

Highland Capital Fails Bid to Recuse Presiding Judge (US)

Article By:

Tara Peramatukorn

In January, [we wrote about Highland Capital Management, L.P.](#) and the reorganized debtor's filing of a petition for a *writ of certiorari*, by which the reorganized debtor asked the Supreme Court to consider whether section 524(e) of the Bankruptcy Code prohibits non-debtor exculpations.

Now for something completely different. Earlier this month, the Bankruptcy Court for the Northern District of Texas (Dallas Division) [issued a memorandum of opinion and order](#) (the "Opinion") denying the Movants'^[1] Amended Renewed Motion to Recuse (the "Motion").^[2] The Motion sought an order requiring Judge Jernigan to recuse herself from presiding over the entirety of the debtor's Chapter 11 case pursuant to 28 U.S.C. § 455. A motion for recusal under section 455 is subject to an exceptionally high bar and requires the Movants to demonstrate that the overall circumstances would cause a reasonable observer to question the judge's impartiality.^[3]

Although the Motion was filed exactly three years after the bankruptcy case was filed, and therefore considered untimely, the court nevertheless addressed the substance of the Motion due to the serious issues raised.^[4] What was interesting about the Motion was that part of the Movants' argument relied on the content of two fictional books published by Judge Jernigan, *He Watches All My Paths* and *Hedging Death*.

The Movants relied on certain content in the first book, *He Watches All My Paths*, to illustrate Judge Jernigan's purported "high degree of antagonism" towards James Dondero, the co-founder and former CEO of Highland Capital. First, the Movants cited the book's description of the financial industry as being dominated by "[h]igh flying hedge fund managers" who show "outrageous amounts of hubris" as part of their "bro culture." Second, the Movants cited that the book's protagonist, a Dallas federal bankruptcy judge, suspects she is receiving death threats from a hedge fund manager.^[5]

The second book, *Hedging Death*, is a sequel to the first book. The second book's story revolves around a biomedical research firm in a Chapter 11 case before the same protagonist judge featured in *He Watches All My Paths*. The Movants alleged that the second book mirrors even more details from the *Highland Capital* bankruptcy case. In the book, the biomedical research firm's president received funding from a hedge fund manager named Cade Graham, a character whom the Movants allege is based on Mr. Dondero. One of Cade Graham's investment firms, Ranger Capital, manages a portfolio of complicated financial products which is "exactly the same unusual mix of investments"

that Highland Capital also manages.^[6] The Movants also relied on the name of that investment firm, Ranger Capital, as further evidence of a connection between the book and the *Highland Capital* bankruptcy case because Highland Capital was once named Ranger Asset Management.

Based on this, the Movants argued that any reasonable person would agree that the content of these two books was patterned after Mr. Dondero and his businesses.^[7] The Movants alleged that the books were evidence of the court's "exceedingly negative views" about hedge fund managers, the hedge fund industry, and Mr. Dondero himself.^[8] However, the court rejected the Movants' contentions that there were links between the books and Mr. Dondero. The court found that the novels contained no such evidence of animus or bias. Contrary to the Movants' argument, the judge in *He Watches All My Paths* was not receiving death threats from a hedge fund manager, but was instead receiving threats from a former tort victim who felt wronged by the American justice system.^[9] Furthermore, in *Hedging Death*, the use of the name "Ranger Capital" appears to be an uncanny coincidence and nothing more—the information about Highland Capital's former name was never disclosed in the bankruptcy case or disclosed to the presiding judge in any other way.^[10] Both books made clear that their content was fictional and any resemblance to actual events or persons was entirely coincidental. Without any evidence that the content of the books was "patterned" on Mr. Dondero, or any other real evidence of bias or animus towards Mr. Dondero, the court concluded that the Movants failed to meet the standard of proving the existence of objective manifestations of bias or prejudice.

Many judges author books, and judges who write non-fiction books may write about "what they know," loosely basing their works on real life people or events.^[11] While this extrajudicial practice should not be limited, the *Highland Capital* case serves as an example of the potential perils of judicial authorship by "creating the possibility that someone is going to infer a legal viewpoint that might signal how the judge might rule in a future case."^[12] Social media may only increase the use of recusal motions, as past posts made before judges were confirmed may provide ammunition for claims of bias.

FOOTNOTES

^[1] The term "Movants" consists of the following parties: James Dondero; Highland Capital Management Fund Advisors, L.P.; NexPoint Advisors, L.P.; The Dugaboy Investment Trust; The Get Good Trust' and NexPoint Real Estate Partners, LLC f/k/a/ HCRE Partners, LLC.

^[2] The Movants have also filed two additional recusal motions in this case. One of the Movants, Highland Capital Management Fund Advisors, L.P., also filed a recusal motion in a related adversary proceeding.

^[3] Opinion at 11, citing *Lieb v. Tillman (In re Lieb)*, 112 B.R. 830, 836 (Bankr. W.D. Tex. 1990).

^[4] Opinion at 13-14.

^[5] Movants' Supplemental Memorandum of Law in Support of Amended Renewed Motion to Recuse Pursuant to 28 U.S.C. § 455 [Doc No. 3673] ("Supplemental Memorandum") at pages 2, 4.

^[6] See Supplemental Memorandum at page 3. The mix of financial products managed by Highland Capital and the fictional Ranger Capital include hedge funds, private equity funds, collateralized debt obligations, CLOs, REITs, life settlement portfolios, and private investment accounts for institutions around the world.

^[7] Supplemental Memorandum at page 4.

^[8] Supplemental Memorandum at page 4.

^[9] Opinion at page 33.

^[10] Opinion at page 34.

^[11] Opinion at page 35.

^[12] Opinion at page 34.

© Copyright 2025 Squire Patton Boggs (US) LLP

National Law Review, Volume XIII, Number 88

Source URL: <https://natlawreview.com/article/highland-capital-fails-bid-to-recuse-presiding-judge-us>