

PACHULSKI STANG ZIEHL & JONES LLP  
Jeffrey N. Pomerantz (CA Bar No. 143717) (*pro hac vice*)  
Ira D. Kharasch (CA Bar No. 109084) (*pro hac vice*)  
John A. Morris (NY Bar No. 266326) (*pro hac vice*)  
Gregory V. Demo (NY Bar No. 5371992) (*pro hac vice*)  
Hayley R. Winograd (NY Bar No. 5612569) (*pro hac vice*)  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Telephone: (310) 277-6910  
Facsimile: (310) 201-0760

HAYWARD PLLC  
Melissa S. Hayward  
Texas Bar No. 24044908  
M Hayward@HaywardFirm.com  
Zachery Z. Annable  
Texas Bar No. 24053075  
ZAnnable@HaywardFirm.com  
10501 N. Central Expy, Ste. 106  
Dallas, Texas 75231  
Tel: (972) 755-7100  
Fax: (972) 755-7110

*Counsel for Highland Capital Management, L.P.*

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

In re:  
  
HIGHLAND CAPITAL MANAGEMENT, L.P.,<sup>1</sup>  
  
Reorganized Debtor.

---

JAMES DONDERO,  
  
Petitioner

v.

ALVAREZ & MARSAL CRF MANAGEMENT,  
LLC and FARALLON CAPITAL  
MANAGEMENT, L.L.C.,  
  
Respondents

---

§  
§ Chapter 11  
§  
§ Case No. 19-34054-sgj11  
§  
§

§  
§ Adversary No. 21-03051  
§  
§

§  
§ *Removed from the 95th Judicial*  
§ *District Court of Dallas County,*  
§ *Texas, Cause No. DC-21-09534*  
§  
§

---

<sup>1</sup> The last four digits of Highland Capital Management, L.P.’s taxpayer identification number are (8357). Its headquarters and service address are 100 Crescent Court, Suite 1850, Dallas, TX 75201.



**RESPONSE OF HIGHLAND CAPITAL MANAGEMENT, L.P.  
TO JAMES DONDERO'S MOTION TO REMAND**

Highland Capital Management, L.P, the above-captioned reorganized debtor ("HCMLP"), files this response to *James Dondero's Motion to Remand* [Adv. Docket No. 4] (the "Motion"). In support thereof, HCMLP states as follows.

**RESPONSE**

1. The Court should deny the Motion. The petition (the "Petition") filed by James Dondero under Texas Rule of Civil Procedure 202 in the District Court of the 95th Judicial District, Dallas County, Texas – which seeks open-ended discovery designed to harass HCMLP and others – is a civil action subject to removal under 28 U.S.C. § 1452.

2. HCMLP adopts the arguments made by Alvarez & Marsal CRF Management, LLC ("A&M") and Farallon Capital Management, L.L.C. ("Farallon," and together with A&M, "Respondents") in *Respondents' Response to Dondero's Motion to Remand* [Adv. Docket No. 11] (the "Response") that the better-reasoned authorities from the district courts in Texas hold that the term "civil action" should be interpreted broadly and apply to non-criminal matters where one party seeks judicial relief against another party.<sup>2</sup> As discussed below, Mr. Dondero's use of the judicial process to compel open-ended discovery to support claims against HCMLP's chief executive officer and for violations of the U.S. Trustee's guidelines surely qualifies.

3. Next, the Court has the authority to adjudicate the Petition under 28 U.S.C. § 1334(b) as it is "related to" HCMLP's pending chapter 11 proceeding. While the Petition is ostensibly aimed at discovery against Respondents, James P. Seery, Jr. is named nine times in the

---

<sup>2</sup> There are no grounds to authorize an award of costs under 28 U.S.C. § 1447(c), which requires the Court to find that there was no objectively reasonable basis upon which removal was sought. As discussed in the Response, (i) Respondents had a good-faith basis for seeking such relief; and (ii) on the merits, the Response and the arguments set forth therein not only establish that removal was "objectively reasonable" but that the Motion should be denied and the matters raised in the Petition should be adjudicated in this Court.

Petition and is allegedly a key actor in Mr. Dondero's frivolous claims of wrongdoing. As this Court knows, Mr. Seery was appointed to serve as HCMLP's chief executive officer and chief restructuring officer. Mr. Seery now serves as the reorganized HCMLP's chief executive officer and as the Claimant Trustee of the Highland Claimant Trust.

4. Mr. Dondero seems intent on using the discovery sought in the Petition to manufacture a claim to bring against Mr. Seery. As a result, HCMLP and Mr. Seery will be required to devote time and resources in connection with the Petition which will divert their attention and resources from monetizing HCMLP's assets under the confirmed Plan.<sup>3</sup> HCMLP will also be required to indemnify Mr. Seery for any costs he incurs in connection therewith. Mr. Dondero does not – and cannot – argue that the Petition does not “relate to” the chapter 11 case or that his Petition does not affect HCMLP and Mr. Seery. *See, e.g., In re TXNB Internal Case*, 483 F.3d 292, 298 (5th Cir. 2007) (a matter is “‘related to’ bankruptcy if the outcome could alter, positively or negatively, the debtor’s rights, liabilities, options, or freedom of action or could influence the administration of the bankrupt estate”); *see also Refinery Holdings Co., L.P. v. TRMI Holdings, Inc. (In re El Paso Refinery, L.P.)*, 302 F.3d 343, 349 (5th Cir. 2002) (finding “related to” jurisdiction when a “claim . . . could conceivably have an effect on the Estate in light of the chain of indemnification provisions beginning with Texaco and leading directly to the Debtor”); *Centrix Fin. Liq. Trust v. Sutton*, 2019 U.S. Dist. LEXIS 154083 (D. Colo. Sept. 10, 2019) (in a liquidating plan “related to” jurisdiction exists over all matters that impact distributions from the liquidating trust).

---

<sup>3</sup> “Plan” refers to the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* [Bankr. Docket No. 1808], which was confirmed on February 22, 2021 [Bankr. Docket No. 1943] and went effective on August 11, 2021 [Bankr. Docket No. 2700].

5. Moreover, this Court has “arising under” and “arising in” jurisdiction over the Petition. If successful, the Petition will allow Mr. Dondero to conduct discovery to determine whether (i) the allegedly “highly irregular manner in which the Claim [sic]” of three of HCMLP’s prepetition creditors – HarbourVest, Acis Capital Management, L.P. (“Acis”), and the “Crusader Funds” – “were marketed (if at all) and sold” was improper and (ii) Acis and the “Crusader Funds” violated the U.S. Trustee’s guidelines by not seeking the approval of such sales *from this Court*.<sup>4</sup> See Ex. 1 to Notice of Removal a Section III ¶¶ 9-18; Section IV ¶ 1. The procedure for objecting to a claim transfer is set forth in Federal Rule of Bankruptcy Procedure 3001(e). See 9 COLLIER ON BANKRUPTCY ¶ 3001.08[1] (“Rule 3001(e) governs transfer of claims . . . [T]he 1991 Advisory Committee Note states that ‘the [bankruptcy] court’s role is to determine whether a transfer has been made that is enforceable under nonbankruptcy law,’ it is reasonable that the [bankruptcy] court might review the facts surrounding the transfer rather than limiting itself to a simple, mechanical review of the underlying documents.”) The claims, their transfer, and the ability to object to such transfer exist solely because of the Bankruptcy Code and are “administrative matters that rise *only* in bankruptcy cases.” *Wood v. Wood (In re Wood)*, 825 F.2d 90, 96 (5th Cir. 1987) (emphasis in original).

6. Finally, any suits against Mr. Seery would ultimately have to be brought in this Court – not Texas state court – pursuant to the injunction contained in the Plan.<sup>5</sup> Plan Art. IX.F.

7. The Petition is subject to this Court’s core jurisdiction, and this Court is best positioned to evaluate any claim that Respondents failed to comply with protocols promulgated by

---

<sup>4</sup> Mr. Dondero alleges that Acis and the Crusader Fund’s claim transfers violate the U.S. Trustee’s guidelines. The U.S. Trustee, however, makes no such allegation and, in fact, filed a notice with this Court on June 25, 2021 that Acis and the Crusader Fund had resigned from Highland’s official committee of unsecured creditors [Bankr. Docket No. 2485].

<sup>5</sup> Judicial economy also favors denying the Motion. The actions alleged against Mr. Seery in the Petition would ultimately have to be brought to this Court anyway.

the U.S. Trustee’s Office in connection with the transfer of claims – allegations that attempt to undermine the administration of HCMLP’s chapter 11 bankruptcy case. *See Wood*, 825 F.2d at 96 (finding a proceeding “arises under” title 11 if it is a “cause of action created or determined by a statutory provision of title 11” and “arises in” title 11 if it deals with “administrative matters that arise *only* in bankruptcy cases.”)

8. Respectfully, this Court should deny Mr. Dondero’s Motion and allow the Petition to be adjudicated in the Bankruptcy Court.<sup>6</sup>

*[Remainder of Page Intentionally Blank]*

---

<sup>6</sup> HCMLP believes that the Petition and the causes of action alleged in the Petition are meritless for a number of reasons, one of which is that Mr. Dondero does not have standing to assert any claims or causes of action with respect to HarbourVest, Crusader Funds, or Acis’s claim transfers. Among other reasons, he has no interest in any of those entities. HCMLP reserves all of its rights and remedies, and nothing herein shall be construed as a waiver of any such rights or remedies.

Dated: October 4, 2021.

**PACHULSKI STANG ZIEHL & JONES LLP**

Jeffrey N. Pomerantz (CA Bar No.143717) (*pro hac vice*)  
Ira D. Kharasch (CA Bar No. 109084) (*pro hac vice*)  
John A. Morris (NY Bar No. 266326) (*pro hac vice*)  
Gregory V. Demo (NY Bar No. 5371992) (*pro hac vice*)  
Hayley R. Winograd (NY Bar No. 5612569) (*pro hac vice*)  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Telephone: (310) 277-6910  
Facsimile: (310) 201-0760  
E-mail: jpomerantz@pszjlaw.com  
ikharasch@pszjlaw.com  
jmorris@pszjlaw.com  
gdemo@pszjlaw.com  
hwinograd@pszjlaw.com

-and-

**HAYWARD PLLC**

*/s/ Zachery Z. Annable*

---

Melissa S. Hayward  
Texas Bar No. 24044908  
MHayward@HaywardFirm.com  
Zachery Z. Annable  
Texas Bar No. 24053075  
ZAnnable@HaywardFirm.com  
10501 N. Central Expy, Ste. 106  
Dallas, Texas 75231  
Tel: (972) 755-7100  
Fax: (972) 755-7110

*Counsel for Highland Capital Management, L.P.*