

1 IN THE UNITED STATES BANKRUPTCY COURT
2 FOR THE NORTHERN DISTRICT OF TEXAS
3 DALLAS DIVISION

3 In Re:) **Case No. 19-34054-sgj-11**
4) Chapter 11
5)
6 HIGHLAND CAPITAL) Dallas, Texas
7 MANAGEMENT, L.P.,) June 12, 2024
8) 10:00 a.m. Docket
9 Reorganized Debtor.)
10) STATUS CONFERENCE RE:
11) HIGHLAND'S MOTION TO STAY
12) CONTESTED MATTER
13)

14 TRANSCRIPT OF PROCEEDINGS
15 BEFORE THE HONORABLE STACEY G.C. JERNIGAN,
16 UNITED STATES BANKRUPTCY JUDGE.

17 APPEARANCES:

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1 DALLAS, TEXAS - JUNE 12, 2024 - 10:04 A.M.

2 THE CLERK: All rise.

3 THE COURT: Please be seated. We will now begin a
4 status conference we have set in Highland Capital, Case No.
5 19-34054. This pertains to an order staying a contested
6 matter that was initiated by Hunter Mountain Investment Trust.

7 All right. So let's get our lawyer appearances. We'll
8 ask for Hunter Mountain, your appearance, please?

9 MS. DEITSCH-PEREZ: Good morning, Your Honor. This
10 is Deborah Deitsch-Perez from Stinson for Hunter Mountain.
11 Mr. Aigen is also on the line, I see, and he may assist me by
12 pulling up a PowerPoint.

13 THE COURT: All right. I'm not sure why we're going
14 to need a PowerPoint, but things are complex, shall we say, in
15 this case as a general matter.

16 MS. DEITSCH-PEREZ: A short one.

17 THE COURT: So we will see what that's going to be
18 about.

19 All right. For the Debtor, who do we have appearing?

20 MR. MORRIS: Good morning, Your Honor. It's John
21 Morris from Pachulski Stang Ziehl & Jones on behalf of
22 Highland Capital Management, LP.

23 THE COURT: Okay. I should say Reorganized Debtor,
24 not Debtor. We're a few years down the road.

25 All right. Do we have other lawyers who want to appear

1 today?

2 MR. STANCIL: Your Honor, this is Mark Stancil from
3 Willkie Farr & Gallagher. I'm joined by my colleague, Josh
4 Levy. We represent Mr. Seery.

5 THE COURT: All right. Thank you.

6 Would that be all of our lawyer appearances, I presume?

7 All right. Well, let's be clear about why we are here.
8 And I'm sure the lawyers will correct me if I'm wrong. There
9 was a motion filed, I don't know, I would say January-ish of
10 this year by Hunter Mountain Trust -- I'll call it a
11 Gatekeeper Motion -- where Hunter Mountain was wanting leave
12 of this Court to file a lawsuit in the Delaware Chancery Court
13 against Mr. Seery regarding his role as the Claimant Trust
14 Trustee. And we had a hearing January 25th, and the Court
15 indicated it would stay the motion because I had -- I think
16 that was when I had under advisement, maybe I'd just taken
17 under advisement a Hunter Mountain motion for leave to file --
18 to go forward with another type of suit involving -- I think
19 it was the Valuation Suit.

20 MS. DEITSCH-PEREZ: Your Honor? Your Honor?

21 THE COURT: Okay. So, anyway, I know I stayed the
22 motion for leave to go forward in Delaware Chancery Court.
23 Ms. Deitsch-Perez, what were you wanting to say?

24 MS. DEITSCH-PEREZ: I was going to say I believe Your
25 Honor stayed the case awaiting your hearing and decision of

1 the motion to dismiss the valuation complaint.

2 MR. MORRIS: Correct.

3 THE COURT: All right. So, and I did go back and
4 look at my order a few days ago, and I said we'd have a status
5 conference after I ruled on that, right? So that's why we're
6 here?

7 MR. MORRIS: Yes.

8 MS. DEITSCH-PEREZ: I think so. What Your Honor said
9 was that you thought it was possible that your decision in the
10 valuation case might bear on the motion to stay -- on the
11 motion for leave, and so you stayed the matter, said we would
12 have a status conference after it was decided. After it was
13 decided, we called Ms. Ellison and asked for a status
14 conference so that we could address whether or not the
15 dismissal of the valuation complaint had any bearing on this
16 matter.

17 In a nutshell, the Court dismissed the valuation complaint
18 on the ground that the Plaintiffs had no standing to seek the
19 valuation because the conditions in the CTA had not been met.
20 Putting aside whether the parties believe that was correct --
21 it is being appealed -- the motion for leave is materially
22 different and cannot and should not be decided on the same
23 basis. And that's what we're here to discuss today.

24 THE COURT: All right. So we're here on the status
25 conference because I ruled we would have a status conference

1 down the road to look at whether should we continue to stay
2 the Hunter Mountain motion for leave to go forward in the
3 Delaware Chancery Court.

4 So we're here pursuant to my prior order. And your
5 client, Hunter Mountain, is arguing this is materially
6 different, and so I can't figure out for the life of me why
7 this is materially different. I'm just going to share my
8 thinking right now. I have ruled three times now, right, that
9 Hunter Mountain doesn't have standing. And I --

10 MS. DEITSCH-PEREZ: Your Honor, I --

11 THE COURT: And if it didn't have standing Time 1, 2,
12 and 3, why on earth would it have standing now?

13 MS. DEITSCH-PEREZ: Your Honor, I'm prepared to
14 explain why it's different. But if Your Honor has already
15 decided on the basis of what you already have before you that
16 Hunter Mountain has no standing, even though, here, the
17 allegations concern -- are that Mr. Seery is deliberately
18 manipulating the estate to maintain his tenure at his
19 \$150,000-a-month job by not paying creditors and refusing to
20 issue the certification. And that allegation, and the fact
21 that the law requires that this be decided by a Delaware
22 court, if those things are not enough for Your Honor to
23 believe that this matter is different and should be decided
24 differently, then we would ask that you simply rule that
25 Hunter Mountain has no standing and is not entitled to have a

1 Delaware court make the decision of the matters at issue in
2 the motion for leave, and we would take it up at the same time
3 as the valuation motion, so that the issue that Your Honor was
4 concerned about --

5 THE COURT: What do you mean, you would take it up at
6 the same time as the valuation motion?

7 MS. DEITSCH-PEREZ: In other words, if Your Honor
8 were to rule right now, as you've indicated, that you believe
9 that --

10 THE COURT: Right. You would appeal, and then what?
11 What do you mean?

12 MS. DEITSCH-PEREZ: If I could finish, Your Honor.
13 If Your Honor ruled that Hunter Mountain has no standing to
14 seek leave to sue Mr. Seery in Delaware court and that the CTA
15 overrides Delaware law if Delaware law --

16 THE COURT: Got it, got it, got it.

17 MS. DEITSCH-PEREZ: Right? Okay. If Your Honor were
18 to rule that and deny the motion for leave, we would appeal
19 that at the same time -- on the same timeline as the appeal of
20 the valuation decision. And then Your Honor's concern about
21 potentially conflicting rulings would not exist. We would
22 consent to the same court hearing both so that we --

23 THE COURT: What makes you think a district judge
24 would consolidate these two appeals? Or I guess it would be
25 three appeals.

1 MS. DEITSCH-PEREZ: We have no control over that, but
2 we would consent to it. The Debtor has expressed a concern
3 about inconsistent rulings, and so if both parties sought for
4 them to be -- the matters to be heard by the same judge --
5 we've done that in the past with all the -- with the reports
6 and recommendations arising out of the withdrawal of the
7 reference -- in every instance where the parties have
8 requested the same judge to hear appeals from this Court, the
9 District Court has agreed.

10 So while I certainly don't presume to control the District
11 Court, we have good evidence that they would do so. And that
12 would be the most efficient. It would minimize the chances of
13 inconsistent rulings.

14 THE COURT: Okay. I'm going to hear your PowerPoint
15 and see if there's something I'm missing, but this is really
16 -- you said extremely different, or words to that effect. But
17 I'm going to tell you right now, I would not -- to all the
18 lawyers -- I would not be presumptuous and think that some
19 district judge, let's say the one who has the current Hunter
20 Mountain appeals, I don't know if it's one judge or two, is
21 going to say, sure, we'll consolidate.

22 I mean, that's just not the way they work. Maybe you got
23 lucky. Probably it was the Note Litigation, okay, where it
24 made a ton of sense to consolidate that. But let me just be
25 blunt. Bankruptcy is not their priority. The Constitution

1 requires that criminal matters be their priority. They're
2 just, you know, they're not going to --

3 MS. DEITSCH-PEREZ: Your Honor, all we can do is ask.

4 THE COURT: They don't see the world the way we
5 bankruptcy nerds see the world. Okay? That's just my
6 experience. And I don't expect them to.

7 But, anyway, I -- who, by the way, has the Hunter Mountain
8 appeals? Do we have that handy? I'm just curious.

9 MS. DEITSCH-PEREZ: I don't --

10 THE COURT: Judge Ada Brown? Does she have all of
11 them, or just --

12 MR. MORRIS: She does. She has the main appeal of
13 the order denying the motion for leave to sue Mr. Seery,
14 Stonehill, and Farallon, the one that was the subject of the
15 evidentiary hearing last June. She does have that matter
16 right now.

17 THE COURT: And right now, do we have a judge
18 assigned to the more recent order denying --

19 MS. DEITSCH-PEREZ: That was just --

20 THE COURT: -- Hunter Mountain leave?

21 MR. MORRIS: Not that I know of.

22 MS. DEITSCH-PEREZ: That was --

23 MR. MORRIS: That notice of appeal was just filed, I
24 think, on June 7th, and I don't know if that's been assigned
25 yet.

1 THE COURT: My law clerk over here is saying no.
2 You're correct; there's no judge assigned to that. So we, you
3 know, we --

4 MS. DEITSCH-PEREZ: So it is possible, then, that we
5 could ask Judge Brown to hear all three. That's a
6 possibility.

7 MR. MORRIS: May I be heard at some point, Your
8 Honor?

9 THE COURT: Well, absolutely. Absolutely. But I am
10 just, I'm focusing on procedure at the moment. And we'll let
11 you explain why you think this is different, but surely you
12 know where my brain is.

13 I've ruled three times now that Hunter Mountain does not
14 have standing under the terms of the plan and under Delaware
15 law. And three times, we have written lengthy opinions on
16 that. And my impression, after sitting here 18 years, is the
17 District Court is going to be very irritated with me and
18 everyone else if I rule yet a fourth time on this and there is
19 an appeal sent their way. Consolidation or no consolidation,
20 at some point judicial economy and efficiency of the parties
21 rears its head.

22 I mean, why wouldn't I stay this further and see how Judge
23 Brown rules in the other matter? Heck, --

24 MS. DEITSCH-PEREZ: Your Honor, the --

25 THE COURT: -- at some point this plan could go

1 effective. I mean, excuse me, could be fully implemented.
2 But I think we know why it hasn't been. My impression is
3 certainly all we have left is to resolve all the litigation
4 involving your client.

5 MS. DEITSCH-PEREZ: Your Honor, the reason you cannot
6 stay it is because the Fifth Circuit and the Supreme Court
7 have a very high standard for staying litigation, and by
8 staying it you would be effectively denying the very relief
9 that's being sought. Hunter Mountain is entitled to try to
10 end this by removing a trustee with a conflict who is eating
11 up the costs -- the money in the estate. And we're entitled
12 to have that decided. And by staying it, you are effectively
13 denying the relief. That's what's impermissible. The Fifth
14 Circuit and the Supreme Court have set a very high bar to
15 staying litigation.

16 This is not like the motion for mediation, where we
17 harbored no illusion whatsoever that Your Honor would stay
18 litigation over the Debtor's objection. The only --

19 THE COURT: Okay. It never would have occurred to me
20 this was analogous to the motion to stay litigation. I think
21 it's analogous to three different motions your client has
22 filed and I've ruled on. I don't know, --

23 MS. DEITSCH-PEREZ: Your Honor, I will show you why
24 it's different.

25 THE COURT: -- what number of pages, Courtney, were

1 our three rulings? And I say three because --

2 MS. DEITSCH-PEREZ: Your Honor?

3 THE COURT: -- there was a motion for
4 reconsideration. I mean, a couple hundred pages of ink spilt
5 that some district judge --

6 MS. DEITSCH-PEREZ: Your Honor?

7 THE COURT: -- has got to read? And why are we doing
8 the same thing over and over? It's like the famous --

9 MS. DEITSCH-PEREZ: That's what I --

10 THE COURT: -- Einstein saying. You know, the famous
11 Einstein saying. What did he say?

12 MR. MORRIS: The definition of insanity, Your Honor,
13 doing the same thing over and over again, expecting a
14 different result? That was going to be my opening line.

15 THE COURT: Oh, wow. Oh, wow. Okay. Well, that's
16 --

17 MR. MORRIS: So we're in the same place.

18 THE COURT: -- definitely the one I was thinking.

19 MS. DEITSCH-PEREZ: Your Honor, the difference --

20 THE COURT: Okay. Ms. Deitsch, just --

21 MS. DEITSCH-PEREZ: The difference is that this was
22 --

23 THE COURT: -- let's make -- just make your
24 presentation and then we'll hear Mr. Morris's presentation.
25 If something is horribly lost on me, this is your chance to

1 show me that I am totally missing the boat on why this
2 situation is different.

3 MS. DEITSCH-PEREZ: Okay. There are two points here.
4 One is we would like you to understand why it's different and
5 see why it's different. But if you have already made up your
6 mind, then simply deny the motion for leave, opine that the
7 CTA overrides Delaware law, and the most efficient path is to
8 have this evaluation and the insider trading case be appealed
9 where that will be the most efficient use of resources.

10 So let me go -- could I ask --

11 MR. MORRIS: Your Honor, I apologize.

12 THE COURT: Okay. Before we do the whole PowerPoint,
13 --

14 MR. MORRIS: I would love to be heard on the
15 procedural point. Just the procedural point.

16 THE COURT: All right. You may, Mr. Morris.

17 MR. MORRIS: There is no motion to dismiss pending
18 before the Court. What you're being asked to do, the Court
19 doesn't have the authority to do. What we're here today to
20 decide is whether or not to extend the stay. The answer is
21 either going to be yes or no.

22 If the stay is extended, we're done. If the stay is not
23 extended, then we're going to have to answer the complaint.
24 And we're going to make a motion to dismiss. And we're going
25 to have a whole -- with a Rule 11 motion, because this is all

1 collaterally estopped. But putting that aside for the moment,
2 going to the District Court would be appropriate only if
3 Hunter Mountain agrees that the issues are the exact same as
4 raised in the stay.

5 You're about to hear a presentation that says, oh, no, no,
6 they're not. These issues have never been heard before,
7 they've never been briefed before, and there is no chance that
8 it would be appropriate that the Court would have the
9 authority to send this -- to make a decision on a case on a
10 matter that's never been briefed. Right?

11 It's either a stay or it's not a stay. If it's a stay,
12 let's go home. If it's not a stay, then we're going to answer
13 the complaint with a motion to dismiss, and they can come back
14 and tell us at that time, in writing, with notice, why they're
15 not collaterally estopped by Your Honor's prior orders.

16 That's all.

17 THE COURT: Okay.

18 MS. DEITSCH-PEREZ: And that would normally be the
19 case, Your Honor, but here the Court can sua sponte deny the
20 motion. The Court has said repeatedly that it views it as the
21 same. And so we are saying we would forego further briefing
22 if Your Honor wanted to simply sua sponte dismiss the matter
23 so that it could be appealed. And so it could be appealed on
24 the same timeline more or less as the other matters that are
25 proceeding.

1 I'll continue on now with --

2 THE COURT: Okay. Well, --

3 MS. DEITSCH-PEREZ: -- with the presentation.

4 THE COURT: I'll state the obvious. And as Mr.
5 Morris said but I think you know very well, Ms. Deitsch-Perez,
6 this is just a motion to unstay the contested matter -- I
7 mean, it may be premature to call it a contested matter -- to
8 unstay proceedings on Hunter Mountain's motion for leave to
9 file a complaint in the Delaware Chancery Court. Should I
10 keep the stay in place or not? Okay? So, --

11 MS. DEITSCH-PEREZ: I understand we're --

12 THE COURT: -- I don't think anyone has any confusion
13 about that, and it's the reason why I said something about you
14 having a PowerPoint. I was a little surprised that you would
15 have a PowerPoint on this, but if you do, you do. I'll let
16 you present it.

17 But I would never jump ahead, just so everyone is crystal
18 clear, I would never jump ahead to a substantive ruling today
19 that I'm denying your motion for leave to file the complaint
20 in the Delaware Chancery Court. It would be either we're
21 continuing the stay, we're going to continue the stay, please
22 upload a new order supplementing my prior order saying the
23 stay is going to be continued until whatever we decide, or
24 it's going to be the stay is lifted, parties have, you know,
25 21 days to respond to Hunter Mountain's motion for leave to

1 file a complaint. Okay? So I hope there was no confusion on
2 that.

3 MS. DEITSCH-PEREZ: No, Your Honor, we were simply
4 responding to your repeated suggestion that this is the same
5 and Hunter Mountain has no standing and the CTA overrides
6 Delaware law, which was, if that was already determined and
7 you did not need further explanation from the Reorganized
8 Debtor on that in opposition, because we've already filed the
9 motion for leave, then we would not argue as a procedural
10 point that Your Honor could not simply make a decision.

11 THE COURT: Okay.

12 MS. DEITSCH-PEREZ: I understand that Mr. Morris is
13 saying he does not want that because the whole goal here is to
14 delay this long enough so that we can never be heard in
15 Delaware. So I understand Mr. Morris's position.

16 MR. MORRIS: You know, Your Honor, I just, I so
17 regret these ad hominem attacks. The fact of the matter is we
18 don't have a pleading. We're about to hear arguments from Ms.
19 Deitsch-Perez for the very first time. She's never briefed
20 these issues. And I'm just going to leave it at that. This
21 is just so improper.

22 THE COURT: All right. Well, how lengthy is your
23 PowerPoint, and is it really geared towards the stay issue?

24 MS. DEITSCH-PEREZ: It is, Your Honor. It's seven
25 slides.

1 THE COURT: Okay.

2 MS. DEITSCH-PEREZ: It's not very long. And there is
3 nothing that we are going to raise that the Debtor is not
4 aware of.

5 THE COURT: All right. Well, I'll let you present
6 your seven slides. And, again, I think we're all crystal
7 clear. This is just about is it time to lift the stay. And
8 we've had a lot of preliminary discussions and I've made a lot
9 of comments because it just seemed like the common-sense
10 approach we might all agree to was let the District Court
11 decide your appeal. She may say --

12 MS. DEITSCH-PEREZ: We do not agree to that --

13 THE COURT: -- Hunter Mountain has standing. She may
14 say Hunter Mountain has standing, let them go forward with
15 their valuation thing, with their suit they want to file
16 against Farallon and whoever the other one was, I can't
17 remember. You know, let them -- they have standing. She may
18 view the plan documents, the Claimant Trust Agreement,
19 Delaware law different. If she does, then absolutely I
20 probably should lift the stay in this matter. I mean, I
21 guess. I don't know.

22 MS. DEITSCH-PEREZ: Your Honor?

23 THE COURT: But it just seems like a matter of
24 efficiency. You filed the appeals. You want it heard.
25 You're entitled to that. Let that happen, and then we'll

1 figure out where we go from there. Except, as we well know,
2 probably one party will file an appeal to the Fifth Circuit.
3 So I'm just trying to understand what is rational here, and --

4 MS. DEITSCH-PEREZ: The Fifth Circuit has already
5 rejected this very maneuver. And we have a slide that will
6 tell you the --

7 THE COURT: Maneuver? What maneuver? What maneuver?
8 Whose maneuver?

9 MS. DEITSCH-PEREZ: The maneuver is to stay a case,
10 but it's the Debtor's request, to stay a case while awaiting
11 other cases' decisions on standing. That's not proper. All
12 of the cases should go up at the same time. If there's a
13 dispositive ruling on standing at some point, well, it could
14 be raised at that time. But there's no reason to stay, to
15 prevent a party from having its day in court, because of the
16 potential that another case is going to decide a similar or
17 even the very same --

18 THE COURT: Okay. Present your PowerPoint and we'll
19 perhaps better understand.

20 MS. DEITSCH-PEREZ: Okay. So, I'm --

21 Mike, if you can pull it up and go to Slide 2.

22 Okay. So, and before I get to that, yesterday we filed a
23 notice of supplemental authority because since -- this is a
24 very unusual circumstance.

25 THE COURT: Where did you file that?

1 MS. DEITSCH-PEREZ: In the bankruptcy. We filed a
2 copy of the *Morris v. Spectra* Delaware case that the Debtor
3 already had because we had found it, I think Mr. Aigen
4 deserves the credit for this, and had provided it to the other
5 counsel for HMIT to --

6 THE COURT: Okay. Just so you know, I've not seen
7 it, I've not read it. So, --

8 MS. DEITSCH-PEREZ: Okay. I will describe it --

9 THE COURT: And I would not have been looking for it
10 before a status conference.

11 MS. DEITSCH-PEREZ: Okay. I will -- it's very easy
12 to describe. It's a Delaware case. And that was a case where
13 someone was attempting to challenge -- a former shareholder
14 was attempting to challenge a merger. And normally the rule
15 in Delaware is, if you're not a shareholder, you can't
16 challenge it anymore. You're not a shareholder; you can't
17 challenge the merger.

18 But the claim there was that the Defendants had wrongfully
19 caused the merger to eliminate the shareholders' ability to
20 complain. And the Delaware Supreme Court said, gee, if
21 someone deliberately does something to strip someone of their
22 standing, we're not going to allow that, so we are going to
23 allow someone who is no longer a shareholder to still complain
24 about the merger.

25 And this is what we found, this is the most analogous

1 Delaware law we have found, and shows that it is appropriate,
2 if someone does something that prevents someone from having
3 standing, the Court should still allow the case to go forward.

4 So that's one reason why this is different. But the right
5 to be heard in Delaware on an issue of the workings of a
6 trust, on the issue of removing a trust, that's something that
7 is subject to Delaware law and has to be decided by a Delaware
8 court. And we cited in the opposition to the stay the *United*
9 *Brotherhood* case and the Delaware statute that provides that.

10 And so that's another reason this case is different than
11 the insider trading case or the valuation case, because this
12 expressly involves the internal workings of a trust, which,
13 even if you had a contract that had a venue provision,
14 Delaware law says you can ignore that because this is
15 important enough that we want this resolved by a Delaware
16 court.

17 So, in Your Honor's decision dismissing the valuation
18 proceeding, you relied on the Plaintiff's supposed agreement
19 to the CTA as precluding them from challenging it or from
20 invoking the duty of good faith and fair dealing. And I think
21 you said something like that earlier today also. But that
22 analysis is wrong here.

23 First, Hunter Mountain didn't negotiate or agree to the
24 CTA. If you remember, at the time of the plan, the estate's
25 projections were that payments would only be made through

1 Class 8. So Classes 10 or 11 had no reason to address the
2 CTA.

3 But second, the duty of good faith and fair dealing can,
4 should, really, must be raised when a party's actions actually
5 prevent a condition precedent from occurring.

6 So the Court's conclusion that the existence of a
7 condition precedent -- in other words, the conditions for
8 vesting -- precludes a claim for good faith and fair dealing
9 ignores the whole body of law that a party can't take
10 advantage of his own wrongdoing.

11 So this isn't a case -- this usually comes up in the
12 circumstance where somebody is claiming there's a breach of
13 good faith and fair dealing because a party didn't do
14 something that's expressly not required by the contract, where
15 the duty of good faith and fair dealing is being used to
16 contradict the contract. But that's not what's happening
17 here.

18 Here, the complaint that is sought to be brought in
19 Delaware is saying that Mr. Seery is thwarting the occurrence
20 of the condition precedent, and the Plaintiff is entitled to
21 have its allegations taken as true. And if that is true, that
22 is the classic case for the invocation of good faith and fair
23 dealing.

24 And we cite in the motion for leave the *Dunlap* case, the
25 *Injective Labs* case, and the *Snow Phipps* case, all of which

1 are cases where there was some condition in the contract that
2 the other side was alleged to be preventing from happening,
3 and the courts allowed those -- either allowed the -- said
4 that the parties (inaudible) to make that clear or allow the
5 claim to go forward.

6 So these cases are directly counter to this case's
7 mistaken conclusion that the vesting provision precludes HMIT
8 from raising the good faith and fair dealing here. This is
9 exactly when you must raise good faith and fair dealing, and
10 it's entirely appropriate. So it is not like the valuation
11 case, which was asking for information. It's not exactly like
12 the insider trading case, either. Here, it is exactly when
13 good faith and fair dealing governs.

14 So, for all of these reasons, the Court's prior decisions
15 aren't governing here and are not a basis for staying or
16 denying the gatekeeper matter.

17 But as we've said, if the Court's already decided
18 otherwise, we would not object to the procedure of the Court
19 sua sponte simply sending this on. What would not be fair
20 would be stalling this case to prevent HMIT from seeking the
21 Delaware decision-making to which it's entitled. And that's
22 why, when the issue is a stay of court proceedings, the Fifth
23 Circuit and the Supreme Court have a very high bar.

24 Mike, next slide. Mike, Slide 3. Okay.

25 Okay. So let's remember the standard for obtaining a

1 stay: A strong showing of likelihood to succeed on the
2 merits; whether the movant -- that's the Debtor here -- will
3 be irreparably harmed absent a stay; whether the issuance of a
4 stay will injure other interested parties -- Hunter Mountain;
5 and where the public interest lies.

6 And the Supreme Court has characterized the circumstances
7 in which a stay is appropriate as rare. And that's the *Landis*
8 case cited by the Northern District.

9 And Highland, in the motion for stay, doesn't address this
10 standard at all. And in the initial hearing we had, Highland
11 said, and the Court seemed to agree, well, the standard isn't
12 required because, remember, when you all sought a stay for the
13 mediation, you didn't raise the standard.

14 But that was very different, because for the mediation we
15 had no illusion that Your Honor would grant a stay over the
16 objection of the Debtor. So, really, what we were talking
17 about in that circumstance is a consensual stay. And then the
18 standard wouldn't apply.

19 Let's go to Slide 4, Mike.

20 Okay. And here is the case, the *Jamison* case, which
21 relied on Supreme Court *Landis* case, said the defendant
22 requested a stay pending the Supreme Court's rulings on two
23 different cases where the same or virtually the same standing
24 question was raised, and the Court denied the motion, saying
25 that, because standing is an issue that can be raised at any

1 time, there was no reason to stay, because if the Supreme
2 Court made a ruling that was dispositive it could be raised
3 when that happened.

4 And that's exactly what the circumstance is here. The
5 case should go forward, and if the Fifth Circuit makes a
6 dispositive ruling, if there's a dispositive ruling that would
7 end one of these other cases and is not distinguishable, it
8 could be raised at that time.

9 So, go to the next slide.

10 Okay. And so the Fifth Circuit has also said
11 discretionary stays, even when -- if they are lengthy or
12 indefinite, should not be granted. That is exactly what the
13 Debtor is asking for here. Let's take a look at how long
14 things have been taking.

15 Go to Slide 6.

16 Okay. The Notes cases, the Court's reports and
17 recommendations, December '22, the Notes case is still pending
18 in the Fifth Circuit, the HarbourVest settlement. And this is
19 not including the lower court, the District Court intermediate
20 action. Two years. UBS, I mean, huge amounts of time. It's
21 one and half to two years. All of them.

22 So if in fact the Court were to stay until a final
23 decision, or even the decision of the next court, we are
24 talking about a long enough time that it creates the very harm
25 that the motion for leave -- that the complaint that Hunter

1 Mountain is trying to file is seeking to avoid.

2 This Court knows how long it takes to get through the
3 District Court, out of the Fifth Circuit, much less, as we
4 have with the release matter, going all the way to the Supreme
5 Court.

6 So, if Hunter Mountain has to await a final nonappealable
7 decision of the valuation proceeding before it can even start
8 to seek to remove Seery in Delaware court, even winning would
9 be a pyrrhic victory, because Mr. Seery will have remained
10 employed and spending money and moving money into the
11 indemnity subtrust for two or more years. And so a stay
12 thereby creates irreparable harm for Hunter Mountain.

13 So, in sum, using the Claimant Trust Agreement to preclude
14 Hunter Mountain from seeking removal of the Trustee actually
15 underscores why Delaware law is crafted the way it is. Were
16 it not for the duty of good faith and fair dealing imposed by
17 Delaware law, Mr. Seery could arguably continually increase
18 the funds set aside for indemnification, indefinitely withhold
19 final distributions to Class 9 -- we believe Class 8 has
20 already been paid in full -- and refuse to file the GUC
21 certification.

22 Would it be okay if he paid everything other than \$10 and
23 refused to issue the GUC certification based on a theoretical
24 possibility that he might need more money for indemnification?
25 The amount that's been set aside for indemnification is so

1 much more than the \$25 million that was originally
2 contemplated at the time of the plan. So this is exactly the
3 kind of conflict that Delaware Code Section 3327 regarding the
4 removal of trustees is designed to prevent. It's designed to
5 prevent the conflict where the trustee has a reason to hold
6 onto the money that he or it is holding in trust for another
7 party.

8 This is -- whatever the excess is, that belongs to Hunter
9 Mountain. It doesn't belong to the professionals. It doesn't
10 belong to Mr. Seery. And so someone who does not have this
11 conflict should be making these decisions. And Hunter
12 Mountain is entitled to go to Delaware for that decision.

13 So, putting this on ice is simply allowing the Claimant
14 Trust to avoid scrutiny, and we would ask that Your Honor not
15 do that.

16 Thank you.

17 THE COURT: Mr. Morris?

18 MR. MORRIS: Your Honor, I just want to begin where
19 counsel left off. The excess -- if there is such a thing, and
20 I don't know that there is, and I don't know that anybody will
21 know until the case is over -- but the so-called excess
22 belongs first to indemnified parties. Indemnified parties
23 have a contractual right to be indemnified, frankly, before
24 Class 8 or Class 9 receive a nickel, let alone Class 10 or 11.

25 So let's be really clear that what's happening here, as

1 Your Honor alluded to earlier, is that resources must be
2 husbanded because of the ongoing onslaught of litigation.
3 This case could be over tomorrow if Mr. Dondero would give a
4 release to all protected parties.

5 So, just a little bit of background, though. Obviously,
6 this issue of Hunter Mountain and Dugaboy's standing has been
7 percolating for exactly two years. It was in June of 2022
8 that Mr. Draper on behalf of Dugaboy brought the first
9 valuation motion. He was soon joined by Mr. Phillips on
10 behalf of Hunter Mountain. That effort was the subject of
11 substantial briefing over the rights or so-called rights or
12 potential rights of Class 10 and Class 11, and ultimately Your
13 Honor decided that the relief they sought was not appropriate
14 as a contested matter and had to proceed as an adversary
15 proceeding.

16 The next calendar year, 2023, we have a new lawyer for
17 Hunter Mountain, Sawnie McEntire and his firm. Again, the
18 issues of standing and Hunter Mountain's unvested contingent
19 interest and the meaning of that were the subject of
20 substantial litigation in 2023.

21 Now we've got a third lawyer, the Stinson firm, again
22 representing Hunter Mountain, again raising basically the
23 exact same issue.

24 Your Honor has issued multiple decisions that go into
25 great detail. I want to just read just a couple of lines from

1 the Court's most recent decision that was filed at Docket No.
2 26 in Adversary Proceeding 23-03038.

3 On Page 29, the Court wrote that the Court "finds and
4 concludes that under the terms of the CTA and Delaware law,
5 Plaintiffs are not beneficiaries or beneficial owners of the
6 Claimant Trust who would be entitled to assert rights under
7 the CTA. The Claimant Trust is a Delaware statutory trust
8 governed by the Delaware Statutory Trust Act, and the Trust
9 Act does define 'Beneficial Owner' and uses that term
10 exclusively to refer to the beneficiaries of a Delaware
11 statutory trust. Specifically, under the Trust Act, a trust's
12 -- a statutory trust's beneficial owners are any owners of a
13 beneficial interest in a statutory trust, the fact of
14 ownership to be determined and evidenced in conformity with
15 the applicable provisions of the governing instrument of the
16 statutory trust."

17 Your Honor went on at Page 30, said, "It appears that
18 Plaintiffs may be frustrated that they did not negotiate or
19 obtain the same oversight rights as the actual Claimant Trust
20 beneficiaries in the plan and the CTA. The plan, with the
21 incorporated CTA, was confirmed over three years ago now, and
22 neither the Plaintiff -- neither of the Plaintiffs objected or
23 appealed to the terms of the plan or the CTA that dictate
24 those oversight rights. The Fifth Circuit, in September of
25 2022, affirmed the confirmation order and the terms of the

1 plan and its incorporated documents, including the CTA, in all
2 respects other than striking certain exculpations."

3 Then, finally, Your Honor pointed out that "Plaintiffs
4 make an argument that an implied covenant of good faith and
5 fair dealing under Delaware law necessarily means that the
6 terms of the CTA that govern the parties' rights here,
7 including the information rights and the rights to an
8 accounting from the Claimant Trustee that Plaintiffs seek in
9 Count One can be overridden here. The Court disagrees. The
10 Court will not use the implied covenant of good faith to
11 override the rights and responsibilities that were bargained
12 for in the trust agreement."

13 An exhaustive opinion. It is collateral estoppel at this
14 point. I frankly think that Rule 11 gets implicated when
15 lawyers continue to push issues that have already been
16 decided.

17 It is the exact same issue. There is no claim for breach
18 of good faith and fair dealing in the complaint. Just look at
19 the proposed complaint that was filed at Docket No. 4000.
20 Exhibit 1. There are five causes of action. Every one of
21 them is premised not on a breach of good faith and fair
22 dealing but on a breach of Delaware Corporate Law 3327. And
23 as Your Honor knows from the extensive briefing that we've
24 had, the Court looks to the trust document to determine the
25 rights of the beneficiaries, and only beneficiaries have

1 rights under 3327.

2 This is law of the case. These parties are collaterally
3 estopped from continuing to do this. The fact that they
4 suggest that they could just bring lawsuit after lawsuit after
5 lawsuit after lawsuit, where standing is always going to a
6 threshold issue, until every single judge in the Northern
7 District of Texas has an opportunity to weigh in is
8 preposterous.

9 Let me go through -- let me just refer and respond to a
10 couple of these last points. The statute that Ms. Deitsch-
11 Perez cited in her first slide, 3804(e), it only applies if
12 you're a beneficial owner. This Court has decided multiple
13 times Hunter Mountain and Dugaboy are not beneficial owners.

14 Next. The duty of good faith and fair dealing, as I
15 mentioned, it's not even a claim in the proposed complaint.
16 And I know of no law, and I don't think anybody will ever be
17 able to cite any law, that suggests a party to a contract owes
18 a duty of good faith and fair dealing to someone with no
19 rights under the contract. How is that even -- how does that
20 even make sense?

21 I have no rights under the contract, that's what this
22 Court has already held, but somehow Mr. Seery has an implied
23 duty of good faith and fair dealing. Makes absolutely no
24 sense.

25 The standard of likelihood of success on the merits.

1 Right? I don't think that standard applies when the Court is
2 just policing its docket. But even if it did, likelihood of
3 success on the merits? It's a certainty. The Court has
4 already decided. We have won. Right? They can't -- they
5 have no standing. So there's a hundred-percent certainty that
6 we're likely to succeed on the merits.

7 This is not going to be lengthy or indefinite, and I will,
8 you know, just say, Your Honor, that the Plaintiffs here have
9 some control over this. There probably hasn't been five
10 percent of the appeals where we don't get eventually some
11 request for an extension of time. It happens every time.
12 They're taking weeks now to file their appellate record.
13 They're within the rules. They have the right to do. But if
14 they want this to proceed more quickly, stop asking for
15 extensions of time. We'll move quickly. We don't have a
16 problem doing that at all.

17 Mr. Seery owes no --

18 MS. DEITSCH-PEREZ: Your -- I have to interrupt on
19 that.

20 THE COURT: You will have your rebuttal time, but let
21 Mr. Morris finish, please.

22 MR. MORRIS: Mr. Seery owes no duties to Hunter
23 Mountain and to Dugaboy. He never has. We have an agreement.
24 The agreement has been affirmed. The merits of that have been
25 decided multiple times.

1 The Court should continue the stay here. The Court should
2 allow the District Court, and, if necessary, the Fifth
3 Circuit, to opine and let it take its course. Right? We're
4 happy to work as quickly as they want. Not on an expedited
5 basis, but within the rules. And if they do the same, I think
6 this will get decided much quicker than they think.

7 In the alternative, Your Honor, if the Court for any
8 reason wants to lift the stay, we would request 30 days to
9 file an opposition here, and we will be filing a Rule 11.

10 I do just want to mention one last thing. Because as
11 counsel pointed out, they filed a so-called supplement at 7:00
12 p.m. Eastern Time last night on the docket. I was out with my
13 wife at the theater, and really haven't had any opportunity to
14 look at this in any detail.

15 I will tell you that I -- Ms. Deitsch-Perez and I emailed
16 multiple times yesterday. She and Mr. Aigen have been
17 emailing me multiple times in the last week. No courtesy of a
18 heads up. No suggestion that maybe we should adjourn this.
19 No citation in their pleading as to why they think they get to
20 file a surreply the eve before trial. There's no rule that
21 allows them to do so.

22 And I would just, you know, just very quickly, Your Honor,
23 the two cases that they cite are from 2021 and 1998. Those
24 cases were decided even before Mr. Draper filed his first
25 motion for valuation information two years ago.

1 The cases are easily distinguishable. They have nothing
2 to do with statutory trusts. They have nothing to do with the
3 definition of beneficiaries. They have nothing to do with
4 Section 3327.

5 But I will say, Your Honor, if, upon reflection, the Court
6 has any thought that those cases are at all relevant, we would
7 respectfully request the opportunity to brief it. I don't
8 think it's necessary. I think the filing was improper. But
9 even if the Court accepts them, I think those cases are so
10 easily distinguishable that it won't matter. But if, you
11 know, it's not fair to be treated this way, to email multiple
12 times, to give no notice, to file it 15 hours before a
13 hearing, with no rule citation, with no right to do so, and
14 expect the Court or expect me, frankly, to be prepared to
15 fully address it. I've addressed it as best I'm able under
16 the circumstances.

17 I think the motion to stay should be extended until a
18 court of competent jurisdiction issues a final nonappealable,
19 you know, affirmation, determination, on Your Honor's motion
20 to dismiss the valuation proceeding.

21 THE COURT: All right. Before I hear any last word
22 from Ms. Deitsch-Perez, I know Mr. Seery's counsel made an
23 appearance. Is there anything you would like to say?

24 MR. STANCIL: No, Your Honor. I think Mr. Morris
25 covered it quite well.

1 THE COURT: All right. Ms. Deitsch-Perez, you get
2 the last word.

3 MS. DEITSCH-PEREZ: Your Honor, I've explained why
4 this case is different and why a party cannot prevent another
5 party from gaining rights under a contract. That is the
6 epitome of breaching the contract by breaching the duty of
7 good faith and fair dealing which is inherent in the contract.

8 Mr. Morris's argument that, oh, the stay is of no great
9 moment because you could move expeditiously is incorrect,
10 because, for example, the delays in the record, that is not
11 something -- and he well knows, that is not something a party
12 can control. The Court moves the record and the parties are
13 stuck with however long that takes. And if one were to look
14 at the record of the extensions in the appeals, they have --
15 equally well if not more so than the Debtor's side. And so I
16 take exception to that.

17 And finally, the Reorganized Debtor is something of a
18 bully. Every time that they don't like something, there has
19 been a threat that we're going to seek sanctions. It's a way
20 of trying to scare lawyers from exercising their duties to
21 their clients. If he's going to make -- if the Debtor is
22 going to make a sanctions motion, we'll fight it. We've
23 fought it before. Sometimes they've threatened it and not
24 done it.

25 But it is, I will point out, it is itself a violation of

1 Rule 11 to willfully and disingenuously threaten sanctions to
2 try and prevent litigation. And that's what we think is going
3 on here. It's a club.

4 If this matter is stayed, Hunter Mountain -- it's no
5 different than if this Court simply denied the motion, because
6 the passage of time will eviscerate what's in the estate.

7 Thank you.

8 THE COURT: I'm going to ask this question. I've
9 asked it before in prior hearings, but I'm asking it again.
10 And I always am asking it because of, well, a couple reasons.
11 I've raised the issue of judicial economy and concerns about
12 the efficient administration of justice and what's in the
13 interest of the parties. How many appeals do we have pending
14 or have been made since confirmation of the plan in February
15 2021? And I'm concerned about judicial economy, yes, but I'm
16 also --

17 MS. DEITSCH-PEREZ: Your Honor, --

18 THE COURT: Let me -- here is another reason I ask.
19 It is argued as part of the lawsuit you want to file that Mr.
20 Seery isn't wrapping things up. But, of course, part of that
21 hinges on are there appeals still pending. Okay? So I ask
22 for those two reasons. I don't know if anyone has it at their
23 fingertips, but it is --

24 MS. DEITSCH-PEREZ: Your Honor?

25 THE COURT: -- germane to everything I've heard here.

1 Okay? So who has --

2 MS. DEITSCH-PEREZ: Your Honor, there --

3 THE COURT: -- the answer at their fingertips?

4 Either one of you?

5 MS. DEITSCH-PEREZ: Your Honor, there are not very
6 many appeals still pending, but I would point out that some of
7 these have been successful. That Your Honor's contempt
8 decision was reversed. The release issue was partially
9 reversed. So, --

10 THE COURT: Reversed and remanded for me to have
11 follow-up hearings. So not done, by the way, but anyway,
12 we'll have a hearing on that remand at some point.

13 MS. DEITSCH-PEREZ: But these are --

14 THE COURT: So, but anyway, the question was how
15 many.

16 MS. DEITSCH-PEREZ: And I don't know exactly how
17 many, but there are relatively few. If the issue is how much
18 money is needed to be set aside for indemnification, there are
19 relatively few appeals pending.

20 THE COURT: That is a non-answer. Okay?

21 MR. MORRIS: I'm counting, Your Honor.

22 THE COURT: Okay.

23 MS. DEITSCH-PEREZ: I would object to an off-the-cuff
24 response.

25 MR. MORRIS: I'm counting.

1 MS. DEITSCH-PEREZ: We will follow up with the Court
2 and give you an exact number.

3 THE COURT: You know what, I --

4 MR. MORRIS: I believe -- I think --

5 THE COURT: My decision today is likely not going to
6 hinge on the precise answer here. Okay? I'm just asking a
7 question because I'm worried about judicial economy and what's
8 efficient, and I'm worried about a lingering continuing
9 argument that Mr. Seery is not wrapping things up quickly
10 enough. And I think the answer --

11 MS. DEITSCH-PEREZ: There's not a hundred million
12 dollars.

13 THE COURT: -- to this question is relevant to both
14 of those concerns. Having the precise answer, you know, no,
15 but I'd like a ballpark answer --

16 MS. DEITSCH-PEREZ: Here's the --

17 THE COURT: -- at least, if not precise.

18 MR. MORRIS: Your Honor, the ballpark --

19 MS. DEITSCH-PEREZ: Here's the important answer, Your
20 Honor.

21 MR. MORRIS: The ballpark --

22 MS. DEITSCH-PEREZ: It's there's not a hundred
23 million dollars' worth of legal work left to do.

24 THE COURT: I just --

25 MS. DEITSCH-PEREZ: It's --

1 THE COURT: -- asked for the answer to a question,
2 not an argument.

3 MR. MORRIS: Your Honor?

4 THE COURT: Mr. Morris, do you have an answer?

5 MR. MORRIS: It's approximately 55. But that
6 includes --

7 MS. DEITSCH-PEREZ: There are not 55 appeals
8 outstanding.

9 THE COURT: Stop interrupting. I want to hear the
10 complete answer.

11 Fifty-five is what, the number of notices of appeal ever
12 filed since the plan was confirmed?

13 MR. MORRIS: There are approximately 55 appeals that
14 have been filed in the Highland bankruptcy case. Some of
15 them, admittedly, include both an appeal to the District Court
16 and then, you know, depending on the outcome there, an appeal
17 to the Fifth Circuit. So it might involve the same case.

18 THE COURT: Okay.

19 MR. MORRIS: But there have been 55 appeals. Could
20 be 54, could be 56, something like that.

21 THE COURT: Okay.

22 MR. MORRIS: And there's -- and there's probably --
23 there's probably at least eight or ten in the pipeline.

24 THE COURT: Eight or ten, do you mean still pending
25 when you say in the pipeline?

1 MR. MORRIS: Still pending. Either haven't been
2 briefed at all; they've been briefed and we're waiting for a
3 court to rule; you know, it's in the District Court so we'll
4 have to await the outcome there and then see if we go to the
5 Fifth Circuit. I think there are -- I think we're waiting on
6 several decisions for the Fifth Circuit. I think there are
7 three matters in the pipeline in the Fifth Circuit, and
8 there's probably four or five in the District Court.

9 MS. DEITSCH-PEREZ: Most of which have been largely
10 briefed, so that we are awaiting decision. It's a small
11 handful where there's still work to be done.

12 MR. MORRIS: Your Honor, just -- your decision last
13 week, we don't even have a judge in the District Court. The
14 notion that this is somehow, you know, on the precipice of
15 completing litigation, it's just not realistic. I'll just
16 leave it --

17 MS. DEITSCH-PEREZ: That's not the point. The point
18 --

19 THE COURT: Look, I've heard about this enough. I
20 know that sometimes, luck of the draw, you have a judge, let's
21 say a district judge who doesn't have criminal jury trials
22 week, week, week, week, week, for the next six months, and
23 sometimes you have someone who just wrapped up something huge
24 and can get to an appeal quickly. We're coming up on August
25 before we know it, when we have changes of law clerks, new law

1 clerks coming in. And just who knows. Nobody can predict.
2 But I just wanted sheer numbers.

3 And my last question on this is, we technically had a
4 three-year trust duration, right? And I'm sure this is like
5 every other one I've ever seen in all these years: There's an
6 ability to extend the life of the trust. Am I correct that in
7 August we have a three-year end of trust --

8 MR. MORRIS: Your Honor?

9 THE COURT: -- unless otherwise extended, Mr. Morris?

10 MR. MORRIS: Your Honor, you're exactly right. And
11 we will be filing a motion, probably in the next week or two,
12 to continue the trust, precisely because of all of this
13 litigation will not be resolved on the third anniversary. So
14 you're exactly right, Your Honor. We're in the process of
15 drafting it. I can't see how it will be opposed, but I'm sure
16 it will be.

17 We'll have a chart of all of the outstanding litigation.
18 Your Honor will see how many pieces of litigation are still
19 outstanding at that time. But I do expect to file that with
20 the Court in the next week or two.

21 THE COURT: All right. And I won't get ahead of
22 myself, but, really, the only thing, I'm guessing, after close
23 to three years, that is left as far as trust administration is
24 concluding these lawsuits. Probably all the assets have been
25 liquidated, right, at this point? Or --

1 MR. MORRIS: You know, I don't know off the top of my
2 head. I think there are a handful of assets, there may be a
3 few assets that remain unsold. There's some, you know,
4 managerial responsibilities over certain funds that we have to
5 dispose of. But all of that is kind of irrelevant because all
6 of that, I'm certain, will be completed before the end of the
7 litigation cycle. You know, like, we can talk about the cases
8 that are pending, but, you know, we had a new case filed just
9 recently, right, for leave to remove Jim Seery as Trustee.
10 And so, you know, if there's -- that's -- we're talking about
11 the litigation that's pending. We also have to be concerned
12 with what litigation Mr. Dondero might bring in the future.
13 And, you know, if he can promise that he'll never bring
14 another lawsuit, we might have a different view. But, you
15 know, with the threat of ongoing litigation, yeah, we're just
16 going to have to continue to husband resources.

17 But back to your specific question of the length of the
18 trust, we do expect to file a motion shortly to extend the
19 life of the trust, probably by a year, maybe two, but probably
20 by a year.

21 THE COURT: Okay. All right. The Court --

22 MR. MORRIS: Your Honor, I really apologize, but I
23 just have to tell you that I'm really low battery on my
24 computer. For some reason, my charger is not working. And if
25 I go blank, you'll know why. I'll switch to my phone.

1 THE COURT: Okay. Thank you.

2 As far as the ruling here today, I will extend the stay of
3 this what I'll call a contested matter. Even though we don't
4 have a response to Hunter Mountain's motion for leave to file
5 the Delaware lawsuit on file yet, I'm calling it a contested
6 matter that's been initiated by the Hunter Mountain motion.
7 I'm going to extend the stay on letting the contested matter
8 go forward until all appeals have been finally exhausted in
9 connection with this Court's prior orders in which it has
10 ruled Hunter Mountain does not have stay to either file the
11 lawsuit -- oh, yes, I'm misspeaking, I meant to say standing
12 just now when I said stay. The parties know the orders I'm
13 talking about. Twice now, this Court has ruled that Hunter
14 Mountain does not have standing to pursue litigation. The
15 first time was in connection with when Hunter Mountain wanted
16 to sue claims purchasers Farallon and Stonegate, I think it
17 was called, Stonehill, and Mr. Seery concerning certain claims
18 trading that, I'll call it, that happened during the case.

19 I ruled extensively then, and I hear Judge Brown has it on
20 appeal now, why this Court thought Hunter Mountain did not
21 have standing under the confirmation order, the plan, the
22 Claimant Trust Agreement, or Delaware law.

23 And then I understand there's a new appeal when the Court
24 ruled Hunter Mountain doesn't have standing to pursue a
25 valuation complaint.

1 So, until all appeals, whether it ends in the District
2 Court or ends in the Fifth Circuit or I suppose a cert
3 petition could be filed to the Supreme Court, until all of
4 those appeals have been exhausted, this matter will not go
5 forward.

6 I have not been convinced today that the standing issues
7 now with regard to this newest Hunter Mountain motion are
8 sufficiently different where I should go forward and hear the
9 motion for leave.

10 So, as I've alluded to a couple of times, I think it's in
11 the interests of judicial economy and the efficient
12 administration of justice and in the interests of the parties
13 that I continue the stay in effect. I think there are very
14 real issues that we do have, collateral estoppel and law of
15 the case and other sorts of estoppel issues that would even
16 preclude me, should preclude me, from looking at the current
17 motion for leave.

18 But I will nevertheless look at the four-prong test for
19 stays that traditionally are applied. Prong #1, whether there
20 has been a showing of likelihood of success on the merits.
21 Again, I view that I've already ruled on this, and I've spilt
22 much ink on this, written well over a hundred pages on this.
23 And I think there is a likelihood of success on the merits
24 with regard to the issue of Hunter Mountain not having
25 standing on appeal.

1 I think there would be certainly harm and injury here,
2 I'll say irreparable harm, if we had to go through this yet
3 again, yet again, yet again. The balance of harms certainly
4 -- well, I don't just find the Reorganized Debtor to be
5 harmed. Whether Hunter Mountain realizes it or not, everyone
6 is going to be harmed if more litigation, more expense, is
7 incurred litigating the same darn thing again. And again,
8 based on what I've heard today, I don't see it any
9 differently.

10 The cases that were filed at 7:00 p.m. Central Time last
11 night, as I said, I wasn't even aware of it. I haven't looked
12 at them. But they are older cases. It's not like something
13 hot off the press from last week that Hunter Mountain would be
14 justified in putting before the Court if it was germane. And
15 just glancing at them, they don't seem to be relevant to this
16 situation, where you have a plan that went out on notice,
17 voting, opportunity for people to object, the Court approved
18 the plan and the Claimant Trust Agreement in a confirmation
19 order that was appealed.

20 We have, on top of that, the Delaware law that seemed to
21 be fairly dispositive that Hunter Mountain is not to be deemed
22 a beneficial owner of the trust.

23 So it is not in anyone's interest, as far as balancing of
24 harms here, in this matter going forward, as long as the
25 issues are primed for an appellate judge to either say you got

1 it wrong, Judge Jernigan, or you got it right. And the public
2 interest is, I think, in favor of judicial economy and
3 efficient administration of justice in this regard.

4 So if I go to the four-pronged test, it results in, I
5 think, the stay being extended here. But, again, this is kind
6 of a unique animal. I'm not sure that's even the way we
7 should view it. The way we should view it is I've been asked
8 again and again and again to rule on this issue. I've ruled
9 on it -- I say three times because I did a lengthy order on a
10 motion to reconsider the first time I did an order on this.
11 So I have done three lengthy rulings on this.

12 I guess I'm just going to say, in closing, and I want this
13 to be helpful but I'm guessing it might not be: The optics
14 here, Ms. Deitsch-Perez, look terrible. Terrible. I mean,
15 how else should it look to the Court? It's just like this has
16 become a blood sport and the optics make it look like, well,
17 it's not about justice and fairness. It's taken this very
18 ugly turn some time ago that let's try --

19 MS. DEITSCH-PEREZ: We agree the --

20 THE COURT: -- let's try to destroy Mr. Seery. What
21 else is a rational judge supposed to think?

22 MS. DEITSCH-PEREZ: Your Honor, Mr. Seery --

23 THE COURT: Now it's gotten to the point of raising
24 the same issue again and again and again. And guess what. If
25 this was going forward, if there was not going to be a stay in

1 place, I would be inclined to consider Rule 11 sanctions. How
2 many times is it proper for a party to keep asking for the
3 same thing again and again? You know, we'll use a different
4 counsel this time. We'll say it's different this time. It's
5 not different.

6 MS. DEITSCH-PEREZ: Your Honor, it is different, and
7 Mr. Seery -- and put it -- take it away from Mr. Seery. The
8 Claimant Trustee is the fiduciary for the parties who may
9 benefit ultimately from the Claimant Trust. And so they have
10 a right to make sure that the Claimant Trustee is not
11 preventing their rights from vesting. It is a perfectly
12 legitimate exercise. It is a perfectly legitimate endeavor.

13 And the optics do look bad. It looks like that the estate
14 is doing everything it can to prevent scrutiny of that.

15 So we agree the optics are bad, but in exactly the
16 opposite way. If there were transparency here, if we could
17 actually get a trustee who doesn't have this conflict, this
18 case could be resolved.

19 THE COURT: The 55 appeals, eight or ten of which are
20 still in the pipeline. Relatively few, as you said. But we
21 are three years post-effective date. That was the optics I'm
22 talking about. There is no reason for this case not to be
23 over except for this. That's the optics I'm talking about.

24 And it's one thing to legitimately exercise your right to
25 appeal, a party's right to appeal when they disagree. God

1 bless America. That's what our judicial system is about. But
2 when you start bringing the same motion again and again and
3 again, that is definitely Rule 11 territory and definitely
4 affects credibility. Okay?

5 Mr. Morris, if you're still there, please upload a simple
6 form of order reflecting what the Court ruled today.

7 We are adjourned.

8 MR. MORRIS: I am. Thank you. Thank you, Your
9 Honor.

10 THE CLERK: All rise.

11 (Proceedings concluded at 11:18 a.m.)

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CERTIFICATE

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I certify that the foregoing is a correct transcript from
the electronic sound recording of the proceedings in the
above-entitled matter.

23

/s/ Kathy Rehling

06/13/2024

24

Kathy Rehling, CETD-444
Certified Electronic Court Transcriber

Date

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