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

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

In re: Highland Capital Management, L.P.,

Debtor.

Hunter Mountain Investment Trust,
Appellant,

v.

Highland Capital Management, L.P., Highland Claimant Trust, and James P. Seery, Jr.,
Appellees.

On Appeal from the United States Bankruptcy Court
for the Northern District of Texas, Bankruptcy Case No. 19-34054-sgj11
Hon. Stacey G.C. Jernigan, Presiding

APPELLANT'S REPLY BRIEF

STINSON LLP
Deborah Deitsch-Perez
Michael P. Aigen
2200 Ross Avenue, Suite 2900
Dallas, Texas 75201
Telephone: (214) 560-2201
Facsimile: (214) 560-2203
Email: deborah.deitschperez@stinson.com
Email: michael.aigen@stinson.com

Counsel for Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Other Authorities

I. INTRODUCTION[1]

To avoid consideration on the merits of Hunter Mountain Investment Trust's ("HMIT" or "Appellant") motion for leave ("Motion for Leave") to bring suit in Delaware ("Delaware Complaint") to remove James P. Seery, Jr. ("Seery") as Trustee ("Claimant Trustee") of the Highland Capital Management, L.P. Claimant Trust ("Claimant Trust"), the reorganized debtor in the underlying chapter 11 case ("HCMLP") and the Claimant Trust (collectively, "Highland") filed the Motion to Stay, seeking an indefinite stay of all proceedings related to HMIT's Motion for Leave. The bankruptcy court granted Highland's motion for an indefinite stay pending appeal despite Highland's failure to meet the requisite standard for such relief ("Stay Order"). As explained in HMIT's Appellant Brief, that was an abuse of discretion.

In its Appellee Brief, Highland makes several arguments to support the bankruptcy court's decision but ignores pertinent factual allegations and relevant law cited by Appellant that demonstrates that the stay should not have been granted. For example, Highland argues that the appeal is improper because the Stay Order is interlocutory but addresses none of the law cited by Appellant that informs the Court to treat the Stay Order as final and appealable. Highland also argues that the

[1] Appellant uses the same defined terms as used in their Opening Brief, Dkt. 16 ("Appellant Brief"). Appellant refers to the responding brief (Dkt. 25) as "Appellee Brief." Appellant refers to Appellees collectively as "Highland," unless otherwise indicated.

bankruptcy court utilized the appropriate standard but fails to address several flaws in the Stay Order that Appellant identified. Highland also fails to address Appellant's arguments as to why the issues in the Valuation Proceeding and the Claims Trading Proceeding are different from the standing issue in this proceeding, making a stay in deference to those proceedings inappropriate. Finally, Highland's argument that the Stay Order is not indefinite ignores the plain language of the Stay Order extending the stay until all appellate proceedings are concluded. Highland fails to justify the error and abuse of discretion committed by the bankruptcy court. Therefore, the Court should reverse.

II. ARGUMENTS AND AUTHORITIES

A. The Court Should Treat this Appeal as an Authorized Appeal of a Final Order

Highland argues that the Stay Order is an interlocutory order that cannot be appealed without leave of Court.[2] Highland makes no legal argument about why the body of law instructing the Court to treat the Stay Order as final and appealable is wrong or inapplicable. Rather, Highland relies solely on the misleading assertion that "Appellant acknowledged that the Stay Order is interlocutory…." *Id.*

On July 8, 2024, Appellant timely filed two notices of appeal from the bankruptcy court's Stay Order. In the first, the subject of the present appeal,

[2] Appellee Brief at 8.

Appellant asserted that the Order should be appealable as of right because it functions as a dismissal on the merits of Appellant's Motion for Leave for reasons discussed below.[3] On September 16, 2024, Appellant filed its opening brief on appeal in this proceeding. In that brief, Appellant likewise asserted that the Stay Order is appealable as of right because it acts as a dismissal on the merits.[4]

Appellant alternatively filed the second notice of appeal (along with its Motion for Leave) in the event the Stay Order is construed as interlocutory. In connection with that appeal, in both its Motion for Leave to File an Interlocutory Appeal[5] and its Notice of Appeal by Leave, Appellant also noted that the Stay Order may be appealable as of right because it functions as a dismissal on the merits.[6] The

[3] ROA.000002 at n. 1 ("Given the lack of clarity in the law about the appropriate mechanism for obtaining review, Hunter Mountain is filing a Notice of Appeal by Right and a Notice of Appeal by Leave (along with a motion for leave to file an interlocutory appeal) and a petition for writ of mandamus (which will be filed shortly thereafter).").

[4] Appellant Brief at 1 ("The stay extends 'until a court of competent jurisdiction enters final, non-appealable orders' resolving two unrelated appeals. As explained by the Fifth Circuit in *Grace v. Vannoy*, appellate jurisdiction is properly exercised over 'a 'small class' of collateral orders [that] 'are too important to be denied immediate review.' 826 F.3d 813, 815-16 (5th Cir. 2016) (quoting *Mohawk Indus., Inc. v. Carpenter*, 558 U.S. 100, 106, 116 (2009)). A stay that has 'the practical effect' of a dismissal falls into that small class. *Id*. at 817 (quoting *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp*., 460 U.S. 1, 13 (1983)).").

[5] Motion for Leave to File an Interlocutory Appeal, *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj11 (N.D. Tex. Bankr.), at Dkt 4116, of which the Court can take judicial notice, at n. 23 ("Given the lack of clarity in the law about the appropriate mechanism for obtaining review, HMIT files this motion for leave in the alternative to its notice of appeal by right (filed on the same date as this motion) and its petition for writ of mandamus (which will be filed shortly thereafter).").

[6] Notice of (Permissive) Appeal of "Order Extending Stay of Contested Matter [Docket No. 4000]" [Dkt 4104] by Leave, *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj11 (N.D.

Motion for Leave to File an Interlocutory Appeal was denied by this Court on October 29, 2024, based, in part, on the pendency of the other appeals.[7]

On July 25, 2024, Appellant also filed a petition for writ of mandamus seeking an order directing that the Stay Order be reversed with remand instructions to allow the matter to proceed ("Writ Petition").[8] Like the two appeals, Appellant expressly filed the Writ Petition "in the alternative" in light of "the lack of clarity in the law about the appropriate mechanism for obtaining review" of the Stay Order.[9]

As such, Appellant never "acknowledge[d] that the Stay Order is interlocutory," as Highland contends. Appellee Brief at 8. Rather, because of the murky state of the law for challenging an indefinite stay order (discussed below), Appellant filed such notices of appeal and petitions as it considered necessary out of an abundance of caution to ensure that the Stay Order receives appellate review.

Tex. Bankr.), at Dkt 4115 ("Notice of Appeal by Leave"), of which the Court can take judicial notice, at n. 1 ("Given the lack of clarity in the law about the appropriate mechanism for obtaining review, Hunter Mountain is filing a Notice of Appeal by Right and a Notice of Appeal by Leave (along with a motion for leave to file an interlocutory appeal) and a petition for writ of mandamus (which will be filed shortly thereafter).").

[7] Memorandum Opinion and Order, *Hunter Mountain Inv. Trust v. Highland Cap. Mgmt., L.P., et al.*, Civil Action No. 3:24-CV-1787-L (N.D. Tex.) at Dkt. 22, of which the Court can take judicial notice ("For the reasons essentially stated by Appellees, the court agrees that HMIT has not satisfied the requirements for interlocutory appeals, and an interlocutory order regarding the bankruptcy court's stay order would only serve to unnecessarily delay the underlying litigation and cause confusion in light of the related appeals pending before Judges Brown and Starr.").

[8] *Hunter Mountain Inv. Trust v. Highland Cap. Mgmt., L.P., et al.*, Case No. 24-cv-01912-E (N.D. Tex.), at Dkt. 1, of which the Court can take judicial notice.

[9] *Id*. at fns 30, 35.

The Stay Order should be treated as a final appealable order. While orders on motions to stay are typically not appealable collateral orders, as the Fifth Circuit explained in *Grace v. Vannoy*, appellate jurisdiction is properly exercised over "a 'small class' of collateral orders [that] are 'too important to be denied immediate review.'"[10] A stay that has "the practical effect" of a dismissal falls into this small class.[11]

In *Grace*, the Fifth Circuit evaluated whether a district court's order staying a habeas proceeding while a prisoner exhausted his state court remedies was an appealable collateral order.[12] Under *Grace*, a collateral order may be immediately reviewed when the decision is "conclusive," "resolve[s] important questions separate from the merits," and is "effectively unreviewable on appeal from the final judgment in the underlying action."[13] The *Grace* court noted that "importance and unreviewability are inseparable inquiries" because "whether a question is unreviewable for purposes of the collateral-order doctrine depends on a value judgment about what is lost unless the party is permitted to immediately appeal."[14]

---

[10] 826 F.3d 813, 815-16 (5th Cir. 2016) (quoting *Mohawk Indus., Inc. v. Carpenter*, 558 U.S. 100, 106, 116 (2009)).

[11] *Id*. at 817 (quoting *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 13 (1983)).

[12] 826 F.3d at 815.

[13] *Id*. at 816.

[14] *Id*.

As the *Grace* court observed, while it is rare, stay orders are immediately reviewable when they present a "*Moses Cone* situation,"[15] which occurs when "[t]here would be no more merits over which to litigate" if the stay order is not immediately reviewed.[16]

Here, the Stay Order satisfies the *Grace* factors and presents a *Moses Cone* situation. Appellant seeks leave to file the Delaware Complaint raising breaches of fiduciary duty claims against Seery and seeking to remove him as trustee. As detailed in its Motion for Leave, Appellant has pleaded serious allegations against Seery that require immediate consideration and Seery's immediate removal as Claimant Trustee.[17] These allegations include, but are not limited to, allegations that Seery breached his duty of loyalty by failing to pay creditors, failing to file required certifications, and failing to maximize the value of the Claimant Trust for the benefit of its beneficiaries.[18] Seery has also used (and continues to use) the Claimant Trust to his own pecuniary advantage by funding an increasingly sizable indemnification reserve pursuant to an Indemnity Sub-trust.[19] He also continues to remain employed

[15] *Id*.

[16] *Id*. at 817 (quoting *EEOC v. Neches Butane Prods. Co*., 704 F.2d 144, 151 (5th Cir. 1983)).

[17] ROA.001468-1605.

[18] *Id.* at Dkt. 4000-1 (ROA.001507-1523).

[19] ROA.001482-1485 at ¶¶ 19-26.

at $150,000 a month[20] and has effectively given himself a release from liability by attempting to prevent any action against him from proceeding until it is equitably moot. Seery's actions (and inactions) will continue to prejudice and harm Appellant as long as they continue.[21] For these and other reasons, Appellant seeks Seery's immediate removal as Trustee.

Indefinitely prohibiting Appellant from pursuing its claims, which is the effect of the Stay Order, will prevent a court from ever reaching the merits of Appellant's claims. The Stay Order requires entry of a final, non-appealable order in two separate matters (the Valuation Proceeding and the Claims Trading Proceeding) before the indefinite stay is lifted. Once the pending appeals of those matters wind their way through the appellate courts (and potentially beyond, if any proceedings are necessary on remand),[22] the Claimant Trust will by its terms be dissolved and Seery's duties as Claimant Trustee considered complete, [23] whether or not they were performed legally or ethically. The funds of the Claimant Trust will be further dissipated.[24] This means there will likely be no merits to litigate in the Delaware

[20] ROA.001543 § 3.13(a)(i).

[21] ROA.001485 at ¶ 25.

[22] Appellant Brief at 15-17.

[23] Appellant Brief at 26.

[24] Highland suggests in its Appellee Brief that the bankruptcy court's extension of the Claimant Trust until August 11, 2025 somehow means that the Claimant Trust will not be dissolved before the termination of the stay. Appellee Brief at 14-15. Highland, however, never explains how the

Complaint by the time the bankruptcy court addresses the merits of Appellant's Motion for Leave. Moreover, even if the Trust is not dissolved while the appeals are pending, Highland could spend down the Trust so much that by the time the matter can be heard, removing Seery and replacing him with an unconflicted Trustee would be a pyrrhic victory. The Stay Order thus has "the practical effect" of dismissing Appellant's proceeding seeking leave to file the Delaware Complaint.[25]

Thus, Appellant's Motion for Leave raises important questions about the propriety of Seery's actions as Trustee, and his right to remain the Trustee, which are "'too important to be denied immediate review.'"[26] Without immediate review, the merits of Appellant's claim will never see the light of day because of the passage of time, a classic *Moses Cone* situation. This places the Stay Order in the "'small class' of collateral orders" that are immediately reviewable by this Court.[27] As a result, Appellant's appeal was properly filed and this Court has jurisdiction over this appeal.

---

appeals of the various proceedings, including the Claims Trading Proceeding and the Valuation Proceeding, will be finally concluded by that date when Appellant has already shown that appeals arising out of this bankruptcy have taken or are taking several years to complete. Appellant Brief at 15-17.

[25] *Grace,* 826 F.3d. at 817 (quoting *Moses Cone*, 460 U.S. at 13).

[26] *Id.* at 815-16 (quoting *Mohawk Indus., Inc.*, 558 U.S. at 116).

[27] *Id*. (quoting *Mohawk Indus., Inc.*, 558 U.S. at 106).

Importantly, in its Appellee Brief, Highland makes no effort to challenge the correctness or applicability of *Grace* or *Moses Cone*, and instead relies on the incorrect assertion that Appellant admitted that the appeal was interlocutory.[28] Highland thus fails to abide this Court's instruction that "[a]ny arguments regarding the propriety of this appeal and response to the issues in Appellant's Brief must be included in Appellees' Brief(s)."[29]

B. The Bankruptcy Court Incorrectly Applied the Appropriate Standard

In response to Appellant's argument that the bankruptcy court failed to properly apply the legal standard for issuing a stay, Highland argues that the bankruptcy court used and correctly applied the correct standard.[30] Specifically, Highland suggests that the "four-prong" standard typically applied by courts was not necessary here and instead suggested that a court could issue a stay "when a related case with substantially similar issues is pending before a court of appeals."[31]

In support of this, Highland cites one case, *Greco v. NFL*, 116 F. Supp. 3d 744 (N.D. Tex. 2015). That case, however, is distinguishable. In that case, this Court granted a stay of a case after it granted defendant's motion for partial judgment

[28] Appellee Brief at 8-9.

[29] Electronic Order, dated October 15, 2024, Dkt. 24.

[30] Appellee Brief at 10.

[31] Appellee Brief at 11.

pending the appeal of a similar case, *Ibe*, with "nearly identical factual and legal issues." *Greco*, 116 F. Supp. 3d at 761. The stay in that case, which was requested by plaintiffs, not the defendant, was granted because this Court found "that the interests of the parties, and appropriate conservation of judicial resources, weigh in favor of granting a stay." *Id.* In granting the stay, this Court noted that the stayed case involved nearly 200 plaintiffs "and will proceed with time-consuming bellwether trials, the logistics and schedule for which will be complex." *Id.* This Court also noted that, should the Fifth Circuit reverse any rulings in the pending appeal, "it would potentially necessitate a retrial of any bellwether trials conducted during the pendency of the *Ibe* appeal." *Id.* In granting the stay, this Court noted that the parties agreed that *Ibe* would be a bellwether trial for the potentially stayed case, the final outcome of *Ibe* would likely streamline issues for dispositive motions and bellwether trials in the stayed case, and the risk of duplicative litigation was "too great for this Court to ignore." *Id.*

This Court also noted that the only arguments made by the defendant in *Greco* (which were rejected by the Court) to oppose the stay were (1) the plaintiffs were likely to lose the pending appeal, (2) that a stay would cause evidence, including witness memory, to become stale, and (3) it was plaintiffs in the stayed case that "pressed for an aggressive schedule." *Id.* These are not the arguments that Appellant is making here in opposition to the stay. The defendant opposing the stay in *Greco*,

unlike in this case, never argued that a stay would cause irreparable harm in any way, such as due to the dissipation of assets and excessive spending present here.[32] In other words, in *Greco*, this Court properly analyzed the correct factors but there was never any argument made that the party opposing the stay would suffer irreparable harm absent a stay, as is the case here.

As set forth in Appellant's brief, to grant a stay of litigation, a court must determine "(1) whether the applicant has made a strong showing of likelihood to succeed on the merits; (2) whether the movant will be irreparably harmed absent a stay; (3) whether issuance of a stay will substantially injure other interested parties; and (4) where the public interest lies."[33] The applicant's "burden is a substantial one, as a stay is 'an extraordinary remedy.'"[34] "[T]he Supreme Court has characterized the circumstances in which a stay [of litigation] is appropriate as 'rare.'"[35] The bankruptcy court abused its discretion by failing to hold Highland to this high burden on a motion for stay.

---

[32] Appellant Brief at 17-19.

[33] *Texas v. United States*, 40 F.4th 205, 215 (5th Cir. 2022) (quoting *Thomas v. Bryant*, 919 F.3d 298, 303 (5th Cir. 2019), *overruled on other grounds*, *United States v. Texas*, 599 U.S. 670 (2023)); *see also McCoy v. SC Tiger Manor, LLC*, No. CV 19-723-JWD-SDJ, 2022 WL 164537, at *1-3 (M.D. La. Jan. 18, 2022) (applying these four factors to deny motion to stay pending resolution of related action).

[34] *Texas v. United States*, 40 F.4th at 215 (quoting *Thomas*, 919 F.3d at 303, *overruled on other grounds*, *United States v. Texas*, 599 U.S. 670 (2023)).

[35] *Jamison v. Esurance Ins. Servs., Inc.*, No. 3:15-CV-2484-B, 2016 WL 320646, at *4 (N.D. Tex. Jan. 27, 2016) (quoting *Landis v. N. Am. Co.*, 299 U.S. 248, 255 (1936)).

Rather than analyze these factors in its Appellee Brief, Highland simply quotes the bankruptcy court's brief discussion of these factors made during oral argument.[36] As Appellant explained in detail in their Appellant Brief, however, the bankruptcy court provided almost no explanation or analysis as to how any of these factors should be applied here.[37]

Specifically, in its Appellant Brief, Appellant explained in detail how: (1) the bankruptcy court failed to address relevant authorities, including *Morris v. Spectra Energy Partners (DE) GP, LP*,[38] showing that a standing analysis should be more flexible when a defendant controls the facts giving rise to standing;[39] (2) the bankruptcy court abused its discretion in failing to hold Highland to its "substantial" burden by granting the stay despite Highland failing to apply any standard, let alone the correct standard, in its Motion to Stay;[40] (3) the bankruptcy court ignored the irreparable harm that Appellant will suffer by a stay that would allow Seery's unlawful behavior and excessive spending to continue unchecked;[41] and (4) the bankruptcy court ignored Appellant's arguments that a denial of a stay would not

[36] Appellee Brief at 11-12.

[37] Appellant Brief at 11-20.

[38] 246 A.3d 121, 136-37 (Del. 2021).

[39] Appellant Brief at 12-13.

[40] Appellant Brief at 13.

[41] Appellant Brief at 17-19.

have harmed Highland and would not have wasted judicial resources.[42] Highland, as it did in its Motion for Stay, analyzes none of these factors or this law in its Appellee Brief or addresses these arguments in any meaningful way.

C. The Issues Raised in the Valuation and Claims Trading Proceedings and the Motion for Leave Are Not Identical

Highland argues that the "*exact issue* [here] is already substantively before this Court in the Valuation Appeal and the Claims Trading Appeal."[43] In support, Highland suggests that "[t]he only real 'difference' Appellant argues is what Appellant would be able to accomplish in each case of some court somewhere ruled that Appellant is a Claimant Trust Beneficiary despite the clear terms of the Claimant Trust Agreement."[44] This misconstrues Appellant's argument as to why the issues are different and wholly ignores important distinctions and arguments made by Appellant in their Appellant Brief.

Initially, Appellant argued in its Appellant Brief that the standing issue present here may never be decided in the other proceedings. In the Motion for Stay, Highland explicitly recognized that with respect to the Order Denying Leave: "Given the scope of the appeal, it is unclear whether the District Court will address

[42] Appellant Brief at 20.

[43] Appellee Brief at 16.

[44] *Id*.

the Bankruptcy Court's determination that Appellant is not a beneficiary under the Claimant Trust."[45] In other words, the District Court may not even reach the issue of Appellant's beneficiary status in the context of the Claims Trading Proceeding.[46] And with respect to the Valuation Proceeding, Appellant argued that because of the multiple arguments made by the parties in the two cases, the Valuation Proceeding decision may not address the issues in the Motion for Leave to file the Delaware Complaint at all.[47] Highland addresses none of this in its Appellee Brief. Highland also fails to address that the bankruptcy court dismissed the Valuation Complaint, not because of a lack of standing but under Rule 12(b)(6), based on its finding that Dugaboy could not prove any set of facts that would demonstrate that it had a right to the information it sought in the Valuation Proceeding.[48]

Additionally, Highland fails to address the actual distinctions between the different proceedings and this one raised by Appellant. As discussed in the Appellant Brief, in the Valuation Proceeding, Appellant seeks information about the Claimant Trust's assets, and in the Delaware Complaint, Appellant specifically seeks to have Seery removed as Trustee because he has breached his fiduciary duties and the duties

[45] ROA.001633 at fn 4.

[46] Appellant Brief at 21.

[47] Appellant Brief at 22-23.

[48] ROA.001906.

of good faith and fair dealing. As a result, not only is standing in the Delaware Complaint based on Appellant's status as a beneficiary under Delaware law, but it is also inextricably based on Seery's failure to file a GUC Certification and Seery's conflicts and conduct.[49] In its Appellant Brief, Appellant explained how this was addressed by the Delaware Supreme Court in *Morris,* when that court held that a standing analysis should be more flexible when a defendant controls the facts giving rise to standing.[50] Highland fails to address *Morris* at all in its Appellee Brief and ignores the simple fact that Seery's conflicted position has allowed him to unilaterally deprive Appellant of its status as a vested beneficiary and, as a result, its standing to pursue this claim.

All these arguments distinguishing this case from the other proceedings are ignored by Highland in its Appellee Brief. It was improper for the bankruptcy court to issue a stay pending conclusion of the appeals in other proceedings because the issue that the bankruptcy court concluded was dispositive for the Motion for Leave ***may well not be reached*** in the other two proceedings that must be concluded before the Motion for Leave will be allowed to proceed.

[49] Appellant Brief at 23.

[50] *Morris*, 246 A.3d at 136.

D. The Bankruptcy Court Abused its Discretion by Ordering an Indefinite Stay

Highland recognizes that the "four-prong test" discussed above applies to the extent that the Stay Order is "indefinite."[51] As the Fifth Circuit held in *In re Ramu Corp.*, "[e]ven discretionary stays . . . will be reversed when they are 'immoderate or of an indefinite duration.'"[52] But Highland also argues, incorrectly, that the Stay Order is of "limited scope and length" merely because "(1) both of those other appeals are fully briefed and *sub judice* such that they could be resolved at any time; and (2) whether those appeals continue on is within Appellant's control because the 'several-year delay' Appellant complains of is entirely of its own making."[53] Highland is incorrect. The bankruptcy court abused its discretion by granting relief in the form of an indefinite stay of the proceedings.

Specifically, although Highland is correct that the appeals are fully briefed in this Court, this in no way means that the issues presented will be resolved "at any time." The stay of the Motion for Leave will not terminate when this Court decides either or even both of the other two appeals. Rather, the stay lasts "until a court of competent jurisdiction enters final, non-appealable orders resolving the [two other]

---

[51] Appellee Brief at 13.

[52] 903 F.2d 312, 318 (5th Cir. 1990) (quoting *McKnight v. Blanchard*, 667 F.2d 477, 479 (5th Cir. 1982)).

[53] Appellee Brief at 13.

Appeals."[54] And as explained in the Appellant Brief, a cursory examination of the course of various appeals in this bankruptcy case establishes that it will take several years for the adversary proceedings at issue and their later appeals to be finally resolved.[55] Highland does not dispute this timing in its Appellee Brief and instead attempts to rebut it by making the irrelevant observation that Appellant and its affiliates filed those appeals.[56] There is, of course, no law allowing an indefinite stay pending appeal to be treated as definite merely because the party opposing the stay is the appellant.

Additionally, while Highland is technically correct that Appellant has some control of the length of the stay because Appellant could voluntarily dismiss its appeals and thereby terminate the stay, that argument makes little practical sense. Highland, of course, provides no authority that an indefinite stay could be characterized as definite merely because the opposing party could just give up, a nonsensical argument that would render any stay pending an appeal definite. Additionally, Highland ignores that if the Court agrees with Appellant and rules in its favor, Highland would certainly appeal, extending the stay for several more years. In other words, the fact that Appellant could potentially end the stay by choosing to

[54] ROA.000008.

[55] Appellant Brief at 15.

[56] Appellee Brief at 13, fn. 22.

dismiss its appeals does not change that the stay is, by its own terms, indefinite (i.e., of uncertain duration).

Appellant will be unable to move forward with its Motion for Leave until *all* appeals in the Valuation Proceeding and the Claims Trading Proceeding are concluded. Highland ignores this possibility in its Appellee Brief.

The Fifth Circuit has cautioned against granting indefinite stays.[57] There is ample case law holding that an order granting an indefinite stay is subject to appellate review when it amounts to an effective dismissal of the underlying suit.[58] For that reason, in deciding to grant a stay, a "court must also carefully consider the time reasonably expected for resolution of the other case."[59] The Fifth Circuit has explained that a stay is "manifestly indefinite" (and inappropriate) where the "stay hinged on completion" of "bankruptcy proceedings [that] are not likely to conclude in the immediate future."[60] That is the case here.

---

[57] *Coastal (Bermuda) Ltd. v. E.W. Saybolt & Co., Inc.*, 761 F.2d 198, 203, n. 6 (5th Cir. 1985).

[58] *See, e.g.*, *In re Davis*, 730 F.2d 176, 179 (5th Cir. 1984) ("[S]tay orders will be reversed when they are found to be immoderate or of an indefinite duration.") (quoting *Landis*, 299 U.S. at 257); *see also CTF Hotel Holdings, Inc. v. Marriott Int'l, Inc.*, 381 F.3d 131, 135 (3d Cir. 2004) ("[W]hen a stay amounts to an effective dismissal of the underlying suit, it may be subjected to appellate review.") (citing *Cheyney State Coll. Fac. V. Hufstedler*, 703 F.2d 732, 735 (3d Cir. 1983)); *Wheeling-Pittsburgh Steel Corp. v. McCune*, 836 F.2d 153, 158 (3d Cir. 1987) ("Although stay orders are not usually appealable, there is an exception where an indefinite stay order unreasonably delays a plaintiff's right to have his case heard.") (quotations omitted).

[59] *In re Davis*, 730 F.2d at 178-79 (quotations omitted).

[60] *Id.* at 179 (quotations omitted).

Highland also ignores the fact that the bankruptcy court's stay effectively amounts to a dismissal because, given the years it will take to resolve the pending appeals, the relief sought by Appellant in the Delaware Complaint will likely no longer be available. Once the pending appeals wind their way through the appellate courts, the Claimant Trust will by its terms be dissolved and Seery's duties as Claimant Trustee complete.[61] Highland suggests in its Appellee Brief that the bankruptcy court's extension of the Claimant Trust until August 11, 2025 somehow means that the Claimant Trust will not be dissolved before the termination of the stay.[62] Highland, however, never explains how the appeals of the various proceedings, including the Claims Trading Proceeding and the Valuation Proceeding, will be finally concluded by that date when Appellant has already shown that appeals arising out of this bankruptcy case have taken or are taking several years to complete.[63] Moreover, if the Trust remains extant, but is fully exhausted by improper expenditures while Seery is immune from challenge by virtue of the stay, even eventual vindication with Seery's removal and replacement would be a pyrrhic victory indeed.

[61] Appellant Brief at 26.

[62] Appellee Brief at 14-15.

[63] Appellant Brief at 15-17.

III. CONCLUSION AND RELIEF SOUGHT

The bankruptcy court erred in its decision and this Court should conclude that the bankruptcy court abused its discretion by indefinitely staying the proceedings. For all of the reasons stated in this brief and the Appellant Brief, this Court should reverse the bankruptcy court's Order in its entirety and grant any further relief as the Court deems proper and just.

Respectfully submitted,

STINSON LLP

/s/Deborah Deitsch-Perez
Deborah Deitsch-Perez
Texas Bar No. 24036072
Michael P. Aigen
Texas Bar No. 24012196
2200 Ross Avenue, Suite 2900
Dallas, Texas 75201
Telephone: (214) 560-2201
Facsimile: (214) 560-2203
Email: deborah.deitschperez@stinson.com
Email: michael.aigen@stinson.com
Counsel for Appellant Hunter Mountain Investment Trust

CERTIFICATE OF COMPLIANCE

This document complies with the word limit of FED. R. BANKR. P. 8015(a)(7)(B) because, excluding the parts of the document exempted by FED. R. BANKR. P. 8015(g), this document contains 4,850 words; and

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 Microsoft Word in size 14 font, Times New Roman, with footnotes in size 12 font for ease of readability.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on October 30, 2024, a true and correct copy of this document was served electronically via the Court's CM/ECF system to the parties registered or otherwise entitled to receive electronic notices in this case.

/s/Deborah Deitsch-Perez
Deborah Deitsch-Perez