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*Counsel for Marc S. Kirschner, as Litigation
Trustee of the Highland Litigation Sub-Trust*

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

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,¹

Reorganized Debtor.

MARC S. KIRSCHNER, AS LITIGATION
TRUSTEE OF THE LITIGATION SUB-TRUST,

Plaintiff,

v.

JAMES D. DONDERO; MARK A. OKADA;
SCOTT ELLINGTON; ISAAC LEVENTON;
GRANT JAMES SCOTT III; STRAND
ADVISORS, INC.; NEXPOINT ADVISORS,
L.P.; HIGHLAND CAPITAL MANAGEMENT
FUND ADVISORS, L.P.; DUGABOY
INVESTMENT TRUST AND NANCY
DONDERO, AS TRUSTEE OF DUGABOY
INVESTMENT TRUST; GET GOOD TRUST
AND GRANT JAMES SCOTT III, AS
TRUSTEE OF GET GOOD TRUST; HUNTER
MOUNTAIN INVESTMENT TRUST; MARK &
PAMELA OKADA FAMILY TRUST –
EXEMPT TRUST #1 AND LAWRENCE
TONOMURA AS TRUSTEE OF MARK &
PAMELA OKADA FAMILY TRUST –

Chapter 11
Case No. 19-34054-sgj11

Adv. Pro. No. 21-03076-sgj

¹ The last four digits of the Reorganized Debtor’s taxpayer identification number are (8357). The Reorganized Debtor is a Delaware limited partnership. The Reorganized Debtor’s headquarters and service address are 100 Crescent Court, Suite 1850, Dallas, TX 75201.



EXEMPT TRUST #1; MARK & PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #2 AND LAWRENCE TONOMURA IN HIS CAPACITY AS TRUSTEE OF MARK & PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #2; CLO HOLDCO, LTD.; CHARITABLE DAF HOLDCO, LTD.; CHARITABLE DAF FUND, LP.; HIGHLAND DALLAS FOUNDATION; RAND PE FUND I, LP, SERIES 1; MASSAND CAPITAL, LLC; MASSAND CAPITAL, INC.; AND SAS ASSET RECOVERY, LTD.,

Defendants.

THE LITIGATION TRUSTEE’S OPPOSED MOTION FOR EXPEDITED HEARING ON MOTION TO STAY THE ADVERSARY PROCEEDING

Marc S. Kirschner (the “Trustee” or “Litigation Trustee”), the Litigation Trustee of the Litigation Sub-Trust established pursuant to the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* [Bankr. Dkt. 1808]² (as amended, the “Plan”) and plaintiff in the above-captioned adversary proceeding (the “Adversary Proceeding”), through his undersigned counsel, hereby files this motion (the “Motion to Expedite”) requesting an expedited hearing on the Litigation Trustee’s *Motion to Stay the Adversary Proceeding* (the “Motion to Stay”) ³ as soon as counsel may be heard. In support of the Motion to Expedite, the Litigation Trustee respectfully states the following:

JURISDICTION AND VENUE

1. This Court has jurisdiction over the Motion to Expedite pursuant to 28 U.S.C. §§ 157 and 1334(b).
2. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1409.

² “Bankr. Dkt.” refers to the docket maintained in Case No. 19-34054-sgj11 (Bankr. N.D. Tex.).

³ Capitalized terms not otherwise defined in this Motion to Expedite shall have the meanings given them in the Motion to Stay.

3. The predicates for the relief requested in the Motion to Expedite are sections 105(a) and 362(a) of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 9006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

RELEVANT BACKGROUND

A. HCMLP FILES FOR BANKRUPTCY AND THE LITIGATION SUB-TRUST IS CREATED

4. On October 16, 2019 (the “Petition Date”), Highland Capital Management, L.P. (“HCMLP”) filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the “Delaware Bankruptcy Court”). On December 4, 2019, the Delaware Bankruptcy Court entered an order transferring venue of HCMLP’s bankruptcy case to this Court.

5. On February 22, 2021, this Court entered the *Order (i) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (ii) Granting Related Relief* [Bankr. Dkt. 1943] (the “Confirmation Order”), which confirmed the Plan. The Plan went effective on August 11, 2021 (the “Effective Date”). Bankr. Dkt. 2700. Among other things, the Plan created the Litigation Sub-Trust, as a “sub-trust established within the Claimant Trust or as a wholly-owned subsidiary of the Claimant Trust,” for the purpose of “investigating, litigating, and settling the Estate Claims” transferred to it by the Claimant Trust pursuant to the Plan. Bankr. Dkt. 1808 ¶¶ 81, 83. Proceeds from the Litigation Trust’s pursuit of claims “shall be distributed . . . to the Claimant Trust for distribution to the Claimant Trust Beneficiaries[.]” *Id.* at 27.

B. THE LITIGATION SUB-TRUST COMMENCES THIS ACTION

6. The Litigation Trustee commenced this Adversary Proceeding on October 15, 2021. The Complaint asserts 36 causes of action against 23 Defendants. While the broad scope

of the claims ensured that this would be a substantial litigation, the Defendants in this action have exacerbated the cost by propounding sweeping and unreasonable discovery of HCMLP and third parties, while simultaneously obstructing the Litigation Trustee’s discovery of Defendants. As set forth more fully in the Motion to Stay, the Litigation Trustee has reviewed over 700,000 documents and produced 655,432 documents comprising 7,390,270 pages. Defendants have responded by demanding ever more documents, from more complicated and difficult-to-search sources, and have served over 45 subpoenas seeking the production of documents from third parties. Remarkably, Defendants have yet to produce a single document in response to the Litigation Trustee’s requests.

C. THE DONDERO PARTIES COMPLAIN ABOUT THE COSTS OF THIS ACTION AND CONTEND IT IS UNNECESSARY

7. On June 30, 2022, The Dugaboy Investment Trust (“Dugaboy”) filed a *Motion for Determination of the Value of the Estate and Assets Held by the Claimant Trust* [Bankr. Dkt. 3382] (the “First Valuation Motion”) seeking a valuation of the Claimant Trust’s assets. This Court denied the First Valuation Motion as procedurally improper on December 7, 2022. Bankr. Dkt. 3645. Accordingly, on February 6, 2023, Dugaboy and Hunter Mountain Investment Trust (“HMIT”) filed a *Motion for Leave to File Proceeding* [Bankr. Dkt. 3662] (the “Second Valuation Motion,” and together with the First Valuation Motion, the “Valuation Motions”), this time making baseless allegations against HCMLP, the Claimant Trust, and their fiduciaries and professionals, and seeking leave to file an Adversary Proceeding seeking information concerning the Claimant Trust.

8. In the Valuation Motions, Dugaboy and HMIT assert that they have residual contingent interests in the Claimant Trust because they hold unvested, contingent trust interests.⁴

⁴ Dugaboy and HMIT were members of Class 10 and Class 11 under the Plan, but they will receive no interest or rights in the Claimant Trust unless and until all senior classes have been paid in full with interest, all disputed claims have been resolved, and the Claimant Trustee has filed a certificate with this Court. Bankr. Dkt. 1943 ¶ 60b.

Dugaboy and HMIT further assert that the Claimant Trust has sufficient assets to pay all current Claimant Trust Beneficiaries in full and that they are thus somehow in the money (notwithstanding that that is not how the Plan works). Finally, Dugaboy and HMIT assert that protections are necessary to preserve the Claimant Trust’s assets and that continued prosecution of this Action “threatens to depress the value of the Claimant Trust” (*Id.* at ¶ 18) and diminish the value of their contingent, residual interests.

9. This is not the first time the Dondero Parties have complained about the cost of this Action and contended that it is unnecessary since the value of the Claimant Trust’s assets supposedly exceed the value of the Claimant Trust Beneficiaries’ interests.⁵

10. While reserving the Claimant Trusts’ rights to contest the Dondero Parties’ assertions, the Litigation Trustee believes it would be prudent to stay the Action for a period six months until September 30, 2023, and to continue the stay thereafter until one party to the Action provides 30 days’ written notice to all other parties and the Court of their intent to resume the Action (the “Stay Period”) to allow assets to be monetized pursuant to the Plan while conserving resources for all parties and third-parties. And, while the Defendants have not consented to this relief, it is astounding that they would contest it because it directly addresses the concerns set forth in the Valuation Motions. Accordingly, the Litigation Trustee is requesting in the Stay Motion that this Court stay proceedings in this Action for the Stay Period. By this motion, the Litigation Trustee is respectfully requesting an expedited hearing on the Stay Motion so that the parties and the Court can suspend the ever-increasing costs of this litigation as soon as possible.

⁵ See, e.g., *Reply Brief of Appellant, The Dugaboy Investment Trust*, Case No. 22-10831, Document No. 00516578672 at 9 (5th Cir. Dec. 14, 2022) (“[T]he Kirschner litigation continues to this day to erode the value of the estate, which most significantly impacts” Dugaboy’s and HMIT’s pecuniary interests).

ARGUMENT

11. Pursuant to section 105(a) of the Bankruptcy Code, the Court “may issue any order . . . that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a). Furthermore, pursuant to Bankruptcy Rule 9006, the Court may, for cause shown, reduce the notice period required prior to a hearing.

12. A prompt hearing on the Motion to Stay is necessary and in the best interests of all parties. If the Motion to Stay is ultimately granted, the sooner the requested stay can be implemented and thus the sooner the ever-increasing costs of this litigation can be suspended. Should the Motion to Stay be heard in the ordinary course without an expedited hearing, the substantial litigation costs associated with this Adversary Proceeding will continue to accrue for potentially another month or more. Courts have found that expedition is warranted in hearing motions to stay. *See, e.g., Lodge v. Doe*, No. CV 11-1257, 2012 WL 12990524, at *1 (E.D. La. Sept. 11, 2012) (granting motion to expedite and setting expedited hearing on motion to stay without oral argument).

13. Notice of the proposed expedited hearing will be provided to counsel for Defendants by email and the Court’s CM/ECF system. Such notice is sufficient because the relief requested in the Motion to Stay is sought against Defendants, and Defendants will have actual notice of the Motion to Stay and the issues raised therein prior to the date of the proposed hearing.

14. The Litigation Trustee is requesting an expedited hearing on the Motion to Expedite at the earliest available opportunity. Per the certificate of conference attached below, Defendants did not provide a response indicating whether or not they would agree to the motion, so this Motion is submitted as being opposed.

PRAYER

WHEREFORE, the Litigation Trustee respectfully requests that the Court enter an order (i) granting the Motion to Expedite, (ii) setting an expedited hearing on the Motion to Stay at the Court's earliest convenience, and (iii) granting the Litigation Trustee such further and additional relief as the Court deems appropriate.

Dated: March 24, 2023

Respectfully submitted,

SIDLEY AUSTIN LLP

/s/ Paige Holden Montgomery

Paige Holden Montgomery

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-and-

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*Counsel for Marc S. Kirschner, as Litigation
Trustee of the Highland Litigation Sub-Trust*

CERTIFICATE OF CONFERENCE

The undersigned hereby certifies, that on Thursday, March 23, 2023, counsel for the Litigation Trustee corresponded with counsel for Defendants regarding the relief requested in the foregoing motion. Defendants did not provide a response indicating whether or not they would agree to the motion, so this Motion is submitted as being **OPPOSED**.

/s/ Robert S. Loigman

Robert S. Loigman

CERTIFICATE OF SERVICE

The undersigned hereby certifies, that on this 24th day of March 2023, the undersigned caused to be served a true and correct copy of the Motion to Expedite by electronically filing it with the Court using the CM/ECF system, which sent notification to all parties of interest participating in the CM/ECF system.

/s/ Paige Holden Montgomery
Paige Holden Montgomery

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

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,¹
Reorganized Debtor.

Chapter 11

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MARC S. KIRSCHNER, AS LITIGATION
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¹ The last four digits of the Reorganized Debtor's taxpayer identification number are (8357). The Reorganized Debtor is a Delaware limited partnership. The Reorganized Debtor's headquarters and service address are 100 Crescent Court, Suite 1850, Dallas, TX 75201.

PAMELA OKADA FAMILY TRUST –
EXEMPT TRUST #1; MARK & PAMELA
OKADA FAMILY TRUST – EXEMPT TRUST
#2 AND LAWRENCE TONOMURA IN HIS
CAPACITY AS TRUSTEE OF MARK &
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EXEMPT TRUST #2; CLO HOLDCO, LTD.;
CHARITABLE DAF HOLDCO, LTD.;
CHARITABLE DAF FUND, LP.; HIGHLAND
DALLAS FOUNDATION; RAND PE FUND I,
LP, SERIES 1; MASSAND CAPITAL, LLC;
MASSAND CAPITAL, INC.; AND SAS ASSET
RECOVERY, LTD.,

Defendants.

**ORDER GRANTING OPPOSED MOTION FOR
EXPEDITED HEARING ON THE LITIGATION TRUSTEE’S
MOTION TO STAY THE ADVERSARY PROCEEDING**

Having considered the *Opposed Motion for Expedited Hearing on the Litigation Trustee’s Motion to Stay the Adversary Proceeding* (the “Motion to Expedite”)² filed by Marc S. Kirschner (the “Litigation Trustee”), the Litigation Trustee of the Litigation Sub-Trust established pursuant to the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* [Bankr. Dkt. 1808]³ (as amended, the “Plan”) and plaintiff in the above-captioned adversary proceeding (the “Adversary Proceeding”), the Court finds and concludes (i) it has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; (b) the Litigation Trustee’ notice of the Motion to Expedite and opportunity for a hearing on the Motion to Expedite were appropriate under the circumstances and no other notice need be provided; and (c) good cause exists to grant the relief requested in the Motion to Expedite. Accordingly, **IT IS THEREFORE ORDERED THAT:**

1. The Motion to Expedite is **GRANTED** as set forth herein.

² Capitalized terms not otherwise defined in this Order shall have the meanings given them in the Motion to Expedite.

³ “Bankr. Dkt.” refers to the docket maintained in Case No. 19-34054-sgj11 (Bankr. N.D. Tex.).

2. The hearing on the Litigation Trustee's Motion to Stay is hereby scheduled to take place on _____, 2023, at _____ .m. (Central Time).

3. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation of this Order.

END OF ORDER