

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

4 In Re:) **Case No. 19-34054-sgj-11**
5) Chapter 11
6)
7 HIGHLAND CAPITAL) Dallas, Texas
8 MANAGEMENT, L.P.,) July 10, 2024
9) 1:30 p.m. Docket
10 Reorganized Debtor.)
11) MOTION TO INTERVENE FILED BY
12) CREDITOR ACIS CAPITAL
13) MANAGEMENT, L.P. (3695)
14)
15)

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

19 APPEARANCES:

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1 DALLAS, TEXAS - JULY 10, 2024 - 1:37 P.M.

2 THE CLERK: All rise. The United States Bankruptcy
3 Court for the Northern District of Texas, Dallas Division, is
4 now in session, The Honorable Stacey Jernigan presiding.

5 THE COURT: Good afternoon. Please be seated.

6 All right. We are here with a hearing in Highland Capital
7 Management, Case No. 19-34054. We have a motion of Acis
8 Capital to intervene with regard to a contested matter
9 involving Highland CLO Management, Ltd., a claim that it
10 asserts in Highland, and then we have the Reorganized Debtor's
11 objection to that claim. So it's a contested claim objection
12 matter that Acis wants to intervene in.

13 Let me get lawyer appearances first for Acis.

14 MR. COOKE: Thomas Cooke for Acis, Your Honor.

15 THE COURT: All right.

16 MR. BATES: Shawn Bates also for Acis, Your Honor.

17 THE COURT: Okay. Next I'll get lawyer appearances
18 for Highland CLO Management, Ltd.

19 MR. AIGEN: Good afternoon, Your Honor. Michael
20 Aigen from Stinson, and I'm here with Deborah Deitsch-Perez,
21 representing HCLOM.

22 THE COURT: All right. I will now get lawyer
23 appearances for the reorganized Highland.

24 MR. MORRIS: Good afternoon, Your Honor. This is
25 John Morris from Pachulski, Stang, Ziehl & Jones.

1 As the Court may have seen, Highland did not oppose this
2 motion and we didn't file any papers and we're not
3 anticipating being an active participant today, but we are
4 interested in hearing the argument.

5 THE COURT: Okay. Thank you, Mr. Morris. And I did
6 note that you took no position on this.

7 All right. Well, Mr. Cooke or Mr. Bates, who will be
8 making the argument?

9 MR. COOKE: I'll be making the argument, Your Honor.

10 THE COURT: All right.

11 MR. COOKE: This is Thomas Cooke.

12 THE COURT: I'm ready.

13 MR. COOKE: Okay. Your Honor, Acis has moved to
14 intervene in HCLOM's claim objection in the Highland
15 bankruptcy under Federal Rule of Civil Procedure 24. And we
16 have brought alternative arguments.

17 First, we argue that we are entitled -- Acis is entitled
18 to mandatory intervention as a right because Acis is a real
19 party in interest. We have a real interest in the \$9.5
20 million note that we contend was fraudulently transferred from
21 Acis to HCLOM, or HCLOM, Highland CLO Management, in November
22 of 2017. And because we have a real interest in that note, we
23 have the right to intervene under Federal Rule of Civil
24 Procedure 24.

25 Alternatively, Your Honor, we assert that Acis has the

1 right to permissive intervention because the question that is
2 at issue here in this dispute between Highland and HCLOM is a
3 question that shares a common nucleus of facts with the
4 question that is at the heart of part of Acis's ongoing
5 litigation against James Dondero. And that question is
6 whether the transfer agreement whereby the \$9.5 million note
7 was transferred from Highland to HCLOM was -- or from, excuse
8 me, from Acis to HCLOM -- was a valid agreement. We contend
9 that it was not a valid agreement because there was no
10 consideration to Acis for that transfer, Your Honor.

11 And moreover, Your Honor, there is nobody else in this
12 proceeding who is representing Acis's interests. There is no
13 other party in this matter who is bringing the same argument
14 that Acis is bringing -- namely, that the transfer agreement
15 for the note fails for lack of consideration to Acis. Now,
16 Highland is asserting that the transfer agreement fails for
17 lack of consideration to Highland, but there's no one involved
18 in this proceeding who will represent Acis's interests. And
19 --

20 THE COURT: Okay. Let me stop --

21 MR. COOKE: -- therefore --

22 THE COURT: Let me stop you right now. And maybe you
23 were going to get to this. But here is what is first and
24 foremost on my mind. As I understand it, Acis does not claim
25 any entitlement to that \$9-1/2, \$10 million claim in the

1 Highland case.

2 For example, if Acis intervened, it would not be arguing
3 we get a distribution on -- I'm going to call it the \$10
4 million note because it was \$9.5 million plus a bunch of
5 interest. Can I do that, or will it confuse people? All
6 right. So, --

7 MR. COOKE: No objection, Your Honor.

8 THE COURT: -- well, yes, there was a settlement. We
9 all know there was a settlement in the Highland case between
10 Acis and Highland. And what I understood happened as part of
11 that settlement was that Acis waived any claims against
12 Highland or any claims against HCLOM, other than, you know,
13 the \$23 million or whatever it was settlement amount that Acis
14 negotiated on its claim.

15 And then as I understand it, in the big adversary
16 proceeding that's still pending in the Acis case, both
17 Highland and HCLOM were released or dismissed with prejudice.

18 So, again, I'm trying to understand. You're not saying
19 that you're entitled to a \$10 million payment from the
20 Highland estate, are you?

21 MR. COOKE: Certainly not, Your Honor. We are not
22 claiming that we are entitled to continued payments from
23 Highland under this note.

24 The person, the party that we're bringing a claim against,
25 Your Honor, is James Dondero. We're not suing HCLOM and we're

1 not suing Highland. We are suing James Dondero for
2 fraudulently transferring this asset.

3 THE COURT: All right. So are you just worried that
4 findings or a holding might be reached in this claim
5 litigation between Highland and HCLOM that would somehow
6 prejudice you in your adversary against Mr. Dondero? You
7 know, there'd be collateral estoppel or res judicata as to
8 something the Court found or held?

9 MR. COOKE: That is one of our concerns, Your Honor,
10 is that there would be some kind of collateral estoppel effect
11 that, yeah, that would affect our litigation against James
12 Dondero.

13 But we are also, given that our claim is one for
14 fraudulent transfer, and given that fraudulent transfers --
15 the remedy for fraudulent transfers is to avoid the transfer,
16 we would want to avoid an outcome where the note was, by the
17 operation of this proceeding, where the note was -- ended up
18 in HCLOM's hands. We would want to avoid the transfer. So we
19 have an interest in the note in that sense.

20 THE COURT: Well, I need to understand that point
21 better. Let's say that at the end of the day HCLOM prevails
22 on its claim. You've released any claim against HCLOM.
23 You're going against Mr. Dondero over this transaction. So,
24 again, I'm trying to understand.

25 I guess I understand the res judicata/collateral estoppel

1 concern, which my kneejerk reaction to that is can't you all
2 agree to some sort of language that nothing that happens in
3 the litigation between Highland and HCLOM impairs or improves
4 anyone's rights in the Acis adversary?

5 I mean, maybe I'm being too simple-minded, but it seems
6 like an easy fix if people would agree to it. I mean, to me,
7 that's what you're worried about. You said that's one thing,
8 but I'm not understanding anything more than that.

9 MR. COOKE: Yes. Well, Your Honor, the -- if it were
10 possible for us to reach an agreement like that and such an
11 agreement would be binding and really would result in no
12 prejudice to any party in the ongoing Acis adversary against
13 James Dondero, that would be -- I mean, that would essentially
14 resolve our concern. That's accurate.

15 But -- and, certainly, we don't -- Acis does not concede
16 that any kind of finding here would necessarily prejudice us,
17 even if it were a finding adverse to our interests. But we
18 must intervene to protect our interests, given that
19 uncertainty.

20 THE COURT: Okay. Anything else you wanted to
21 present? I interrupted the flow, I guess. So I'll let you go
22 back to whatever points you were going to make.

23 MR. COOKE: Well, if Your Honor doesn't have any
24 other questions, I think what I will do is just hear the other
25 side out and I'll wait to give Acis's rebuttal.

1 THE COURT: Okay. Thank you.

2 Mr. Aigen, will you --

3 MR. COOKE: Thank you, Your Honor.

4 THE COURT: Will you be making the argument?

5 MR. AIGEN: Yes, Your Honor. Are you able to hear me
6 all right?

7 THE COURT: I can hear you.

8 MR. AIGEN: Your Honor, like I said, Michael Aigen
9 representing HCLOM. We're here arguing against Acis's attempt
10 to intervene in this claim proceeding.

11 The issue for today is whether Acis, who, as you've
12 already recognized, is not actually claiming a right to be
13 paid under the note, should be allowed to intervene in this
14 proceeding. And we have two reasons that the intervention
15 request should be denied. Number one, that they don't have an
16 interest in the note; and number two, that they failed to
17 pursue the claim for years.

18 Each of these arguments were made in our briefing, and you
19 seem to have recognized and understood them from what you've
20 discussed so far, so I won't get into these into a lot of
21 detail, other than to address some of the items that came up
22 in argument now and some of the arguments that were made in
23 the reply brief.

24 As you're well aware, the standard --

25 THE COURT: Can I --

1 MR. AIGEN: -- for intervention has --

2 THE COURT: I'm going to interrupt the flow for you
3 as well. I apologize.

4 What about my idea of, gosh, can we just craft some
5 language here that nobody's position in that Acis adversary
6 proceeding is either impaired or improved by whatever happens
7 with regard to this \$10 million claim allowance or
8 disallowance?

9 MR. AIGEN: Yeah. And Your Honor, that is obviously
10 a good question, and I guess I have two responses to it. One
11 is that our understanding was similar to what counsel just
12 argued, that it was more than that, that they claimed to have
13 an interest, so we didn't -- I didn't think that was a
14 possibility, and that's sort of what counsel said before you
15 sort of questioned him more.

16 But I guess, number two, more importantly, my answer
17 unfortunately would have to be I don't know, and the main
18 reason for that is we're not counsel in that other case. So
19 there may be something to that, but being that I'm not counsel
20 in that case, I have no involvement in that case, I feel like
21 I would be stepping beyond what I'm supposed to do by giving
22 you an answer of a yes or no, other than just, oh, maybe
23 that's something that could be discussed.

24 THE COURT: Okay. See, I had forgotten, you are not
25 counsel of record for Mr. Dondero in that adversary

1 proceeding. You're counsel of record on a lot --

2 MR. BATES: Your Honor, if I --

3 THE COURT: -- of entities.

4 MR. AIGEN: Correct.

5 THE COURT: Okay. Mr. Bates, I usually don't allow
6 interruption. You'll get a rebuttal. Okay?

7 MR. BATES: I apologize. I was just going to ask if
8 the Court might want us to take a few days and have the
9 discussion on your idea, which I think is quite a good one.
10 I'm not trying to rebut Mr. Aigen. I'm just thinking --

11 THE COURT: Why a few days?

12 MR. BATES: -- it's an idea that I think has a lot of
13 merit.

14 THE COURT: Why a few days?

15 MR. BATES: Oh, however long it takes -- however long
16 it takes for us to get a hold of the other side. That's all.
17 A day. An hour.

18 THE COURT: Okay.

19 MR. BATES: It's just a suggestion. I apologize,
20 Your Honor. I'll go back to --

21 THE COURT: Okay. Well, okay.

22 MR. AIGEN: And we're here, Your Honor, to argue
23 this. My argument is five, ten minutes. I would suggest we
24 at least make our arguments. We're here in front of you. And
25 if we want to try to work on something while you're holding

1 out to the -- you know, to make a decision, I could see that.
2 But, obviously, if you're telling us this hearing is going to
3 be adjourned and you want us to go do that, I'm obviously not
4 going to say no. But we're here. We're ready to argue. And
5 if something could be worked out, I'm willing to, you know,
6 try to get those other counsel involved. Whatever Your Honor
7 would rather have here.

8 THE COURT: Okay. I'm not going to adjourn this for
9 a few days. I would adjourn it for a few minutes. But you
10 and Ms. Deitsch-Perez represent Mr. Dondero on plenty of other
11 matters, right? So I would think that it wouldn't be that big
12 of an obstacle to reach your client in this matter.

13 MR. AIGEN: Like I said, Your Honor, we're just not
14 on that case. And I would be hesitant to make an agreement
15 that binds a case that I'm not a lawyer in, and Ms. Deitsch-
16 Perez isn't in that, either.

17 So, yes, you are right, we have -- we represent Mr.
18 Dondero in many issues, but the whole Acis side, this is the
19 closest I've really come to Acis. So everything going on
20 there, I just don't have familiarity with, so I don't know how
21 long it would -- we would have to get in touch with those
22 lawyers. I just don't know whether that's something that
23 could be done in a couple minutes, and that's why I said I'd
24 rather just have the argument today. But whatever you want,
25 Your Honor.

1 THE COURT: All right. You can continue with your
2 argument, Mr. Aigen.

3 MR. AIGEN: Okay. And like I said, Your Honor, this
4 shouldn't take long. Most of our arguments are in our brief,
5 and you've already touched on probably what we think is the
6 most important point. So I'll try to move along quickly and
7 not waste any of the Court's time.

8 As you know, there are the four elements to intervene.
9 The request has to be timely. They have to have an interest
10 in the transaction that's subject to the action. The
11 intervenor must be in a position that the disposition of the
12 action might impair the ability to protect its interests. And
13 the interest be inadequately represented by the existing
14 parties.

15 Our first argument, as you well know, is that they
16 disclaimed any interest in the note as part of the settlement
17 agreement. And you really sort of took my thunder out of this
18 argument, so I can move through it quickly. But, basically,
19 Acis agreed to withdraw its claims against the Debtor-
20 controlled defendants, including HCLOM. And Acis admits this
21 in their reply brief. They're not looking to be paid here
22 under the note.

23 So that, it should be the end of the story. They admit
24 they have no interest in being paid under the note, which
25 means it has no interest in this proceeding that could be

1 impaired as part of this action. Which means that two of the
2 elements -- having an interest and having the interest
3 potentially be impaired -- are not met here.

4 So what is Acis's response to all this? It's not that we
5 have an interest in being paid under the note. They've
6 admitted that's not the case behind their questioning. But
7 instead they say, well, we never released our claims against
8 Mr. Dondero, who we're currently suing in another proceeding,
9 not to be paid under the note, but for breach of fiduciary
10 duty, and those proceedings somehow relates to this note.

11 And my response to that really is, you know, with all due
12 respect, who cares about these other issues? Acis might not
13 have released claims related to the note against everyone in
14 the world except for the Debtor and HCLOM, but that's all that
15 matters with respect to the claim in this action. The purpose
16 of this matter is to determine whether HCLOM has a potential
17 claim against the estate and will be paid under the note. And
18 they admit they're not doing that.

19 So, really, the question is what is the claimed interest,
20 then? And that's what's important and that's what I want to
21 touch on here. It's an interest -- and this is from their
22 brief, and this is what they've said before -- an interest in
23 showing that the transfer agreement was fraudulent transfer --
24 fraudulently transferred. So that's very important. It's not
25 an interest to be paid in the note. It's an interest to show

1 that the transfer agreement was fraudulently transferred.

2 So the problem for Acis, Your Honor, is whatever that
3 means, the supposed interest, it's not an issue in this
4 proceeding, let alone something being impaired in any way by
5 this proceeding. This alleged fraudulent transfer issue that
6 they don't want impaired only becomes an issue in this
7 proceeding if you let them intervene. If you don't allow
8 intervention, there's simply no interest to show that the
9 transfer agreement was fraudulently transferred because
10 neither Highland or my client are making those arguments.

11 So, to get into what I think was the main point before,
12 and that's what I want to touch on here, is possibly, I guess,
13 there could be a different answer if Acis was coming to this
14 Court and saying we have a need to intervene because the
15 issues in this matter will have a preclusive effect on the
16 other litigation. And despite what counsel told you, that's
17 not what they have in their motion. They say the opposite in
18 their motion. They say that any determination in this
19 proceeding wouldn't preclude any of its claims in the other
20 litigation. And that's Page 9 of its motion. Page 9 of its
21 motion, the quote is, "To the contrary, neither res judicata
22 (claim preclusion) nor collateral estoppel (issue preclusion)
23 would prevent Acis from asserting its rights in the note, no
24 matter how the Court decides HCLOM's claims or Highland's
25 objection."

1 In other words, Highland is taking the -- sorry -- Acis is
2 taking the position that the results of this contested matter
3 have nothing to do with whatever litigation they have on the
4 side. They have no interest that could be impaired here.

5 If they came to this Court and took the position that,
6 yes, we could be collaterally estopped or we could be
7 judicially estopped, we'd have to look at those cases and
8 examine and figure out if that's true and take a position.
9 They didn't. And not only were they silent on it, they took
10 the opposite position.

11 Yes, I've been in situations before, and I'm sure you've
12 seen them, where a party comes to a court and says, look, our
13 interest is -- our interests may be impaired in this other
14 case because we can be collaterally estopped, we can be
15 judicially estopped. I'm sure there's lots of cases out there
16 that say that. They have cited none, and that's because they
17 took the opposite position.

18 There certainly are no cases -- they have not cited any
19 and we certainly haven't found any -- that a proposed
20 intervenor could come to this Court, say, we don't think
21 there's collateral estoppel, we don't think there's res
22 judicata, we don't think there's judicial estoppel, but, hey,
23 Your Honor, you may get it wrong, another judge may get it
24 wrong, so, just because of that, let us in this case, let us
25 litigate in this case, let us follow along with it.

1 They've taken the position that they can't be precluded.
2 They can't come here and then say, well, if the opposite
3 happens, we should then be in, on a theory that not only did
4 they not argue, that they took the opposite on.

5 I won't get into the delay issue much except to say they
6 took three years to file this, and their response to that was
7 no, no, no, there was nothing for us to intervene in until
8 Highland filed an objection.

9 Respectfully, I don't really understand that. For three
10 years, our claim was out there saying that we wanted to be
11 paid on this. So if they think we have no right to be paid on
12 it because of fraudulent transfer, that's been sitting out
13 there for three years.

14 And, again, I don't think they have an interest in it, but
15 to the extent that somehow they've convinced you that they
16 have an interest or a concern, then that issue has been there
17 for three years. Nothing new happened when the Debtor filed
18 its objection. There's still our party for three years trying
19 to get its claim.

20 So why are we here, Your Honor? Acis admits that they're
21 not seeking to be paid under the note in this proceeding, and
22 they've taken the -- they have taken the specific position
23 that decisions here cannot affect their other proceeding.
24 Presumably, they're here because of their long-running feud
25 with Mr. Dondero and they hope to maybe get discovery here

1 that could help there, or whether it's just to burden Mr.
2 Dondero, I don't know. But it's not to protect any interest,
3 and they've taken the position that they're not concerned
4 about any estoppel or anything like that. So they don't have
5 enough to intervene in this proceeding, as they have no
6 interest that could be impaired based on their own concessions
7 and the positions took. And therefore we request that the
8 intervention motion be denied.

9 THE COURT: Okay. Let me tell you a couple of things
10 I am concerned about. I'm looking at Rule 24(b)(1)(B), and
11 that contemplates permissive intervention on timely motion by
12 one who has a claim or defense that shares with the main
13 action a common question of law or fact.

14 So my concern is, while Acis doesn't have an interest in
15 the \$10 million note or getting paid on it from the Highland
16 estate, maybe there is a common question of fact between this
17 contested matter and the Acis adversary. In other words,
18 questions of fact about the transaction. You know, the note
19 was executed between Highland and Acis in October 2016 or
20 whenever it was, and then it was allegedly assigned in
21 November I think it was 2017. I mean, maybe basic common
22 facts are going to be litigated in this contested matter.
23 Common questions of fact.

24 So while I've tried to come up with some magic language
25 that might protect everyone, I guess I can see some common

1 questions of fact, and maybe under this rule they should be
2 permitted to intervene.

3 MR. AIGEN: Your Honor, may I respond to that?

4 THE COURT: Please.

5 MR. AIGEN: So, I would think I have two responses to
6 -- and, again, this is for permissive, not mandatory
7 intervention. So, whether, you know, you decide that they
8 need to come in for whatever reason. So, there's two
9 responses I would make.

10 One is that, like I said before, this fraudulent transfer
11 is not being litigated here. It's not an issue. That's their
12 claim there. That's what they're worried about.

13 THE COURT: But I --

14 MR. AIGEN: Yes, there may be underlying facts --

15 THE COURT: But what I'm hearing is they're concerned
16 that this Court could find, based on evidence presented, that,
17 I don't know, the note was never validly transferred, or maybe
18 it was, and that somehow impairs their argument of arguing a
19 fraudulent transfer occurred for which Dondero should be held
20 accountable, not HCLOM, but there is a common set of facts
21 that --

22 MR. AIGEN: Yes.

23 THE COURT: -- they think would --

24 MR. AIGEN: Yes.

25 THE COURT: -- be part of the timeline of

1 transactions in both matters.

2 MR. AIGEN: Yes. And there's definitely common
3 facts. I agree. But what I would say is, again, the
4 fraudulent transfer is not being litigated here. We have
5 Highland's objection. We have our response. We're not taking
6 that position. They're not taking that position. So that
7 couldn't happen.

8 But I think more importantly is the second point I wanted
9 to make. Their brief mentions this permissive rule and says
10 it in a couple sentences as kind of a throwaway, so there
11 wasn't really much of a response to it other than getting into
12 the issue. But I will say, is when you look at the cases on
13 that, just a common fact isn't enough, obviously. There are
14 lots of cases with common facts. People don't jump in. It's
15 because of the preclusion issues. And in those cases where
16 people are coming in under that, you'll see it's because
17 they're going to be precluded and a common issue will be
18 litigated. They may not have the -- you know, not all cases
19 have a promissory note, so you don't have the interest in the
20 transaction that would be a requirement for the mandatory
21 intervention. So that's why a lot of these cases, people rely
22 on the permissive intervention rule and they rely on the
23 common issues. But even in those cases, it's we're going to
24 be bound by something that happens there.

25 They're not parties in this proceeding. They have never

1 -- like I said, it's not like they were silent on the issue;
2 they took the opposite side. To come here and say we're not
3 bound but yet we want the rewards and benefits of being bound,
4 but to jump in, is really kind of talking out of both sides of
5 their mouth. They shouldn't get both. If they want to come
6 here and say they were going to be bound, then they should
7 have taken that position and we could have briefed it and
8 looked at it. But they said the opposite.

9 And -- well, Your Honor, I don't need to get in on that
10 anymore. So that's my response to Your Honor.

11 THE COURT: All right. I said I had a couple of
12 questions. I think I have three. So here's number two. Who
13 is the fact witness for HCLOM? For example, 30(b)(6)
14 representative. Who would that be?

15 MR. AIGEN: I don't know for sure yet, Your Honor.
16 That's not -- we've done a scheduling order, and it's
17 triggered off of the ruling on this, and then we're going to
18 start doing discovery and depositions and do things like that.
19 And it'll obviously come up in the next few weeks, but I don't
20 have the answer for that right now.

21 THE COURT: You don't know who your client
22 representative is?

23 MR. AIGEN: I talk to lawyers as my representatives,
24 but I suspect they're not going -- you know, they gather
25 information and talk to people. I guess it's possible that

1 one of the lawyers I talk to will be a 30(b)(6), but just from
2 my experience throughout the different adversary proceedings
3 and things we've worked on here, it sometimes changes on the
4 matter.

5 So I can make a guess, but I don't -- there's no use in me
6 making a guess to you when it's -- when there's good
7 information that came from the client on that. But
8 unfortunately, I just don't know, Your Honor.

9 THE COURT: All right. Well, okay. I've just got to
10 let that soak in. I mean, if I were to give you a few
11 minutes' break to go talk to your client about language to
12 preserve everyone's rights, I'm hearing you don't even know
13 who your client is to talk to.

14 MR. AIGEN: Oh, no, no, no. I would know who the
15 client is to talk about the case. You asked for a corporate
16 rep, someone who would be presenting evidence. I think I may
17 -- maybe I misunderstood your question. I thought you had
18 been talking about who is getting on the stand to present a
19 case and who will be our witnesses versus who I talk to about
20 the litigation.

21 THE COURT: Okay. Then who do you talk to?

22 MR. AIGEN: So, --

23 THE COURT: Who would you go talk to?

24 MR. AIGEN: Well, D.C. Sauter is one of the people we
25 talk to. And I did -- not to give up any privileged

1 information -- but I understand that Ms. Deitsch-Perez is
2 trying to contact someone, whether it's the other counsel in
3 the case or the client right now. I don't know that she's
4 gotten any answers. But she has reached out, because she's
5 listening to this and knows what's going on.

6 THE COURT: Okay.

7 MR. AIGEN: I obviously have not reached out because
8 I've been with you on this.

9 THE COURT: All right. Here --

10 MR. AIGEN: So I just --

11 THE COURT: Here's my last question. And I'm going
12 back and forth on trying to understand. Let me preface what
13 I'm about to ask. When I saw this motion to intervene and
14 started reading the pleadings, I'm like, whoa, there's a \$10
15 million claim, proof of claim, I'm saying loosely, deemed-
16 filed claim of Highland CLO Management, Ltd.? Who is that?
17 I've been living this case for six years plus, if you go back
18 to the Acis filing, and there are a lot of entities I've
19 learned about along the way, but I don't remember this one at
20 all. And I sure don't remember a \$10 million claim that is
21 still out there unresolved.

22 So then I started reading and understanding, oh, there
23 wasn't physically a proof of claim filed, this was a scheduled
24 claim that was first filed under the payee, if you will, being
25 HCLOF. Well, I definitely remember them very well. And then

1 I guess Debtor Highland amended its schedules in September-ish
2 of 2020 and changed the payee to your client, HCLOM, as we're
3 calling it, the entity that I was like, who is this?

4 So this almost will sound like a *Colombo* question, and I
5 don't know if you're old enough to even know the reference,
6 but here it is, I'm throwing it out there. Thousands and
7 thousands and thousands of dollars of legal fees have been
8 spent by both the estate and HMIT, Hunter Mountain Investment
9 Trust, in the last two or three years regarding HMIT's
10 standing. I've weighed in on it in multiple contexts in
11 connection with gatekeeping motions. District courts have
12 weighed in on it. The Fifth Circuit has weighed in on it
13 multiple times. I'm just trying to figure out why so much ink
14 has been spilt and so much time has been spent analyzing
15 whether a contingent interest holder has standing in
16 connection with Highland and the various motions and appeals
17 if there was a \$10 million claim holder, HCLOM. Can you
18 explain that to me?

19 MR. AIGEN: That is a good question, Your Honor, and
20 one I -- I also as well didn't have any experience with HCLOM
21 until the claim objection was filed, and now it's something
22 that I've thought about and looked into a little bit. And I
23 guess the main answer I have is, well, they're not a Class 10
24 or 11 prior equity holder. They're, I believe, either Class 8
25 or 9.

1 So when HMIT or Hunter Mountain or Dugaboy was doing all
2 of these things that we've had many fights, arguments, and
3 hearings and proceedings about on behalf of those class
4 holders, they wouldn't have been able to substitute in HCLOM
5 for that, who, although is not contingent, is not in their
6 class. So the rights that --

7 THE COURT: It would clearly --

8 MR. AIGEN: -- they would think they have --

9 THE COURT: If it has an allowed claim, it clearly
10 would have standing. Okay? And even if it is a disputed
11 claim, the case authority is clear it would have standing.

12 MR. AIGEN: Uh-huh.

13 THE COURT: But yet we've spent thousands of dollars
14 and thousands of hours analyzing Hunter Mountain's standing as
15 a contingent interest holder. I'm just trying to figure out
16 why we went through that grief if there was a party to which
17 Mr. Dondero is connected --

18 MR. AIGEN: Uh-huh.

19 THE COURT: -- which clearly had standing.

20 MR. AIGEN: And yes, but I think it would be that
21 they may or may not have had standing -- maybe they might have
22 had standing for some of the things. But when Dugaboy or
23 Hunter Mountain is looking for standing for things that
24 protect their class of shareholders or information for them,
25 I'm sure someone would make the argument that HCLOM, as a

1 different class, although they have general standing, wouldn't
2 have the right to seek the same things that they are wanting,
3 because they're differently situated.

4 THE COURT: Okay. For example? What would they not
5 have had standing to pursue?

6 MR. AIGEN: Well, I don't, obviously, want to take a
7 position that my client didn't have standing on things when
8 they didn't. But, you know, there's lots of different things
9 Dugaboy and H -- Hunter Mountain are complaining about that
10 are specific to how they are being treated and how there's
11 distributions to Class 10 or 11, when I'm not going to say
12 that -- you know, again, it's -- this isn't something I've
13 litigated or looked at, so I can't say definitively or not,
14 but at first glance I could say certainly there might be an
15 issue on whether someone from another class, like HCLOM, could
16 bring a proceeding or bring information if it's all about
17 things that are helping or protecting or rights of 10 and 11.

18 THE COURT: Okay. What class would HCLOM be in?

19 MR. AIGEN: And that's what I -- you know, there's
20 not a listing that says. From being a creditor, I believe
21 they'd either be 8 or 9, --

22 THE COURT: Yes.

23 MR. AIGEN: -- when I tried to look into it. Not 10
24 or 11, because that's former equity holders. I don't -- on my
25 own research, I wasn't able to figure out whether it would be

1 8 or 9, but I know they wouldn't be 10 or 11. So that sort of
2 at least gave me enough information to think about these
3 questions that you're asking.

4 THE COURT: All right. Mr. Cooke, Movant gets the
5 last word. What would you like to say in rebuttal?

6 MR. COOKE: Thank you, Your Honor. The first thing
7 that I want to address is that the argument that opposing
8 counsel seemed to make the centerpiece of his address to the
9 Court just now was that Acis said in our briefing that we do
10 not concede that an adverse finding here would have any kind
11 of preclusive effect for us. And certainly we think the
12 correct outcome would be that, if there were an adverse
13 finding in this proceeding, that it shouldn't stop us from
14 going after James Dondero for the fraudulent transfer of the
15 note.

16 If you ask me, am I going to get in a car accident when I
17 drive home today, I would say no, but I will still wear my
18 seat belt, Your Honor. There are gray areas. We are not
19 going to pin \$9-1/2 million or I guess \$10 million to our hope
20 or even our very confident, well-informed, well-researched
21 belief that the correct outcome would be no preclusive effect.
22 We're not going to pin \$10 million to believing that the
23 correct outcome will always be the outcome, or what we
24 consider to be the correct outcome will always be the outcome.

25 So there's no reason why Acis saying that there's no

1 preclusive effect should prohibit Acis from intervening in
2 case there is a preclusive effect. That's why we're here, and
3 things don't always go as we hope or expect, so it makes sense
4 for us to intervene in that sense.

5 The second point I would want to bring to the Court's
6 attention is that we didn't hear a word about prejudice. We
7 touched on timeliness, but we didn't hear anything about the
8 most important *Stallworth* factor for assessing timeliness, and
9 that is, is there any prejudice to the parties? And there is
10 none.

11 The closest that we saw to an argument in any of the
12 briefing about prejudice was some sort of conjecture coming
13 from HCLOM that Acis would need to conduct time-consuming
14 extensive discovery and everybody would have to start all
15 over. Well, we've represented and I'll tell -- I'll represent
16 now that we would not be seeking extensive discovery. Minimal
17 discovery, really, if any. And as far as I know, I'm pretty
18 confident, Your Honor, nobody has served any discovery on us
19 or -- and we haven't served any, we haven't tried to serve any
20 in this matter.

21 So there really hasn't been any argument about prejudice.
22 And the argument about just the sheer length of time, also,
23 frankly, we -- it just -- it doesn't make sense, Your Honor.
24 We've addressed this in the briefs. Acis filed its motion to
25 intervene and its brief in support just a few weeks after

1 Highland filed its objection in February of 2023. And we've
2 cited case law in our briefing, in our reply brief, that says
3 it is appropriate for the length of time to be measured from
4 the date when a party finds that its interest is being
5 affected, when the party's interest is under threat.

6 So that's what we did here. It simply doesn't make sense
7 to say that there's no prejudice in arguing with Highland when
8 Highland objected in February of 2023 but there is prejudice
9 because Acis objected in -- or, Acis moved to intervene in
10 early March. We joined the dispute basically as soon as there
11 was a dispute to join. So timeliness really shouldn't be a
12 factor here, Your Honor.

13 And I would just like to close by going back to the point
14 that Your Honor highlighted, which is that there is a common
15 question of law and fact here that affects Acis's claim
16 against James Dondero in that adversary proceeding. We have a
17 claim against Mr. Dondero for his breach of fiduciary duty and
18 his fraudulent transfer of the note, and that claim hinges on
19 whether the transfer agreement assigning the note to HCLOM was
20 valid. We contend that it wasn't. That question is at the
21 core of this proceeding as well, and that's why we have to
22 intervene.

23 I think, frankly, the argument that fraudulent transfer
24 has not been explicitly invoked by HCLOM or Highland and
25 therefore there's no common question, it just doesn't -- it

1 just doesn't hold water, Your Honor. There can be a common
2 question that affects our fraudulent transfer claim even if
3 there isn't a fraudulent transfer claim here.

4 THE COURT: All right. And let's just -- I want to
5 be clear. I have under advisement right now in the Acis
6 adversary proceeding -- and I have a couple of things ahead of
7 it in the queue, so I'm not at all ready to rule on it. But I
8 have under advisement in that Acis adversary proceeding
9 whether the fraudulent transfer claims as to Mr. Dondero
10 survive and go forward. Because the issue has been raised he
11 wasn't a transferee of the note as well as, I guess, other
12 alleged property transfers, and he wasn't a party for whose
13 benefit the transfer was made. So there is a scenario where
14 the fraudulent transfer regarding this note seeking to impose
15 liability on Mr. Dondero doesn't survive. Correct?

16 MR. COOKE: There's a possibility that the fraudulent
17 transfer claim that we have pleaded in our amended petition
18 does not survive, Your Honor.

19 But even if that were to happen, our original petition
20 alleges and uses the term fraudulent transfer, although we
21 don't explicitly invoke 11 U.S.C. § 548 in the original
22 petition. But there is, in our original petition, a claim
23 that nevertheless hinges on the validity of this transfer
24 agreement.

25 This transfer agreement was made for no consideration,

1 Your Honor.

2 THE COURT: Okay. I know.

3 MR. COOKE: And that's essential to a breach of
4 fiduciary --

5 THE COURT: But I'm just -- we keep talking about the
6 fraudulent transfer claims against Mr. Dondero in the Acis
7 adversary proceeding. But just to be clear, I have a 12(b)(6)
8 motion under advisement right now with regard to the
9 fraudulent transfer claims against Mr. Dondero, the issue
10 being, if he wasn't a transferee and he didn't benefit
11 personally from the transfers, is he a liable party on a
12 fraudulent transfer? Correct? I'm just trying to remember
13 where I am on that, and that's what I think the issue under
14 advisement is, correct?

15 MR. COOKE: That is the issue under advisement, Your
16 Honor. And --

17 THE COURT: And I'm trying to figure out --

18 MR. COOKE: -- certainly I have a lot to say about
19 it, but --

20 THE COURT: Let's say hypothetically I grant the
21 12(b)(6) motion and that goes away. I'm trying to remember,
22 will the \$10 million note have any continuing relevance in the
23 Acis adversary proceeding?

24 And I guess, because there's a breach of fiduciary duty
25 claim that isn't the subject of the 12(b)(6) motion, it might

1 be relevant to the fact pattern that you say supports breach
2 of fiduciary duty. Correct?

3 MR. COOKE: That is correct, Your Honor. It's always
4 been part of our claim --

5 THE COURT: Okay.

6 MR. COOKE: -- since April of 2020.

7 THE COURT: Okay. Again, I'm asking because common
8 questions. I'm trying to consider everything I need to
9 consider there.

10 All right. Mr. Morris, you were trying to be a silent
11 observer, but I'm going to pick on you because I have one or
12 two questions for you. Are you there?

13 MR. MORRIS: I am here, Your Honor, but I don't have
14 a jacket on.

15 THE COURT: Oh, okay. Well, --

16 MR. MORRIS: So, I'm happy to answer questions --
17 because I wasn't expecting to speak. But I'm certainly
18 available to answer any questions you may have.

19 THE COURT: Okay. I'm trying to understand the
20 timeline here, because, of course, timeliness has been argued.
21 Can you tell me why this contested matter was stayed for quite
22 a long time? I don't have any memory of when I signed the
23 order staying it or I don't know if it was a stipulation or I
24 signed an order approving a stipulation. Anyway, obviously,
25 the Highland objection to the HCLOM claim was filed February

1 2023. Acis filed a motion to intervene March 2023. And then
2 the contested matter was stayed for many months. And I'm
3 trying to understand that.

4 MR. MORRIS: My recollection, Your Honor, is in the
5 spring of 2023, shortly after the claim objection was filed
6 and the motion to intervene was filed, we had for the first
7 time the Litigation Trustee seeking to stay the Kirschner
8 adversary proceeding. And then there was a cross-motion to
9 stay more than that.

10 And I think, just through negotiations, this got included
11 in a list of various matters that were stayed, and then a
12 broader stay was entered when we went into mediation shortly
13 thereafter. And it's the subject of a couple of different
14 stay orders that Your Honor -- I just don't remember the
15 actual sequence, but I know that the issue of a stay arose for
16 the first time maybe 15 months ago and then we lifted the stay
17 after the mediation was unsuccessful.

18 THE COURT: Okay.

19 MR. AIGEN: And Your Honor, I agree with everything
20 Mr. Morris said explaining the stay. I don't -- I wasn't
21 involved on what the delay was between our claim and the
22 objection of those years, but after the objection was filed,
23 everything Mr. Morris just said is accurate, to my
24 understanding.

25 THE COURT: Okay. My next question for you, Mr.

1 Morris, is I know we've had hearings where HMIT has wanted to
2 get the status of the assets of the Trust and what's left to
3 administer this estate. I know that this was never on my
4 radar screen, that there was this \$10 million issue hanging
5 out there. Has money -- would this be a Class 8 claim, if
6 allowed, and has money been held aside to pay it potentially
7 in full? Or --

8 MR. MORRIS: Yes and yes.

9 THE COURT: Yes and yes?

10 MR. MORRIS: Yes. I do think, Your Honor, going back
11 a year or more, it was part of the disclosures that we've made
12 that there is a reserve for this particular claim, but it's
13 subject, obviously, to the objection.

14 And to be clear, HCLOM did not file a claim. It's a
15 scheduled claim, as Your Honor pointed out earlier. Highland
16 has been pretty transparent about its intent to object to the
17 claim. It's reserved for the claim, as it was obligated to do
18 so, and we want to just get the claim resolved.

19 But if it were to be allowed -- and we don't think
20 ultimately it will be -- but if it were to be allowed, it
21 would be a Class 8 claim. It has been reserved for. And
22 HCLOM would then have the very limited information rights that
23 all beneficial owners under the Trust enjoy.

24 THE COURT: Okay. And I went down that road of
25 wondering out loud why have we spent thousands of hours -- and

1 I said thousands of dollars; I'm sure it's millions of dollars
2 -- arguing about HMIT's standing when there was presumably a
3 Dondero-controlled entity with a \$10 million disputed claim.
4 Can you shed any light on this? Maybe my thinking is flawed.
5 Maybe someone would say, well, they aren't a person aggrieved
6 because they're going to get paid in full with interest. I
7 don't even -- or their rights are what they are under the
8 trust agreement and that wouldn't --

9 I'm just, I'm flabbergasted that there's an entity that
10 might be a Dondero-controlled entity, although no one will say
11 here on the record today it is, that has potentially a \$10
12 million claim against the Highland estate.

13 MR. MORRIS: So, I can't speak, obviously, for Mr.
14 Dondero or all of his entities, any of his entities. I have
15 no idea, you know, why they haven't been more aggressive with
16 this.

17 I will just state once again that even in HCLOM's best-
18 case scenario, which I don't think they're likely to achieve,
19 but even if the objection is overruled, all HCLOM would become
20 is a holder of a Class 8 claim. And as Your Honor may recall
21 from the Trust documents, holders of Class 8 claims have very
22 limited information rights. And Hunter Mountain and Dugaboy
23 have not been seeking what holders of allowed claims and what
24 holders of vested interests in the Claimant Trust are entitled
25 to. They've been seeking substantially more than that.

1 And so I'll just speculate and say, from the Dondero camp,
2 having an allowed 8 claim doesn't get -- doesn't get it what
3 it really wants.

4 THE COURT: Okay.

5 MR. MORRIS: So it's not -- again, I can't speak for
6 them. It's just my speculation. I know that there is a very,
7 very, very, very substantial difference between what Class 8
8 holders are entitled to under the Trust and what HMIT and
9 Dugaboy have been demanding in all of these different
10 proceedings. Because the fact of the matter is, you know,
11 with the disclosures that we made in advance of the mediation,
12 whether or not you're a holder of a Class 8 claim, you already
13 got more information than was required to be provided. So
14 it's kind of moot.

15 But for purposes of standing, for purposes of getting
16 information, they've already gotten more than they would be
17 entitled to under the agreement. So that's, you know, I don't
18 think that that's what they're after here.

19 THE COURT: All right. This is my last question for
20 you, I promise. What do you envision a trial looking like on
21 this claim? I mean, I don't know if there would be more than
22 a witness or two, more than a handful of documents.

23 MR. MORRIS: I think it would be fairly short. And
24 if Your Honor recalls, and I don't expect you to, but the
25 stipulation that we agreed to provided for extremely limited

1 discovery. I think 10 document requests per side. A very
2 limited number of requests to admit and interrogatories. I
3 think a maximum of two depositions.

4 I think the questions are going to be pretty narrow as to
5 whether or not, you know, HCLOM provided any consideration to
6 Highland, whether HCLOM performed under the agreement. I
7 cannot imagine this being more than a one-day evidentiary
8 hearing. I cannot imagine there being more than two, three
9 witnesses, maximum.

10 So we have actually already negotiated pretty severe
11 limits on discovery. We're going to serve written discovery
12 within seven days of the entry of an order resolving this
13 motion to intervene. And I think, the way we have it laid
14 out, once that order is entered, I think there is a 70 --
15 seven-day period between then and the actual hearing.

16 THE COURT: Okay. Who do you think your fact
17 witnesses are?

18 MR. MORRIS: We'll have a 30(b)(6) witness. It will
19 very likely be Mr. Seery, although, you know, it could be Mr.
20 Klos. Those are the only two possibilities that I think are
21 likely on our side.

22 And we will certainly call a 30(b)(6) witness to testify
23 on behalf of HCLOM so that HCLOM can tell us what it believes
24 it gave to Highland, HCLOM can tell us how it believes it
25 performed under the agreement.

1 Beyond that, I'm not sure there's much.

2 THE COURT: And you don't know who the HCLOM
3 representative is, the HCLOM fact witness?

4 MR. AIGEN: Not a fact witness. No, Your Honor.

5 THE COURT: No, I was asking Mr. Morris. Maybe he
6 knows.

7 MR. AIGEN: Oh.

8 MR. MORRIS: I think it will be Mr. Dondero because I
9 think he signed the agreements. You know, if past is any
10 projection to the future, I suspect he didn't read them. But
11 nevertheless, he did sign them, so he's likely to be a
12 witness. And whether he turns out to also be the 30(b)(6)
13 witness or not remains to be seen.

14 THE COURT: All right. But, I mean, I think --
15 again, maybe I'm getting way ahead of myself, but I think the
16 facts would be undisputed that the note, which was originally
17 \$12 million plus, was executed in October 2016 at the same
18 time there was this -- I don't know if it was called a
19 purchase and sale agreement, but it contemplated that Acis
20 would sell to Highland a participation in the Acis CLO
21 servicing fees. So this was October 2016, just agreements
22 between Highland and Acis.

23 And then there was a paydown to some extent on the note.
24 Highland paid Acis some on the note, and I think Acis probably
25 remitted some participation fees to Highland. But everything

1 stopped in November 2017, which was exactly the same time of
2 the assignment of the note from Acis to HCLOM. And I think,
3 even though it was contemplated that HCLOM would become the
4 new servicer of the CLOs, that never happened.

5 Is anyone going to dispute any of that?

6 MR. MORRIS: Not Highland, Your Honor.

7 THE COURT: Mr. Aigen, are you in a position to say?

8 MR. AIGEN: I don't think so, Your Honor. There's a
9 lot of details in there, but I think if your point to this is
10 that many, many, many, if not all, of the facts will be
11 undisputed, I think that may be the case. And if this is
12 going to your first question about the final hearing, you
13 know, maybe down the road counsel looks at this and says,
14 okay, we kind of agree on all the facts and this really is
15 just a legal ruling, then maybe there's some way to shortcut
16 this.

17 THE COURT: Okay. But we all know that there were
18 never any payments on this note after the assignment happened
19 in November 2017 and HCLOM never stepped in to be manager of
20 the CLO portfolio?

21 MR. MORRIS: That's the point of lack of
22 consideration and lack of performance. That's exactly right.
23 And I don't think that will ever be credibly disputed.

24 THE COURT: Okay. Well, as we know, Federal Rule of
25 Civil Procedure 24 governs the motion to intervene. I

1 conclude that mandatory intervention does not apply here
2 because Acis does not have a claim related to the property
3 that's the subject of this contested matter -- *i.e.*, the note.
4 It waived its claims in the Highland bankruptcy, as well as
5 any claims against HCLOM. And I think that pertains -- it
6 doesn't have a claim to the transaction that is the subject
7 matter of the action. So, mandatory intervention under
8 Federal Rule 24 does not apply.

9 Permissive intervention is the more vexing question
10 because it says, "On timely motion, the Court may permit
11 anyone to intervene who has a claim or defense that shares
12 with the main action a common question of law or fact." So,
13 the Court has focused extensively here on whether the
14 fraudulent transfer claim that Acis has asserted against Mr.
15 Dondero that involves the transfer of this \$10 million note
16 from Acis as payee to HCLOM as payee, whether that involves a
17 common-enough, shall we say, question of law or fact that I
18 should permit Acis to intervene, even though I don't have to.

19 First, I'm going to address timeliness. I don't think the
20 timeliness argument of HCLOM is persuasive. Again, even
21 though this deemed claim of HCLOM -- and I use air quotes
22 because I'm mimicking words in the Bankruptcy Rule that if you
23 have a scheduled claim that's not scheduled as disputed,
24 contingent, or unliquidated, it's deemed allowed, even if
25 there's no proof of claim filed -- so, even though this deemed

1 claim has been in existence since about September 2020, I
2 don't think the timeliness factor became relevant until
3 February 2023, when Highland objected to the claim. And it
4 was only about five weeks later, in March 2023, that Acis
5 moved to intervene. So we don't have a timeliness problem.

6 But I am going to find that we don't have a common-enough
7 question of law or fact to permit intervention. So I'm not
8 going to permit intervention.

9 But I'm going to say that denial of Acis's right to
10 intervene has no dispositive effect on claims in the Acis
11 adversary proceeding. And specifically, nothing decided in
12 this contested matter between Highland and HCLOM, nothing
13 decided or resolved in this contested matter shall have any
14 preclusive effect on the Acis adversary proceeding against
15 Dondero in, let's say, Adversary Proceeding No. whatever-it-is
16 pending in Acis.

17 So I, as I suggested, would have hoped that people could
18 have agreed to that. But I'm going to put it in there as
19 belts and suspenders. If I order there was no transfer or
20 there was a transfer of the note, whatever I may end up
21 ordering or people may end up agreeing in the contested matter
22 on the HCLOM claim, it's not going to have any preclusive
23 effect. Acis wasn't a party. Mr. Dondero wasn't a party.
24 I'm not going to view the privity thing having a preclusive
25 effect in the adversary in Acis. Okay?

1 So you all should be happy with that ruling. The motion
2 to intervene is denied, but Acis is not prejudiced in any way
3 with regard to whatever happens in the contested matter.

4 All right. Mr. Morris, I am really picking on you today.
5 I'm going to ask you to be the scrivener on this order. I
6 know that's -- usually, I get a party to write the order. But
7 you're kind of the neutral, as best I can tell, on this, and I
8 don't want a battle over the form of order. Can you do that?

9 MR. MORRIS: I'm happy to play that constructive
10 role, but I do want to confer with Mr. Cooke and Mr. Aigen and
11 see if we can get to a consensual point, because I think the
12 point that you started out with and the point that you ended
13 with, without prejudice, was kind of an obvious resolution to
14 this. I think it's a good one. I don't think I've heard any
15 resistance from anybody. So I'm happy to help out, and I'm
16 really hopeful that we can come to a consensual order.

17 THE COURT: All right. Well, thank you for that.
18 And, of course, very good point. We certainly need Mr. Cooke
19 and Mr. Aigen to give their two cents on the order.

20 MR. MORRIS: Yes.

21 THE COURT: And so we'll just look for it to be
22 submitted very soon. All right.

23 MR. MORRIS: Good.

24 THE COURT: We're adjourned.

25 THE CLERK: All rise.

1 MR. MORRIS: Thank you.
2 MR. COOKE: Thank you, Your Honor.
3 MR. AIGEN: Thank you, Your Honor.
4 MR. COOKE: Bye, now.

5 (Proceedings concluded at 2:41 p.m.)

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CERTIFICATE

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

/s/ Kathy Rehling

07/11/2024

Kathy Rehling, CETD-444
Certified Electronic Court Transcriber

Date

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