

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

HELLAS TELECOMMUNICATIONS
(LUXEMBOURG) II SCA,

Debtor in a Foreign Proceeding.

ANDREW LAWRENCE HOSKING and SIMON
JAMES BONNEY, in their capacity as joint
compulsory liquidators and duly authorized foreign
representatives of HELLAS
TELECOMMUNICATIONS (LUXEMBOURG) II
S.C.A.,

Plaintiffs,
-against-

TPG CAPITAL MANAGEMENT, L.P., *et al.*,

Defendants.

Chapter 15
Case No. 12-10631 (MG)

Adv. Proc. No. 14-01848 (MG)

**ORDER (I) DENYING CERTAIN MOTIONS TO DISMISS AND SEAL MOTIONS AND
(II) SCHEDULING A HEARING**

Pending before the Court are the following motions (collectively, the “Pending Motions”): (A) *Motion to Dismiss of TCW/Crescent Mezzanine III, LLC, TCW/Crescent Mezzanine Trust III, TCW/Crescent Mezzanine Partners III Netherlands, L.P., TCW/Crescent Mezzanine Partners III, L.P., and TCW/Capital Investment Corp.* (the “TCW Motion,” ECF Doc. # 200), which was joined by the TPG Defendants¹ (the “TPG Joinder” ECF Doc. # 230);

¹ The term “TPG Defendants” shall mean collectively: TPG Capital Management, L.P., f/k/a TPG Capital, L.P., David Bonderman, James Coulter, Richard Schifter, TPG Advisors IV, Inc., TPG GenPar IV, L.P., TPG Partners IV, L.P, T3 Advisors II, Inc., T3 GenPar II, L.P., T3 Partners II, L.P., T3 Parallel II, L.P., TPG FOF IV, L.P., TPG FOF IV-QP, L.P., TPG Equity IV-A, L.P., f/k/a TPG Equity IV, L.P., TPG Management IV-B, L.P., TPG Co-Investment IV, L.P., TPG Associates IV, L.P., TPG Management IV, L.P., TPG Management III, L.P., Bonderman Family Limited Partnership, Bondo-TPG Partners III, L.P., William S. Price III, Dick W. Boyce, Kevin R. Burns, Justin Chang, Jonathan Coslet, Kelvin Davis, Andrew J. Dechet, Jamie Gates, Marshall Haines, John

(B) *Motion by Deutsche Bank AG to Dismiss the First Amended Complaint* (the “DB Motion,” ECF Doc. # 205); (C) *Motion of Certain TPG Defendants to Dismiss the First Amended Complaint for Lack of Personal Jurisdiction* (the “TPG Personal Jurisdiction Motion,” ECF Doc. # 211); (D) *Motion to Dismiss the First Amended Complaint based on Forum Non Conveniens* (the “Forum Non Conveniens Motion,” ECF Doc. # 254).² Having reviewed all of the papers submitted in support of and in opposition to the Pending Motions, the Court has determined that only two of the Pending Motions raise issues that were not previously decided by this Court in the prior decisions. *See Hosking v. TPG Capital Mgmt. (In re Hellas Telecomms. (Luxembourg) II SCA)* 524 B.R. 488 (Bankr. S.D.N.Y. 2015) (“Hosking I”); *Hosking v. TPG Capital Mgmt. (In re Hellas Telecomms. (Luxembourg) II SCA)*, 535 B.R. 543 (Bankr. S.D.N.Y. 2015) (“Hosking III”).

This Order will dispose of the TCW Motion, the TPG Joinder, and the DB Motion. As to each motion, the Plaintiffs argue that the law of the case can and should apply. *See Pescatore v. Pan Am. World Airways, Inc.*, 97 F.3d 1, 7–8 (2d Cir. 1996) (stating that “[t]he law of the case doctrine posits that when a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case.”) (internal quotations and citations omitted). The Court agrees. The movants fail to make persuasive arguments regarding why the Court, in the exercise of its discretion, should permit the movants to obtain a second, if not third, bite of the apple. The movants did not seek reconsideration or interlocutory review.³ Given that

Marren, Michael MacDougall, Thomas E. Reinhart, Todd B. Sisitsky, Bryan M. Taylor, Carrie A. Wheeler, James B. Williams, and John Viola

² On February 3, 2016, a *Motion to Withdraw the Reference to the Bankruptcy Court* (Case No. 16-00826, ECF Doc. # 1) was filed in the United States District Court for the Southern District of New York.

³ The First Amended Complaint adds additional individual defendants (the “TPG Executives”) who were not defendants at the time of the prior decisions. In *Hosking III*, the Court considered an opposition filed by certain TPG defendants (ECF Doc. # 161), including the TPG Executives. The TPG Executives now join in the TCW Motion. The arguments in support of the TCW Motion were made, considered and rejected in the prior decisions. The results reached in the prior decisions apply to the TPG Executives as well.

the movants are rehashing arguments that were previously made and rejected by the Court, the Court will not benefit from oral argument with respect to these motions.

Specifically, with respect to the DB Motion, the Court adheres to its prior decision in Hosking I that general jurisdiction has been established. In opposition to the DB Motion, the Plaintiffs argue persuasively based on discovery in the case since the earlier decision that grounds exist to establish specific jurisdiction. But given that the Plaintiffs heavy reliance on an agency-based theory of personal jurisdiction based on the actions of DBSI, a nondefendant in this adversary proceeding, the Court declines to find that specific jurisdiction exists at this stage of the proceeding. In the event that Deutsche Bank AG continues to contest personal jurisdiction at trial, the Plaintiffs may seek to support specific jurisdiction as well as general jurisdiction based on an appropriate evidentiary showing.

For the foregoing reasons, the TCW Motion (ECF Doc. # 200), the TPG Joinder Motion (ECF Doc. # 230) and the DB Motion (ECF Doc. # 205) are **DENIED**.

With respect the TPG Motion (ECF Doc. # 211), challenging personal jurisdiction over the TPG Executives, the Court will hear argument of that motion on **February 24, 2016 at 2:00 p.m.** (prevailing Eastern Standard Time).

With respect to the Forum Non Conveniens Motion (ECF Doc. # 254), the Court will schedule a hearing following the completion of briefing.

Additionally, pending before the Court are two motions seeking authorization to file certain information and documents under seal (collectively, the “Seal Motions”): (i) *Motion for an Order Authorizing the Filing of the Plaintiffs’ Unredacted Papers in Opposition to Defendant Deutsche Bank AG’s Second Motion to Dismiss for Lack of Personal Jurisdiction* (ECF Doc. # 240); and (ii) *Motion for an Order Authorizing the Filing Under Seal of the Plaintiffs*

Unredacted Papers in Opposition to TPG Executive Defendants' Motion to Dismiss the First Amended Complaint for Lack of Personal Jurisdiction (ECF Doc. # 246). The Court has reviewed both the unredacted pleadings and the redacted pleadings. The Court concludes that the Seal Motions fail to establish a basis to seal the unredacted pleadings under section 107(b) of the Bankruptcy Code. Therefore, the Seal Motions are **DENIED** in all respects. The information contained in the unredacted pleadings is necessary to understand the basis of the Court's disposition of the pending motions. The unredacted pleadings shall be filed on ECF on or before **February 11, 2016 at 5:00 p.m.** (prevailing Eastern Standard Time).

IT IS SO ORDERED.

Dated: February 4, 2016
New York, New York

/s/Martin Glenn
MARTIN GLENN
United States Bankruptcy Judge