

PACHULSKI STANG ZIEHL & JONES LLP  
Jeffrey N. Pomerantz (admitted *pro hac vice*)  
John A. Morris (admitted *pro hac vice*)  
Gregory V. Demo (admitted *pro hac vice*)  
Hayley R. Winograd (admitted *pro hac vice*)  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Tel: (310) 277-6910

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

WILLKIE FARR & GALLAGHER LLP  
Mark T. Stancil mstancil@willkie.com  
Joshua S. Levy jlevy@willkie.com  
1875 K Street, N.W.  
Washington, D.C. 20006  
(202) 303-1000

REED SMITH LLP  
Omar J. Alaniz (Texas Bar No. 24040402)  
Lindsey L. Robin (Texas Bar No. 24091422)  
2850 N. Harwood St., Ste. 1500  
Dallas, Texas 75201  
(469) 680-4292

*Counsel for Highland Capital Management, L.P. and the Highland Claimant Trust*

*Counsel for James P. Seery, Jr.*

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

In re:  
HIGHLAND CAPITAL MANAGEMENT,  
L.P.,  
  
Reorganized Debtor.

Chapter 11  
  
Case No. 19-34054-sgj11

HUNTER MOUNTAIN INVESTMENT  
TRUST,  
  
Appellant,  
  
v.  
HIGHLAND CAPITAL MANAGEMENT,  
L.P. and JAMES P. SEERY, JR.,  
  
Appellees.

Civil Case No. 3:24-cv-01786-BW

**HIGHLAND PARTIES' MOTION TO DISMISS APPEAL**

Appellees Highland Capital Management, L.P. (“**HCMLP**”), the reorganized debtor in the above-referenced bankruptcy case, the Highland Claimant Trust (the “**Claimant Trust**” and, together with HCMLP, “**Highland**”), and James P. Seery,



Jr., HCMLP's Chief Executive Officer and the Trustee of the Claimant Trust (together with Highland, the "**Highland Parties**" or "**Appellees**"), respectfully move to dismiss this appeal. Appellant has attempted to appeal what is indisputably an interlocutory order. Because this Court has not granted Appellant leave to appeal, the appeal must be dismissed.

### PROCEDURAL POSTURE

1. Appellant initially commenced Case No. 3:24-cv-01786 on July 8, 2024, with the filing of a notice of appeal (the "**Premature Appeal**") as if Appellant had an absolute right to appeal the Bankruptcy Court's *Order Extending Stay of Contested Matter* [Bankr. Ct. Dkt. No. 4104] (the "**Stay Order**") despite acknowledging that the Stay Order is an interlocutory order that may not be appealed to this Court without leave.

2. Appellant acknowledged the interlocutory nature of the Stay Order by filing, also on July 8, 2024, a second notice of appeal in this Court, commencing Case No. 3:24-cv-01787, attaching (as it was required to do) a *Motion for Leave to File an Interlocutory Appeal* [1787 Dkt. No. 1-7] (the "**Interlocutory Motion**"). In the Interlocutory Motion, Appellant openly acknowledged that the Stay Order is interlocutory and argues that this Court should grant leave to appeal the interlocutory Stay Order. *Id.* at 7-8 (providing the legal standard for obtaining leave to appeal an interlocutory order).

3. On July 22, 2024, the Highland Parties filed their *Opposition to Hunter Mountain Investment Trust's Motion for Leave to File an Interlocutory Appeal* [1787 Dkt. No. 13] (the “**Interlocutory Opposition**”). The Interlocutory Opposition agreed with Appellant that the Stay Order was interlocutory but argued that the Court should *not* grant leave to appeal it.

4. On July 25, 2024, this Court entered an order [1786 Dkt. No. 16] asking each party to respond by August 1, 2024, if that party objected to the consolidation of Case Nos. 3:24-cv-1786 and 3:24-cv-1787. Appellant did not respond. Appellees did [1786 Dkt. 12], voicing their support for consolidation and reserving their rights to continue to oppose leave to appeal the interlocutory Stay Order and expressly stating that Appellees were assuming that, pending this Court's ruling on the Interlocutory Motion, “briefing on the Purported Appeal [the Premature Appeal in Case No. 1786] will be suspended pending further order of the Court.” The two cases were consolidated.

5. On August 5, 2024, Appellant filed its *Reply Brief in Support of Motion for Leave to File an Interlocutory Appeal* [1787 Dkt. No. 19] (the “**Interlocutory Reply**”). Appellant maintained its position that the Stay Order was interlocutory. But, ostensibly because the Court has not yet ruled on the Interlocutory Motion, Appellant filed its opening brief on September 16, 2024 [1786 Dkt. No. 16] (the

“**Opening Brief**”) as if the Court had ruled in Appellant’s favor on the Interlocutory Motion. It hasn’t.

6. Appellant’s filing their Opening Brief has forced Appellees to file this motion to dismiss because Appellees cannot be assured, without further order of this Court, that they are not “on the clock” for filing their appellee brief. Because Appellant purports to proceed with an appeal this Court has not authorized, Appellees were compelled to file both this motion to dismiss and a motion to extend Appellees’ time to file their appellate brief until this Court rules on either or both of the Interlocutory Motion and this motion to dismiss.

### **APPEAL SHOULD BE DISMISSED**

7. A would-be appellant must obtain leave from the appellate court to appeal an interlocutory bankruptcy court order. Rule 8004 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) provides that, to “appeal from an interlocutory order or decree of a bankruptcy court under 28 U.S.C. § 158(a)(3), a party must file with the bankruptcy clerk a notice of appeal” that “must ... be accompanied by a motion for leave to appeal ....” Unless and until the appellate court grants the motion for leave to appeal, the appeal may not proceed. If the appellate court denies leave to appeal, the appeal is dismissed.<sup>1</sup>

---

<sup>1</sup> See, e.g., *Parson v. Unknown*, 2018 U.S. Dist. LEXIS 102958, at \*2 (N.D. Tex. June 20, 2018) (Lindsay, J.) (dismissing appeal as a result of leave to appeal interlocutory order being denied, noting that “leave for an interlocutory appeal is granted only in exceptional circumstances that justify overriding the general policy of not allowing such appeals”); *Clem v. Tomlinson*, 2019 U.S.

8. Here, although Appellant has properly and timely filed its required motion for leave to appeal—the Interlocutory Motion—the Court has not ruled on it and has not granted the Interlocutory Motion or otherwise granted leave to Appellant to appeal the Stay Order.

9. Appellant acknowledges that the Stay Order is interlocutory and cannot be appealed “as of right” under Rule 8003 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”). This Court’s leave is required under Bankruptcy Rule 8004 and 28 U.S.C. § 158(a)(3) for Appellant to proceed with its appeal of the Stay Order. Because this Court has not granted that leave,<sup>2</sup> this appeal must be dismissed.<sup>3</sup>

---

Dist. LEXIS 6926 (N.D. Tex. Jan. 15, 2019) (appeal dismissed following denial of leave to appeal interlocutory order and because appeal was untimely).

<sup>2</sup> This Court may (and should) consider the Interlocutory Motion without oral argument. *See* FED. R. BANKR. P. 8004(c)(3). This Court (Judge Kinkeade) did exactly that with respect to Appellant’s owner, James Dondero, in this same bankruptcy case when, without oral argument, it dismissed Dondero’s appeal of the bankruptcy court’s denial of one of Dondero’s several recusal motions. *Dondero v. Jernigan (In re Highland Cap. Mgmt., L.P.)*, 2022 U.S. Dist. LEXIS 23454, at \*14 (N.D. Tex. Feb. 9, 2022) (“The Recusal Order is not a final, appealable order, is not subject to the collateral order doctrine, and is not an appealable interlocutory order under § 1292(a) and the Court is without jurisdiction over this appeal .... The Court further denies Appellants leave to appeal the Recusal Order .... Accordingly, the Court dismisses this appeal for lack of jurisdiction.”).

<sup>3</sup> As noted, the Court has not yet ruled on the Interlocutory Motion. This motion to dismiss incorporates all arguments the Highland Parties made in their Interlocutory Opposition without repeating them here. No basis exists for this Court to grant leave to appeal the interlocutory Stay Order. If this Court denies the Interlocutory Motion, the appeal will be dismissed and this motion to dismiss will be moot. If the Court grants the Interlocutory Motion and grants Appellant leave to appeal the Stay Order, the Highland Parties reserve all rights to move to dismiss the appeal on bases other than those stated in this motion.

**PRAYER**

WHEREFORE, Appellees respectfully request that the Court enter an order (i) granting this motion to dismiss and dismissing this appeal, and (ii) granting Appellees such other and further relief as the Court deems just and proper.

October 8, 2024

PACHULSKI STANG ZIEHL & JONES LLP

Jeffrey N. Pomerantz (admitted *pro hac vice*)  
John A. Morris (admitted *pro hac vice*)  
Gregory V. Demo (admitted *pro hac vice*)  
Hayley R. Winograd (admitted *pro hac vice*)  
10100 Santa Monica Boulevard, 13th Floor  
Los Angeles, CA 90067  
Tel: (310) 277-6910  
Fax: (310) 201-0760  
Email: [jpomerantz@pszjlaw.com](mailto:jpomerantz@pszjlaw.com)  
[jmorris@pszjlaw.com](mailto:jmorris@pszjlaw.com)  
[gdemo@pszjlaw.com](mailto:gdemo@pszjlaw.com)  
[hwinograd@pszjlaw.com](mailto:hwinograd@pszjlaw.com)

-and-

HAYWARD PLLC

/s/ Zachery Z. Annable  
Melissa S. Hayward  
Texas Bar No. 24044908  
[MHayward@HaywardFirm.com](mailto:MHayward@HaywardFirm.com)  
Zachery Z. Annable  
Texas Bar No. 24053075  
[ZAnnable@HaywardFirm.com](mailto:ZAnnable@HaywardFirm.com)  
10501 N. Central Expy, Ste. 106  
Dallas, Texas 75231  
Tel: (972) 755-7100  
Fax: (972) 755-7110

*Counsel for Highland Capital Management,  
L.P. and the Highland Claimant Trust*

WILLKIE FARR & GALLAGHER LLP

Mark T. Stancil  
Joshua S. Levy  
1875 K Street, N.W.  
Washington, D.C. 20006  
(202) 303-1000  
[mstancil@willkie.com](mailto:mstancil@willkie.com)  
[jlevy@willkie.com](mailto:jlevy@willkie.com)

-and-

REED SMITH LLP

/s/ Omar J. Alaniz  
Omar J. Alaniz  
Texas Bar No. 24040402  
Lindsey L. Robin  
Texas Bar No. 24091422  
2850 N. Harwood St., Ste. 1500  
Dallas, Texas 75201  
(469) 680-4292

*Counsel for James P. Seery, Jr.*

### **CERTIFICATE OF CONFERENCE**

The undersigned hereby certifies that, on October 7-8, 2024, counsel for appellees Highland Capital Management, L.P. and the Highland Claimant Trust, John A. Morris, corresponded with counsel for appellant Hunter Mountain Investment Trust (“HMIT”), Deborah R. Deitsch-Perez, regarding the relief requested in the foregoing motion. Ms. Deitsch-Perez advised that HMIT is **OPPOSED** to the relief requested in the Motion.

*/s/ Zachery Z. Annable*  
Zachery Z. Annable

### **CERTIFICATE OF COMPLIANCE**

1. This document complies with the word limit of Fed. R. Bankr. P. 8013(f)(3)(A) because, excluding the portions excluded by Fed. R. Bankr. P. 8015(g), this document contains 1,160 words.
2. This document complies with the typeface requirements of Fed. R. Bankr. P. 8015(a)(5) and the type-style requirements of Fed. R. Bankr. P. 8015(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word, typeface Times New Roman, 14-point type (12-point type of footnotes).

*/s/ Zachery Z. Annable*  
Zachery Z. Annable