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Highland Capital Management LP bankruptcy moves to hostile territory

By Seth Brumby

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Judge Christopher Sontchi of the Delaware bankruptcy court agreed yesterday to move Highland Capital Management LP's (HCMLP) bankruptcy proceedings to the Northern District of Texas.

Sontchi ordered the change in venue despite HCMLP's objections, at the behest of HCMLP's unsecured creditor's committee and Acis Capital Management, HCMLP's former CLO platform. The change in venue paves a path for HCMLP's creditors to pursue litigation against HCMLP and remove its president and co-founder, James Dondero.

"I think here we have a situation where the real gravitas is in Dallas," said Judge Sontchi. "The two facts that come out to me are that the executive suite is clearly focused on Dallas and [so is] the existing litigation in the Acis bankruptcy that has been going on for some time, those are two predominant factors."

The change in venue could have big implications for the bankruptcy. Judge Stacey Jernigan of the bankruptcy court in the Northern District of Texas presided over Acis's January 2018 involuntary petition. She largely ruled against Highland during a litigious restructuring and, in February, **confirmed a plan of reorganisation** over Highland's objections that handed control of Acis to Highland's former head of structured products, Joshua Terry.

Attorneys for Acis, as well as Patrick Daugherty, a large unsecured creditor with an $11m unsecured claim against HCMLP stemming from legacy litigation, have **signalled** their desire to remove Dondero. But no one has so far filed a motion to do so.

"A motion is not yet filed because they want Judge Jernigan to rule on that motion," said the debtor's attorney, Jeffrey Pomerantz of Pachulski Stang Ziehl & Jones, during yesterday's hearing. "It is because she had negative views of certain members of debtor's management that Acis hopes will carry over to this case. They want a trustee to run the debtor and they want Judge Jernigan to rule on that. This is a transparent litigation ploy."

The idea of "forum shopping" was not lost on Judge Sontchi when he made his bench ruling. He noted that a choice in forum was paramount in the decision-making process for any restructuring and acknowledged that HCMLP's creditors were engaging in forum shopping too. But he pushed back against the negative connotations.

"Where you file depends on a lot of things unique to the forum. You don't need to be ashamed of that," he told the packed courtroom.

Sontchi's order kicked a lot of near-term rulings to the Northern District of Texas. A crucial one is the retention and scope of HCMLP's proposed CRO, Bradley Sharp of Development Specialists Inc (DSI). In their objection to DSI's retention,

the unsecured creditors' committee argued that HCMLP's proposal would give Dondero too much control over the debtor.

"The committee believes that Mr Dondero, in particular, cannot be trusted to act in the best interests of the debtor's estate," **wrote attorneys at Sidley Austin**, which represents the unsecured creditors committee, in their 12 November objection to DSI's retention.

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