

**KELLY HART PITRE**

**Louis M. Phillips (#10505)**

One American Place  
301 Main Street, Suite 1600  
Baton Rouge, LA 70801-1916  
Telephone: (225) 381-9643  
Facsimile: (225) 336-9763  
Email: louis.phillips@kellyhart.com  
Amelia L. Hurt (LA #36817, TX #24092553)  
400 Poydras Street, Suite 1812  
New Orleans, LA 70130  
Telephone: (504) 522-1812  
Facsimile: (504) 522-1813  
Email: amelia.hurt@kellyhart.com

and

**KELLY HART & HALLMAN**

Hugh G. Connor II  
State Bar No. 00787272  
hugh.connor@kellyhart.com  
Michael D. Anderson  
State Bar No. 24031699  
michael.anderson@kellyhart.com  
Katherine T. Hopkins  
Texas Bar No. 24070737  
katherine.hopkins@kellyhart.com  
201 Main Street, Suite 2500  
Fort Worth, Texas 76102  
Telephone: (817) 332-2500  
Telecopier: (817) 878-9280

ATTORNEYS FOR CLO HOLDCO, LTD. AND HIGHLAND DALLAS FOUNDATION, INC.

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

**In re:**

**HIGHLAND CAPITAL MANAGEMENT,  
L.P.,**

**Debtor**

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**Case No. 19-34054-sgj11**

**Chapter 11**





grounds used by the Court to justify its decision to grant a 90 day stay are clearly wrong, with one contrary to plain math, and the other contrary to the evidence and the entire underpinning of the Opposition filed by the Charitable Defendants.

First, the math. The Court says that the time it could take to get a ruling from the District Court on the pending Motions to Withdraw Reference would in effect give the Plaintiffs the requested stay, as it might take up to 90 days for the reference issues to be finally determined. Therefore, the Court found that there could be no prejudice to the Charitable Defendants, because the requested stay would in all likelihood be already baked in to the proceedings. As a math problem this is wrong. The 90 day stay will in fact be a 180 day delay if the Court is correct that the natural process will take 90 days to conclusion of the reference withdrawal motions. That would place the decision on the motions to withdraw reference somewhere close to mid-November, 2021, or some 10 plus months after the complaint initiating this proceeding was filed (the amended complaint, which is the first entry of the docket of this proceeding, was filed December 17, 2020).

Second, this Court improperly imputed ill motive to the Charitable Defendants because the Court decided, directly contrary to the evidence submitted and the argument of counsel, that the opposition to the stay was somehow grounded in a desire to impose upon Mr. Kirschner the obligation to work without being paid. Where that conclusion came from cannot be understood. The Charitable Defendants, in fact, introduced the employment application which expressly requests retroactive approval to the filing date. *See* Application to Employ, ¶10. Second, the Charitable Defendants argued that the Committee had been utilizing the services of Kirschner since mid-April and therefore would not be prejudiced. The underlying assumption of the Charitable Defendants is that Kirschner will be employed and the Court will approve the routine request that his employment (and therefore right to compensation) would commence as of the date

of his retention, in mid-April. So, there is utterly no underpinning for the Court's erroneous imputation of bad motive on the part of the Charitable Defendants, which is clearly a primary ground for the Court's decision to stay this proceeding. The Charitable Defendants want nobody to work without being paid, and this Court's imputation of this bad motive to the Charitable Defendants is clearly wrong.<sup>3</sup>

Simply put, there is no basis for defendants to have to be under the cloud of a multi-million dollar lawsuit for some 10 months (at least) before they know before what court they will be litigating. This Court made the correct decision to set the Motions to Withdraw the Reference for the conference required by this Court's local rules on June 3, 2021. The Court's math is not correct, the stay is not baked in, but rather would have the effect of adding another 90 days at least to the delay, which would mean 10 months before a Motions to Withdraw the Reference decision. Also and again, there was no basis for the Court's imputation of bad motive or bad faith to the Charitable Defendants. Finally, the idea that the Committee and counsel thereto needs further client advice as to the legal issue of withdrawal of the reference or that a new client will direct current litigation trust counsel as to the way to plead around a withdrawal of reference motion can in no way be seen as well founded.

This Court should consider this post-hearing memorandum and reconsider its determination to issue the stay, and should deny the requested stay.

Respectfully submitted,

**KELLY HART PITRE**

*/s/ Louis M. Phillips*

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<sup>3</sup> The Court as well could not comprehend defendants wishing to prod a proceeding to conclusion. The Charitable Defendants are not seeking expeditious determination, quite the opposite. We seek, simply, normal process.

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**CERTIFICATE OF SERVICE**

I, undersigned counsel, hereby certify that a true and correct copy of the above and foregoing document and all attachments thereto were sent via electronic mail via the Court's ECF system to all parties authorized to receive electronic notice in this case on this May 21, 2021.

*/s/ Louis M. Phillips*

Louis M. Phillips