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

In re:	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,	Case No. 19-34054-sgj11
Reorganized Debtor.	

HIGHLAND CLAIMANT TRUST'S MOTION FOR AN ORDER EXTENDING DURATION OF TRUST

The Highland Claimant Trust ("**Claimant Trust**"), formed under the confirmed and effective *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (As Modified)* [Docket No. 1808] ("**Plan**"),[1] respectfully moves the Court for entry of an order, substantially in the form attached to this motion as **Exhibit A**, extending the duration of the Claimant Trust for one year (the "**Motion**"). In support of this Motion, the Claimant Trust states:

[1] Capitalized terms used but not defined in this motion are defined in the Plan.

I. BACKGROUND

A. Jurisdiction and Venue

1. This Court has jurisdiction over this Motion under 28 U.S.C. §§ 157 and 1334 and the retention of jurisdiction provisions of Article XI of the Plan. This is a core proceeding under 28 U.S.C. § 157(b)(2). Venue in this district is proper under 28 U.S.C. §§ 1408 and 1409.

B. The Plan

2. On February 22, 2021, the Court entered the *Order (i) Confirming the Fifth Amended Plan of Reorganization (as Modified) and (ii) Granting Related Relief* [Docket No. 1943] ("**Confirmation Order**") confirming the Plan.[2] The Plan went effective on August 11, 2021 [Docket No. 2700] ("**Effective Date**").

3. The Plan created the Claimant Trust as of the Effective Date for the purpose of monetizing and managing most of the Debtor's assets, which were vested in the Claimant Trust, and distributing the proceeds to Claimant Trust Beneficiaries *(i.e.*, holders of Claimant Trust interests in Classes 8 and 9). The Claimant Trust is managed by its designated Claimant Trustee, Mr. James P. Seery, Jr., and the Claimant Trust Oversight Board.

C. The Claimant Trust

4. The Claimant Trust is governed by the Claimant Trust Agreement, which generally provides for, among other things: (a) the payment of or reserve for Claimant Trust Expenses (including all indemnification obligations); (b) the investment of Claimant Trust Assets in Cash and certain U.S. Government securities; (c) the orderly monetization of the Claimant Trust Assets; (d) litigation of any Causes of Action (including through the Litigation Sub-Trust); (e) resolution

[2] The Fifth Circuit Court of Appeals affirmed the Confirmation Order in all respects but one (the scope of exculpations) not relevant here. *NexPoint Advisors, L.P. v. Highland Cap. Mgmt., L.P. (In re Highland Cap. Mgmt., L.P.),* 48 F.4th 419 (5th Cir. 2022).

of all Claims, including administration of disputed claims reserves; and (f) the distribution of Cash, after reserves determined by the Claimant Trustee, to Claimant Trust Beneficiaries.

5. Section 9.1 of the Claimant Trust Agreement provides that the Claimant Trust will be dissolved when:

> (a) the Litigation Trustee determines that the pursuit of Estate Claims is not likely to yield sufficient additional proceeds to justify further pursuit of such Estate Claims, (b) the Claimant Trustee determines that the pursuit of Causes of Action (other than Estate Claims) is not likely to yield sufficient additional proceeds to justify further pursuit of such Causes of Action, (c) the Clamant Trustee determines that the pursuit of sales of other Claimant Trust Assets is not likely to yield sufficient additional proceeds to justify further pursuit of such sales of Claimant Trust Assets, (d) all objections to Disputed Claims and Equity Interests are fully resolved, (e) the Reorganized Debtor is dissolved, and (f) all Distributions required to be made by the Claimant Trustee to the Claimant Trust Beneficiaries under the Plan have been made, but in no event shall the Claimant Trust be dissolved later than three years from the Effective Date unless the Bankruptcy Court, upon motion made within the six-month period before such third anniversary (and, in the event of further extension, by order of the Bankruptcy Court, upon motion made at least six months before the end of the preceding extension), determines that a fixed period extension (not to exceed two years, together with any prior extensions) is necessary to facilitate or complete the recovery on, and liquidation of, the Claimant Trust Assets.

6. This provision's three-year sunset on the Claimant Trust will occur on August 11, 2024, unless the Claimant Trust is extended in accordance with the terms of the Claimant Trust Agreement. That is the purpose of this Motion.

7. To date, the Claimant Trust has accomplished a great deal. Among many other things, the Claimant Trust has successfully monetized numerous assets and made distributions to the Claimant Trust Beneficiaries substantially exceeding expectations. But the Claimant Trust's work is not complete. Most significantly, substantial litigation must be fully and finally resolved before "all Distributions required to be made by the Claimant Trustee to the Claimant Trust Beneficiaries under the Plan" can be made.

8. As the Court is aware, most of the Claimant Trust's time and expenses have been devoted to addressing litigation initiated or caused by James Dondero and his affiliates. In addition to the many matters commenced in this Court since the Effective Date, the Claimant Trust and Mr. Seery have been forced to defend scores of appeals Mr. Dondero and his entities have filed in the District Court and the Fifth Circuit Court of Appeals.[3]

9. Focusing solely on pending matters, attached as **Exhibit B** is a list of all *unresolved* litigation—all of which involves Mr. Dondero and/or certain of his affiliates, none of whom are Claimant Trust Beneficiaries—that the Claimant Trust must address in the coming months and (perhaps, but hopefully not) years (collectively, the "**Current Litigation**").

10. Among other things, the Claimant Trust has been forced to litigate to judgment collection actions on over $60 million of promissory notes owing by Mr. Dondero and his affiliates (the "**Notes Judgments**"). Collecting on those notes should have been a straightforward and substantial achievement for the Claimant Trust were it not for years of litigation—during which Mr. Dondero and the other defendants fabricated a defense this Court ultimately found nonsensical and insufficient to defeat summary judgment.[4]

11. Because the Current Litigation cannot be finally resolved by August 11, 2024, an extension of the Claimant Trust is required.[5]

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[3] Separately, although neither the Claimant Trust nor Highland is a litigant, certain of Mr. Dondero's entities are parties to litigation pending in the United States District Court for the Southern District of New York and the United States Court of Appeals for the Second Circuit (the "**New York Litigation**") that is further impeding the Claimant Trust's ability to complete its asset monetization plan because certain funds in which Highland is invested refuse to make distributions while the litigation remains unresolved. Notably, the New York Litigation concerns the same issues that Mr. Dondero's entities pursued in Guernsey but that the Royal Court in Guernsey dismissed following an evidentiary hearing.

[4] The Notes Judgments were issued by the District Court after acceptance of this Court's Reports and Recommendations. The Notes Judgments are presently before the Fifth Circuit; the appeal has been fully briefed and oral argument has tentatively been scheduled for the week of August 5, 2024. *See* Fifth Circuit Court of Appeals, Case No. 23-10911, Dkt. No. 104.

[5] In addition to managing the Current Litigation, a few claims remain to be resolved, and the Reorganized Debtor must complete the wind-up of the Managed Funds and monetize a handful of remaining assets (collectively, the

II. RELIEF REQUESTED

12. By this Motion, in accordance with Section IV.B.14 of the Plan, the Claimant Trust seeks to extend the Claimant Trust's duration for an additional one year beyond the "third anniversary" of August 11, 2024, without prejudice to the rights of the Claimant Trust to seek further extensions in accordance with the Plan. This is the Claimant Trust's first such request.[6]

13. As noted above, Section IV.B.14 of the Plan provides for the Claimant Trust's dissolution three years from the Effective Date, "unless the Bankruptcy Court, upon motion made within the six-month period before such third anniversary … determines that a fixed period extension (not to exceed two years …) is necessary to facilitate or complete the recovery on, and liquidation of the Claimant Trust Assets …."

14. Bankruptcy Rule 9006(b) also empowers the Court to extend unexpired periods:

> when an act is required or allowed to be done at or within a specified period by [the Bankruptcy Rules] or by a notice given thereunder or by order of court, the court for cause shown may at any time in its discretion … with or without motion or notice order the period enlarged if the request therefor is made before the expiration of the period originally prescribed or as extended by a previous order.

In addition, Bankruptcy Code § 105(a) provides that the "court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]." Accordingly, because the Claimant Trust's third anniversary has not yet passed and this Motion is properly brought within the six-month period preceding the third anniversary as required in the Plan, the Court is authorized to grant the relief requested in this Motion.

"**Remaining Activities**"). Even if the Remaining Activities could be completed by August 11, 2024, the Motion should be granted because the Current Litigation is likely to continue for an extended period thereafter.

[6] This Motion is timely. Section 9.1 of the Claimant Trust Agreement requires that a motion to extend the duration of the Claimant Trust be brought "within the six-month period before such third anniversary …" This Motion is brought within that six-month period. Additionally, the Claimant Trust does not seek an extension of more than two years, as sanctioned by the Claimant Trust Agreement. Although the Claimant Trust requests an extension of one year, the Claimant Trust respectfully reserves the right to request further extensions in the future if necessary.

15. As described above, the Claimant Trust and its professionals have been diligently pursuing the monetization of assets vested by the Plan in the Claimant Trust. The last 30 months have been eventful and highly successful in monetizing most of the Claimant Trust's assets, resolving nearly all claims, and making substantial distributions to Claimant Trust Beneficiaries, all as intended by the Plan and the near-unanimity of the creditors who voted for it in 2021.

16. Despite the significant progress the Claimant Trust has made to date, the Claimant Trust needs more time to complete its mandate. The Claimant Trust has not yet achieved, and cannot achieve, its ultimate goal of resolving all Claims, dissolving all entities, and completing distributions to Claimant Trust Beneficiaries as required under the Plan, in part, because of, among other things, the Current Litigation and the need to retain funds to satisfy senior obligations, including material indemnification obligations related to pending and threatened actions against indemnified parties.

17. Accordingly, the Claimant Trust respectfully requests an extension of its time to operate under the Plan for one year, through and including August 11, 2025. Such an extension is necessary, prudent, and in the best interests of all stakeholders, principal among them the Claimant Trust's beneficiaries, and is subject to the Claimant Trust's reservation of the right to seek further extensions as and if necessary, consistent with the terms of the Claimant Trust Agreement.

III. PRAYER

WHEREFORE, the Claimant Trust respectfully requests that the Court (i) enter the order attached as **Exhibit A** granting the relief requested in this Motion and (ii) grant the Claimant Trust any additional relief the Court deems appropriate.

Dated: June 19, 2024

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EXHIBIT A

Proposed Order

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

In re:	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,	Case No. 19-34054-sgj11
Reorganized Debtor.	

ORDER EXTENDING DURATION OF CLAIMANT TRUST

The Court has considered the motion of the Highland Claimant Trust for the entry of an order extending the duration of the Claimant Trust through and including August 11, 2025 (the "**Motion**").[1] The Court finds and concludes that: (a) notice of the Motion was adequate and no additional notice of the Motion is required; (b) the Court has jurisdiction to consider the Motion under 28 U.S.C. §§ 157 and 1334 and the retention of jurisdiction provisions of the Plan; (c) this is a core proceeding under 28 U.S.C. § 157(b)(2); (d) venue is proper under 28 U.S.C. §§ 1408 and 1409; and (e) the relief requested in the Motion is in the best interest of the Debtor, its creditors, the Claimant Trust and its beneficiaries, and all parties in interest, and is necessary for the Claimant Trust to complete the monetization of the Claimant Trust Assets. Accordingly,

IT IS ORDERED that:

1. The Motion is GRANTED.

2. The duration of the Claimant Trust is extended from August 11, 2024, through and including August 11, 2025.

[1] Capitalized terms used but not defined in this order are defined in the Motion.

3. This Order is without prejudice to the Claimant Trust's right to seek further extensions of its duration under the Plan.

4. This Court retains jurisdiction and power to hear and determine all matters arising from or related to the implementation of this Order.

###End of Order###

EXHIBIT B: UNRESOLVED, PENDING LITIGATION

FIFTH CIRCUIT		
Matter	**Description**	**Status**
1. Dondero v. Jernigan, Case No. 24-10287	*Recusal Litigation*: Appeal of District Court decision denying Dondero's *Petition for a Writ of Mandamus* to recuse Judge Jernigan. *See* USDC No. 3:23-cv-726-S, Dkt. No. 25.	Opening brief filed June 17, 2024
2. NexPoint Advisors v. HCMLP, Case No. 24-10267	*Admin Claim/Contract*: Appeal of District Court decision affirming Bankruptcy Court's judgment (a) denying administrative claims and (b) granting HCMLP's breach of contract claims. *See* USDC No. 3:22-cv-2170-S, Dkt. No. 35.	Opening brief filed June 18, 2024
3. NexPoint v. HCMLP, 23-10911, 23-10921	*Notes Litigation*: Appeal of judgments entered by District Court granting HCMLP's summary judgment motion on breach of contract claims arising from breach of promissory notes. *See* USDC No. 3:21-cv-0881-X, Dkt. Nos. 127, 128.	Matter fully briefed; oral argument tentatively scheduled for week of August 5, 2024. If (and only if) any judgment is reversed, the parties will either conduct a jury trial in District Court or litigate the appeal of the motion denying arbitration.
4. HCMFA v. HCMLP, Case No. 23-10534	*Confirmation/Gatekeeper Appeal*: Direct appeal of Bankruptcy Court order conforming Confirmation Order to prior Fifth Circuit decision; challenge to scope of Plan's Gatekeeper provision.	Matter fully briefed and argued on 2/8/24; remains *sub judice*.
5. Dondero v. HCMLP, Case No. 22-10889	*Contempt I*: Appeal of District Court order affirming Bankruptcy Court's contempt judgment against Dondero. *See* USDC No. 3:21-cv-01590-N, Dkt. No. 42.	Matter fully briefed and argued on 9/6/23; remains *sub judice*.

DISTRICT COURT		
Matter	**Description**	**Status**
1. HMIT v. HCMLP, Case No. 3:23-cv-02071-E	*HMIT "Claims Trading" Appeal*: Appeal of Bankruptcy Court order denying leave to commence action on behalf of HCMLP against Seery and Claims Traders alleging breach of fiduciary duty and related causes of action. *See* Bankr. Dkt No. 3903.	Matter fully briefed; waiting to see if District Court wants oral argument. If (and only if) the Order is ever reversed, the parties will litigate the claims in the Bankruptcy Court.
2. DAF v. HCMLP, Case No. 3:23-cv-1503-B	*DAF "HarbourVest" Appeal*: Appeal of Bankruptcy Court order dismissing Complaint alleging HCMLP and Seery violated SEC rules and breached fiduciary duties. *See* Adv. Pro. No. 21-03067, Dkt. Nos. 166, 167.	Matter fully briefed; waiting to see if District Court wants oral argument. If (and only if) the Order is ever reversed, the parties will litigate the claims in the Bankruptcy Court.
3. HCMLP v. HCMFA, Case No. 3:21-cv-00881-X	*Vexatious Litigant Motion*: HCMLP's motion to designate Dondero and related entities "vexatious litigants" and cross-motions to strike HCMLP's reply. *See* USDC Dkt. Nos. 136, 137.	Matter fully briefed, including Respondents' motion to strike HCMLP's reply brief; parties negotiating joint request for oral argument. The Dondero parties seek discovery and an evidentiary hearing, none of which has been ordered, agreed to, or scheduled.

DISTRICT COURT		
Matter	**Description**	**Status**
4. HCRE v. HCMLP, Case No. 3:24-cv-1479-S	*Appeal of "Bad Faith" Decision:* HCRE's appeal of Bankruptcy Court orders (a) granting HCMLP's motion for "bad faith" finding and (b) denying HCRE's motion for reconsideration. *See* Bankr. Dkt. Nos. 4038, 4039, 4069.	Notice of Appeal (as amended) filed (Bankr. Dkt. No. 4074); no briefing schedule fixed.
5. Dugaboy v. HCMLP, [TBD]	*Appeal of "Valuation Information" Decision*: Appeal of order granting HCMLP's motion to dismiss Dugaboy's Complaint seeking "valuation information" from the Claimant Trust. *See* Adv. Pro. No. 23-03038, Dkt. No. 27.	Notice of Appeal filed (Adv. Pro. No. 23-03038, Dkt. No. 30); not yet assigned; no briefing schedule fixed.
6. DAF v. HCMLP, Case No. 3:21-cv-1585-S	*Appeal of Seery Employment Order*: DAF's appeal of order denying motion for modification of Seery retention order. Bankr. Dkt. No. 2506.	Matter abated pending resolution of Contempt II. *See* Bankr. Dkt. No. 4070.

BANKRUPTCY COURT		
Matter	**Description**	**Status**
1. HCLOM Claim Objection, Bankr. Dkt. No. 3657	*HCMLP Objection to HCLOM Claim*: HCMLP's objection to HCLOM's scheduled claims will be litigated after Acis' related motion to intervene is determined (Bankr. Dkt. No. 3695). *See* Bankr. Dkt No. 4086.	Hearing on Acis' motion to intervene scheduled for July 10; litigation of HCMLP's claim objection will follow entry of an order resolving Acis' intervention motion.
2. Kirschner v. Dondero, AP No. 21-03076	*Kirschner Litigation*: Lawsuit commenced by Litigation Trustee against Dondero and certain related parties to recover damages for fraudulent transfers, breaches of duties, and related matters.	This adversary proceeding was stayed pursuant to Court order. Adv. Pro. No. 21-03076, Dkt. No. 338.
3. Dugaboy Motion to Preserve Evidence and Compel Forensic Imaging of James P. Seery, Jr.'s iPhone, Bankr. Dkt. No. 3802.	*Dugaboy's "Imaging" Motion*: Dugaboy moved to compel Seery to preserve evidence and compel forensic imaging.	Seery's deadline to respond was extended to July 7, 2023 (*see* Bankr. Dkt. No. 3849), and then the matter was stayed pursuant to Court order. Bankr. Dkt. No. 3897.
4. Motion for Leave to File a Delaware Complaint, Bankr. Dkt. No. 4001	*HMIT "Removal" Motion*: On June 12, the Bankruptcy Court further stayed HMIT's motion for leave to commence as action to remove Seery as Claimant Trustee. *See* Bankr. Dkt. No. 4000.	An order staying HMIT's removal motion will be entered shortly. This matter will then be stayed unless HMIT seeks an interlocutory appeal or files a petition for a writ of mandamus.