UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE:	§	
	§	
SPEEDCAST INTERNATIONAL	§	
LIMITED, et. al.,	§	**CASE NO. 20-32243 (MI)**
	§	
Debtors.	§	**Chapter 11**
	§	
	§	**Jointly Administered**
	§	
CATHERINE E. YOUNGMAN,	§	
in her capacity as Class 3 Trustee for	§	
the Speedcast SFA Lenders' Litigation	§	
Trust,	§	
	§	
Plaintiff,	§	
	§	
v.	§	
	§	**ADV. PRO. 22-03019**
PETER SHAPER,	§	
	§	
Defendant.	§	
	§	

DEFENDANT PETER SHAPER'S RESPONSE TO PLAINTIFF'S MOTION TO REMAND TO STATE COURT (Adv. Dkt. 20)

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I. INTRODUCTION

1. Plaintiff's Motion to Remand (Adv. Dkt. 20) fails to establish why this matter—which turns entirely on actions allegedly taken during the bankruptcy proceeding, challenges the integrity of that proceeding (including both the value received and the procedures followed), and seeks to recover damages consisting of harm allegedly suffered by the bankruptcy estate—should not remain in this Bankruptcy Court.

2. ***First,*** this Court has subject matter jurisdiction because this adversary proceeding is a "core" proceeding "arising in" the Speedcast Bankruptcy. A proceeding is core if "by its nature" it "could only arise in the context of a bankruptcy case." *In re Wood*, 825 F.2d 90, 97 (5th Cir. 1987). The Fifth Circuit—along with numerous other courts—has held that claims that a fiduciary breached his or her duties to a debtor during the bankruptcy process are "inseparable from the bankruptcy context" because "a *sine qua non* in restructuring the debtor-creditor relationship is the court's ability to police the fiduciaries, whether trustees or debtors-in possession and other court-appointed professionals, who are responsible for managing the debtor's estate in the best interest of creditors." *In re Southmark Corp.*, 163 F.3d 925, 931 (5th Cir. 1999).

3. Just so here. The Complaint (Adv. Dkt. 1 at Ex. 3) almost exclusively asserts breaches of duties allegedly owed by Peter Shaper as a director and officer of a "debtor in possession in a chapter 11 proceeding." Compl. ¶ 99. In particular, it alleges that Shaper's breach of those duties so befouled the bankruptcy process that it caused Speedcast to wrongly incur millions of dollars in professional fees otherwise approved by this Court (*id.* ¶ 102); resulted in a reduced recovery by the bankruptcy estate and its creditors (*id.*); and irretrievably tainted the decision-making process of the Special Restricting Committee ("SRC") (*id.* ¶ 94).

There can be no doubt that these allegations are "inseparable from the bankruptcy context"—indeed, taken as true (although Shaper disputes them),[1] they constitute a frontal assault on the legitimacy of the bankruptcy process supervised by this Court. As a result, "arising in" jurisdiction exists[2] and mandatory abstention is inapplicable.

4. ***Second***, and independently, mandatory abstention does not apply to these facts because, in addition to the existence of "arising in" jurisdiction, the state court action was not "commenced prior to the bankruptcy proceedings." *In re Hous. Reg'l Sports Network, L.P.*, 514 B.R. 211, 214 (Bankr. S.D. Tex. 2014). Plaintiff ignores this requirement for mandatory abstention.

5. ***Third,*** the Court should not exercise its discretion to either permissively abstain or equitably remand back to state court. Among other reasons, Plaintiff's claims implicate the integrity of the bankruptcy process and the administration of the estate; issues of bankruptcy process and procedure predominate over state law issues; there is substantial relatedness between the allegations of this case and the underlying main bankruptcy case; and the claims would not exist but for the Speedcast restructuring overseen by this Court. *Id.* at 215-16 (laying out the various factors).

II. RELEVANT BACKGROUND AND PROCEDURAL POSTURE

6. Plaintiff is Catherine Youngman, as Trustee of the SFA Lenders Litigation Trust (also known as the "Class 3 Trust"). The Class 3 Trust was established during the Speedcast International Limited Bankruptcy Proceeding in this Court (jointly administered as Case No. 20-

[1] Shaper recites the allegations in the Complaint solely for purposes of this Response.

[2] Even Plaintiff acknowledges that the Court at least has subject matter jurisdiction under the alternative, broad "related to" doctrine. Mot. at 7; *see also Ogle v. Comcast Corp.* (*In re Hous. Reg'l Sports Network, L.P.*), 547 B.R. 717, 736 (Bankr. S.D. Tex. 2016) (noting that litigation trusts "by their nature maintain a connection to the bankruptcy even after the plan has been confirmed….").

32243)[3] ("Speedcast Bankruptcy") as part of the implementation of the Third Amended Confirmation Plan ("Third Amended Plan") approved by this Court's Order Confirming the Third Amended Joint Chapter 11 Plan ("Confirmation Order").

7. Speedcast is a satellite communications company that filed for Chapter 11 relief on April 23, 2020. Compl. ¶ 7. At the time, Defendant Shaper had been a Director of Speedcast since September 2019 and had been the acting CEO of Speedcast for barely a month. Compl. ¶¶ 23, 36.

8. Over the first few months of the bankruptcy process, two creditors emerged as holding the majority of Speedcast's secured debt: Centerbridge and Black Diamond. *Id*. ¶ 57. By August 2020, Speedcast had not been able to move forward with a deal with either of those potential plan sponsors—they both had a so-called "blocking" position—and Shaper, in frustration, resigned from any roles at Speedcast. *Id*. ¶¶ 11, 80. There is no allegation that he took any actions that harmed Speedcast after his resignation.

9. Three months after his resignation, the SRC approved, and Speedcast filed, a Second Amended Joint Chapter 11 Plan ("Second Amended Plan") supported by the Debtor, the Unsecured Creditors Committee, and Centerbridge. Bkr. Dkt. 992. As part of the Second Amended Plan, Centerbridge, not Black Diamond, would take ownership of the reorganized entity. Compl. ¶ 90. The Second Amended Plan also called for both Shaper and Joe Spytek, another Speedcast executive, to receive full and complete releases. Bkr. Dkt. 992 at p. 24.

10. Black Diamond objected to the Second Amended Plan. Bkr. Dkt. 1047. Black Diamond's objections included assertions that Shaper and Spytek's conduct did not warrant releases under the plan; that the plan undervalued Speedcast; that the Plan had not been proposed

[3] References to the main Bankruptcy Docket are cited herein as "Bkr. Dkt. [#]." References to the Docket for this adversary proceeding are "Adv. Dkt. [#]."

in good faith; that Shaper and Spytek sought to suppress value to maximize their own upside; and that the bidding process was structured unfairly as to Black Diamond. *E.g.,* Bkr. Dkt. 1047 at Objection I, II, IV, VII and Background III(A).

11. Following multiple days of trial over the Second Amended Plan, Centerbridge and Black Diamond entered into a Settlement Agreement on January 20, 2021. Bkr. Dkt. 1397 at Ex. B. As part of the consideration for that Settlement Agreement, the Parties agreed to carve out Shaper—a non-party who had not been an executive or director of Speedcast since August 2020—from the released or exculpated parties. Instead, a litigation trust (the "Class 3 Trust") was created to take assignment of Speedcast's potential claims against him. Bkr. Dkt. 1397 at p. 159. Centerbridge additionally agreed to waive its interest in the Class 3 Trust, thereby giving Black Diamond either the exclusive, or at least majority, beneficial interest in the Trust and sole control of its "Litigation Oversight Committee." Bkr. Dkt. 1397 at p. 189 (listing two Black Diamond executives as the sole members of the Litigation Oversight Committee).

12. In sum, as consideration for the Settlement, the Debtors and Centerbridge agreed to transfer the estate's claims against Speedcast's former officer and director, Peter Shaper, to the Class 3 Trust primarily for the benefit of creditor Black Diamond. *See also* Bkr. Dkt. 1417 (1/21/21 Hearing Tr.) at 20:10-21:9 (Black Diamond's attorney explaining that the carve-out and rejection of Mr. Shaper's indemnification rights were "one of the conditions to the settlement as a package deal with the Confirmation Order….").

13. The Settlement Agreement formed the basis for a Third Amended Plan, which the Court confirmed on January 22, 2021. Bkr. Dkt. 1397. By its terms, the Plan became effective on March 11, 2021.

14. The Third Amended Plan specifically provides that this Court retains jurisdiction over claims brought by the Class 3 Trustee. Bkr. Dkt. 1397 ¶ 46 ("Notwithstanding the entry of this Confirmation Order or the occurrence of the Effective Date, the Bankruptcy Court shall, after the Effective Date, retain such jurisdiction over the Chapter 11 Cases and all Entities with respect to all matters related to the Plan, the Plan Settlement Agreement, the Chapter 11 Cases and the Debtors, including the Litigation Trust and the Litigation Trust Agreement, to the fullest extent legally permissible."); *id.* at Ex. A ("Plan") § 11.1(b) (stating that the Bankruptcy Court shall retain jurisdiction "of the Litigation Trust Causes of Action and the Class 3 Trust Causes of Action; *provided*, *however*, that the Bankruptcy Court's jurisdiction with respect to the Litigation Trust Causes of Action and the Class 3 Trust Causes of Action shall not be exclusive.").

15. On March 4, 2021, Plaintiff served Bankruptcy Rule 2004 requests on Shaper. Ex. 1. Over the course of the Summer of 2021, Shaper voluntarily produced thousands of pages of documents in response to those requests and pursuant to the Stipulated Protective Order previously entered in the Speedcast Bankruptcy.

16. On January 7, 2022, the Class 3 Trustee filed its Original Petition in the 61st Judicial District for Harris County, Texas alleging that during the Speedcast Bankruptcy, Shaper breached his fiduciary duties to Speedcast (or conspired or aided and abetted in breaches committed by Spytek) by attempting to negotiate allegedly self-dealing transactions and favoring one creditor over another—which Plaintiff alleges reduced the value received by the bankruptcy estate and/or caused Speedcast to incur additional, unnecessary professional fees in the bankruptcy proceeding. *See generally* Adv. Dkt. 1 at Ex. 3.

17. In sum and substance, these claims are a regurgitation of the objections raised by Black Diamond during the Speedcast Bankruptcy regarding both Shaper and Spytek's alleged

conduct and Black Diamond's belief that some combination of Speedcast, the Special Restructuring Committee, Shaper, and/or Spytek favored Centerbridge over Black Diamond, to the alleged detriment of the estate.

18. Shaper accepted service of the Original Petition on January 10, 2022 and timely removed the case to this Court on February 7, 2022. Adv. Dkt. 1.

III. ARGUMENTS AND AUTHORITY

A. Plaintiff's Claims Arise in the Speedcast Bankruptcy, So This is Necessarily a "Core" Proceeding.

19. This case alleges wrongdoing solely in connection with the Speedcast Bankruptcy. As such, this is a "core" proceeding "arising in a case under Title 11." 28 U.S.C. § 157(b)(1) ("Bankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11, referred under subsection (a) of this section, and may enter appropriate orders and judgments, subject to review under section 158 of this title."). Core proceedings "include, but are not limited to" "matters concerning the administration of the estate," 28 U.S.C. § 157(b)(2)(A), "other proceedings affecting the liquidation of the assets of the estate or the adjustment of the debtor-creditor or the equity security holder relationship," *id*. § 157(b)(2)(O), and any proceeding that, "by its nature, could only arise in the context of a bankruptcy case," *In re Southmark*, 163 F.3d at 930 (citing *In re Wood*, 825 F.2d 90, 97 (5th Cir. 1987)). In undertaking this analysis, courts look to the substance of the claims, not merely whether the laws violated are state or federal. *In re Southmark*, 163 F.3d at 930 ("The state law origin of [plaintiff's] claims is not dispositive. The jurisdictional statute expressly provides that the applicability of state law to a proceeding is insufficient to render it a non-core proceeding.") (citing 28 U.S.C. § 157(b)(3)); *see also In re Tronox*, 603 B.R. 712 (Bankr. S.D.N.Y. 2019) ("[T]he determinative issue is not whether the

origin of the claims is found in state law but instead whether claims that appear to be based in state law are really an extension of the proceeding already before the bankruptcy court.") (cleaned up) (citing *Baker v. Simpson*, 613 F.3d 346 (2d Cir. 2010)).[4]

20. The Fifth Circuit has clearly recognized that claims alleging a breach of state law duties by a fiduciary of a debtor for actions or omissions *during*—as opposed to before or after—a bankruptcy proceeding are "core" proceedings "arising in a case under Title 11." In *In re Southmark*, the Fifth Circuit held that state law claims brought against a court-appointed accountant for alleged breach of duties during the bankruptcy process represented a "core" proceeding. *Id.* at 930-931. In doing so, the Fifth Circuit rejected arguments similar to the ones Plaintiff makes here—namely, that the case did not arise in the context of bankruptcy because the defendant accounting firm could have been sued on similar grounds for "disloyalty, non-disclosure and malpractice" outside of the bankruptcy context. *Id.* Rather, the Fifth Circuit looked to the substance of the claims—which alleged that the accounting firm had breached its duty of loyalty, failed to appropriately value a claim the debtor had against another of the accounting firm's clients, and had thereby harmed the debtor's recovery—all of which were "inseparable from the bankruptcy process" itself. *Id.*

21. Plaintiff attempts to confine *Southmark*'s holding to the "specific role of court-appointed professionals." Mot. at 8. But Judge Jones's holding is not nearly so limited—"*a sine qua non* in restructuring the debtor-creditor relationship is the court's ability to police the fiduciaries, whether trustees *or debtors-in-possession* . . . , who are responsible for managing the

[4] Plaintiff cites to *In re Cano* for the proposition that claims that "arise in" a bankruptcy case are those that "by their nature, not their particular factual circumstances, could only arise in the context of a bankruptcy case." Mot. at 8 (citing 410 B.R. 506, 545 (Bankr. S.D.Tex. 2009). To be clear, *In re Cano* was simply quoting a Third Circuit case—*In re Seven Fields Dev. Corp.*—that correctly held that "the bankruptcy court had core jurisdiction" in a case alleging breaches of ***state law*** duties by a fiduciary during a bankruptcy proceeding. *Id.* (quoting 505 F.3d 237, 260 (3rd Cir. 2007)) (following *In re Southmark* and finding core jurisdiction over suit against Ernst & Young for alleged malpractice during bankruptcy proceeding).

debtor's estate in the best interest of creditors." *In re Southmark*, 163 F.3d at 931 (emphasis added). Indeed, this Court has quoted that very language in recognition of the fact that bankruptcy courts have the ability and obligation to regulate not just court-appointed fiduciaries, but also debtors-in-possession "to assure that the managers of the debtors are performing their work conscientiously and cost-effectively." *In re Hous. Reg'l Sports Network, L.P.*, 505 B.R. 468, 481 (Bankr. S.D. Tex. 2014) (quoting *In re Southmark,* 163 F.3d at 931)).

22. This Court has also applied the logic of *Southmark* to suits involving non-court-appointed fiduciaries. In *In re ABC Dentistry, P.A*, the Court held it had "arising in" jurisdiction over a suit by a former plaintiff (who had settled a case against the debtor) against the plaintiff's former non-court-appointed attorneys because "the conduct set forth in the amended complaint involved Dr. Rohi's attorneys making material misrepresentations to Dr. Rohi, which directly influenced proceedings before this Court, and then failing to disclose those agreements to the Court." No. 16-34221, 2021 WL 955932, at *3-4 (Bankr. S.D. Tex. Mar. 12, 2021). As in this case, "arising in" jurisdiction existed over allegations that a fiduciary breached his duties in such a way that those actions affected the underlying bankruptcy proceedings. *Id.*

23. Other courts within the Fifth Circuit have likewise held that suits against any fiduciaries of a debtor, not just attorneys or accountants, for conduct *during* a bankruptcy proceeding constitute "core" proceedings. For example, in *Comtel Telcom Assets LP v. Alvarez & Marsal, Inc.*, Alvarez & Marsal, a professional services firm, appointed individuals as the restructuring officers of the Debtor, including as COO and CFO. No. CIVA 309-CV-0172-G, 2009 WL 2407621, at *1 (N.D. Tex. Aug. 5, 2009). The plaintiff claimed that in those capacities, the individuals mismanaged the assets during the bankruptcy process. *Id.* at *1. The Bankruptcy Court for the Northern District of Texas held that these state law claims constituted a

"core proceeding" because the allegations were that, as officers of the debtor, the individuals "did not carry out the duties assigned to them" during the bankruptcy process. *Id.* at *2.

24. Similarly, in *In re H&M Oil & Gas*, the court held that the "Trustee's allegations regarding [Defendant's] actions (or inactions) as H&M's post-petition manager, as well as [the Defendant's] related claim for indemnification, are core because they arise in and are inextricably linked to the Court-approved DIP Agreement, which was an integral part of H&M's Chapter 11 bankruptcy case." 514 B.R. 790, 799 (Bankr. N.D. Tex. 2014); *see also In re Stonebridge Technologies, Inc.* 430 F.3d 260, 267 (5th Cir. 2005) (Bankruptcy trustee's negligent misrepresentation claims related to post-petition draws on line of credit were core because "these claims are dependent upon the rights created in bankruptcy and would not exist but for the filing of Stonebridge's bankruptcy."); *In re United Operating, L.L.C.*, No. 03-70131-RBK-11, 2007 WL 9747430, at *3 (W.D. Tex. July 31, 2007) (Court had core jurisdiction because "[e]ach of the allegations challenge the Appellees' management decisions in operating Dynasty's oil and gas properties during the post-petition and pre-confirmation period."). As in those cases, the claims against Shaper "would not exist but for the filing" of Speedcast's Bankruptcy petition and depend entirely on the alleged duties that arise in bankruptcy.[5]

[5] Courts within the Fifth Circuit are hardly alone in this view. Courts across the country have held that suits alleging that non-court-appointed fiduciaries—including officers and directors—have breached their fiduciary duties as part of the bankruptcy process invoke "arising in" jurisdiction and therefore are core proceedings. *See, e.g.*, *In re Repository Techs., Inc.*, 601 F.3d 710, 720 (7th Cir. 2010) (court had "arising in" jurisdiction over adversary proceeding alleging that debtor's law firm assisted debtor's shareholders in breaching their fiduciary duties to company post-petition because claims revolved around "the bankruptcy action and conduct within it"); *Turner v. Boyle*, 425 B.R. 20, 25 (D. Me. 2010) (claims by Chapter 7 trustee against corporate debtor's president for alleged breach of fiduciary duty for "improper post-filing transfer of estate assets" constituted core proceeding); *In re 610 W. 142 Owners Corp.*, 219 B.R. 363, 371 (Bankr. S.D.N.Y. 1998) ("[A]cts by the officers of a debtor-in-possession would seem to clearly be 'matters concerning the administration of the estate' under 28 U.S.C. § 157(b)(2)(A)"); *Stalford v. Blue Mack Transp., Inc.* (*In re Lands End Leasing, Inc.*), 193 B.R. 426, 435 (Bankr. D.N.J. 1996) (trustee's action for breach of fiduciary duty against debtor's officer based on post-petition conduct was core proceeding); *In re Levine*, 100 B.R. 537, 542 (Bankr. D. Colo. 1989) ("The Trustee's allegations, particularly those which embody, in whole or in part, *post-petition* conduct and *post-petition* misconduct by the Defendants in the nature of concealment, civil conspiracy, and misrepresentations, fall squarely within the ambit of subsections (2)(A), (H), and (O) of Section 157(b)."); *Glinka v. Abraham & Rose Co., Ltd.*, No. 2:93-CV-291,

25. Plaintiff's authority is not to the contrary. Plaintiff misleadingly relies on *In re Dune Energy* and *In re Allied Holding* for the proposition that claims brought by litigation trustees relate to—but do not arise in—bankruptcy and therefore are "non-core." Mot. at 6-7. Plaintiff's reliance on those cases is misplaced because both *Dune Energy* and *Allied Systems* involved "state law causes of action based on **pre-bankruptcy events** that do not invoke a substantive right created by federal bankruptcy." *In re Dune Energy, Inc*., 575 B.R. 716, 727 (Bankr. W.D. Tex. 2017) (emphasis added); *see also Allied Systems Holdings, Inc.*, 524 B.R. 598, 601-603 (Bankr. D. Del. 2015) (explaining that involuntary bankruptcy petition was filed in 2012, but claims related to pre-petition debt agreements executed beginning in 2007 and 2008). As the *Dune Energy* court put it, "[j]ust because a bankruptcy plan creates a liquidating trust empowered to pursue **pre-bankruptcy** state law causes of action does not mean that the causes of action 'arise in' a bankruptcy estate." 575 B.R. at 727; *see also id.* at 728 (acknowledging that "all of the causes of action in the Complaint are premised on pre-bankruptcy actions allegedly taken (and not taken) by Defendants").

26. Here, in contrast, the material allegations relate to *post-bankruptcy* conduct in breach of duties that arose solely in the context of a Chapter 11 restructuring. As the Complaint declares, "**at the heart of this case are the actions taken by Shaper to achieve an attractive investment opportunity for himself and Genesis Park post-Bankruptcy**." Compl. ¶ 8 (emphasis added); *see also id.* ¶ 9 ("These fiduciary breaches reached an apex in late August 2020 [during the bankruptcy case]); *id.* ¶ 13 ("Shaper's unabashed bias . . . set the Bankruptcy into chaos . . . "); *id* ¶ 15 ("Shaper's persistent fiduciary breaches were egregious **and resulted in hundreds of millions in damages to the Estate**.") (emphasis added); *id.* ¶ 99 (alleging only

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1994 WL 905714, at *8 (D. Vt. June 6, 1994) (allegations of breach of fiduciary duty by "officers of debtor-in-possession" were core proceeding).

that "Shaper had a fiduciary relationship with the Estate (including its creditors) and owed fiduciary duties to the Estate").

27. While the Motion attempts to obscure this fact—hand waving that the allegations are "based *in part* on Shaper's post-petition conduct," Mot. at 8 (emphasis added)—the Complaint's allegations speak for themselves. They are, at their core, that Shaper had a fiduciary duty to "maximize the value of the Company *for the benefit of the Bankruptcy estates including their creditors*." Compl. ¶ 8 (emphasis in original).

28. The Complaint's main griefs with Shaper are summarized below:

Allegation Against Shaper	**Relevant Time Period**	**Exists outside of Chapter 11?**
Unsuccessfully tried to arrange a "stalking horse" bid for Genesis Park after Speedcast filed for bankruptcy (Compl. ¶¶ 51-52).	Postpetition	No
Tried to negotiate co-investment restructuring with potential plan sponsors Centerbridge (and Black Diamond) (Compl. ¶¶ 54, 69-72).	Postpetition	No
Favored one plan sponsor/bidder over another bidder (or favored a reorganization proposal under Section 1129 over the Section 363 sale proposal) (Compl. ¶¶ 57-58, 61-68).	Postpetition	No
Sought to negotiate a management incentive plan for approval of the bankruptcy court (Compl. ¶¶ 55, 63-68).	Postpetition	No
Improperly influenced the Special Restructuring Committee to support Centerbridge over Black Diamond (Compl. ¶¶ 61-68, 78-80).	Postpetition	No
Used Speedcast's "restructuring professionals" to "carry out his personal agenda" (Compl. ¶ 101).	Postpetition	No
Tendered a resignation conditioned on whether or not Speedcast could adopt a reorganization plan containing specific conditions that Complaint characterizes as a "ransom" (Compl. ¶¶ 78-80).	Postpetition	No
Actions resulted in Debtors' Second and Third Amended Plans undervaluing Speedcast, to the detriment of the Estate and Black Diamond (Compl. ¶¶ 83-93, 102).	Postpetition	No

29. Each of the forgoing allegations invokes quintessential bankruptcy processes, including the negotiation of a restructuring transaction involving the cancellation of existing equity and issuance of new equity, the Section 363 sale process, and the ability of the Court to approve management compensation plans. The analysis of whether Shaper's conduct violated his duties will involve consideration of both his actions and the actions taken by other key parties during the bankruptcy—including alleged co-conspirator Spytek, Black Diamond, Centerbridge and the SRC—and whether the restructuring process was, as Plaintiff alleges, irreversibly "tainted" by Shaper even months after he left Speedcast. Compl. ¶ 94. These inquiries are inseparable from the bankruptcy process. *E.g., In re Repository Techs., Inc.*, 601 F.3d 710, 726 (7th Cir. 2010) (claims that law firm "used the bankruptcy purpose for the improper purpose of self-enrichment, rather than the proper purpose of advancing [the Debtor's] interests" were "inseparable from the bankruptcy context"); *In re Aramid Entm't Fund, LLC*, 628 B.R. 584, 596 (Bankr. S.D.N.Y. 2021) ("[Plaintiff's] own description of his claims thus shows that the claims arise in the underlying Aramid Bankruptcy . . . . [Plaintiff] complains that the bankruptcy itself was 'Defendants' means of taking control out of Plaintiff's hands….")

30. Indeed, many if not most of the allegations in the Complaint are a re-hashing of issues already litigated before the Court when Black Diamond raised them prior to and during the adversarial confirmation hearing. *See, e.g.*, Bkr. Dkt. 1047 (complaining about Shaper and Spytek's conduct, the bidding process, and whether Black Diamond was given a fair shake); Compl. ¶¶ 8, 14 (claiming that the approved Plan "resulted in SFA Lenders recovering a fraction of the value of their outstanding loans…").

31. The Complaint also implicates the bankruptcy process by going so far as to claim that many of the professional fees incurred by Speedcast—again approved by this Court without

prior objection—were wastefully incurred as a result of Shaper's conduct. Compl. ¶¶ 94, 102; *see In re ABC Dentistry,* 2021 WL 955932, at *3 (malpractice claim against non-court-appointed attorneys that challenged fees "awarded under the superintendence of the bankruptcy court" presented core proceeding); *In re Aramid Entm't Fund, LLC*, 628 B.R. at 595 (claims for breach of fiduciary duty against professionals and board members "inseparable" from bankruptcy when they implicated "Court's findings in approving fee applications for professional services during the bankruptcy . . . and its findings in its confirmation order that the Plan was proposed in good faith and not for any improper purpose.").

32. This and the secondary liability claims will require the Court to review and interpret its own orders, including the Confirmation Order, and the extent of the releases and findings of reasonableness and good faith previously entered by the Court. Bkr. Dkt. 1397; Adv. Dkt. 8 ("Motion to Dismiss") at § IV(3)[6]; *see In re Lothian Oil, Inc.*, 531 Fed. Appx. 428, 436 n.9 (5th Cir. 2013) ("It is beyond dispute that a bankruptcy court has 'jurisdiction to interpret and enforce its own prior orders[.]'") (quoting *Travelers Indem. Co. v. Bailey*, 557 U.S. 137, 151 (2009)).

33. Finally, if there were any doubt as to whether this lawsuit springs inseparably from the underlying Speedcast Bankruptcy, the centerpiece of the Complaint consists of excerpts from this Court's own Confirmation Hearing. Compl. ¶¶ 81-82, 93-96 (repeatedly quoting the Court's admonition of Shaper during the Confirmation hearing). Failure to exercise jurisdiction over this case will require a state court judge to parse this Court's prior statements and the meaning and breadth of this Court's Confirmation Order. This case clearly falls within the core

[6] In particular, the Court may be required to determine whether the release received by Mr. Spytek under the Plan prohibits claims in the Complaint against Mr. Shaper arising from Mr. Spytek's alleged conduct. This determination will require interpretation of Paragraph Z.4 of the Confirmation Order and the release provisions of the Plan. Bkr. Dkt. 1397.

ambit of a bankruptcy court's jurisdiction, which allows it to "police the fiduciaries, whether trustee or debtors-in-possession." *In re Southmark Corp.*, 163 F.3d at 931.

B. Alternatively, Plaintiff Admits this Proceeding Is "Related to" the Speedcast Bankruptcy, and Abstention Doctrines Do Not Apply

34. Plaintiff admits that even if this case presented a "non-core" proceeding, it would still fall within the "related to" jurisdiction of a federal court. *See* Mot. at 7 (arguing that "post-confirmation suits by plan trustees based on state law claims" at the very least fall "within the 'related to' (and not 'core') bankruptcy jurisdiction of a federal district court.") (citing *In re Dune Energy, Inc.* 575 B.R. at 729). Plaintiff, however, argues that despite this, the Court should either mandatorily or permissively abstain. But neither doctrine applies.

1. Mandatory Abstention Doctrine Does Not Apply

35. Mandatory abstention does not apply because three required elements are not met. The Fifth Circuit applies a four-part test for mandatory abstention: (1) the claims have no independent basis for federal jurisdiction other than § 1334(b); (2) the claims are non-core; (3) an action has been commenced in state court; and (4) the action can be timely adjudicated in state court. *In re Hous. Reg'l Sports Network*, 514 B.R. at 214 (citing *In re Rupp & Bowman Co.*, 109 F.3d 237, 239 (5th Cir. 1997)). As discussed above, the claims here are core ones, and thus this case fails to meet element (2). In any event, elements (1) and (3) are also lacking here.

36. First, there *is* an independent basis for federal jurisdiction here because there is complete diversity between Plaintiff (a New Jersey Trustee)[7] and Defendant Shaper (a Texas resident). *See* Bkr. Dkt. 1397 at p. 182 (listing Trustee's address as Morristown, New Jersey).

[7] *See, e.g., Thunder Patch II, LLC v. JPMorgan Chase Bank, N.A. as Tr. of Red Crest Tr.*, No. 518CV00629OLGRBF, 2018 WL 6488008, at *2 (W.D. Tex. Dec. 10, 2018), *report and recommendation adopted sub nom. Thunder Patch II, LLC v. JPMorgan Chase Bank, N.A.,* No. CV SA-18-CA-629-OLG, 2019 WL 1313457 (W.D. Tex. Jan. 16, 2019) (When trustee is party "in its capacity as trustee, it is the citizenship of the trustee….that matters for diversity of citizenship purposes.").

Plaintiff argues that there is no diversity jurisdiction because Shaper is a forum defendant and therefore "could not have removed on diversity grounds." Mot. at 9. But the "forum defendant rule is merely a procedural bar to removal, not to diversity jurisdiction under 1332(a)." *Doe v. Archdiocese of New Orleans Indem., Inc.*, No. CV 20-1338, 2020 WL 4593443, at *3, n. 5 (E.D. La. Aug. 11, 2020) (citing *Tex. Brine Co. LLC v. Am. Arbitration Ass'n*, 955 F.3d 482, 485-486 (5th Cir. 2020)). Therefore, there is an independent basis for jurisdiction.

37. Second, even if the other elements were met, contrary to Plaintiff's recitation, abstention requires that the "state court action **be commenced prior to the bankruptcy proceedings.**" *In re Hous. Reg'l Sports Network*, 514 B.R. at 214 (emphasis added); *Special Value Continuation Partners, L.P. v. Jones*, No. ADV 11-3304, 2011 WL 5593058, at *2 (Bankr. S.D. Tex. Nov. 10, 2011) ("The Court agrees with those cases interpreting this language to require a state court action to be commenced prior to the bankruptcy proceeding."). There is no dispute here that the Shaper Proceeding, filed in January 2022, was commenced *after* the bankruptcy proceeding was initiated in March 2020. *Compare* Adv. Dkt. 1 *with* Bankr. Dkt. 1. Mandatory abstention categorically does not apply to this case.

2. The Court Should Not Permissively or Equitably Abstain

38. While the Court clearly is not required to abstain under § 1334(c)(2), it should also decline to abstain from the case permissively or equitably. Courts within the Fifth Circuit look to fourteen factors to determine whether abstention and remand are appropriate.[8] *In re Hous. Reg'l Sports Network*, 514 B.R. at 218. In conducting this analysis, "the Court must ultimately decide which factors are of greater importance and persuasion." *In re Hassell*, No. 19-30694, 2020 WL 728890, at *2 (Bankr. S.D. Tex. Jan. 7, 2020). Here, the balance of the

[8] For purposes of brevity, this Response does not go through each of the "equitable" factors courts consider because there is substantial overlap, and they weigh against remand for largely the same reasons.

fourteen factors clearly weighs in favor of this Court retaining jurisdiction and not remanding the case to state court. It would be particularly unjust to remand the case when the Plaintiff has previously invoked the Court's jurisdiction to serve Rule 2004 requests on Defendant Shaper to collect documents the Plaintiff later relied upon in its Complaint. Ex. 1.

1. Effect Or Lack Thereof on the Efficient Administration of the Estate if the Court Abstains

39. This factor weighs against remand because Plaintiff's claims will directly impact the amount of recovery for creditors of the Bankruptcy Estate—who are now the beneficiaries of the Class 3 Trust (namely, Black Diamond). *See In re Hassell*, 2020 WL 728890, at *4 ("If the Debtor prevails, his creditors will benefit from any collection on the judgment, as these will be assets of the estate.").

40. Furthermore, because this proceeding will require the Court to re-evaluate the underlying events of the Speedcast Bankruptcy and to interpret its prior orders, including the Confirmation Order and Third Amended Plan, this factor additionally weighs in favor of exercising jurisdiction. *In re Texaco Inc.*, 182 B.R. 937, 947 (Bankr. S.D.N.Y. 1995) ("A bankruptcy court is undoubtedly the best qualified to interpret and enforce its own orders including those providing for discharge and injunction and, therefore, should not abstain from doing so.") (collecting cases).

41. Contrary to Plaintiff's contention, the Bankruptcy Court's confirmation of the Third Amended Plan does not weigh in favor of abstention. The Motion for Final Decree specifically indicates that jurisdiction is retained over this proceeding. Bkr. Dkt. 1908 at ¶¶ 14, 16 (noting the Court would retain "jurisdiction and authority, by way of the Remaining Case, over the Shaper Proceeding and any prospective actions brought by the Litigation Trustee."). The Final Decree also envisions that additional litigation matters will continue to be litigated or

filed in the Bankruptcy Court. *Id.* ¶¶ 2, 15. If Plaintiff were correct that confirmation mandates abstention, courts would abstain from *all* post-confirmation adversary proceedings, which clearly is not the case. *See,* Section III (D), *infra.*

42. Finally, if not for the settlement agreement between Black Diamond and Centerbridge, these facts and allegations would have continued to be litigated in the Bankruptcy Proceeding. The Shaper Proceeding is effectively a "second bite at the apple" by Black Diamond—by and through the Class 3 Trust, for which it oversees the "Litigation Oversight Committee." There is no reason that this second case should not proceed in the same forum as the first. *E.g., In re Senior Care Centers, LLC*, 622 B.R. 680, 684, 694 (Bankr. N.D. Tex. 2020) (declining to abstain from lessor's claim when bankruptcy court had previously adjudicated substantially related claims); *In re Schlotzsky's, Inc.*, 351 B.R. 430, 436 (Bankr. W.D. Tex. 2006) (finding that "efficiencies gained from the fact that the court in which the matter has been brought is familiar with the context of the litigation and the general background of the debtors" weighed against remand even though plan had been confirmed).

2. Extent to Which State Law Issues Predominate Over Bankruptcy Issues

43. While the Complaint nominally raises state law issues, those issues do not predominate over bankruptcy issues in this case. As discussed above, this case requires the application of general state law to a specific nexus of facts and circumstances that arose in—and could only arise in—the bankruptcy process. A simple breach of contract or mismanagement action this is not. Put simply, the Trustee is asking the Court to re-litigate the bankruptcy proceeding, to determine the value of competing bids by Black Diamond, to evaluate the legitimacy of the bidding process and the independence of the SRC, and to judge whether or not Speedcast needlessly incurred professional fees. These raise specific questions for which

general, prosaic Texas (or other) state fiduciary duty law does not provide ready answers. *See, e.g., In re Schepps Food Stores, Inc.*, 160 B.R. 792, 797 (S.D. Tex. 1992) (explaining that "[p]rior to bankruptcy, a director's duties to a corporation and its shareholders are generally governed by state law … [but that] [u]pon the filing of a bankruptcy under Chapter 11 of the Bankruptcy Code … governance of the corporation is supplanted by certain code provisions.")**.**

44. This Court is more substantially more equipped to resolve these claims than a Texas state court. *See, e.*g., *Principal Life Ins. Co. v. JPMorgan Chase Bank, N.A. (In re Brooks Mays Music Co.)*, 363 B.R. 801, 817 (Bankr. N.D. Tex. 2007) (finding this factor weighed against remand, despite state law claims, where the Bankruptcy Court could more easily address the claims than the state court, and the claims required interpretation of prior bankruptcy court proceedings); *In re Aramid Entm't Fund*, 628 B.R. at 600 (finding this factor favored keeping case alleging breach of fiduciary duty claims against professionals and board members because state law claims were "inextricably intertwined with the Aramid Bankruptcy and this Court's prior rulings.")

45. For example, in *In re Senior Care Centers, LLC*, the Bankruptcy Court for the Northern District of Texas declined to abstain when the case required "interpretation of complex aspects of bankruptcy law, including the effect of section 365 lease assumption, plan and plan support document interpretation, plan implementation and consummation, and interpretation of this court's prior orders." 622 B.R. at 694. The court found that in such a situation, "bankruptcy issues do not merely predominate over state law issues in this case, they overwhelm." *Id.* Such is the case here.

3. Difficult Or Unsettled Nature of Applicable Law

46. This factor likewise weighs against abstention. Shaper agrees with Plaintiff that the contours of breach of fiduciary duty are "clearly established under Texas law and thus not difficult or unsettled." Mot. 13. Bizarrely, the Plaintiff suggests this favors remand—but it is just the opposite. *Id.* When "claims are well settled in Texas law," that "weighs ***against*** abstention and remand" because there is no need for state courts to weigh in on undecided or developing aspects of the law. *Hous. Reg'l Sports Network*, 514 B.R. at 216 (emphasis added). To the extent there is unsettled law at play here, what is unsettled is the interplay of state law and federal bankruptcy law and procedures—which this Court is in a better position to resolve than a Texas state court.

4. Presence of Related Proceeding Commenced in State Court or Other Non-Bankruptcy Proceeding

47. This factor also weighs against abstention because there is no other related case that is pending in state court or other non-bankruptcy court. Plaintiff argues that because *this* proceeding was originally filed in state court, it can constitute its own related proceeding—but that is not the case. *See id.* (When parties moved to withdraw the reference rather than remand separate case, it meant that "there [was] no related proceedings in state court, which favor[ed] retention."); *In re Brooks Mays Music Co.*, 363 B.R. at 817 (calling this factor "[n]ot applicable' because the "State Court Action was commenced post-petition," and "all related proceedings are in the bankruptcy court.").

5. Jurisdictional Basis, if any, other than § 1334

48. This factor weighs against remand because—as mentioned above—there is complete diversity between the parties. Section III(B)(1), *supra.* That ordinarily Shaper, as a forum defendant, would not have been able to *remove* the case does not destroy diversity

jurisdiction. *Doe*, 2020 WL 4593443, at *3, n.5; *see also Tex. Brine Co. LLC*, 955 F.3d at 486 ("We begin by recognizing that the forum-defendant rule is a procedural rule and not a jurisdictional one."); *In re Repository Tech., Inc.*, 601 F.3d at 721-722 ("[T]he forum defendant rule is non-jurisdictional, meaning that the rule does not divest the district court of jurisdiction over claims improperly removed by a forum defendant so long as complete diversity exists at the time of judgment."). Therefore, there is an independent basis for federal jurisdiction, weighing in favor of keeping the case in federal court.

6. Degree of Relatedness or Remoteness of Proceeding to Main Bankruptcy Case

49. Plaintiff suggests that because the "Court provided for separate, orderly adjudication of these claims," this somehow means that these claims are not related to the main bankruptcy case. Mot. 15. But the Court precisely provided that it would retain (non-exclusive) jurisdiction over these claims. Bkr. Dkt. 1397 ¶ 46; *id.* at Ex. A, § 11.1(b).

50. In any event, the Complaint is not just related to the main bankruptcy case, but as mentioned above, is an attempted re-litigation of it. The harm it asserts is the undervaluation of the bankruptcy estate and the alleged payment of wasteful expenses from the bankruptcy estate. Compl. ¶ 102. And the actions it complains of relate to the negotiations conducted with potential plan sponsors over management incentive plans and co-investment rights. *Id*. ¶¶ 75-90. At a minimum, "there are efficiencies gained from the fact that the court in which the matter [now resides] is familiar with the context of the litigation and the general background of the debtor[]." *In re Schlotzsky's*, 351 B.R. at 436 (denying motion to abstain from adversary proceeding brought by unsecured creditors committee).

7. Substance Rather than Form of An Asserted Core Proceeding, and

8. Feasibility of Severing State Law Claims from Core Bankruptcy Matters

51. Plaintiff suggests that these factors favor remand because this is not a "core" proceeding. Mot. 15-16. As discussed above, this is incorrect. Because this is a "core" proceeding, these factors too weigh against remand. *E.g., In re Hous. Reg'l Sports Network,* 514 B.R. at 216 (stating that this factor supports abstention if it "is not a core proceeding"); *In re Johnson*, 506 B.R. 233, 242 (Bankr. M.D. La. 2014) ("Although the cross-claim's status as a core proceeding is not dispositive of the abstention issue it is persuasive…"). Furthermore, both the primary and secondary claims are all related and therefore there is no way to sever certain ones and remand others.

9. Burden On Bankruptcy Court's Docket

52. The Court is best situated to determine the burden of its own docket. Plaintiff suggests that the Harris County District Court maintained a high clearance rate for its civil docket in 2021 as evidence that the Harris Court docket has capacity. Mot. 16. But those statistics show that the Harris County civil courts have an historic number of active cases pending.[9] This is not surprising. Like courts many places, Harris County is in fact facing a substantial backlog of cases awaiting trial due to the COVID-19 pandemic.[10] In any event, at worst, this factor appears to be neutral.

[9] "Civil District Courts Dashboard – July-September 2021" HARRIS COUNTY DISTRICT COURTS, *available at* https://www.justex.net/dashboard/Civil.

[10] *E.g.,* "The Massive slowdown of Texas courts and the impact on justice," CLICK 2 HOUSTON.COM, (Apr. 19, 2021), *available at* https://www.click2houston.com/news/local/2021/04/20/the-massive-slowdown-of-texas-courts-and-the-impact-on-justice/ (noting that the Texas Judicial Branch estimated in 2021 that it would take three years for the system to catch up).

10. Likelihood of Forum Shopping

53. Ironically, though the Complaint liberally quotes from this Court's prior statements to buttress its liability case against Shaper, Plaintiff now suggests that Shaper has forum-shopped by removing this case to this very Court. Mot. 17. There is simply no evidence that Shaper has forum shopped beyond the "permissible forum shopping that every party engages in when selecting its venue"—namely, a plaintiff preferring state court and a defendant availing himself of his right to remove a case to federal court when jurisdiction lies. *In re Hous. Reg'l Sports Network*, 514 B.R. at 216. This factor, too, is neutral.

11. Existence of the Right to a Jury Trial

54. Either party may file a motion to withdraw the reference to allow the district court to conduct a jury trial in this case, thereby making this a neutral factor. *E.g., In re Hous. Reg'l Sports Network*, 514 B.R. at 211 ("[E]xistence of right to a jury trial is neutral. Because the Court assumes the reference will be withdrawn, a jury trial can be held in either forum."). Shaper intends to move to withdraw the reference so that while pre-trial matters (including his previously filed Motion to Dismiss (Adv. Dkt. 8)), may be decided by this Court, any eventual jury trial, if necessary, will occur in district court.

12. Presence In the Proceeding of Non-Debtor Parties

55. This factor is also neutral, as the parties in this action—a litigation Trustee and a former director and officer of the Debtor—are non-debtors, but each of these entities and individuals are related to the underlying bankruptcy. *See In re Dune Energy*, 575 B.R. at 734 (noting that while "technically the Suit involves only non-debtor parties . . . Plaintiff was appointed and the Plan Trust was created in the Debtors' bankruptcy case to pursue the Debtors' causes of action"); *Special Value Continuation Partners*, 2011 WL 5593058, at *10 (finding this

factor neutral where all parties in the suit were non-debtors, but Defendants were principals of the Debtors).

13. Comity

56. This factor favors retaining jurisdiction. While this case nominally involves state law, trying this case in Texas state court would require the state court—entirely alien to the underlying bankruptcy proceeding—to interpret this Court's prior orders and the complicated processes that were involved in negotiating what eventually became the Third Amended Plan (including weighing the values of various proposals; interpreting a management-incentive-plan; determining the merits of an auction versus a reorganization; determining the effect of Black Diamond's opportunity to bid during the confirmation hearing; and so on). Furthermore, the fact that foreign law—namely, Australian law—may apply to certain claims or defenses further weighs against remanding this case to Texas state court. *See* Adv. Dkt. 8 at p. 9 n.3 (explaining that Speedcast was an Australian company at the time of the alleged breaches); *In re Schepps*, 160 B.R. at 797 (explaining that the "law of the company's state of incorporation" controls substantive corporate issues including "a director's duties to a corporation and its shareholders"). There is no comity principle advanced in allowing a Texas state court, rather than this Court, to attempt to divine and apply Australian law in this matter.

14. Possibility of Prejudice to Other Parties in Action

57. This is, at worst, a neutral factor. There is no prejudice to a litigation trustee—a legal fiction created by this Court—to having its case remanded. Indeed, the Confirmation Order specifically provides that such a case can be brought here. Bkr. Dkt. 1397 ¶ 46**;** *id.* at Ex. A, § 11.1(b).

58. In sum, as this is an "'arising in' core matter, implicating some of the more complex aspects of bankruptcy law, it should be this court rather than Texas state district court who determines the parties' respective rights and responsibilities." *In re Senior Care Centers, LLC*, 622 B.R. at 694.

C. Confirmation Did Not Strip the Court of Subject Matter Jurisdiction

59. Though Plaintiff does not raise this issue directly, out of an abundance of caution and because issues of subject-matter jurisdiction can be raised *sua sponte*, Shaper notes that the Court likewise does not lack subject matter jurisdiction over this proceeding simply because the Shaper Proceeding was filed after the Third Amended Plan was confirmed and made effective on March 11, 2021. Bkr. Dkt. 1498.

60. Fifth Circuit courts look to three factors to determine if post-confirmation bankruptcy jurisdiction exists: "whether: (1) the claims primarily arise from pre-confirmation or post-confirmation relations between the parties; (2) any claims or antagonisms were pending between the parties on the date of plan confirmation; and (3) any facts or law deriving from the bankruptcy are necessary to the claims." *In re Dune Energy*, 575 B.R. at 725 (citing *In re Enron Corp. Sec.*, 535 F.3d 325, 335 (5th Cir. 2008)). Of these, the first two factors predominate in importance—if they are present, jurisdiction still lies even if the third factor is not. *In re MSB Energy, Inc.*, 438 B.R. 571, 586-87 (S.D. Tex. 2010) ("[P]ursuant to the analysis in *Enron*, the Court retains its jurisdiction even if the third factor fails."). When the causes of action presented "occurred prior to confirmation, to a large extent involve conduct occurring *during the bankruptcy case itself*, and any recovery from this lawsuit will be distributed [to the creditors], the Court finds that such a 'close nexus' exists." *Ogle v. Comcast Corp*. (*Hous. Reg'l Sports Network, L.P.*), 547 B.R. 717, 736 (Bankr. S.D. Tex. 2016) (emphasis in original).

61. All three factors are present here. First, it cannot be disputed that the claims "primarily arise from pre-confirmation" relations or conduct. As the Complaint acknowledges, Shaper resigned from Speedcast months before Confirmation Plan was approved or became effective. Compl. ¶ 80. The Complaint does not allege a single action—tortious or otherwise—taken by Shaper after he left Speedcast, only that his "influence lingered." *Id*. ¶ 89.

62. Second, the antagonisms between the parties were pending as of the date of the plan confirmation. The Class 3 Trust was specifically formed, negotiated, and included in the Third Amended Plan to investigate and bring these claims against Defendant Shaper. Bkr. Dkt. 1397, ¶ 4 (pp. 15-16); *id.* at Third Amended Plan at § 5.21 ("Class 3 Trust"). And the hostility to Defendant Shaper far predates Confirmation. Shaper's alleged conduct (along with the alleged conduct of his alleged co-conspirator, Spytek) were central issues litigated during Black Diamond's challenges to the Court's approval of the Second Amended Plan. *See* Compl. ¶¶ 81-82 (excerpting testimony from those confirmation hearings).

63. Third, the facts and law deriving from the Bankruptcy Proceeding will be important to the resolution of this case. Much of the Complaint is a rehashing of Black Diamond's previously aired complaints about the bankruptcy process: namely, that Shaper or Spytek or the SRC preferred Centerbridge, that the bidding procedures set up by the SRC were unfair, that Speedcast could have received more value from Black Diamond than Centerbridge, and so on. *E.g., id*. ¶¶ 83-89. Even if the facts and law from the prior proceeding were "limited," however, this third factor would still be present because "any net recoveries made by Plaintiff on these claims will affect distributions to creditors under the confirmed Plan." *In re Dune Energy*, 575 B.R. at 726.

64. Finally, if there were any doubt, the Confirmation Order specifically acknowledged that the Court was retaining any jurisdiction it had. Bkr. Dkt. 1397 § 46 ("Retention of Jurisdiction"); *id.* at Ex. A, § 11.1. As in the more tenuous case of *In re Dune Energy*—which asserted pre-petition, not post-petition—causes of action, the Court should "easily find[] that it has bankruptcy subject matter over the Suit," if for no other reason than Plaintiff is a "Plan Trustee appointed under the confirmed bankruptcy Plan" and is empowered to "pursue and collect on the Debtor['s] causes of action….and to distribute any net recoveries to pay creditors of the Debtor[] under the Plan." 575 B.R. at 725-26; s*ee also Ogle*, 547 B.R. at 736 (finding that the Court retained post-confirmation jurisdiction over case that "to a large extent involve[d] conduct occurring during the bankruptcy case itself" and where recovery would be distributed to creditors).

IV. CONCLUSION

For the foregoing reasons, Shaper respectfully requests that the Court deny Plaintiff Trustee's Motion to Remand and grant him any other such relief deemed just and proper.

DATED: March 28, 2022

Respectfully submitted,

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Certificate of Service

I hereby certify that copy of the foregoing has been served on all counsel of record on this date, in accordance with the Federal Rules of Civil Procedure.

/s/ Ross MacDonald
Ross MacDonald

EXHIBIT 1

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May 4, 2021

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Re: *In re Speedcast International Limited, et al.*, Case No. 20-32243 (MI) (S.D. Tex.)

Subject Matter: Production of Documents Pursuant to Federal Rule of Bankruptcy Procedure 2004 ("Bankruptcy Rule 2004")

Gentlemen:

Our firm, together with Yetter Coleman LLP, represents the Class 3 Trustee (the "**Trustee**") for the Speedcast SFA Lenders' Litigation Trust (the "**Trust**"). As you know, the Trust was created — and the Trustee was appointed — to investigate and prosecute Class 3 Trust Causes of Action as defined in a Third Amended Joint Chapter 11 Plan of Speedcast International Limited and Its Debtor Affiliates (the "**Plan**") approved in the above-referenced bankruptcy case by Order dated January 22, 2021. (*See* Case No. 20-32243, ECF. No. 1397, Ex. A at § 5.21).[1]

The Trustee believes that your client, Peter Shaper, possesses documents that are relevant to Class 3 Trust Causes of Action being investigated. As a result, the Trustee seeks the production of certain documents in Mr. Shaper's possession, custody, or control (the

[1] Background and court documents relating to the bankruptcy of Speedcast International Limited and related debtors can be found on the website of the Debtors' claims and noticing agent at http://www.kccllc.net/speedcast.

"**Documents**").[2] To facilitate the production of the Documents, the Trustee has prepared the attached Bankruptcy Rule 2004 Request.

Pursuant to Rule 2004-1 of the Local Rules for the United States Bankruptcy Court for the Southern District of Texas, the Trustee is contacting you in an effort to reach an agreement with respect to the date, time, place, and scope of the production of the Documents without the need for motion practice.

Please review the attached Bankruptcy Rule 2004 Request and contact us no later than May 17, 2021 to discuss Mr. Shaper's production of Documents.

We look forward to resolving this request in a prompt and efficient manner.

Very truly yours,

/s/ Jeffrey H. Zaiger
Jeffrey H. Zaiger

Enclosure

cc (via email): Ross M. MacDonald (rmacdonald@gibbsbruns.com)
Collin J. Cox (ccox@yettercoleman.com)
Susanna Rychlak Allen (sallen@yettercoleman.com)

[2] For the avoidance of doubt, the Trustee does not seek documents that are *not* in Mr. Shaper's possession, for example, documents in the possession of Speedcast or any successor to Speedcast.

DEFINITIONS

1. The words "and" and "or" shall be both conjunctive and disjunctive and shall be construed broadly to bring within the scope of these Requests any and all information that otherwise might be outside the scope of these Requests.

2. "**Bankruptcy Cases**" shall mean the bankruptcy cases captioned *In re Speedcast International Limited, et al.*, Case No. 20-32243 (MI) (S.D. Tex.).

3. "**Black Diamond**" shall mean Black Diamond Capital Management, L.L.C. and any of its affiliates, employees, representatives, agents, advisors, and attorneys.

4. "**Board of Directors**" means the Board of Directors of Speedcast International Limited.

5. "**Centerbridge**" shall mean Centerbridge Partners, LP and any of its affiliates, employees, representatives, agents, advisors, and attorneys, including but not limited to those affiliates named as Commitment Parties under the Equity Commitment Agreement.

6. "**Communication**" shall have the broadest meaning allowable under the Federal Rules of Civil Procedure and Federal Rules of Bankruptcy Procedure and includes the transmission, sending, and/or receipt of information of any kind, or the attempt to elicit information of any kind, by and or through any means, including but not limited to speech, writing, language, electronic mail, instant messages, text messages, calendars, faxes, and all forms of electronic transmission. Requests for Communications also include a request for all documents concerning such Communications.

7. "**Concerning**" means "relating to."

8. "**Document**" shall have the broadest meaning allowable under the Federal Rules of Civil Procedure and Federal Rules of Bankruptcy Procedure and includes items written by

hand, printed, recorded, generated, or reproduced by any mechanical or electronic process, including but not limited to electronically stored information ("**ESI**").

9. "**Equity Commitment Agreement**" shall mean the Equity Commitment Agreement Among Speedcast International Limited and the Commitment Parties Hereto Dated August 12, 2020, including: (a) any predecessor agreements and/or amendments or restatements to the Equity Commitment Agreement including the Revised ECA, and (b) all schedules and exhibits to the Equity Commitment Agreement or any of its predecessor agreements and/or amendments or restatements.

10. "**FTI**" shall mean FTI Consulting, Inc. and any of its employees, affiliates, partners, representatives, agents, advisors, and attorneys.

11. "**Genesis Park**" shall mean Genesis Park LLC and any of its employees, affiliates, partners, representatives, agents, advisors, and attorneys.

12. "**Including**" means including without limitation.

13. "**Moelis**" shall mean Moelis & Company and any of its employees, affiliates, partners, representatives, agents, advisors, and attorneys.

14. "**Petition Date**" means April 23, 2020.

15. "**Plan**" means the Third Amended Joint Chapter 11 Plan of Speedcast International Limited and its Debtor Affiliates including any of its predecessors, and as altered, amended, modified, or supplemented from time to time.

16. "**Relating to**" means concerning, constituting, describing, evidencing, consisting of, referring to, pertaining to, reflecting, or in any way logically or factually connected with the matter discussed, in whole or part, directly or indirectly.

17. "**Revised ECA**" means the Amended and Restated Equity Commitment Agreement Among Speedcast International Limited and the Commitment Parties Hereto Dates as of September 17, 2020, including: (a) any amendments to or restatements of the Revised ECA; (b) all prior versions and drafts of the Revised ECA, including but not limited to, the Equity Commitment Agreement.

18. "**Riverside**" shall mean Riverside Partners, LLC, and any of its affiliates, employees, representatives, agents, advisors, and attorneys.

19. "**Special Restructuring Committee**" refers to the committee established by Speedcast on the Petition Date in the Bankruptcy Cases as well as each member thereof over time including Stephe Wilks, Michael Malone, Carol Flaton, Hooman Yazhari, and David Mack.

20. "**Speedcast**" shall mean Speedcast International Limited and its affiliated debtors in the Bankruptcy cases, including its officers, representatives, agents, advisors, and attorneys.

21. "**Weil**" shall mean Weil, Gotshal & Manges LLP.

22. "**You**" or "**Your**" shall mean Peter Shaper.

23. The singular includes the plural, and vice versa.

INSTRUCTIONS

1. Each Request herein extends to all documents in Your possession, custody or control or anyone acting on Your behalf. For the avoidance of doubt, these Requests do not seek documents in the possession of Speedcast or any successor to Speedcast.

2. Documents are to be produced in full and complete form, along with any attachments, drafts, and non-identical copies, including copies that differ due to handwritten notes or other notes or markings.

3. Requests Your communications shall include communications made in Your capacity as a partner of Genesis Park, as an officer or director of Speedcast, and in Your personal capacity. For the avoidance of doubt, Requests for Your communications include any text messages and/or messages sent via any chat or instant messaging applications.

4. If You object to any Request, please state with specificity all grounds for the objection so that the parties may meet and confer.

5. If any document called for by these Requests is withheld in whole or in part because you claim that it is privileged, constitutes attorney work product, or is otherwise exempt from discovery, set forth the grounds for withholding such document, its present location custodian, and additional information sufficient to identify the document and your reasons for withholding, including, but not limited to: the type of document, its date, author(s), recipient(s), general subject matter, the type of privilege asserted or reason for withholding, and the basis for asserting privilege.

6. Unless otherwise specifically stated herein, the period covered by these Requests is from September 1, 2019 to the present.

7. These Requests are continuing. Promptly supplement Your responses when and if You become aware of additional responsive materials.

REQUESTS FOR PRODUCTION

1. All documents concerning any contracts, agreements or terms of employment between You and Speedcast.

2. All documents and communications concerning any business plans or turnaround plans for Speedcast that you assisted in developing or otherwise reviewed after you became an officer and/or director of Speedcast.

3. All documents and communications concerning valuations, appraisals, models or audits of Speedcast's business or assets performed by or at Your direction or otherwise obtained by or known to You.

4. All documents and communications between You and Genesis Park concerning Speedcast.

5. All documents and communications between You and Riverside concerning Speedcast.

6. All documents and communications concerning any agreements, contracts, or term sheets relating to Speedcast between You and Centerbridge.

7. All documents and communications concerning any agreements, contracts, or term sheets relating to Speedcast between You and Joe Spytek.

8. All documents and communications concerning any agreements, contracts, or term sheets relating to Speedcast between You and Riverside.

9. All documents and communications concerning any agreements, contracts, or term sheets relating to Speedcast between You and Genesis Park.

10. All documents and communications concerning the Revised ECA, including but not limited to internal communications or communications with Joe Spytek, Centerbridge, Black Diamond, Genesis Park, or Riverside. For the avoidance of doubt, consistent with the definitions set forth above, this request seeks all documents and communications concerning the Revised ECA, as well as all prior versions and drafts of the of the Revised ECA, including, but not limited to, the Equity Commitment Agreement.

11. All documents and communications concerning any proposed management co-investment rights, and/or management incentive plan(s), in Speedcast, any successor to Speedcast, or any acquisition entity concerning Speedcast.

12. All documents and communications concerning any restructuring proposal for Speedcast, including but not limited to internal communications or communications with Joe Spytek, Centerbridge, Black Diamond, Genesis Park or Riverside.

13. All documents and communications, concerning the governance of Speedcast, any successor to Speedcast, or any acquisition entity concerning Speedcast.

14. All documents and communications concerning Your actual or proposed resignation from Speedcast, including resignation from its Board of Directors or management team.

15. Your communications with (i) Speedcast's officers or directors, (ii) the Special Restructuring Committee, (iii) Weil, (iv) FTI, (v) Moelis, (vi) Centerbridge, (vii) Black Diamond, (viii) Genesis Park, or (ix) Riverside concerning Speedcast, the Bankruptcy Cases, or the Plan following Your resignation from Speedcast.

16. All documents and communications concerning any plans that You developed to make a cash bid or offer for the acquisition of Speedcast following Your resignation from Speedcast.

17. All documents and communications concerning the Plan, including any earlier version of the Plan propounded in the Bankruptcy Cases.

18. All documents and communications concerning Black Diamond.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE:	§	
	§	
SPEEDCAST INTERNATIONAL	§	
LIMITED, et. al.,	§	**CASE NO. 20-32243 (MI)**
	§	
Debtors.	§	**Chapter 11**
	§	
	§	**Jointly Administered**
	§	
CATHERINE E. YOUNGMAN, in her capacity as Class 3 Trustee for the Speedcast SFA Lenders' Litigation Trust,	§	
	§	
Plaintiff,	§	
	§	
v.	§	
	§	**ADV. PRO. 22-03019**
PETER SHAPER,	§	
	§	
Defendant.	§	

[PROPOSED] ORDER DENYING PLAINTIFF'S MOTION TO REMAND

Before the Court is Plaintiff Catherine E. Youngman's, in her capacity as Class 3 Trustee for the Speedcast SFA Lenders' Litigation Trust, Motion to Remand (the "Motion") (Adversary No. 22-03019, ECF 20). Having reviewed the Motion and any responses or replies on file, the Court finds the Motion should be, and hereby is, **DENIED**.

It is hereby **ORDERED** that the Motion and all claims asserted therein is hereby **DENIED**. All parties shall bear their own costs.

SO ORDERED.

Signed this _____, day of _____, 2022.

_____

Hon. Marvin Isgur
United States Bankruptcy Judge