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**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 TEMPORARILY SUSPEND BRIEFING

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 suspend all briefing and associated deadlines in this appeal. Appellant has attempted to appeal what it acknowledges is an interlocutory order. Because this Court has not granted Appellant leave to appeal, Appellant’s filing of its opening brief on September 16, 2024 [1786 Dkt. No. 16] (the “**Opening Brief**”) was premature. The Highland Parties should not be required to file their appellee briefs unless and until this Court first grants Appellant’s fully briefed Interlocutory Motion (defined below), if at all. Suspending further briefing in this would-be appeal pending the Court’s ruling on Appellant’s Interlocutory Motion would preserve judicial resources and save the parties considerable time and expense in preparing briefs in an appeal that is likely to 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 as if the Court had granted the Interlocutory Motion. It didn’t.¹

6. Because Appellant filed its Opening Brief before this Court has authorized this interlocutory appeal, it would be unjust and wasteful to put Appellees “on the clock” for filing their appellee brief and to require Appellees to expend considerable time and expense preparing one or more appellate briefs pertaining to an appeal that this Court has not authorized.

RELIEF REQUESTED

7. This Court has the discretion to suspend the briefing deadlines in this case in consideration of judicial efficiency or the pendency of motions.² Appellees respectfully move the Court for an order suspending all briefing in connection with

¹ The Highland Parties have filed, simultaneously with this motion, a motion to dismiss this appeal on this basis.

² See FED. R. BANKR. P. 8016(e); *SR Constr., Inc. v. RE Palm Springs, LLC (In re RE Palm Springs II, LLC)*, 2021 U.S. Dist. LEXIS 141351 (N.D. Tex. July 29, 2021) (concerning an appeal of a bankruptcy court order, the “Court suspended all appellate briefing deadlines pending the resolution of HPS’s motion” to dismiss appeal); *Graham v. Savage*, 2022 U.S. App. LEXIS 35093 (5th Cir. Sept. 15, 2022); *Stevens v. Conn’s, Inc.*, 2019 U.S. App. LEXIS 39145 (5th Cir. Nov. 25, 2019).

the Premature Appeal until this Court rules on the Interlocutory Motion (or, alternatively, the motion to dismiss) and then resume briefing *only* if the Court grants Appellant leave to appeal. Further, Appellees respectfully request that their time to file appellee brief(s) be tolled pending the Court's ruling on this motion to suspend briefing. If the Court denies this motion and orders briefing to proceed, Appellees respectfully request that they be given at least 14 days from the date of that order to prepare and file appellee brief(s).

PRAYER

WHEREFORE, Appellees respectfully request that the Court enter an order (i) granting this motion, (ii) suspending all briefing in connection with the Premature Appeal until this Court rules on the Interlocutory Motion (or, alternatively, the motion to dismiss), (iii) tolling the time to file appellee brief(s) pending the Court's ruling on this motion to suspend briefing, and (iv) granting Appellees such other and further relief as the Court deems just and proper.

October 8, 2024

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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 922 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
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