No. 24A1154

In the Supreme Court of the United States

HIGHLAND CAPITAL MANAGEMENT, L.P.,
APPLICANT,

v.

NEXPOINT ASSET MANAGEMENT, L.P.
AND
NEXPOINT ADVISORS, L.P.,
RESPONDENTS

ON EMERGENCY APPLICATION FOR STAY OF MANDATE AND JUDGMENT PENDING THE FILING AND DISPOSITION OF A PETITION FOR WRIT OF CERTIORARI AND REQUEST FOR IMMEDIATE ADMINISTRATIVE STAY

OPPOSITION TO APPLICATION FOR STAY OF MANDATE

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CORPORATE DISCLOSURE STATEMENT

Pursuant to this Court's Rule 29.6, Respondents state that NexPoint Advisors, L.P.'s majority owner is The Dugaboy Investment Trust and that NexPoint Asset Management, L.P.'s majority owner is Highland Capital Management Services, Inc., and that no publicly held company owns 10% or more of either of those entities' ownership interests.

TO THE HONORABLE SAMUEL A. ALITO, ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT:

Pursuant to Rule 21(4) of the Rules of this Court, Respondents NexPoint Advisors, L.P. and NexPoint Asset Management, L.P. (collectively, "NexPoint") respectfully oppose the Emergency Application for Stay of Mandate and Judgment Pending the Filing and Disposition of a Petition for Writ of Certiorari and Request for Immediate Administrative Stay ("Application") filed by Applicant Highland Capital Management, L.P. ("Highland" or "Applicant") because this case does not present an issue meritorious of certiorari and no stay is warranted.[1]

INTRODUCTION

There are no grounds for the extraordinary intervention and emergency relief the Applicant seeks in this case. The Applicant does not come close to the clear showing of irreparable harm that is required for this Court to issue a stay of a circuit court mandate pending a contemplated petition for certiorari. In any event, the Applicant has not demonstrated a reasonable probability certiorari will be granted, much less a fair prospect that this Court would reverse the Fifth Circuit's decision.

In the decision below, the Fifth Circuit enforced its mandate from a prior case and held that the bankruptcy court must narrow an injunction requiring the bankruptcy court's permission before filing suit against numerous parties related to the bankruptcy. This so-called "gatekeeping" provision established the bankruptcy judge as the arbiter of whether a claim can be pursued against virtually every

[1] Throughout this Response, the Highland's Application is cited as "Highland Appl."

professional, advisor, law firm, consultant, or other person associated with the Highland bankruptcy. The Fifth Circuit called this "perhaps the broadest gatekeeper injunction ever written into a bankruptcy confirmation plan." App.19a. The Fifth Circuit ordered that provision to be limited to the debtor (Highland Capital Management, L.P), the unsecured creditors committee and its members, and the independent directors of the debtor for conduct within the scope of their duties (the "Protected Parties").

If the Fifth Circuit's mandate requiring a narrower gatekeeping provision were to issue, the result would be that those outside the narrowed class of those protected might be sued without the bankruptcy judge first conducting an extensive hearing as to whether they should be. In other words, the alleged harm in the absence of a stay is potential legal filings and the fees of attorneys required to address them. This Court repeatedly has held that filings in court cases and attorneys' fees are not irreparable harm. *Renegotiation Bd. v. Bannercraft Clothing Co.*, 415 U.S. 1, 24 (1974); *FTC v. Standard Oil Co. of California*, 449 U.S. 232, 244 (1980); *see also Coinbase, Inc. v. Bielski*, 599 U.S. 736, 746–47 (2023). That is particularly so when the harm is not legal filings and the consumption of attorneys' fees *per se*, but those filings occurring outside the bankruptcy court or being allegedly frivolous. As the Fifth Circuit pointed out in declining to stay the mandate here, those affected have "tools to seek relief from burdensome litigation, such as sanctions." Supp.App.162a-163a. The alleged harm stemming from the absence of a stay is inherently remediable

or, in other words, repairable. This is why litigation or speculation about the threat of future litigation rarely rises to the level of irreparable harm.

Moreover, Highland has not demonstrated a reasonable probability the Court will grant the contemplated petition for certiorari, much less a fair prospect that the Court will reverse.

Highland's Application relies on a stale argument. Highland attempts to resurrect the very same arguments this Court declined to review in response to the Fifth Circuit opinion in *In re Highland Capital Management, L.P.*, 48 F.4th 419 (5th Cir. 2022) ("*Highland I*") (App.41a). In *Highland I*, the Fifth Circuit held that Highland's confirmed Fifth Amended Plan of Reorganization (the "Plan") improperly released the liability of, and enjoined suit without bankruptcy court permission against, parties beyond the Protected Parties. The Fifth Circuit remanded the case to the bankruptcy court with an instruction to narrow those provisions accordingly.

The bankruptcy court followed the mandate with respect to the provision releasing and exculpating entities from liability, but it did not narrow the injunction and its gatekeeping provision in the same manner. The Respondents appealed, and the Fifth Circuit found that the bankruptcy court had failed to follow the mandate in *Highland I*, remanding with specific instructions to do so. *In re Highland Capital Management, L.P.*, 132 F.4th 353 (5th Cir. 2025) ("*Highland II*") (App.4a). *Highland II* amounts to nothing more than a ministerial opinion reversing the bankruptcy court's failure to implement the Fifth Circuit's directive in *Highland I*.

The Applicant's contemplated petition for certiorari is unlikely to be granted for many reasons. First, the principal split of circuit authority emphasized by the Applicant—regarding whether a bankruptcy court may release or exculpate those who are not debtors from third-party liability—is not in any way presented by *Highland II*. The Fifth Circuit's decision in *Highland II* was only about the Plan's gatekeeping and injunction provisions, and even then was simply enforcing the mandate of *Highland I* on that point.

Second, Highland did petition this Court for certiorari on the exculpation issue in response to the Fifth Circuit opinion in *Highland I*, where it was actually presented. And this Court denied that petition, after calling for the views of the Solicitor General and holding the petition for the resolution of this Court's then-pending decision in *Harrington v. Purdue Pharma LP*, 603 U.S. 204 (2024). The request for this Court's review is no better now, especially as Highland cites no circuit-level authority disagreeing with the Fifth Circuit on the proper scope of exculpation clauses since last year's *Purdue* decision.

Third, the Applicant claims that circuit courts disagree about whether bankruptcy courts may enjoin suit against non-debtors without bankruptcy court permission, through so-called "gatekeeping" provisions. But the youngest circuit decision the Applicant claims is in conflict is sixteen years old, and no other circuit decision has addressed the effects of this Court's *Purdue* decision on the issue. Moreover, this gatekeeping question was squarely presented by *Highland I*, as the

Solicitor General recognized. Highland should have but did not seek review of the issue then.

In the end, the Application is in search of a time machine, taking us back three years to redo the failed petitions for certiorari arising from the 2022 opinion in *Highland I*. This stretching back in time is far from a "reasonable probability" certiorari will be granted and even further from the extraordinary circumstances required for an emergency stay of a circuit court mandate. The application should be denied.

STATEMENT OF THE CASE

A. The Bankruptcy Court Issues a Final Confirmation Order Containing Broad Protections for Non-Debtors, and Various Parties Appeal

On February 22, 2021, the bankruptcy court entered a final order confirming Highland's Plan, ending a 16-month bankruptcy process that pitted Highland against many of its pre-bankruptcy litigation adversaries as well as its founder, James Dondero ("Dondero"). App.71a. The Plan became effective on August 11, 2021. App.49a. The Plan called for the orderly liquidation and winding up of Highland's business, something that largely has been accomplished. Virtually all major assets have been liquidated; all priority, administrative, and secured claims have been paid; and unsecured creditors have been paid almost in full, leaving only former equity holders remaining. *See In re Highland Cap. Mgmt., L.P.*, No. 19-34054-sgj-11 (Bankr. N.D. Tex.), Dkt. 4208 at 7; *id.*, Dkt. 4217 at Ex. 1.

The Plan contained several broad protections for non-debtors, without the consent and over the objection of potentially affected claimants. In particular, the

Plan contained an exculpation provision that, with limited exceptions, insulated a litany of parties from all liability (from the petition date onward) "in connection with or arising out of" the filing and administration of Highland's bankruptcy, the negotiation and confirmation of the Plan, the funding and consummation of the Plan, distributions made pursuant to the Plan, and the negotiations, transactions, and documentation associated with the foregoing. App.27a. The Plan defined "Exculpated Parties" to mean not just the debtor, but also its general partner and all the debtor's subsidiaries, managed funds, employees, officers, directors, and professionals, the three-member independent board that had been appointed to manage Highland through bankruptcy, its individual members, and the Unsecured Creditors Committee and its members and professionals. App.27a–28a. Further, the Plan exculpated all persons "related" to the specifically identified exculpated parties. *Id.* The Plan defined "Related Persons" to include "all former, present, and future officers, directors, employees, managers, members, financial advisors, attorneys, accountants, investment bankers, consultants, professionals, advisors, shareholders, principals, partners, heirs, agents, other representatives, subsidiaries, divisions, and managing companies." App.47a.

The Plan also contained an injunction provision that enjoined various parties—essentially, any entity or individual affiliated with Dondero—from pursuing any action against any "Protected Parties" arising from or relating to the bankruptcy proceedings, the Plan, the administration of the Plan or the trusts created pursuant to the Plan, or the transactions relating to any of the foregoing, without first seeking

a ruling from the bankruptcy court that the action could proceed. App.7a–8a. The Plan defined the "Protected Parties" as expansively as the "Exculpated Parties." *Id.*

Embedded in the injunction provision is the "gatekeeper clause," which the Fifth Circuit correctly described as "perhaps the broadest gatekeeper injunction ever written into a bankruptcy confirmation plan." App.19a. The clause required any enjoined party seeking to sue the Protected Parties first to obtain the bankruptcy court's determination that the action is "colorable." App.48a. Under the Plan, the bankruptcy court has the "sole and exclusive jurisdiction" to make this determination, and it retains that jurisdiction indefinitely. *Id.*

Several parties, including NexPoint, appealed the bankruptcy court's confirmation order and argued that the Plan's protection provisions impermissibly extended to non-debtors in violation of the Bankruptcy Code.

B. On Appeal from the Bankruptcy Court's Final Confirmation Order, the Fifth Circuit Issues a Final and Binding Mandate in *Highland I*

On appeal, NexPoint argued that the Plan's exculpation provision and injunction provision (including its gatekeeper clause) impermissibly protected non-debtors in violation of the bankruptcy code and the Fifth Circuit's decision in *In re Pacific Lumber Co.*, 584 F.3d 229 (5th Cir. 2009). App.62a. The Fifth Circuit issued its initial opinion in the appeal on August 19, 2022 and held:

> [T]he Plan violates § 524(e) but only insofar as it exculpates *and enjoins* certain non-debtors. The exculpatory order is therefore vacated as to all parties *except* Highland Capital, the Committee and its members, and the Independent Directors for conduct within the scope of their duties. We *otherwise* affirm the inclusion of the injunction and gatekeeper provisions in the Plan.

App.37a (emphasis added).

Certain appellants filed a petition for limited panel rehearing, seeking confirmation that the Plan's injunction provision and gatekeeper clause should be narrowed in the same way as the exculpation provision. *See* App.9a.

The Fifth Circuit *granted* that petition, withdrew its original opinion, and made clear the injunctive and gatekeeping provisions were also to be narrowed. The Fifth Circuit struck the phrase: "The injunction and gatekeeper provisions are, on the other hand, perfectly lawful." *See* App.42a; App.9a. And what followed made clear the remainder of the injunction and gatekeeper provisions were being upheld only because the scope of parties protected by them were being narrowed in the same way as the exculpation provision. App.15a ("Appellants' primary contention—that the Plan's injunction 'is broad' by releasing non-debtors in violation of § 524(e)—is resolved by our striking the impermissibly exculpated parties."). The Fifth Circuit remanded the case to the bankruptcy court with instructions to revise the Plan consistent with its opinion.

C. The Parties Seek Review of *Highland I*, and this Court Denies their Petitions

Highland and NexPoint filed competing petitions seeking this Court's review of *Highland I* (the "*Highland I* petitions"). Highland asked the Court to hold that bankruptcy courts could confirm plans exculpating non-debtors. *See* Highland Appl. at 3. In language indistinguishable from the current Application, Highland emphasized the disagreement among circuit courts regarding the ability to exculpate non-debtors prevailing before this Court's decision in *Purdue*. *Id.*

NexPoint also filed a petition for writ of certiorari in *Highland I*. NexPoint challenged the Fifth Circuit's opinion insofar as it approved the exculpation and injunction provisions protecting the debtor's independent directors and conduct occurring after consummation of the Plan. *NexPoint Advisors, L.P. v. Highland Cap. Mgmt., L.P.*, No. 22-669 (S. Ct.), Petition for a Writ of Certiorari at (i).

This Court called for the views of the Solicitor General on the petitions. The Solicitor General interpreted *Highland I* as narrowing the scope of the injunction provision and gatekeeper clause: "As for the injunction and gatekeeper provisions, the court determined that the bankruptcy courts have authority to enjoin conduct *with respect to the narrowed group of exculpated parties*." *See Highland Cap. Mgmt., L.P. v. NexPoint Advisors, L.P.*, Nos. 22-631 & 22-669 (S. Ct.), Brief of Amicus Curiae at 8 (emphasis added). The Solicitor General further explained that, because "[a]n exculpation clause is a type of third-party release," resolution of the issue in the then-pending *Purdue* case about the legality of non-consensual releases likely would shed light on the exculpation issue in *Highland I*. *Id.* at 11. Specifically, "many exculpation clauses raise significant concerns similar to those posed by nonconsensual third-party releases, including that exculpation clauses lack express authorization under the Code; that they secure outcomes that conflict with the text, structure, and purpose of the Code; and that they purport to extinguish claims of both individuals and sovereigns without consent." *Id.* The Solicitor General thus recommended that the Court hold any decision on the *Highland* petitions until rendering a decision in *Purdue* and then "dispose of the petitions as appropriate in

light of the Court's disposition in that case." *Id.* at 13. Neither the Solicitor General nor any party suggested that the petitions should be denied because the Fifth Circuit's decision in *Highland I* was interlocutory.

On June 27, 2024, the Court issued its opinion in *Purdue*. 603 U.S. 204 (2024). Therein, the Court addressed the *very same split* of authority (and many of the same cases) that Highland cites in its Application.[2] The Court held that the Bankruptcy Code "does not authorize a release and injunction that, as part of a plan of reorganization under Chapter 11, effectively seeks to discharge claims against a nondebtor without the consent of the affected claimants." *Id.* at 214 n.1, 227.

Thereafter, the parties filed supplemental briefs urging the Court to grant the *Highland I* petitions. NexPoint argued that the Court's opinion in *Purdue* "strongly" supported the Fifth Circuit's conclusion in *Highland I* that non-debtor exculpations are impermissible but urged the Court to say so explicitly. *See Highland Cap. Mgmt. L.P. v. NexPoint Advisors, L.P.*, Nos. 22-631 & 22-669, Supplemental Brief for NexPoint Advisors, L.P. and NexPoint Asset Management, L.P., at 4–5. Highland urged the Court to address whether exculpations are different from releases after *Purdue* and whether they may be extended to non-debtor third parties for actions undertaken during the bankruptcy proceedings. *Highland Cap. Mgmt. L.P. v.*

[2] *Compare id.* at 214 & n.1 (citing *In re A.H. Robins Co.*, 880 F.2d 694, 702 (4th Cir. 1989); *In re Pacific Lumber Co.*, 584 F.3d 229 (5th Cir. 2009); *In re Dow Corning Corp.*, 280 F.3d 648, 657 (6th Cir. 2002); *In re Airadigm Commc'ns, Inc.*, 519 F.3d 640, 656 (7th Cir. 2008); *In re Seaside Eng'g & Surveying, Inc.*, 780 F.3d 1070, 1078 (11th Cir. 2015)) *with* Highland Appl. at 15-17 (same).

NexPoint Advisors, L.P., Nos. 22-631 & 22-669, Supplemental Brief for Highland Capital Management, L.P., at 3–4.

The Court declined to grant the *Highland I* petitions or to vacate the Fifth Circuit's decision and remand for reconsideration in light of *Purdue*, denying them on July 2, 2024. *Highland Cap. Mgmt., L.P. v. Nex-Point Advisors, L.P.*, 144 S. Ct. 2714 (2024) (Mem); *NexPoint Advisors, L.P. v. Highland Cap. Mgmt., L.P.*, 144 S. Ct. 2715 (2024) (Mem).

D. The Bankruptcy Court Refuses to Follow the Fifth Circuit's Mandate, Leading to the *Highland II* Decision

On remand, the bankruptcy court modified the Plan to narrow the Plan's exculpation provision, but not the injunction and gatekeeping provisions. App.34a–40a. NexPoint appealed.

The Fifth Circuit reversed. App.5a. The Fifth Circuit held that the bankruptcy court failed to properly implement its instructions in *Highland I*, by declining to narrow the gatekeeper provision in the same way as the exculpation provision. App.15a. The Fifth Circuit explained that "[t]he plain language of two particular sections of *Highland I*" demonstrated that the gatekeeper clause should have been narrowed on remand. App.15a.

First, the court turned to *Highland I*'s statement that it had addressed the breadth of "the Plan's injunction" (which contains the gatekeeping clause) by "striking the impermissibly exculpated parties." App.15a–16a. Those words, the court held, permitted "only one possible reading" that the gatekeeper clause must be

narrowed on remand "to protect the same persons and entities as the narrowed Exculpation Provision lawfully protects." *Id.*

Second, the court explained that its holding in *Highland I* that "the Plan violates § 524(e) but only insofar as it exculpates and enjoins certain non-debtors" represented a "crystal-clear statement" that it had narrowed the exculpation and gatekeeping provisions "coextensively." App.17a.

Third, the Fifth Circuit held its actions on rehearing in *Highland I* removed all doubt about the content of its mandate, by taking "steps to rectify any erroneous message that the Injunction Provision and its Gatekeeper Clause, as written in the Plan, were fully lawful." App.18a.

Highland filed petitions for rehearing and rehearing *en banc*, which the Fifth Circuit denied on April 28, 2025. App.3a.

E. Fifth Circuit Denies Highland's Motion to Stay the Mandate

The Fifth Circuit denied Highland's motion to stay the mandate on May 22, 2025 (App.1a), and issued an opinion explaining the decision on May 29, 2025. Supp.App.162a. The Fifth Circuit explained that "the questions that Highland Capital asserts it would include in its petition for certiorari do not appear to be reviewable because they were not the subject of this appeal." *Id.* Rather, in *Highland II*, the court "merely confirmed the instruction that [it] had previously given the bankruptcy court in" *Highland I*. *Id.* The "question actually raised in the appeal" is "whether the bankruptcy court properly implemented *Highland I*," which the Fifth Circuit held is "hardly a substantial question" and one that Highland itself repeatedly characterized as "simple." *Id.*, 163a. The Fifth Circuit's opinion "reiterated and

followed principles that have been the law of th[e] circuit for decades; it neither deepened nor created any circuit split." *Id.*, 162a.

Finally, the Fifth Circuit held Highland had made nowhere close to the required showing of the irreparable harm that would occur absent a stay (regarding potentially unwarranted litigation). *Id.*, 162a-63a. The broader gatekeeper provision preferred by Highland, at most, would stop some allegedly unwarranted litigation. And the costs of unwarranted litigation are *reparable*. As the Fifth Circuit explained, "Highland Capital certainly knows how to bring its concerns to this court and other courts, given the voluminous litigation that has occurred between the parties thus far," and has "tools to seek relief from burdensome litigation, such as sanctions." *Id.*, 162a.

REASONS FOR DENYING HIGHLAND'S APPLICATION

To obtain a stay of the Fifth Circuit's mandate, Highland must demonstrate "(1) a reasonable probability that four Justices will consider the issue sufficiently meritorious to grant certiorari; (2) a fair prospect that a majority of the Court will vote to reverse the judgment below; and (3) a likelihood that irreparable harm will result from the denial of a stay." *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (per curiam). Staying the mandate of a court of appeal, pending a petition for certiorari, is an extraordinary remedy. Fed. R. App. P. 41(d)(1); *Rostker v. Goldberg*, 448 U.S. 1306, 1308 (1980) (Brennan, J., in chambers).

Highland does not clear the high bar for this emergency relief. Most notably, the harms allegedly flowing in the absence of a stay have been consistently rejected

as "irreparable harm." The asserted peril is unwarranted litigation, and our justice system has time-tested means for redressing and remedying that when it occurs. Supp.App.162a.

This Court should address Highland's arguments for certiorari in the normal course, after a petition is filed. With respect to projecting how this Court might treat such an eventual petition, Highland has not demonstrated a "reasonable probability" certiorari will be granted, much less a "fair prospect" of reversal. The issues presented by Highland are from another, older, Fifth Circuit opinion in this case, not from the mandate at issue here. The present mandate simply seeks to enforce *Highland I*, from which this Court denied certiorari.

The principal alleged split of authority—regarding the ability of bankruptcy courts to exculpate non-debtors—is not even remotely presented in *Highland II*, as the decision did not touch the exculpation clause of the Plan. Nor is there any crisp disagreement among the circuit courts on a different or greater authority to gatekeep litigation against non-debtors rather than to exculpate them. And no circuit case cited by Highland addresses the effect of this Court's *Purdue* decision on these questions.

The issues identified by Highland are simply not ready for this Court. If there will be a post-*Purdue* split of authority, the Court should let it form and then perhaps grant review in a case that actually presents the issues. This case does not.

I. Highland Cannot Demonstrate Irreparable Harm

Highland has not met its burden to demonstrate a likelihood of irreparable harm if the Court refuses a stay. This should end the Court's inquiry into the merits of extraordinary relief Highland requests. The Court, rather, should entertain Highland's arguments through the ordinary course of seeking a writ of certiorari.

The sole basis for Highland's irreparable harm argument is that, absent a stay, Mr. Dondero *may* file lawsuits that would "absorb the Protected Parties' time and energy, waste resources that rightfully belong to Highland's stakeholders, and further delay the implementation of Highland's plan and conclusion of this case." Highland Appl. at 28.

This Court has long held that the prospect of future litigation—even when it poses "substantial and unrecoupable cost"—does not constitute irreparable harm. *Renegotiation Bd.*, 415 U.S. at 24 ("Mere litigation expense, even substantial and unrecoupable cost, does not constitute irreparable injury."); *Coinbase, Inc. v. Bielski*, 599 U.S. 736, 746–47 (2023) (same). Indeed, it has gone so far as to say that "the expense and annoyance of litigation is 'part of the social burden of living under government.'" *FTC v. Standard Oil Co. of California*, 449 U.S. 232, 244 (1980) (citing *Petroleum Exploration, Inc. v. Public Service Comm'n*, 304 U.S. 209, 222 (1938)).

The reason, of course, is that the economic cost of litigation can be addressed after the fact. "The possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm." *Sampson v. Murray*, 415 U.S. 61, 90 (1974)

(citing *Va. Petroleum Jobbers Ass'n v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958)). The "key word in this consideration is *irreparable*," and injuries "in terms of money, time and energy necessarily expended in the absence of a stay," "however substantial," simply do not cut it. *Id.* (emphasis added).

Here, the Fifth Circuit identified the "adequate compensatory or other corrective relief" available to Highland in lieu of a stay of the mandate. If the litigation Highland fears actually comes to pass, Highland could always challenge it through the normal litigation process. Supp.App.162a ("Highland certainly knows how to bring its concerns to this court and other courts, given the voluminous litigation that has occurred between the parties thus far."). And to the extent that Highland considers any potential future litigation burdensome or frivolous, it could always seek sanctions. Supp.App.163a ("Highland Capital has tools to seek relief from burdensome litigation, such as sanctions."). Congress and the courts have provided several avenues for doing just that. *See, e.g.*, 28 U.S.C. § 1927; Fed. R. Civ. P. 11(b)(1); *Chambers v. NASCO, Inc.*, 501 U.S. 32, 45–46 (1991) (discussing courts' inherent powers to sanction litigants).

Highland devotes several pages of its brief to complaining about the existence of other prior lawsuits. Highland Appl. at 26–29. But its explanation of how past litigation (or even a future risk of litigation) can constitute "irreparable injury" is left to a short footnote that does not address this Court's clear authority to the contrary. Highland Appl. at 29 n.3.

Highland cites a handful of district court and bankruptcy court opinions in an effort to convince the Court to adopt a lower standard for irreparable harm in the bankruptcy context. Highland Appl. at 28–29. These cases are inapposite. Each case involved a request to stay *existing* litigation based on allegations of irreparable harm arising out of those specific lawsuits. *See SAS Overseas Consultants v. Benoit*, 2000 WL 140611, at *4 (E.D. La. Feb. 7, 2000); *In re LTL Management, LLC*, 645 B.R. 59, 66 (Bankr. D.N.J. 2022); *In re Kmart Corp.*, 285 B.R. 679, 692 (Bankr. N.D. Ill. 2002). No case involved a stay of a circuit court mandate overruling an unlawfully broad gatekeeping provision that prevented even the filing of a lawsuit absent court approval.[3]

The remainder of Highland's discussion of "irreparable harm" is spent speculating about whether various parties related to the bankruptcy process "would . . . have taken on those roles" without the exculpation and gatekeeper provisions and whether the district court would have denied its motion to designate Mr. Dondero a vexatious litigant absent these provisions. *Id.* at 29. These arguments are red herrings; Highland's speculation about the *past effects* of the unlawful

[3] Highland's cited cases are further distinguishable on other grounds. For example, in *Benoit*, the district court found irreparable harm where the debtor's "reorganization efforts would be seriously impaired if its president and controlling shareholder were forced to defend himself in ancillary proceedings" and agreed to stay a case pending against the debtor's president. 2000 WL 140611, at *4. Here, however, the gatekeeper provision already extends to Highland and the independent directors responsible for its management. And, in *In re Kmart*, the court declined to enjoin a state court action because the non-debtor "fail[ed] to show that necessity of defending itself in that case will give rise to irreparable harm apart from the possibility of losing." 285 B.R. at 692.

exculpation and gatekeeper provisions can hardly support a finding of irreparable *future* injury.

If they were remotely relevant, they also misread history. The claims that Mr. Dondero or his associated entities are litigious arise from them objecting to aspects of the bankruptcy process, as it was occurring, before the bankruptcy court. The only affirmative litigation arising from this bankruptcy process has been initiated by the debtor and its trustee—as plaintiff—and against Mr. Dondero's associated entities as defendants. With respect to whether various advisors, lawyers, and consultants would have aided the estate without immunity or protection from suit, Highland's argument overlooks it has paid those lawyers and advisors well in excess of $250 million, from the bankruptcy estate, over the course of this case. They all had awesome financial incentives to participate in this process.

At the end of the day, Highland also cannot square its claims of outsize harm with the current status of the proceedings. The bankruptcy process is nearing an end. The bankruptcy court approved Highland's Plan more than four years ago. App.71a. To date, Highland has paid all administrative claims, secured claims, and priority claims in full. *See In re Highland Cap. Mgmt., L.P.*, No. 19-34054-sgj (Bankr. N.D. Tex.), Dkt. 4208 at 7. Highland also has paid 95% of all general unsecured claims. *Id.* That leaves two former equity holders to pay. And Highland has entered a putative settlement with one of those two equity holders, Hunter Mountain Investment Trust ("Hunter Mountain"). *Id.*, Dkt. 4217 at Ex. 1. In other words, there are no "stakeholders," save for one subordinated equity holder, left to protect.

II. Highland Cannot Demonstrate a Reasonable Probability that Four Justices Would Consider the Issues Raised Sufficiently Meritorious to Grant Certiorari

Highland fails to demonstrate that the issues it seeks to raise in a forthcoming petition for a writ of certiorari are sufficiently meritorious to warrant a stay. Highland contends that this appeal presents an opportunity for the Court to resolve two circuit splits: (1) whether bankruptcy courts can immunize non-debtors; and (2) whether bankruptcy courts may act as gatekeepers over litigation against non-debtors. Highland Appl. at 14–22.

A. This Case Does Not Present the Issues Raised by Highland for Review

At the outset, the questions Highland poses are not presented in *Highland II*. In *Highland II*, the only issue presented and decided was whether the bankruptcy court had followed the mandate in *Highland I*, when it failed to narrow the gatekeeper clause to the same parties as the exculpation clause. App.10a; Appellee's Brief, Dkt. 39 at 1;App.11a; Supp.App.162a. Such ministerial decisions rarely present issues of such great moment meriting Supreme Court review.

In any event, the Fifth Circuit's recent opinion enforcing its mandate in *Highland I* did not, in any way, reach the aspect of *Highland I* that concerned the scope of the exculpation provision. Instead, the sole issue addressed in *Highland II* was implementation of the prior mandate with respect to the gatekeeping provision. No party in *Highland II* appealed the bankruptcy court's amendment of the scope of the exculpation order, it so clearly having been required by the Fifth Circuit's decision in *Highland I*.

Nonetheless, the principal split of authority that Highland now claims will stimulate this Court's review in this case is the scope of the *exculpation* clause of the Plan. Highland Appl. at 15. Highland also emphasizes the Fifth Circuit's own recognition in *Highland I* of various other courts of appeals taking a contrary view. *Id.* at 11, 15. But the Fifth Circuit's discussion of that authority, and the cases cited, all concerned the power of a bankruptcy court to exculpate or release non-debtor parties. App.64a (citing *In re Pac. Lumber Co.*, 584 F.3d 229, 252–53 (5th Cir. 2009); *Landsing Diversified Props. v. First Nat'l Bank & Tr. Co. of Tulsa*, 922 F.2d 592, 600 (10th Cir. 1990) (per curiam); *Blixseth v. Credit Suisse*, 961 F.3d 1074, 1084 (9th Cir. 2020); *In re PWS Holding Corp.*, 228 F.3d 224, at 246–47 (3d Cir. 2000); *In re Metromedia Fiber Network, Inc.*, 416 F.3d 136, 143 (2d Cir. 2005); *In re A.H. Robins Co.*, 880 F.2d 694, 702 (4th Cir. 1989); *In re Dow Corning Corp.*, 280 F.3d 648, 658 (6th Cir. 2002); *In re Airadigm Commc'ns., Inc.*, 519 F.3d 640, 657 (7th Cir. 2008); *In re Seaside Eng'g & Surveying, Inc.*, 780 F.3d 1070, 1078 (11th Cir. 2015)). None concerned the existence or scope of any gatekeeping provision, the only issue that the Fifth Circuit even remotely touched in *Highland II*.

In short, the contemplated petition for certiorari discussed in the Application is a relic of an earlier time and case. It is seeking to pull through an issue—the bankruptcy court's authority to release or exculpate non-debtor parties—that was presented in the Fifth Circuit's 2022 *Highland I* decision but simply is not presented in the Fifth Circuit's 2025 *Highland II* decision.

Perhaps for that reason, Highland attempts to identify a second split of authority that it may present in its forthcoming petition for certiorari. That alleged disagreement among the lower courts concerns whether a bankruptcy judge may require her preclearance before parties may initiate suit against non-debtors. The bankruptcy court, here, had created "what is perhaps the broadest gatekeeper injunction ever written into a bankruptcy confirmation plan." App.19a.

According to the Fifth Circuit, the scope of the gatekeeper injunction was squarely presented in *Highland I*. App.15a–18a (explaining that *Highland I*, certainly as amended on rehearing, clearly mandated the narrowing of the gatekeeping provision). The Solicitor General, when presenting its views on the *Highland I* petitions for certiorari, also agreed that the scope of the gatekeeper injunction was directly presented by the Fifth Circuit's decision in *Highland I*: "As for the injunction and gatekeeper provisions, the court determined that bankruptcy courts have authority to enjoin conduct with respect to the narrowed group of exculpated parties." *See Highland Cap. Mgmt., L.P. v. NexPoint Advisors, L.P.*, Nos. 22-631 & 22-669 (S. Ct.), Brief of Amicus Curiae at 8. The Applicant here, nonetheless, chose not to present any issues regarding the gatekeeper provision in its *Highland I* petition for certiorari. That is when the Applicant should have presented this issue. Digging it up now is simply too late.

In any event, there is far from a crisp division of authority regarding the authority of bankruptcy courts to protect through a gatekeeper provision those beyond the debtor and those effectively acting as its trustees.

As the Fifth Circuit explained in denying a motion to stay the mandate in *Highland II*: "Our opinion reiterated and followed principles that have been the law of this circuit for decades; it neither deepened nor created any circuit split." Supp.App.162a. In the *Highland II* opinion itself, the Fifth Circuit acknowledged that other courts have permitted somewhat broader bankruptcy court gatekeeping injunctions. *See* App.14a–15a & n.6. But the youngest of the cited circuit level decisions is sixteen years old. *Id.* None of them occurs after this Court's clarification of bankruptcy courts' powers with respect to non-debtors in its 2024 *Purdue* decision. And only one of the cited federal circuit decisions meaningfully addresses the proper scope of gatekeeper protections. *See Lawrence v. Goldberg*, 573 F.3d 1265, 1270 (11th Cir. 2009). Even there, the Eleventh Circuit approved a much narrower gatekeeper clause than the one at issue here. *Id.*[4] All the other cited cases are bankruptcy court decisions and unpublished district court decisions. This is nowhere close to the substantial and well-developed split of circuit-level authority that traditionally has drawn the review of this Court.

B. This Court's Denial of the Petitioners' Request for Certiorari in *Highland I* Suggest There Is Not a Reasonable Probability this Court Will Grant Review of *Highland II*

As explained above, the split of circuit authority regarding bankruptcy courts' authority to extend exculpation clauses to non-debtors is not presented at all in

[4] The only other circuit case mentioned by the Fifth Circuit—*In re Lowenbraun*, 453 F.3d 314, 321–22 (6th Cir. 2006)—mentions gatekeeping only in passing on the way to a holding that turns on a different issue.

Highland II. And the issue regarding the extent of bankruptcy courts' authority to craft gatekeeper clauses should have been presented, if at all, in petitions for certiorari from *Highland I* and is far from a ripened disagreement among the circuit courts.

In any event, the Court's treatment of the *Highland I* petitions weigh strongly against a projected reasonable probability that Highland's contemplated *Highland II* petition will be granted. In its *Highland I* petition, Highland sought review of the very same issue regarding bankruptcy court authority to exculpate or release non-debtors and emphasized the very same disagreeing circuit decisions. This Court called for the views of the Solicitor General and held it, as the Solicitor General recommended, until its disposition of the *Purdue* merits case. Ultimately, this Court denied the petition.

The Applicant speculates that denial was due to the "interlocutory posture" of the *Highland I* case. Only this Court knows, but the Applicant's speculation is hard to understand. *Highland I* was not an interlocutory appeal. It was a direct appeal from a final order in the form of a plan confirmation, authorized by Congress. 28 U.S.C. § 158(d)(1). And neither the Solicitor General nor any other party had argued that *Highland I* was in a premature posture or at some kind of interlocutory stage, such that review should have been deferred to some later point in the proceedings. Indeed, had the bankruptcy court faithfully implemented the Fifth Circuit's mandate in *Highland I*, there would have been very little grounds for any party to appeal the issues further to the Fifth Circuit, much less to this Court. That the bankruptcy court

needed further correction is a fortuity. To suggest that certiorari was deferred for that possibility is a stretch.

In addition, the split of authority on the exculpation issue and the alleged split of authority on the gatekeeper issue were more likely candidates for this Court's review prior to this Court's 2024 decision in *Purdue*, than after it. In *Purdue*, the Court was asked to decide whether the Bankruptcy Code authorizes a bankruptcy court to approve a plan of reorganization that releases and enjoins third-party claims against non-debtors without the consent of the affected claimants. 603 U.S. at 209. The Court granted certiorari to "resolve the circuit split" that had long divided the federal courts of appeals on that issue. *Id.* at 214.[5] And the Court held that the bankruptcy court in *Purdue* was not permitted to release non-debtors at issue in that case from liability. *Id.* at 227. In doing so, the Court engaged in a broad survey of the Bankruptcy Code's authorities and explained that they were limited as to non-debtor parties. *Id.* at 221 ("[L]ooking to Chapter 11 more broadly, we find at least three further reasons why § 1123(b)(6) cannot bear the interpretation the plan proponents and the dissent would have us give it.").

[5] This Court invited readers to compare *In re Pacific Lumber Co.*, 584 F.3d 229 (5th Cir. 2009); *In re Lowenschuss*, 67 F.3d 1394 (9th Cir. 1995); and *In re Western Real Estate Fund, Inc.*, 922 F.2d 592 (10th Cir. 1990), with *In re Millennium Lab Holdings II, LLC*, 945 F.3d 126 (3d Cir. 2019); *In re Seaside Engineering & Surveying, Inc.*, 780 F.3d 1070 (11th Cir. 2015); *In re Airadigm Communications, Inc.*, 519 F.3d 640 (7th Cir. 2008); *In re Dow Corning Corp.*, 280 F.3d 648 (6th Cir. 2002); and *In re A.H. Robins Co.*, 880 F.2d 694 (4th Cir. 1989). 603 U.S. at 214 n.1. This is the very same disagreement among the circuit courts that Highland identifies in its Application as meriting this Court's re-resolution now. *See* Highland Appl. at 15–17.

Highland argues that the holdings of *Purdue* are limited and that the *Purdue* decision, potentially, preserves a role for bankruptcy courts in releasing, exonerating, or protecting non-debtors from liability. Highland Appl. at 17–18. But there is no question this Court pushed the historical disagreement among the circuit courts in the direction of the Fifth Circuit, that a bankruptcy court's powers with respect to protecting non-debtors from litigation or liability are very limited, if there are any at all.

If there were a concern that the Fifth Circuit's position, as reflected in *Highland I*, were inconsistent with *Purdue*, this Court could have granted the *Highland I* petitions, vacated the *Highland I* decision, and remanded it to the Fifth Circuit for consideration in light of *Purdue*. This Court instead, after holding the *Highland I* petitions for *Purdue*, denied them.

What the Applicant does not cite is any disagreement among the circuit courts on this issue *in decisions rendered after Purdue*. Respondents respectfully submit that this Court is not reasonably probable to do, and should not do, what the Applicant is urging now: Take up questions regarding whether or to what extent bankruptcy courts may release, exonerate, or otherwise protect from litigation non-debtors after *Purdue*—**before the circuit courts have disagreed on the implications of *Purdue* on those issues.** The issues pressed by the Applicant as candidates for review now are precisely the type this Court long has determined would benefit from further disagreement and sharpening in the circuit courts, with the full benefit of this Court's reasoning in *Purdue*. *See, e.g.*, *Dep't of Homeland Sec.*

v. New York, 140 S. Ct. 599, 600 (2020) (Gorsuch, J., concurring in grant of stay) (percolation process "encourages multiple judges and multiple circuits to weigh in only after careful deliberation, a process that permits the airing of competing views that aids this Court's own decisionmaking process").

In any event, the Applicant is incorrect that the Fifth Circuit is headed in the wrong direction. As an initial matter, the Applicant complains that the Fifth Circuit in *Highland II* "vaunted the circuit's minority reading of Section 524(e) as a 'bedrock principle[] concerning bankruptcy courts' power to protect non-debtors.'" Highland Appl. at 17 (quoting App.15a). That is not what the Fifth Circuit said or did. It was not breaking new ground, it was enforcing the mandate in *Highland I*, the case in which this Court denied review. To that point, the Fifth Circuit explained its position was in place before *Highland I* and before *Purdue*:

> The Supreme Court and this court have definitively held that bankruptcy courts may not approve a confirmation plan that non-consensually releases non-debtors from liability related to a bankruptcy proceeding. They have also recognized that bankruptcy injunctions, though not in themselves releases, similarly act to shield persons and entities from liability and therefore may not be entered to protect non-debtors not legally entitled to release.

App.12a.

Finding that § 524(e) speaks only to the *debtor* and the scope of the discharge to be afforded the *debtor*, the Court in *Purdue* looked to other provisions of the Bankruptcy Code to determine whether there was some other authorization for releasing non-debtors through a bankruptcy confirmation plan. The Court then analyzed both Bankruptcy Code § 1123(b) (governing the allowable contents of a plan of reorganization) and § 105(a) (governing the bankruptcy courts' "inherent" powers)

and concluded that neither section granted bankruptcy courts the "capacious new power" to release non-debtors without the consent of the affected claimants. 603 U.S. at 206, 215–16 & n.2. Importantly, these are the very same sections of the Bankruptcy Code the Applicant urges here as authority to release and/or protect non-debtors from liability. Highland Appl. at 25.

This Court's opinion in *Purdue* further bolsters the Fifth Circuit's position on gatekeeping in a variety of ways. First, this Court made clear that Section 1123 of the Bankruptcy Code "addresses the 'contents'—or terms—of the bankruptcy reorganization plan" and cabins the types of claims a bankruptcy court may adjust without consent. 603 U.S. at 205, 215. Second, the Court refused to make "policy judgments" about what should be the proper scope of bankruptcy plans that were not grounded in statutory text, particularly about the scope of a bankruptcy discharge. *Id.* at 226. Third, the Court squarely held that a plan may not release past *or future* claims against a non-debtor without the consent of the affected claimants. *Id.* at 211, 226–27. And finally, the Court held that an injunction effectively barring future claims against a non-debtor without the consent of the affected claimants is impermissible. *Id.* at 215–17.

The holding and reasoning of the Court in *Purdue* thus weigh strongly against the broad exculpation and injunction provisions contained in Highland's Plan. As originally written, those provisions, like the release at issue in *Purdue*, purported to protect a litany of non-debtors from third-party claims far into the future and without

the affected claimants' consent.[6] Highland cannot rely on its policy arguments regarding the need to protect bankruptcy professionals. As the Court instructed, "if a policy decision like that is to be made, it is for Congress to make." *Id.* at 226.[7] This Court has consistently emphasized a cautious and narrowly circumscribed approach to interpreting judicial powers in bankruptcy matters. *Czyzewski v. Jevic Holding Corp.*, 580 U.S. 451, 465 (2017).

III. Highland Cannot Demonstrate a Fair Prospect that this Court Would Reverse

Highland's arguments about the likelihood of reversal are similarly misdirected. Highland devotes most of its argument to describing the very same federal circuit split that the Court just resolved in *Purdue* and advocating that the Court reach a different result. *See* Highland Appl. at 24. But Highland does not attempt to explain why the Court would reverse course so soon, much less why there is a "fair prospect" of such reversal.

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[6] Indeed, the Solicitor General explained that, "[a]s applied to non-debtors, exculpation clauses are a type of third-party release contained in a plan of reorganization that pertains to nondebtor conduct that occurs after the filing of the bankruptcy petition." *Highland Cap. Mgmt., L.P. v. NexPoint Advisors, L.P.*, Nos. 22-631 & 22-669 (S. Ct.), Brief of Amicus Curiae at 9. Likewise, the Fifth Circuit explained that "courts and bankruptcy confirmation plans often use the terms 'release,' 'exculpation,' and 'discharge' loosely or interchangeably." App.12a n.4.

[7] Highland also invokes the *Purdue* dissent. Highland Appl. at 20–21. The dissents, however, were primarily concerned with fairness to the "more than 100,000 opioid victims" in a mass-tort bankruptcy and believed the release was "necessary to help victims and creditors achieve fair and equitable recovery." *Purdue*, 603 U.S. at 227, 243. Those concerns are inapplicable to this bankruptcy, which involves neither mass torts nor thousands of tort victims. Moreover, because nearly all creditors have been paid in full, there is no risk to a fair and equitable recovery here. *Supra* at 5.

Highland argues that the Court should decide that the savings clause contained in Bankruptcy Code § 1123(b)(6) and the inherent authority conferred by Bankruptcy Code § 105 endows the bankruptcy court with authority to approve the broader non-debtor exculpation provision and gatekeeper clause in this case. But this Court already *rejected* those same arguments in *Purdue*. There, as here, the plan proponents argued that § 1123(b)(6) "allows a debtor to include in its plan, and a court to order, *any* term not 'expressly forbid[den]' by the bankruptcy code as long as a bankruptcy judge deems it 'appropriate' and consistent with the broad 'purpose[s]' of bankruptcy." *Compare Purdue*, 603 U.S. at 217, *with* Highland Appl. at 25 (arguing that "Section 1123(b)(6) of the Code allows a bankruptcy plan to 'include any other appropriate provision not inconsistent with the applicable provisions of this title'"). The Court held otherwise, concluding that "the catchall [contained in § 1123(b)(6)] cannot fairly be read to endow a bankruptcy court with the 'radically different' power to discharge the debts of a non-debtor without the consent of affected nondebtor claimants." *Purdue*, 603 U.S. at 218.

Purdue likewise addressed the Sacklers' argument—repeated by Highland here—that Bankruptcy Code § 105(a) "permit[s] a bankruptcy court to release and enjoin claims against a nondebtor without the affected claimants' consent." *Compare id.* at 216 n.2, *with* Highland Appl. at 25 (arguing that § 105(a) permits the bankruptcy court to "issue any order, process, or judgment that is necessary or appropriate," including by exculpating and enjoining claims against non-debtors). But as the Court explained, "'§ 105(a) alone cannot justify' the imposition of

nonconsensual third-party releases because it serves only to 'carry out' authorities expressly conferred elsewhere in the code." *Purdue*, 603 U.S. at 216 n.2.[8]

Nor is there any reason to believe the Court would reverse the Fifth Circuit's ruling regarding the appropriate scope of the gatekeeper clause. As explained above, there is no new view of gatekeeper clauses that has divided the federal courts since *Purdue*. The cases Highland cites are the same cases that existed when the Court previously denied the *Highland I* petitions. Further, there cannot be a "fair prospect" that the Court will reverse the Fifth Circuit opinion actually at issue, *Highland II*, which does not implicate any of the issues discussed by Highland. As set forth above, the only question presented by *Highland II* is whether the Fifth Circuit correctly held that the bankruptcy court was required to follow the Fifth Circuit's ruling and mandate in *Highland I*.

CONCLUSION

This case does not genuinely present, and is not the proper vehicle for the this Court to address, the issues Highland raises. The time to do that was on review of *Highland I*, and the Court denied review after issuing its opinion in *Purdue*. The Court should deny Highland's Application for a stay.

[8] Ultimately, in *Purdue*, the Sacklers (and other plan proponents) appropriately conceded that § 105(a) does not confer the power advocated. 603 U.S. at 216 n.2. Highland's nearly identical argument fares no better.

Respectfully submitted this 5th day of June, 2025,

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Supplemental Appendix

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
May 29, 2025
Lyle W. Cayce
Clerk

No. 23-10534

IN THE MATTER OF HIGHLAND CAPITAL MANAGEMENT, L.P.

Debtor,

HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P., *now known as* NEXPOINT ASSET MANAGEMENT, L.P.; NEXPOINT ADVISORS, L.P.,

Appellants,

versus

HIGHLAND CAPITAL MANAGEMENT, L.P.,

Appellee.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:23-CV-573

ORDER RESPECTING DENIAL OF MOTION TO STAY ISSUANCE OF MANDATE PENDING PETITION FOR WRIT OF CERTIORARI

Before ELROD, *Chief Judge*, and WILLETT and DUNCAN, *Circuit Judges*.
PER CURIAM:

It is not this court's usual practice to stay issuance of the mandate pending the filing and disposition of a petition for writ of certiorari. We do so only when a party shows that "the petition would present a substantial question and that there is good cause for a stay." Fed. R. App. P. 41(d)(1). Highland Capital has shown neither of these things.

Preliminarily, the questions that Highland Capital asserts it would include in its petition for certiorari do not appear to be reviewable because they were not the subject of this appeal. Highland Capital submits that it would ask the Supreme Court to consider: (1) whether this court correctly struck various non-debtors from the scope of the Gatekeeper Clause; and (2) whether the bankruptcy courts have authority to exculpate or release non-debtors from liability arising from the bankruptcy process. But in our opinion, we merely confirmed the instruction that we had previously given the bankruptcy court in *In re Highland Capital Management, L.P. (Highland I)*, 48 F.4th 419 (5th Cir. 2022): to narrow the definition of "Protected Parties" used in the Gatekeeper Clause. In doing so, we answered the question actually raised in the appeal: whether the bankruptcy court properly implemented *Highland I*. And that is hardly a substantial question.

Moreover, our opinion reiterated and followed principles that have been the law of this circuit for decades; it neither created nor deepened any circuit split. And denying Highland Capital's motion does not likely lead to irreparable harm. While Highland Capital fears that our decision could lead to significant future litigation, Highland Capital certainly knows how to bring its concerns to this court and other courts, given the voluminous litigation that has occurred between the parties thus far. In addition, even with the Gatekeeper Clause narrowed as required by both *Highland I* and our opinion

in the current appeal, Highland Capital has tools to seek relief from burdensome litigation, such as sanctions.

Highland Capital stressed repeatedly in its briefing on appeal that it was not asking for the moon and stars, agreeing with Appellants that the appeal was a "simple" one that asked us merely to clarify whether the bankruptcy court had properly implemented our instructions in *Highland I*. And our resulting opinion did exactly that, interpreting our own jurisprudence and requiring the bankruptcy court to comply with it. Now, Highland Capital complains that we failed to grant them the moon and stars by reinterpreting our bankruptcy jurisprudence to vastly extend the power of the bankruptcy courts.

Accordingly, denial of Highland Capital's motion to stay issuance of the mandate is appropriate here.

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
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May 29, 2025

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 23-10534 Highland Captl Fund v. Highland Captl Mgmt
USDC No. 3:23-CV-573

Enclosed is an order entered in this case.

Sincerely,

LYLE W. CAYCE, Clerk

Christina Gardner

By: _____
Christina A. Gardner, Deputy Clerk
504-310-7684

Mr. Zachery Z. Annable
Mr. John D. Ashcroft
Mr. Gregory Vincent Demo
Mr. Jordan A. Kroop
Mr. John A. Morris
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