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

<p>In re: HIGHLAND CAPITAL MANAGEMENT, L.P., Reorganized Debtor.</p>	<p>Chapter 11 Case No. 19-34054-sgj11</p>
<p>HUNTER MOUNTAIN INVESTMENT TRUST, Appellant, v. HIGHLAND CAPITAL MANAGEMENT, L.P. and JAMES P. SEERY, JR., Appellees.</p>	<p>Civil Case No. 3:24-cv-01786-L</p>

**HIGHLAND PARTIES’ OMNIBUS REPLY IN SUPPORT OF MOTIONS
TO DISMISS APPEAL AND TO 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 reply to *Appellant’s Response to Appellees’ Motion to Dismiss Appeal* [Doc. 20] and *Appellant’s Response to Appellees’ Motion to Temporarily Suspend Briefing* [Doc. 21] (the “**Responses**”) and in further support of the Highland Parties’ motions to dismiss this appeal and to suspend briefing pending the Court’s ruling on the Interlocutory Motion [Docs. 17 and 18] (the “**Motions**”).¹ The Responses are founded on and proceed from an erroneous premise and cannot overcome the merits of the Motions, which this Court should grant.

REPLY

1. Respectfully, the Court faces a simple threshold question: whether the Bankruptcy Court’s *Order Extending Stay of Contested Matter* [Bankr. Ct. Dkt. No. 4104] (the “**Stay Order**”) is an interlocutory order that may not be appealed to this Court without leave. The Court cannot rule on the Interlocutory Motion without first determining whether the Stay Order is actually an interlocutory order. Appellees maintain that it is. Until it filed its Responses, so did Appellant.

¹ Any capitalized terms used but not defined in this omnibus reply carry the definitions given to them in the Motions.

2. The Responses proceed from the fundamental premise that the Stay Order is an “indefinite” stay that equates to a dismissal. Appellant is wrong. There is nothing “indefinite” about the Stay Order.

3. Appellant argues that the Stay Order is indefinite because the stay will not lift until two of Appellant’s other appeals—the “Valuation Proceeding” and the “Claims Trading Proceeding”—are resolved by final, non-appealable orders. Appellant’s intentional vagueness cannot hide the reality that: (1) *both* of those other appeals are fully briefed and *sub judice* such that they could be resolved at any moment; and (2) whether those appeals continue on is within Appellant’s control.² When those appeals are resolved, the Stay Order will terminate immediately. This entire consolidated appeal would then be moot.

4. Appellant also argues that “the Claimant Trust will, by its terms, be dissolved and Seery’s duties as Claimant Trustee complete [*sic*]”³ while grudgingly noting in a footnote⁴ that the Bankruptcy Court *granted* Highland’s motion to extend the Claimant Trust by one year, to August 11, 2025.⁵ Mostly because of the

² Appellant is also an appellant in those appeals. Appellant’s reference to a chart it filed in another case purporting to demonstrate the length of time other appeals have taken is irrelevant. *These* two appeals are fully briefed. Rulings can come any day.

³ Doc. 21 at 9.

⁴ *Id.* n.23.

⁵ Highland expressly reserved the right to seek and obtain a further extension of the Claimant Trust beyond August 11, 2025.

continued unbridled litigiousness of the Dondero entities like Appellant, the Claimant Trust is not going to be “dissolved” for some ten months *at the very least*. Appellant knows this, yet cynically suggests otherwise.

5. None of the arguments Appellant uses to try to convince this Court that the Stay Order is not interlocutory, or that the Stay Order effects an “indefinite” stay, has any merit. The Responses fail to cite any precedential support for the odd proposition that the Bankruptcy Court’s unremarkable, finite, procedural order staying a case pending a related, dispositive appeal is—in this one, putatively special instance—a final order subject to appeal as of right. The Stay Order functions precisely the way innumerable other customary federal trial-level stay orders do. All those orders are interlocutory.⁶

6. Neither of the two cases Appellant cites in the Responses says otherwise.⁷ Both of those decisions pertained to courts entering stays in favor of pending arbitration, obviously precluding review of an order that compelled

⁶ Courts in this Circuit routinely “grant a stay when a related case with substantially similar issues is pending before a court of appeals.” *Greco v. NFL*, 116 F. Supp. 3d 744, 761 (N.D. Tex. 2015) (staying “case pending resolution of the appeal filed” in “a related case” that “will very likely bear on this case”). *See also, e.g., Acceptance Indem. Ins. Co. v. Frankford Farms, LLC*, 2024 WL 1595757, at *5–7 (N.D. Tex. Mar. 12, 2024) (recommending to “stay the present case until the Fifth Circuit enters an opinion in the *Sentry Insurance* appeal”), *report and recommendation adopted by* 2024 WL 1597752 (N.D. Tex. Apr. 12, 2024); *Second Amend. Found., Inc. v. Bureau of Alcohol, Firearms, & Explosives*, 2023 WL 4497266, at *1 (N.D. Tex. July 10, 2023) (staying “this case pending the Fifth Circuit’s decision in *Mock v. Garland*”).

⁷ Appellant cites no cases in the Responses resembling the procedural posture of this case. Appellees are unaware that any case exists indicating that a temporary, finite stay order such as the Stay Order is anything other than a non-appealable interlocutory order.

arbitration over one party's objection, depriving that party, once the arbitration is completed, of being able to argue that the issue should not be arbitrated.

7. The situation here fundamentally differs. This case does not involve arbitration or litigation of Appellant's case in another forum. Appellant's motion for leave will be heard in the bankruptcy court once the stay lifts. The Stay Order does nothing to affect Appellant's substantive rights. That's why it's an interlocutory order.

PRAYER

Appellees respectfully request that the Court deny the Interlocutory Motion, grant the Motions, and dismiss this consolidated appeal.

October 15, 2024

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CERTIFICATE OF COMPLIANCE

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