COURT: Okay. Thank you.

20 THE CLERK: All rise.

21 (A recess ensued from 10:05 a.m. until 10:12 a.m.)

22 THE CLERK: All rise.

23 THE COURT: Okay. Please be seated.

24 All right. We're back on the record in Highland. Have we
25 gotten to closure on all the issues or not?

1 MS. DEITSCH-PEREZ: We have, Your Honor.

2 THE COURT: Okay.

3 MR. MORRIS: And so what we'd like to do is Highland
4 is going to take the laboring oar of doing an initial draft of
5 a stipulated order. We expect to get that to Stinson today.
6 And we'd like to just put a loose deadline to report to the
7 Court if we're unable to file this document, let's just say by
8 the 24th, next -- I think it's Tuesday.

9 And if we're unable to do it by then, we'll ask for
10 another date for coming back. But I do just want to keep a
11 deadline there just so --

12 MS. DEITSCH-PEREZ: I think it's a week. Okay.

13 MR. MORRIS: A week is -- it's six days instead of
14 five days because I didn't want to take Christmas. That's
15 just me.

16 THE COURT: Okay. Sounds reasonable to me.

17 MR. MORRIS: Yeah.

18 THE COURT: Sounds more than reasonable that you can
19 work this out --

20 MR. MORRIS: Yeah.

21 THE COURT: -- with language within six days.

22 MR. MORRIS: I do appreciate Ms. Deitsch-Perez's
23 listening and getting to yes on this. It's a good result.

24 THE COURT: Okay.

25 MR. MORRIS: Thank you, Your Honor.

1 MS. DEITSCH-PEREZ: Thank you, Your Honor.

2 THE COURT: Anything you want to add, or you're in
3 agreement with everything you just heard, Ms. Deitsch-Perez?

4 MS. DEITSCH-PEREZ: Yes.

5 THE COURT: Okay.

6 MR. MORRIS: Deborah?

7 MS. DEITSCH-PEREZ: What?

8 MR. MORRIS: I assume part of this is withdrawing the
9 bad faith motion?

10 MS. DEITSCH-PEREZ: Oh, yes.

11 MR. MORRIS: Yes. I can confirm that that's Element
12 Number 7. The bad faith motion will be deemed withdrawn.

13 THE COURT: Okay. All right. Well, --

14 MS. DEITSCH-PEREZ: Well, will be withdrawn.

15 MR. MORRIS: Yeah. Thank you.

16 THE COURT: All right. I would have been happy to
17 spend a whole day with you all, but we can now go on and take
18 care of other business, I guess.

19 So I thank you all for getting this resolved. And I'm not
20 going to be a happy camper if I don't see an order. I mean,
21 the battle of the forms, I really don't think we need to have
22 that here. Okay?

23 MR. MORRIS: Yep.

24 THE COURT: So, --

25 MR. MORRIS: Thank you, Your Honor.

1 THE COURT: All right. Happy holidays to everyone.

2 MR. MORRIS: You, too.

3 MS. DEITSCH-PEREZ: You, too.

4 THE CLERK: All rise.

5 (Proceedings concluded at 10:15 a.m.)

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CERTIFICATE

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

23

/s/ Kathy Rehling

12/19/2024

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Kathy Rehling, CETD-444
Certified Electronic Court Transcriber

Date

INDEX

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PROCEEDINGS

3

WITNESSES

-none-

EXHIBITS

-none-

RULINGS

29

END OF PROCEEDINGS

30

INDEX

31