Case No. 24-10287

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

In re Highland Capital Management, L.P.,
Reorganized Debtor

James Dondero; Highland Capital Management Fund Advisors, L.P.;
The Dugaboy Investment Trust; NexPoint Real Estate Partners, L.L.C.;
Get Good Trust,

Plaintiffs - Appellants

v.

Stacey G. Jernigan; Highland Capital Management, L.P.,

Defendants - Appellees

Appeal from the United States District Court,
Northern District of Texas, Dallas Division
Case No. 3:23-cv-00726-S
Hon. Karen Gren Scholer, District Judge

APPELLEE'S BRIEF

PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz
John A. Morris
Gregory V. Demo
Jordan A. Kroop
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
(310) 277-6910

HAYWARD PLLC
Melissa S. Hayward
(Texas Bar No. 24044908)
Zachery Z. Annable
(Texas Bar No. 24053075)
10501 N. Central Expy, Ste. 106
Dallas, TX 75231
(972) 755-7100

Counsel for Appellee Highland Capital Management, L.P.

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that:

(a) There are no other debtors associated with this bankruptcy case other than Highland Capital Management L.P., and there are no publicly-held corporations that own 10% or more of Highland Capital Management L.P., which is not a corporation or a parent corporation;

(b) On information and belief (and not as represented on the Certificate of Interested Persons contained in their opening brief, which is incomplete and does not comply with 5th Cir. R. 28.2.1), Appellants are all private, non-governmental parties whose owners are also private, non-governmental parties and no publicly-held corporation owns 10% or more of the equity interests in any of these entities;

(c) The following listed persons and entities, as described in the fourth sentence of 5th Cir. R. 28.2.1, have an interest in the outcome of this case:

(i) Highland Capital Management, L.P., Appellee
Counsel: Pachulski Stang Ziehl & Jones LLP
Hayward PLLC

(ii) The Highland Claimant Trust, the beneficiaries of which comprise the creditors of Highland Capital Management, L.P., Indirectly interested party
Counsel: Pachulski Stang Ziehl & Jones LLP
Hayward PLLC

(iii) James Dondero; The Dugaboy Investment Trust; NexPoint Real Estate Partners, L.L.C.; Get Good Trust; Highland Capital Management Fund Advisors, L.P., Appellants
Counsel: Crawford Wishnew Lang PLLC

(iv) The Honorable Stacey G. Jernigan, U.S. Bankruptcy Court, Northern District of Texas, Dallas Division, Appellee

/s/ Zachery Z. Annable
Zachery Z. Annable

STATEMENT REGARDING ORAL ARGUMENT

This is an appeal of the District Court's denial of Appellants' petition for a writ of mandamus concerning the Bankruptcy Court's denial of a motion to recuse. The facts are undisputed and adequately set forth in the appellate record. The applicable standard for issuing a writ of mandamus is well-established and uncontroversial in this Circuit. Appellee believes the issues before this Court to be straightforward and clear and that this appeal and the petition before the District Court lack any merit. Oral argument is unlikely to aid the Court in resolving the question presented.

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STATEMENT OF ISSUE AND STANDARD OF REVIEW[1]

Appellants' statement of the issues in their Opening Brief (at 3–4) is wrong and improper. This case is an appeal of the District Court's denial of Appellants' petition for writ of mandamus. It is *not* an appeal of the Bankruptcy Court's order denying Appellants' motion to recuse. This Court lacks jurisdiction over that Bankruptcy Court order, which is not a final order. (Appellants expressly acknowledge this in their Opening Brief (at 28).) Accordingly, the first enumerated issue in the Opening Brief is not, and cannot be, before this Court.

Although the second enumerated issue improperly contains Appellants' self-serving characterizations of the record, Appellee agrees that the first part of Appellants' statement ("Did the District Court abuse its discretion in denying the Dondero Parties mandamus relief?") accurately identifies the sole issue on appeal and the applicable legal standard.[2]

[1] For the Court's convenience, capitalized but undefined terms used in this brief have the meanings given to them in the *Brief of Appellants* (the "**Opening Brief**") [Doc. 34]. Citations to "ROA" are to the Record on Appeal.

[2] Despite Appellants' description of it in their Opening Brief, the standard of review for the Bankruptcy Court's order denying recusal is irrelevant because this is not an appeal of that order. That standard was also irrelevant in the District Court because a petition for a writ of mandamus is not an appeal of the lower court's decision on the merits. Appellants appear to know this, yet persist in their Opening Brief to attempt to turn this appeal into something it isn't and can't be.

STATEMENT OF THE CASE

Appellee does not believe a full recitation of everything that occurred in its Chapter 11 case since its inception on October 16, 2019, would assist the Court in reviewing the narrow issue presented here: whether the District Court abused its discretion by denying Appellants' petition for a writ of mandamus. Accordingly, and in accordance with FRAP 28(b), Appellee will set forth only the portions of the factual and procedural background that Appellants omitted, misstated, or mischaracterized.

BANKRUPTCY CASE BACKGROUND

The Opening Brief fails to mention important context about both the Highland bankruptcy case (the "**Highland Case**") and the preceding Acis bankruptcy case. In October 2019, Highland—then controlled by James Dondero—voluntarily filed a Chapter 11 petition to stay the enforcement of a $180-million arbitration award rendered against Highland based on an arbitration panel's determinations[3] that Highland breached its fiduciary duties and contractual obligations, wrongfully converted approximately $30 million in investor funds, and used proxies to surreptitiously acquire equity in an investment vehicle in violation of a Bermudian court order.

Following its appointment, the Creditors Committee moved to transfer venue to the US Bankruptcy Court for the Northern District of Texas, Dallas Division, because the "Bankruptcy Court [was] already intimately familiar with the Debtor's

[3] ROA.16727–16813.

principals and complex organizational structure," having presided over the still-pending Acis bankruptcy cases.[4] The Highland Case was transferred[5] and, after the Creditors Committee and the U.S. Trustee raised concerns about Mr. Dondero's ability to serve as an estate fiduciary because of his history of self-dealing, creditor-avoidance asset transfers, and other breaches of fiduciary duty, Highland, the Creditors Committee, and Mr. Dondero entered into a settlement intended to avoid the appointment of a chapter 11 trustee. Judge Jernigan approved the settlement on January 9, 2020,[6] under which Mr. Dondero surrendered his control positions at Highland and an independent board of directors with no prior connections to Highland, Mr. Dondero, or Highland's creditors (the "**Independent Board**") was appointed to oversee Highland's Case. By the fall of 2020, Mr. Dondero had begun taking actions adverse to the Highland estate and its creditors. The Independent Board demanded that Mr. Dondero resign from *all* positions at Highland. In October 2020, as required by the January Order, Mr. Dondero resigned.

[4] The Acis bankruptcy cases were involuntary bankruptcy cases commenced against the then-Dondero controlled Acis entities after Mr. Dondero and others acting at his direction caused the Acis entities to fraudulently transfer their assets leaving them "judgment proof" and unable to satisfy yet another adverse arbitration award. *See In re Acis Capital Management, L.P.*, Case No. 18-30264-sgj11 (Bankr. N.D. Tex. 2018), and *In re Acis Capital Management, GP, LLC*, Case No. 18-30265-sgj11 (Bankr. N.D. Tex. 2018).

[5] Although Highland opposed the venue transfer, citing Judge Jernigan's alleged bias, Highland and its counsel took instruction from Mr. Dondero and his long-time in-house counsel at that time. Mr. Dondero believed that Judge Jernigan was biased against him, not Highland's counsel.

[6] ROA.14622–14627 (the "**January Order**").

Around the same time, the Creditors Committee rejected Mr. Dondero's settlement offers as inadequate, thus blocking his efforts to regain control of Highland. In response, Mr. Dondero vowed to "burn down the place."[7] From then on, Mr. Dondero—on his own behalf and through his many Dondero Entities—began making good on that promise, interfering with the Independent Board's management of the estate, threatening Highland employees, challenging actions taken in the interests of Highland's reorganization, commencing frivolous litigation and claims against Highland and its management both inside and outside of the Bankruptcy Court, and violating Bankruptcy Court orders.

The Dondero Parties also began appealing dozens of Bankruptcy Court orders. This appeal is approximately the Dondero Parties' *fifteenth* before this Court arising out of the Highland Case. They have prevailed in none of them.[8] And they have commenced more than two dozen appeals of the Bankruptcy Court's orders in the District Court from the Highland Case and petitioned several times for writs of

[7] *NexPoint Advisors, L.P. v. Highland Cap. Mgmt., L.P. (In re Highland Cap. Mgmt., L.P.)*, 48 F.4th 419, 426 (5th Cir. 2022), *cert. denied* 2024 U.S. LEXIS 2913 (U.S., July 2, 2024).

[8] Although none of Judge Jernigan's decisions has been reversed, this Court did address limited aspects of two decisions. First, this Court narrowed the scope of the Highland plan's exculpation clause but otherwise affirmed the Bankruptcy Court's confirmation order in all other respects. *See generally NexPoint,* 48 F.4th 419. Second, this Court vacated and remanded for a re-calculation of the monetary sanctions imposed in one of the two contempt orders the Bankruptcy Court issued against Mr. Dondero but otherwise upheld the Bankruptcy Court's civil contempt order as well as the other contempt order in its entirety. *Dondero v. Highland Cap. Mgmt., L.P.,* 2024 U.S. App. LEXIS 16019, 105 F.4th 830 (5th Cir. July 1, 2024); *The Charitable DAF Fund, L.P. v. Highland Cap. Mgmt., L.P. (In re Highland Cap. Mgmt., L.P.),* 98 F.4th 170 (5th Cir. 2024).

mandamus. They have prevailed in none of them. With the exception of obtaining narrow, limited relief on two isolated issues, the more than *three dozen* appeals and mandamus petitions have all been rejected by this Court and the District Court.

While affirming the Bankruptcy Court's orders, a number of federal judges have been highly critical of Mr. Dondero's legal positions and conduct. For example, District Court Judge Starr expressed his belief that Mr. Dondero's arguments in one appeal were intended to "bamboozle" the court,[9] and this Court described the Dondero Parties' collective objections to plan confirmation as a "blunderbuss."[10] Further, while affirming one of the contempt orders, this Court found that Mr. Dondero had engaged in "bad-faith" conduct during the Highland Case and had given "untruthful" testimony.[11] Unchastened, Appellants continue to feign surprise that Judge Jernigan would "repeatedly describe[ ] the Dondero Parties as 'litigious' and 'vexatious' …."[12] Judge Jernigan's findings of fact regarding Mr. Dondero and the Dondero Parties were incorporated into the Bankruptcy Court's order confirming Highland's plan of reorganization, which this Court affirmed in all but one narrow respect unrelated to the evidentiary support for those findings.

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[9] *Dugaboy Inv. Tr. v. Highland Cap. Mgmt. L.P.*, 2022 U.S. Dist. LEXIS 172351, at *12 (N.D. Tex. Sept. 22, 2022).

[10] *NexPoint*, 48 F.4th at 432.

[11] *Dondero v. Highland,* 2024 U.S. App. LEXIS 16019 at *12.

[12] Opening Brief at 42.

By December 2020, Mr. Dondero's actions had led Judge Jernigan to issue a temporary restraining order (the "**TRO**") against him,[13] which he promptly violated.[14]

On February 22, 2021, with virtually unanimous creditor support but over the objections of Mr. Dondero and his controlled affiliates, including Appellants, the Bankruptcy Court entered the *Order Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (ii) Granting Related Relief* (the "**Confirmation Order**"), which confirmed the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* (the "**Plan**").[15] The Plan became effective on August 11, 2021.

In the Confirmation Order, the Bankruptcy Court made detailed factual findings about Mr. Dondero and the Appellants, including that Mr. Dondero controlled each Appellant, among other entities, and was using litigation (directly and by proxy) to harass Highland, its management, and its estate.[16] The Confirmation Order's factual findings were either unchallenged or affirmed on appeal.[17]

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[13] *Highland Cap. Mgmt., L.P. v. Dondero*, Adv. Pro. No. 20-03190-sgj, Docket No. 10 (Bankr. N.D. Tex. Dec. 10, 2020).

[14] Mr. Dondero was held in contempt for violating the TRO. *Highland Cap. Mgmt., L.P. v. Dondero (In re Highland Cap. Mgmt., L.P.)*, 2021 Bankr. LEXIS 1533 (Bankr. N.D. Tex. Jun. 7, 2021), *aff'd* 3:21-cv-01590-N, Docket No. 42 (N.D. Tex. Aug. 17, 2022), *aff'd* 105 F.4th 830 (5th Cir. 2024).

[15] ROA.14274–14435.

[16] *See, e.g.,* Confirmation Order, ¶¶ 76-79 at ROA.14328–14331.

[17] *See NexPoint Advisors*, 48 F.4th at 427-28, 434-35 ("One factual finding is in dispute, but we see no clear error"); *Highland Cap. Mgmt. Fund Advisors, L.P. v. Highland Cap. Mgmt., L.P. (In re Highland Cap. Mgmt., L.P.)*, 57 F.4th 494, 498 (5th Cir. 2023) ("The confirmation order roundly

BACKGROUND TO THE PETITION

Appellants' First Recusal Motion

On March 18, 2021, Appellants filed their first motion to recuse Judge Jernigan (the "**First Motion**").[18] By that time, much of the core bankruptcy work in the Highland Case was complete. For example: (a) nearly every major claim had been consensually resolved either through the entry of orders approving settlements under Bankruptcy Rule 9019 (where, with one exception, only Mr. Dondero and his affiliates objected) or through the presentation of settlement terms at the commencement of the confirmation hearing; (b) Highland's disclosure statement had been approved;[19] (c) Highland's plan of reorganization had been confirmed (with Mr. Dondero and his affiliates pressing the only unresolved objections);[20] (d) the Bankruptcy Court had entered a temporary restraining order against Mr. Dondero to prevent him from further threatening Highland's employees and interfering with Highland's business;[21] and (e) the Bankruptcy Court had rejected the attempts of certain of Mr.

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criticized Dondero's behavior before and during the bankruptcy proceedings and deduced that Dondero was a serial litigator whose objections to the Plan were not made in good faith").

[18] ROA.3648–3651.

[19] *See Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Approve the Fifth Amended Plan of Reorganization; (C) Establishing Deadline to File Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice*, entered on November 24, 2020, at Docket No. 1476.

[20] *See* Confirmation Order.

[21] *See Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero*, entered on December 10, 2020, in Adv. Pro. 20-03190 at Bankruptcy Court Docket No. 10.

Dondero's affiliates to impede Highland from exercising contractual rights and monetizing assets.[22]

Late as it was, the First Motion alleged, among other things, that Judge Jernigan was biased against the Appellants and her bias had been evident even *before the Highland Case was transferred to the Bankruptcy Court in December 2019*. On March 22, 2021, the Bankruptcy Court denied the First Motion (the "**First Order**"), finding, among other things, that Appellants did not meet their burden of proof and that the First Motion was untimely.[23]

Appellants' First Appeal and Writ of Mandamus

Appellants appealed the First Order to the District Court.[24] On June 10, 2021, District Judge Kinkeade granted Highland's motion to intervene over Appellants' objection.[25] After briefing, Judge Kinkeade, *sua sponte*, issued an order questioning whether the First Order was final and directed supplemental briefing. On February 9, 2022, Judge Kinkeade found that the First Order was interlocutory and not subject

[22] *See Order Denying Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales By Non-Debtor CLO Vehicles, entered on December 18, 2020*, at Bankruptcy Court Docket No. 1605.

[23] ROA.3656–3666.

[24] Case No. 3:21-cv-00879-K (N.D. Tex.).

[25] ROA.3792–3794. After intervening, Appellee filed an *Answering Brief* in which it exhaustively addressed each instance of alleged bias that were asserted as of July 28, 2021, when it was filed. *See Dondero v. Jernigan*, Case No. 3:21-cv-00879-K, District Court Docket No. 20 ("Answering Brief") at 6-30.

to the collateral order doctrine, as Appellants had argued.[26] Judge Kinkeade also denied Appellants leave to appeal and rejected Appellants' request for mandamus, finding they had "fail[ed] to make the required showing" of "exceptional circumstances" and a "clear and indisputable right" to a writ of mandamus.[27] Appellants did not appeal that decision to this Court.

Appellants' Second Recusal Motion

More than five months later, on July 20, 2022, Appellants filed a "supplemental" motion to recuse Judge Jernigan (the "**Second Motion**"),[28] in which they asked the Bankruptcy Court to enter a final, appealable version of the First Order.[29]

Highland objected and included an extensive annotated chart proving that Appellants' "examples" of supposed bias did not warrant recusal because they (a) were premised on material distortions or omissions of fact and (b) were not, when viewed fairly, the product of bias. In reply, Appellants sought to have their Second Motion treated as a motion to supplement and reiterated their improper request that the Bankruptcy Court "amend the [First Order] to make it final."[30]

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[26] *Dondero v. Jernigan (In re Highland Cap. Mgmt., L.P.)*, 2022 U.S. Dist. LEXIS 23454, at *8-12 (N.D. Tex. Feb. 8, 2022).
[27] *Id.* at *13.
[28] ROA.5856–6747.
[29] ROA.6593.
[30] ROA.14667–14671.

On September 1, 2022, the Bankruptcy Court denied the Second Motion as "procedurally improper" but allowed Appellants to file "(1) a simple motion … seeking only a revised and amended Recusal Order that removes" the reservation of rights or "(2) a new motion to recuse … based on any alleged new evidence or grounds for recusal that were not considered … at the time of [this Court's] consideration of the" First Order.[31]

Appellants' Third Recusal Motion

On September 27, 2022, rather than appeal the Second Order, Appellants "renewed" the First Motion and subsequently amended it[32] (the "**Third Motion**"). In the Third Motion, Appellants ignored the Bankruptcy Court's directions in the Second Order, incorporated the entirety of the First Motion by reference, and demanded that Judge Jernigan recuse herself. In the alternative, Appellants again reiterated their improper request that the Bankruptcy Court "make clear that any order denying recusal is final so that Movants may appeal …."[33]

On October 31, 2022, Highland objected to the Third Motion, again rebutting Appellants' allegations of bias, proving that they were based on material misstatements and omissions of fact and related to Bankruptcy Court orders that Appellants never appealed or were affirmed on appeal.

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[31] (The "**Second Order**") ROA.14719–14721.
[32] ROA.2842-2870.
[33] ROA.2869.

On March 5, 2023, the Bankruptcy Court issued a detailed ruling[34] denying the Third Motion and holding that the Third Motion, like the previous motions, was untimely, ill-founded, and premised on "several misstatements or partial descriptions of events during the case … that create misimpressions."[35] Judge Jernigan also addressed her two novels—*He Watches All My Paths* and *Hedging Death*—and flatly rejected the notion that they were based on Mr. Dondero or that they evinced any bias or animosity towards him. "The Presiding Judge's novels—again entirely fiction—are not about Mr. Dondero or the hedge fund industry in general … there are no characters or entities in her books that have been inspired by or modeled after" the Dondero Parties.[36]

Appellants' Second and Third Mandamus Petitions

On April 4, 2023, Appellants attempted to bypass the appellate process by filing a petition for writ of mandamus with Judge Kinkeade in which they again sought to have Judge Jernigan recused.[37] The next day, Judge Kinkeade held the Second Mandamus Petition to be procedurally improper because the case was closed following entry of the February Order and ordered the District Court clerk to "unfile" the Second Mandamus Petition.[38]

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[34] ROA.44–79 (the "**Third Recusal Order**").
[35] ROA.61.
[36] ROA.75–79.
[37] Case No. 3:21-cv-00879-K (N.D. Tex. Apr. 4, 2023) (the "**Second Mandamus Petition**").
[38] ROA.5854–5855.

Undeterred, Appellants immediately filed their *Petition for Writ of Mandamus* (the "**Petition**")[39]—the denial of which is before this Court in this appeal—largely regurgitating the already-discredited bases for recusal set forth in Appellants' three motions to recuse and alleging that Judge Jernigan's novels (published in January 2019 and March 2022, respectively) are somehow additional evidence of her bias.

On March 8, 2024, the District Court issued its *Order* denying the Petition.[40] In a concise six-page ruling, District Judge Scholer found that Appellants "failed to present any objective manifestations of bias or prejudice that would constitute grounds for Judge Jernigan's recusal."[41] The District Court scrupulously analyzed the uncontroversial three-part standard for recusal under 28 U.S.C. § 455 and found that Appellants had "not proved 'exceptional circumstances' sufficient to justify the extraordinary remedy of a writ of mandamus."[42] Notably, when Judge Scholer issued the Mandamus Denial Order, she was already quite familiar with Judge Jernigan's work in the Highland Case, having issued less than two weeks earlier a thoughtful 18-page opinion affirming in all respects certain judgments entered by Judge Jernigan against two of Mr. Dondero's affiliated entities.[43] This appeal followed.

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[39] ROA.7–39.

[40] ROA.18885–18890 (the "**Mandamus Denial Order**").

[41] ROA.18885, Mandamus Denial Order at 1.

[42] ROA.18890, Mandamus Denial Order at 6.

[43] *See Memorandum Opinion and Order* entered on February 28, 2024, at Docket No. 35 in *NexPoint Advisors, L.P. v. Highland Capital Management, L.P.*, Case No. 3:22-cv-2170-S (N.D. Tex.).

SUMMARY OF THE ARGUMENT

This is Appellants' third attempt to obtain a writ of mandamus to remove Judge Jernigan from presiding over the Highland Case. Like their earlier attempts, Appellants have not met their heavy burden of proving that: (a) there is a clear and indisputable right to a writ of mandamus; (b) they have no other adequate means to obtain the relief they seek; and (c) the writ is appropriate under the circumstances. Consequently, the drastic and extraordinary remedy of mandamus remains unwarranted for precisely the reasons the District Court stated in its Mandamus Denial Order.

Although Appellants are obviously unhappy with some of Judge Jernigan's rulings, that does not remotely justify mandamus relief.[44] The Third Recusal Order and the District Court's Mandamus Denial Order firmly establish that Appellants' Third Motion (on which the Petition was based) was ill-founded and premised on material omissions and blatant mischaracterizations of the record. Under the circumstances, and based on a fair reading of the record, the District Court did not abuse its discretion by rejecting Appellants' falsehoods and denying the Petition.

Appellants have not demonstrated—and cannot demonstrate—that the District Court abused its discretion in denying their Petition for writ of mandamus.

[44] Tellingly, Appellants appealed only a handful of the rulings they complain about and all those appeals affirmed the Bankruptcy Court's orders or were dismissed for lack of standing.

Appellants have not demonstrated—and cannot demonstrate—that Judge Jernigan harbored any bias against them because, in all but two isolated instances, more than three dozen appeals to the District Court and this Court have not disturbed Judge Jernigan's rulings. Because the District Court had before it more than ample grounds to reject Appellants' allegations about Judge Jernigan's supposed bias (and, risibly, about being characters in two novels), this Court should affirm the Mandamus Denial Order and finally end Appellants' misguided crusade to recuse Judge Jernigan.

ARGUMENT

THE LEGAL STANDARD

The District Court noted—and even Appellants acknowledge, as they must—that a writ of mandamus is "a drastic and extraordinary remedy reserved for really extraordinary cases."[45] This Court has repeatedly held that "[t]he power to issue the writ is discretionary and is sparingly exercised."[46] A writ of mandamus "is not to be used as a substitute for an appeal, or to control the decision of the trial court in discretionary matters."[47]

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[45] *In re Depuy Orthopaedics, Inc.*, 870 F.3d 345, 350 (5th Cir. 2017) (internal quotations omitted); *In re Gordon,* 2019 U.S. App. LEXIS 39974, *1–2 (5th Cir. Apr. 10, 2019) (same).

[46] *United States v. U.S. Dist. Court, S. Dist. of Tex.*, 506 F.2d 383, 384 (5th Cir. 1974).

[47] *Plekowski v. Ralston-Purina Co.*, 557 F.2d 1218, 1220 (5th Cir. 1977); *see also In re Chesson*, 897 F.2d 156, 159 (5th Cir. 1990) (mandamus relief "is charily used and is not a substitute for an appeal").

Because "the writ is one of the most potent weapons in the judicial arsenal, three conditions must be satisfied before it may issue."[48] This Court follows the Supreme Court's three-pronged approach:[49] "First, the party seeking issuance of the writ must have no other adequate means to attain the relief he desires.… Second, the petition must satisfy the burden of showing that his right to issuance of the writ is clear and indisputable", and third, "the issuing court, in the exercise of its discretion, must be satisfied that the writ is appropriate under the circumstances."[50]

This standard applies most urgently in matters involving a requested recusal of a federal judge. "The question of disqualification is reviewable on a petition for writ of mandamus … [but] a writ will not lie in the absence of exceptional circumstances.… 'The determination of the judge concerned should be accorded great weight, and should not be disturbed unless clearly erroneous.'"[51]

The District Court understood this standard and rigorously applied it to determine that Appellants had not met any of the three prongs. The District Court found that Appellants had not demonstrated that they lack an adequate means of review, that they had a "clear and indisputable" right to mandamus, or that the circumstances

[48] *In re LeBlanc*, 559 F. Appx. 389, 392 (5th Cir. 2014) (internal quotations omitted).

[49] *Cheney v. U.S. Dist. Court*, 542 U.S. 367, 380 (2004).

[50] *LeBlanc*, 559 Fed. Appx. at 392.

[51] *In re Houston*, 745 F.2d 925, 927 (5th Cir. 1984) (citing *Kinnear-Weed Corp. v. Humble Oil & Refin. Co*., 324 F. Supp. 1371, 1385 (S.D.Tex.1969), *aff'd*, 441 F.2d 631 (5th Cir.), *cert. denied*, 404 U.S. 941 (1971).

Appellants presented to the District Court were the type of "exceptional circumstances" compelling an exceptional remedy of mandamus, under which a District Court judge would directly order Judge Jernigan to remove herself from the Chapter 11 case she has presided over for almost five years.

Appellants argue that Judge Jernigan applied a "subjective standard" in denying recusal because she wrote that she "does not believe she harbors, or has shown, any personal bias or prejudice against" Appellants.[52] Because this is an appeal of the District Court's Mandamus Denial Order and *not* an appeal of Judge Jernigan's ruling, it is far more relevant to examine the District Court's analysis of the applicable three-prong standard than anything Appellants contend Judge Jernigan did or didn't do. Appellants can only prevail in this appeal if they can prove that the District Court—not Judge Jernigan—abused its discretion in denying the Petition.

They can't.

APPELLANTS HAVE NO CLEAR AND INDISPUTABLE RIGHT TO MANDAMUS[53]

Appellants failed to demonstrate to the District Court, just as they failed to demonstrate to the Bankruptcy Court, that they should prevail on the merits of their

[52] Opening Brief at 34, citing ROA.60. Appellants take this isolated statement out of context from a 36-page ruling and attempt to mislead this Court into believing that this statement was a "subjective standard" that Judge Jerigan substituted for the proper objective standard. Not only did she cite the proper legal standard, she employed it. Any cursory reading of her opinion—and, more importantly, of the District Court's Mandamus Denial Order—indicates that both the Bankruptcy Court and the District Court cleaved to the appropriate legal standard at all times.

[53] Regarding the first prong of the standard for issuing a writ of mandamus, Appellants accuse the District Court of "not address[ing] the well-settled law finding that mandamus relief is warranted

basic allegation that Judge Jernigan was biased and should have recused. In ruling that Appellants failed to meet the second prong for mandamus—a clear and indisputable right to mandamus—the District Court clearly took Appellants' litany of "examples" of bias seriously enough to evaluate them and place them in context, saying:

> Petitioners do not place the contested ruling and statements in the appropriate context within the Bankruptcy Case. As set forth in the Third Order Denying Recusal, the Third Recusal Motion "contains several misstatements or partial descriptions of events during the case, in several places, that create misimpressions." … Petitioners fail to identify any action or statement revealing a sufficient degree of antagonism.[54]

Yet Appellants quibble that the District Court's order fails to "explain[ ] this statement or provide[ ] examples of 'misstatements' or 'partial descriptions.'"[55] They cite no case that says a District Court's failure to exhaustively explain its factual findings constitutes the type of abuse of discretion this Court would have to find to reverse the District Court's order. They even accuse Judge Jernigan of being equally

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in the recusal context, nor the Dondero Parties' argument about why an ordinary appeal will not suffice …" [Opening Brief at 47]. That is inaccurate. The District Court found that Appellants "fail[ed] to make the required showing" because "[i]f anything, Judge Jernigan's ruling could arguably constitute grounds for appeal, not for recusal …" [ROA.18888]. It also doesn't matter. Even had the District Court explicitly ruled that, because the Bankruptcy Court's recusal order was interlocutory and not subject to direct appeal, the Petition was procedurally proper, the District Court would still have denied the Petition because Appellants did not satisfy either of the other two prongs of the standard: Appellants failed to demonstrate a clear and indisputable right to mandamus or that a writ would be appropriate under these circumstances. In fact, the District Court proceeded to rule on the merits of the Petition, implicitly acknowledging that "an ordinary appeal will not suffice."

[54] ROA.18889.

[55] Opening Brief at 51.

unforthcoming, despite that Judge Jernigan's decision contained *23 pages* of minutely detailed analysis of Appellants' allegations and the extensive bankruptcy and litigation context in which they must be placed to understand what Judge Jernigan did and did not do over the course of a multi-year, highly complex Chapter 11 case.

Worse, Appellants accuse Judge Jernigan of "avoiding most of the grounds for recusal," and offering up that falsehood as "yet another example of her predisposition to rule against the Dondero Parties without due consideration of the evidence before the court and without objective analysis."[56] Again, Judge Jernigan's ruling denying the Third Motion was *36 pages* long. How many more pages would Judge Jernigan have had to produce before Appellants would be satisfied that she had given "due consideration" to the prodigious amount of so-called "evidence" Appellants freely put before her?[57] The record amply reflects that Judge Jernigan exhaustively addressed Appellants' allegations by identifying them, explaining them, and placing them in the appropriate context. That no one else sees the world the way Appellants do is not grounds for recusal.[58]

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[56] Opening Brief at 35.

[57] Appellants submitted a *278-page* memorandum of law in support of the Third Motion alone. Judge Jernigan noted that the "submissions on this issue are enormous (as mentioned, thousands of pages have been filed)." ROA.79. Appellee respectfully suggests that Appellants cannot credibly complain that they were denied an opportunity to be heard on every purported basis for recusal they could muster.

[58] Appellants spend several pages of their Opening Brief's argument section obliquely attacking Judge Jernigan's credibility. Given these Appellants' repeatedly contemptuous behavior, it's unsurprising that Appellants would engage in such *ad hominem* attacks against a sitting federal judge.

Appellants even accuse Judge Jernigan of failing to address Appellants' far-fetched allegations "stemming from her novels." This is another baseless accusation. Judge Jernigan spent more than four pages of her opinion discussing her novels in exacting detail and explaining her motivations and inspirations for writing them. The District Court, for its part, addressed the issue of Judge Jernigan's novels directly and bluntly:

> Petitioners also contend that two *fiction* novels authored by Judge Jernigan are "the most revealing evidence of [her] bias." … The Court is not persuaded by Petitioners' far-reaching comparison between the books and the parties to the Bankruptcy Case. Petitioners fail to show how any portion of the crime novels could raise a doubt in the mind of a reasonable observer as to Judge Jernigan's impartiality.[59]

This Court should take particular notice that the District Court was "not persuaded" by Appellants' "far-reaching" (perhaps read "far-fetched") comparison, which comprised some three pages of its Opening Brief and included a chart containing only three "parallels" Appellants claim to see between Judge Jernigan's novels and Dondero-controlled Highland.[60] Interestingly, the Opening Brief fails to address the portion of the District Court's order pertaining to the novels, perhaps because Judge Scholer's assessment of Appellants' favorite argument is

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Although unsurprising, it's still unacceptable and unbecoming. The Court should countenance none of it.

[59] ROA.18889 (emphasis in original).

[60] Opening Brief at 38–39.

uncomfortably terse.[61] Instead, Appellants just persist in arguing the merits of Judge Jernigan's opinion as if this were an appeal of that opinion. It isn't.

Similarly, Appellants attempt to make much of an isolated episode years ago in which Judge Jernigan appropriately inquired about whether Independent Director-controlled Highland had taken out PPP loans, again seeing the same bias bogeyman they see around every corner: "the bankruptcy judge read an article outside the record, assumed from that article (rather than evidence presented in court) that Mr. Dondero had engaged in nefarious conduct, demanded information regarding that conduct, and broadcast her distrust of Mr. Dondero."[62] First, Judge Jernigan did nothing

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[61] Had the District Court chosen to elaborate on its rejection of the "parallels" Appellants attempt to draw between themselves and Judge Jernigan's novels, the District Court may have noted that Judge Jernigan herself confirmed that her books "are not about Mr. Dondero or the hedge fund industry in general," and that she "made clear that everything in the two books should be viewed as fiction," that "there are no characters or entities in her books that have been inspired by or modeled after" Mr. Dondero or these Appellants. These statements are hardly self-serving. Any fair reading of the novels confirms what Judge Jernigan said about them. *He Watches All My Paths* was about two brothers seeking revenge on the protagonist, Judge Avery Lassiter, and the bankruptcy system generally. The brothers' mother was killed by a drunk driver and Judge Lassiter, before her judicial appointment, successfully represented the defendants in the wrongful death suit brought by the mother's estate. Without money or family, the brothers were placed in an orphanage, where they were sexually abused and then had their claims discharged in the orphanage's bankruptcy. In the sequel, *Hedging Death,* the antagonist, Cade Graham, was a Texas native who managed a hedge fund. Given all that Appellee knows about Mr. Dondero, Appellee does not believe Cade Graham's story bears even a passing resemblance to Mr. Dondero's. Graham invested in a biomedical company that turned out to be a Ponzi scheme resulting in investor and SEC litigation and leading Graham to fake his own death and accept money from a Mexican drug cartel, which he invested in a cartel-sponsored assisted living facility that killed its residents to realize on their life insurance policies. Judge Jernigan's books are creations of her vivid imagination concerning salaciously criminal activity. They are fiction.

[62] Opening Brief at 41. The "article outside the record" is notable because (a) Judge Jernigan openly disclosed it, and (b) it is the *only* extra-judicial fact cited by Appellants after years of litigating these issues.

of the sort. She gave a perfectly sensible explanation for this short-lived July 2020 colloquy in her opinion.[63] Second, despite that the District Court did not address this small matter specifically, Appellants employ this passage in their Opening Brief to substitute their own imaginings for Judge Jernigan's facially plausible and objectively credible explanation of this isolated, momentary exchange at a hearing that occurred more than four years ago.

In all, although its order was concise, the District Court considered Appellants' arguments and evidence but was nevertheless "not persuaded," finding Appellants' allegations to be "wholly conclusory and baseless."[64]

Appellants hope this Court will be moved by their contention that Judge Jernigan "repeatedly suggested that [the Dondero Parties] or their counsel were proceeding in 'bad faith,' called their actions 'frivolous,' and even sanctioned (or threatened to sanction) counsel unnecessarily."[65] Whatever "repeatedly" might mean, it is true that Judge Jernigan rightly found that the Dondero Parties had proceeded in bad faith. This Court upheld that finding.[66] It is true that Judge Jernigan rightly called

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[63] *See* ROA.70–71. Highland later advised the Bankruptcy Court that it had not taken out any PPP loans.

[64] ROA.18889.

[65] Opening Brief at 54.

[66] *See, generally, NexPoint*, 48 F.4th 419. Judge Jernigan also later issued a *Memorandum Opinion and Order Granting Highland Capital Management, L.P.'s Motion for (A) Bad Faith Finding and (B) Attorneys' Fees Against NexPoint Real Estate Partners LLC (f/k/a HCRE Partners, LLC) in Connection with Proof of Claim # 146* [Bankruptcy Docket No. 4039] (the "Bad Faith Order") in which she held (following an evidentiary hearing) that that the claimant—an entity majority-owned and -controlled by Mr. Dondero—acted in bad faith by filing and prosecuting for years a

certain of the Dondero Parties' actions "frivolous." So did the District Court.[67] And it is true that Judge Jernigan rightly found Mr. Dondero, some of the Dondero Parties, and the Dondero Parties' counsel in contempt. Those contempt findings were affirmed on appeal.[68] Every single finding of bad faith and every single finding of contempt has been affirmed and reaffirmed on appeals to the District Court and this Court. Uncomfortable truths are still truths and not evidence of bias.

MANDAMUS IS INAPPROPRIATE UNDER THESE CIRCUMSTANCES

Finally, Appellants grossly mischaracterize the District Court by stating that "the District Court said only that mandamus relief is not appropriate because the Court concluded at [sic] the second, merits prong that the bankruptcy judge was not biased."[69] Not so. The District Court said, in addressing "the third requirement, …. *[a]fter a careful review of the record*, the Court concludes that a reasonable and

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baseless proof of claim. Appellants contend that the Bad Faith Order is "[p]erhaps the most egregious example" of Judge Jernigan's bias. Opening Brief at 23. If relevant, Appellee welcomes this Court's review of the Bad Faith Order; it is a well-reasoned, exhaustive opinion based on extensive evidence that Appellee is confident will be upheld on appeal now pending in the District Court. *See NexPoint Real Estate Partners, LLC v. Highland Capital Management, L.P.*, Civil Case No. 3:24-cv-01479-S (N.D. Tex. 2024).

[67] *See, e.g., CLO Holdco, Ltd. v. Kirschner (In re Highland Cap. Mgmt., L.P.),* 2023 U.S. Dist. LEXIS 87842, at *19 (N.D. Tex. May 18, 2023) (calling Dondero-controlled CLO Holdco's litigation positions and theories "frivolous" three times).

[68] *Dondero v. Highland,* 2024 U.S. App. LEXIS 16019. In a separate case, this Court reversed certain sanctions but left undisturbed the Bankruptcy Court's finding of contempt against Mr. Dondero, two of his entities, and his counsel. *The Charitable DAF Fund, L.P. v. Highland Cap. Mgmt., L.P. (In re Highland Cap. Mgmt., L.P.),* 98 F.4th 170 (5th Cir. 2024).

[69] Opening Brief at 56.

objective observer, aware of all the facts and circumstances, would not harbor doubts about Judge Jernigan's impartiality in the Bankruptcy Case."[70]

This "careful review of the record" included at least:

- An unprecedented appellate record where, with very limited exceptions, Judge Jernigan's rulings have been adopted or affirmed by the District Court and this Court in *dozens of appeals*, something that would not have been possible were Judge Jernigan unable to be impartial;
- Each Appellant is owned or controlled by or affiliated with James Dondero;
- None of these Appellants has ever had an allowed claim in the Highland Case;[71]
- None of these Appellants has a vested interest in Reorganized Highland or the Highland Claimant Trust created under the Plan.[72]
- None of these Appellants has had a post-effective date contractual relationship with Highland;
- Many of these Appellants have had Highland-related appeals dismissed by this Court and the District Court for lack of standing;[73]

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[70] ROA.18889 (emphasis added).

[71] *See, e.g., Dugaboy Inv. Trust v. Highland Cap. Mgmt., L.P. (In re Highland Cap. Mgmt., L.P.)*, 2023 U.S. App. LEXIS 19674, at *5-6 (5th Cir. Jul. 31, 2023); *NexPoint Advisors, L.P. v. Pachulski Stang Ziehl & Jones, L.L.P. (In re Highland Cap. Mgmt., L.P.)*, 74 F.4th 361, 366-67 (5th Cir. 2023).

[72] *In re Highland Cap. Mgmt., L.P.*, 2023 Bankr. LEXIS 2104, at *118-19 (Bankr. N.D. Tex. Aug. 25, 2023); *Dugaboy Inv. Tr. v. Highland Cap. Mgmt., L.P. (In re Highland Cap. Mgmt., L.P.)*, 2024 Bankr. LEXIS 1217, at *44-45 (Bankr. N.D. Tex. May 24, 2024).

[73] Dugaboy is the *only* appellant with an *unvested, contingent* interest in the Highland Claimant Trust, and even that is a deeply subordinated Class 11 interest. Dugaboy obtained that interest because it held a pre-bankruptcy fractional 0.1866% limited partnership interest in Highland Capital Management, L.P.—an interest so small and speculative that this Court twice dismissed Dugaboy's appeals for lack of prudential (or bankruptcy) standing. *See Dugaboy v. Highland Cap. Mgmt, L.P.*, Case No. 22-10831 at Docket No. 46; *Dugaboy v. Highland Cap. Mgmt., L.P.*, Case No. 22-10960 at Docket No. 68.

- Many of these Appellants have been found to have acted in bad faith by the Bankruptcy Court, the District Court, and this Court;
- No actual creditor with a vested interest in the Claimant Trust has ever sought Judge Jernigan's recusal or engaged in post-effective date litigation with Reorganized Highland;
- Hundreds of millions of dollars in assets cannot be "un-sold," nor can hundreds of millions of dollars in distributions to creditors be clawed back; and
- These Appellants claim to believe that Judge Jernigan was biased before the Highland Case was transferred to her yet did not seek recusal until after the Plan was confirmed more than a year later, after most significant claims against the bankruptcy estate had been resolved, and after the Bankruptcy Court had imposed a temporary restraining order preventing these Appellants and their affiliates from impeding Highland's reorganization.

None of the so-called "evidence" of bias withstands scrutiny. The District Court did not reject the Appellants' Petition because it did not apply the correct legal standard. The District Court rejected the Petition because it was without merit.

That is precisely the approach this Court countenances with respect to this third prong. This Court has repeatedly noted that a writ of mandamus is most "appropriate under the circumstances" when the writ would "have importance beyond the immediate case."[74] But, more fundamentally, these cases all note that this third prong is only pertinent if the petitioners have satisfied the second, merits-based prong of demonstrating that the right to the writ is "clear and indisputable." When

[74] *In re A&D Ints., Inc.,* 33 F.4th 254, 256 (5th Cir. 2022), quoting *In re Volkswagen of Am., Inc.,* 545 F.3d 304, 319 (5th Cir. 2008); s*ee also, e.g., In re Depuy Orthopaedics, Inc.,* 870 F.3d 345, 352 (5th Cir. 2017).

the petitioners fail to meet that second prong—just as Appellants here—their failure to meet the third prong ineluctably follows.[75] Stated simply, it is not "appropriate under the circumstances" to issue a writ of mandamus Appellants do not merit.

That is precisely what the District Court held here: it determined that Appellants had not demonstrated a clear and indisputable right to a writ of mandamus and, therefore, issuing a writ under those circumstances would not be appropriate. And the District Court correctly ruled that the Appellants had failed to demonstrate a "clear and indisputable" right to mandamus. Satisfying this condition "require[s] more than showing that the district court misinterpreted the law, misapplied it to the facts, or otherwise engaged in an abuse of discretion."[76] Appellants must demonstrate a "clear abuse[ ] of discretion that produce[s] patently erroneous results" or that "there has been a usurpation of judicial power."[77] In other words, Appellants "must show not only that the [Bankruptcy Court] erred, but that it *clearly and indisputably erred*."[78]

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[75] *See, e.g., In re* TikTok, Inc. 85 F.4th 352, 366–67 (5th Cir. 2023) (after finding that petitioners had met the first two prongs and noting that "district courts have … applied [our] tests with too little regard for consistency of outcomes," Court ruled that "granting mandamus in this case will improve 'consistency of outcomes; by further instructing when transfer [of venue] is—or, for that matter, is not—warranted in response to a § 1404(a) motion. Therefore, the writ is appropriate under these circumstances").

[76] *Depuy*, 870 F.3d at 350 (internal quotations omitted).

[77] *Id.*; *see also United States v. Comeaux*, 954 F.2d 255, 261 (5th Cir. 1992) (mandamus relief is not appropriate when "the most that could be claimed is that the district courts have erred in ruling on matters within their jurisdiction … Such use of the writ would 'thwart the congressional policy against piecemeal appeal'") (internal citations omitted).

[78] *In re Occidental Petroleum Corp.*, 217 F.3d 293, 295 (5th Cir. 2000) (emphasis in original).

The Bankruptcy Court did not clearly and indisputably abuse its discretion in denying the Third Motion or usurp judicial authority. And the District Court did not abuse its discretion in denying the Petition on that basis. The Third Motion was ill-founded and premised on omitted or mischaracterized facts and conspiratorial fantasy. The Bankruptcy Court was not clearly and indisputably in error by denying the Third Motion and the District Court aptly and justifiably refused to invoke the rare and extraordinary remedy of mandamus to force the Bankruptcy Court to recuse.

ALTHOUGH IRRELEVANT, JUDGE JERNIGAN DID NOT APPLY THE WRONG STANDARD

Despite Appellants' repeated urging in their Opening Brief, this Court does *not* have before it the question of whether Judge Jernigan abused her discretion in denying the Third Motion to recuse herself because *this is not an appeal of Judge Jernigan's order.* Appellants obviously wish it were because they spend most of their Opening Brief arguing their case from that mistaken vantage point.[79] In doing so, Appellants begin their argument oddly, by nakedly mischaracterizing a Supreme Court case regarding 28 U.S.C. § 455(a). Rather than stand for the proposition that a "judge's subjective belief of her impartiality is irrelevant,"[80] *Liljeberg* actually

[79] Again, although Appellee does not believe the merits of the Bankruptcy Court's denial of recusal is properly before this Court, Appellee addressed the merits in the Answering Brief at 6–30 and in a pleading that was filed at the direction of, and considered by, the District Court. *See Dondero v. Jernigan*, 3:23-cv-00726-S, *Order*, ROA.3647 (directing Appellee to respond to the Appellants' Petition for a Writ of Mandamus), *Highland Capital Management, L.P.'s Response to Petition for Writ of Mandamus*, ROA.18815–18841.

[80] Opening Brief at 29.

involved circumstances in which an obviously disqualifying conflict of interest involving the judge was purportedly *unknown* to the judge: "Judge Collins had been a member of the Board of Trustees of Loyola University while Liljeberg was negotiating with Loyola to purchase a parcel of land on which to construct a hospital. The success and benefit to Loyola of these negotiations turned, in large part, on Liljeberg prevailing in the litigation before Judge Collins."[81] *Liljeberg* says nothing about "subjective belief" or anything that might help Appellants here. In fact, the Supreme Court said "as the [Fifth Circuit] Court of Appeals correctly noted, Judge Collins' failure to disqualify himself on March 24, 1982, also constituted a violation of § 455(b)(4), which disqualifies a judge if he 'knows that he, individually or as a fiduciary, … has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding."[82] Even these Appellants do not allege that Judge Jernigan has any financial interest in the outcome of the Highland Case or that she was somehow unaware of the alleged "examples" of bias offered by Appellants.

[81] *Liljeberg v. Health Servs. Acquisition Corp.,* 486 U.S. 847, 850 (1988). "Judge Collins had forgotten about Loyola's interest by the time the declaratory judgment suit came to trial …" *Id.* "Judge Collins was a trustee of Loyola University, but was not conscious of the fact that the University and Liljeberg were then engaged in serious negotiations concerning the Kenner hospital project, or of the further fact that the success of those negotiations depended upon his conclusion that Liljeberg controlled the certificate of need." *Id.* at 855-56.

[82] *Id.* at 866–67.

Nor can Appellants hope to persuade this Court that a "reasonable observer could 'harbor doubts concerning [Judge Jernigan's] impartiality ….'"[83] District Judges Kinkeade and Scholer are reasonable observers. They refused to take any action to remove Judge Jernigan. So, too, are the dozens of other District Court and Circuit Court judges who have reviewed and (nearly without exception) left undisturbed a mountain of Judge Jernigan's decisions, orders, and judgments in the Highland Case.

Judge Jernigan is but one in a long list of fact finders, judges, and arbitrators who have ruled against Mr. Dondero and his affiliates. That the Dondero Parties' meritless thrashing-about in the Highland Case produced poor results for Mr. Dondero is no evidence of "bias." Any suggestions to the contrary cannot withstand scrutiny. Nor do these baseless allegations warrant the exceptional remedy of mandamus.

* * *

The 1962 New York Mets amassed the worst season in modern major league baseball history, losing 120 of their 160 games. The team's manager, an aged and

[83] Opening Brief at 31, citing, inaccurately, *Patterson v. Mobil Oil Corp.,* 335 F.3d 476, 483–84 (5th Cir. 2003). *Patterson* is of no use to Appellants, either. This Court regarded the allegations against the judge as a "close question," and, although the Court reluctantly held itself "bound to conclude that, given the specific facts alleged in the plaintiffs' original and supplemental motions to disqualify, Judge Cobb should have recused himself," the Court also held that Judge Cobb's ruling should not be vacated because his failure to recuse himself under "close" circumstances constituted but "harmless error," reasoning that "in light of the long passage of time, the public may be more inclined to lose faith in the system if this court were to mindlessly vacate Judge Cobb's rulings." *Id.* at 485–86.

world-weary Casey Stengel, said of his squad: "The Mets have shown me more ways to lose than I even knew existed." At once humorous and sobering, that was a candid assessment of who was to blame for the Mets's incessant losing. The team lost three quarters of their games that year because they played bad baseball. The team didn't lose 120 times because the umpires were biased.

James Dondero and his entities haven't lost essentially every motion and objection they filed in the Bankruptcy Court and every appeal in the District Court and every appeal in this Court because the judges before whom they've appeared are biased. Judge Jernigan has just been calling balls and strikes. They lose because their legal and factual positions lack merit. They lose because they often lack standing. They lose because they act contemptuously. They lose because they testify falsely.

They lose because they should.

And they should lose here. Appellants—lacking any vested interest in the Claimant Trust—have offered nothing to this Court that would allow it to conclude that the District Court abused its discretion in declining to issue the type of writ reserved for the most egregious, emergent, extraordinary situations of manifest injustice. Any assertion that Judge Jernigan should recuse is baseless. Any assertion that the District Court should have forced Judge Jernigan to recuse is baseless.

CONCLUSION

This Court should credit the District Court's extensive work with the copious record before it and affirm its order denying the Petition.

July 26, 2024

Respectfully submitted,

PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz (CA Bar No. 143717)
John A. Morris (NY Bar No. 2405397)
Gregory V. Demo (NY Bar No. 5371992)
Jordan A. Kroop (NY Bar No. 2680882)
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Email: jpomerantz@pszjlaw.com
jmorris@pszjlaw.com
gdemo@pszjlaw.com
jkroop@pszjlaw.com

-and-

HAYWARD PLLC

/s/ Zachery Z. Annable
Melissa S. Hayward (Texas Bar No. 24044908)
Zachery Z. Annable (Texas Bar No. 24053075)
10501 N. Central Expy, Ste. 106
Dallas, Texas 75231
Telephone: (972) 755-7100
Email: MHayward@HaywardFirm.com
ZAnnable@HaywardFirm.com

Counsel for Highland Capital Management, L.P.

CERTIFICATE OF COMPLIANCE WITH FRAP 32(A)

I certify that this brief complies with the requirements of Federal Rule of Appellate Procedure (FRAP) 32(a)(4)–(6). The brief is typeset on 8.5" × 11" size paper with one-inch margins on all sides, double-spaced (except for quotations exceeding two lines, headings, and footnotes), in 14-point Times New Roman font (a plain, roman, proportional font with serifs), and all case names are italicized. This brief complies with the limits set forth in FRAP 32(a)(7) insofar as it contains 8,014 words, not including the parts of the brief excluded under FRAP 32(f).

/s/ Zachery Z. Annable
Zachery Z. Annable

CERTIFICATE OF SERVICE

I certify that, on July 26, 2024, the foregoing document was served electronically on all parties registered to receive electronic notice in this case via the Court's CM/ECF system.

/s/ Zachery Z. Annable
Zachery Z. Annable