

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:	§	Case No. 19-12239 (CSS)
	§	
HIGHLAND CAPITAL MANAGEMENT, LP, ¹	§	Chapter 11
	§	
Debtor.	§	Re: Docket Nos. 86, 118, 122, 156
	§	Hearing Date: Dec. 2, 2019, at 10:00 a.m. (ET)
		Obj. Deadline: Nov. 12, 2019, at 4:00 p.m. (ET)

ACIS’S REPLY IN SUPPORT OF MOTION TO TRANSFER VENUE

Creditors Acis Capital Management, L.P. and Acis Capital Management GP, LLC (collectively “Acis”) file this Reply in Support of the Motion of the Official Committee of Unsecured Creditors For an Order Transferring Venue of this Case to the United States Bankruptcy Court for the Northern District of Texas (the “Motion”) [Dkt. No. 86] and, in addition to the reply filed by the Committee [Dkt. No. 156], to specifically address certain of the matters raised in the Objection to the Motion filed by Debtor Highland Capital Management, L.P. (the “Objection”) [Dkt. 118], and respectfully show the following:²

SUMMARY OF REPLY

1. Highland is the *only* party to object to the Motion. Highland repeatedly calls the Motion, filed by the Committee who owes duties to the entire unsecured creditor class, a “litigation ploy” or “litigation tactic.” *E.g.* Objection ¶ 2. It is not. Highland cannot feign surprise that the Committee and others seek to transfer this case to Highland’s home venue where it incurred many of the debts that Highland listed in its top 20 creditors, including at least two law firms that represent Highland—but Highland failed to pay—in the Acis Bankruptcy.

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 Unless otherwise defined, Acis incorporates herein the defined terms in the Motion and the Objection. Acis uses the term “Debtor” and “Highland” interchangeably.



Dkt. No. 1 at 10. Acis seeks a transfer because it is in the interest of justice and for the convenience of the parties to do so—section 1412 exists for a reason.

ARGUMENT & AUTHORITY

A. The administration of this particular Chapter 11 is more appropriate in Debtor’s hometown.

2. The Court should consider what the future holds for this Chapter 11 bankruptcy. This is not a simple “balance sheet restructuring.” The Debtor has stated that it needs to sell assets to operate and fund claims repayment. This is a quintessential “freefall” operational restructuring. Given the significant business issues, *i.e.* sale of assets, retention of employees, streamlining of operational divisions, driving the end result, it follows that the bankruptcy itself should be where the principal business (and business people) is/are located. Indeed, even the proposed CRO concedes that when he deploys his “boots on the ground,” those boots are deployed to Dallas, Texas.

3. By its own admission, Debtor filed this Chapter 11 because of repeated and significant losses in litigation that constitute the vast majority of the claims in this case. That litigation must either be resolved in the course of this Chapter 11, or at a minimum a court must estimate the claims, including the claims against the Debtor currently pending before the Northern District of Texas. As reflected by the Committee’s Motion, the major litigation claimants believe that the Northern District of Texas is better suited—based on its experience with the Debtor—to address their claims. Since their votes will be necessary to support any exit strategy, venue should be transferred to Texas.

B. The Dallas Bankruptcy Court knows Highland’s current management.

4. Incredibly, the Objection asserts that “the Dallas Bankruptcy Court has no special familiarity with the Debtor or its current management.” *Id.* ¶ 2. Highland presumably makes

this bold statement based on the installation a very short time ago of the proposed CRO, on the eve of its bankruptcy filing. Dkt. No. 75 ¶¶ 6,13. Highland cannot point to one other change in “management”—all of the same players who got Highland into myriad litigation and ultimately this bankruptcy, including Mr. Dondero, remain firmly in control of the Debtor, which Highland seeks Court permission to continue operating in the “ordinary course.” Dkt. No. 77. Notably, Mr. Dondero *alone* can fire the CRO at any time with 30-days’ notice. Dkt. No. 75 ¶ 11. Clearly, these players will continue to play a significant role as this bankruptcy case proceeds forward. The Dallas Bankruptcy Court’s familiarity with the management that will set the go-forward plan is critical.

C. The Dallas Bankruptcy Court knows Highland’s business.

5. Despite Highland’s efforts to minimize the Dallas Bankruptcy Court’s knowledge regarding Highland, Judge Jernigan’s knowledge runs far and deep. First, the Dallas Bankruptcy Court is further along the learning curve on Highland’s “investment management,” which includes structured products, including collateralized loan obligations (“CLOs”). Dkt. No. 77. Debtor expends at least three paragraphs discussing CLOs in its filings, and discloses that it is “currently the collateral manager for *twenty* CLOs ...” *Id.* at ¶¶ 25-27 (emphasis added). Structured credit products—and specifically CLOs—form a core part of Highland’s current business. Debtor promotes on its website that “Highland was one of the early pioneers in the collateralized loan obligation (CLO) market, setting up one of the first non-bank CLO deals in 1996.”³ Highland had its fingers in every aspect of the bankruptcy of Debtor’s own “structured credit arm,” which this Court can see by reading the extensive rulings by both the Texas Bankruptcy and District Court. Indeed, the Dallas Bankruptcy Court heard extensive testimony

³ Highland Capital Management, <https://www.highlandcapital.com/structured-products/>. (last visited Nov. 21, 2019).

from Mr. Dondero (CEO and co-owner), Mr. Okada (co-owner), Mr. Ellington (General Counsel), and many other Highland executives about Highland's inner workings and advisory actions. *Acis I* at 119; *Acis II* at *16. The testimony was in no way limited, as Highland attempts to advance, to “whether Terry satisfied the legal requirements to file involuntary cases against Acis and (b) the structure of actively managed CLOs.” *Id.* ¶ 38. It is simply not true that the Dallas Bankruptcy Court has “no special familiarity with the Debtor or its current management.” *Id.* ¶ 2.

6. Highland argues that Judge Jernigan and Fitzwater's demonstrated knowledge regarding Acis is not relevant to understanding Highland's “business, assets, or liabilities, aside from its prior involvement with Acis.” Dkt. No. 118 at ¶ 26. According to Highland's own pleadings in this case, one of Debtor's “three primary business lines” (in addition to investment advisory services, which includes the management of CLOs) is “the provision of certain middle and back office services to other registered investment advisors ...” Dkt. No. 9 ¶ 37. As stated by the Dallas Bankruptcy Court, “[t]he Debtor-Acis paid handsome fees to Highland for the personnel and back-office services that Highland provided to the Debtor-Acis.” *In re Acis Capital Mgmt., L.P.*, 18-30264-SGJ-11, 2019 WL 417149, at *3 (Bankr. N.D. Tex. Jan. 31, 2019), *aff'd*, 604 B.R. 484 (N.D. Tex. 2019). This is the *exact* business that Highland states is one of its “three primary business lines,” Dkt. No. 9; *Id.*, and regarding which the Dallas Bankruptcy Court is considerably further along the learning curve.

D. The Debtor has already demonstrated why a transfer is warranted in multiple filings in *this* Court.

7. In terms of the administration of this bankruptcy estate, the Northern District of Texas is intimately familiar with the services provided to the Debtor by Foley Gardere and Lynn Pinker, two firms Debtor seeks to hire as special counsel in this case. Dkt. No. 69-70. The

retention applications for Foley Gardere and Lynn Pinker, and more importantly, the objections thereto, highlight the efficiency of the Northern District of Texas hearing this matter and the inefficiency posed to this Court. Debtor proposes the retention of both firms (two of the three legal professionals sought to be specifically retained in this case and who are both owed money for services rendered in the Acis Bankruptcy) for litigation stemming from the Acis Bankruptcy in the Northern District of Texas. Those courts have viewed the entirety of the past representation and can assess more closely, and certainly with far less effort, the prudence of retention go forward under the applicable provisions of section 327 of the Bankruptcy Code.

E. The Dallas Bankruptcy Court has no conflict with a transfer.

8. Highland makes much of the fact that “[t]he interests of Acis are directly adverse to those of this estate.” Objection ¶ 4 (emphasis in original). Highland goes on to argue that the pendency of litigation against Highland in the Dallas Bankruptcy Court militates *against* a transfer to the Dallas Bankruptcy Court, as if Acis has somehow co-opted the Dallas Bankruptcy Court. *See id.*; ¶ 34. “Courts have recognized the strong public policy favoring centralization of bankruptcy proceedings in a bankruptcy court.” *Kurz v. EMAK Worldwide, Inc.*, 464 B.R. 635, 640 (D. Del. 2011). Accordingly, Highland's bankruptcy case should be heard by the same court as the first-filed adversary pending against Debtor in the Northern District of Texas—that is quintessential “judicial economy” and the promotion of “the efficient administration of the estate.”

9. Highland's argument also runs contrary to the fundamental obligations of bankruptcy courts, which are tasked with “appropriately resolv[ing] competing economic interests in an orderly and effective way.” *Taylor v. Slick*, 178 F.3d 698, 702 (3d Cir. 1999) (internal citations omitted). If what Highland argues is true, then *every* bankruptcy court would

have a conflict in adjudicating disputed proofs of claims, as those proofs of claims inherently represent claims against the estate, or in jointly administering bankruptcy cases. That is nonsensical. The Dallas Bankruptcy Court has no conflict, just as this Court is not conflicted in hearing multi-debtor matters, many with intercompany claims, or adjudicating third party disputed proofs of claims.

CONCLUSION

10. In their Motion and Joinder, neither the Committee nor Acis cast aspersions regarding Highland's motive in filing this bankruptcy proceeding over a thousand miles from the Dallas Bankruptcy Court and District Court from which the Debtor has recently requested so much. The Motion is meritorious because it is firmly rooted in the express text and the cases interpreting section 1412. Acis has said it before and will say it again: this case presents extremely unique facts. A transfer to the Northern District of Texas is warranted. Acis respectfully requests the Court grant the Motion and such other relief to which Acis is entitled.

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Respectfully submitted,

BLANK ROME LLP

Dated: November 21, 2019
Wilmington, Delaware

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