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July 3, 2024

BY ECF ONLY

Lyle W. Cayce, Clerk
United States Court of Appeals
for the Fifth Circuit

Re: In re Highland Capital Management Fund Advisors, L.P., et al v. Highland Capital Management, L.P. (In re Highland Capital Management, L.P.), Case 23- 10534

Dear Mr. Cayce:

Pursuant to Rule 28(j), and on behalf of the Appellants in this Appeal, I write to respond to Mr. Pomerantz's letter of July 2, 2024.

While I agree with my esteemed colleague's conclusion that this Appeal is final and ripe for adjudication, and while I generally agree that *Purdue* does not directly bear on this Appeal, I write to address two points on which I do disagree with Mr. Pomerantz.

First, the lesson from *Purdue* is that a bankruptcy court may not invoke some extra-statutory power of equity, or roving equitable power to do what it believes is right, as well-reasoned and well-meaning as doing so may be. The bankruptcy court is a court of limited and strict jurisdiction, and its powers are strictly set forth in the Bankruptcy Code. Just as that jurisdiction and power did not extend to nonconsensual third parties releases in *Purdue*, however wise they may otherwise have been—precisely as has been this Court's precedent for decades—that jurisdiction and power does not support the Gatekeeper Injunction in this Appeal.

Second, Mr. Pomerantz writes that “gatekeeper provisions protecting post-petition fiduciaries whose conduct materially contributed to the resolution of the bankruptcy are justified under the Barton doctrine and other sources of law.” Were that the issue before the Court, I would agree. But that is not the issue. As I have briefed and argued extensively, the Gatekeeper Injunction here does not just protect estate fiduciaries for their actions in managing the estate. Rather, it applies to a whole host of third (and otherwise unprotected) parties, who may not even be fiduciaries; it applies to ordinary business decisions and actions having nothing to do with managing the estate; and it applies *after* chapter 11 plan confirmation when there is no estate and no bankruptcy jurisdiction—this third point being truly unprecedented and in my respectful opinion an egregious usurpation of jurisdiction at the expense of my clients' and others' rights to seek legal redress before our courts.

In *Purdue*, the Sackler family was at least willing to put in \$4.3 billion to mitigate some of the harm they caused, in exchange for their protections. Here, the protected third parties do not even attempt to provide any return consideration for the extraordinary Gatekeeper Injunction, remembering additionally that the Debtor's professionals were paid tens of millions of dollars for their services to the estate.



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Sincerely,

/s/ Davor Rukavina
Davor Rukavina, Esq.

DR:

Cc: All Parties [via ECF]