IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	Case No. 19-12239 (CSS)
Debtor.	**Hearing Date: Dec. 2, 2019, at 10:00 a.m. (ET)** **Obj. Deadline: Nov. 12, 2019, at 4:00 p.m. (ET)**
	Docket Ref. Nos. 86, 118

REPLY OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS IN SUPPORT OF MOTION TO TRANSFER VENUE OF THIS CASE TO THE UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF TEXAS

The official committee of unsecured creditors (the "Committee") of Highland Capital Management, L.P. (the "Debtor") hereby submits this reply (the "Reply") to the *Objection of the Debtor to Motion of Official Committee of Unsecured Creditors to Transfer Venue of this Case to the United States Bankruptcy Court for the Northern District of Texas* [Docket No. 118] (the "Objection") in support of the *Motion of Official Committee of Unsecured Creditors to Transfer Venue of this Case to the United States Bankruptcy Court for the Northern District of Texas* [Docket No. 86] (the "Motion").[2] In response to the Objection and in further support of the Motion, the Committee respectfully states as follows:

REPLY

1. Transferring the venue of this case to the United States Bankruptcy Court for the Northern District of Texas (the "Dallas Bankruptcy Court") is entirely appropriate, and doing so serves the convenience of the parties and is in the interest of justice. Rather than reiterate all of

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

[2] Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Motion.

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the arguments set forth in the Motion, the Committee submits this Reply only to respond to six misguided arguments the Debtor raises in its Objection.

2. First, the Debtor asserts that the Committee has not established that the testimony of the Debtor's management team in the Acis Bankruptcy is relevant to the Debtor's choice of venue because the Debtor is now managed by its proposed Chief Restructuring Officer ("CRO"), Mr. Bradley Sharp, who had no prior involvement with the Acis Bankruptcy. This argument misses the mark. As more fully set forth in the *Omnibus Objection of the Official Committee of Unsecured Creditors to the Debtor's (I) Motion for Final Order Authorizing Continuance of the Existing Cash Management System, (II) Motion to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, and (III) Precautionary Motion for Approval of Protocols for "Ordinary Course" Transactions* [Docket No. 125] (the "Omnibus Objection"), filed on November 12, 2019, and incorporated herein by reference, it is inaccurate to say that the CRO is "managing" the Debtor. To start, the CRO was engaged mere days before the chapter 11 filing, and has only been employed by the Debtor for approximately one month, several weeks of which the Committee understands the CRO has spent recovering from serious medical issues. While the Committee is not disputing the CRO's qualifications, it is simply implausible that *any* professional—even one who was physically present at the Debtor's office—could get completely up to speed with an organization as complex as the Debtor's and become as familiar with the business as the Debtor's current management in such a short time frame. More critical, however, is the fact that the Debtor is still controlled by the exact same management who (i) historically managed the Debtor, (ii) testified in the Acis Bankruptcy, (iii) can be terminated by Mr. Dondero and, (iv) as the Debtor's motion to retain the CRO makes clear, to whom the CRO still reports. Nothing has changed—Mr. Dondero is still in control. Notwithstanding the "fresh start" that

Chapter 11 affords, the Debtor's case will very much be about the past—the past conduct and transactions engaged in by the Debtor, Mr. Dondero and his labyrinth of affiliated and controlled entities. As such, the Dallas Bankruptcy Court's familiarity with how the Debtor operates, gained through many days of testimony and argument including on topics such as advisory agreements and shared services agreements with the Debtor, is extremely relevant to the Debtor's bankruptcy case. *See In re Acis Capital Mgmt., L.P.*, No. 18-30264 (SGJ), 2019 WL 406137, at *8 (Bankr. N.D. Tex. Jan. 31, 2019) (the "Acis Confirmation Opinion").

3. Second, the Debtor argues that the testimony given by the Debtor's employees in the Acis Bankruptcy is irrelevant to this case. On the contrary, as set forth in the Omnibus Objection, the prior testimony of the Debtor's employees reflects a pattern of behavior by Mr. Dondero and his senior executives that, if permitted to continue during this chapter 11 case, is likely to deplete value from the Debtor's estate to the detriment of its creditors. This pattern of past behavior, with which the Dallas Bankruptcy Court is extremely familiar, is highly relevant to examining the Committee's concerns regarding the potential siphoning of funds from the Debtor by Mr. Dondero.

4. Third, the Debtor's argument that the core issue in the Acis Bankruptcy was maintaining cash flows from CLOs is misguided. The Dallas Bankruptcy Court considered an extensive record pertaining to a litany of transactions and agreements with the Debtor and conduct by the Debtor's management.[3] Thus, the Dallas Bankruptcy Court is familiar with how the Debtor,

[3] For example, in what the Dallas Bankruptcy Court referred to "startling" evidence, the Court examined, among other things, amendments to Acis' sub-advisory agreement and shared services agreement with the Debtor and the removal of a multi-million dollar note owed to Acis by the Debtor. *See In re Acis Capital Mgmt., L.P.*, 2019 WL 406137, at *8. The Dallas Bankruptcy Court clearly has familiarity with more than just cash flows from CLOs.

through Mr. Dondero, operates and is uniquely situated to preside over the Debtor's bankruptcy case.

5. Fourth, the Debtor argues that the Motion is without merit because the Committee did not attach a number of published opinions that it cites to or the hundreds of documents that are already part of the Acis Bankruptcy record. It is well-established that courts may take judicial notice of published opinions and the contents of court records more generally. *See* FED. R. EVID. 201(b)(2); *Southmark Prime Plus, L.P. v. Falzone*, 776 F. Supp. 888, 892 (D. Del. 1991) ("Pursuant to Rule 201(b)(2) [of the Federal Rules of Evidence], the Court can take judicial notice of the contents of court records from another jurisdiction."); *United States ex rel. Geisler v. Walters*, 510 F.2d 887, 890 n.4 (3d Cir. 1975) (taking judicial notice of briefs and petitions filed in other courts); *Southern Cross Overseas Agencies, Inc. v. Wah Kwong Shipping Group Ltd.*, 181 F.3d 410, 413 (3d Cir. 1999) (taking judicial notice of a published opinion as a matter of public record). The Committee therefore need not attach opinions and other documents from the Acis Bankruptcy to meet its burden here. Notably, the Debtor does not dispute the merits of the Committee's argument on this point. Rather, the Debtor attempts to misdirect the Court by mischaracterizing the Committee's position. For the avoidance of doubt, the Committee's position is that transfer of venue to the Dallas Bankruptcy Court is in the interest of justice and convenience of the parties and will help conserve this Court's time and judicial resources, given the voluminous record in the Dallas Bankruptcy Court.

6. Fifth, the Debtor argues that the Dallas Bankruptcy Court "knows little about the details of the Debtor's business, assets, or liabilities, or its restructuring efforts." Obj. at ¶ 41. As set forth above, this is incorrect. The Dallas Bankruptcy Court is clearly and undisputedly familiar with the Debtor's *liabilities* as to Acis, as well as the counterclaims the Debtor has raised against

Acis in the Acis Bankruptcy adversary proceeding (which counterclaims are *assets* of the Debtor's estate). Moreover, it was "undisputed that, prior to the appointment of the Chapter 11 Trustee, ***the [Acis] Debtors*** and Highland were affiliated and had a close relationship." *In re Acis Capital Mgmt., L.P.*, 2019 WL 417149, at *2 n.5. In other words, the Dallas Bankruptcy Court is intimately familiar with the Debtor's corporate structure, which, except for the Acis spin-off, the Committee believes has remained substantially unchanged.[4] Furthermore, as detailed in the Acis Confirmation Opinion, the Dallas Bankruptcy Court closely examined, among other things, the sub-advisory agreement and the shared services agreement Acis had with the Debtor. *See id.* at *2-3. Therefore, it is clear that the Dallas Bankruptcy Court does indeed know about the Debtor's business and its assets.

7. Sixth, the Dallas Bankruptcy Court is not conflicted from presiding over this case because it is currently presiding over an adversary proceeding between the Debtor and Acis. Indeed, that is precisely *why* the Dallas Bankruptcy Court is the proper venue for this case, as it is already overseeing litigation involving the Debtor and one of its largest creditors on matters that will likely affect this case. Moreover, the Debtor's argument appears to be based on the unstated

[4] During the pendency of the Acis Bankruptcy Cases, Acis and Highland were affiliates within the Highland enterprise consisting of more than 2,000 entities. Acis had *no* employees of its own and was managed by Highland. This required the Dallas Bankruptcy Court to become intimately familiar with Highland's management team and several other Highland entities, including, but not limited to, Highland Capital Management, L.P., Highland CLO Funding Ltd., Highland HCF, Highland CLO Management Ltd., Highland CLO Holdings, Ltd., and Neutra Ltd., and their relationships with Acis. *See, e.g., In re Acis Capital Mgmt., L.P.*, 2019 WL 417149, at *2, 5-8 (analyzing several Highland affiliates, their relationships with Acis, and their roles as defendants in the adversary proceeding); *In re Acis Capital Mgmt., L.P.*, 584 B.R. 115, 122-127 (Bankr. N.D. Tex. 2018) (explaining the Acis business operations and structure, including Highland's operations in connection therewith). A number of these Highland entities are also defendants in the adversary proceeding currently pending before the Dallas Bankruptcy Court.

"presumption" that each Chapter 11 debtor gets to have its own "home court." As such, this argument contravenes the foundational principle of judicial impartiality.

8. In addition, the Debtor also notes multiple times throughout its Objection that its appeal of the Acis confirmation order is pending before the Fifth Circuit, without considering the impact on this case if that appeal is successful. *See, e.g.*, Obj. ¶¶ 4, 25, 26. To be clear, if the Debtor's appeal is successful, Acis would revert to being an ***affiliate*** of the Debtor and the Dallas Bankruptcy Court would have initial venue over this case pursuant to Bankruptcy Rule 1014 and would be the Court that would properly make the determination of where this case would proceed. In other words, if the Debtor were to get its way with both the Acis appeal and this Motion, it would be juggling simultaneous bankruptcy proceedings in Delaware and Texas. That is hardly a picture of judicial economy. Transferring this case to the Dallas Bankruptcy Court now would avoid any such potential issues down the road.

9. The Debtor dismisses all of the Committee's legitimate bases for requesting a transfer of venue by simply taking the position that the Debtor's choice of venue is entitled to deference. While that is true, that does not mean that the Debtor's right to choose venue is absolute. *See, e.g., In re Pubco Corp.*, 27 B.R. 139 (Bankr. E.D. Penn. 1983) (ordering the transfer of venue upon request of the creditors' committee); *In re Palmer Lake Plaza, LLC*, 470 B.R. 511 (Bankr. W.D. Wis. 2012) (holding that a chapter 11 case had to be transferred in the interest of justice and for convenience of parties); *In re Shorts Auto Parts of Warren, Inc.*, 136 B.R. 30 (Bankr. N.D.N.Y. 1991) (same); *In re Patriot Coal Corp.*, 482 B.R. 718 (Bankr. S.D.N.Y. 2012) (same); *In re Grand Dakota Partners, LLC*, 573 B.R. 197 (Bankr. W.D.N.C. 2017) (transferring the venue of the bankruptcy case to where the debtor's principal asset was located). As discussed

in the Motion, there are in fact circumstances that warrant a transfer of venue despite the Debtor's choice. This case is no exception.

CONCLUSION

10. In sum, each of the arguments raised by the Debtor in its Objection fail to demonstrate why a transfer of venue would be improper. For all of the reasons set forth herein and in the Motion, the Committee respectfully requests that the Court grant the Motion and transfer the venue of this case to the United States Bankruptcy Court for the Northern District of Texas.

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Respectfully submitted,

Dated: November 21, 2019
Wilmington, Delaware

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