Docket #4186 Date Filed: 12/13/2024

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Counsel for Highland CLO Management, Ltd. And James Dondero

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.	Case No. 19-34054 (sgj)
Reorganized Debtor.	

HIGHLAND CLO MANAGEMENT, LTD. AND JAMES DONDERO'S WITNESS LIST, DEPOSITION DESIGNATIONS, AND EXHIBIT LIST WITH RESPECT TO HEARING TO BE HELD ON DECEMBER 18, 2024

Highland CLO Management, Ltd. ("HCLOM") and James Dondero ("Dondero"), by and through its undersigned counsel, submits the following witness and exhibit list with respect to Highland Capital Management, L.P.'s Objection to Scheduled Claims 3.65 and 3.66 of Highland CLO Management, Ltd. [Docket No. 3657] (the "Motion"), which the Court has set for hearing at 9:30 a.m. (Central Time) on December 18, 2024 (the "Hearing") in the Bankruptcy Case.

A. Witnesses:

1. Frank Waterhouse;

2. James Dondero;

3. James P. Seery Jr.;

4. David Klos;

5. Timothy Cournoyer (by deposition);

6. Any witness identified by or called by any other party; and

7. Any witness necessary for rebuttal.

B. Deposition Designations:

HCLOM hereby submits the following designations from the November 13, 2024, deposition transcript of Timothy Cournoyer:

4:25 – 5:4	27: 13-19	48:4-49:2
6:20-8:23	28: 17-22	55:18-56:19
9:24-10:9	30: 8-18	58:11-60:7
11:1-15	31:9-13	62:22-63:1
12: 1-4	32: 16-21	64:9-23
13:4-7	35:23-37:5	65:5-66:9
13:21-22	38:10-21	
13:25-14:14	39:1-40:15	

C. Exhibits:

Ex.	Date	Dkt.	Description	Offered	Admitted
1	12/13/19	247	Official Form 206Sum		
2	9/22/20	1082	Notice of Filing of Debtor's Amended Schedules		
3	October 2016	3695-3	Promissory Note from Highland Capital Management, L.P. to Acis Capital Management, L.P. in the amount of $12,666,446		

Ex.	Date	Dkt.	Description	Offered	Admitted
4	10/7/16	3695-3	Agreement for Purchase and Sale of CLO Participation Interests by and between Acis Capital Management, L.P. and Highland Capital Management, L.P.		
5	10/7/16	3695-3	Assignment and Transfer Agreement between Acis Capital Management, L.P. and Highland Capital Management, L.P.		
6	10/20/21		Hearing Transcript - Motion to Compromise Controversy with Acis Capital Management		
7	4/30/18	3695-2	Acis CLO Notices of Optional Redemption		
8	6/21/18	Dkt. 310; Case No. 18-30264-sgj-11	Ex Parte Temporary Restraining Order, dated June 21, 2018,		
9	6/29/18	Dkt. 354; Case No. 18-30264-sgj-11	Agreed Extension of Temporary Restraining Order		
10	1/31/19	Dkt. 827; Case No. 18-30264-sgj-11	Bench Ruling and Memorandum of Law in Support of: (1) Final Approval of Disclosure Statement; and (B) Confirmation of Chapter 11 Trustee's Third Amended Joint Plan		
11	1/31/19	Dkt.829; Case No. 18-30264-sgj-11	Findings of Fact, Conclusions of Law, and Order Granting Final Approval of Disclosure Statement and Confirming the Third Amended Joint Plan for Acis Capital Management, L.P. and Acis Capital Management GP, LLC, as Modified		

Ex.	Date	Dkt.	Description	Offered	Admitted
12	6/20/16	Dkt. 157; Case No. 18-03078-sgj	Second Amended Complaint (Including Claim Objections and Objections to Administrative Expense Claim)		
13	4/22/19	Dkt. 171; Case No. 18-03078-sgj	Highland Capital's Partial Motion to Dismiss the Second Amended Complaint and Brief in Support, dated July 22, 2019, Dkt. 171 in Case No. 18-03078-sgj		
14	12/31/19		Acis Proof of Claim #23, in Case No. 18-30264-sgj-11		
15	6/23/20	771	Debtor Objection to Acis Claim		
16	10/28/20	1302	Order Approving Debtor's Settlement with (A) Acis Capital Management, L.P. and Acis Capital Management GP, LLC (Claim No. 23) (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156, and (C) Acis Capital management, L.P. (Claim No. 159) and Authorizing Actions Consistent Therewith		
17	11/3/10	Dkt. 215; Case No. 18-03078-sgj	Acis Motion to Dismiss Less than All Defendants		
18	11/6/20	Dkt. 216; Case No. 18-03078-sgj	Order Dismissing Less than All Defendants		
19	12/4/19	11	Declaration of Frank Waterhouse in Support of First Day Motions		
20	11/8/24		Depo Notice - Seery		
21	10/7/16		Promissory Note 12.6M HCLOM00008535, Klos Exhibit 2		
22			Intentionally Omitted		
23	1/30/17		HCLOM Resolutions HCLOM00009902		

Ex.	Date	Dkt.	Description	Offered	Admitted
24	5/10/17		Payment Cancellation Agreement HCLOM00008893, Klos Exhibit 4		
25	10/19/17		Delaware Certificate of Formation HCLOM02122330		
26	10/27/17		Bodden Email HCLOM00009419		
27	11/3/17		Assignment and Transfer Agreement, Klos Exhibit 3		
28	11/15/17		LLC Agreement HCLOM00220923		
29	1/10/18		Agreement HCLOM00013413, Klos Exhibit 8		
30	1/16/18		Leventon Email HCLOM01414262		
31	1/18/18		Cournoyer Email HCLOM00009418		
32	1/19/18		Acknowledgment and Waiver HCLOM00013727, Klos Exhibit 7		
33	1/31/18		Aaron Email HCLOM00931789		
34			Intentionally Omitted		
35	5/31/18		Forbearance Agreement HCLOM00009462, Klos Exhibit 5		
36	5/31/19		Amended Forbearance Agreement HCLOM00009466, Klos Exhibit 6		
37	8/12/19		Salas Email HCLOM01609750		
38	11/25/19		Demo Email HCLOM00001540		
39			Intentionally Omitted		
40			Intentionally Omitted		
41	10/20/20		Hearing Transcript		
42	2/2/23	3657	HCMLP Objection to Claims 3.65 and 3.66		
43	4/3/23	3715	HCLOM Response to Objection to Claims 3.65 and 3.66		

Ex.	Date	Dkt.	Description	Offered	Admitted
44			HCLOM LLC Chart		
45			Highland Risk Retention C-MOA Structure Chart.003		
46			Highland Risk Retention C-MOA Structure Chart (Updated)		
47	9/24/24		Deposition Transcript - Frank Waterhouse, Individually and as Corporate Representative of HCLOM		
48	11/13/24		Deposition Transcript - Timothy Cournoyer		
49	11/4/24		Deposition Transcript - James Dondero		
50	9/25/24		Deposition Transcript - David Klos		
51	11/13/24		Deposition Transcript - James P. Seery, Jr., Individually and as Corporate Representative of Highland Capital Management, L.P.		
52	2/21/23		*HEB Enterprises LTD v.* Richards ([2023] UKPC 7 (Privy Council Appeal No. 0087 of 2020)		
			Any transcript of any hearing in the above-captioned bankruptcy case		
			Any document or pleading filed in the above-captioned bankruptcy case		
			Any transcript of any hearing in the above-captioned adversary proceedings		
			Any document or pleading filed in the above-captioned adversary proceedings		
			Any exhibit necessary for impeachment or rebuttal purposes		
			Any and all documents identified or offered by any other party		

HCLOM and Dondero reserve the right to amend and/or supplement this Exhibit List should they determine that any other document may be helpful to the trier of fact.

Dated December 13, 2024

Respectfully submitted,
STINSON LLP

/s/ Deborah Deitsch-Perez
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Counsel for Highland CLO Management, Ltd. And James Dondero

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on December 13, 2024, a true and correct copy of this document was served electronically via the Court's CM/ECF system to the parties registered or otherwise entitled to receive electronic notices in this case.

/s/ Deborah Deitsch-Perez
Deborah Deitsch-Perez

Exhibit 1

Fill in this information to identify the case:

Debtor name **Highland Capital Management, L.P.**

United States Bankruptcy Court for the: NORTHERN DISTRICT OF TEXAS

Case number (if known) **19-34054-SGJ**

☐ Check if this is an amended filing

Official Form 206Sum
Summary of Assets and Liabilities for Non-Individuals

12/15

Part 1: Summary of Assets

1. ***Schedule A/B: Assets-Real and Personal Property*** (Official Form 206A/B)

   1a. **Real property:**
   Copy line 88 from *Schedule A/B*..... $ **523,970.00**

   1b. **Total personal property:**
   Copy line 91A from *Schedule A/B*..... $ **409,580,813.30**

   1c. **Total of all property:**
   Copy line 92 from *Schedule A/B*..... $ **410,104,783.30**

Part 2: Summary of Liabilities

2. ***Schedule D: Creditors Who Have Claims Secured by Property*** (Official Form 206D)
   Copy the total dollar amount listed in Column A, *Amount of claim,* from line 3 of *Schedule D*..... $ **34,862,225.94**

3. ***Schedule E/F: Creditors Who Have Unsecured Claims*** (Official Form 206E/F)

   3a. Total claim amounts of priority unsecured claims:
   Copy the total claims from Part 1 from line 5a of *Schedule E/F*..... $ **Unknown**

   3b. Total amount of claims of nonpriority amount of unsecured claims:
   Copy the total of the amount of claims from Part 2 from line 5b of *Schedule E/F*..... +$ **244,455,350.78**

4. **Total liabilities** .....
   Lines 2 + 3a + 3b $ **279,317,576.72**

1934054191213000000000006

Fill in this information to identify the case:

Debtor name **Highland Capital Management, L.P.**

United States Bankruptcy Court for the: NORTHERN DISTRICT OF TEXAS

Case number (if known) **19-34054-SGJ**

☐ Check if this is an amended filing

Official Form 206A/B

Schedule A/B: Assets - Real and Personal Property

12/15

Disclose all property, real and personal, which the debtor owns or in which the debtor has any other legal, equitable, or future interest. Include all property in which the debtor holds rights and powers exercisable for the debtor's own benefit. Also include assets and properties which have no book value, such as fully depreciated assets or assets that were not capitalized. In Schedule A/B, list any executory contracts or unexpired leases. Also list them on *Schedule G: Executory Contracts and Unexpired Leases* (Official Form 206G).

Be as complete and accurate as possible. If more space is needed, attach a separate sheet to this form. At the top of any pages added, write the debtor's name and case number (if known). Also identify the form and line number to which the additional information applies. If an additional sheet is attached, include the amounts from the attachment in the total for the pertinent part.

For Part 1 through Part 11, list each asset under the appropriate category or attach separate supporting schedules, such as a fixed asset schedule or depreciation schedule, that gives the details for each asset in a particular category. List each asset only once. In valuing the debtor's interest, do not deduct the value of secured claims. See the instructions to understand the terms used in this form.

Part 1: Cash and cash equivalents

1. **Does the debtor have any cash or cash equivalents?**

☐ No. Go to Part 2.
☑ Yes Fill in the information below.

All cash or cash equivalents owned or controlled by the debtor			Current value of debtor's interest
3. **Checking, savings, money market, or financial brokerage accounts** *(Identify all)* Name of institution (bank or brokerage firm)	Type of account	Last 4 digits of account number	
3.1. **NexBank**	**Checking Account**	**X735**	**$1,453.40**
3.2. **NexBank**	**Checking Account**	**X668**	**$0.00**
3.3. **NexBank**	**Checking Account**	**X513**	**$291,309.27**
3.4. **NexBank**	**Money Market Deposit Account**	**X130**	**$190.82**
3.5. **BBVA Compass**	**Checking Account**	**X342**	**$2,125,975.28**
3.6. **Jefferies**	**Brokerage Account**	**X932**	**$0.00**
3.7. **Maxim Group**	**Brokerage Account**	**X885**	**$96.17**

Debtor **Highland Capital Management, L.P.** Case number *(If known)* **19-34054-SGJ**
Name

4. **Other cash equivalents** *(Identify all)*

5. **Total of Part 1.** **$2,419,024.94**
Add lines 2 through 4 (including amounts on any additional sheets). Copy the total to line 80.

Part 2: Deposits and Prepayments

6. **Does the debtor have any deposits or prepayments?**

- [ ] No. Go to Part 3.
- [x] Yes Fill in the information below.

7. **Deposits, including security deposits and utility deposits**
Description, including name of holder of deposit

7.1.	**Certificate of Deposit (NexBank)**	**$135,205.21**
7.2.	**Security Deposit (200/300 Crescent Ct #700 Dallas, TX 75201) - Crescent TC Investors**	**$118,397.05**
7.3.	**Deposit for Maple Avenue Holdings (Equity Method Investment)**	**$10,000.00**
7.4.	**Deposit for expense reimbursement.**	**$1,474.60**

8. **Prepayments, including prepayments on executory contracts, leases, insurance, taxes, and rent**
Description, including name of holder of prepayment

8.1.	**Other Prepaid Expenses (Unreconciled Book Balance)**	**$830,899.73**
8.2.	**Prepaid Retainer - Development Specialists, Inc.**	**$240,340.00**
8.3.	**Prepaid Legal Retainer - Pachulski Stang Ziehl & Jones LLP (1)**	**$500,000.00**
8.4.	**Prepaid Retainers - Kurtzman Carson Consultants LLC (1)**	**$50,000.00**
8.5.	**Prepaid Rent (200/300 Crescent Ct #700 Dallas, TX 75201) - Crescent TC Investors**	**$96,294.05**

(1) Pre-petition balance was not applied.

9. **Total of Part 2.** **$1,982,610.64**
Add lines 7 through 8. Copy the total to line 81.

Debtor **Highland Capital Management, L.P.** Case number *(If known)* **19-34054-SGJ**
Name

Part 3: Accounts receivable

10. **Does the debtor have any accounts receivable?**

- [ ] No. Go to Part 4.
- [x] Yes Fill in the information below.

11. **Accounts receivable Exhibit A**

	face amount		doubtful or uncollectible accounts		
11a. 90 days old or less:	**3,482,893.80**	-	**0.00**	=	**$3,482,893.80**
11b. Over 90 days old:	**32,304,511.36**	-	**22,380,459.81**	=....	**$9,924,051.55**

12. **Total of Part 3.** **$13,406,945.35**
Current value on lines 11a + 11b = line 12. Copy the total to line 82.

Part 4: Investments

13. **Does the debtor own any investments?**

- [ ] No. Go to Part 5.
- [x] Yes Fill in the information below.

				Valuation method used for current value	**Current value of debtor's interest**
14.	**Mutual funds or publicly traded stocks not included in Part 1** Name of fund or stock:				
15.	**Non-publicly traded stock and interests in incorporated and unincorporated businesses, including any interest in an LLC, partnership, or joint venture** Name of entity:	% of ownership			
15.1.	**Equity Method Investments (Exhibit B)**	**Multiple**	%	**Book Value**	**$167,226,227.63**
15.2.	**Investments at Fair Value (Exhibit C)**	**Multiple**	%	**Fair Value**	**$224,267,777.21**
16.	**Government bonds, corporate bonds, and other negotiable and non-negotiable instruments not included in Part 1** Describe:				
16.1.	**Debtor owns defaulted corporate bonds.**			**N/A**	**$0.00**

17. **Total of Part 4.** **$391,494,004.84**
Add lines 14 through 16. Copy the total to line 83.

Part 5: Inventory, excluding agriculture assets

18. **Does the debtor own any inventory (excluding agriculture assets)?**

- [x] No. Go to Part 6.
- [ ] Yes Fill in the information below.

Part 6: Farming and fishing-related assets (other than titled motor vehicles and land)

Debtor **Highland Capital Management, L.P.** Case number *(If known)* **19-34054-SGJ**
Name

27. **Does the debtor own or lease any farming and fishing-related assets (other than titled motor vehicles and land)?**

- [x] No. Go to Part 7.
- [ ] Yes Fill in the information below.

Part 7: Office furniture, fixtures, and equipment; and collectibles

38. **Does the debtor own or lease any office furniture, fixtures, equipment, or collectibles?**

- [ ] No. Go to Part 8.
- [x] Yes Fill in the information below.

	General description	Net book value of debtor's interest (Where available)	Valuation method used for current value	Current value of debtor's interest
39.	**Office furniture**			
	Desk, chairs and other office furniture.	**$118,428.73**	**N/A**	**Unknown**
40.	**Office fixtures**			
41.	**Office equipment, including all computer equipment and communication systems equipment and software**			
	Computers, Software and Office Equipment	**$382,803.25**	**N/A**	**Unknown**
42.	**Collectibles** *Examples*: Antiques and figurines; paintings, prints, or other artwork; books, pictures, or other art objects; china and crystal; stamp, coin, or baseball card collections; other collections, memorabilia, or collectibles			
42.1.	**Artwork**	**$0.00**	**Original Cost**	**$231,657.53**

43. **Total of Part 7.** **$231,657.53**
Add lines 39 through 42. Copy the total to line 86.

44. **Is a depreciation schedule available for any of the property listed in Part 7?**
- [ ] No
- [x] Yes

45. **Has any of the property listed in Part 7 been appraised by a professional within the last year?**
- [x] No
- [ ] Yes

Part 8: Machinery, equipment, and vehicles

46. **Does the debtor own or lease any machinery, equipment, or vehicles?**

- [ ] No. Go to Part 9.
- [x] Yes Fill in the information below.

	General description Include year, make, model, and identification numbers (i.e., VIN, HIN, or N-number)	Net book value of debtor's interest (Where available)	Valuation method used for current value	Current value of debtor's interest
47.	**Automobiles, vans, trucks, motorcycles, trailers, and titled farm vehicles**			
47.1.	**2015 GMC Sierra 2500 HD**	**$0.00**	**Replacement**	**$46,570.00**
48.	**Watercraft, trailers, motors, and related accessories** *Examples:* Boats, trailers, motors, floating homes, personal watercraft, and fishing vessels			

Debtor **Highland Capital Management, L.P.** Case number *(If known)* **19-34054-SGJ**
Name

49. **Aircraft and accessories**

50. **Other machinery, fixtures, and equipment (excluding farm machinery and equipment)**

51. **Total of Part 8.** **$46,570.00**
Add lines 47 through 50. Copy the total to line 87.

52. **Is a depreciation schedule available for any of the property listed in Part 8?**
- [x] No
- [ ] Yes

53. **Has any of the property listed in Part 8 been appraised by a professional within the last year?**
- [x] No
- [ ] Yes

Part 9: Real property

54. **Does the debtor own or lease any real property?**

- [ ] No. Go to Part 10.
- [x] Yes Fill in the information below.

55. **Any building, other improved real estate, or land which the debtor owns or in which the debtor has an interest**

	Description and location of property Include street address or other description such as Assessor Parcel Number (APN), and type of property (for example, acreage, factory, warehouse, apartment or office building, if available.	Nature and extent of debtor's interest in property	Net book value of debtor's interest (Where available)	Valuation method used for current value	Current value of debtor's interest
55.1.	**30.433 Acres of raw land located at 14102 FM 986 Terrell, Texas 75160**	**100% Ownership**	**$398,450.00**	**Tax records**	**$523,970.00**
55.2.	**Leasehold Improvements (200/300 Crescent Ct #700 Dallas, TX 75201)**	**Tenant**	**$1,550,281.49**	**N/A**	**Unknown**

56. **Total of Part 9.** **$523,970.00**
Add the current value on lines 55.1 through 55.6 and entries from any additional sheets. Copy the total to line 88.

57. **Is a depreciation schedule available for any of the property listed in Part 9?**
- [ ] No
- [x] Yes

58. **Has any of the property listed in Part 9 been appraised by a professional within the last year?**
- [x] No
- [ ] Yes

Part 10: Intangibles and intellectual property

59. **Does the debtor have any interests in intangibles or intellectual property?**

- [ ] No. Go to Part 11.
- [x] Yes Fill in the information below.

Debtor **Highland Capital Management, L.P.** Case number *(If known)* **19-34054-SGJ**
Name

	General description	Net book value of debtor's interest (Where available)	Valuation method used for current value	Current value of debtor's interest
60.	**Patents, copyrights, trademarks, and trade secrets**			
61.	**Internet domain names and websites** **139 Domain Names**	**$0.00**	**N/A**	**Unknown**
62.	**Licenses, franchises, and royalties** **3rd Party Private Equity Management Company**	**$0.00**	**N/A**	**Unknown**
63.	**Customer lists, mailing lists, or other compilations**			
64.	**Other intangibles, or intellectual property**			
65.	**Goodwill**			
66.	**Total of Part 10.** Add lines 60 through 65. Copy the total to line 89.			**Unknown**

67. **Do your lists or records include personally identifiable information of customers** (as defined in 11 U.S.C.§§ 101(41A) and 107**?**
- [ ] No
- [x] Yes

68. **Is there an amortization or other similar schedule available for any of the property listed in Part 10?**
- [x] No
- [ ] Yes

69. **Has any of the property listed in Part 10 been appraised by a professional within the last year?**
- [x] No
- [ ] Yes

Part 11: All other assets

70. **Does the debtor own any other assets that have not yet been reported on this form?**
Include all interests in executory contracts and unexpired leases not previously reported on this form.

- [ ] No. Go to Part 12.
- [x] Yes Fill in the information below.

						Current value of debtor's interest
71.	**Notes receivable** Description (include name of obligor) **Notes Receivable (Exhibit D)**	**150,331,222.61** Total face amount	-	**Unknown** doubtful or uncollectible amount	=	**Unknown**
72.	**Tax refunds and unused net operating losses (NOLs)** Description (for example, federal, state, local)					
73.	**Interests in insurance policies or annuities**					
74.	**Causes of action against third parties (whether or not a lawsuit has been filed)**					

Debtor **Highland Capital Management, L.P.** Case number *(If known)* **19-34054-SGJ**
Name

Exhibit E		**Unknown**
Nature of claim		
Amount requested		

75. **Other contingent and unliquidated claims or causes of action of every nature, including counterclaims of the debtor and rights to set off claims**

76. **Trusts, equitable or future interests in property**

77. **Other property of any kind not already listed** *Examples:* Season tickets, country club membership

Defined Benefit Plan (Overfunded 12/31/18 balance $323 thousand)	**Unknown**
Estimated Deferred Fee Account value plus residual deferred fee accounts at NAV $13.0 million fully reserved due to uncertain collectibility	**Unknown**

78. **Total of Part 11.** **Unknown**
Add lines 71 through 77. Copy the total to line 90.

79. **Has any of the property listed in Part 11 been appraised by a professional within the last year?**
- [x] No
- [ ] Yes

Debtor **Highland Capital Management, L.P.** Case number *(If known)* **19-34054-SGJ**
Name

Part 12: **Summary**

In Part 12 copy all of the totals from the earlier parts of the form

	Type of property	Current value of personal property	Current value of real property
80.	**Cash, cash equivalents, and financial assets.** *Copy line 5, Part 1*	**$2,419,024.94**	
81.	**Deposits and prepayments.** *Copy line 9, Part 2.*	**$1,982,610.64**	
82.	**Accounts receivable.** *Copy line 12, Part 3.*	**$13,406,945.35**	
83.	**Investments.** *Copy line 17, Part 4.*	**$391,494,004.84**	
84.	**Inventory.** *Copy line 23, Part 5.*	**$0.00**	
85.	**Farming and fishing-related assets.** *Copy line 33, Part 6.*	**$0.00**	
86.	**Office furniture, fixtures, and equipment; and collectibles.** *Copy line 43, Part 7.*	**$231,657.53**	
87.	**Machinery, equipment, and vehicles.** *Copy line 51, Part 8.*	**$46,570.00**	
88.	**Real property.** *Copy line 56, Part 9.....>*		**$523,970.00**
89.	**Intangibles and intellectual property.** *Copy line 66, Part 10.*	**$0.00**	
90.	**All other assets.** *Copy line 78, Part 11.*	**+ Unknown**	
91.	**Total.** Add lines 80 through 90 for each column	**$409,580,813.30**	**+** 91b. **$523,970.00**
92.	**Total of all property on Schedule A/B**. Add lines 91a+91b=92		**$410,104,783.30**

Highland Capital Management LP
Case # 19-34054-SGJ
Exhibit A - Schedule 11

	Less than 90 Days [1]			Greater than 90 days		
Accounts Receivable	**Face Amount**	**Doubtful or Uncollectible**	**Total**	**Face Amount**	**Doubtful or Uncollectible**	**Total**
Reimbursable Fund Expense	$ 777,108.00	$ -	$ 777,108.00	$ 6,082,319.61	$ (1,934,540.89)	$ 4,147,778.72
Unpaid Crusader Distributions [3]	-	-	-	6,324,234.00	(2,034,161.00)	4,290,073.00
Management Fees Receivable [2][5]	2,435,434.04	-	2,435,434.04	197,173.42	-	197,173.42
Cash Interest Receivable [2]	-	-	-	1,243,304.26	-	1,243,304.26
Shared Services Fee Receivable [2]	270,351.76	-	270,351.76	-	-	-
Highland Capital Management Singapore Pte Ltd [2]	-	-	-	35,158.50	-	35,158.50
Miscellaneous Receivable [2]	-	-	-	10,563.65	-	10,563.65
Acis Capital Management, LP Subadvisory and Shared Services Fee Receivable	-	-	-	5,350,931.62	(5,350,931.62)	-
Highland Capital of New York, Inc.	-	-	-	5,023,073.12	(5,023,073.12)	-
HERA [4]	-	-	-	7,231,103.00	(7,231,103.00)	-
Reimbursements from multiple funds managed by Acis Capital Management, LP	-	-	-	806,650.18	(806,650.18)	-
Total	**$ 3,482,893.80**	**$ -**	**$ 3,482,893.80**	**$ 32,304,511.36**	**$ (22,380,459.81)**	**$ 9,924,051.55**

[1]For shaded area, no aging analysis has been performed so entire amount is included in the greater than 90 days section.

[2]Doubtful or Uncollectible accounts are evaluated at year end.

[3] Represents distributions from all Crusader entities, including Highland Crusader Fund, Ltd., Highland Crusader Fund II, Ltd., and Highland Crusader Fund, L.P. and includes unpaid distributions due to a wholly owned subsidiary (Eames Ltd) as well as unpaid distributions with respect to deferred fees, which are reserved against as potentially uncollectible.

[4] Debtor has recorded $3.3mm of net receivable as of the Petition Date, representing 2019 activity. This balance is normally evaluated for collectability as of year-end. However, the 2019 activity is likely not collectible and has therefore been fully reserved for purposes of this schedule.

[5] Amount greater than 90 days represents the entire receivable earned, but not yet payable per one of the Debtor's management agreements. For the receivable under this agreement, the entire $197k amount has been earned during 2019 and a portion has been earned within the last 90 days.

Highland Capital Management LP
Case # 19-34054-SGJ
Exhibit B - Schedule 15

Equity Method Investments [1]	**Total [2]**
Highland Select Equity Fund, L.P.	$ 130,213,244.86
Wright, Ltd [3]	22,303,199.33
Starck, Ltd [3]	6,960,671.89
Eames, Ltd [3]	3,704,338.16
Maple Avenue Holdings LLC	2,250,501.95
Highland Capital Management Korea Ltd.	1,011,300.61
Highland Capital Management Singapore Pte Ltd	457,809.57
Penant Management LP	302,358.21
Eagle Equity Advisors, LLC	22,803.05
Total	**$ 167,226,227.63**

[1] Investments are based on the debtors pro rata net asset value.
[2] Values based on most recent available information as of the petition date.
[3] Owned indirectly through 100% owned subsidiaries.

Highland Capital Management LP
Case # 19-34054-SGJ
Exhibit C - Schedule 15

Investments, at fair value [1]	**Total [2][3]**
Investment Securities - Cost	$ 66,791,277.56
Investment Securities - Mark To Market	(7,702,195.68)
Public Security - A	49,648,257.65
Private Security - A	36,949,197.43
Private Security - B	20,244,908.67
Public Security - B	13,275,503.51
Third Party Private Equity Fund - A	12,065,754.32
Public Security - C	10,718,068.67
Public Security - D	5,427,536.32
Private Security - C	3,346,763.82
Public Security - E	2,752,533.87
Private Portfolio Company - A	2,525,873.00
Public Security - F	1,721,458.16
Public Security - G	1,573,054.32
Public Security - H	1,397,752.04
Third Party Private Equity Fund - B	1,254,168.41
Public Security - I	792,313.43
Public Security - J	533,357.32
Private Security - D	481,354.43
Private Security - E	261,889.71
Private Security - F	132,002.75
Public Security - K	67,639.33
Public Security - L	8,928.17
Third Party Private Equity Fund - C [4]	380.00
Total	**$ 224,267,777.21**

[1] Listing includes both publicly traded and private investments. Public securities are denoted with the description "Public Security - [ ]". Additionally, $28,651,800 of the total balance of "Investment Securities - Cost" and "Investment Securities - Mark to Market" is comprised of public securities.
[2] Values based on most recent available information as of the petition date.
[3] For third party private equity funds and investments in managed private funds values are at estimated net asset value.
[4] For [Third party private equity fund - c] value presented equals cost basis.

Highland Capital Management LP
Case # 19-34054-SGJ
Exhibit D - Schedule 71A

Notes Receivable		**Total Face Amount [1]**
Hunter Mountain Investment Trust	$	56,873,209.22
Affiliate Note Receivable - A		24,534,644.03
The Dugaboy Investment Trust		18,286,268.16
Affiliate Note Receivable - B		10,413,539.53
Affiliate Note Receivable - C		10,394,680.47
James Dondero		9,334,012.00
Highland Capital Management Services, Inc.		7,482,480.88
Siepe		2,019,256.35
Highland Mult Strategy Credit Fund, LP		3,269,000.00
Highland Capital Management Korea Ltd. [2]		3,132,278.05
Private Portfolio Company - A		2,198,610.05
Mark Okada		1,336,287.84
Private Portfolio Company - B		1,056,956.03
Total	**$**	**150,331,222.61**

[1]Doubtful or Uncollectible accounts are evaluated at year end.
[2] Includes $72,278.05 of intercompany receivable.

Highland Capital Management LP
Case # 19-34054-SGJ
Exhibit E - Schedule 74

Case Style	Date Filed	Damages	Summary	Status
Highland Capital Management, L.P. and Highland CLO Funding, Ltd. v. Robin Phelan as Chapter 11 Trustee v. Highland HCF Advisor, Ltd., Highland CLO Management, Ltd., and Highland CLO Holdings, Ltd., Adversary No. 18-03078 in the United States Bankruptcy Court for the Northern District of Texas	5/30/2018	$4-$8 million	Highland entities sought to compel redemptions in the Acis CLOs; Trustee counterclaimed for alleged fraudulent transfers	Motion practice.
Highland Capital Management, L.P. v. Patrick Daugherty v. Sierra Verde, LLC, Highland Employee Retention Assets, LLC, James Dondero, Patrick Boyce, and William L. Britain, Cause No. 05-14-01215-CB pending in the Texas Fifth Court of Appeals, Dallas, Texas	4/11/2012	None	Highland has collected on its verdict for $2.8 million against Daugherty. Daugherty obtained a judgment for $2.6 million against HERA. Daugherty has not appealed any of his affirmative claims against Highland, though he has appealed other claims.	Enforcement of Injunction versus Mr. Daugherty
NexBank, SSB and Highland Capital Management, L.P. v. Winstead, P.C., in the District Court of Dallas County, 193rd Judicial District	3/16/15	$3 million	Law firm committed malpractice by incorrectly handling foreclosure of Park West property	Appeal.

Fill in this information to identify the case:

Debtor name **Highland Capital Management, L.P.**

United States Bankruptcy Court for the: NORTHERN DISTRICT OF TEXAS

Case number (if known) **19-34054-SGJ**

☐ Check if this is an amended filing

Official Form 206D

Schedule D: Creditors Who Have Claims Secured by Property 12/15

Be as complete and accurate as possible.

1. Do any creditors have claims secured by debtor's property?

☐ No. Check this box and submit page 1 of this form to the court with debtor's other schedules. Debtor has nothing else to report on this form.

■ Yes. Fill in all of the information below.

Part 1: List Creditors Who Have Secured Claims

2. **List in alphabetical order all creditors who have secured claims.** If a creditor has more than one secured claim, list the creditor separately for each claim.

			Column A **Amount of claim** Do not deduct the value of collateral.	*Column B* **Value of collateral that supports this claim**
2.1	**Frontier State Bank** Creditor's Name **5100 South I-35 Service Road** **Oklahoma City, OK 73129** Creditor's mailing address **selliott@frontier-ok.com** Creditor's email address, if known **Date debt was incurred** **08/17/2015** **Last 4 digits of account number** **1100** **Do multiple creditors have an interest in the same property?** ■ No ☐ Yes. Specify each creditor, including this creditor and its relative priority.	**Describe debtor's property that is subject to a lien** **171,724 shares of voting common stock of privately held security.** **Describe the lien** **Held in lender's name** **Is the creditor an insider or related party?** ■ No ☐ Yes **Is anyone else liable on this claim?** ■ No ☐ Yes. Fill out *Schedule H: Codebtors* (Official Form 206H) **As of the petition filing date, the claim is:** Check all that apply ☐ Contingent ☐ Unliquidated ☐ Disputed	**$5,209,102.31**	**$10,103,038.09**
2.2	**Jefferies LLC** Creditor's Name **520 Madison Avenue, 12th Floor** **New York, NY 10022** Creditor's mailing address **Cbianchi@jefferies.com** Creditor's email address, if known **Date debt was incurred** **05/24/2013** **Last 4 digits of account number** **0932** **Do multiple creditors have an interest in the same property?**	**Describe debtor's property that is subject to a lien** **The assets held within the Jefferies Prime Brokerage Account** **Describe the lien** **Security interest in all collateral** **Is the creditor an insider or related party?** ■ No ☐ Yes **Is anyone else liable on this claim?** ■ No ☐ Yes. Fill out *Schedule H: Codebtors* (Official Form 206H) **As of the petition filing date, the claim is:** Check all that apply	**$29,653,123.63**	**$82,007,136.69**

Debtor **Highland Capital Management, L.P.** Case number (if know) **19-34054-SGJ**
Name

■ No
☐ Yes. Specify each creditor, including this creditor and its relative priority.

☐ Contingent
☐ Unliquidated
☐ Disputed

3.	**Total of the dollar amounts from Part 1, Column A, including the amounts from the Additional Page, if any.**	**$34,862,225.94**

Part 2: List Others to Be Notified for a Debt Already Listed in Part 1

List in alphabetical order any others who must be notified for a debt already listed in Part 1. Examples of entities that may be listed are collection agencies, assignees of claims listed above, and attorneys for secured creditors.

If no others need to notified for the debts listed in Part 1, do not fill out or submit this page. If additional pages are needed, copy this page.

Name and address	On which line in Part 1 did you enter the related creditor?	Last 4 digits of account number for this entity
Director of Compliance **Re: Prime Brokerage Services - Jefferies** **520 Madison Ave** **New York, NY 10022**	Line **2.2**	
Frontier State Bank **Attn: Mr. Steve Elliot** **5100 South I-35 Service Road** **Oklahoma City, OK 73129**	Line **2.1**	
Office of General Counsel **RE: Prime Brokerage Services - Jefferies** **520 Madison Ave** **New York, NY 10022**	Line **2.2**	
Prime Brokerage Services **Attn: Jefferies LLC** **520 Madison Ave** **New York, NY 10020**	Line **2.2**	

Fill in this information to identify the case:

Debtor name **Highland Capital Management, L.P.**

United States Bankruptcy Court for the: NORTHERN DISTRICT OF TEXAS

Case number (if known) **19-34054-SGJ**

☐ Check if this is an amended filing

Official Form 206E/F

Schedule E/F: Creditors Who Have Unsecured Claims

12/15

Be as complete and accurate as possible. Use Part 1 for creditors with PRIORITY unsecured claims and Part 2 for creditors with NONPRIORITY unsecured claims. List the other party to any executory contracts or unexpired leases that could result in a claim. Also list executory contracts on *Schedule A/B: Assets - Real and Personal Property* (Official Form 206A/B) and on *Schedule G: Executory Contracts and Unexpired Leases* (Official Form 206G). Number the entries in Parts 1 and 2 in the boxes on the left. If more space is needed for Part 1 or Part 2, fill out and attach the Additional Page of that Part included in this form.

Part 1: List All Creditors with PRIORITY Unsecured Claims

1. **Do any creditors have priority unsecured claims?** (See 11 U.S.C. § 507).

   ☐ No. Go to Part 2.

   ☑ Yes. Go to line 2.

2. **List in alphabetical order all creditors who have unsecured claims that are entitled to priority in whole or in part.** If the debtor has more than 3 creditors with priority unsecured claims, fill out and attach the Additional Page of Part 1.

			Total claim	Priority amount
2.1	Priority creditor's name and mailing address **All Employees** **300 Crescent Ct.** **Suite 700** **Dallas, TX 75201**	As of the petition filing date, the claim is: *Check all that apply.* ☑ Contingent ☑ Unliquidated ☐ Disputed	**Unknown**	**Unknown**
	Date or dates debt was incurred **2019**	Basis for the claim: **Employee Wages & Bonuses**		
	Last 4 digits of account number Specify Code subsection of PRIORITY unsecured claim: 11 U.S.C. § 507(a) (4)	Is the claim subject to offset? ☑ No ☐ Yes		

Part 2: List All Creditors with NONPRIORITY Unsecured Claims

3. **List in alphabetical order all of the creditors with nonpriority unsecured claims**. If the debtor has more than 6 creditors with nonpriority unsecured claims, fill out and attach the Additional Page of Part 2.

			Amount of claim
3.1	**Nonpriority creditor's name and mailing address** **45 Employees** **300 Crescent Ct.** **Suite 700** **Dallas, TX 75201**	**As of the petition filing date, the claim is:** *Check all that apply.* ☑ Contingent ☑ Unliquidated ☐ Disputed	**Unknown**
	Date(s) debt was incurred **2017, 2018 & 2019** **Last 4 digits of account number** _	**Basis for the claim:** **Deferred Awards** Is the claim subject to offset? ☑ No ☐ Yes	
3.2	**Nonpriority creditor's name and mailing address** **46 Employees** **300 Crescent Ct.** **Suite 700** **Dallas, TX 75201**	**As of the petition filing date, the claim is:** *Check all that apply.* ☑ Contingent ☐ Unliquidated ☐ Disputed	**$5,758,166.67**
	Date(s) debt was incurred **2018** **Last 4 digits of account number** _	**Basis for the claim:** **Prior year employee bonuses** Is the claim subject to offset? ☑ No ☐ Yes	

Debtor **Highland Capital Management, L.P.** Case number (if known) **19-34054-SGJ**
Name

3.3	**Nonpriority creditor's name and mailing address** **Abrams & Bayliss** **20 Montchanin Road, Suite 200** **Wilmington, DE 19807** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** **See Exhibit A** Is the claim subject to offset? ☑ No ☐ Yes	**$108,399.83**
3.4	**Nonpriority creditor's name and mailing address** **ACA Compliance Group** **8403 Colesville Road** **Suite 870** **Silver Spring, MD 20910** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** **See Exhibit A** Is the claim subject to offset? ☑ No ☐ Yes	**$26,324.25**
3.5	**Nonpriority creditor's name and mailing address** **Acis Capital Management** **c/o Brian P. Shaw** **Rogge Dunn Group PC** **500 N. Akard Street Ste 1900** **Dallas, TX 75201** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☑ Contingent ☑ Unliquidated ☑ Disputed **Basis for the claim:** **Litigation Claim** Is the claim subject to offset? ☑ No ☐ Yes	**Unknown**
3.6	**Nonpriority creditor's name and mailing address** **Acis Capital Management, L.P.** **c/o Brian P. Shaw** **Rogge Dunn Group, PC** **500 N. Akard Street Ste 1900** **Dallas, TX 75201** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☑ Contingent ☑ Unliquidated ☑ Disputed **Basis for the claim:** **Litigation Claim** Is the claim subject to offset? ☑ No ☐ Yes	**Unknown**
3.7	**Nonpriority creditor's name and mailing address** **Action Shred of Texas** **1420 S. Barry Ave** **Dallas, TX 75223** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** **Trade Payable** Is the claim subject to offset? ☑ No ☐ Yes	**$3,825.00**
3.8	**Nonpriority creditor's name and mailing address** **Akin Gump Strauss Hauer & Feld LLP** **1700 Pacific Avenue** **Suite 4100** **Dallas, TX 75201** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** **See Exhibit A** Is the claim subject to offset? ☑ No ☐ Yes	**$113,947.86**
3.9	**Nonpriority creditor's name and mailing address** **All Employees** **300 Crescent Ct.** **Suite 700** **Dallas, TX 75201** **Date(s) debt was incurred** **2019** **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☑ Contingent ☑ Unliquidated ☐ Disputed **Basis for the claim:** **Employee Bonuses** Is the claim subject to offset? ☑ No ☐ Yes	**Unknown**

Debtor **Highland Capital Management, L.P.** Case number (if known) **19-34054-SGJ**
Name

3.10	**Nonpriority creditor's name and mailing address** **Allen ISD** **Attn: Elizabeth Weller** **2777 N. Stemmons Freeway** **Suite 1000** **Dallas, TX 75207**	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** **Ad Valorem Taxes** Is the claim subject to offset? ☑ No ☐ Yes	**$1,522.33** **Date(s) debt was incurred** **2019** **Last 4 digits of account number** **2301**
3.11	**Nonpriority creditor's name and mailing address** **Allen ISD** **Attn: Elizabeth Weller** **2777 N. Stemmons Freeway** **Suite 1000** **Dallas, TX 75207**	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** **Ad Valorem Taxes** Is the claim subject to offset? ☑ No ☐ Yes	**$2,188.30** **Date(s) debt was incurred** **2019** **Last 4 digits of account number** **9351**
3.12	**Nonpriority creditor's name and mailing address** **Alston & Bird LLP** **1201 W. Peachtree Street** **Atlanta, GA 30309-3424**	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** **See Exhibit A** Is the claim subject to offset? ☑ No ☐ Yes	**$2,234.00** **Date(s) debt was incurred** _ **Last 4 digits of account number** _
3.13	**Nonpriority creditor's name and mailing address** **American Arbitration Association** **120 Broadway. 21st Floor** **New York, NY 10271**	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** **See Exhibit A** Is the claim subject to offset? ☑ No ☐ Yes	**$55,511.80** **Date(s) debt was incurred** _ **Last 4 digits of account number** _
3.14	**Nonpriority creditor's name and mailing address** **American Solutions for Business** **NW#7794** **PO Box 1450** **Minneapolis, MN 55485-7794**	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** **Trade Payable** Is the claim subject to offset? ☑ No ☐ Yes	**$7,470.04** **Date(s) debt was incurred** _ **Last 4 digits of account number** _
3.15	**Nonpriority creditor's name and mailing address** **Andrews Kurth** **111 Congress Ave** **Suite 1700** **Attn: Scott Brister** **Austin, TX 78701**	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** **See Exhibit A** Is the claim subject to offset? ☑ No ☐ Yes	**$137,637.81** **Date(s) debt was incurred** _ **Last 4 digits of account number** _
3.16	**Nonpriority creditor's name and mailing address** **Arkadin, Inc.** **Lockbox #32726** **Collection Center Dr** **Chicago, IL 60693-0726**	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** **Trade Payable** Is the claim subject to offset? ☑ No ☐ Yes	**$647.59** **Date(s) debt was incurred** _ **Last 4 digits of account number** _

Debtor **Highland Capital Management, L.P.** Case number (if known) **19-34054-SGJ**
Name

3.17	**Nonpriority creditor's name and mailing address** **ASW Law Limited** **Crawford House** **50 Cedar Avenue** **Hamilton HM11 Bermuda** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** **See Exhibit A** Is the claim subject to offset? ☑ No ☐ Yes	**$77,044.60**
3.18	**Nonpriority creditor's name and mailing address** **AT&T** **PO BOX 5001** **Carol Stream, IL 60197-5001** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** **Trade Payable** Is the claim subject to offset? ☑ No ☐ Yes	**$927.16**
3.19	**Nonpriority creditor's name and mailing address** **AT&T Mobilty** **PO Box 6444** **Carol Stream, IL 60197-6444** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** **Trade Payable** Is the claim subject to offset? ☑ No ☐ Yes	**$6,728.59**
3.20	**Nonpriority creditor's name and mailing address** **Bates White, LLC** **2001 K Street, NW** **North Building, Suite 500** **Washington, DC 20006** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** **See Exhibit A** Is the claim subject to offset? ☑ No ☐ Yes	**$90,855.79**
3.21	**Nonpriority creditor's name and mailing address** **Bell Nunnally & Martin LLP** **3232 MCKINNEY AVE** **STE 1400** **DALLAS, TX 75204** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** **See Exhibit A** Is the claim subject to offset? ☑ No ☐ Yes	**$6,934.79**
3.22	**Nonpriority creditor's name and mailing address** **Bloomberg Finance LP** **731 Lexington Ave.** **New York, NY 10022** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** **Trade Payable** Is the claim subject to offset? ☑ No ☐ Yes	**$25,384.89**
3.23	**Nonpriority creditor's name and mailing address** **Boies, Schiller & Flexner LLP** **5301 Wisconsin Ave NW** **Washington, DC 20015-2015** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** **See Exhibit A** Is the claim subject to offset? ☑ No ☐ Yes	**$115,714.80**
3.24	**Nonpriority creditor's name and mailing address** **Brandywine Process Servers, Ltd.** **PO Box 1360** **Wilmington, DE 19899** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** **Trade Payable** Is the claim subject to offset? ☑ No ☐ Yes	**$69.00**

Debtor **Highland Capital Management, L.P.** Case number (if known) **19-34054-SGJ**
Name

3.25	**Nonpriority creditor's name and mailing address** **Caledonian Directors Limited** **PO Box 1043** **George Town** **Grand Cayman KY1-1002** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** **See Exhibit A** Is the claim subject to offset? ☑ No ☐ Yes	**$325.00**
3.26	**Nonpriority creditor's name and mailing address** **Canteen Vending Services** **PO Box 417632** **Boston, MA 02241-7632** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** **Trade Payable** Is the claim subject to offset? ☑ No ☐ Yes	**$4,233.60**
3.27	**Nonpriority creditor's name and mailing address** **Carey International, Inc.** **7445 New Technology Way** **Frederick, MD 21703** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☑ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** **Uncompleted Transaction** Is the claim subject to offset? ☑ No ☐ Yes	**$2,059,337.01**
3.28	**Nonpriority creditor's name and mailing address** **Carey Olsen** **PO Box 10008** **Willow House, Cricket Square** **Grand Cayman KY1-1001** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** **See Exhibit A** Is the claim subject to offset? ☑ No ☐ Yes	**$38,930.00**
3.29	**Nonpriority creditor's name and mailing address** **Case Anywhere LLC** **21860 Burbank Blvd.** **Ste 125** **Woodland Hills, CA 91367** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** **See Exhibit A** Is the claim subject to offset? ☑ No ☐ Yes	**$417.20**
3.30	**Nonpriority creditor's name and mailing address** **CBIZ Valuation Group, LLC** **ATTN: ACCOUNTS RECEIVABLE** **PO BOX 849846** **DALLAS, TX 75284-9846** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** **See Exhibit A** Is the claim subject to offset? ☑ No ☐ Yes	**$545.77**
3.31	**Nonpriority creditor's name and mailing address** **CDW Direct** **PO Box 75723** **Chicago, IL 60675-5723** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** **Trade Payable** Is the claim subject to offset? ☑ No ☐ Yes	**$4,998.70**

Debtor **Highland Capital Management, L.P.** Case number (if known) **19-34054-SGJ**
Name

3.32	**Nonpriority creditor's name and mailing address** **Centroid** **1050 Wilshire Dr.** **Ste #170** **Troy, MI 48084** **Date(s) debt was incurred _** **Last 4 digits of account number _**	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** **Trade Payable** Is the claim subject to offset? ☑ No ☐ Yes	**$1,155.00**
3.33	**Nonpriority creditor's name and mailing address** **Chase Couriers, Inc** **1220 Champion Circle** **#114** **Carrollton, TX 75006** **Date(s) debt was incurred _** **Last 4 digits of account number _**	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** **Trade Payable** Is the claim subject to offset? ☑ No ☐ Yes	**$155.81**
3.34	**Nonpriority creditor's name and mailing address** **CLO Holdco, Ltd.** **c/o Grant Scott, Esq** **Myers Bigel Sibley & Sajovec, P.A.** **4140 Park Lake Ave, Ste 600** **Raleigh, NC 27612** **Date(s) debt was incurred _** **Last 4 digits of account number _**	**As of the petition filing date, the claim is:** *Check all that apply.* ☑ Contingent ☑ Unliquidated ☐ Disputed **Basis for the claim:** **Contractual Obligation** Is the claim subject to offset? ☑ No ☐ Yes	**$11,340,751.26**
3.35	**Nonpriority creditor's name and mailing address** **Cole Schotz** **Court Plaza North** **25 Main Street** **P.O. Box 800** **Hackensack, NJ 07602-0800** **Date(s) debt was incurred _** **Last 4 digits of account number _**	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** **See Exhibit A** Is the claim subject to offset? ☑ No ☐ Yes	**$198,760.29**
3.36	**Nonpriority creditor's name and mailing address** **Coleman Research Group, Inc.** **120 West 45th St** **25th Floor** **New York, NY 10036** **Date(s) debt was incurred _** **Last 4 digits of account number _**	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** **Trade Payable** Is the claim subject to offset? ☑ No ☐ Yes	**$52,500.00**
3.37	**Nonpriority creditor's name and mailing address** **Concur Technologies, Inc.** **18400 NE Union Hill Road** **Redmond, WA 98052** **Date(s) debt was incurred _** **Last 4 digits of account number _**	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** **Trade Payable** Is the claim subject to offset? ☑ No ☐ Yes	**$4,090.46**
3.38	**Nonpriority creditor's name and mailing address** **Connolly Gallagher LLP** **1201 North Market Street** **20th Floor** **Wilmington, DE 19801** **Date(s) debt was incurred _** **Last 4 digits of account number _**	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** **See Exhibit A** Is the claim subject to offset? ☑ No ☐ Yes	**$118,831.25**

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3.39	**Nonpriority creditor's name and mailing address** **Crescent Research** **PO Box 64-3622** **Vero Beach, FL 32964** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** **Trade Payable** Is the claim subject to offset? ☑ No ☐ Yes	**$1,200.00**
3.40	**Nonpriority creditor's name and mailing address** **CSI Global Deposition Services** **Accounting Dept-972-719-5000** **4950 N. O'Connor Rd, 1 st Fl** **Irving, TX 75062-2778** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** **See Exhibit A** Is the claim subject to offset? ☑ No ☐ Yes	**$826.01**
3.41	**Nonpriority creditor's name and mailing address** **CT Corp** **PO Box 4349** **Carol Stream, IL 60197-4349** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** **Trade Payable** Is the claim subject to offset? ☑ No ☐ Yes	**$515.25**
3.42	**Nonpriority creditor's name and mailing address** **CVE Technologies Group Inc.** **1414 S. Gustin Rd.** **Salt Lake City, UT 84104** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** **Trade Payable** Is the claim subject to offset? ☑ No ☐ Yes	**$1,500.00**
3.43	**Nonpriority creditor's name and mailing address** **Dallas County** **Attn: Elizabeth Weller** **2777 N. Stemmons Freeway** **Suite 1000** **Dallas, TX 75207** **Date(s) debt was incurred** **2019** **Last 4 digits of account number** **3150**	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** **Ad Valorem Taxes** Is the claim subject to offset? ☑ No ☐ Yes	**$47,809.87**
3.44	**Nonpriority creditor's name and mailing address** **Daniel Sheehan & Associates, PLLC** **8150 N. Central Expressway** **Suite 100** **Dallas, TX 75206** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** **See Exhibit A** Is the claim subject to offset? ☑ No ☐ Yes	**$21,226.25**
3.45	**Nonpriority creditor's name and mailing address** **Debevoise & Plimpton LLP** **c/o Accounting Dept. 28th Floor** **909 Third Ave** **New York, NY 10022** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** **See Exhibit A** Is the claim subject to offset? ☑ No ☐ Yes	**$20,658.79**

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3.46	**Nonpriority creditor's name and mailing address** **Denton County** **PO Box 90223** **Denton, TX 76202** **Date(s) debt was incurred** 2019 **Last 4 digits of account number** 0DEN	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** Ad Valorem Taxes Is the claim subject to offset? ☑ No ☐ Yes	**$553.46**
3.47	**Nonpriority creditor's name and mailing address** **Denton County** **PO Box 90223** **Denton, TX 76202** **Date(s) debt was incurred** 2019 **Last 4 digits of account number** 5DEN	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** Ad Valorem Taxes Is the claim subject to offset? ☑ No ☐ Yes	**$3.68**
3.48	**Nonpriority creditor's name and mailing address** **DLA Piper LLP (US)** **1900 N Pearl St, Suite 2200** **Dallas, TX 75201** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** See Exhibit A Is the claim subject to offset? ☑ No ☐ Yes	**$1,318,730.36**
3.49	**Nonpriority creditor's name and mailing address** **Dow Jones & Company, Inc.** **1211 Avenue of the Americas** **New York, NY 10036** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** Trade Payable Is the claim subject to offset? ☑ No ☐ Yes	**$1,038.26**
3.50	**Nonpriority creditor's name and mailing address** **DTCC ITP LLC** **PO Box 27590** **New York, NY 10087-7590** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** Trade Payable Is the claim subject to offset? ☑ No ☐ Yes	**$3.30**
3.51	**Nonpriority creditor's name and mailing address** **Duff & Phelps, LLC** **c/o David Landman** **Benesch, Friedlander, Coplan & Aronoff** **200 Public Sq. Suite 2300** **Cleveland, OH 44114-4000** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** See Exhibit A Is the claim subject to offset? ☑ No ☐ Yes	**$350,000.00**
3.52	**Nonpriority creditor's name and mailing address** **Elite Document Technology** **403 North Stemmons Freeway Suite 100** **Dallas, TX 75207** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** See Exhibit A Is the claim subject to offset? ☑ No ☐ Yes	**$5,837.30**
3.53	**Nonpriority creditor's name and mailing address** **Epiq eDiscovery Solutions** **Dept 2651** **PO Box 122651** **Dallas, TX 75312-2651** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** See Exhibit A Is the claim subject to offset? ☑ No ☐ Yes	**$9,972.65**

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3.54	**Nonpriority creditor's name and mailing address** **Eric Girard** **312 Polo Trl** **Colleyville, TX 76034** **Date(s) debt was incurred** 10/14/2019 **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** Consulting fee Is the claim subject to offset? ☑ No ☐ Yes	**$11,430.14**
3.55	**Nonpriority creditor's name and mailing address** **Felicity Toube QC** **3-4 South Square** **Gray's Inn** **London, WC1R 5HP** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** See Exhibit A Is the claim subject to offset? ☑ No ☐ Yes	**$1,546.65**
3.56	**Nonpriority creditor's name and mailing address** **Foley Gardere** **2021 McKinney Ave** **Suite 1600** **Dallas, TX 75201** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** See Exhibit A Is the claim subject to offset? ☑ No ☐ Yes	**$1,446,136.66**
3.57	**Nonpriority creditor's name and mailing address** **Four Seasons Plantscaping, LLC** **139 Turtle Creek Blvd.** **Dallas, TX 75207-6807** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** Trade Payable Is the claim subject to offset? ☑ No ☐ Yes	**$108.95**
3.58	**Nonpriority creditor's name and mailing address** **Gardner Haas PLLC** **2501 N. Harwood Street** **Suite 1250** **Dallas, TX 75201** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** See Exhibit A Is the claim subject to offset? ☑ No ☐ Yes	**$522.72**
3.59	**Nonpriority creditor's name and mailing address** **Gold's Gym International** **Attn: Corporate Billing** **125 E John Carpenter Frwy** **Suite 1300** **Irving, TX 75062** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** Trade Payable Is the claim subject to offset? ☑ No ☐ Yes	**$561.75**
3.60	**Nonpriority creditor's name and mailing address** **Greenwood Office Outfitters** **2951 Suffolk Drive** **Suite 640** **Fort Worth, TX 76133-1149** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** Trade Payable Is the claim subject to offset? ☑ No ☐ Yes	**$2,371.07**

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3.61	**Nonpriority creditor's name and mailing address** **Greyline Solutions** **PO Box 733976** **Dallas, TX 75373-3976** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** **See Exhibit A** Is the claim subject to offset? ☑ No ☐ Yes	**$11,250.00**
3.62	**Nonpriority creditor's name and mailing address** **Harder LLP** **132 S. RODEO DRIVE** **FOURTH FLOOR** **BEVERLY HILLS, CA 90212** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** **See Exhibit A** Is the claim subject to offset? ☑ No ☐ Yes	**$5,464.13**
3.63	**Nonpriority creditor's name and mailing address** **Highland Capital Management (Singapore)** **300 Crescent Ct.** **Suite 700** **Dallas, TX 75201** **Date(s) debt was incurred** **Prior to 12/31/2018** **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☑ Unliquidated ☐ Disputed **Basis for the claim:** **The balance shown is updated annually for service fees and has not been updated since 12/31/2018** Is the claim subject to offset? ☑ No ☐ Yes	**$248,745.28**
3.64	**Nonpriority creditor's name and mailing address** **Highland CLO Holdco** **300 Crescent Ct.** **Suite 700** **Dallas, TX 75201** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** **Interest payable** Is the claim subject to offset? ☑ No ☐ Yes	**$599,187.26**
3.65	**Nonpriority creditor's name and mailing address** **Highland CLO Holdco** **300 Crescent Ct.** **Suite 700** **Dallas, TX 75201** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** **Notes Payable** Is the claim subject to offset? ☑ No ☐ Yes	**$9,541,446.00**
3.66	**Nonpriority creditor's name and mailing address** **Highland RCP Offshore, LP** **300 Crescent Ct.** **Suite 700** **Dallas, TX 75201** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** **Unearned Revenue** Is the claim subject to offset? ☑ No ☐ Yes	**$2,447,870.00**
3.67	**Nonpriority creditor's name and mailing address** **Highland RCP, LP** **300 Crescent Ct.** **Suite 700** **Dallas, TX 75201** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** **Unearned Revenue** Is the claim subject to offset? ☑ No ☐ Yes	**$1,945,067.00**

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3.68	**Nonpriority creditor's name and mailing address** **Hunton Andrews Kurth LLP** **1445 Ross Avenue** **Suite 3700** **Dallas, TX 75202-2799** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** **See Exhibit A** Is the claim subject to offset? ☑ No ☐ Yes	**$107,221.92**
3.69	**Nonpriority creditor's name and mailing address** **ICE Data Pricing & Reference Data, LLC** **PO Box 98616** **Chicago, IL 60693** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** **Trade Payable** Is the claim subject to offset? ☑ No ☐ Yes	**$1,565.23**
3.70	**Nonpriority creditor's name and mailing address** **Intralinks** **P.O. Box 10259** **New York, NY 10259** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** **Trade Payable** Is the claim subject to offset? ☑ No ☐ Yes	**$7,995.00**
3.71	**Nonpriority creditor's name and mailing address** **JAMS, Inc** **PO Box 512850** **Los Angelos, CA 90051-0850** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** **See Exhibit A** Is the claim subject to offset? ☑ No ☐ Yes	**$1,352.27**
3.72	**Nonpriority creditor's name and mailing address** **Joshua & Jennifer Terry** **c/o Brian P. Shaw, Esq.** **Rogge Dunn Group, PC** **500 N. Akard Street, Suite 1900** **Dallas, TX 75201** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☑ Contingent ☑ Unliquidated ☑ Disputed **Basis for the claim:** **Litigation Claim** Is the claim subject to offset? ☑ No ☐ Yes	**$425,000.00**
3.73	**Nonpriority creditor's name and mailing address** **Katten Muchin Rosenman LLP** **525 W Monroe St** **Chicago, IL 60661-3693** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** **See Exhibit A** Is the claim subject to offset? ☑ No ☐ Yes	**$16,695.00**
3.74	**Nonpriority creditor's name and mailing address** **Kaufman County** **Attn: Elizabeth Weller** **2777 N. Stemmons Freeway** **Suite 1000** **Dallas, TX 75207** **Date(s) debt was incurred** **2019** **Last 4 digits of account number** **0606**	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** **Ad Valorem Taxes** Is the claim subject to offset? ☑ No ☐ Yes	**$585.09**

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3.75	**Nonpriority creditor's name and mailing address** **Kaufman County** **Attn: Elizabeth Weller** **2777 N. Stemmons Freeway** **Suite 1000** **Dallas, TX 75207** **Date(s) debt was incurred** 2019 **Last 4 digits of account number** 0600	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** Ad Valorem Taxes Is the claim subject to offset? ☑ No ☐ Yes	**$3,090.25**
3.76	**Nonpriority creditor's name and mailing address** **Kaufman County** **Attn: Elizabeth Weller** **2777 N. Stemmons Freeway** **Suite 1000** **Dallas, TX 75207** **Date(s) debt was incurred** 2019 **Last 4 digits of account number** 0600	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** Ad Valorem Taxes Is the claim subject to offset? ☑ No ☐ Yes	**$125.05**
3.77	**Nonpriority creditor's name and mailing address** **Kaufman County** **Attn: Elizabeth Weller** **2777 N. Stemmons Freeway** **Suite 1000** **Dallas, TX 75207** **Date(s) debt was incurred** 2019 **Last 4 digits of account number** 0600	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** Ad Valorem Taxes Is the claim subject to offset? ☑ No ☐ Yes	**$5,732.15**
3.78	**Nonpriority creditor's name and mailing address** **Legalpeople LLC** **134 N LaSalle Street** **Suite 800** **Chicago, IL 60602** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** See Exhibit A Is the claim subject to offset? ☑ No ☐ Yes	**$34,425.72**
3.79	**Nonpriority creditor's name and mailing address** **Levinger PC** **1445 Ross Avenue** **Suite 2500** **Dallas, TX 75202** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** See Exhibit A Is the claim subject to offset? ☑ No ☐ Yes	**$3,778.01**
3.80	**Nonpriority creditor's name and mailing address** **Lexitas** **PO Box 734298** **Dept. 2012** **Dallas, TX 75373-4298** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** See Exhibit A Is the claim subject to offset? ☑ No ☐ Yes	**$2,583.66**
3.81	**Nonpriority creditor's name and mailing address** **Loews Coronado Bay Resort** **4000 Coronado Bay Road** **Coronado, CA 92118** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** Trade Payable Is the claim subject to offset? ☑ No ☐ Yes	**$57,628.65**

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3.82	**Nonpriority creditor's name and mailing address** **Lynn Pinker Cox & Hurst, LLP** **2100 Ross Ave** **Suite 2700** **Dallas, TX 75201** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** **See Exhibit A** Is the claim subject to offset? ☑ No ☐ Yes	**$436,538.06**
3.83	**Nonpriority creditor's name and mailing address** **Maples and Calder** **UGLAND HOUSE** **PO BOX 309GT; S CHURCH ST** **George Town Grand Cayman** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** **See Exhibit A** Is the claim subject to offset? ☑ No ☐ Yes	**$25,800.11**
3.84	**Nonpriority creditor's name and mailing address** **MarkitWSO Corporation** **Three Lincoln Centre** **5430 LBJ Frwy; Ste 800** **Dallas, TX 75240** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** **Trade Payable** Is the claim subject to offset? ☑ No ☐ Yes	**$12,015.91**
3.85	**Nonpriority creditor's name and mailing address** **McKool Smith** **300 Crescent Court** **Suite 1500** **Dallas, TX 75201** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** **See Exhibit A** Is the claim subject to offset? ☑ No ☐ Yes	**$2,163,976.00**
3.86	**Nonpriority creditor's name and mailing address** **Meta-e Discovery LLC** **Six Landmark Square** **Fourth Floor** **Stamford, CT 06901** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** **See Exhibit A** Is the claim subject to offset? ☑ No ☐ Yes	**$780,645.36**
3.87	**Nonpriority creditor's name and mailing address** **Nick Meserve** **11835 Brandywine Ln** **Houston, TX 77024** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** **Trade Payable** Is the claim subject to offset? ☑ No ☐ Yes	**$300.00**
3.88	**Nonpriority creditor's name and mailing address** **NWCC, LLC** **c/o of Michael A. Battle** **Barnes & Thornburg, LLP** **1717 Pennsylvania Ave N.W. Ste 500** **Washington, DC 20006** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☑ Contingent ☑ Unliquidated ☑ Disputed **Basis for the claim:** **Litigation Claim** Is the claim subject to offset? ☑ No ☐ Yes	**$375,000.00**

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3.89	**Nonpriority creditor's name and mailing address** **Opus 2 International, Inc.** **100 Pine Street** **Suite 560** **San Francisco, CA 94111** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** **See Exhibit A** Is the claim subject to offset? ☑ No ☐ Yes	**$15,669.86**
3.90	**Nonpriority creditor's name and mailing address** **PACER Service Center** **P.O. Box 5208** **Portland, OR 97208-5208** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** **Trade Payable** Is the claim subject to offset? ☑ No ☐ Yes	**$435.30**
3.91	**Nonpriority creditor's name and mailing address** **Patrick Daugherty** **c/o Thomas A. Uebler** **McCollom D'Emilio Smith** **2751 Centerville Rd #401** **Wilmington, DE 19808** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☑ Contingent ☑ Unliquidated ☑ Disputed **Basis for the claim:** **Litigation Claim** Is the claim subject to offset? ☑ No ☐ Yes	**$11,700,000.00**
3.92	**Nonpriority creditor's name and mailing address** **Pitney Bowes- Purchase Power** **PO Box 371874** **Pittsburgh, PA 15250-2648** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** **Trade Payable** Is the claim subject to offset? ☑ No ☐ Yes	**$1,611.00**
3.93	**Nonpriority creditor's name and mailing address** **ProStar Services, Inc** **PO Box 110209** **Carrollton, TX 75011** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** **Trade Payable** Is the claim subject to offset? ☑ No ☐ Yes	**$1,064.58**
3.94	**Nonpriority creditor's name and mailing address** **Quintairos, Prieto Wood & Boyer** **865 S. Figueroa St** **10th FL** **Los Angeles, CA 90017** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** **See Exhibit A** Is the claim subject to offset? ☑ No ☐ Yes	**$8,608.17**
3.95	**Nonpriority creditor's name and mailing address** **Redeemer Committee - Highland Crusader** **Attn: Eric Felton** **731 Pleasant Ave.** **Glen Ellyn, IL 60137** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☑ Contingent ☑ Unliquidated ☑ Disputed **Basis for the claim:** **Litigation Claim** Is the claim subject to offset? ☐ No ☑ Yes	**$189,314,946.00**

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3.96	**Nonpriority creditor's name and mailing address** **Reid Collins & Tsai** **810 Seventh Ave Ste 410** **New York, NY 10019** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** **See Exhibit A** Is the claim subject to offset? ☑ No ☐ Yes	**$258,526.25**
3.97	**Nonpriority creditor's name and mailing address** **Scott Douglass & McConnico LLP** **303 Colorado St** **Ste 2400** **Austin, TX 78701** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** **See Exhibit A** Is the claim subject to offset? ☑ No ☐ Yes	**$1,478.59**
3.98	**Nonpriority creditor's name and mailing address** **Secured Access Systems, LLC** **1913 Walden Court** **Flower Mound, TX 75022** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** **Trade Payable** Is the claim subject to offset? ☑ No ☐ Yes	**$24.37**
3.99	**Nonpriority creditor's name and mailing address** **Siepe Services, LLC** **5440 Harvest Hill Road** **Suite 100** **Dallas, TX 75230** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** **Trade Payable** Is the claim subject to offset? ☑ No ☐ Yes	**$80,183.88**
3.100	**Nonpriority creditor's name and mailing address** **Southland Property Tax Consultants, Inc** **421 W. 3rd Street** **Ste 920** **Fort Worth, TX 76102** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** **Trade Payable** Is the claim subject to offset? ☑ No ☐ Yes	**$309.11**
3.101	**Nonpriority creditor's name and mailing address** **Squire Patton Boggs (US) LLP** **PO Box 643051** **Cincinnati, OH 45264** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** **See Exhibit A** Is the claim subject to offset? ☑ No ☐ Yes	**$5,208.40**
3.102	**Nonpriority creditor's name and mailing address** **Stanton Advisors LLC** **300 Coles Street** **Apt. 802** **Jersey City, NJ 07310** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** **See Exhibit A** Is the claim subject to offset? ☑ No ☐ Yes	**$10,000.00**

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3.103	**Nonpriority creditor's name and mailing address** **Stanton LLP** **9400 N Central Expwy** **Ste 1304** **Dallas, TX 75231**	**As of the petition filing date, the claim is:** *Check all that apply.* ☑ Contingent ☑ Unliquidated ☑ Disputed	**$90,712.65**
	Date(s) debt was incurred _	**Basis for the claim:** **See Exhibit A**	
	Last 4 digits of account number _	Is the claim subject to offset? ☑ No ☐ Yes	
3.104	**Nonpriority creditor's name and mailing address** **State Street Global Exchange** **Elkins/McSherry, LLC** **One Lincoln Street** **Boston, MA 02111**	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed	**$2,500.00**
	Date(s) debt was incurred _	**Basis for the claim:** **See Exhibit A**	
	Last 4 digits of account number _	Is the claim subject to offset? ☑ No ☐ Yes	
3.105	**Nonpriority creditor's name and mailing address** **Stinson Leonard Street LLP** **PO Box 843052** **Kansas City, MO 64184**	**As of the petition filing date, the claim is:** *Check all that apply.* ☑ Contingent ☑ Unliquidated ☑ Disputed	**$246,802.54**
	Date(s) debt was incurred _	**Basis for the claim:** **See Exhibit A**	
	Last 4 digits of account number _	Is the claim subject to offset? ☑ No ☐ Yes	
3.106	**Nonpriority creditor's name and mailing address** **Thomson West** **PO Box 64833** **St. Paul, MN 55164-0833**	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed	**$1,158.52**
	Date(s) debt was incurred _	**Basis for the claim:** **Trade Payable**	
	Last 4 digits of account number _	Is the claim subject to offset? ☑ No ☐ Yes	
3.107	**Nonpriority creditor's name and mailing address** **UBS AG, London Branch** **c/o Andrew Clubock, Esq.** **Latham & Watkins LLP** **555 11th Street NW #1000** **Washington, DC 20004**	**As of the petition filing date, the claim is:** *Check all that apply.* ☑ Contingent ☑ Unliquidated ☑ Disputed	**Unknown**
	Date(s) debt was incurred _	**Basis for the claim:** **Litigation Claim**	
	Last 4 digits of account number _	Is the claim subject to offset? ☑ No ☐ Yes	
3.108	**Nonpriority creditor's name and mailing address** **UBS Securities LLC** **c/o Andrew Clubock** **Latham & Watkins LLP** **555 11th Street NW #1000** **Washington, DC 20004**	**As of the petition filing date, the claim is:** *Check all that apply.* ☑ Contingent ☑ Unliquidated ☑ Disputed	**Unknown**
	Date(s) debt was incurred _	**Basis for the claim:** **Litigation Claim**	
	Last 4 digits of account number _	Is the claim subject to offset? ☑ No ☐ Yes	
3.109	**Nonpriority creditor's name and mailing address** **UPS Supply Chain Solutions** **28013 Network Place** **Chicago, IL 60673-1280**	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed	**$90.45**
	Date(s) debt was incurred _	**Basis for the claim:** **Trade Payable**	
	Last 4 digits of account number _	Is the claim subject to offset? ☑ No ☐ Yes	

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3.110	**Nonpriority creditor's name and mailing address** **Wakefield Quin** **Victoria Place** **31 Victoria St** **Hamilton, HM10 Bermuda** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** **See Exhibit A** Is the claim subject to offset? ☑ No ☐ Yes	**$2,334.80**
3.111	**Nonpriority creditor's name and mailing address** **Wilks, Lukoff & Bracegirdle, LLC** **4250 Lancaster Pike** **#200** **Wilmington, DE 19805** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** **Trade Payable** Is the claim subject to offset? ☑ No ☐ Yes	**$3,411.87**
3.112	**Nonpriority creditor's name and mailing address** **Xerox Corporation** **PO Box 650361** **Dallas, TX 75265** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** **Trade Payable** Is the claim subject to offset? ☑ No ☐ Yes	**$2,348.31**

Part 3: List Others to Be Notified About Unsecured Claims

4. List in alphabetical order any others who must be notified for claims listed in Parts 1 and 2. Examples of entities that may be listed are collection agencies, assignees of claims listed above, and attorneys for unsecured creditors.

If no others need to be notified for the debts listed in Parts 1 and 2, do not fill out or submit this page. If additional pages are needed, copy the next page.

Name and mailing address	On which line in Part1 or Part 2 is the related creditor (if any) listed?	Last 4 digits of account number, if any

Part 4: Total Amounts of the Priority and Nonpriority Unsecured Claims

5. Add the amounts of priority and nonpriority unsecured claims.

			Total of claim amounts
5a. Total claims from Part 1	5a.	$	**Unknown**
5b. Total claims from Part 2	5b.	+ $	**244,617,627.33**
5c. Total of Parts 1 and 2 Lines 5a + 5b = 5c.	5c.	$	**244,617,627.33**

Highland Capital Management LP
Case # 19-34054-SGJ
Schedule F - Exhibit A

Law Firm	Gross Balance [1]	HCMLP Balance [2]	Other Balance [3]
McKool Smith	2,163,976.00	2,163,976.00	-
Foley Gardere	1,601,136.66	1,446,136.66	155,000.00
DLA Piper LLP (US)	1,318,730.36	1,318,730.36	-
Meta-e Discovery LLC	1,378,061.34	780,645.36	597,415.98
Lynn Pinker Cox & Hurst, LLP	529,303.56	436,538.06	92,765.50
Duff & Phelps, LLC	350,000.00	350,000.00	-
Reid Collins & Tsai	1,087,474.36	258,526.25	828,948.11
Stinson Leonard Street LLP	246,802.54	246,802.54	-
Cole Schotz	243,667.06	198,760.29	44,906.77
Andrews Kurth	771,467.89	137,637.81	633,830.08
Connolly Gallagher LLP	118,831.25	118,831.25	-
Boies, Schiller & Flexner LLP	115,714.80	115,714.80	-
Akin Gump Strauss Hauer & Feld LLP	1,739,149.45	113,947.86	1,625,201.59
Abrams & Bayliss	108,399.83	108,399.83	-
Hunton Andrews Kurth LLP	205,378.20	107,221.92	98,156.28
Bates White, LLC	90,855.79	90,855.79	-
Stanton LLP	90,712.65	90,712.65	-
ASW Law Limited	77,044.60	77,044.60	-
American Arbitration Association	55,511.80	55,511.80	-
Carey Olsen	38,930.00	38,930.00	-
Legalpeople LLC	34,425.72	34,425.72	-
ACA Compliance Group	48,526.43	26,324.25	22,202.18
Maples and Calder	200,758.82	25,800.11	174,958.71
Daniel Sheehan & Associates, PLLC	21,226.25	21,226.25	-
Debevoise & Plimpton LLP	48,300.79	20,658.79	27,642.00
Katten Muchin Rosenman LLP	16,695.00	16,695.00	-
Opus 2 International, Inc.	39,214.03	15,669.86	23,544.17
MarkitWSO Corporation	154,632.25	12,015.91	142,616.34
Greyline Solutions	11,250.00	11,250.00	-
Stanton Advisors LLC	10,000.00	10,000.00	-
Epiq eDiscovery Solutions	21,889.05	9,972.65	11,916.40
Quintairos, Prieto Wood & Boyer	12,897.42	8,608.17	4,289.25
Bell Nunnally & Martin LLP	6,934.79	6,934.79	-
Elite Document Technology	49,300.00	5,837.30	43,462.70
Harder LLP	5,464.13	5,464.13	-
Squire Patton Boggs (US) LLP	50,000.00	5,208.40	44,791.60
Levinger PC	12,884.21	3,778.01	9,106.20
Lexitas	2,583.66	2,583.66	-
State Street Global Exchange	2,500.00	2,500.00	-
Wakefield Quin	4,760.60	2,334.80	2,425.80
Alston & Bird LLP	2,234.00	2,234.00	-
Felicity Toube QC	6,208.22	1,546.65	4,661.57
Scott Douglass & McConnico LLP	4,983.50	1,478.59	3,504.91
JAMS, Inc	24,097.28	1,352.27	22,745.01
CSI Global Deposition Services	826.01	826.01	-
CBIZ Valuation Group, LLC	8,269.26	545.77	7,723.49
Gardner Haas PLLC	7,920.00	522.72	7,397.28
Case Anywhere LLC	417.20	417.20	-
Caledonian Directors Limited	325.00	325.00	-
Winston & Strawn LLP	1,770,877.30	-	1,770,877.30
K&L Gates LLP	160,228.40	-	160,228.40
Davis Polk & Wardwell LLP	105,140.83	-	105,140.83

Highland Capital Management LP
Case # 19-34054-SGJ
Schedule F - Exhibit A

Law Firm	Gross Balance [1]	HCMLP Balance [2]	Other Balance [3]
Baker & McKenzie LLP	131,938.68	-	131,938.68
Zuckerman Spaeder LLP	127,295.18	-	127,295.18
Robbins, Russell, Englert, Orseck, Untereiner & Sauber LLP	100,476.30	-	100,476.30
Berkeley Research Group, LLC	60,976.22	-	60,976.22
Day Pitney LLP	55,793.69	-	55,793.69
Milbank, Tweed, Hadley	52,993.21	-	52,993.21
Garman Turner Gordon	42,222.06	-	42,222.06
Wick Phillips Gould & Martin, LLP - Operating Account	27,749.45	-	27,749.45
Pope, Hardwicke, Christie, Schell, Kelly & Taplett LLP	27,102.33	-	27,102.33
Ober Kaler Grimes & Shriver	24,939.27	-	24,939.27
ValueScope	22,357.65	-	22,357.65
Brian Lauten, PC	16,650.00	-	16,650.00
Hutchison & Steffen, PLLC	15,156.95	-	15,156.95
Counsel Press LLC	14,926.01	-	14,926.01
Integra FEC LLC	13,409.52	-	13,409.52
Rowlett Hill Collins LLP	12,562.50	-	12,562.50
Willkie Farr & Gallagher LLP	9,640.00	-	9,640.00
Flemming Zulack Williamson Zauderer	8,356.25	-	8,356.25
TSG Reporting, Inc	6,589.70	-	6,589.70
Todd Travers	4,987.50	-	4,987.50
Brownstein Hyatt Farber Schreck, LLP	4,777.21	-	4,777.21
Morris James LLP - Invoices	4,313.10	-	4,313.10
Wachtell, Lipton, Rosen & Katz	3,752.48	-	3,752.48
Lenz & Staehelin	3,568.15	-	3,568.15
Quinn Emanuel Trial Lawyers	3,180.65	-	3,180.65
Ogier	2,794.97	-	2,794.97
Lowenstein Sandler	2,778.72	-	2,778.72
J. Sagar Associates	2,391.20	-	2,391.20
Bifferato Gentilotti LLC	1,931.41	-	1,931.41
Bass, Berry & Sims PLC	1,888.00	-	1,888.00
TransPerfect Translations International Inc.	1,646.59	-	1,646.59
Kim & Chang	1,487.11	-	1,487.11
WilmerHale	1,056.00	-	1,056.00
Bailey Kennedy, LLP	900.00	-	900.00
CT Corporation	899.00	-	899.00
Cooke, Young & Keidan LLP	804.40	-	804.40
Elite Deposition Technologies	783.61	-	783.61
Gibson, Dunn & Crutcher LLP	651.60	-	651.60
US Legal Support	507.06	-	507.06
Esquire Deposition Solutions	253.42	-	253.42
Kim Leslie Shafer	225.00	-	225.00
Akerman LLP	69.93	-	69.93
Total	**15,993,700.38**	**8,511,459.84**	**7,482,240.53**

[1] Represents gross amount of invoices received where the Debtor is counterparty to the engagement letter.

[2] Represents allocated amount of invoices owing by Debtor.

[3] Represents allocated amount of invoices owing by non-Debtor party. Amount are not final amounts and may be subject to dispute.

Fill in this information to identify the case:

Debtor name **Highland Capital Management, L.P.**

United States Bankruptcy Court for the: NORTHERN DISTRICT OF TEXAS

Case number (if known) **19-34054-SGJ**

☐ Check if this is an amended filing

Official Form 206G

Schedule G: Executory Contracts and Unexpired Leases

12/15

Be as complete and accurate as possible. If more space is needed, copy and attach the additional page, number the entries consecutively.

1. **Does the debtor have any executory contracts or unexpired leases?**
   - ☐ No. Check this box and file this form with the debtor's other schedules. There is nothing else to report on this form.
   - ☑ Yes. Fill in all of the information below even if the contacts of leases are listed on *Schedule A/B: Assets - Real and Personal Property* (Official Form 206A/B).

2. List all contracts and unexpired leases		**State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease**
2.1. State what the contract or lease is for and the nature of the debtor's interest	**Subscription To 13D Global Strategy And Research Services**	
State the term remaining	**121 Days**	**13D Global Strategy and Research 491 N Main Street Ketchum, ID 83340**
List the contract number of any government contract		
2.2. State what the contract or lease is for and the nature of the debtor's interest	**Subscription Agreement**	
State the term remaining	**76 Days**	**4Cast Inc. 420 Lexington Avenue Suite 2147 New York, NY 10170**
List the contract number of any government contract		
2.3. State what the contract or lease is for and the nature of the debtor's interest	**Servicing Agreement**	
State the term remaining	**Termination Contingent**	**Aberdeen Loan Funding, Ltd. 190 Elgin Avenue George Town, Grand Cayman KY1-9005, Cayman Islands**
List the contract number of any government contract		
2.4. State what the contract or lease is for and the nature of the debtor's interest	**Janitorial Service**	
State the term remaining	**198 Days**	**ABM Texas General Services, Inc. 2020 Westridge Drive Irving, TX 75038**
List the contract number of any government contract		

Debtor 1 **Highland Capital Management, L.P.** Case number (*if known*) **19-34054-SGJ**
First Name Middle Name Last Name

Additional Page if You Have More Contracts or Leases

2. List all contracts and unexpired leases		**State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease**
2.5.	State what the contract or lease is for and the nature of the debtor's interest: **Compliance Services** State the term remaining: **0 Days** List the contract number of any government contract:	**ACA Compliance Group** **8403 Colesville Road** **Ste 870** **Silver Spring, MD 20910**
2.6.	State what the contract or lease is for and the nature of the debtor's interest: **Tamale Software** State the term remaining: **351 Days** List the contract number of any government contract:	**Advent Software, Inc.** **600 Townsend Street** **Ste 500** **San Francisco, CA 94103**
2.7.	State what the contract or lease is for and the nature of the debtor's interest: **Geneva Software** State the term remaining: **207 Days** List the contract number of any government contract:	**Advent Software, Inc.** **Three Lincoln Centre** **5430 LBJ Freeway Ste 800** **Dallas, TX 75240**
2.8.	State what the contract or lease is for and the nature of the debtor's interest: **Software License Global Strategy And China** State the term remaining: **167 Days** List the contract number of any government contract:	**Alpine Macro** **1130 Sherbrooke St West PH1** **Montreal, Quebec** **Canada, H3A2M8**
2.9.	State what the contract or lease is for and the nature of the debtor's interest: **Travel Account Purchase And Usage** State the term remaining: **254 Days** List the contract number of any government contract:	**American Airlines, Inc.** **PO Box 619616 MD4106** **Ft Worth, TX 76155**
2.10.	State what the contract or lease is for and the nature of the debtor's interest: **Actuarial Services** State the term remaining: **76 Days** List the contract number of any	**Aon Consulting, Inc.** **445 Hutchinson Ave** **Ste 900** **Columbus, OH 43235**

Debtor 1 **Highland Capital Management, L.P.** Case number (*if known*) **19-34054-SGJ**
First Name Middle Name Last Name

Additional Page if You Have More Contracts or Leases

2. List all contracts and unexpired leases		State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease
government contract		
2.11. State what the contract or lease is for and the nature of the debtor's interest	**Enterprise Technology Research**	
State the term remaining	**746 Days**	**Aptiviti, Inc.** **129 West 29th Street** **3rd Floor** **New York, NY 10001**
List the contract number of any government contract		
2.12. State what the contract or lease is for and the nature of the debtor's interest	**Employment Practices Insurance**	
State the term remaining	**147 Days**	**Argonaut Insurance Company** **225 W Washington Street** **24th floor** **Chicago, IL 60606**
List the contract number of any government contract		
2.13. State what the contract or lease is for and the nature of the debtor's interest	**Internet**	
State the term remaining	**3 Years**	**AT&T** **208 South Akard Street** **Dallas, TX 75201**
List the contract number of any government contract		
2.14. State what the contract or lease is for and the nature of the debtor's interest	**Cell Phones**	
State the term remaining	**Monthly**	**AT&T Mobility** **208 South Akard Street** **Dallas, TX 75202**
List the contract number of any government contract		
2.15. State what the contract or lease is for and the nature of the debtor's interest	**Dev Server Hosting**	
State the term remaining	**Monthly**	**AWS** **410 Terry Avenue North** **Seattle, WA 98109**
List the contract number of any government contract		
2.16. State what the contract or lease is for and the nature of the debtor's interest	**Investment Research**	**BCA Research Inc.** **1002 Sherbrooke Street West** **Suite 1600** **Montreal, Quebec, CA 3L6**

Debtor 1 **Highland Capital Management, L.P.** Case number (*if known*) **19-34054-SGJ**
First Name Middle Name Last Name

Additional Page if You Have More Contracts or Leases

2. List all contracts and unexpired leases	State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease

State the term remaining **76 Days**

List the contract number of any government contract

2.17. State what the contract or lease is for and the nature of the debtor's interest: **Bloomberg**

State the term remaining: **60 day termination; two year autorenewal; after initial term of 07/15/201**

List the contract number of any government contract

Bloomberg Finance, L.P.
731 Lexington Ave
New York, NY 10022

2.18. State what the contract or lease is for and the nature of the debtor's interest: **Erisa Group Health Plan**

State the term remaining: **41 Days**

List the contract number of any government contract

Blue Cross Blue Shield of Texas
1001 E. Lookout Dr.
Richardson, TX 75082

2.19. State what the contract or lease is for and the nature of the debtor's interest: **Stop Loss Coverage**

State the term remaining: **41 Days**

List the contract number of any government contract

Blue Cross Blue Shield of Texas
1001 E. Lookout Dr.
Richardson, TX 75082

2.20. State what the contract or lease is for and the nature of the debtor's interest: **Electronic Access**

State the term remaining: **Perpetuity**

List the contract number of any government contract

BNY Mellon
525 Penn Place
Pittsburgh, PA 15219

2.21. State what the contract or lease is for and the nature of the debtor's interest: **Cloud Doc Hosting**

State the term remaining: **Monthly**

List the contract number of any government contract

BOX.com
900 Jefferson Ave
Redwood City, CA 94063

Debtor 1 **Highland Capital Management, L.P.** Case number (*if known*) **19-34054-SGJ**
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Additional Page if You Have More Contracts or Leases

2. List all contracts and unexpired leases	State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease

2.22.	State what the contract or lease is for and the nature of the debtor's interest	**Servicing Agreement**	
	State the term remaining	**Termination Contingent**	**Brentwood CLO, Ltd.** **Maples Finance Limited, PO Box 1093GT** **Queensgate House, South Church Street** **George Town, Grand Cayman, Cayman Island**
	List the contract number of any government contract		
2.23.	State what the contract or lease is for and the nature of the debtor's interest	**E-Ballot And Meeting Information Services**	
	State the term remaining	**162 Days**	Broadridge Investor Communication Solutions **One Park Ave** **New York, NY 10016**
	List the contract number of any government contract		
2.24.	State what the contract or lease is for and the nature of the debtor's interest	**Advisory Services Agreement**	
	State the term remaining	**Termination Contingent**	**Carey International, Inc.** **4530 Wisconsin Ave NW** **Washington, DC 20016**
	List the contract number of any government contract		
2.25.	State what the contract or lease is for and the nature of the debtor's interest	**Advisory Services Agreement**	
	State the term remaining	**Termination Contingent**	**CCS Medical, Inc.** **14255 49th Street North** **Suite 301** **Clearwater, FL 33762**
	List the contract number of any government contract		
2.26.	State what the contract or lease is for and the nature of the debtor's interest	**Wan Line And Telephones**	
	State the term remaining	**Monthly**	**CenturyLink** **100 CenturyLink Drive** **Monroe, LA 71203**
	List the contract number of any government contract		
2.27.	State what the contract or lease is for and the nature of the debtor's interest	**Second Amended And Restated Investment Advisory Agreement**	Charitable DAF Fund, L.P. / Charitable DAF GP , LLC **Attention: Grant Scott** **4140 Park Lake Avenue** **Suite 600** **Raleigh, NC 27612**
	State the term remaining	**90 Day Termination Provision; Annual Autoextend Following**	

Debtor 1 **Highland Capital Management, L.P.** Case number (*if known*) **19-34054-SGJ**
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Additional Page if You Have More Contracts or Leases

2. List all contracts and unexpired leases		**State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease**
	Initial Term Ending 12/31/2017	
List the contract number of any government contract		
2.28. State what the contract or lease is for and the nature of the debtor's interest	**Second Amended And Restated Service Agreement**	
State the term remaining	**60 Day Termination Provision; Annual Autoextend Following Initial Term 12/31/2017**	Charitable DAF Fund, L.P. / Charitable DAF GP , LLC **Attention: Grant Scott** **4140 Park Lake Avenue** **Suite 600** **Raleigh, NC 27612**
List the contract number of any government contract		
2.29. State what the contract or lease is for and the nature of the debtor's interest	**Workers Comp**	
State the term remaining	**254 Days**	**Chubb** **2001 Bryan St.** **Ste. 3600** **Dallas, TX 75201**
List the contract number of any government contract		
2.30. State what the contract or lease is for and the nature of the debtor's interest	**Cisco Hardware Support**	
State the term remaining	**2 Years**	**Cisco** **170 West Tasman Dr** **San Jose, CA 95134**
List the contract number of any government contract		
2.31. State what the contract or lease is for and the nature of the debtor's interest	**Conference Services**	
State the term remaining	**Monthly**	**Cisco Webex** **170 West Tasman Dr** **San Jose, CA 95134**
List the contract number of any government contract		
2.32. State what the contract or lease is for and the nature of the debtor's interest	**Webex Seminars**	
State the term remaining	**Annual**	**Cisco Webex Events** **170 West Tasman Dr** **San Jose, CA 95134**
List the contract number of any government contract		

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Additional Page if You Have More Contracts or Leases

2. List all contracts and unexpired leases		**State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease**
2.33. State what the contract or lease is for and the nature of the debtor's interest	**Pr Services**	
State the term remaining	**121 Days**	**Cision US Inc.** **1 Prudential Plaza, 7th floor** **130 E Randolph Street** **Chicago, IL 60601**
List the contract number of any government contract		
2.34. State what the contract or lease is for and the nature of the debtor's interest	**Reference Portfolio Management Agreement**	
State the term remaining	**Termination Contingent**	**Citibank, N.A.** **Attnetion: Doug Warren** **390 Greenwich Street** **Fourth Floor** **New York, NY 10013**
List the contract number of any government contract		
2.35. State what the contract or lease is for and the nature of the debtor's interest	**Saas Solutions**	
State the term remaining	**295 Days**	**Clearwater Analytics LLC** **777 W Main St** **Ste 900** **Boise, ID 83702**
List the contract number of any government contract		
2.36. State what the contract or lease is for and the nature of the debtor's interest	**Research**	
State the term remaining	**77 Days**	**Coleman Research** **575 5th Ave 21st Floor** **New York, NY 10017**
List the contract number of any government contract		
2.37. State what the contract or lease is for and the nature of the debtor's interest	**Research Service Credits**	
State the term remaining	**76 Days**	**Coleman Research Group, Inc.** **575 5th Avenue** **21st Floor** **New York, NY 10017**
List the contract number of any government contract		
2.38. State what the contract or lease is for and the nature of the debtor's interest	**San Backup**	
State the term remaining	**Annual**	**Commvault Backup** **1 Commvault Way** **Tinton Falls, NJ 07724**

Debtor 1 **Highland Capital Management, L.P.** Case number (*if known*) **19-34054-SGJ**
First Name Middle Name Last Name

Additional Page if You Have More Contracts or Leases

2. List all contracts and unexpired leases	State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease

List the contract number of any government contract

2.39. State what the contract or lease is for and the nature of the debtor's interest: **Avaya Maintenance**

State the term remaining: **Annual**

List the contract number of any government contract

Converge One
10900 Nesbitt Avenue South
Bloomington, MN 55437

2.40. State what the contract or lease is for and the nature of the debtor's interest: **Amended And Restated Advisory Services Agreement**

State the term remaining: **Termination Contingent**

List the contract number of any government contract

Cornerstone Healthcare Group Holding, Inc
2200 Ross Ave
Ste. 5400
Dallas, TX 75201

2.41. State what the contract or lease is for and the nature of the debtor's interest: **Office Lease**

State the term remaining: **927 Days**

List the contract number of any government contract

Crescent TC Investors, L.P.
200 Crescent Court
Ste 250
Dallas, TX 75201

2.42. State what the contract or lease is for and the nature of the debtor's interest: **Filing/Formation/Registered Agent**

State the term remaining: **N/A - As Needed**

List the contract number of any government contract

CT Corporation
1999 Bryan Street
Ste 900
Dallas, TX 75201

2.43. State what the contract or lease is for and the nature of the debtor's interest: **Emergency Backup It Support**

State the term remaining: **Monthly**

List the contract number of any government contract

CVE technology
3000 E Plano Pkwy
Plano, TX 75074

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Additional Page if You Have More Contracts or Leases

2. List all contracts and unexpired leases		State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease
2.44. State what the contract or lease is for and the nature of the debtor's interest	**Anti Virus Software**	
State the term remaining	**Annual**	**Cylance** **400 Spectrum Center Dr.** **Suite 900** **Irvine, CA 92618**
List the contract number of any government contract		
2.45. State what the contract or lease is for and the nature of the debtor's interest	**Compliance Information Service**	
State the term remaining	**30 Day Termination**	**Debt Domain** **295 Madison Ave** **Ste 24** **New York, NY 10017**
List the contract number of any government contract		
2.46. State what the contract or lease is for and the nature of the debtor's interest	**Cable News**	
State the term remaining	**Monthly**	**DirectTV** **208 South Akard Street** **Dallas, TX 75202**
List the contract number of any government contract		
2.47. State what the contract or lease is for and the nature of the debtor's interest	**Cobra Admin**	
State the term remaining	**443 Days**	**Discovery Benefits Inc** **4321 20th Ave. S.** **Fargo, ND 58103**
List the contract number of any government contract		
2.48. State what the contract or lease is for and the nature of the debtor's interest	**2 Factor Authentication**	
State the term remaining	**Monthly**	**DUO Security** **170 West Tasman Dr** **San Jose, CA 95134**
List the contract number of any government contract		
2.49. State what the contract or lease is for and the nature of the debtor's interest	**Servicing Agreement**	
State the term remaining	**Termination Contingent**	**Eastland CLO Ltd.** **190 Elgin Avenue** **George Town, Grand Cayman** **KY1-9005, Cayman Islands**
List the contract number of any		

Debtor 1 **Highland Capital Management, L.P.** Case number (*if known*) **19-34054-SGJ**
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Additional Page if You Have More Contracts or Leases

2. List all contracts and unexpired leases		State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease
government contract		
2.50. State what the contract or lease is for and the nature of the debtor's interest	**Trading Cost Analytic Services**	
State the term remaining	**30 Day Termination**	**Elkins McSherry 225 Liberty St 24th floor New York, NY 10281**
List the contract number of any government contract		
2.51. State what the contract or lease is for and the nature of the debtor's interest	**Disaster Recovery Site**	
State the term remaining	**3 Years**	**Evoque Data Center 250 Vesey Street 15th Floor New York, NY 10281**
List the contract number of any government contract		
2.52. State what the contract or lease is for and the nature of the debtor's interest	**Load Balancers**	
State the term remaining	**Annual**	**F5 801 5th Ave Seattle, WA 98104**
List the contract number of any government contract		
2.53. State what the contract or lease is for and the nature of the debtor's interest	**Amended And Restated Shared Services Agreement**	
State the term remaining	**Termination Contingent**	**Falcon E&P Opportunities GP, LLC c/o PetroCap, LLC, Attention: Marc Manzo 2602 McKinney Avenue Suite 400 Dallas, TX 75204**
List the contract number of any government contract		
2.54. State what the contract or lease is for and the nature of the debtor's interest	**Software**	
State the term remaining	**169 Days**	**Financial Tracking 1111 East Putnam Ave Ste 304 Riverside, CT 06878**
List the contract number of any government contract		
2.55. State what the contract or lease is for and the nature of the debtor's interest	**Pr Services**	**First Page Management LLC dba StatusLabs 151 South 1st Ste 100 Austin, TX 78704**

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Additional Page if You Have More Contracts or Leases

2. List all contracts and unexpired leases	State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease

State the term remaining **16 Days**

List the contract number of any government contract

2.56. State what the contract or lease is for and the nature of the debtor's interest: **Primary Data Center**

State the term remaining: **Monthly**

List the contract number of any government contract

Flexential
11900 East Cornell Avenue
Building B, 3rd Floor
Aurora, CO 80014

2.57. State what the contract or lease is for and the nature of the debtor's interest: **Plant Maintenance**

State the term remaining: **166 Days**

List the contract number of any government contract

Four Seasons Plantscaping, LLC
PO Box 793429
Dallas, TX 75379

2.58. State what the contract or lease is for and the nature of the debtor's interest: **Data Accessed Via Bloomberg Terminals**

State the term remaining: **290 Days**

List the contract number of any government contract

FT Interactive Date Corporation
22 Crosby Drive
Bedford, MA 01730

2.59. State what the contract or lease is for and the nature of the debtor's interest: **Expert Services**

State the term remaining: **N/A**

List the contract number of any government contract

FTI Consulting, Inc.
Three Times Square
10th floor
NewYork, NY 10036

2.60. State what the contract or lease is for and the nature of the debtor's interest: **Portfolio Management Agreement**

State the term remaining: **Termination Contingent**

List the contract number of any government contract

Gleneagles CLO, Ltd.
PO Box 1093 GT, Queensgate House
South Church Street, George Town
Grand Cayman, Cayman Islands

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Additional Page if You Have More Contracts or Leases

2. List all contracts and unexpired leases		**State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease**
2.61. State what the contract or lease is for and the nature of the debtor's interest	**Domain Registrations**	
State the term remaining	**1 Year**	**GoDaddy** **14455 N. Hayden Rd.** **Ste. 219** **Scottsdale, AZ 85260**
List the contract number of any government contract		
2.62. State what the contract or lease is for and the nature of the debtor's interest	**Corporate Wellness**	
State the term remaining	**197 Days**	**Gold's Texas Holdings Group, Inc** **4001 Maples Avenue** **Ste 200** **Dallas, TX 75219**
List the contract number of any government contract		
2.63. State what the contract or lease is for and the nature of the debtor's interest	**Investment Management Agreement**	
State the term remaining	**60 Day Termination Provision; Annual Autoextend Following Initial Term 12/31/2008**	**Governance Re Ltd.** **Wellesley House North** **2nd Floor, 90 Pitts Bay Road** **Pembroke HM 08, Bermuda**
List the contract number of any government contract		
2.64. State what the contract or lease is for and the nature of the debtor's interest	**D&O policy**	
State the term remaining	**75 days (to 12/31/2019)**	**Governance Re Ltd.** **Wellesley House North,2nd Floor** **90 Pitts Bay Road, Pembroke HM 08** **Bermuda**
List the contract number of any government contract		
2.65. State what the contract or lease is for and the nature of the debtor's interest	**Amendment No. 1 To Servicing Agreement**	
State the term remaining	**N/A**	**Grayson CLO Corp., et al** **190 Elgin Avenue** **George Town, Grand Cayman** **KY1-9005, Cayman Islands**
List the contract number of any government contract		
2.66. State what the contract or lease is for and the nature of the debtor's interest	**Servicing Agreement**	**Grayson CLO Ltd.** **190 Elgin Avenue** **George Town, Grand Cayman** **KY1-9005, Cayman Islands**
State the term remaining	**Termination Contingent**	

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First Name Middle Name Last Name

Additional Page if You Have More Contracts or Leases

2. List all contracts and unexpired leases	**State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease**

List the contract number of any government contract

2.67. State what the contract or lease is for and the nature of the debtor's interest: **Servicing Agreement**
State the term remaining: **Termination Contingent**
List the contract number of any government contract
Greenbriar CLO, Ltd.
P.O. Box 1093GT, Queensgate House
South Church Street, George Town
Grand Cayman, Cayman Islands

2.68. State what the contract or lease is for and the nature of the debtor's interest: **Compliance Testing**
State the term remaining: **95 Days**
List the contract number of any government contract
Greyline Solutions LLC
One Sansome Street
Suite 1895
San Francisco, CA 94104

2.69. State what the contract or lease is for and the nature of the debtor's interest: **Food Ordering**
State the term remaining: **191 Days**
List the contract number of any government contract
GrubHub Holdings Inc.
111 W. Washington Street
Ste 2100
Chicago, IL 60602

2.70. State what the contract or lease is for and the nature of the debtor's interest: **Gips Services**
State the term remaining: **43982**
List the contract number of any government contract
Guardian Performance Solutions, LLC
836 57th Street
Suite 408
Sacramento, CA 95819

2.71. State what the contract or lease is for and the nature of the debtor's interest: **Data Sharing Platform**
State the term remaining: **306 Days**
List the contract number of any government contract
Harvest Exchange Corp
1200 Smith Street
Ste. 672
Houston, TX 77002

Debtor 1 **Highland Capital Management, L.P.** Case number (*if known*) **19-34054-SGJ**
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Additional Page if You Have More Contracts or Leases

2. List all contracts and unexpired leases		**State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease**
2.72.	State what the contract or lease is for and the nature of the debtor's interest: **Online Research Portal** State the term remaining: **5 business day termination; 3 month autorenewal after initial term of 03/31/2016** List the contract number of any government contract:	**Hedgeye Risk Management, LLC** **1 High Ridge Park** **3rd Floor** **Stamford, CT 06905**
2.73.	State what the contract or lease is for and the nature of the debtor's interest: **Sub-Advisory Agreement** State the term remaining: **30 Days With Additional Contingencies** List the contract number of any government contract:	**Highland Capital Insurance Solutions, L.P.** **Attention: General Counsel** **300 Crescent Court** **Suite 700** **Dallas, TX 75201**
2.74.	State what the contract or lease is for and the nature of the debtor's interest: **Shared Services Agreement** State the term remaining: **30 Day Termination Provision** List the contract number of any government contract:	**Highland Capital Insurance Solutions, L.P.** **Attention: General Counsel** **300 Crescent Court** **Suite 700** **Dallas, TX 75201**
2.75.	State what the contract or lease is for and the nature of the debtor's interest: **Second Amended And Restated Shared Service Agreement** State the term remaining: **60 Day Termination Provision; Annual Autoextend Following Initial Term 2/8/2014** List the contract number of any government contract:	**Highland Capital Management Fund Advisor LP** **Attention: General Counsel** **300 Crescent Court** **Suite 700** **Dallas, TX 75201**
2.76.	State what the contract or lease is for and the nature of the debtor's interest: **Investment Management Agreement** State the term remaining: **60 Day Termination Provision; Annual Autoextend Following Initial Term 7/31/2007** List the contract number of any government contract:	**Highland Capital Multi-Strategy Fund, L.P.** **PO Box 309 Ugland House** **Grand Cayman** **KY1-1104, Cayman Islands**

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Additional Page if You Have More Contracts or Leases

2. List all contracts and unexpired leases	State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease

2.77.	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	**Collateral Management Agreement** **Termination Contingent**	**Highland Credit Opportunities CDO Ltd.** **190 Elgin Avenue** **George Town, Grand Cayman** **KY1-9005, Cayman Islands**
2.78.	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	**Management Agreement** **90 Days With Additional Contingencies**	Highland Credit Opportunities Japanese Feeder Sub-Trust **190 Elgin Avenue** **George Town Grand Cayman** **KY1-9005, Cayman Islands**
2.79.	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	**Service Agreement** **30 day termination notice**	**Paxstone Capital LLP** **Attn: Kasper Kemp Hansen** **483 Green Lane** **London N13 4BS** **UK**
2.80.	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	**Sub-Advisory Agreement** **Termination Contingent**	**Highland HCF Advisor, Ltd.** **Attention: General Counsel** **300 Crescent Court** **Suite 700** **Dallas, TX 75201**
2.81.	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	**Shared Services Agreement** **30 Days**	**Highland HCF Advisor, Ltd.** **Attention: General Counsel** **300 Crescent Court** **Suite 700** **Dallas, TX 75201**
2.82.	State what the contract or lease is for and the nature of the debtor's interest State the term remaining	**Collateral Management Agreement** **Termination Contingent**	**Highland Legacy Limited** **c/o Maples and Calder, PO Box 309** **Ugland House, South Church Street, Georg** **Grand Cayman, Cayman Islands**

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Additional Page if You Have More Contracts or Leases

2. List all contracts and unexpired leases		**State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease**
List the contract number of any government contract		
2.83. State what the contract or lease is for and the nature of the debtor's interest	**Investment Management Agreement**	**Highland Loan Fund, Ltd., et al** **PO Box 309 Ugland House** **Grand Cayman** **KY1-1104, Cayman Islands**
State the term remaining	**Termination Contingent**	
List the contract number of any government contract		
2.84. State what the contract or lease is for and the nature of the debtor's interest	**Collateral Management Agreement**	**Highland Loan Funding V Ltd.** **P.O. Box 1093GT, Queensgate House** **South Church Street, George Town** **Grand Cayman, Cayman Islands**
State the term remaining	**Termination Contingent**	
List the contract number of any government contract		
2.85. State what the contract or lease is for and the nature of the debtor's interest	**Third Amended And Restated Investment Management Agreement**	**Highland Multi Strategy Credit Fund, Ltd** **PO Box 309 Ugland House** **Grand Cayman** **KY1-1104, Cayman Islands**
State the term remaining	**75 Day Termination; Annual Auto Renewal Following Initial Term 12/31/2014**	
List the contract number of any government contract		
2.86. State what the contract or lease is for and the nature of the debtor's interest	**Investment Management Agreement**	**Highland Multi Strategy Credit Fund, Ltd** **PO Box 309 Ugland House** **Grand Cayman** **KY1-1104, Cayman Islands**
State the term remaining	**60 Day Termination; Annual Auto Renewal Following Initial Term 7/31/2007**	
List the contract number of any government contract		
2.87. State what the contract or lease is for and the nature of the debtor's interest	**Collateral Servicing Agreement**	**Highland Park CDO I, Ltd.** **P.O. Box 1093GT, Queensgate House** **South Church Street, George Town** **Grand Cayman, Cayman Islands**
State the term remaining	**Termination Contingent**	
List the contract number of any government contract		

Debtor 1 **Highland Capital Management, L.P.** Case number (*if known*) **19-34054-SGJ**
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Additional Page if You Have More Contracts or Leases

2. List all contracts and unexpired leases	State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease

2.88.	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	**Amended And Restated Investment Management Agreement** **90 Days With Additional Contingencies**	**Highland Prometheus Master Fund, L.P.** **c/o Maples and Calder, PO Box 309** **Ugland House, South Church Street, Georg** **Grand Cayman, Cayman Islands**
2.89.	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	**Management Agreement** **Termination Contingent**	Highland Restoration Capital Partners Offshore, L.P. **PO Box 309 Ugland House** **Grand Cayman** **KY1-1104, Cayman Islands**
2.90.	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	**Investment Management Agreement** **75 Days With Additional Contingencies**	**Highland Select Equity Master Fund, L.P.** **31 Victoria Street Victoria House** **Hamilton** **HM10, Bermuda**
2.91.	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	**Oms Software** **Annual**	**IBM Websphere** **1 New Orchard Road** **Armonk, NY 10504**
2.92.	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	**Discovery Assistant** **111 Days**	**ImageMAKER Development Inc** **Ste 102,416 - 6th Street** **New Westminster, BC, Canada** **V3L3B2**
2.93.	State what the contract or lease is for and the nature of the debtor's interest	**Software License Xto Zephyr**	**Informa Investment Solutions** **4 Westchester Park Drive** **White Plain, NY 10604**

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Additional Page if You Have More Contracts or Leases

2. List all contracts and unexpired leases	State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease
State the term remaining **288 Days** List the contract number of any government contract	
2.94. State what the contract or lease is for and the nature of the debtor's interest **Style Advisor Software** State the term remaining **76 Days** List the contract number of any government contract	**Informa Investment Solutions** **4 Westchester Park Drive** **White Plain, NY 10604**
2.95. State what the contract or lease is for and the nature of the debtor's interest **Research Vendor** State the term remaining **228 Days** List the contract number of any government contract	**InsiderScore, LLC** **100 Thanet Circle** **Suite 300** **Princeton, NJ 08540**
2.96. State what the contract or lease is for and the nature of the debtor's interest **Data Warehouse Services** State the term remaining **Variable based on schedule** List the contract number of any government contract	**Interactive Data Pricing and Reference D** **32 Crosby Drive** **Bedford, MA 01730**
2.97. State what the contract or lease is for and the nature of the debtor's interest **License Deal Model Libraries** State the term remaining **350 Days** List the contract number of any government contract	**Intex Solutions, Inc.** **110 A Street** **Needham, MA 02494**
2.98. State what the contract or lease is for and the nature of the debtor's interest **Data Site** State the term remaining **Variable based on schedule** List the contract number of any government contract	**Intralinks Inc.** **150 East 42nd St** **8th floor** **New York, NY 10017**

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Additional Page if You Have More Contracts or Leases

2. List all contracts and unexpired leases	State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease

2.99. State what the contract or lease is for and the nature of the debtor's interest: **Desktop Usb Monitoring**
State the term remaining: **Annual**
List the contract number of any government contract:
Ivanti Security
698 West 10000 South
Jordan, UT 84095

2.100. State what the contract or lease is for and the nature of the debtor's interest: **Amended And Restated Portfolio Management Agreement**
State the term remaining: **Termination Contingent**
List the contract number of any government contract:
Jasper CLO Ltd.
190 Elgin Avenue
George Town, Grand Cayman
KY1-9005, Cayman Islands

2.101. State what the contract or lease is for and the nature of the debtor's interest: **Portfolio Management Agreement**
State the term remaining: **Termination Contingent**
List the contract number of any government contract:
Liberty CLO Ltd.
190 Elgin Avenue
George Town, Grand Cayman
KY1-9005, Cayman Islands

2.102. State what the contract or lease is for and the nature of the debtor's interest: **Group Life Insurance**
State the term remaining: **406 Days**
List the contract number of any government contract:
Liberty Life Assurance Company of Boston
100 Liberty Way
Dover, NH 03821

2.103. State what the contract or lease is for and the nature of the debtor's interest: **Financial Institution Bond**
State the term remaining: **199 Days**
List the contract number of any government contract:
Liberty Mutual Insurance Company
175 Berkley St
Boston, MA 02116

2.104. State what the contract or lease is for and the nature of the debtor's interest: **Linkedin - Recruiting/Job Posting**
State the term remaining: **269 Days**
List the contract number of any
LinkedIn Corporation
1000 West Maude Avenue
Sunnyvale, CA 94085

Debtor 1 **Highland Capital Management, L.P.** Case number (*if known*) **19-34054-SGJ**
First Name Middle Name Last Name

Additional Page if You Have More Contracts or Leases

2. List all contracts and unexpired leases		State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease
government contract		
2.105. State what the contract or lease is for and the nature of the debtor's interest	**Investment Management Agreement**	
State the term remaining	**Termination Contingent**	**Longhorn Credit Funding, LLC** **874 Walker Rd, Ste C** **Dover, DE 19904**
List the contract number of any government contract		
2.106. State what the contract or lease is for and the nature of the debtor's interest	**Amendment No. 1 To Investment Management Agreement**	
State the term remaining	**N/A**	**Longhorn Credit Funding, LLC** **874 Walker Rd, Ste C** **Dover, DE 19904**
List the contract number of any government contract		
2.107. State what the contract or lease is for and the nature of the debtor's interest	**Macroeconomic Research Services**	
State the term remaining	**15 Days**	**MacroMavens** **180 W 20th Street** **Suite 1700** **New York, NY 10011**
List the contract number of any government contract		
2.108. State what the contract or lease is for and the nature of the debtor's interest	**Compliance Services**	
State the term remaining	**One month termination**	**Maples Compliance Services (Cayman) Limit** **PO Box 1093, Queensgate House** **Grand Cayman, Cayman Islands** **KY1-1102**
List the contract number of any government contract		
2.109. State what the contract or lease is for and the nature of the debtor's interest	**Nav Calc And Distribution**	
State the term remaining	**223 Days**	**Markit Equities Limited** **c.o Market Group Limited, Level 4** **Ropemaker Place, 25 Ropemaker Street** **London EC2Y9LY**
List the contract number of any government contract		
2.110. State what the contract or lease is for and the nature of the debtor's interest	**Data Services**	**Markit Group Limited / Markit North America** **2 More London Riverside** **London SE12AP**

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First Name Middle Name Last Name

Additional Page if You Have More Contracts or Leases

2. List all contracts and unexpired leases	**State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease**

State the term remaining **60 day termination after initial term of 11/01/2021; variable based on schedules**

List the contract number of any government contract

2.111. State what the contract or lease is for and the nature of the debtor's interest: **Software License**

State the term remaining: **746 Days**

List the contract number of any government contract

MarkitWSO Corporation
Three Lincoln Centre
5430 LBJ Freeway
Ste 800
Dallas, TX 75240

2.112. State what the contract or lease is for and the nature of the debtor's interest: **Wso Software**

State the term remaining: **746 Days**

List the contract number of any government contract

MarkitWSO Corporation
Three Lincoln Centre
5430 LBJ Freeway Ste 800
Dallas, TX 75240

2.113. State what the contract or lease is for and the nature of the debtor's interest: **401K Plan Admin**

State the term remaining: **47 Days**

List the contract number of any government contract

MBM Advisors, Inc.
440 Louisiana St
Suite 2500
Houston, TX 77002

2.114. State what the contract or lease is for and the nature of the debtor's interest: **Comp Survey**

State the term remaining: **30 day termination**

List the contract number of any government contract

McLagan Partners Inc (Aon McLagan)
1600 Summer Street
Ste 601
Stamford, CT 06905

2.115. State what the contract or lease is for and the nature of the debtor's interest: **Subscription To Creditflux News & Clo I-Data Services**

State the term remaining: **350 Days**

List the contract number of any government contract

Mergermarket (US) Limited
1501 Broadway
8th Floor
New York, NY 10036

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First Name Middle Name Last Name

Additional Page if You Have More Contracts or Leases

2. List all contracts and unexpired leases	**State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease**

2.116. State what the contract or lease is for and the nature of the debtor's interest: **Subscription To Xtract Research**

State the term remaining: **45 Days**

List the contract number of any government contract:

Mergermarket (US) Limited
1501 Broadway
Suite 801
New York, NY 10036

2.117. State what the contract or lease is for and the nature of the debtor's interest: **Term Life Insurance**

State the term remaining: **188 Days**

List the contract number of any government contract:

Metlife Investors USA Insurance Company
PO Box 13863
Philadelphia, PA 19101

2.118. State what the contract or lease is for and the nature of the debtor's interest: **Ms Software Assurance**

State the term remaining: **3 Years**

List the contract number of any government contract:

Microsoft
One Microsoft Way
Redmond, WA 98052

2.119. State what the contract or lease is for and the nature of the debtor's interest: **Creditview Corporate - Leveraged Finance (12 Users)**

State the term remaining: **74 Days**

List the contract number of any government contract:

Moody's Analytics, Inc.
7 World Trade Center
New York, NY 10007

2.120. State what the contract or lease is for and the nature of the debtor's interest: **Software License**

State the term remaining: **259 Days**

List the contract number of any government contract:

Morningstar Inc.
22 W Washington St
Chicago, IL 60602

2.121. State what the contract or lease is for and the nature of the debtor's interest: **Data License**

State the term remaining: **50 Days**

MSCI Inc.
7 World Trade Center
250 Greenwich St, 49th floor
New York, NY 10007

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First Name Middle Name Last Name

Additional Page if You Have More Contracts or Leases

2. List all contracts and unexpired leases	State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease

	List the contract number of any government contract		
2.122.	State what the contract or lease is for and the nature of the debtor's interest	**Mailflow Monitoring**	
	State the term remaining	**Monthly**	**Mxtoolbox** **12710 Research Blvd** **Ste 225** **Austin, TX 00225**
	List the contract number of any government contract		
2.123.	State what the contract or lease is for and the nature of the debtor's interest	**San Maintenance**	
	State the term remaining	**3 Years**	**Netapp** **1395 Crossman Ave** **Sunnyvale, CA 94089**
	List the contract number of any government contract		
2.124.	State what the contract or lease is for and the nature of the debtor's interest	**Third Amended And Restated Investment Advisory Agreement**	
	State the term remaining	**30 Day Termination; One Year Autoextend After Initial Term Of 8/31/2018**	**NexBank SSB** **2515 McKinney Avenue** **Suite 1100** **Dallas, TX 75201**
	List the contract number of any government contract		
2.125.	State what the contract or lease is for and the nature of the debtor's interest	**Sub-Servicing Agreement;Shared National Credit Program**	
	State the term remaining	**30 day termination; one year autorenwal after initial term of 1/1/2015, additional termination contingencies**	**NexBank, SSB** **2515 McKinney Avenue** **Suite 1100** **Dallas, TX 75201**
	List the contract number of any government contract		
2.126.	State what the contract or lease is for and the nature of the debtor's interest	**Sub-Advisory Agreement**	
	State the term remaining	**30 Days With Additional Contingencies**	**NexPoint Advisors, LP** **200 Crescent Court** **Ste. 700** **Dallas, TX 75201**
	List the contract number of any		

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Additional Page if You Have More Contracts or Leases

2. List all contracts and unexpired leases		State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease
government contract		
2.127. State what the contract or lease is for and the nature of the debtor's interest	**Amended And Restated Shared Services Agreement**	
State the term remaining	**30 Days**	**NexPoint Advisors, LP 200 Crescent Court Ste. 700 Dallas, TX 75201**
List the contract number of any government contract		
2.128. State what the contract or lease is for and the nature of the debtor's interest	**Cloud Single Sign On**	
State the term remaining	**Monthly**	**Onelogin 848 Battery Street San Francisco, CA 94111**
List the contract number of any government contract		
2.129. State what the contract or lease is for and the nature of the debtor's interest	**Rightfax Maintenance**	
State the term remaining	**Annual**	**Opentext 275 Frank Tompa Drive Waterloo, ON N2L 0A1 Canada**
List the contract number of any government contract		
2.130. State what the contract or lease is for and the nature of the debtor's interest	**Oracle Owns Taleo Our Ats**	
State the term remaining	**80 Days**	**Oracle America, Inc. 500 Oracle Parkway Redwood Shores, CA 94065**
List the contract number of any government contract		
2.131. State what the contract or lease is for and the nature of the debtor's interest	**Network Monitoring**	
State the term remaining	**Annual**	**Paessler Thurn-und-Taxis-Str. 14 90411 Nuremberg Germany**
List the contract number of any government contract		
2.132. State what the contract or lease is for and the nature of the debtor's interest	**Collateral Management Agreement**	**PAM Capital Funding, LP / Ranger Asset Management LP c/o Maples and Calder, PO Box 309 Ugland House, South Church Street, Georg Grand Cayman, Cayman Islands**

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Additional Page if You Have More Contracts or Leases

2. List all contracts and unexpired leases	State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease

State the term remaining **Termination Contingent**

List the contract number of any government contract

2.133. State what the contract or lease is for and the nature of the debtor's interest: **Collateral Management Agreement**

State the term remaining: **Termination Contingent**

List the contract number of any government contract

PamCo Cayman Ltd. / Ranger Asset Management LP
c/o Maples and Calder, PO Box 309
Ugland House, South Church Street, Georg
Grand Cayman, Cayman Islands

2.134. State what the contract or lease is for and the nature of the debtor's interest: **Payroll Services**

State the term remaining: **N/A**

List the contract number of any government contract

Paylocity Corporation
3850 N. Wilke Rd.
Arlington Heights, IL 60004

2.135. State what the contract or lease is for and the nature of the debtor's interest: **401Kplan Auditor Erisa Cpa**

State the term remaining: **Perpetuity**

List the contract number of any government contract

Payne & Smith, LLC
5952 Royal Lane
Ste 158
Dallas, TX 75230

2.136. State what the contract or lease is for and the nature of the debtor's interest: **Investment Management Agreement**

State the term remaining: **75 Days With Additional Contingencies**

List the contract number of any government contract

PCMG Trading Partners XXIII, L.P.
1209 Orange Street
Wilmington, DE 19801

2.137. State what the contract or lease is for and the nature of the debtor's interest: **Investment Management Agreement**

State the term remaining: **Termination Contingent**

List the contract number of any government contract

PensionDanmark Pensionsforsikringsakties
Langelinie Alle 43
2100 Copenhagen
Attention: Head of Legal
Denmark

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Additional Page if You Have More Contracts or Leases

2. List all contracts and unexpired leases	State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease
2.138. State what the contract or lease is for and the nature of the debtor's interest: **Amendment No. 1 To Investment Management Agreement** State the term remaining: **N/A** List the contract number of any government contract:	**PensionDanmark Pensionsforsikringsakties** **Langelinie Alle 43** **2100 Copenhagen** **Attention: Head of Legal** **Denmark**
2.139. State what the contract or lease is for and the nature of the debtor's interest: **Amended And Restated Administrative Services Agreement** State the term remaining: **Termination Contingent** List the contract number of any government contract:	**PetroCap Partners II GP, LLC** **Attention: William L. Britain** **2602 McKinney Avenue** **Suite 400** **Dallas, TX 75204**
2.140. State what the contract or lease is for and the nature of the debtor's interest: **Mail Meter** State the term remaining: **60 day termination; one year autorenewal after intial term of 09/09/14** List the contract number of any government contract:	**Pitney Bowes Global Financial Services** **PO Box 371874** **Pittsburgh, PA 15250**
2.141. State what the contract or lease is for and the nature of the debtor's interest: **Media Services** State the term remaining: **106 Days** List the contract number of any government contract:	**PR Newswire Association, LLC** **602 Plaza** **Three Harborside Financial Center** **Jersey City, NJ 07311**
2.142. State what the contract or lease is for and the nature of the debtor's interest: **Actuarial Valuation Retirement Plan** State the term remaining: **Project Based** List the contract number of any government contract:	**PricewaterhouseCoopers LLP** **One North Wacker** **Chicago, IL 60606**
2.143. State what the contract or lease is for and the nature of the debtor's interest: **Second Amended And Restated Back Office Shared Services And Administration Agreement** State the term remaining: **30 Day Termination;**	**Rand Advisors, LLC / Atlas IDF LP, et al** **Attn John Honis** **87 Railroad Place** **Ste 403** **Saratoga Springs, NY 12866**

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Additional Page if You Have More Contracts or Leases

2. List all contracts and unexpired leases	State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease

	List the contract number of any government contract	**One Year Autorenwal After Initial Term Of 12/24/2016, Additional Termination Contingencies**	
2.144.	State what the contract or lease is for and the nature of the debtor's interest	**Linux Maintenance**	
	State the term remaining	**Annual**	**Red Hat** **100 East Davie Street** **Raleigh, NC 27601**
	List the contract number of any government contract		
2.145.	State what the contract or lease is for and the nature of the debtor's interest	**Servicing Agreement**	
	State the term remaining	**Termination Contingent**	**Red River CLO Ltd.** **190 Elgin Avenue** **George Town Grand Cayman** **KY1-9005, Cayman Islands**
	List the contract number of any government contract		
2.146.	State what the contract or lease is for and the nature of the debtor's interest	**Amendment No. 1 To Servicing Agreement**	
	State the term remaining	**N/A**	**Red River CLO Ltd., et al** **190 Elgin Avenue** **George Town, Grand Cayman** **KY1-9005, Cayman Islands**
	List the contract number of any government contract		
2.147.	State what the contract or lease is for and the nature of the debtor's interest	**Subscription Services, Reorg Americas**	
	State the term remaining	**289 Days**	**Reorg Research, Inc.** **11 East 26th Street** **12th Floor** **New York, NY 10010**
	List the contract number of any government contract		
2.148.	State what the contract or lease is for and the nature of the debtor's interest	**Servicing Agreement**	
	State the term remaining	**Termination Contingent**	**Rockwall CDO II Ltd.** **P.O. Box 1093GT, Queensgate House** **South Church Street, George Town** **Grand Cayman, Cayman Islands**
	List the contract number of any government contract		

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Additional Page if You Have More Contracts or Leases

2. List all contracts and unexpired leases	State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease
2.149. State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	**Interim Collateral Management Agreement** **Termination Contingent** **Rockwall CDO Ltd.** **P.O. Box 1093GT, Queensgate House** **South Church Street, George Town** **Grand Cayman, Cayman Islands**
2.150. State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	**Servicing Agreement** **Termination Contingent** **Rockwall CDO Ltd.** **P.O. Box 1093GT, Queensgate House** **South Church Street, George Town** **Grand Cayman, Cayman Islands**
2.151. State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	**Amendment No. 1 To Servicing Agreement** **N/A** **Rockwall CDO Ltd., et al** **P.O. Box 1093GT, Queensgate House** **South Church Street, George Town** **Grand Cayman, Cayman Islands**
2.152. State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	**Advisory Services Agreement** **Termination Contingent** **Romacorp, Inc.** **1700 Alma Drive** **Ste. 400** **Plano, TX 75075**
2.153. State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	**Research Services** **442 Days** **S&P Global Market Intelligence LLC** **55 Water Street** **New York, NY 10041**
2.154. State what the contract or lease is for and the nature of the debtor's interest State the term remaining	**Subadvisor Agreement** **Termination Contingent** **SALI Fund Management, LLC** **6836 Austin Center Blvd** **Ste. 320** **Austin, TX 78731**

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Additional Page if You Have More Contracts or Leases

2. List all contracts and unexpired leases	**State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease**

List the contract number of any government contract

2.155. State what the contract or lease is for and the nature of the debtor's interest: **It Services**
State the term remaining: **717 Days**
List the contract number of any government contract:
Siepe Services, LLC
2200 Ross Ave, Ste 4700E
Dallas, TX 75201

2.156. State what the contract or lease is for and the nature of the debtor's interest: **Ftp Server Maintenance**
State the term remaining: **Annual**
List the contract number of any government contract:
Solarwinds
7171 Southwest Parkway
Bldg 400
Austin, TX 78735

2.157. State what the contract or lease is for and the nature of the debtor's interest: **Portfolio Management Agreement**
State the term remaining: **Termination Contingent**
List the contract number of any government contract:
Southfork CLO Ltd.
P.O. Box 1093GT, Queensgate House
South Church Street, George Town
Grand Cayman, Cayman Islands

2.158. State what the contract or lease is for and the nature of the debtor's interest: **Research Services**
State the term remaining: **320 Days**
List the contract number of any government contract:
Spin-off Advisors, LLC
1327 W. Washington Blvd
Suite 4-G
Chicago, IL 60607

2.159. State what the contract or lease is for and the nature of the debtor's interest: **Finders Fee For Acquisitions/Investments**
State the term remaining: **Perpetuity**
List the contract number of any government contract:
Springboard Network LLC
9900 Spectrum Drive
Austin, TX 78717

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Additional Page if You Have More Contracts or Leases

2. List all contracts and unexpired leases		**State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease**
2.160.	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	**Fourth Admended And Restated Agreement Of Limited Partnership Of Highland Capital Management, L.P.** **Perpetuity** **Strand Advisors Inc.** **1209 Orange Street** **Wilmington, DE 19801**
2.161.	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	**Research Service** **442 Days** **Strategas Securities, LLC** **52 Vanderbilt Ave** **8th Floor** **New York, NY 10017**
2.162.	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	**Servicing Agreement** **Termination Contingent** **Stratford CLO Ltd.** **P.O. Box 1093GT, Queensgate House** **South Church Street, George Town** **Grand Cayman, Cayman Islands**
2.163.	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	**Management Services Agreement** **Contingent** **Structural and Steel Products, Inc** **3001 W Pafford Street** **Fort Worth, TX 76110**
2.164.	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	**Electronic Trading Services** **30 day termination** **SunTrust Robinson Humphrey Inc.** **SunTrust Robinson Humphrey** **Attn: Documentation** **711 5th Avenue 14th Fl.** **New York, NY 10022**
2.165.	State what the contract or lease is for and the nature of the debtor's interest State the term remaining	**Symphony License** **205 Days** **Symphony Communication Services LLC** **1117 S California Ave** **Palo Alto, CA 94304**

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Additional Page if You Have More Contracts or Leases

2. List all contracts and unexpired leases	State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease

List the contract number of any government contract

2.166. State what the contract or lease is for and the nature of the debtor's interest: **Electronic Access**

State the term remaining: **Perpetuity**

List the contract number of any government contract

The Bank of New York Mellon Trust Company
601 Travis, 16th floor
Houston, TX 77002

2.167. State what the contract or lease is for and the nature of the debtor's interest: **Tax Research Software**

State the term remaining: **139 Days**

List the contract number of any government contract

The Bureau of National Affairs, Inc
1801 South Bell Street
Arlington, VA 22202

2.168. State what the contract or lease is for and the nature of the debtor's interest: **Disability Income Insurance**

State the term remaining: **258 Days**

List the contract number of any government contract

The Standard
1100 SW Sixth Ave
Portland, OR 97204

2.169. State what the contract or lease is for and the nature of the debtor's interest: **Westlaw Services**

State the term remaining: **60 day termination and one year autorenewal; after initial term of 11/29/2021**

List the contract number of any government contract

Thompson Reuters
610 Opperman Drive
PO Box 64833
Eagan, MN 55123

2.170. State what the contract or lease is for and the nature of the debtor's interest: **Tax Research Software**

State the term remaining: **224 Days**

List the contract number of any government contract

Thomson Reuters
PO Box 71687
Chicago, IL 60694

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Additional Page if You Have More Contracts or Leases

2. List all contracts and unexpired leases	State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease
2.171. State what the contract or lease is for and the nature of the debtor's interest: **Dns Server Backup** State the term remaining: **Monthly** List the contract number of any government contract:	**Total Uptime Tech** **Post Office Box 2228** **Skyland, NC 28776**
2.172. State what the contract or lease is for and the nature of the debtor's interest: **Amended And Restated Advisory Services Agreement** State the term remaining: **Termination Contingent** List the contract number of any government contract:	**Trussway Holdings, Inc.** **9411 Alcorn** **Houston, TX 77093**
2.173. State what the contract or lease is for and the nature of the debtor's interest: **Mail Gateway** State the term remaining: **Annual** List the contract number of any government contract:	**Trustwave** **70 W Madison St** **Ste. 1050** **Chicago, IL 01050**
2.174. State what the contract or lease is for and the nature of the debtor's interest: **Mailing** State the term remaining: **1007 Days** List the contract number of any government contract:	**United Parcel Service, Inc** **55 Glenlake Parkway** **Atlanta, GA 30328**
2.175. State what the contract or lease is for and the nature of the debtor's interest: **Reference Portfolio Management Agreement** State the term remaining: **Termination Contingent** List the contract number of any government contract:	**Valhalla CLO, Ltd.** **c/o Intertrust SPV Cayman Limited** **190 Elgin Ave, George Town Grand Cayman** **Cayman Islands**
2.176. State what the contract or lease is for and the nature of the debtor's interest: **Server Backups, Tape** State the term remaining: **Annual** List the contract number of any	**Veritas Backup Exec** **2625 Augustine Drive** **Santa Clara, CA 95054**

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Additional Page if You Have More Contracts or Leases

2. List all contracts and unexpired leases	State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease

	government contract		
2.177.	State what the contract or lease is for and the nature of the debtor's interest	**Mail Archive Software**	
	State the term remaining	**Annual**	**Veritas Enterprise Vault** **2625 Augustine Drive** **Santa Clara, CA 95054**
	List the contract number of any government contract		
2.178.	State what the contract or lease is for and the nature of the debtor's interest	**Print Services**	
	State the term remaining	**Monthly**	**Verity Group** **885 E Collins Blvd** **Ste. 102** **Richardson, TX 75081**
	List the contract number of any government contract		
2.179.	State what the contract or lease is for and the nature of the debtor's interest	**Servicing Agreement**	
	State the term remaining	**Termination Contingent**	**Westchester CLO Ltd.** **P.O. Box 1093GT, Queensgate House** **South Church Street, George Town** **Grand Cayman, Cayman Islands**
	List the contract number of any government contract		
2.180.	State what the contract or lease is for and the nature of the debtor's interest	**Tax Return Software; File Document Storage Software**	
	State the term remaining	**37 Days**	**Wolters Kluwer** **1999 Bryan Street** **Ste 900** **Dallas, TX 75201**
	List the contract number of any government contract		
2.181.	State what the contract or lease is for and the nature of the debtor's interest	**Public Website Hosting**	
	State the term remaining	**Monthly**	**WP Engine** **504 Lavaca Street** **Suite 1000** **Austin, TX 78701**
	List the contract number of any government contract		
2.182.	State what the contract or lease is for and the nature of the debtor's interest	**Print Services**	**Xerox** **45 Glover Ave** **Norwalk, CT 06856**

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Additional Page if You Have More Contracts or Leases

2. List all contracts and unexpired leases	State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease

2.183. State what the contract or lease is for and the nature of the debtor's interest: **Wan Line**

State the term remaining: **2 Years**

List the contract number of any government contract:

Zayo Group
1821 30th Street
Unit A
Boulder, CO 80301

2.184. State what the contract or lease is for and the nature of the debtor's interest: **Helpdesk Platform**

State the term remaining: **Monthly**

List the contract number of any government contract:

Zendesk
1019 Market St
San Francisco, CA 94103

2.185. State what the contract or lease is for and the nature of the debtor's interest: **Web Proxy**

State the term remaining: **Annual**

List the contract number of any government contract:

Zscaler
110 Rose Orchard Way
San Jose, CA 95134

Fill in this information to identify the case:

Debtor name **Highland Capital Management, L.P.**

United States Bankruptcy Court for the: NORTHERN DISTRICT OF TEXAS

Case number (if known) **19-34054-SGJ**

☐ Check if this is an amended filing

Official Form 206H
Schedule H: Your Codebtors

12/15

Be as complete and accurate as possible. If more space is needed, copy the Additional Page, numbering the entries consecutively. Attach the Additional Page to this page.

1. Do you have any codebtors?

☐ No. Check this box and submit this form to the court with the debtor's other schedules. Nothing else needs to be reported on this form.

■ Yes

2. In Column 1, list as codebtors all of the people or entities who are also liable for any debts listed by the debtor in the schedules of creditors, Schedules D-G. Include all guarantors and co-obligors. In Column 2, identify the creditor to whom the debt is owed and each schedule on which the creditor is listed. If the codebtor is liable on a debt to more than one creditor, list each creditor separately in Column 2.

	Column 1: **Codebtor**		*Column 2:* **Creditor**	
	Name	**Mailing Address**	**Name**	*Check all schedules that apply:*
2.1	**Acis CLO 2014-3 Ltd.**	**P.O. Box 1093, Boundary Hall, Cricket Sq George Town, Grand Cayman KY1-1102 Cayman Islands**	**Lynn Pinker Cox & Hurst, LLP**	☐ D ■ E/F **3.82** ☐ G
2.2	**Acis CLO 2014-3 Ltd.**	**P.O. Box 1093, Boundary Hall, Cricket Sq George Town, Grand Cayman KY1-1102 Cayman Islands**	**Foley Gardere**	☐ D ■ E/F **3.56** ☐ G
2.3	**Highland CLO 2014-3R LLC**	**300 Crescent Ct Suite 700 Dallas, TX 75201**	**Cole Schotz**	☐ D ■ E/F **3.35** ☐ G
2.4	**Highland CLO 2014-3R Ltd.**	**300 Crescent Ct. Suite 700 Dallas, TX 75201**	**Cole Schotz**	☐ D ■ E/F **3.35** ☐ G

Debtor **Highland Capital Management, L.P.** Case number *(if known)* **19-34054-SGJ**

Additional Page to List More Codebtors

Copy this page only if more space is needed. Continue numbering the lines sequentially from the previous page.

	Column 1: **Codebtor**		*Column 2:* **Creditor**	
2.5	**Highland CLO Funding, Ltd.**	**First Floor, Dorey Court, Admiral Park St. Peter Port, Guernsey GY1 6HJ Channel Islands**	**Foley Gardere**	☐ D ■ E/F **3.56** ☐ G
2.6	**Highland CLO Holding, Ltd.**	**PO Box 309 Ugland House S. Church St. George Town, Grand Cayman KY1-1004 Cayman Island**	**Foley Gardere**	☐ D ■ E/F **3.56** ☐ G
2.7	**Highland CLO Holding, Ltd.**	**PO Box 309 Ugland House S. Church St. George Town, Grand Cayman KY1-1004 Cayman Island**	**Lynn Pinker Cox & Hurst, LLP**	☐ D ■ E/F **3.82** ☐ G
2.8	**Highland CLO Management GP, LLC**	**1209 Orange St Wilmington, DE 19801**	**Cole Schotz**	☐ D ■ E/F **3.35** ☐ G
2.9	**Highland CLO Management Holdings, L.P.**	**PO Box 309 Ugland House Grand Cayman KY1-1104 Cayman Islands**	**Cole Schotz**	☐ D ■ E/F **3.35** ☐ G
2.10	**Highland CLO Management, LLC**	**1209 Orange St. Wilmington, DE 19801**	**Cole Schotz**	☐ D ■ E/F **3.35** ☐ G
2.11	**Highland CLO Management, Ltd.**	**PO Box 309 Ugland House, S. Church St. George Town, Grand Cayman KY1-1004 Cayman Islands**	**Foley Gardere**	☐ D ■ E/F **3.56** ☐ G

Debtor **Highland Capital Management, L.P.** Case number *(if known)* **19-34054-SGJ**

Additional Page to List More Codebtors

Copy this page only if more space is needed. Continue numbering the lines sequentially from the previous page.

	Column 1: **Codebtor**		*Column 2:* **Creditor**	
2.12	**Highland CLO Management, Ltd.**	**PO Box 309 Ugland House, S. Church St. George Town, Grand Cayman KY1-1004 Cayman Islands**	**Lynn Pinker Cox & Hurst, LLP**	☐ D ■ E/F **3.82** ☐ G
2.13	**Highland CLO Trust**	**PO Box 309 Ugland House George Town, Grand Cayman KY1-1104 Cayman Islands**	**Cole Schotz**	☐ D ■ E/F **3.35** ☐ G
2.14	**Highland Credit Opportunities CDO, LP**	**1209 Orange St Wilmington, DE 19801**	**Reid Collins & Tsai**	☐ D ■ E/F **3.96** ☐ G
2.15	**Highland Credit Strategies Master FundLP**	**31 Victoria St Hamilton HM10**	**Reid Collins & Tsai**	☐ D ■ E/F **3.96** ☐ G
2.16	**Highland Crusader Offshore Partners, L.P**	**Magnolia House Building, 1st Floor 119 Front Street Hamilton HM 12**	**Reid Collins & Tsai**	☐ D ■ E/F **3.96** ☐ G
2.17	**Highland Employee Retention Assets, LLC**	**1209 Orange St Wilmington, DE 19801**	**DLA Piper LLP (US)**	☐ D ■ E/F **3.48** ☐ G
2.18	**Highland ERA Management, LLC**	**1209 Orange St. Wilmington, DE 19801**	**DLA Piper LLP (US)**	☐ D ■ E/F **3.48** ☐ G

Debtor **Highland Capital Management, L.P.** Case number *(if known)* **19-34054-SGJ**

Additional Page to List More Codebtors

Copy this page only if more space is needed. Continue numbering the lines sequentially from the previous page.

	Column 1: **Codebtor**		*Column 2:* **Creditor**	
2.19	**Highland HCF Advisor, Ltd.**	**PO Box 309 Ugland House S. Church St. George Town, Grand Cayman KY1-1004 Cayman Island**	**Cole Schotz**	☐ D ■ E/F **3.35** ☐ G
2.20	**Highland HCF Advisor, Ltd.**	**PO Box 309 Ugland House S. Church St. George Town, Grand Cayman KY1-1004 Cayman Island**	**Foley Gardere**	☐ D ■ E/F **3.56** ☐ G
2.21	**Highland HCF Advisor, Ltd.**	**PO Box 309 Ugland House S. Church St. George Town, Grand Cayman KY1-1004 Cayman Island**	**Lynn Pinker Cox & Hurst, LLP**	☐ D ■ E/F **3.82** ☐ G
2.22	**James Dondero**	**300 Crescent Ct. Suite 700 Dallas, TX 75201**	**DLA Piper LLP (US)**	☐ D ■ E/F **3.48** ☐ G
2.23	**NexBank, SSB**	**2515 McKinney Ave #1100 Dallas, TX 75201**	**Stinson Leonard Street LLP**	☐ D ■ E/F **3.105** ☐ G
2.24	**Strand Advisors, Inc.**	**1209 Orange St. Wilmington, DE 19801**	**Reid Collins & Tsai**	☐ D ■ E/F **3.96** ☐ G

Fill in this information to identify the case:	
Debtor name	**Highland Capital Management, L.P.**
United States Bankruptcy Court for the:	NORTHERN DISTRICT OF TEXAS
Case number (if known)	**19-34054-SGJ**

☐ Check if this is an amended filing

Official Form 202

Declaration Under Penalty of Perjury for Non-Individual Debtors

12/15

An individual who is authorized to act on behalf of a non-individual debtor, such as a corporation or partnership, must sign and submit this form for the schedules of assets and liabilities, any other document that requires a declaration that is not included in the document, and any amendments of those documents. This form must state the individual's position or relationship to the debtor, the identity of the document, and the date. Bankruptcy Rules 1008 and 9011.

WARNING -- Bankruptcy fraud is a serious crime. Making a false statement, concealing property, or obtaining money or property by fraud in connection with a bankruptcy case can result in fines up to $500,000 or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.

Declaration and signature

I am the president, another officer, or an authorized agent of the corporation; a member or an authorized agent of the partnership; or another individual serving as a representative of the debtor in this case.

I have examined the information in the documents checked below and I have a reasonable belief that the information is true and correct:

- ■ *Schedule A/B: Assets–Real and Personal Property* (Official Form 206A/B)
- ■ *Schedule D: Creditors Who Have Claims Secured by Property* (Official Form 206D)
- ■ *Schedule E/F: Creditors Who Have Unsecured Claims* (Official Form 206E/F)
- ■ *Schedule G: Executory Contracts and Unexpired Leases* (Official Form 206G)
- ■ *Schedule H: Codebtors* (Official Form 206H)
- ■ *Summary of Assets and Liabilities for Non-Individuals* (Official Form 206Sum)
- ☐ Amended *Schedule* _____
- ☐ *Chapter 11 or Chapter 9 Cases: List of Creditors Who Have the 20 Largest Unsecured Claims and Are Not Insiders* (Official Form 204)
- ☐ Other document that requires a declaration _____

I declare under penalty of perjury that the foregoing is true and correct.

Executed on **December 13, 2019**

X _____
Signature of individual signing on behalf of debtor

Bradley Sharp
Printed name

Chief Restructuring Officer
Position or relationship to debtor

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	Chapter 11
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	§	Case No. 19-34054-sgj11
	§	
Debtor.	§	
	§	

GLOBAL NOTES AND STATEMENT OF LIMITATIONS, METHODS, AND DISCLAIMER REGARDING DEBTOR'S SCHEDULES OF ASSETS AND LIABILITIES AND STATEMENT OF FINANCIAL AFFAIRS

Highland Capital Management, L.P. (the "Debtor") submits its Schedules of Assets and Liabilities (the "Schedules") and Statement of Financial Affairs (the "SoFA") in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Bankruptcy Court"). The Debtor, with the assistance of its advisors and management, prepared the Schedules and SoFA in accordance with section 521 title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code") and Rule 1007 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

These Global Notes and Statement of Limitations, Methods, and Disclaimer Regarding the Debtor's Schedules and SoFA (collectively, the "Global Notes") pertain to, are incorporated by reference in, and comprise an integral part of the Schedules and SoFA. These Global Notes should be referred to, and reviewed in connection with any review of the Schedules and SoFA.[2]

The Schedules and SoFA have been prepared by the Debtor with the assistance and under the direction of the Debtor's proposed Chief Restructuring Officer and additional personnel at Development Specialists, Inc. (collectively, the "CRO") and are unaudited and subject to further review and potential adjustment and amendment. In preparing the Schedules and SoFA, the CRO relied on financial data derived from the Debtor's books and records that was available at the time of preparation. The CRO has made reasonable efforts to ensure the accuracy and completeness of such financial information, however, subsequent information or discovery of other relevant facts may result in material changes to the Schedules and SoFA and inadvertent errors, omissions, or inaccuracies may exist. The Debtor reserves all rights to amend or supplement its Schedules and SoFA.

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

[2] These Global Notes are in addition to any specific notes contained in the Debtor's Schedules or SoFA. The fact that the Debtor has prepared a "general note" with respect to any of the Schedules and SoFA and not to others should not be interpreted as a decision by the Debtor to exclude the applicability of such general note to any of the Debtor's remaining Schedules and SoFA, as appropriate.

Reservation of Rights. The Debtor reserves all rights to amend the SoFA and Schedules in all respects, as may be necessary or appropriate, including, but not limited to, the right to dispute or to assert offsets or defenses to any claim reflected on the SoFA and Schedules as to amount, liability or classification of the claim, or to otherwise subsequently designate any claim as "disputed," "contingent" or "unliquidated." Furthermore, nothing contained in the SoFA and Schedules shall constitute a waiver of rights by the Debtor involving any present or future causes of action, contested matters or other issues under the provisions of the Bankruptcy Code or other applicable non-bankruptcy laws.

Description of the Case and "As Is" Information Date. On October 16, 2019 (the "Petition Date"), the Debtor filed a voluntary petition for relief with the United States Bankruptcy Court for the District of Delaware (the "Delaware Bankruptcy Court") under Chapter 11 of the Bankruptcy Code. The Debtor is managing its assets as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. On December 4, 2019, the Delaware Bankruptcy Court entered an Order transferring this case to the Bankruptcy Court [Docket No. 1].

Asset information in the Schedules reflects the Debtor's best estimate of asset values as of the Petition Date, unless otherwise noted. No independent valuation has been obtained.

Basis of Presentation. The Schedules and SoFA do not purport to represent financial statements prepared in accordance with Generally Accepted Accounting Principles ("GAAP"), nor are they intended to fully reconcile to any financial statements otherwise prepared and/or distributed by the Debtor.

Although these Schedules and SoFA may, at times, incorporate information prepared in accordance with GAAP, the Schedules and SoFA neither purport to represent nor reconcile to financial statements prepared and/or distributed by the Debtor in accordance with GAAP or otherwise. Moreover, given, among other things, the valuation and nature of certain liabilities, to the extent that the Debtor shows more assets than liabilities, this is not a conclusion that the Debtor was solvent at the Petition Date. Likewise, to the extent that the Debtor shows more liabilities than assets, this is not a conclusion that the Debtor was insolvent at the Petition Date or any time prior to the Petition Date.

Estimates. To timely close the books and records of the Debtor, the CRO must make certain estimates and assumptions that affect the reported amounts of assets and liabilities and reported revenue and expenses. The Debtor reserves all rights to amend the reported amounts of assets, liabilities, revenue, and expenses to reflect changes in those estimates and assumptions.

Confidentiality. There may be instances within the Schedules and SoFA where names, addresses, or amounts have been left blank. Due to the nature of an agreement between the Debtor and the third party, concerns of confidentiality, or concerns for the privacy of an individual, the Debtor may have deemed it appropriate and necessary to avoid listing such names, addresses, and amounts.

Intercompany Claims. Any receivables and payables between the Debtor and affiliated or related entities in this case (each an "Intercompany Receivable" or "Intercompany Payable" and, collectively, the "Intercompany Claims") are reported as assets on Schedule B or liabilities on Schedule E and Schedule F. These Intercompany Claims include the following components, among others: 1) loans to affiliates or related entities, 2) accounts payable and payroll disbursements made out of an affiliate's or related entity's bank accounts on behalf of the Debtor, 3) centrally billed expenses, 4) corporate expense allocations, and 5) accounting for trade and other intercompany transactions. These Intercompany Claims may or may not result in allowed or enforceable claims by or against the Debtor, and by listing these claims the Debtor is not indicating a conclusion that the Intercompany Claims are enforceable. Intercompany Claims may also be subject to set off, recoupment, and netting not reflected in the Schedules. In situations where there is not an enforceable claim, the assets and/or liabilities of the Debtor may be greater or lesser than the amounts stated herein. All rights to amend intercompany Claims in the Schedules and SoFA are reserved.

The Debtor has listed the intercompany payables as unsecured claims on Schedule F. The Debtor reserves its rights to later change the characterization, classification, categorization, or designation of such items.

Insiders. For purposes of the Schedules and SoFA, the Debtor defines "insider" pursuant to section 101(31) of the Bankruptcy Code. Payments to insiders are set forth on Question 3.c. of the SoFA.

Persons listed as "insiders" have been included for informational purposes only. The Debtor did not take any position with respect to whether such individual could successfully argue that he or she is not an "insider" under applicable law, including without limitation, the federal securities laws, or with respect to any theories of liability or for any other purpose. Inclusion of any party in the Schedules and SoFA as an insider does not constitute an admission that such party is an insider or a waiver of such party's right to dispute insider status.

Excluded Accruals and GAAP Entries. The Debtor's balance sheet reflects liabilities recognized in accordance with GAAP; however, not all such liabilities would result in a claim against the Debtor. Certain liabilities (including but not limited to certain reserves, deferred charges, and future contractual obligations) have not been included in the Debtor's Schedules. Other immaterial assets and liabilities may also have been excluded.

Classification and Claim Descriptions. Any failure to designate a claim on the Schedules as "disputed," "contingent" or "unliquidated" does not constitute an admission by the Debtor that such amount is not "disputed," "contingent" or "unliquidated." The Debtor reserves the right to dispute, or to assert offsets or defenses to, any claim reflected on its Schedules as to amount, liability or classification or to otherwise subsequently designate any claim as "disputed," "contingent" or "unliquidated."

Listing a claim (i) in Schedule D as "secured," (ii) in Schedule E as "priority" or (iii) in Schedule F as "unsecured nonpriority," or listing a contract in Schedule G as "executory" or "unexpired," does not constitute an admission by the Debtor of the legal rights of the claimant or a waiver of the Debtor's right to recharacterize or reclassify such claim or contract.

Moreover, the Debtor reserves all rights to amend the SoFA and Schedules, in all respects, as may be necessary or appropriate, including, but not limited to, the right to dispute or to assert offsets or defenses to any claim reflected on the SoFA and Schedules as to amount, liability or classification of the claim, or to otherwise subsequently designate any claim as "disputed," "contingent" or "unliquidated." Furthermore, nothing contained in the SoFA and Schedules shall constitute a waiver of rights by the Debtor involving any present or future causes of action, contested matters or other issues under the provisions of the Bankruptcy Code or other relevant non-bankruptcy laws.

Credits and Adjustments. The claims of individual creditors for, among other things, goods, products, services or taxes are listed as the amounts entered on the Debtor's books and records and may not reflect credits, allowances or other adjustments due from such creditors to the Debtor. The Debtor reserves all of its rights respecting such credits, allowances or other adjustments.

Setoffs. The Debtor may incur setoffs from third parties in its business. Setoffs in the ordinary course can result from various routine transactions, including intercompany transactions, pricing discrepancies, warranty claims and other disputes between the Debtor and third parties. Certain of these constitute normal setoffs consistent with the ordinary course of business in the Debtor's industry. In such instances, such ordinary course setoffs are excluded from the Debtor's responses to Question 13 of the SoFA. The Debtor reserves all rights to enforce or challenge, as the case may be, any setoffs that have been or may be asserted.

Specific Notes. These general notes are in addition to the specific notes set forth below or in the related Statement and Schedules hereinafter.

General Disclaimer

The Debtor has prepared the Schedules and the SoFA based on the information reflected in the Debtor's books and records. However, inasmuch as the Debtor's books and records have not been audited or formally closed and evaluated for proper cut-off on the Petition Date, the Debtor cannot warrant the absolute accuracy of these documents. The Debtor has made a diligent effort to complete these documents accurately and completely. To the extent additional information becomes available, the Debtor will amend and supplement the Schedules and SoFA.

Specific Schedules Disclosures

a. **Schedule A/B, Part 4 - Investments; Non-Publicly Traded Stock and Interests in Incorporated and Unincorporated Businesses, including any Interest in an LLC, Partnership, or Joint Venture.** Certain ownership interests in subsidiaries have been listed in Schedule A/B, Part 4, at their book value on account of the fact that the fair market value of such ownership is dependent on numerous variables and factors. Fair value of such interests may differ significantly from their net book value. Further, for investments listed at fair value, many of the Debtor's assets are not exchange traded and are fair valued utilizing unobservable

inputs, historical information, and significant and/or subjective estimates. As a result the liquidity and ultimately realized value of such investments may differ materially from the fair value listed on the schedule.

b. **Schedule A/B, Part 7 - Office Furniture, Fixtures, and Equipment; and Collectibles**. Dollar amounts are presented net of accumulated depreciation and other adjustments.

c. **Schedule A/B, Part 11 - All Other Assets**. Dollar amounts are presented net of impairments and other adjustments. Debtor has reflected "unknown" for value of its interests in various other assets. While the face value of the notes receivable is included, the current value of these as well as the other assets has not been determined and may differ materially.

Additionally, the Debtor may receive refunds, income tax refunds or other sales tax refunds at various times throughout its fiscal year. As of the Petition Date, however, certain of these amounts are unknown to the Debtor, and accordingly, may not be listed in Schedule A/B.

Other Contingent and Unliquidated Claims or Causes of Action of Every Nature, including Counterclaims of the Debtor and Rights to Setoff Claims. In the ordinary course of its business, the Debtor may have accrued, or may subsequently accrue, certain rights to counter-claims, cross-claims, setoffs, or refunds with its customers and suppliers. Additionally, the Debtor may be party to pending litigation in which the Debtor has asserted, or may assert, claims as a plaintiff or counter-claims and/or cross-claims as a defendant. Because certain of these claims are unknown to the Debtor and not quantifiable as of the Petition Date, they may not be listed on Schedule A/B, Part 11.

d. **Schedule D - Creditors Who Have Claims Secured by Property**. The Debtor reserves its rights to dispute or challenge the validity, perfection, or immunity from avoidance of any lien purported to be granted or perfected in any specific asset to a secured creditor listed on Schedule D. Moreover, although the Debtor has scheduled claims of various creditors as secured claims, the Debtor reserves all rights to dispute or challenge the secured nature of any such creditor's claim or the characterization of the structure of any such transaction or any document or instrument related to such creditor's claim.

The descriptions provided in Schedule D are intended only to be a summary. Reference to the applicable agreements and other related relevant documents is necessary for a complete description of the collateral and the nature, extent, and priority of any liens.

The Debtor has not included on Schedule D parties that may believe their claims are secured through setoff rights or inchoate statutory lien rights. Although there are multiple parties that hold a portion of the debt included in the secured

facilities, only the administrative agents have been listed for purposes of Schedule D.

e. **Schedule E/F - Creditors Who Have Unsecured Claims.**

Part 1 - Creditors with Priority Unsecured Claims. Pursuant to the *Order (I) Authorizing the Debtor to (A) Pay and Honor Prepetition Compensation, Reimbursable Business Expenses, and Employee Benefit Obligations, and (B) Maintain and Continue Certain Compensation and Benefit Programs Postpetition; and (11) Granting Related Relief* [Docket No. 39] (the "Wage Order"), the Debtor received authority to pay certain prepetition obligations, including to pay employee wages and other employee benefits, in the ordinary course of business. The Debtor believes that any non-insider employee claims for prepetition amounts related to ongoing payroll and benefits, whether allowable as a priority or nonpriority claim, which were due and payable at the time of the Petition Date have been or will be satisfied as permitted pursuant to the Wage Order. The Debtor filed the *Motion of the Debtor for Entry of an Order Authorizing the Debtor to Pay and Honor Ordinary Course Obligations under Employee Bonus Plans and Granting Related Relief* [Docket No. 177] pursuant to which the Debtor seeks authority to pay and honor certain prepetition bonus programs. Employee claims related to these programs are shown in the aggregate amounts in Schedule E/F for privacy reasons. Additional information is available by appropriate request to the Debtor. The listing of a claim on Schedule E/F, Part 1, does not constitute an admission by the Debtor that such claim or any portion thereof is entitled to priority status.

Part 2 - Creditors with Nonpriority Unsecured Claims. The liabilities identified in Schedule E/F, Part 2, are derived from the Debtor's books and records. The Debtor made a reasonable attempt to set forth its unsecured obligations, although the actual amount of claims against the Debtor may vary from those liabilities represented on Schedule E/F, Part 2. The listed liabilities may not reflect the correct amount of any unsecured creditor's allowed claims or the correct amount of all unsecured claims.

Schedule E/F, Part 2 reflects liabilities based on the Debtor's books and records.

Schedule E/F, Part 2, contains information regarding threatened or pending litigation involving the Debtor. The amounts for these potential claims are listed as "unknown" and are marked as contingent, unliquidated, and disputed in the Schedules and Statements. Additionally, the amounts of certain litigation claims may be estimates based on the allegations asserted by the litigation counterparty, and do not constitute an admission by the Debtor with respect to either liability for, or the amount of, such claims.

Schedule E/F, Part 2, reflects certain prepetition amounts owing to counterparties to executory contracts and unexpired leases. Such prepetition amounts, however,

may be paid in connection with the assumption or assumption and assignment of an executory contract or unexpired lease. In addition, Schedule E/F, Part 2, does not include claims that may arise in connection with the rejection of any executory contracts and unexpired leases, if any, that may be or have been rejected.

As of the time of filing of the Schedules and Statements, the Debtor had not received all invoices for payables, expenses, and other liabilities that may have accrued prior to the Petition Date. Accordingly, the information contained in Schedules D and E/F may be incomplete. The Debtor reserves its rights to amend Schedules D and E/F if and as it receive such invoices.

f. **Schedule G - Executory Contracts and Unexpired Leases**. While reasonable efforts have been made to ensure the accuracy of Schedule G, inadvertent errors or omissions may have occurred.

Listing a contract or agreement on Schedule G does not constitute an admission that such contract or agreement is an executory contract or unexpired lease or that such contract or agreement was in effect on the Petition Date or is valid or enforceable. The Debtor hereby reserves all of its rights to dispute the validity, status, or enforceability of any contracts, agreements, or leases set forth in Schedule G and to amend or supplement such Schedule as necessary. Certain of the leases and contracts listed on Schedule G may contain renewal options, guarantees of payment, indemnifications, options to purchase, rights of first refusal and other miscellaneous rights. Such rights, powers, duties and obligations are not set forth separately on Schedule G. In addition, the Debtor may have entered into various other types of agreements in the ordinary course of its business, such as supplemental agreements, amendments, and letter agreement, which documents may not be set forth in Schedule G.

Certain of the agreements listed on Schedule G may have expired or terminated pursuant to their terms, but are listed on Schedule G in an abundance of caution.

The Debtor reserves all rights to dispute or challenge the characterization of any transaction or any document or instrument related to a creditor's claim.

In some cases, the same supplier or provider may appear multiple times in Schedule G. Multiple listings, if any, reflect distinct agreements between the Debtor and such supplier or provider.

The listing of any contract on Schedule G does not constitute an admission by the Debtor as to the validity of any such contract. The Debtor reserves the right to dispute the effectiveness of any such contract listed on Schedule G or to amend Schedule G at any time to remove any contract.

Omission of a contract or agreement from Schedule G does not constitute an admission that such omitted contract or agreement is not an executory contract or

unexpired lease. The Debtor's rights under the Bankruptcy Code with respect to any such omitted contracts or agreements are not impaired by the omission.

Exhibit 2

PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz (CA Bar No.143717) (*admitted pro hac vice*)
Ira D. Kharasch (CA Bar No. 109084) (*admitted pro hac vice*)
Maxim B. Litvak (Texas Bar No. 24002482)
Gregory V. Demo (NY Bar No. 5371992) (*admitted pro hac vice*)
10100 Santa Monica Blvd., 13th Floor
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Fax: (972) 755-7110

Counsel for the Debtor and Debtor-in-Possession

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	)	Case No. 19-34054-sgj11
Debtor.	)	**Re: Docket No. 247**

NOTICE OF FILING OF DEBTOR'S AMENDED SCHEDULES

PLEASE TAKE NOTICE that the above-captioned debtor and debtor-in-possession (the "Debtor") hereby files its *Amended Schedules of Assets and Liabilities – Schedule E-F* (the "Amended Schedules").

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

PLEASE TAKE FURTHER NOTICE that the following changes were made to the Amended Schedules attached hereto as **Exhibit 1**:

- Schedule E/F – add claims of Andrew Parmentier (E-2.2; F-3.15)
- Schedule E/F – Change name from Highland CLO Holdco (previously F-3.64 & F-3.65) to Highland CLO Management, Ltd. (F-3.65 & F-3.66).

PLEASE TAKE FURTHER NOTICE that, other than the changes listed above, there are no other changes to the Debtor's Schedules.

PLEASE TAKE FURTHER NOTICE THAT, pursuant to the *Order (I) Establishing Bar Dates for Filing Claims and (II) Approving the Form and Manner of Notice Thereof* [Docket No. 488], any creditor affected by this notice may file a proof of claim no later than thirty (30) days after the date that the notice of the Amended Schedules is served on the entity.

PLEASE TAKE FURTHER NOTICE that, notwithstanding the filing of the Amended Schedules, the Debtor reserves the right to further amend, in any way and at any time, the schedules of assets and liabilities filed in this chapter 11 case, consistent with the provisions of title 11 of the United States Code (the "Bankruptcy Code") and the Federal Rules of Bankruptcy Procedure.

[Remainder of Page Intentionally Left Blank]

Dated: September 22, 2020.

PACHULSKI STANG ZIEHL & JONES LLP

Jeffrey N. Pomerantz (CA Bar No.143717)
Ira D. Kharasch (CA Bar No. 109084)
Maxim B. Litvak (TX Bar No. 24002482)
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-and-

HAYWARD & ASSOCIATES PLLC

/s/ Zachery Z. Annable

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Counsel for the Debtor and Debtor-in-Possession

Exhibit 1

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	Chapter 11
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	§	Case No. 19-34054-sgj11
	§	
Debtor.	§	
	§	

GLOBAL NOTES AND STATEMENT OF LIMITATIONS, METHODS, AND DISCLAIMER REGARDING DEBTOR'S AMENDED SCHEDULES OF ASSETS AND LIABILITIES

Highland Capital Management, L.P. (the "Debtor") submits its Amended Schedules of Assets and Liabilities (the "Schedules") in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Bankruptcy Court"). The Debtor, with the assistance of its advisors and management, prepared the Schedules in accordance with section 521 title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code") and Rule 1007 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

These Global Notes and Statement of Limitations, Methods, and Disclaimer Regarding the Debtor's Schedules (collectively, the "Global Notes") pertain to, are incorporated by reference in, and comprise an integral part of the Schedules. These Global Notes should be referred to, and reviewed in connection with any review of the Schedules.[2] These Global Notes are intended to supplement the Global Notes filed at Docket No. 247 and 248 which remain applicable to the Schedules and Statement of Financial Affairs ("SoFA") filed at Docket No. 247 and 248, respectively and, to the extent not revised, shall be applicable to the attached Schedules.

The Schedules have been prepared by the Debtor with the assistance of its professionals and are unaudited and subject to further review and potential adjustment and amendment. In preparing the Schedules, the Debtor and its professionals relied on financial data derived from the Debtor's books and records that was available at the time of preparation. The Debtor and its professionals have made reasonable efforts to ensure the accuracy and completeness of such financial information, however, subsequent information or discovery of other relevant facts may result in material changes to the Schedules and inadvertent errors, omissions, or inaccuracies may exist. The Debtor reserves all rights to amend or supplement its Schedules and SoFA.

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

[2] These Global Notes are in addition to any specific notes contained in the Debtor's Schedules or SoFA. The fact that the Debtor has prepared a "general note" with respect to any of the Schedules and SoFA and not to others should not be interpreted as a decision by the Debtor to exclude the applicability of such general note to any of the Debtor's remaining Schedules and SoFA, as appropriate.

Case 19-34054-sgj11 Doc 3786-2 Filed 04/13/24 Entered 04/13/24 20:54:05 Desc 26 Exhibit 2 Page 7 of 30

Reservation of Rights. The Debtor reserves all rights to amend the SoFA and Schedules in all respects, as may be necessary or appropriate, including, but not limited to, the right to dispute or to assert offsets or defenses to any claim reflected on the SoFA and Schedules as to amount, liability or classification of the claim, or to otherwise subsequently designate any claim as "disputed," "contingent" or "unliquidated." Furthermore, nothing contained in the SoFA and Schedules shall constitute a waiver of rights by the Debtor involving any present or future causes of action, contested matters or other issues under the provisions of the Bankruptcy Code or other applicable non-bankruptcy laws.

Description of the Case and "As Is" Information Date. On October 16, 2019 (the "Petition Date"), the Debtor filed a voluntary petition for relief with the United States Bankruptcy Court for the District of Delaware (the "Delaware Bankruptcy Court") under Chapter 11 of the Bankruptcy Code. The Debtor is managing its assets as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. On December 4, 2019, the Delaware Bankruptcy Court entered an Order transferring this case to the Bankruptcy Court [Docket No. 1].

Asset information in the Schedules reflects the Debtor's best estimate of asset values as of the Petition Date, unless otherwise noted. No independent valuation has been obtained.

Basis of Presentation. The Schedules and SoFA do not purport to represent financial statements prepared in accordance with Generally Accepted Accounting Principles ("GAAP"), nor are they intended to fully reconcile to any financial statements otherwise prepared and/or distributed by the Debtor.

Although these Schedules and SoFA may, at times, incorporate information prepared in accordance with GAAP, the Schedules and SoFA neither purport to represent nor reconcile to financial statements prepared and/or distributed by the Debtor in accordance with GAAP or otherwise. Moreover, given, among other things, the valuation and nature of certain liabilities, to the extent that the Debtor shows more assets than liabilities, this is not a conclusion that the Debtor was solvent at the Petition Date. Likewise, to the extent that the Debtor shows more liabilities than assets, this is not a conclusion that the Debtor was insolvent at the Petition Date or any time prior to the Petition Date.

Estimates. To timely close the books and records of the Debtor, the Debtor and its professionals must make certain estimates and assumptions that affect the reported amounts of assets and liabilities and reported revenue and expenses. The Debtor reserves all rights to amend the reported amounts of assets, liabilities, revenue, and expenses to reflect changes in those estimates and assumptions.

Confidentiality. There may be instances within the Schedules and SoFA where names, addresses, or amounts have been left blank. Due to the nature of an agreement between the Debtor and the third party, concerns of confidentiality, or concerns for the privacy of an individual, the Debtor may have deemed it appropriate and necessary to avoid listing such names, addresses, and amounts.

Intercompany Claims. Any receivables and payables between the Debtor and affiliated or related entities in this case (each an "Intercompany Receivable" or "Intercompany Payable" and, collectively, the "Intercompany Claims") are reported as assets on Schedule B or liabilities on Schedule E and Schedule F. These Intercompany Claims include the following components, among others: 1) loans to affiliates or related entities, 2) accounts payable and payroll disbursements made out of an affiliate's or related entity's bank accounts on behalf of the Debtor, 3) centrally billed expenses, 4) corporate expense allocations, and 5) accounting for trade and other intercompany transactions. These Intercompany Claims may or may not result in allowed or enforceable claims by or against the Debtor, and by listing these claims the Debtor is not indicating a conclusion that the Intercompany Claims are enforceable. Intercompany Claims may also be subject to set off, recoupment, and netting not reflected in the Schedules. In situations where there is not an enforceable claim, the assets and/or liabilities of the Debtor may be greater or lesser than the amounts stated herein. All rights to amend intercompany Claims in the Schedules and SoFA are reserved.

The Debtor has listed the intercompany payables as unsecured claims on Schedule F. The Debtor reserves its rights to later change the characterization, classification, categorization, or designation of such items.

Insiders. For purposes of the Schedules and SoFA, the Debtor defines "insider" pursuant to section 101(31) of the Bankruptcy Code. Payments to insiders are set forth on Question 3.c. of the SoFA.

Persons listed as "insiders" have been included for informational purposes only. The Debtor did not take any position with respect to whether such individual could successfully argue that he or she is not an "insider" under applicable law, including without limitation, the federal securities laws, or with respect to any theories of liability or for any other purpose. Inclusion of any party in the Schedules and SoFA as an insider does not constitute an admission that such party is an insider or a waiver of such party's right to dispute insider status.

Excluded Accruals and GAAP Entries. The Debtor's balance sheet reflects liabilities recognized in accordance with GAAP; however, not all such liabilities would result in a claim against the Debtor. Certain liabilities (including but not limited to certain reserves, deferred charges, and future contractual obligations) have not been included in the Debtor's Schedules. Other immaterial assets and liabilities may also have been excluded.

Classification and Claim Descriptions. Any failure to designate a claim on the Schedules as "disputed," "contingent" or "unliquidated" does not constitute an admission by the Debtor that such amount is not "disputed," "contingent" or "unliquidated." The Debtor reserves the right to dispute, or to assert offsets or defenses to, any claim reflected on its Schedules as to amount, liability or classification or to otherwise subsequently designate any claim as "disputed," "contingent" or "unliquidated."

Listing a claim (i) in Schedule D as "secured," (ii) in Schedule E as "priority" or (iii) in Schedule F as "unsecured nonpriority," or listing a contract in Schedule G as "executory" or "unexpired," does not constitute an admission by the Debtor of the legal rights of the claimant or a waiver of the Debtor's right to recharacterize or reclassify such claim or contract.

Moreover, the Debtor reserves all rights to amend the SoFA and Schedules, in all respects, as may be necessary or appropriate, including, but not limited to, the right to dispute or to assert offsets or defenses to any claim reflected on the SoFA and Schedules as to amount, liability or classification of the claim, or to otherwise subsequently designate any claim as "disputed," "contingent" or "unliquidated." Furthermore, nothing contained in the SoFA and Schedules shall constitute a waiver of rights by the Debtor involving any present or future causes of action, contested matters or other issues under the provisions of the Bankruptcy Code or other relevant non-bankruptcy laws.

Credits and Adjustments. The claims of individual creditors for, among other things, goods, products, services or taxes are listed as the amounts entered on the Debtor's books and records and may not reflect credits, allowances or other adjustments due from such creditors to the Debtor. The Debtor reserves all of its rights respecting such credits, allowances or other adjustments.

Setoffs. The Debtor may incur setoffs from third parties in its business. Setoffs in the ordinary course can result from various routine transactions, including intercompany transactions, pricing discrepancies, warranty claims and other disputes between the Debtor and third parties. Certain of these constitute normal setoffs consistent with the ordinary course of business in the Debtor's industry. In such instances, such ordinary course setoffs are excluded from the Debtor's responses to Question 13 of the SoFA. The Debtor reserves all rights to enforce or challenge, as the case may be, any setoffs that have been or may be asserted.

Specific Notes. These general notes are in addition to the specific notes set forth below or in the related Statement and Schedules hereinafter.

General Disclaimer

The Debtor has prepared the Schedules and the SoFA based on the information reflected in the Debtor's books and records. However, inasmuch as the Debtor's books and records have not been audited or formally closed and evaluated for proper cut-off on the Petition Date, the Debtor cannot warrant the absolute accuracy of these documents. The Debtor has made a diligent effort to complete these documents accurately and completely. To the extent additional information becomes available, the Debtor will amend and supplement the Schedules and SoFA.

Specific Schedules Disclosures

a. **Schedule E/F - Creditors Who Have Unsecured Claims.**

Part 1 - Creditors with Priority Unsecured Claims. Pursuant to the *Order (I) Authorizing the Debtor to (A) Pay and Honor Prepetition Compensation, Reimbursable Business Expenses, and Employee Benefit Obligations, and (B) Maintain and Continue Certain Compensation and Benefit Programs Postpetition; and (11) Granting Related Relief* [Docket No. 39] (the "Wage Order"), the Debtor received authority to pay certain prepetition obligations,

including to pay employee wages and other employee benefits, in the ordinary course of business. The Debtor believes that any non-insider employee claims for prepetition amounts related to ongoing payroll and benefits, whether allowable as a priority or nonpriority claim, which were due and payable at the time of the Petition Date have been or will be satisfied as permitted pursuant to the Wage Order. The Debtor filed the *Motion of the Debtor for Entry of an Order Authorizing the Debtor to Pay and Honor Ordinary Course Obligations under Employee Bonus Plans and Granting Related Relief* [Docket No. 177] pursuant to which the Debtor sought authority to pay and honor certain prepetition bonus programs. The Court granted certain relief with respect to this motion at Docket No. 380. Employee claims related to these programs are shown in the aggregate amounts in Schedule E/F for privacy reasons. Additional information is available by appropriate request to the Debtor. The listing of a claim on Schedule E/F, Part 1, does not constitute an admission by the Debtor that such claim or any portion thereof is entitled to priority status.

Part 2 - Creditors with Nonpriority Unsecured Claims. The liabilities identified in Schedule E/F, Part 2, are derived from the Debtor's books and records. The Debtor made a reasonable attempt to set forth its unsecured obligations, although the actual amount of claims against the Debtor may vary from those liabilities represented on Schedule E/F, Part 2. The listed liabilities may not reflect the correct amount of any unsecured creditor's allowed claims or the correct amount of all unsecured claims.

Schedule E/F, Part 2 reflects liabilities based on the Debtor's books and records.

Schedule E/F, Part 2, contains information regarding threatened or pending litigation involving the Debtor. The amounts for these potential claims are listed as "unknown" and are marked as contingent, unliquidated, and disputed in the Schedules and Statements. Additionally, the amounts of certain litigation claims may be estimates based on the allegations asserted by the litigation counterparty, and do not constitute an admission by the Debtor with respect to either liability for, or the amount of, such claims.

Schedule E/F, Part 2, reflects certain prepetition amounts owing to counterparties to executory contracts and unexpired leases. Such prepetition amounts, however, may be paid in connection with the assumption or assumption and assignment of an executory contract or unexpired lease. In addition, Schedule E/F, Part 2, does not include claims that may arise in connection with the rejection of any executory contracts and unexpired leases, if any, that may be or have been rejected.

As of the time of filing of the Schedules and Statements, the Debtor had not received all invoices for payables, expenses, and other liabilities that may have accrued prior to the Petition Date. Accordingly, the information contained in Schedules D and E/F may be incomplete. The Debtor reserves its rights to amend Schedules D and E/F if and as it receive such invoices.

Fill in this information to identify the case:

Debtor name **Highland Capital Management, L.P.**

United States Bankruptcy Court for the: NORTHERN DISTRICT OF TEXAS

Case number (if known) **19-34054-SGJ**

☑ Check if this is an amended filing

Official Form 206Sum

Summary of Assets and Liabilities for Non-Individuals

12/15

Part 1: Summary of Assets

1. ***Schedule A/B: Assets-Real and Personal Property*** (Official Form 206A/B)

   1a. **Real property:**
   Copy line 88 from *Schedule A/B*..... $ **523,970.00**

   1b. **Total personal property:**
   Copy line 91A from *Schedule A/B*..... $ **409,580,813.30**

   1c. **Total of all property:**
   Copy line 92 from *Schedule A/B*..... $ **410,104,783.30**

Part 2: Summary of Liabilities

2. ***Schedule D: Creditors Who Have Claims Secured by Property*** (Official Form 206D)
   Copy the total dollar amount listed in Column A, *Amount of claim,* from line 3 of *Schedule D*..... $ **34,862,225.94**

3. ***Schedule E/F: Creditors Who Have Unsecured Claims*** (Official Form 206E/F)

   3a. Total claim amounts of priority unsecured claims:
   Copy the total claims from Part 1 from line 5a of *Schedule E/F*..... $ **13,650.00**

   3b. Total amount of claims of nonpriority amount of unsecured claims:
   Copy the total of the amount of claims from Part 2 from line 5b of *Schedule E/F*..... +$ **244,753,977.33**

4. **Total liabilities** .....
   Lines 2 + 3a + 3b $ **279,629,853.27**

Fill in this information to identify the case:

Debtor name **Highland Capital Management, L.P.**

United States Bankruptcy Court for the: NORTHERN DISTRICT OF TEXAS

Case number (if known) **19-34054-SGJ**

■ Check if this is an amended filing

Official Form 206E/F
Schedule E/F: Creditors Who Have Unsecured Claims

12/15

Be as complete and accurate as possible. Use Part 1 for creditors with PRIORITY unsecured claims and Part 2 for creditors with NONPRIORITY unsecured claims. List the other party to any executory contracts or unexpired leases that could result in a claim. Also list executory contracts on *Schedule A/B: Assets - Real and Personal Property* (Official Form 206A/B) and on *Schedule G: Executory Contracts and Unexpired Leases* (Official Form 206G). Number the entries in Parts 1 and 2 in the boxes on the left. If more space is needed for Part 1 or Part 2, fill out and attach the Additional Page of that Part included in this form.

Part 1: List All Creditors with PRIORITY Unsecured Claims

1. **Do any creditors have priority unsecured claims?** (See 11 U.S.C. § 507).

☐ No. Go to Part 2.

■ Yes. Go to line 2.

2. **List in alphabetical order all creditors who have unsecured claims that are entitled to priority in whole or in part.** If the debtor has more than 3 creditors with priority unsecured claims, fill out and attach the Additional Page of Part 1.

	Total claim	Priority amount
2.1	**Unknown**	**Unknown**
2.2	**$13,650.00**	**$13,650.00**

2.1 Priority creditor's name and mailing address

All Employees
300 Crescent Ct.
Suite 700
Dallas, TX 75201

As of the petition filing date, the claim is: *Check all that apply.*
■ Contingent
■ Unliquidated
☐ Disputed

Date or dates debt was incurred **2019**

Basis for the claim: **Employee Wages & Bonuses**

Last 4 digits of account number

Is the claim subject to offset?
■ No
☐ Yes

Specify Code subsection of PRIORITY unsecured claim: 11 U.S.C. § 507(a) (4)

Total claim: **Unknown** — Priority amount: **Unknown**

2.2 Priority creditor's name and mailing address

Andrew Parmentier
1821 Redwood Ave.
Boulder, CO 80304

As of the petition filing date, the claim is: *Check all that apply.*
☐ Contingent
☐ Unliquidated
☐ Disputed

Date or dates debt was incurred **5/31/2019**

Basis for the claim: **Separation and Release Agreement**

Last 4 digits of account number

Is the claim subject to offset?
■ No
☐ Yes

Specify Code subsection of PRIORITY unsecured claim: 11 U.S.C. § 507(a) (4)

Total claim: **$13,650.00** — Priority amount: **$13,650.00**

Part 2: List All Creditors with NONPRIORITY Unsecured Claims

3. **List in alphabetical order all of the creditors with nonpriority unsecured claims**. If the debtor has more than 6 creditors with nonpriority unsecured claims, fill out and attach the Additional Page of Part 2.

Amount of claim

Debtor **Highland Capital Management, L.P.** Case number (if known) **19-34054-SGJ**

3.1	**Nonpriority creditor's name and mailing address** **45 Employees** **300 Crescent Ct.** **Suite 700** **Dallas, TX 75201** **Date(s) debt was incurred** 2017, 2018 & 2019 **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ■ Contingent ■ Unliquidated ☐ Disputed **Basis for the claim:** Deferred Awards Is the claim subject to offset? ■ No ☐ Yes	**Unknown**
3.2	**Nonpriority creditor's name and mailing address** **46 Employees** **300 Crescent Ct.** **Suite 700** **Dallas, TX 75201** **Date(s) debt was incurred** 2018 **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ■ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** Prior year employee bonuses Is the claim subject to offset? ■ No ☐ Yes	**$5,758,166.67**
3.3	**Nonpriority creditor's name and mailing address** **Abrams & Bayliss** **20 Montchanin Road, Suite 200** **Wilmington, DE 19807** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** See Exhibit A Is the claim subject to offset? ■ No ☐ Yes	**$108,399.83**
3.4	**Nonpriority creditor's name and mailing address** **ACA Compliance Group** **8403 Colesville Road** **Suite 870** **Silver Spring, MD 20910** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** See Exhibit A Is the claim subject to offset? ■ No ☐ Yes	**$26,324.25**
3.5	**Nonpriority creditor's name and mailing address** **Acis Capital Management** **c/o Brian P. Shaw** **Rogge Dunn Group PC** **500 N. Akard Street Ste 1900** **Dallas, TX 75201** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ■ Contingent ■ Unliquidated ■ Disputed **Basis for the claim:** Litigation Claim Is the claim subject to offset? ■ No ☐ Yes	**Unknown**
3.6	**Nonpriority creditor's name and mailing address** **Acis Capital Management, L.P.** **c/o Brian P. Shaw** **Rogge Dunn Group, PC** **500 N. Akard Street Ste 1900** **Dallas, TX 75201** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ■ Contingent ■ Unliquidated ■ Disputed **Basis for the claim:** Litigation Claim Is the claim subject to offset? ■ No ☐ Yes	**Unknown**
3.7	**Nonpriority creditor's name and mailing address** **Action Shred of Texas** **1420 S. Barry Ave** **Dallas, TX 75223** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** Trade Payable Is the claim subject to offset? ■ No ☐ Yes	**$3,825.00**

Debtor **Highland Capital Management, L.P.** Case number (if known) **19-34054-SGJ**
Name

	Nonpriority creditor's name and mailing address	As of the petition filing date, the claim is: *Check all that apply.*	
3.8	**Akin Gump Strauss Hauer & Feld LLP** **1700 Pacific Avenue** **Suite 4100** **Dallas, TX 75201** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** See Exhibit A Is the claim subject to offset? ■ No ☐ Yes	**$113,947.86**
3.9	**All Employees** **300 Crescent Ct.** **Suite 700** **Dallas, TX 75201** **Date(s) debt was incurred** 2019 **Last 4 digits of account number** _	■ Contingent ■ Unliquidated ☐ Disputed **Basis for the claim:** Employee Bonuses Is the claim subject to offset? ■ No ☐ Yes	**Unknown**
3.10	**Allen ISD** **Attn: Elizabeth Weller** **2777 N. Stemmons Freeway** **Suite 1000** **Dallas, TX 75207** **Date(s) debt was incurred** 2019 **Last 4 digits of account number** 2301	☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** Ad Valorem Taxes Is the claim subject to offset? ■ No ☐ Yes	**$1,522.33**
3.11	**Allen ISD** **Attn: Elizabeth Weller** **2777 N. Stemmons Freeway** **Suite 1000** **Dallas, TX 75207** **Date(s) debt was incurred** 2019 **Last 4 digits of account number** 9351	☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** Ad Valorem Taxes Is the claim subject to offset? ■ No ☐ Yes	**$2,188.30**
3.12	**Alston & Bird LLP** **1201 W. Peachtree Street** **Atlanta, GA 30309-3424** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** See Exhibit A Is the claim subject to offset? ■ No ☐ Yes	**$2,234.00**
3.13	**American Arbitration Association** **120 Broadway. 21st Floor** **New York, NY 10271** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** See Exhibit A Is the claim subject to offset? ■ No ☐ Yes	**$55,511.80**
3.14	**American Solutions for Business** **NW#7794** **PO Box 1450** **Minneapolis, MN 55485-7794** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** Trade Payable Is the claim subject to offset? ■ No ☐ Yes	**$7,470.04**

Debtor **Highland Capital Management, L.P.** Case number (if known) **19-34054-SGJ**
Name

3.15 **Nonpriority creditor's name and mailing address**
Andrew Parmentier
1821 Redwood Ave.
Boulder, CO 80304
Date(s) debt was incurred 5/31/2019
Last 4 digits of account number _

As of the petition filing date, the claim is: *Check all that apply.* **$136,350.00**
☐ Contingent
☐ Unliquidated
☐ Disputed
Basis for the claim: Seperation and Release Agreement
Is the claim subject to offset? ■ No ☐ Yes

3.16 **Nonpriority creditor's name and mailing address**
Andrews Kurth
111 Congress Ave
Suite 1700
Attn: Scott Brister
Austin, TX 78701
Date(s) debt was incurred _
Last 4 digits of account number _

As of the petition filing date, the claim is: *Check all that apply.* **$137,637.81**
☐ Contingent
☐ Unliquidated
☐ Disputed
Basis for the claim: See Exhibit A
Is the claim subject to offset? ■ No ☐ Yes

3.17 **Nonpriority creditor's name and mailing address**
Arkadin, Inc.
Lockbox #32726
Collection Center Dr
Chicago, IL 60693-0726
Date(s) debt was incurred _
Last 4 digits of account number _

As of the petition filing date, the claim is: *Check all that apply.* **$647.59**
☐ Contingent
☐ Unliquidated
☐ Disputed
Basis for the claim: Trade Payable
Is the claim subject to offset? ■ No ☐ Yes

3.18 **Nonpriority creditor's name and mailing address**
ASW Law Limited
Crawford House
50 Cedar Avenue
Hamilton HM11 Bermuda
Date(s) debt was incurred _
Last 4 digits of account number _

As of the petition filing date, the claim is: *Check all that apply.* **$77,044.60**
☐ Contingent
☐ Unliquidated
☐ Disputed
Basis for the claim: See Exhibit A
Is the claim subject to offset? ■ No ☐ Yes

3.19 **Nonpriority creditor's name and mailing address**
AT&T
PO BOX 5001
Carol Stream, IL 60197-5001
Date(s) debt was incurred _
Last 4 digits of account number _

As of the petition filing date, the claim is: *Check all that apply.* **$927.16**
☐ Contingent
☐ Unliquidated
☐ Disputed
Basis for the claim: Trade Payable
Is the claim subject to offset? ■ No ☐ Yes

3.20 **Nonpriority creditor's name and mailing address**
AT&T Mobilty
PO Box 6444
Carol Stream, IL 60197-6444
Date(s) debt was incurred _
Last 4 digits of account number _

As of the petition filing date, the claim is: *Check all that apply.* **$6,728.59**
☐ Contingent
☐ Unliquidated
☐ Disputed
Basis for the claim: Trade Payable
Is the claim subject to offset? ■ No ☐ Yes

3.21 **Nonpriority creditor's name and mailing address**
Bates White, LLC
2001 K Street, NW
North Building, Suite 500
Washington, DC 20006
Date(s) debt was incurred _
Last 4 digits of account number _

As of the petition filing date, the claim is: *Check all that apply.* **$90,855.79**
☐ Contingent
☐ Unliquidated
☐ Disputed
Basis for the claim: See Exhibit A
Is the claim subject to offset? ■ No ☐ Yes

Debtor **Highland Capital Management, L.P.** Case number (if known) **19-34054-SGJ**
Name

3.22	**Nonpriority creditor's name and mailing address** **Bell Nunnally & Martin LLP** **3232 MCKINNEY AVE** **STE 1400** **DALLAS, TX 75204** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** See Exhibit A Is the claim subject to offset? ■ No ☐ Yes	**$6,934.79**
3.23	**Nonpriority creditor's name and mailing address** **Bloomberg Finance LP** **731 Lexington Ave.** **New York, NY 10022** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** Trade Payable Is the claim subject to offset? ■ No ☐ Yes	**$25,384.89**
3.24	**Nonpriority creditor's name and mailing address** **Boies, Schiller & Flexner LLP** **5301 Wisconsin Ave NW** **Washington, DC 20015-2015** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** See Exhibit A Is the claim subject to offset? ■ No ☐ Yes	**$115,714.80**
3.25	**Nonpriority creditor's name and mailing address** **Brandywine Process Servers, Ltd.** **PO Box 1360** **Wilmington, DE 19899** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** Trade Payable Is the claim subject to offset? ■ No ☐ Yes	**$69.00**
3.26	**Nonpriority creditor's name and mailing address** **Caledonian Directors Limited** **PO Box 1043** **George Town** **Grand Cayman KY1-1002** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** See Exhibit A Is the claim subject to offset? ■ No ☐ Yes	**$325.00**
3.27	**Nonpriority creditor's name and mailing address** **Canteen Vending Services** **PO Box 417632** **Boston, MA 02241-7632** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** Trade Payable Is the claim subject to offset? ■ No ☐ Yes	**$4,233.60**
3.28	**Nonpriority creditor's name and mailing address** **Carey International, Inc.** **7445 New Technology Way** **Frederick, MD 21703** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ■ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** Uncompleted Transaction Is the claim subject to offset? ■ No ☐ Yes	**$2,059,337.01**

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Name

No.	Nonpriority creditor's name and mailing address	As of the petition filing date, the claim is: *Check all that apply.*	Amount
3.29	**Carey Olsen** **PO Box 10008** **Willow House, Cricket Square** **Grand Cayman KY1-1001** Date(s) debt was incurred _ Last 4 digits of account number _	☐ Contingent ☐ Unliquidated ☐ Disputed Basis for the claim: See Exhibit A Is the claim subject to offset? ■ No ☐ Yes	**$38,930.00**
3.30	**Case Anywhere LLC** **21860 Burbank Blvd.** **Ste 125** **Woodland Hills, CA 91367** Date(s) debt was incurred _ Last 4 digits of account number _	☐ Contingent ☐ Unliquidated ☐ Disputed Basis for the claim: See Exhibit A Is the claim subject to offset? ■ No ☐ Yes	**$417.20**
3.31	**CBIZ Valuation Group, LLC** **ATTN: ACCOUNTS RECEIVABLE** **PO BOX 849846** **DALLAS, TX 75284-9846** Date(s) debt was incurred _ Last 4 digits of account number _	☐ Contingent ☐ Unliquidated ☐ Disputed Basis for the claim: See Exhibit A Is the claim subject to offset? ■ No ☐ Yes	**$545.77**
3.32	**CDW Direct** **PO Box 75723** **Chicago, IL 60675-5723** Date(s) debt was incurred _ Last 4 digits of account number _	☐ Contingent ☐ Unliquidated ☐ Disputed Basis for the claim: Trade Payable Is the claim subject to offset? ■ No ☐ Yes	**$4,998.70**
3.33	**Centroid** **1050 Wilshire Dr.** **Ste #170** **Troy, MI 48084** Date(s) debt was incurred _ Last 4 digits of account number _	☐ Contingent ☐ Unliquidated ☐ Disputed Basis for the claim: Trade Payable Is the claim subject to offset? ■ No ☐ Yes	**$1,155.00**
3.34	**Chase Couriers, Inc** **1220 Champion Circle** **#114** **Carrollton, TX 75006** Date(s) debt was incurred _ Last 4 digits of account number _	☐ Contingent ☐ Unliquidated ☐ Disputed Basis for the claim: Trade Payable Is the claim subject to offset? ■ No ☐ Yes	**$155.81**
3.35	**CLO Holdco, Ltd.** **c/o Grant Scott, Esq** **Myers Bigel Sibley & Sajovec, P.A.** **4140 Park Lake Ave, Ste 600** **Raleigh, NC 27612** Date(s) debt was incurred _ Last 4 digits of account number _	■ Contingent ■ Unliquidated ☐ Disputed Basis for the claim: Contractual Obligation Is the claim subject to offset? ■ No ☐ Yes	**$11,340,751.26**

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3.36	**Nonpriority creditor's name and mailing address** **Cole Schotz** **Court Plaza North** **25 Main Street** **P.O. Box 800** **Hackensack, NJ 07602-0800** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** See Exhibit A Is the claim subject to offset? ■ No ☐ Yes	**$198,760.29**
3.37	**Nonpriority creditor's name and mailing address** **Coleman Research Group, Inc.** **120 West 45th St** **25th Floor** **New York, NY 10036** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** Trade Payable Is the claim subject to offset? ■ No ☐ Yes	**$52,500.00**
3.38	**Nonpriority creditor's name and mailing address** **Concur Technologies, Inc.** **18400 NE Union Hill Road** **Redmond, WA 98052** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** Trade Payable Is the claim subject to offset? ■ No ☐ Yes	**$4,090.46**
3.39	**Nonpriority creditor's name and mailing address** **Connolly Gallagher LLP** **1201 North Market Street** **20th Floor** **Wilmington, DE 19801** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** See Exhibit A Is the claim subject to offset? ■ No ☐ Yes	**$118,831.25**
3.40	**Nonpriority creditor's name and mailing address** **Crescent Research** **PO Box 64-3622** **Vero Beach, FL 32964** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** Trade Payable Is the claim subject to offset? ■ No ☐ Yes	**$1,200.00**
3.41	**Nonpriority creditor's name and mailing address** **CSI Global Deposition Services** **Accounting Dept-972-719-5000** **4950 N. O'Connor Rd, 1 st Fl** **Irving, TX 75062-2778** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** See Exhibit A Is the claim subject to offset? ■ No ☐ Yes	**$826.01**
3.42	**Nonpriority creditor's name and mailing address** **CT Corp** **PO Box 4349** **Carol Stream, IL 60197-4349** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** Trade Payable Is the claim subject to offset? ■ No ☐ Yes	**$515.25**

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3.43 **Nonpriority creditor's name and mailing address**
CVE Technologies Group Inc.
1414 S. Gustin Rd.
Salt Lake City, UT 84104
Date(s) debt was incurred _
Last 4 digits of account number _

As of the petition filing date, the claim is: *Check all that apply.* **$1,500.00**
☐ Contingent
☐ Unliquidated
☐ Disputed
Basis for the claim: Trade Payable
Is the claim subject to offset? ■ No ☐ Yes

3.44 **Nonpriority creditor's name and mailing address**
Dallas County
Attn: Elizabeth Weller
2777 N. Stemmons Freeway
Suite 1000
Dallas, TX 75207
Date(s) debt was incurred 2019
Last 4 digits of account number 3150

As of the petition filing date, the claim is: *Check all that apply.* **$47,809.87**
☐ Contingent
☐ Unliquidated
☐ Disputed
Basis for the claim: Ad Valorem Taxes
Is the claim subject to offset? ■ No ☐ Yes

3.45 **Nonpriority creditor's name and mailing address**
Daniel Sheehan & Associates, PLLC
8150 N. Central Expressway
Suite 100
Dallas, TX 75206
Date(s) debt was incurred _
Last 4 digits of account number _

As of the petition filing date, the claim is: *Check all that apply.* **$21,226.25**
☐ Contingent
☐ Unliquidated
☐ Disputed
Basis for the claim: See Exhibit A
Is the claim subject to offset? ■ No ☐ Yes

3.46 **Nonpriority creditor's name and mailing address**
Debevoise & Plimpton LLP
c/o Accounting Dept. 28th Floor
909 Third Ave
New York, NY 10022
Date(s) debt was incurred _
Last 4 digits of account number _

As of the petition filing date, the claim is: *Check all that apply.* **$20,658.79**
☐ Contingent
☐ Unliquidated
☐ Disputed
Basis for the claim: See Exhibit A
Is the claim subject to offset? ■ No ☐ Yes

3.47 **Nonpriority creditor's name and mailing address**
Denton County
PO Box 90223
Denton, TX 76202
Date(s) debt was incurred 2019
Last 4 digits of account number 0DEN

As of the petition filing date, the claim is: *Check all that apply.* **$553.46**
☐ Contingent
☐ Unliquidated
☐ Disputed
Basis for the claim: Ad Valorem Taxes
Is the claim subject to offset? ■ No ☐ Yes

3.48 **Nonpriority creditor's name and mailing address**
Denton County
PO Box 90223
Denton, TX 76202
Date(s) debt was incurred 2019
Last 4 digits of account number 5DEN

As of the petition filing date, the claim is: *Check all that apply.* **$3.68**
☐ Contingent
☐ Unliquidated
☐ Disputed
Basis for the claim: Ad Valorem Taxes
Is the claim subject to offset? ■ No ☐ Yes

3.49 **Nonpriority creditor's name and mailing address**
DLA Piper LLP (US)
1900 N Pearl St, Suite 2200
Dallas, TX 75201
Date(s) debt was incurred _
Last 4 digits of account number _

As of the petition filing date, the claim is: *Check all that apply.* **$1,318,730.36**
☐ Contingent
☐ Unliquidated
☐ Disputed
Basis for the claim: See Exhibit A
Is the claim subject to offset? ■ No ☐ Yes

Debtor **Highland Capital Management, L.P.** Case number (if known) **19-34054-SGJ**

3.50	**Nonpriority creditor's name and mailing address** **Dow Jones & Company, Inc.** **1211 Avenue of the Americas** **New York, NY 10036** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** Trade Payable Is the claim subject to offset? ■ No ☐ Yes	**$1,038.26**
3.51	**Nonpriority creditor's name and mailing address** **DTCC ITP LLC** **PO Box 27590** **New York, NY 10087-7590** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** Trade Payable Is the claim subject to offset? ■ No ☐ Yes	**$3.30**
3.52	**Nonpriority creditor's name and mailing address** **Duff & Phelps, LLC** **c/o David Landman** **Benesch, Friedlander, Coplan & Aronoff** **200 Public Sq. Suite 2300** **Cleveland, OH 44114-4000** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** See Exhibit A Is the claim subject to offset? ■ No ☐ Yes	**$350,000.00**
3.53	**Nonpriority creditor's name and mailing address** **Elite Document Technology** **403 North Stemmons Freeway Suite 100** **Dallas, TX 75207** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** See Exhibit A Is the claim subject to offset? ■ No ☐ Yes	**$5,837.30**
3.54	**Nonpriority creditor's name and mailing address** **Epiq eDiscovery Solutions** **Dept 2651** **PO Box 122651** **Dallas, TX 75312-2651** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** See Exhibit A Is the claim subject to offset? ■ No ☐ Yes	**$9,972.65**
3.55	**Nonpriority creditor's name and mailing address** **Eric Girard** **312 Polo Trl** **Colleyville, TX 76034** **Date(s) debt was incurred** 10/14/2019 **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** Consulting fee Is the claim subject to offset? ■ No ☐ Yes	**$11,430.14**
3.56	**Nonpriority creditor's name and mailing address** **Felicity Toube QC** **3-4 South Square** **Gray's Inn** **London, WC1R 5HP** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** See Exhibit A Is the claim subject to offset? ■ No ☐ Yes	**$1,546.65**

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No.	Nonpriority creditor's name and mailing address	As of the petition filing date, the claim is: *Check all that apply.*	Amount
3.57	**Foley Gardere** **2021 McKinney Ave** **Suite 1600** **Dallas, TX 75201** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** See Exhibit A Is the claim subject to offset? ■ No ☐ Yes	**$1,446,136.66**
3.58	**Four Seasons Plantscaping, LLC** **139 Turtle Creek Blvd.** **Dallas, TX 75207-6807** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** Trade Payable Is the claim subject to offset? ■ No ☐ Yes	**$108.95**
3.59	**Gardner Haas PLLC** **2501 N. Harwood Street** **Suite 1250** **Dallas, TX 75201** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** See Exhibit A Is the claim subject to offset? ■ No ☐ Yes	**$522.72**
3.60	**Gold's Gym International** **Attn: Corporate Billing** **125 E John Carpenter Frwy** **Suite 1300** **Irving, TX 75062** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** Trade Payable Is the claim subject to offset? ■ No ☐ Yes	**$561.75**
3.61	**Greenwood Office Outfitters** **2951 Suffolk Drive** **Suite 640** **Fort Worth, TX 76133-1149** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** Trade Payable Is the claim subject to offset? ■ No ☐ Yes	**$2,371.07**
3.62	**Greyline Solutions** **PO Box 733976** **Dallas, TX 75373-3976** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** See Exhibit A Is the claim subject to offset? ■ No ☐ Yes	**$11,250.00**
3.63	**Harder LLP** **132 S. RODEO DRIVE** **FOURTH FLOOR** **BEVERLY HILLS, CA 90212** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** See Exhibit A Is the claim subject to offset? ■ No ☐ Yes	**$5,464.13**

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3.64	**Nonpriority creditor's name and mailing address** **Highland Capital Management (Singapore)** **300 Crescent Ct.** **Suite 700** **Dallas, TX 75201** **Date(s) debt was incurred** Prior to 12/31/2018 **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ■ Unliquidated ☐ Disputed **Basis for the claim:** The balance shown is updated annually for service fees and has not been updated since 12/31/2018 Is the claim subject to offset? ■ No ☐ Yes	**$248,745.28**
3.65	**Nonpriority creditor's name and mailing address** **Highland CLO Management Ltd.** **PO Box 309** **Ugland House** **Grand Cayman KY1-1104** **Cayman Island** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** Interest payable Is the claim subject to offset? ■ No ☐ Yes	**$599,187.26**
3.66	**Nonpriority creditor's name and mailing address** **Highland CLO Management Ltd.** **PO Box 309** **Ugland House** **Grand Cayman KY1-1104** **Cayman Island** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** Note payable Is the claim subject to offset? ■ No ☐ Yes	**$9,541,446.00**
3.67	**Nonpriority creditor's name and mailing address** **Highland RCP Offshore, LP** **300 Crescent Ct.** **Suite 700** **Dallas, TX 75201** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** Unearned Revenue Is the claim subject to offset? ■ No ☐ Yes	**$2,447,870.00**
3.68	**Nonpriority creditor's name and mailing address** **Highland RCP, LP** **300 Crescent Ct.** **Suite 700** **Dallas, TX 75201** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** Unearned Revenue Is the claim subject to offset? ■ No ☐ Yes	**$1,945,067.00**
3.69	**Nonpriority creditor's name and mailing address** **Hunton Andrews Kurth LLP** **1445 Ross Avenue** **Suite 3700** **Dallas, TX 75202-2799** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** See Exhibit A Is the claim subject to offset? ■ No ☐ Yes	**$107,221.92**
3.70	**Nonpriority creditor's name and mailing address** **ICE Data Pricing & Reference Data, LLC** **PO Box 98616** **Chicago, IL 60693** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** Trade Payable Is the claim subject to offset? ■ No ☐ Yes	**$1,565.23**

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3.71 **Nonpriority creditor's name and mailing address**
Intralinks
P.O. Box 10259
New York, NY 10259
Date(s) debt was incurred _
Last 4 digits of account number _

As of the petition filing date, the claim is: *Check all that apply.* **$7,995.00**
☐ Contingent
☐ Unliquidated
☐ Disputed
Basis for the claim: Trade Payable
Is the claim subject to offset? ■ No ☐ Yes

3.72 **Nonpriority creditor's name and mailing address**
JAMS, Inc
PO Box 512850
Los Angelos, CA 90051-0850
Date(s) debt was incurred _
Last 4 digits of account number _

As of the petition filing date, the claim is: *Check all that apply.* **$1,352.27**
☐ Contingent
☐ Unliquidated
☐ Disputed
Basis for the claim: See Exhibit A
Is the claim subject to offset? ■ No ☐ Yes

3.73 **Nonpriority creditor's name and mailing address**
Joshua & Jennifer Terry
c/o Brian P. Shaw, Esq.
Rogge Dunn Group, PC
500 N. Akard Street, Suite 1900
Dallas, TX 75201
Date(s) debt was incurred _
Last 4 digits of account number _

As of the petition filing date, the claim is: *Check all that apply.* **$425,000.00**
■ Contingent
■ Unliquidated
■ Disputed
Basis for the claim: Litigation Claim
Is the claim subject to offset? ■ No ☐ Yes

3.74 **Nonpriority creditor's name and mailing address**
Katten Muchin Rosenman LLP
525 W Monroe St
Chicago, IL 60661-3693
Date(s) debt was incurred _
Last 4 digits of account number _

As of the petition filing date, the claim is: *Check all that apply.* **$16,695.00**
☐ Contingent
☐ Unliquidated
☐ Disputed
Basis for the claim: See Exhibit A
Is the claim subject to offset? ■ No ☐ Yes

3.75 **Nonpriority creditor's name and mailing address**
Kaufman County
Attn: Elizabeth Weller
2777 N. Stemmons Freeway
Suite 1000
Dallas, TX 75207
Date(s) debt was incurred 2019
Last 4 digits of account number 0606

As of the petition filing date, the claim is: *Check all that apply.* **$585.09**
☐ Contingent
☐ Unliquidated
☐ Disputed
Basis for the claim: Ad Valorem Taxes
Is the claim subject to offset? ■ No ☐ Yes

3.76 **Nonpriority creditor's name and mailing address**
Kaufman County
Attn: Elizabeth Weller
2777 N. Stemmons Freeway
Suite 1000
Dallas, TX 75207
Date(s) debt was incurred 2019
Last 4 digits of account number 0600

As of the petition filing date, the claim is: *Check all that apply.* **$3,090.25**
☐ Contingent
☐ Unliquidated
☐ Disputed
Basis for the claim: Ad Valorem Taxes
Is the claim subject to offset? ■ No ☐ Yes

3.77 **Nonpriority creditor's name and mailing address**
Kaufman County
Attn: Elizabeth Weller
2777 N. Stemmons Freeway
Suite 1000
Dallas, TX 75207
Date(s) debt was incurred 2019
Last 4 digits of account number 0600

As of the petition filing date, the claim is: *Check all that apply.* **$125.05**
☐ Contingent
☐ Unliquidated
☐ Disputed
Basis for the claim: Ad Valorem Taxes
Is the claim subject to offset? ■ No ☐ Yes

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3.78 **Nonpriority creditor's name and mailing address**
Kaufman County
Attn: Elizabeth Weller
2777 N. Stemmons Freeway
Suite 1000
Dallas, TX 75207
Date(s) debt was incurred 2019
Last 4 digits of account number 0600

As of the petition filing date, the claim is: *Check all that apply.* **$5,732.15**
☐ Contingent
☐ Unliquidated
☐ Disputed
Basis for the claim: Ad Valorem Taxes
Is the claim subject to offset? ■ No ☐ Yes

3.79 **Nonpriority creditor's name and mailing address**
Legalpeople LLC
134 N LaSalle Street
Suite 800
Chicago, IL 60602
Date(s) debt was incurred _
Last 4 digits of account number _

As of the petition filing date, the claim is: *Check all that apply.* **$34,425.72**
☐ Contingent
☐ Unliquidated
☐ Disputed
Basis for the claim: See Exhibit A
Is the claim subject to offset? ■ No ☐ Yes

3.80 **Nonpriority creditor's name and mailing address**
Levinger PC
1445 Ross Avenue
Suite 2500
Dallas, TX 75202
Date(s) debt was incurred _
Last 4 digits of account number _

As of the petition filing date, the claim is: *Check all that apply.* **$3,778.01**
☐ Contingent
☐ Unliquidated
☐ Disputed
Basis for the claim: See Exhibit A
Is the claim subject to offset? ■ No ☐ Yes

3.81 **Nonpriority creditor's name and mailing address**
Lexitas
PO Box 734298
Dept. 2012
Dallas, TX 75373-4298
Date(s) debt was incurred _
Last 4 digits of account number _

As of the petition filing date, the claim is: *Check all that apply.* **$2,583.66**
☐ Contingent
☐ Unliquidated
☐ Disputed
Basis for the claim: See Exhibit A
Is the claim subject to offset? ■ No ☐ Yes

3.82 **Nonpriority creditor's name and mailing address**
Loews Coronado Bay Resort
4000 Coronado Bay Road
Coronado, CA 92118
Date(s) debt was incurred _
Last 4 digits of account number _

As of the petition filing date, the claim is: *Check all that apply.* **$57,628.65**
☐ Contingent
☐ Unliquidated
☐ Disputed
Basis for the claim: Trade Payable
Is the claim subject to offset? ■ No ☐ Yes

3.83 **Nonpriority creditor's name and mailing address**
Lynn Pinker Cox & Hurst, LLP
2100 Ross Ave
Suite 2700
Dallas, TX 75201
Date(s) debt was incurred _
Last 4 digits of account number _

As of the petition filing date, the claim is: *Check all that apply.* **$436,538.06**
☐ Contingent
☐ Unliquidated
☐ Disputed
Basis for the claim: See Exhibit A
Is the claim subject to offset? ■ No ☐ Yes

3.84 **Nonpriority creditor's name and mailing address**
Maples and Calder
UGLAND HOUSE
PO BOX 309GT; S CHURCH ST
George Town Grand Cayman
Date(s) debt was incurred _
Last 4 digits of account number _

As of the petition filing date, the claim is: *Check all that apply.* **$25,800.11**
☐ Contingent
☐ Unliquidated
☐ Disputed
Basis for the claim: See Exhibit A
Is the claim subject to offset? ■ No ☐ Yes

Debtor **Highland Capital Management, L.P.** Case number (if known) **19-34054-SGJ**
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3.85 **Nonpriority creditor's name and mailing address**
MarkitWSO Corporation
Three Lincoln Centre
5430 LBJ Frwy; Ste 800
Dallas, TX 75240
Date(s) debt was incurred _
Last 4 digits of account number _

As of the petition filing date, the claim is: *Check all that apply.* **$12,015.91**
☐ Contingent
☐ Unliquidated
☐ Disputed
Basis for the claim: **Trade Payable**
Is the claim subject to offset? ■ No ☐ Yes

3.86 **Nonpriority creditor's name and mailing address**
McKool Smith
300 Crescent Court
Suite 1500
Dallas, TX 75201
Date(s) debt was incurred _
Last 4 digits of account number _

As of the petition filing date, the claim is: *Check all that apply.* **$2,163,976.00**
☐ Contingent
☐ Unliquidated
☐ Disputed
Basis for the claim: **See Exhibit A**
Is the claim subject to offset? ■ No ☐ Yes

3.87 **Nonpriority creditor's name and mailing address**
Meta-e Discovery LLC
Six Landmark Square
Fourth Floor
Stamford, CT 06901
Date(s) debt was incurred _
Last 4 digits of account number _

As of the petition filing date, the claim is: *Check all that apply.* **$780,645.36**
☐ Contingent
☐ Unliquidated
☐ Disputed
Basis for the claim: **See Exhibit A**
Is the claim subject to offset? ■ No ☐ Yes

3.88 **Nonpriority creditor's name and mailing address**
Nick Meserve
11835 Brandywine Ln
Houston, TX 77024
Date(s) debt was incurred _
Last 4 digits of account number _

As of the petition filing date, the claim is: *Check all that apply.* **$300.00**
☐ Contingent
☐ Unliquidated
☐ Disputed
Basis for the claim: **Trade Payable**
Is the claim subject to offset? ■ No ☐ Yes

3.89 **Nonpriority creditor's name and mailing address**
NWCC, LLC
c/o of Michael A. Battle
Barnes & Thornburg, LLP
1717 Pennsylvania Ave N.W. Ste 500
Washington, DC 20006
Date(s) debt was incurred _
Last 4 digits of account number _

As of the petition filing date, the claim is: *Check all that apply.* **$375,000.00**
■ Contingent
■ Unliquidated
■ Disputed
Basis for the claim: **Litigation Claim**
Is the claim subject to offset? ■ No ☐ Yes

3.90 **Nonpriority creditor's name and mailing address**
Opus 2 International, Inc.
100 Pine Street
Suite 560
San Francisco, CA 94111
Date(s) debt was incurred _
Last 4 digits of account number _

As of the petition filing date, the claim is: *Check all that apply.* **$15,669.86**
☐ Contingent
☐ Unliquidated
☐ Disputed
Basis for the claim: **See Exhibit A**
Is the claim subject to offset? ■ No ☐ Yes

3.91 **Nonpriority creditor's name and mailing address**
PACER Service Center
P.O. Box 5208
Portland, OR 97208-5208
Date(s) debt was incurred _
Last 4 digits of account number _

As of the petition filing date, the claim is: *Check all that apply.* **$435.30**
☐ Contingent
☐ Unliquidated
☐ Disputed
Basis for the claim: **Trade Payable**
Is the claim subject to offset? ■ No ☐ Yes

Debtor **Highland Capital Management, L.P.** Case number (if known) **19-34054-SGJ**

3.92	**Nonpriority creditor's name and mailing address** **Patrick Daugherty** **c/o Thomas A. Uebler** **McCollom D'Emilio Smith** **2751 Centerville Rd #401** **Wilmington, DE 19808** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ■ Contingent ■ Unliquidated ■ Disputed **Basis for the claim:** **Litigation Claim** Is the claim subject to offset? ■ No ☐ Yes	**$11,700,000.00**
3.93	**Nonpriority creditor's name and mailing address** **Pitney Bowes- Purchase Power** **PO Box 371874** **Pittsburgh, PA 15250-2648** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** **Trade Payable** Is the claim subject to offset? ■ No ☐ Yes	**$1,611.00**
3.94	**Nonpriority creditor's name and mailing address** **ProStar Services, Inc** **PO Box 110209** **Carrollton, TX 75011** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** **Trade Payable** Is the claim subject to offset? ■ No ☐ Yes	**$1,064.58**
3.95	**Nonpriority creditor's name and mailing address** **Quintairos, Prieto Wood & Boyer** **865 S. Figueroa St** **10th FL** **Los Angeles, CA 90017** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** **See Exhibit A** Is the claim subject to offset? ■ No ☐ Yes	**$8,608.17**
3.96	**Nonpriority creditor's name and mailing address** **Redeemer Committee - Highland Crusader** **Attn: Eric Felton** **731 Pleasant Ave.** **Glen Ellyn, IL 60137** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ■ Contingent ■ Unliquidated ■ Disputed **Basis for the claim:** **Litigation Claim** Is the claim subject to offset? ☐ No ■ Yes	**$189,314,946.00**
3.97	**Nonpriority creditor's name and mailing address** **Reid Collins & Tsai** **810 Seventh Ave Ste 410** **New York, NY 10019** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** **See Exhibit A** Is the claim subject to offset? ■ No ☐ Yes	**$258,526.25**
3.98	**Nonpriority creditor's name and mailing address** **Scott Douglass & McConnico LLP** **303 Colorado St** **Ste 2400** **Austin, TX 78701** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** **See Exhibit A** Is the claim subject to offset? ■ No ☐ Yes	**$1,478.59**

Debtor **Highland Capital Management, L.P.** Case number (if known) **19-34054-SGJ**
Name

3.99 Nonpriority creditor's name and mailing address
Secured Access Systems, LLC
1913 Walden Court
Flower Mound, TX 75022
Date(s) debt was incurred _
Last 4 digits of account number _

As of the petition filing date, the claim is: *Check all that apply.* **$24.37**
☐ Contingent
☐ Unliquidated
☐ Disputed
Basis for the claim: **Trade Payable**
Is the claim subject to offset? ■ No ☐ Yes

3.100 Nonpriority creditor's name and mailing address
Siepe Services, LLC
5440 Harvest Hill Road
Suite 100
Dallas, TX 75230
Date(s) debt was incurred _
Last 4 digits of account number _

As of the petition filing date, the claim is: *Check all that apply.* **$80,183.88**
☐ Contingent
☐ Unliquidated
☐ Disputed
Basis for the claim: **Trade Payable**
Is the claim subject to offset? ■ No ☐ Yes

3.101 Nonpriority creditor's name and mailing address
Southland Property Tax Consultants, Inc
421 W. 3rd Street
Ste 920
Fort Worth, TX 76102
Date(s) debt was incurred _
Last 4 digits of account number _

As of the petition filing date, the claim is: *Check all that apply.* **$309.11**
☐ Contingent
☐ Unliquidated
☐ Disputed
Basis for the claim: **Trade Payable**
Is the claim subject to offset? ■ No ☐ Yes

3.102 Nonpriority creditor's name and mailing address
Squire Patton Boggs (US) LLP
PO Box 643051
Cincinnati, OH 45264
Date(s) debt was incurred _
Last 4 digits of account number _

As of the petition filing date, the claim is: *Check all that apply.* **$5,208.40**
☐ Contingent
☐ Unliquidated
☐ Disputed
Basis for the claim: **See Exhibit A**
Is the claim subject to offset? ■ No ☐ Yes

3.103 Nonpriority creditor's name and mailing address
Stanton Advisors LLC
300 Coles Street
Apt. 802
Jersey City, NJ 07310
Date(s) debt was incurred _
Last 4 digits of account number _

As of the petition filing date, the claim is: *Check all that apply.* **$10,000.00**
☐ Contingent
☐ Unliquidated
☐ Disputed
Basis for the claim: **See Exhibit A**
Is the claim subject to offset? ■ No ☐ Yes

3.104 Nonpriority creditor's name and mailing address
Stanton LLP
9400 N Central Expwy
Ste 1304
Dallas, TX 75231
Date(s) debt was incurred _
Last 4 digits of account number _

As of the petition filing date, the claim is: *Check all that apply.* **$90,712.65**
■ Contingent
■ Unliquidated
■ Disputed
Basis for the claim: **See Exhibit A**
Is the claim subject to offset? ■ No ☐ Yes

3.105 Nonpriority creditor's name and mailing address
State Street Global Exchange
Elkins/McSherry, LLC
One Lincoln Street
Boston, MA 02111
Date(s) debt was incurred _
Last 4 digits of account number _

As of the petition filing date, the claim is: *Check all that apply.* **$2,500.00**
☐ Contingent
☐ Unliquidated
☐ Disputed
Basis for the claim: **See Exhibit A**
Is the claim subject to offset? ■ No ☐ Yes

Debtor **Highland Capital Management, L.P.** Case number (if known) **19-34054-SGJ**

3.106	**Nonpriority creditor's name and mailing address** **Stinson Leonard Street LLP** **PO Box 843052** **Kansas City, MO 64184** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ■ Contingent ■ Unliquidated ■ Disputed **Basis for the claim:** See Exhibit A Is the claim subject to offset? ■ No ☐ Yes	**$246,802.54**
3.107	**Nonpriority creditor's name and mailing address** **Thomson West** **PO Box 64833** **St. Paul, MN 55164-0833** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** Trade Payable Is the claim subject to offset? ■ No ☐ Yes	**$1,158.52**
3.108	**Nonpriority creditor's name and mailing address** **UBS AG, London Branch** **c/o Andrew Clubock, Esq.** **Latham & Watkins LLP** **555 11th Street NW #1000** **Washington, DC 20004** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ■ Contingent ■ Unliquidated ■ Disputed **Basis for the claim:** Litigation Claim Is the claim subject to offset? ■ No ☐ Yes	**Unknown**
3.109	**Nonpriority creditor's name and mailing address** **UBS Securities LLC** **c/o Andrew Clubock** **Latham & Watkins LLP** **555 11th Street NW #1000** **Washington, DC 20004** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ■ Contingent ■ Unliquidated ■ Disputed **Basis for the claim:** Litigation Claim Is the claim subject to offset? ■ No ☐ Yes	**Unknown**
3.110	**Nonpriority creditor's name and mailing address** **UPS Supply Chain Solutions** **28013 Network Place** **Chicago, IL 60673-1280** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** Trade Payable Is the claim subject to offset? ■ No ☐ Yes	**$90.45**
3.111	**Nonpriority creditor's name and mailing address** **Wakefield Quin** **Victoria Place** **31 Victoria St** **Hamilton, HM10 Bermuda** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** See Exhibit A Is the claim subject to offset? ■ No ☐ Yes	**$2,334.80**
3.112	**Nonpriority creditor's name and mailing address** **Wilks, Lukoff & Bracegirdle, LLC** **4250 Lancaster Pike** **#200** **Wilmington, DE 19805** **Date(s) debt was incurred** _ **Last 4 digits of account number** _	**As of the petition filing date, the claim is:** *Check all that apply.* ☐ Contingent ☐ Unliquidated ☐ Disputed **Basis for the claim:** Trade Payable Is the claim subject to offset? ■ No ☐ Yes	**$3,411.87**

Debtor **Highland Capital Management, L.P.** Case number (if known) **19-34054-SGJ**
Name

3.113 **Nonpriority creditor's name and mailing address**

Xerox Corporation
PO Box 650361
Dallas, TX 75265

Date(s) debt was incurred _

Last 4 digits of account number _

As of the petition filing date, the claim is: *Check all that apply.*

☐ Contingent
☐ Unliquidated
☐ Disputed

Basis for the claim: **Trade Payable**

Is the claim subject to offset? ■ No ☐ Yes

$2,348.31

Part 3: List Others to Be Notified About Unsecured Claims

4. List in alphabetical order any others who must be notified for claims listed in Parts 1 and 2. Examples of entities that may be listed are collection agencies, assignees of claims listed above, and attorneys for unsecured creditors.

If no others need to be notified for the debts listed in Parts 1 and 2, do not fill out or submit this page. If additional pages are needed, copy the next page.

Name and mailing address	On which line in Part1 or Part 2 is the related creditor (if any) listed?	Last 4 digits of account number, if any

Part 4: Total Amounts of the Priority and Nonpriority Unsecured Claims

5. Add the amounts of priority and nonpriority unsecured claims.

		Total of claim amounts
5a. Total claims from Part 1	5a.	$ **13,650.00**
5b. Total claims from Part 2	5b. +	$ **244,753,977.33**
5c. Total of Parts 1 and 2 Lines 5a + 5b = 5c.	5c.	$ **244,767,627.33**

Fill in this information to identify the case:

Debtor name **Highland Capital Management, L.P.**

United States Bankruptcy Court for the: NORTHERN DISTRICT OF TEXAS

Case number (if known) **19-34054-SGJ**

■ Check if this is an amended filing

Official Form 202

Declaration Under Penalty of Perjury for Non-Individual Debtors

12/15

An individual who is authorized to act on behalf of a non-individual debtor, such as a corporation or partnership, must sign and submit this form for the schedules of assets and liabilities, any other document that requires a declaration that is not included in the document, and any amendments of those documents. This form must state the individual's position or relationship to the debtor, the identity of the document, and the date. Bankruptcy Rules 1008 and 9011.

WARNING -- Bankruptcy fraud is a serious crime. Making a false statement, concealing property, or obtaining money or property by fraud in connection with a bankruptcy case can result in fines up to $500,000 or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.

Declaration and signature

I am the president, another officer, or an authorized agent of the corporation; a member or an authorized agent of the partnership; or another individual serving as a representative of the debtor in this case.

I have examined the information in the documents checked below and I have a reasonable belief that the information is true and correct:

- ☐ *Schedule A/B: Assets–Real and Personal Property* (Official Form 206A/B)
- ☐ *Schedule D: Creditors Who Have Claims Secured by Property* (Official Form 206D)
- ■ *Schedule E/F: Creditors Who Have Unsecured Claims* (Official Form 206E/F)
- ☐ *Schedule G: Executory Contracts and Unexpired Leases* (Official Form 206G)
- ☐ *Schedule H: Codebtors* (Official Form 206H)
- ■ *Summary of Assets and Liabilities for Non-Individuals* (Official Form 206Sum)
- ■ Amended *Schedule* **Amended Schedule E/F and Summary of assets and liabilities for non-individuals**
- ☐ *Chapter 11 or Chapter 9 Cases: List of Creditors Who Have the 20 Largest Unsecured Claims and Are Not Insiders* (Official Form 204)
- ☐ Other document that requires a declaration

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 22, 2020

x _____
Signature of individual signing on behalf of debtor

James P. Seery, Jr.
Printed name

CEO/CRO
Position or relationship to debtor

Exhibit 3

Exhibit 1

PROMISSORY NOTE

$12,666,446 October __, 2016

FOR VALUE RECEIVED, the undersigned, Highland Capital Management, L.P., a Delaware limited partnership ("Maker"), hereby promises to pay to the order of Acis Capital Management, L.P., a Delaware limited partnership ("Payee"), at its office at 300 Crescent Court, Suite 700, Dallas, Texas 75201 in lawful money of the United States of America, the principal sum of TWELVE MILLION SIX HUNDRED SIXTY-SIX THOUSAND FOUR HUNDRED FORTY-SIX DOLLARS ($12,666,446), together with interest on the outstanding principal balance thereof from day to day remaining at the rate of three percent (3%) per annum, as provided herein.

Payments

THE UNPAID PRINCIPAL HEREOF, TOGETHER WITH ALL ACCRUED AND UNPAID INTEREST THEREON, SHALL AUTOMATICALLY BE DUE AND PAYABLE IN FULL, WITHOUT NECESSITY OF DEMAND OR NOTICE, ACCORDING TO THE AMORTIZATION TABLE ATTACHED HERETO AS EXHIBIT A.

All past due principal and interest shall bear interest from and after the date when due at a rate equal to the rate equal to the lesser of (a) eighteen percent (18.0%) per annum or (b) the Maximum Rate (as defined herein).

Interest on the indebtedness evidenced by this Note shall be computed on the basis of a year of 360 days and the actual number of days elapsed (including the first day but excluding the last day) unless such calculation would result in a rate that exceeds the maximum rate allowed by applicable law (such rate, the "Maximum Rate") in which case interest shall be calculated on the basis of a year of 365 or 366 days, as the case may be. If the regularly scheduled due date for any payment under this Note is not a Business Day, the due date for such payment shall be the next succeeding Business Day, and payment made on such succeeding Business Day shall have the same force and effect as if made on the regularly scheduled due date. "Business Day" means a day, other than a Saturday, Sunday or legal holiday, on which a bank in Dallas, Texas is open for business.

Maker shall have the right to prepay this Note, in whole or in part, at any time and from time to time without premium or penalty. Amounts borrowed and repaid hereunder may not be reborrowed.

Conditions Precedent

This Note shall not become effective and Payee shall have no obligation to make the advance hereunder until Payee has received each of the following in form and substance acceptable to Payee:

(a) this Note executed by Maker;

(b) the Agreement for Purchase and Sale of CLO Participation Interests dated of even date herewith (the "Purchase Agreement"), by and between Maker and Payee, and copies of all agreements, documents and instruments executed or delivered in connection therewith and evidence that all conditions to the effectiveness of the Purchase Agreement have been or will be fulfilled contemporaneously with the initial advance under this Note;

(c) evidence that the execution, delivery and performance by Maker of this Note and all other documents and instruments related to this Note have been duly authorized by, or on behalf of, Maker; and

(d) such other agreements, documents, information, and other assurances as Payee may reasonably request.

Events of Default

Maker shall be in default under this Note upon the occurrence of any of the following events or conditions (each, an "Event of Default"):

(a) the failure of Maker to make any payment required to be made under this Note when such payment becomes due;

(b) Maker defaults in the performance of any obligation, covenant, or agreement now or hereafter made or owed by Maker to Payee, whether under this Note or any related document;

(c) any representation or warranty made by Maker to Payee in connection with this Note or any document executed or delivered in connection therewith, is false or misleading in any material respect when made;

(d) Maker shall commence a voluntary proceeding seeking liquidation, reorganization, or other relief with respect to itself or its debts under any bankruptcy, insolvency, or other similar law now or hereafter in effect, or seeking the appointment of a trustee, receiver, liquidator, custodian, or other similar official for it or a substantial part of its property or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it or shall make a general assignment for the benefit of creditors or shall generally fail to pay its debts as they become due or shall take any corporate action to authorize any of the foregoing;

(e) any involuntary proceeding shall be commenced against Maker seeking liquidation, reorganization, or other relief with respect to it or its debts under any bankruptcy, insolvency, or other similar law now or hereafter in effect, or seeking the appointment of a trustee, receiver, liquidator, custodian, or other similar official for it or a substantial part of its property, in each case, that results in the entry of an order for any such relief or appointment that has not been vacated, discharged or stayed or bonded pending appeal within 60 days from the entry thereof;

(f) any lien, attachment, sequestration or similar proceeding against any of Maker's assets or properties other than liens in favor of Payee;

(g) any event or condition occurs that results in any indebtedness of Maker becoming due prior to its scheduled maturity or that enables or permits (with or without the giving of notice, the lapse of time, or both) the holder of such indebtedness to cause any of such indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity; or

(h) the validity or enforceability of this Note shall be contested or challenged by Maker.

Remedies

Should an Event of Default exist, Payee may but without any obligation to do so, at its option and at any time, and without presentment, demand, or protest, notice of default, dishonor, demand, non-payment, or protest, notice of intent to accelerate all or any part of the advances hereunder, notice of acceleration of all or any part of the indebtedness evidenced by this Note, or notice of any other kind, all of which Maker hereby expressly waives, except for any notice required by applicable statute which cannot be waived: (a) terminate Payee's commitment to make any advances under this Note; (b) declare the indebtedness evidenced by this Note, or any part thereof, immediately due and payable, whereupon the same shall be due and payable (provided, however, that upon the occurrence of any event described in clause (e) of the definition of "Event of Default", such indebtedness shall become immediately due and payable in full without demand or acceleration); (c) reduce any claim to judgment; (d) to the maximum extent permitted under applicable laws, set-off and apply any and all deposits, funds, or assets at any time held and any and all other indebtedness at any time owing by Payee to or for the credit or the account of Maker against any and all obligations, whether or not Payee exercises any other right or remedy hereunder and whether or not such obligations are then matured; (e) may cure any Event of Default, or event of nonperformance under this Note and/or (f) exercise any and all rights and remedies afforded by this Note, or by law or equity or otherwise, as Payee deems appropriate. No failure or delay of the holder hereof to exercise any of its rights or remedies shall not constitute a waiver thereof.

If the holder hereof incurs any costs or expenses in any attempt to enforce payment of all or any part of this Note, or if this Note is placed in the hands of an attorney for collection, Maker agrees to pay all such costs fees and expenses incurred, including without limitation, reasonable attorneys' fees.

Miscellaneous

It is expressly stipulated and agreed to be the intent of Maker and Payee at all times to comply with the applicable law of the State of Texas governing the maximum rate or amount of interest payable on or in connection with the indebtedness under this Note (or applicable United States federal law to the extent that it permits Payee to contract for, charge, take, reserve or receive a greater amount of interest than under Texas law). If such law is ever judicially interpreted so as to render usurious any amount contracted for, charged, taken, reserved or received with respect to this Note, or if any payment by Maker results in Maker having paid any interest in excess of the amount that is permitted by such law, then it is Maker's and Payee's express intent that all excess amounts theretofore collected by Payee be credited on the principal balance hereof (or, if the principal balance has been or would thereby be paid in full, refunded to Maker), and the provisions of this Note shall immediately be deemed reformed and the amounts thereafter collectible thereunder reduced, without the necessity of the execution of any new documents, so as to comply with all such applicable laws, but so as to permit the recovery of the fullest amount otherwise called for thereunder. All sums paid or agreed to be paid to Payee for the use, forbearance or detention of money and other indebtedness evidenced by this Note shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full term of such indebtedness until payment in full so that the rate or amount of interest on account of such indebtedness does not exceed the applicable usury ceiling provided by such applicable law. Notwithstanding any provision contained herein to the contrary, the total amount of interest that Maker is obligated to pay and Payee is entitled to receive with respect to this Note shall not exceed the amount calculated on a simple (i.e., non-compounded) interest basis at the maximum rate allowed by applicable law on principal amounts actually advanced hereunder to or for the account of Maker.

MAKER AND EACH SURETY, GUARANTOR, ENDORSER, AND OTHER PARTY EVER LIABLE FOR PAYMENT OF ANY SUMS OF MONEY PAYABLE ON THIS NOTE JOINTLY AND SEVERALLY WAIVE NOTICE, PRESENTMENT, DEMAND FOR PAYMENT, PROTEST, NOTICE OF PROTEST AND NON-PAYMENT OR DISHONOR, NOTICE OF ACCELERATION, NOTICE OF INTENT TO ACCELERATE, NOTICE OF INTENT TO DEMAND, DILIGENCE IN COLLECTING, GRACE, AND ALL OTHER FORMALITIES OF ANY KIND, AND CONSENT TO ALL EXTENSIONS WITHOUT NOTICE FOR ANY PERIOD OR PERIODS OF TIME AND PARTIAL PAYMENTS,

BEFORE OR AFTER MATURITY, AND ANY IMPAIRMENT OF ANY COLLATERAL SECURING THIS NOTE, ALL WITHOUT PREJUDICE TO THE HOLDER. Without limiting the foregoing, any notice or demand upon Maker in connection with this Note shall be in writing and shall become effective (a) upon personal delivery, (b) three (3) days after it shall have been mailed by United States mail, first class, certified or registered, with postage prepaid or (c) when properly transmitted by telecopy, in each case addressed to Maker's address for notice specified in connection with its signature below.

THIS NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND THE APPLICABLE LAWS OF THE UNITED STATES OF AMERICA. THIS NOTE IS PERFORMABLE IN DALLAS COUNTY, TEXAS. ANY ACTION OR PROCEEDING UNDER OR IN CONNECTION WITH THIS NOTE AGAINST MAKER OR ANY OTHER PARTY EVER LIABLE FOR PAYMENT OF ANY SUMS OF MONEY PAYABLE ON THIS NOTE MAY BE BROUGHT IN ANY STATE OR FEDERAL COURT IN DALLAS COUNTY, TEXAS. MAKER AND EACH SUCH OTHER PARTY HEREBY IRREVOCABLY (I) SUBMITS TO THE NONEXCLUSIVE JURISDICTION OF SUCH COURTS AND (II) WAIVES ANY OBJECTION IT MAY NOW OR HEREAFTER HAVE AS TO THE VENUE OF ANY SUCH ACTION OR PROCEEDING BROUGHT IN SUCH COURT OR THAT SUCH COURT IS AN INCONVENIENT FORUM. NOTHING HEREIN SHALL AFFECT THE RIGHT OF PAYEE TO BRING ANY ACTION OR PROCEEDING AGAINST MAKER OR ANY OTHER PARTY LIABLE HEREUNDER OR WITH RESPECT TO ANY COLLATERAL IN ANY STATE OR FEDERAL COURT IN ANY OTHER JURISDICTION. ANY ACTION OR PROCEEDING BY MAKER OR ANY OTHER PARTY LIABLE HEREUNDER AGAINST PAYEE SHALL BE BROUGHT ONLY IN A COURT LOCATED IN DALLAS COUNTY, TEXAS.

MAKER AND PAYEE EACH IRREVOCABLY WAIVES ITS RIGHT TO A TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF OR RELATED TO THIS NOTE OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY, IN ANY ACTION, PROCEEDING OR OTHER LITIGATION OF ANY KIND BROUGHT BY EITHER AGAINST THE OTHER, WHETHER WITH RESPECT TO CONTRACT CLAIMS, TORT CLAIMS, OR OTHERWISE. MAKER AND PAYEE EACH AGREES THAT ANY SUCH CLAIM OR CAUSE OF ACTION SHALL BE TRIED BY A COURT WITHOUT A JURY. WITHOUT LIMITING THE FOREGOING, THE PARTIES FURTHER AGREE THAT ITS RIGHT TO A TRIAL BY JURY IS WAIVED AS TO ANY ACTION, COUNTERCLAIM OR OTHER PROCEEDING WHICH SEEKS, IN WHOLE OR IN PART, TO CHALLENGE THE VALIDITY OR ENFORCEABILITY OF THIS NOTE OR ANY PROVISION HEREOF. THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS NOTE, WHETHER OR NOT SPECIFICALLY SET FORTH THEREIN.

This Note embodies the final, entire agreement of Maker and Payee with respect to the indebtedness evidenced hereby and supersedes any and all prior commitments, agreements, representations and understandings, whether written or oral, relating thereto and may not be contradicted or varied by evidence of prior, contemporaneous or subsequent oral agreements or discussions of Maker and Payee. There are no oral agreements between Maker and Payee.

Signed effective as of the date of this Note.

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: Strand Advisors, Inc., its general partner

By: _____
Name: _____
Title: _____

Maker's address for notice:

HIGHLAND CAPITAL MANAGEMENT, L.P.
300 Crescent Court
Suite 700
Dallas, TX 75201
Attention: Frank Waterhouse
Fax: 972-628-4147

EXHIBIT A

Amortization Schedule

Interest Rate	3.0%				
Payment Date	Beg Principal	Interest	Principal	Payment	End Principal
10/7/2016	12,666,446				12,666,446
5/31/2017	12,666,446	245,694	3,125,000	3,370,694	9,541,446
5/31/2018	9,541,446	286,243	5,000,000	5,286,243	4,541,446
5/31/2019	4,541,446	136,243	4,541,446	4,677,690	-

Exhibit 4

THIS AGREEMENT FOR PURCHASE AND SALE OF CLO PARTICIPATION INTERESTS (this "Agreement"), dated as of the 7th day of October, 2016, is entered into by and between ACIS CAPITAL MANAGEMENT, L.P., a Delaware limited partnership (the "Seller"), and HIGHLAND CAPITAL MANAGEMENT, L.P., a Delaware limited partnership (the "Purchaser").

RECITALS

Whereas, the Seller is the owner of certain rights to receive senior and subordinated management fees (the "Servicer Fees"), as described in Schedule A, attributable to the collateralized loan obligation issuances also listed in Schedule A (the "CLOs");

Whereas, all of the reinvestment periods of the CLOs will have expired by August 2019;

Whereas, the Seller operates an investment management business focused on sponsoring and managing collateralized loan obligations ("CLO Investments");

Whereas, Seller has recently engaged an investment bank to actively market a new CLO to prospective investors and Seller currently is uncertain as to the likelihood of success and timing of securing new investors;

Whereas, recent European and U.S. regulatory rules require sponsors of newly issued CLO investments, such as Seller, to retain during the life of the CLO, a five percent ownership interest in the equity or capital structure of the CLO (the "Risk Retention Amount");

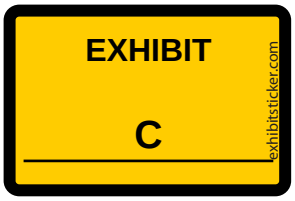
Whereas, in order to fund the Risk Retention Amount, Seller has undertaken a joint venture with another entity to originate and sponsor new CLO investments, pursuant to which Seller is obligated to contribute fifty-one percent of the Risk Retention Amount;

Whereas, Seller has typically paid overhead expenses first with its revenue, then made an annual distribution of excess cash to the partners of Seller;

Whereas, Seller has determined to stop making annual distributions of excess cash to Seller's partners while efforts are underway to form new CLOs;

Whereas, cash flows from the Servicer Fees are unpredictable and unstable;

Whereas, Seller has determined that obtaining a guaranteed fixed amount of cash flow from Buyer is a prudent business decision in order to facilitate Seller's compliance with its



obligation to contribute funds toward the Risk Retention Amount to the joint venture entity;

Whereas, the Purchaser acknowledges it is a sophisticated investor and, in particular, has a knowledge and understanding of CLO Investments;

Whereas, the Purchaser acknowledges that it understands the inherent risk in the timing and amount of the payment of the Servicer Fees by the trustees of the respective CLOs; and

Whereas, the Purchaser acknowledges that it has undertaken all the necessary due diligence to feel comfortable in determining the inherent risks of purchasing such Servicer Fees from the Seller.

AGREEMENT

Now, therefore, in consideration of the premises and mutual agreements set forth herein, and in consideration of the mutual representations, warranties and covenants contained herein, and intending to be legally bound hereby, the parties agree as follows:

1. Sale and Purchase of Acis Participation Interests.

Subject to and upon the terms and conditions set forth in this Agreement, the Seller hereby sells to the Purchaser, and the Purchaser hereby purchases from the Seller, participation interests in the Servicer Fees (the "ACIS Participation Interests") in an amount equal to (A) the total Servicer Fees paid to Seller by each of the CLOs beginning in November 2016 and ending August 2019 (each, with respect to both a particular CLO payor and a particular payment date, a "Servicer Fee Payment," and in the aggregate for a particular payment date the "Aggregate Servicer Fee Payment") less (B) the Servicer Fee Retention Amount with respect to each CLO, as shown on Schedule A.

Purchase Price; Additional Documents; Termination.

1.1 In consideration of the sale of the Acis Participation Interests to the Purchaser, the Purchaser shall (a) pay to the Seller an amount equal to **$666,655.00** in cash (the "Cash Purchase Price"), and (b) deliver to the Seller a promissory note (the "Note"), duly executed by the Purchaser and substantially in the form of Exhibit 1, with an initial principal balance of **$12,666,446.00** (the Cash Purchase Price and the delivery of such Note, collectively, the "Purchase Price").

1.2 The Purchaser shall pay the Cash Purchase Price to the Seller by wire transfer of immediately available funds to an account designated in writing by the Seller.

1.3 The parties acknowledge and agree that the Purchase Price reflects the arm's-length value of the Acis Participation Interests as of the date of this Agreement as determined by mutually agreed appraisal methods.

1.4 Notwithstanding any other provision of this Agreement, to the extent that the sale and purchase of the Acis Participation Interests hereunder shall require the consent or approval of another party or any governmental authority, the consummation of the transactions contemplated by this Agreement shall not constitute an assignment or an attempted assignment with respect to the Servicer Fees if such assignment or attempted assignment would constitute a breach or violation with respect to the terms of the governing CLO agreements (the "CLO Documents"). Each of the parties hereto shall use its commercially reasonable efforts to obtain any such consent or approval. If such consent or approval is not obtained, each party agrees to cooperate with the other party in any reasonable manner necessary or desirable to provide the Purchaser the benefits of the Acis Participation Interests.

1.5 In the event that any governmental entity commences a formal regulatory proceeding against Seller and within 90 days thereof (or later, but solely in the event of removal of Seller by order of such governmental entity), Seller is terminated or otherwise removed as manager of one or more of the CLOs and such governmental action results in the seizure or forfeiture of Servicer Fees, then the outstanding principal of the Note shall be reduced in proportion to the reduction in Servicer Fees resulting from such termination or seizure.

2. Representations and Warranties of the Seller.

The Seller represents and warrants to the Purchaser that each of the following representations and warranties is true and correct as of the date of this Agreement:

2.1 Organization and Authority of the Seller. The Seller is a limited partnership, duly formed, validly existing and in good standing under the laws of the State of Delaware and has requisite power and authority to enter into this Agreement and

any other agreements entered into in connection herewith and to perform its obligations hereunder and thereunder.

2.2 Title to the Acis Participation Interests. The Seller owns good and valid title to, and is the sole record and beneficial owner of, the Servicer Fees, free and clear of any and all mortgages, liens, pledges, charges, adverse rights or claims, security interests, restrictions on use and/or transfer or encumbrances of any kind (collectively, "Liens"), except as provided herein and in the CLO Documents and agreements governing the CLOs. Other than as provided in the CLO Documents, the Acis Participation Interests are not subject to any rights of first refusal or other rights to purchase such Acis Participation Interests.

2.3 Due Authorization and Enforceability. All action on the part of the Seller necessary for the authorization, execution and delivery of this Agreement and any other agreements entered into in connection herewith and the performance by the Seller of its obligations hereunder and thereunder has been taken. This Agreement and any other agreements entered into in connection herewith constitute the valid and legally binding obligations of the Seller, enforceable in accordance with their terms, except as may be limited by (a) applicable bankruptcy, insolvency, reorganization or other laws of general application relating to or affecting the enforcement of creditors' rights generally and (b) the effect of rules of law governing the availability of equitable remedies.

2.4 Consents. Except as may be required under the CLO Documents, no consent, approval, order or authorization of, or registration, qualification, designation, declaration or filing with, any federal, state or local governmental authority or any third party is required by the Seller in connection with the consummation of the transactions contemplated by this Agreement or any other agreements entered into in connection herewith.

2.5 Non-Contravention. Other than with respect to any consents required under the CLO Documents, the execution, delivery and performance of this Agreement and any other agreements entered into in connection herewith and the consummation of the transactions contemplated hereby and thereby will not result in (a) a

violation or default, or be in conflict with or constitute a default, under the Seller's organizational documents, or any agreement or contract that the Seller is party to or that its assets are bound by, (b) a violation of any statute, law, regulation or order; provided, however, that with respect to any statute, law, regulation or order applicable to any of the CLO Documents the foregoing is limited to the knowledge of the Seller, or (c) the creation of any Lien upon any asset of, or the loss of any right or asset by, the Seller that would not reasonably be expected to cause a material adverse effect on the Seller.

3. Representations and Warranties of the Purchaser.

The Purchaser represents and warrants to the Seller that each of the following representations and warranties is true and correct as of the date of this Agreement:

3.1 Organization and Authority of the Purchaser. The Purchaser is a limited liability company, duly formed, validly existing and in good standing under the laws of the State of Delaware and has requisite power and authority to enter into this Agreement and any other agreements entered into in connection herewith and to perform its obligations hereunder and thereunder.

3.2 Due Authorization and Enforceability. All action on the part of the Purchaser necessary for the authorization, execution and delivery of this Agreement and any other agreements entered into in connection herewith and the performance by the Purchaser of its obligations hereunder and thereunder has been taken. This Agreement and any other agreements entered into in connection herewith constitute the valid and legally binding obligations of the Purchaser, enforceable in accordance with their terms, except as may be limited by (a) applicable bankruptcy, insolvency, reorganization or other laws of general application relating to or affecting the enforcement of creditors' rights generally and (b) the effect of rules of law governing the availability of equitable remedies.

3.3 Consents. No consent, approval, order or authorization of, or registration, qualification, designation, declaration or filing with, any federal, state or local governmental authority or any third party is required by the Purchaser in

connection with the consummation of the transactions contemplated by this Agreement or any other agreements entered into in connection herewith.

3.4 Non-Contravention. The execution, delivery and performance of this Agreement and any other agreements entered into in connection herewith and the consummation of the transactions contemplated hereby and thereby will not result in (a) a violation or default, or be in conflict with or constitute a default, under the Purchaser's organizational documents, or any agreement or contract that the Purchaser is party to or that its assets are bound by, (b) a violation of any statute, law, regulation or order, or (c) the creation of any Lien upon any asset of, or the loss of any right or asset by the Purchaser.

3.5 Information Concerning the Acis Participation Interests. The Purchaser (a) has received and had the opportunity to review information with respect to the Seller, the Acis Participation Interests, the CLOs, and the CLO Documents, (b) is familiar with the Seller, the CLOs and the CLO Documents, and (c) has been afforded the opportunity to ask questions of and received satisfactory answers concerning the Seller, the CLOs and the CLO Documents and has asked any questions the Purchaser desires to ask and all such questions have been answered to the full satisfaction of the Purchaser. The Purchaser understands that the purchase and/or receipt of the Acis Participation Interests involves various risks and that the Purchaser may lose some or all of its investment due to economic conditions that could negatively impact the CLOs and/or the Seller and/or for other unforeseen reasons. The Purchaser acknowledges and agrees that no representations or warranties have been made to the Purchaser by the Seller, or any person acting on the Seller's behalf, as to the tax consequences of this investment, or as to profits, losses or cash flow that may be received or sustained as a result of this investment. All documents, records and books pertaining to a proposed investment in and/or receipt of the Acis Participation Interests which the Purchaser has requested have been made available to the Purchaser.

3.6 Acknowledgments of the Purchaser. Subject to Section 1.5, the Purchaser acknowledges and agrees that: (a) except as provided in Section 1.5, should the

Seller's rights with respect to the Servicer Fees be terminated, such termination shall not affect the Purchaser's obligations under the Note; (b) except as provided in Section 1.5, the Seller may exercise all of its legal rights and remedies to enforce the Purchaser's obligations under the Note even if the Acis Participation Interests are not paid, in full or part, by the CLO trustees for any reason, including the termination of the Seller as the manager, a hostile buyout of such CLO, or any other reason (other than as a result of the Seller breaching its covenants under this Agreement or as a result of fraud or by willful misconduct of the Seller); and (c) Purchaser has had the opportunity to consult with its own legal counsel with respect to the purchase of the Acis Participation Interests. The Purchaser understands such actions could negatively impact the timing and amount of payment of such Acis Participation Interests during the pendency of such dispute by the trustee of such CLO. The Purchaser bears the sole risk with respect to non-payment of the Acis Participation Interests (other than as a result of the Seller breaching its covenants under this Agreement or as a result of the fraud or willful misconduct of the Seller).

3.7 No additional Representations. The Purchaser has relied solely upon its investigation and analysis and the representations and warranties of the Seller set forth in this Agreement and the Purchaser acknowledges that, other than as set forth in this Agreement, the Seller does not make any other representation or warranty, either express or implied.

4. **Covenants.**

4.1 Payments on the Acis Participation Interests. The Seller agrees to promptly remit, or cause to be promptly remitted, to the Purchaser the cash received with respect to the Acis Participation Interests. If the Seller is required at any time to return to any person, any portion of the payments made to the Seller pursuant to the Servicer Fees, then the Purchaser shall, on demand of the Seller, forthwith return to the Seller any such payments transferred to the Purchaser by the Seller but without interest or penalty on such payments.

4.2 Actions With Respect to Servicer Fees. Notwithstanding anything else contained in this Agreement, the Seller shall not, without the Purchaser's written consent, and other than as required by the CLO Documents, take or omit to take any action which would (a) postpone any date fixed for any payment under the CLO Documents of the Servicer Fees; (b) amend the CLO Documents so as to materially and adversely affect the payment of the Servicer Fees; or (c) release any material claim of the Seller under the CLO Documents that relates to the Servicer Fees.

4.3 Reporting. Seller shall provide Purchaser a detailed certification of any Servicer Fees received from the CLOs within forty-five (45) business days of the date such Servicer Fees are received by the Seller.

5. Miscellaneous.

5.1 Successors and Assigns. The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties; provided, however, that no party hereto may assign or transfer any of its rights or obligations hereunder without the prior written consent of the other parties hereto.

5.2 Terms Confidential. The parties agree that they will keep the terms, amounts and facts of this Agreement completely confidential, and that they will not hereafter disclose any information concerning this Agreement to anyone except their respective attorneys or accountants. Notwithstanding the foregoing prohibition, the parties shall not be prohibited from disclosing the terms, amounts and facts of this Agreement or this Agreement itself as may be requested by governmental entities or required by law.

5.3 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without giving effect to the principles thereof relating to conflicts of law.

5.4 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

5.5 Headings. The headings and captions used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement. All references in this Agreement to articles, sections, paragraphs, exhibits and schedules shall, unless otherwise provided, refer to articles, sections and paragraphs hereof and exhibits and schedules attached hereto, all of which exhibits and schedules are incorporated herein by reference.

5.6 Notices. All notices, demands and requests required or permitted to be given hereunder shall be in writing and shall be delivered by hand or sent by telecopy (with confirmed transmission), or sent, postage prepaid, by registered, certified or express mail, or reputable overnight courier service, and shall be deemed given when so delivered by hand, or confirmed after telecopying, or if mailed, three (3) business days after mailing (one (1) business day in the case of express mail or overnight courier service), as follows (or to such other address or telecopy number as a party shall specify by notice as provided herein to the other party hereto):

(i) if to the Purchaser:

Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: Frank Waterhouse
Telephone: 972-628-4100
Facsimile: 972-628-4147

with copies to:

Hunton & Williams LLP
1145 Ross Avenue, Suite 3700
Dallas, Texas 75202
Attention: Alexander McGeoch
Telephone: 214-979-3041
Facsimile: 214-979-3938

(ii) if to the Seller:

Acis Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Facsimile: 972-628-4147

5.7 Specific Performance. The Seller and the Purchaser agree that the rights created by this Agreement are unique and that the loss of any such rights is not susceptible to monetary quantification. Consequently, the Seller and the Purchaser agree that an action for specific performance (including for temporary and/or permanent injunctive relief) of the obligations created by this Agreement is a proper remedy for the breach of the provisions of this Agreement, and the Purchaser shall be entitled to such relief without the necessity of proving actual damages or posting a bond.

5.8 Costs, Expenses. The Seller and the Purchaser shall each pay their own costs, fees and expenses in connection with this Agreement and the transactions contemplated herein. The Seller will pay any and all transfer, recording, sales, use or similar taxes and fees in connection with the consummation of the transaction contemplated herein. If any party is forced to institute legal proceedings to enforce its rights in accordance with the provisions of this Agreement, the prevailing party shall be entitled to recover its reasonable expenses, including attorneys' fees and expenses, in connection with any such action.

5.9 Amendments and Waivers. Any term of this Agreement may be amended and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively) only with the written consent of the Seller and the Purchaser.

5.10 Severability. If one or more provisions of this Agreement are held to be unenforceable under applicable law, such provision(s) shall be excluded from this Agreement and the balance of this Agreement shall be interpreted as if such

provision(s) were so excluded and shall be enforceable in accordance with its terms.

5.11 Entire Agreement. This Agreement, together with all exhibits and schedules hereto, constitutes the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes any and all prior negotiations, correspondence, agreements, understandings, duties or obligations between the parties with respect to the subject matter hereof.

5.12 Further Assurances. From and after the date of this Agreement, upon the reasonable request of the Purchaser, the Seller shall execute and deliver such instruments, documents or other writings as may be reasonably necessary or desirable to confirm and carry out and to effectuate fully the intent and purposes of this Agreement.

5.13 Construction. The parties acknowledge that each has had the advice of independent counsel selected by it in connection with the terms of this Agreement. The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

5.14 Arbitration. Any disputes or controversies arising out of or related to this Agreement that are not resolved by the parties shall be resolved by arbitration under the administration of the American Arbitration Association ("AAA"). The Seller and the Purchaser will seek to agree on an arbitrator. If the parties cannot agree, each of the Seller and the Purchaser will appoint an arbitrator, and such arbitrators will select a third arbitrator to serve as the sole arbitrator to determine the dispute. Such dispute or controversy shall be resolved pursuant to the rules of the AAA with the findings and any award by such arbitrator being final and binding upon all parties. Judgment on any award or finding rendered by the arbitrator may be entered in any court of proper jurisdiction. The location of any such arbitration proceedings shall be in the greater Dallas, Texas metropolitan

area or such other location as mutually agreed by the parties. Each party shall bear its own costs related to any dispute or controversy arising out of or related to this agreement. The parties agree any dispute or controversy arising out of or related to this Agreement shall be kept confidential between the relevant arbitrators, the parties, and their appointed counsel and agents.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date first set forth above.

THE PURCHASER:

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: Strand Advisors, Inc., its General Partner

By: _____
Name: James Dondero
Title: President

THE SELLER:

ACIS CAPITAL MANAGEMENT, L.P.

By: Acis Capital Management GP, LLC, its General Partner

By: _____
Name: James Dondero
Title: President

Schedule A

Participation Interests

CLO Issuer	Total Servicer Fee	Servicer Fee Retention Amount	Acis Participation Interests
Acis CLO 2013-1, Ltd.	50 bps	20 bps	30 bps
Acis CLO 2014-3, Ltd.	40 bps	20 bps	20 bps
Acis CLO 2014-4, Ltd.	40 bps	20 bps	20 bps
Acis CLO 2014-5, Ltd.	40 bps	20 bps	20 bps
Acis CLO 2015-6, Ltd.	40 bps	20 bps	20 bps

Exhibit 5

ASSIGNMENT AND TRANSFER AGREEMENT

THIS AGREEMENT FOR ASSIGNMENT AND TRANSFER OF PROMISSORY NOTE (this "***Agreement***"), dated as of November 3, 2017, is entered into by and between ACIS CAPITAL MANAGEMENT, L.P., a Delaware limited partnership ("***Acis***"), HIGHLAND CAPITAL MANAGEMENT, L.P., a Delaware limited partnership ("***HCM***") and HIGHLAND CLO MANAGEMENT, LTD., a Cayman Islands exempted company ("***HCLOM***", and together with HCM and Acis, the "***Parties***"). Capitalized terms used herein but not defined have the meanings ascribed thereto in the Agreement for Purchase and Sale of CLO Participation Interests between Acis and HCM dated as of October 7, 2016 (the "***Purchase Agreement***" and the promissory note therein, the "***Note***").

RECITALS

Whereas, Acis is portfolio manager to certain collateralized loan obligations listed in Schedule A of the Purchase Agreement and is entitled to fee compensation in connection therewith as set forth therein (the "***CLOs***", the governing documents thereof, the "***CLO Documents***" and such fees, the "***Servicer Fees***");

Whereas, Acis and HCM entered into the Purchase Agreement, whereby Acis sold a portion of its future Servicer Fees to HCM in exchange for cash flows from HCM, in each case as set forth in the Note (such future Servicer Fees identified to be paid to HCM pursuant to the Purchase Agreement, the "***HCM Stabilization Fees***" and such cash flows from HCM, the "***Stabilization Payments***");

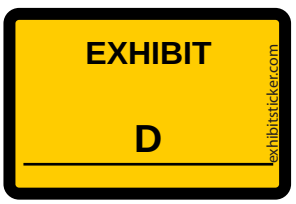
Whereas, HCM has notified Acis that HCM is unwilling to continue to provide support personnel and other critical services to Acis with respect to the CLOs (the "***Notification***");

Whereas, Acis has determined that the effect of the Notification is that it cannot fulfill its duties as portfolio manager of the CLOs, and in order to ensure the continued operation of such CLOs and protection for its stakeholders, it must assign its rights as portfolio manager in the CLOs to a qualified successor portfolio manager pursuant to the CLO Documents (a "***Successor Manager***");

Whereas, HCLOM, a qualified Successor Manager, irrevocably commits to be appointed as Successor Manager in consideration of Acis assigning to it the Note, subject to the conditions set forth in the CLO Documents and pursuant to the terms herein;

Whereas, Acis is expected to incur significant costs and expenses related to ongoing claims and litigation to which Acis is either a party or is otherwise obligated with respect to such costs and expenses (the "Acis Legal Expenses"); and

Whereas, Acis also is expected to have ongoing accounting and administrative expenses (the "Acis Administrative Expenses" and together with the Acis Legal Expenses, the "Acis Expenses").



AGREEMENT

Now, therefore, in consideration of the promises and mutual agreements set forth herein, and in consideration of the mutual representations, warranties and covenants herein, and intending to be legally bound hereby, the Parties agree as follows:

1. **Succession**. Acis shall promptly provide the Controlling Class (as defined in each of the CLO Indentures) with notice requesting the appointment of HCLOM as Portfolio Manager pursuant to the requirements of the CLO Documents (each, a "***Notice***" and the period between the Notice and an Appointment (as such term is defined below), the "***Post-Notice Period***").

2. **Successor Manager.** Subsequent to the Notices, each of Acis and HCLOM shall promptly pursue Successor Manager appointment of HCLOM in respect of each CLO, including but not limited to achieving all conditions precedent required by the CLO Documents in such respect (consummation of HCLOM's appointment as Portfolio Manager of a given CLO, an "***Appointment***").

3. **Assignment and Transfer of the Promissory Note; Stabilization Payments.**

   a. Effective immediately upon execution of this Agreement by the Parties, all right, title and interest of Acis under the Note, including the right to any and all Stabilization Payments not yet paid to Acis, are hereby irrevocably assigned and transferred by Acis to HCLOM, it being understood that from the date of such assignment, HCLOM shall become the "Payee" thereunder.
   b. For so long as Acis shall receive Servicer Fees following the date hereof, Acis shall remit to HCM the HCM Stabilization Fees pursuant to the Note Purchase Agreement.
   c. For so long as HCLOM receives any Servicer Fees following any Appointment, then HCLOM shall remit to HCM any portion of such fees that would otherwise have constituted HCM Stabilization Fees pursuant to the Note Purchase Agreement if Acis was the recipient of such fees.
   d. HCLOM shall sign a joinder to Note Purchase Agreement upon HCM's written notice thereof.

4. **Expense Support**. In the event Acis delivers written notice to HCLOM that Acis is unable to pay when due any Acis Expenses, then HCLOM shall promptly pay to Acis, or at Acis' written request, to Acis' creditors, the amount of such shortfall, provided that in no event shall HCOLM's obligations under this paragraph exceed greater than $2 million of Acis Legal Expenses in the aggregate, or greater than $1 million of Acis Administrative Expenses in the aggregate.

5. **Indemnity**. Acis shall and hereby does, to the fullest extent permitted by applicable law, advance, indemnify and hold harmless any Covered Person from and against any and all claims, demands, liabilities, costs, expenses, damages, losses, suits, proceedings, judgments, assessments, actions and other liabilities, whether judicial, administrative, investigative or otherwise, of whatever nature, known or unknown, liquidated or

unliquidated ("***Claims***"), that my accrue to or be incurred by any Covered Person, or in which any Covered Person may be threatened, relating to this Agreement, including amounts paid in satisfaction of judgments, in compromise or as fines or penalties, and attorneys' fees and expenses incurred in connection with the preparation for or defense or disposition of any investigation, action, suit, arbitration or other proceeding (a "***Proceeding***"), whether civil or criminal (all of such Claims, amounts and expenses referred to therein are referred to collectively as "***Damages***"), except to the extent that it shall have been determined ultimately by a court of competent jurisdiction, in a final nonappealable judgment, that such Damages arose primarily from fraud, bad faith or willful misconduct of such Covered Person. The termination of any Proceeding by settlement, judgment, order, conviction or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that any Damages relating to such settlement, judgment, order, conviction or plea of nolo contendere or its equivalent or otherwise relating to such Proceeding arose primarily from fraud, bad faith or willful misconduct of any Covered Persons. "***Covered Person***" means each of HCLOM and HCM, as well as each and every one of their affiliates (other than Acis), and all of HCLOM's and HCM's respective managers, members, principals, partners, directors, officers, shareholders, employees and agents.

6. **Miscellaneous**.

a. Successors and Assigns. The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the Parties, provided however that no party hereto may assign or transfer any of its rights or obligation hereunder without the prior written consent of the other parties hereto.

b. No Third Party Beneficiaries. For the avoidance of doubt, this Agreement is not intended to and does not confer any right to any person or entity other than the Parties hereto.

c. Terms Confidential. The Parties agree that they will keep the terms, amounts, and facts of this Agreement completely confidential, and that they will not hereafter disclose any information concerning this Agreement to anyone except their respective attorneys or accountants. Notwithstanding the foregoing prohibition, the Parties shall not be prohibited from disclosing the terms, amounts and facts of this Agreement or this Agreement itself as may be requested by governmental entities or required by law.

d. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Cayman Islands, with exclusive jurisdiction in the courts of George Town, Grand Cayman.

e. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

f. Headings. The headings and captions used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement. All references in this Agreement to articles, sections, paragraphs, exhibits and schedules shall, unless otherwise provided, refer to articles, sections and paragraphs hereof and exhibits and schedules attached hereto, all of which exhibits and schedules are incorporated herein by reference.

g. Notices. All notices, demands and requests required or permitted to be given hereunder shall be in writing and shall be delivered by hand or sent by telecopy (with confirmed transmission), or sent, postage prepaid, by registered, certified or express mail, or reputable overnight courier service, and shall be deemed given when so delivered by hand, or confirmed after telecopying, or if mailed, three (3) business days after mailing (one (1) business day in the case of express mail or overnight courier service), as follows (or to such other address or telecopy number as a party shall specify by notice as provided herein to the other party hereto):

i. If to Acis:
Acis Capital Management, LP
300 Crescent Court, Suite 700
Dallas, Texas 75201
Facsimile: 972-628-4147

ii. If to HCM:
Highland Capital Management, LP
300 Crescent Court, Suite 700
Dallas, Texas 75201
Facsimile: 972-628-4147

iii. If to HCLOM:
Highland CLO Management, Ltd.
PO Box 309
Ugland House
Grand Cayman KY1-1104
Cayman Islands

h. Specific Performance. The Parties agree that the rights created by this Agreement are unique and that the loss of any such rights is not susceptible to monetary quantification. Consequently, the Parties agree that an action for specific performance, including for temporary and/or injunctive relief) of the obligations created by this Agreement is a proper remedy for the breach of the provisions of this Agreement, and HCM shall be

entitled to such relief without the necessity of proving actual damages or posting a bond.

i. Costs, Expenses. The Parties shall each pay their own costs, fees and expenses in connection

j. Amendments and Waivers. Any term of this Agreement may be amended and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively) only with the written consent of the Seller and the Purchaser.

k. Severability. If one or more provisions of this Agreement are held to be unenforceable under applicable law, such provision(s) shall be excluded from this Agreement and the balance of this Agreement shall be interpreted as if such provision(s) were so excluded and shall be enforceable in accordance with its terms.

l. Entire Agreement. This Agreement, together with all exhibits and schedules hereto, constitutes the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes any and all prior negotiations, correspondence, agreements, understandings, duties or obligations between the parties with respect to the subject matter hereof.

m. Further Assurances. From and after the date of this Agreement, upon the reasonable request of the Purchaser, the Seller shall execute and deliver such instruments, documents or other writings as may be reasonably necessary or desirable to confirm and carry out and to effectuate fully the intent and purposes of this Agreement.

[Signature page follows]

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of November 3, 2017.

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: Strand Advisors, Inc., its General Partner

By:_____

Name: James Dondero

Title: President

ACIS CAPITAL MANAGEMENT, L.P.

By: Acis Capital Management GP, LLC, its General Partner

By:_____

Name: James Dondero

Title: President

HIGHLAND CLO MANAGEMENT, LTD.

_____

For and on behalf of Summit Management, Limited

Director

Exhibit 6

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In Re:	**Case No. 19-34054-sgj-11**
	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,	Dallas, Texas
	Tuesday, October 20, 2020
	9:30 a.m. Docket
Debtor.	
	MOTIONS TO COMPROMISE CONTROVERSY WITH ACIS CAPITAL MANAGEMENT [1087] AND THE REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUND [1089]

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE STACEY G.C. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE.

WEBEX/TELEPHONIC APPEARANCES:

For the Debtor:	Ira D. Kharasch PACHULSKI STANG ZIEHL & JONES, LLP 10100 Santa Monica Blvd., 13th Floor Los Angeles, CA 90067 (310) 277-6910
For the Debtor:	John A. Morris Gregory V. Demo PACHULSKI STANG ZIEHL & JONES, LLP 780 Third Avenue, 34th Floor New York, NY 10017-2024 (212) 561-7700
For UBS Securities, LLC:	Andrew Clubok Sarah A. Tomkowiak LATHAM & WATKINS, LLP 555 Eleventh Street, NW, Suite 1000 Washington, DC 20004 (202) 637-2200

APPEARANCES, cont'd.:

For UBS Securities, LLC:	Kimberly A. Posin LATHAM & WATKINS, LLP 355 South Grand Avenue, Suite 100 Los Angeles, CA 90071-1560 (213) 485-1234
For Redeemer Committee of the Highland Crusader Fund:	Terri L. Mascherin JENNER & BLOCK, LLP 353 N. Clark Street Chicago, IL 60654-3456 (312) 923-2799
For Redeemer Committee of the Highland Crusader Fund:	Mark B. Hankin JENNER & BLOCK, LLP 919 Third Avenue New York, NY 10022-3098 (212) 891-1600
For Redeemer Committee of the Highland Crusader Fund:	Mark A. Platt FROST BROWN TODD, LLC 100 Crescent Court, Suite 350 Dallas, TX 75201 (214) 580-5852
For Acis Capital Management GP, LLC:	Rakhee V. Patel WINSTEAD, P.C. 2728 N. Harwood Street, Suite 500 Dallas, TX 75201 (214) 745-5250
For Acis Capital Management GP, LLC:	Brian Patrick Shaw ROGGE DUNN GROUP, P.C. 500 N. Akard Street, Suite 1900 Dallas, TX 75201 (214) 239-2707
For James Dondero:	John T. Wilson, IV John Y. Bonds, III D. Michael Lynn Bryan C. Assink BONDS ELLIS EPPICH SCHAFER JONES, LLP 420 Throckmorton Street, Suite 1000 Fort Worth, TX 76102 (817) 405-6900

APPEARANCES, cont'd.:

For Patrick Daugherty:	Jason Patrick Kathman PRONSKE & KATHMAN, P.C. 2701 Dallas Parkway, Suite 590 Plano, TX 75093 (214) 658-6500
For CLO Holdco, Ltd.:	John J. Kane KANE RUSSELL COLEMAN LOGAN, P.C. 901 Main Street, Suite 5200 Dallas, TX 75202 (214) 777-4261
For Highland CLO Funding, Ltd.:	Rebecca Matsumura KING & SPALDING, LLP 500 West 2nd Street, Suite 1800 Austin, TX 78701 (512) 457-2024
For Highland CLO Funding, Ltd.:	Mark M. Maloney KING & SPALDING, LLP 1180 Peachtree Street, NE Atlanta, GA 30309 (404) 572-4857
For HarbourVest, et al.:	Erica S. Weisgerber DEBEVOISE & PLIMPTON, LLP 919 Third Avenue New York, NY 10022 (212) 909-6000
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DALLAS, TEXAS - OCTOBER 20, 2020 - 9:41 A.M.

THE COURT: A little bit of a wait. I was trying to make sure I was caught up on all of the late-day filings yesterday. There were a few of them.

All right. This is Judge Jernigan, and we're ready to start our setting in Highland Capital Management, Case No. 19-34054. We have two motions set today where the Debtor is seeking approval for compromise and settlement agreements, one with Acis and related parties and one with Redeemer Committee and the Crusader Fund.

All right. We have 70 or so people on the line, so we have put you all on mute. But I am going to now take a roll call, so you'll have to take yourself off mute when I call your name for an appearance.

All right. First, for the Debtor team, do we have Mr. Pomerantz and a team of others? Would you appear at this time?

MR. KHARASCH: Good morning, Your Honor. Ira Kharasch of Pachulski Stang Ziehl & Jones on behalf of the Debtor and Debtor-in-Possession.

I'd first like to let the Court know that Mr. Pomerantz is on the phone in a listening mode. He will not be appearing today as he's still recuperating from successful surgery last week, but glad to say that he's improving daily and looking forward to appearing in front of Your Honor again in the very

near future.

THE COURT: All right.

MR. KHARASCH: I have with me today John Morris as well as Greg Demo.

THE COURT: All right. Good morning to all of you. And we wish Mr. Pomerantz well.

All right. For the Redeemer Committee, Crusader Funds, do we have a team appearing for them this morning? Go ahead.

MS. MASCHERIN: Yes, Your Honor. Terri Mascherin of Jenner & Block. I'm appearing today on behalf of both The Redeemer Committee of the Crusader Funds and also the Crusader Funds, --

THE COURT: Okay.

MS. MASCHERIN: -- whose claim is likewise resolved in the settlement.

With me today on the line are my partner Mark Hankin, and Mark Platt of Frost Brown Todd.

THE COURT: All right. Good morning to all of you.

All right. For Acis, do we have Ms. Patel and others appearing this morning?

MS. PATEL: Yes. Good morning, Your Honor. Rakhee Patel on behalf of Acis Capital Management, LP, with the Winstead firm. Also on the line is Brian Shaw of the Rogge Dunn Group, also counsel for Acis and counsel for Mr. Terry. I'll let him announce if he has additional parties.

THE COURT: All right. Mr. Shaw, are you there with us?

MR. SHAW: (no response)

THE COURT: Okay. Maybe technical --

MS. PATEL: Brian, we can't hear you.

(No response.)

THE COURT: All right. Well, Mr. Shaw, --

MS. PATEL: Well, --

THE COURT: -- we put -- the Court put everyone on mute, so if you could take yourself off mute if you are trying to appear. (No response.) Well, maybe we'll get him at some point when -- if he wants to speak up.

All right. We have several objecting parties this morning. I'll start with Mr. Dondero's counsel. Do we have Mr. Lynn or someone from his team on the phone or on the video?

MR. WILSON: Yes, Your Honor. This is John Wilson with Bonds Ellis Eppich Schafer Jones, LLP. I am joined today by John Bonds, Michael Lynn, and Bryan Assink.

THE COURT: All right. Good morning to all of you. All right.

MR. WILSON: Thank you.

THE COURT: We had Patrick Daugherty as an objecting party to the Acis settlement. Do we have Mr. Kathman and his team?

MR. KATHMAN: Good morning, Your Honor. Jason Kathman on behalf of Mr. Daugherty.

THE COURT: Okay. Good morning.

All right. We had UBS objecting to the Redeemer Committee/Crusader Fund settlement. Do we have Mr. Clubok or others appearing for UBS?

MR. CLUBOK: Good morning, Your Honor. This is Andrew Clubok from Latham & Watkins, LLP on behalf of UBS. I'm here with Sarah Tomkowiak, who will actually be leading the proceedings for us today, and also Kimberly Posin.

THE COURT: All right. Good morning to all of you.

We had a few reservation of rights type limited objections, so I'll check now on these parties. CLO Holdco: Do we have Mr. Kane or others appearing?

MR. KANE: Yes, Your Honor. John Kane on behalf of CLO Holdco, specifically related to the Acis settlement.

THE COURT: Okay. Thank you, Mr. Kane.

All right. HCLO Funding: Do we have either Mr. Maloney or Ms. Matsumora on the line?

MS. MATSUMORA: Yes, Your Honor. This is Rebecca Matsumora from King & Spalding. And Mr. Maloney may be joining us later, once we turn to the Acis settlement.

THE COURT: All right. Thank you.

HarbourVest filed a limited objection to the Acis settlement. Do we have Ms. Driver or others appearing for

HarbourVest?

MS. WEISGERBER: Good morning, Your Honor. Erica Weisgerber from Debevoise & Plimpton appearing for HarbourVest this morning.

THE COURT: Okay. Good morning.

All right. Well, I think I've covered all of the parties who filed a pleading today. I suspect the Unsecured Creditors' Committee is out there. Do we have someone appearing for them?

MR. CLEMENTE: Good morning, Your Honor. Matthew Clemente from Sidley Austin on behalf of the Unsecured Creditors' Committee.

THE COURT: All right. Good morning, Mr. Clemente.

All right. Is there anyone else who wishes to appear that I did not hear from?

All right. Well, Mr. Kharasch, do you want to start us off this morning?

MR. KHARASCH: I would like to, Your Honor, just very briefly, before I turn it over to my partner, John Morris.

As you know, Your Honor, we're down to two motions to approve the separate settlements, one with Acis and Josh and Jennifer Terry on the one hand, as well as the Redeemer Committee and the Highland Crusader Funds on the other.

There's one significant update in the case that may come up during today's proceeding, it may not, but it's that Mr.

James Dondero has resigned from his position where he held the title of Portfolio Manager where he managed certain assets under the direction of the Independent Directors, and all actions were subject to the protocols and director oversight.

Here's how we'd like to proceed, Your Honor, today. John Morris of our firm, senior bankruptcy litigator, will be the one to primarily handle most aspects of the 9019 settlement motions, including putting on the testimony of our CEO, Mr. James Seery, and responding to the objections. However, Greg Demo will deal with the response to the technical arguments raised by Mr. Daugherty.

If that works with the Court, I would now turn the floor over to John Morris to present the motions.

THE COURT: All right. Let me just ask one clarification on the Dondero announcement. Does that mean he has no role at all with the Debtor only, or does it mean he has no role with the various affiliates out there as well?

MR. KHARASCH: Your Honor, certainly, I mean, I would defer to Mr. Seery when he gets on the stand, --

THE COURT: Okay.

MR. KHARASCH: -- but there's no role with the Debtor. In terms of the word affiliates, Your Honor, that gets a little tricky in the Highland case. Certainly, you know, it's no -- no role with the controlled entities, Highland's -- the Debtor's controlled entities. But,

obviously, the word affiliates could spill over to other entities that are truly managed and owned by Mr. Dondero or his various companies.

THE COURT: Okay. I know folks tend to bristle when I use that word affiliate. I know there's nuance in some situations. But all right.

Well, let's go ahead, then, and hear from Mr. Morris. And I'll just say right now I don't think I need lengthy opening statements. I don't know if that was your intention, to go straight to the evidence. Certainly, if people feel like they've got to say a word or two, I'll let that happen, but we've done our best to read all the pleadings so I don't really think I need much of an opening statement. I'd rather go to evidence pretty quickly. Mr. Morris?

MR. MORRIS: Good morning, Your Honor. Can you hear me?

THE COURT: I can. Uh-huh.

OPENING STATEMENT ON BEHALF OF THE DEBTORS

MR. MORRIS: Thank you. John Morris from Pachulski Stang Ziehl & Jones for the Debtor. Thank you for the guidance, Your Honor. I'll probably cut considerably on what I had been prepared to say, but I appreciate the time that the Court has taken to review our papers. I know that we didn't get them in until last evening, although they weren't particularly voluminous.

We're really pleased to be here today, Your Honor. This case has just recently passed its one-year anniversary. We're here today, really, quite excited to resolve two of the most contentious, litigious cases that the Debtor has faced, both on a pre-petition basis, and frankly, in certain respects, on a post-petition basis. These cases with Acis -- and Acis, in particular, Your Honor, you're very familiar with, and I just wanted to let the Court know that our plan here is to proceed first with the Redeemer settlement.

THE COURT: Okay.

MR. MORRIS: And so let me just say a few words about that. (garbled) I've shared with all of the objecting parties, so there's no surprise here. I think everybody is prepared for the path that we're going to go down. I'd like to do my short opening. Ms. Patel and Mr. Shaw may -- I apologize, Ms. Mascherin may speak on behalf of the Redeemer Committee. Somebody may speak on behalf of the Crusader Funds. UBS, who is the only objecting party, may choose to make an opening. And I'll call Mr. Seery. And I'll do my direct of Mr. Seery. I've got just a few exhibits to put into the record, and we expect to rest. And I'll leave it to Mr. Clubok and the Latham firm to decide how they want to respond.

So, once that's completed, we will shift to the Acis settlement. I would propose to proceed in the same manner, with a very short opening, put Mr. Seery on the stand to

testify as to the issues and the facts relating to the Acis settlement, and hopefully we'll be done.

THE COURT: All right. So, in both situations, Mr. Seery would be the only witness for --

MR. KHARASCH: Yes.

THE COURT: -- the Debtor. And I guess with regard to the UBS objection to the Redeemer Committee/Crusader Fund settlement, there is a person that was identified for UBS: Moentmann. I'm not sure if I'm saying that correctly. Are we anticipating having him as a witness? I guess I need to hear from Mr. Clubok, but --

MR. CLUBOK: Yeah. Yeah, I don't -- I don't --

MS. TOMKOWIAK: I think --

MR. CLUBOK: -- I'll speak.

MS. TOMKOWIAK: Good morning, Your Honor. This this is Sarah Tomkowiak on behalf of UBS.

THE COURT: Okay. Good morning.

MS. TOMKOWIAK: Yes, we do intend to present Mr. Moentmann as a witness today.

THE COURT: All right. Well, I'm getting ahead on this because what I want to know is, do people -- can people give me a time estimate at least of your direct? Okay? I'm trying to figure out, are we going to need to put any time limitations, reasonable time limitations on witnesses?

Mr. Morris, you acted like Mr. Seery would be fairly quick

in both situations.

MR. MORRIS: Yeah, I would appreciate 10 minutes for an opening, and then certainly no more than 30 but hopefully closer to 20 minutes for direct.

THE COURT: All right. Ms. Tomkowiak, what do you think as far as time?

MS. TOMKOWIAK: Yeah. We would like about the same, approximately 10 minutes for our opening and about 20 minutes to cross-examine Mr. Seery. And then I expect that our direct of Mr. Moentmann would take about the same amount of time.

THE COURT: All right . Well, I've got some loose estimates. If you start going well beyond those estimates, I'm going to kind of rein it in, but I think this all sounds very reasonable.

All right. Mr. Morris, you may make your opening statement.

MR. MORRIS: Thank you very much, Your Honor. What I want to do with my opening is just describe at a very high level what we expect the evidence to show today. The Court is obviously familiar with the settlement terms, so I'm not going to spend any time with that. They're set forth both in our papers and in the agreement itself. The Court is familiar with the legal standard. So I'd like to spend a few minutes at the end talking about the UBS objection and why the Debtor firmly believes that it ought to be overruled.

As Your Honor is aware, the Debtor had served as the investment manager of the Crusader Funds. In 2008, following the stock market and financial crisis, the Debtor put the Crusader Funds into (garbled). Disputes arose among the interest holders of the Crusader Funds, and they spent a few years fighting among themselves. And a few years later, they came up with a plan and scheme, pursuant to which the Redeemer Committee was formed. The Redeemer Committee had the -- had the right, the unfettered right to decide when, how, and whether the Debtor would continue on as its financial manager. And in the summer of 2016, it decided to terminate the Debtor's position as investment manager.

An arbitration ensued. Litigation, frankly, throughout -- throughout numerous countries and numerous courts ensued. There were two cases in Aruba, I believe. There was a case in the Cayman Islands. There was a case filed in the Delaware Chancery Court. You had the arbitration. So I think there was litigation going on on five different fronts.

The parties spent two years in arbitration, engaged in extensive discovery and motion practice. They had a nine-day trial in September of 2018, and ultimately the panel issued an award, and that award came in three parts. The first part was called a partial final award, which was rendered in March of 2019. That was followed, I think, about eight days later with a modification award. And finally, in May, they issued their

final award.

All three awards are attached to my declaration. They have been offered into evidence under seal. The sealing order has already been entered, and that sealing order, I think, is also one of our exhibits. I'm not moving them into evidence yet. We'll get to that point. But I just wanted Your Honor to know that the arbitration awards are very much part of the record.

That award, I don't think there's any dispute that, pursuant to the award, the Debtor was obligated to pay approximately $190 million. Shortly after the award was filed, the Redeemer Committee and the Crusader Funds moved to have the arbitration award confirmed in the Delaware Chancery Court, and Highland moved for partial -- for a partial vacation of that award.

Notably, Highland did not challenge any of the Court -- any of the arbitration panel's factual findings. They didn't challenge any substance of the award. But they raised a number of procedural defects that primarily went to the overarching argument that the partial final award should have been treated as the final award, such that any relief granted in the modification award and the actual final award was impermissible.

I think UBS has calculated the value of the awards given post those two documents as approximately $36 million.

So, you've -- the Redeemer Committee has filed their claim in this case of $490 million. The Crusader Funds have filed a separate proof of claim for approximately $23 million, if I remember correctly. And their basis for the Crusader's Fund claim is that they sued to claw back certain fees that had been paid to Highland in its role as investment manager. Admittedly, I think -- I don't want to speak for the Crusader Funds -- but I do think they acknowledge that there is some overlap in those amounts.

You will hear from Mr. Seery today. Mr. Seery will describe for you what he and an independent board of directors did to educate themselves about the scope, nature, and value of the Redeemer Committee's claim. They will -- Mr. Seery will discuss the extensive advice that the board was given with respect to these matters. Mr. Seery will also describe for you the extensive negotiations that took place between the Debtor and representatives of the Redeemer Committee and the Crusader Funds. You will hear about communications between and among lawyers, communications between and among principals.

I recall, Your Honor, back in June, when we I think first alerted to the Court that we were negotiating the settlement, you expressed some mild surprise, because, after all, this is an arbitration award, so what -- what, in fact, was there to settle? And it was a very fair point, and we appreciated the

fact that you didn't have visibility into the specifics. But lo and behold, there were really -- let's just call them very two -- two very large issues.

And Mr. Seery will describe this in more detail for the Court so it's part of the evidentiary record, but the first issue related to something called deferred fees. Pursuant to the plan and scheme that were agreed upon, Highland was entitled to recover its fees as investment manager only upon the completion of the Crusader Funds' liquidation. But in the early part of 2016, as the panel found, Highland had helped itself to approximately $32 million in deferred fees, and that was one of the claims that the Crusader Fund and the Redeemer Committee brought in the arbitration, and the arbitration required that Highland return that $32 million plus interest.

So why is that an issue now in the settlement? It's an issue because the Debtor chose a different path. Rather than paying that money now and waiting for some time in the future to seek to collect that money, it compromised. And it's a very reasonable and fair and rational compromise, Your Honor. They took two-thirds of the value of the deferred fee today instead of having no settlement, continuing with the litigation, having a fight on setoff issues, because undoubtedly the Redeemer Committee would argue that they ought to get paid a hundred-cent dollars. So we'd have another litigation over setoff. We would have to wait until the

completion of the Crusader Funds' liquidation before we could even make a demand for the deferred fee. And as Your Honor knows, the Crusader Funds are going to have and the Redeemer Committee will have an allowed claim in this case, and that claim won't be satisfied until all distributions are made, and those distributions won't be completed until all estate claims are pursued.

It may be many years before this happens. And so the Debtor, I think rationally, chose to take two-thirds now rather than fight over setoff issues, rather than wait what would likely be many years to even apply for it. And then once they did that, we'd be litigating over the Redeemer Committee's faithless servant defense, one that, if you read the -- if you read the partial final award, I think it's fair to say there would be risk here that the Debtor would get nothing on the deferred fee. So that was one big issue that we dealt with.

The other one related to Cornerstone. Under the terms of the final order by the Court -- the panel, not the Court, but the panel -- but the panel found that Highland acted improperly and was required to buy -- basically buy out the Redeemer Committee and the Crusader Funds' interest in Cornerstone. They would have been required to pay $48 million to do that.

Again, issues of setoff would have abounded. And frankly,

the Debtor doesn't have the money to pay that, doesn't think it's, frankly, worth that price.

So, instead, negotiations, very, very solid negotiations, the Debtor chose to allow the Redeemer Committee and the Crusader Funds to retain those Cornerstone shares and instead give us a credit of $30.5 million against the gross value of the arbitration award.

So the $190 million is reduced first by $21 million for the deferred fee; then, second, by $30-1/2 million for the Cornerstone issue.

How did they arrive at the $30.5 million figure? We'll hear Mr. Seery testify about the diligence that he did and about how he relied in substantial part on certain valuation reports that the Debtor receives in the ordinary course of business from Houlihan Lokey.

He will tell you that these reports are provided by Houlihan for a fee. They're provided not just with respect to Cornerstone but with respect to lots of other assets that the Debtor either owns or manages.

He will tell you that the Debtor relies on the Houlihan reports for setting the marks on their books and for all kinds of other reasons.

We believe that that, again, is a perfectly rational statement, and we want to emphasize to the Court that we're not here today to tell you that this is the absolute best

result that the Debtor could obtain, because no settlement can ever represent that.

Instead, this is a compromise, where everybody gives a little and everybody gets a little. And within that context, no expert that comes in here after having spent 20 or 30 hours doing their own analysis should be able to upset this apple cart. And that's what you're going to hear from UBS's expert. This is the only point that they really make, is that he did his analysis and he thinks that the value is higher. And I don't think that's the corpus of Rule 9019. It's the Debtor's judgment. Is what the Debtor doing fair and reasonable? Has the Debtor engaged in a process to educate itself? Has the Debtor thoughtfully gone through negotiations? Is there a rational basis for where the Debtor is coming out with? There is no question as to all of those things.

And so those are the two big adjustments. Mr. Seery will tell you that there was one other more modest adjustment that was made, another million dollars in favor of the Debtor. But that is the evidence that we plan on presenting, Your Honor.

We think that there will be no dispute that this negotiation was arm's length, it was not the product of fraud or collusion, and that it is in the paramount interest of the Debtor and its estates and all constituents that this litigation with the Redeemer Committee finally be brought to an end.

I have no further comment, unless you have any questions, Your Honor.

THE COURT: Thank you. I guess I should ask Ms. Mascherin, before I go to Ms. Tomkowiak: Did you have anything you wanted to say, as you represent the settling party, obliviously?

MS. MASCHERIN: Yes, Your Honor, I would appreciate it if you'd allow me just a brief set of remarks.

THE COURT: Okay.

OPENING STATEMENT ON BEHALF OF THE REDEEMER COMMITTEE

MS. MASCHERIN: The standard, of course, that governs us today is a familiar standard under Fifth Circuit law. In the Debtor's papers, the Debtor has cited to *In re Cajun Electric Power Co-Op, Incorporated*, 119 F.3d 349, a Fifth Circuit decision from 1997. And the Fifth Circuit tells us that approval is to be given to a settlement if it is fair and equitable and in the best interest of the estate. And the Fifth Circuit has guided courts to consider such issues as probability of success in litigation, taking into account any uncertainties in fact and in law; the complexity and likely duration of a litigated resolution of the dispute, and any attendant expense, inconvenience, and delay; and other factors, such as whether the settlement would be in the best interest of all creditors and whether the settlement was the result of arm's-length negotiation.

Your Honor, I would -- I will submit that after you hear Mr. Seery's testimony, and even in light of the Debtor's -- or UBS's, rather -- effort now to turn this into a valuation dispute over Cornerstone, that the Court will agree that this settlement was in the reasonable business judgment of the Debtor and is in the best interest of the creditors.

Just very briefly, Your Honor, the current state of affairs is that the Redeemer Committee holds an arbitration award entitling it to almost $190 million in damages. As part of that award, as Mr. Morris said, the Debtor is required to pay $48 million in principal plus an additional $21 million in pre-judgment interest to purchase the 42 percent minority interest in Cornerstone that's held by the Crusader Fund.

In addition, under that award, the Redeemer Committee is entitled to the cancellation of several limited partnership interests in Crusader Funds which the panel found Highland Capital Management had obtained by way of breaching the Crusader Fund plan of liquidation and breaching its fiduciary duties.

Only one small piece of that limited partnership interest relief was challenged by the Debtor in the action to confirm or vacate the award, and only one small piece of that, which we'll refer to, I think, in arguments later, perhaps, is the Barclay's claim for a limited partnership interest which Highland transferred to its wholly-owned affiliate Eames,

E-A-M-E-S, is at issue in UBS's objection.

In addition to the relief that the Redeemer Committee was granted in the arbitration award, Your Honor, the Crusader Fund, as Mr. Morris says, has asserted its own separate claim to claw back certain fees paid in the past to the Debtor and also to avoid the payment of any further fees under what New York law recognizes as the Faithless Servant Doctrine, which I will submit there is ample findings in the arbitration awards in this case of breaches of fiduciary duty, and New York law holds that when a servant has been found to have breached its fiduciary duties and acted unfaithfully, that servant is not entitled to further compensation from the client -- in this case, the Crusader Fund.

Now, all of that, as Mr. Morris notes, would be for litigation many years from now upon complete liquidation of the Crusader Fund, because the deferred fees that the Crusader Fund would seek to avoid paying would not be payable in any event unless and until the Fund -- the Crusader Fund was completely liquidated, which, as Mr. Morris notes, could not happen until this claim is fully paid, because this claim now is -- will be the single largest claim -- the single largest asset, rather -- of the Crusader Fund.

Your Honor, this compromise, this settlement, would be to the benefit of the Debtor's estate for several reasons. First and foremost, as Mr. Morris emphasized, it will end all

disputes between the Redeemer Committee and the Crusader Fund on one hand and Highland Capital Management, the Debtor, on the other, and would provide for releases of the Debtor and several of its affiliates and employees in connection with the settlement.

As a net matter, this compromise would reduce the amount of the Redeemer Committee's damages claim to an allowed claim of just over $137 million, a reduction of over $54 million from the amount of the arbitration award.

This settlement would also allow a very modest claim to the Crusader Funds of only $15,000, Your Honor.

It would provide for the same relief as the arbitration panel ordered with respect to the disputed limited partnership interests, including the interests that is currently held by the Debtor's wholly-owned affiliate, Eames.

And, significantly, it would also relieve the Debtor of its obligation to purchase the shares of Cornerstone that are held by the Crusader Fund -- as I mentioned, a 42 percent minority interest in that company -- which otherwise, under the terms of the award, the Debtor would be required to pay a total of $79 million to acquire. As Mr. Morris said and as I believe Mr. Seery will testify, the Debtor doesn't have that kind of money and has no interest in buying those shares. The Debtor is in liquidation, and its interest is in monetizing the 58 percent majority interest that it owns or controls in

Cornerstone.

And significantly, Your Honor, to that end, this settlement also includes an agreement by my clients, the Redeemer Committee and the Crusader Fund, to cooperate with the Debtor so that the Cornerstone asset, the company as a whole, can be monetized jointly. And we've even agreed upon some terms, which I won't get into because they are confidential, given that this is an asset that the Debtor will be seeking to deal with in the future, but under those terms, faithfully cooperate and will attempt to achieve a monetization that would bring in substantial value of what the Debtor could otherwise achieve holding a 58 percent interest rather than a 100 percent interest in that asset.

So, Your Honor, in sum, I submit that this settlement was in the reasonable business judgment of the Debtor and it amply meets the requirements for approval that the Fifth Circuit set forth in *In re Cajun Electric Power Co-Op*. Thank you.

THE COURT: All right. Thank you.

All right. Now I will go back to UBS. Ms. Tomkowiak? Am I saying your name correctly? Correct me if I'm not.

MS. TOMKOWIAK: It's pretty close for a first try.

THE COURT: Okay.

MS. TOMKOWIAK: It's Tomkowiak.

THE COURT: Tomkowiak? Okay. Thank you. You may proceed.

MS. TOMKOWIAK: Thank you, Your Honor. Before I proceed, I did want to raise one housekeeping issue that hopefully will not count against my time, but I think it's important to resolve it before I do my opening statement.

As you just heard from both the Debtor and Redeemer's counsel, part of the -- one of two very large issues in this settlement relate to the value of Cornerstone, and specifically the value of Crusader's ownership interest in Cornerstone. The Debtor put -- assigned a value to that of $30.5 million, and they put that in their papers, they filed that in court, they've said it here again here today, and they've said that Mr. Seery intends to testify as to the diligence that he purportedly did in order to arrive at that number.

We've, you know, received documents from the Debtor and Redeemer showing the valuations that were alluded to. The numbers in those valuations are substantially higher. Our own expert has also performed his own analysis of the valuations, and his own valuation analysis, and we would like to be able to testify to those numbers and talk about them.

Frankly, we're surprised that the Debtor doesn't want to put those valuations into evidence, considering that it is the Debtor's burden to show that the settlement had some rational basis, as they just said.

But, and we have previewed that to the Debtor, and they

have expressed their views that those values and those valuation reports are confidential and should not be part of the public record. We think that is prejudicial. We think it is prejudicial to put the lowest of the low of any of these ranges into the public record without also being allowed -- allowing us to put on evidence that the true valuation is, in fact, much higher.

Again, they put into the record that the perceived fair market value of this asset, which is critical and central to our objection and to their -- the value of the settlement and whether or not it's fair and equitable, they've put that into the record, and we would like to be able to get evidence into the record relating to that number and relating to our analysis of it and why we believe it's well, you know, below any range of reasonableness.

We don't think it's confidential. We think it should all be part of the public record. We do not object if the Court wishes to proceed in some other manner, such as, you know, sealing the courtroom, although, again, that's not our preference. We would prefer to just be able to talk about the evidence and the numbers. But we would welcome your Court's guidance on this. You know, I believe, and I won't speak for the Debtor's counsel, but I believe that that is -- was their preference.

MR. MORRIS: May I be heard, Your Honor?

THE COURT: You may.

MR. MORRIS: Okay. Your Honor, the reports that are being referred to are reports that were provided on a confidential basis. They're stamped confidential. They were produced pursuant to the protective order.

I'm a little confused as to why no effort has been made to deal with the issue prior to the last 12 hours or so, because (garbled). They received the documents as confidential documents. There's no question about that.

And the important point here, Your Honor, is why are they marked confidential. It's one thing to disclose a settlement number. It's very different to disclose the analyses. There may be discounts. There may be adjustments. We're about to embark, if this settlement is approved, the Debtor and the Redeemer Committee and the Crusader Funds are about to embark on a sales and marketing process. That part is known to the public. But the value, if the value -- I'm stunned that UBS is surprised that we care. There's probably not many things that we care about more than maintaining the confidence of the value -- of our perception of value, how we get there, the methodologies that were employed, and particularly when we're about to go into the marketplace. And we believe this information really does need to be kept confidential for that reason.

The option that I can think of, Your Honor, and I know it

may not be popular with everybody here, but there is only one objecting party. There's nobody else here. You've got your statutory committee. You've got the U.S. Trustee. They've got statutory obligations to continue to be part of the process. You've got UBS and you've got the Debtor. I would respectfully request that this part of the proceeding be limited, or at least the portion when their expert witness is testifying, because -- well, be limited to those folks, and everybody else just has to go off the line. That would be my proposal, Your Honor.

If this information gets into the marketplace, not only the Debtor but the other stockholders, including the Crusader Funds, will be harmed.

MS. MASCHERIN: Your Honor, may I speak?

THE COURT: You may.

MS. MASCHERIN: May I, just briefly?

THE COURT: You may.

MS. MASCHERIN: On behalf of the Crusader Funds and the Redeemer Committee, Your Honor, I join in Mr. Morris's objection. We have produced in discovery and UBS has included on its exhibit list the independent third-party valuations that the Crusader Fund has obtained, pursuant to strict confidentiality obligations, with respect to the Crusader Funds' shares in the Cornerstone asset, as well as highly confidential portions of reports by the Crusader Funds'

manager to the Redeemer Committee concerning its opinions regarding the value of that asset.

And we share the concern. And there should be a concern, I think, Your Honor, with respect to anyone who cares about the Debtor's ability to maximize the value of the Cornerstone asset. The market should not see the confidential valuation reports and other advice that the Debtor and my clients considered when we negotiated this compromise.

THE COURT: Okay. Let me --

MS. TOMKOWIAK: Your Honor, may I --

THE COURT: Let me think about --

MS. TOMKOWIAK: May I briefly make just a couple points?

THE COURT: Well, just a minute. Let me think about the mechanics here. I know there was a declaration of your expert submitted ahead of time. Have you filed under seal -- I've granted lots of sealing motions and I'm losing track -- have you filed under seal a valuation report of your expert?

MS. TOMKOWIAK: Your Honor, we have filed these papers under seal, to be cautious. Again, we view that differently than an open proceeding. These documents were on our exhibit list. No one objected to them. Some of these documents we did not have a chance to file because, although we've been asking for them for a very long time, we've only received them in the last, you know, 36, 24 hours.

So while some of them are under seal, there are other more recent valuations that would not be. And, again, we have a very different view here of what would or would not be harmful to a sales process.

We believe it is incredibly more harmful and prejudicial to have put in their motion, and I'm looking at it -- Page 10, Paragraph 31 -- to say that there's a $30.5 million perceived fair market value of Crusader's 42 percent ownership in Cornerstone, and then not be able to put into the public record all of the numbers in these, you know, secret valuations that suggest that it should be much, much higher than that. Substantially higher than that. Double, triple higher than that.

So that's our view. And, you know, again, we're willing to proceed as the Court wishes, but, you know, we have a very different view of who's really being harmed here, and, you know, we think it's the estate and we think it's us.

THE COURT: All right. Well, what I was thinking is, because this is going to be mechanically cumbersome and we're not going to have complete certainty about the integrity of the process if I say everyone has to leave the call except UBS, Redeemer, the Debtor, and the Committee, there's always a risk of someone somehow slipping by, I'm wondering if we can have your witness later and he can testify about the under-seal document without -- I don't know, can we have testimony

with him just referring to page whatever for the Court to look at, without saying the numbers out loud? Is that a ridiculous thought, or is that possible, do we all think?

MS. TOMKOWIAK: That might be possible, Your Honor, when it comes to our witness. And it might be possible to, for example, share slides with you in advance with respect to both my opening and our experts so that only you could see them but then we would talk about them vaguely.

I do, you know, I hesitate because we'd also like to use these documents potentially in our cross-examination of Mr. Seery. Again, we literally got some of these, you know, yesterday. And so I'm not sure that that's -- entirely solves the problem.

I mean, one other suggestion is that we could pause here and switch to the Acis claim and try in the meantime to work something out. You know, we've already proceeded down this road, though.

MS. LAMBERT: Judge Jernigan?

THE COURT: Yes.

MS. LAMBERT: This is Lisa Lambert for the United States Trustee. I had not anticipated needing to make an appearance in this hearing, but the U.S. Trustee has asked for sealed documents in this case, some of which have not been sent. And in addition, we'd ask to be excluded specifically as contemplated in the argument, but I wasn't sure the Court

was aware that we were on the call.

THE COURT: Okay. You're saying that if we have sealed testimony or documents, the U.S. Trustee wants to be included?

MS. LAMBERT: Yes.

THE COURT: Okay.

MS. LAMBERT: And for those who have not e-mailed those documents, we would be grateful if there were e-mailed, because I do not have all of them yet.

THE COURT: Okay. All right. This is a little bit --

MR. MORRIS: Your Honor?

THE COURT: -- challenging -- Mr. Morris, I'm going to go to you -- in a vacuum. I mean, I don't know what the whole set of documents are. I mean, a part of me is torn here. If we have the UBS expert's information out there for public consumption, will that alone, in the Debtor's view, chill the bidding process? I mean, this is one objecting party's view of the world, and, you know, perhaps it would simply be perceived as one objecting party's view of the world and not the end-all be-all on value. What do you think?

MR. MORRIS: Yeah. You know, I know this is a little unusual, Your Honor, but can Mr. Seery be heard since he is the CEO? I don't want to put him under oath and do -- but I think he can probably articulate much better than I can as to

the Debtor's concern. He's very familiar with the documents. He's reviewed them. And I don't know if -- Mr. Seery, are you able to hear me? Do you want to speak up on this particular topic?

MR. SEERY: I can hear you, yes. If the Court can hear me, if the Court wants to hear me, I'm happy to --

THE COURT: I would like --

MR. SEERY: -- describe what these documents are and how they derive into this issue.

THE COURT: Please. Go ahead.

MR. SEERY: Your Honor, each month -- and this is not unique to the Debtor -- with respect to what our view is of -- of the three -- two or three assets, the Debtor gets valuations from a third-party service, in this case Houlihan Lokey, which is probably the most prominent valuator of these assets, these types of assets. They set a -- well, what we call fair value. We use it for our NAV. Doesn't mean that it's fair market value. It's their perception of what value can be for these assets using various models and comparisons.

And we use those every month, we try to do it on a consistent basis, and that's how we value all our liquid assets.

Houlihan also does this service for a myriad of funds, investment funds, as well as the retail funds that are smaller affiliated with the Debtor but we don't control. So these

valuations for various assets go into the NAVs that those entities produce.

Again, they're not fair market value, but perception using models and desktop analysis as to what the value is, to allow investors in the funds to understand movements in the value of assets and get a sense of what the value may be.

In this case, the Debtor owns around three percent of Cornerstone. RCP owns --

THE COURT: I'm sorry.

MR. SEERY: -- around 55 --

THE COURT: I got the math wrong. What is the Debtor's ownership?

MR. SEERY: About three percent, Your Honor.

THE COURT: Okay.

MR. SEERY: RCP, which is a fund called Restoration Capital Partners, --

THE COURT: Uh-huh.

MR. SEERY: -- we've dealt with a little bit in the case before, is a fund with third-party investors mostly, a -- an interest by some Dondero-affiliated entities, and about 16 percent owned by the Debtor. That owns 55 percent of Cornerstone.

So, roughly, the Debtor's derivative interest in the asset is around 11 percent, 12 percent. In that neighborhood. The rest is owned by Crusader.

UBS -- we provide these documents on a regular basis to the Unsecured Creditors' Committee. UBS sits on that Committee. Our confidential information we provide to the Debtor and provide to the Committee, and have been doing exclusively for months, contains various valuations using these marks, and then what we think we can achieve for various outcomes.

We're working with Cornerstone management to put in a management retention program and enhance that opportunity for them so that interests are aligned. We think that's in the best interest of RCP, with whom -- manage the asset. We think it's in the best interest for the estate and our interest. Also in the best interest for Crusader.

We hope to then be able to go to the market. We may or may not be able to go to the market. The market may not be ready. It may not be the right time. We may have to do different things to the asset to get it in the best condition to sell it. We may have to even think about (inaudible) to get the best value. Because we have a duty to RCP as well. Releasing the detail that's in these NAV valuations that we get from Houlihan every month would be extremely detrimental to that process.

The interests of the Debtor, as I said, it's material, but there's significant third-party interests here. Significant third-party interests. For UBS -- these are not the types of

reports that ever are or should be released generally, and they will have an effect on the sale process.

MR. MORRIS: Thank you, Mr. Seery.

THE COURT: All right. Well, let me go back.

MS. TOMKOWIAK: Your Honor, may I -- may I just real briefly reply to that?

THE COURT: Let me ask you this first. Are we -- I want to make sure I understand the universe of documents we're talking about. Is it just your expert plus these Houlihan documents?

MS. TOMKOWIAK: Well, yes, and a couple of other documents that were produced by the Redeemer Committee. The -- those documents, I think what's confidential about them is that they refer back to these Houlihan valuations.

THE COURT: Okay. Isn't there a simpler answer to all of this, and that is, if I don't have a Houlihan person, if I don't have the person who created these documents, then they're hearsay I shouldn't allow in.

MS. TOMKOWIAK: Well, Your Honor, but we're not -- we're not necessarily putting them in for the truth of what's in them. In fact, we think what's in them is unreasonably low and significantly flawed and inaccurate. But, you know, they are relevant for other purposes, including the fact that they are much, much higher than the perceived fair market value that the Debtor put into their motion.

I was confused to hear Mr. Seery say that these don't show anything about fair market value, and those were their words, not ours. It's their burden to show that they had a rational basis and sound business judgment in entering into this settlement, so we are -- we should be allowed to explore with Mr. Seery what, to quote the Debtor's counsel, what diligence he did, including if he looked at these reports; why he didn't accept the higher values that are in these reports; why he took a value as of March, over six months ago, as opposed to the much more recent values in these reports that show that Cornerstone has continued to improve its performance. So, and the -- of our expert, who is allowed to rely on hearsay and allowed to explain what he did and what he reviewed in coming to his own analysis that this asset is worth, you know, two to three times the value that it's been assigned to it, the value that the Debtor's estate is giving up and that Redeemer is getting as part of this deal, which we just think is a windfall. And I don't understand how the Court can have all of the information available to make that independent judgment without --

THE COURT: Okay.

MS. TOMKOWIAK: -- without seeking that information.

THE COURT: Okay. So I'm going to take --

MS. TOMKOWIAK: I mean, we want these assets to be worth more. We want them to be able to monetize them and

maximize their recovery. We just -- we, again, disagree as to what's more harmful, having one very low, incredibly low, unreasonable number out in the public, or having, you know, the -- all of the information out there in the public that shows that the value of these assets is much higher.

THE COURT: Okay. Well, let's take this in chunks. I'm not going to allow any evidence in regarding these Houlihan reports. There was a way to do this, and I may or may not have been amenable to this way, but you could have subpoenaed the Houlihan person. I don't know what kind of fight you would have had on your hand. Probably would have had one. But without a Houlihan person to testify about this, this is hearsay and I think it would be offered to prove the truth of the matter asserted. So I'm not allowing the Houlihan information in for that reason.

I'll say a couple of additional things. We have a longstanding rule in this District that the Debtor can always testify about value. Okay? So, it goes to, obviously, the weight and credibility I give it, but -- so if he speaks about value, he's entitled to speak about value. It's just how much weight do I give it. He has the burden of proof.

The last thing I want to say on this topic is we all know that, in a 9019 context, the Court is not technically required to have a mini-trial. It needs to consider all facts and circumstances that "bear on the wisdom of the settlement

proposed." But I think that is probably yet another reason to keep this information out, that it's going a little bit beyond what I think is necessary today. And, again, the Debtor is either going to meet its burden or not. It has the burden. So that's the Houlihan-related stuff.

You've alluded to Redeemer Committee or Crusader Fund information. That's another category of stuff we're talking about?

MS. TOMKOWIAK: Yes and no, Your Honor. I think we also have presentations that were provided to the Crusader Fund, I believe by Alvarez & Marsal, that show -- again, discuss the valuation of Cornerstone as of particular dates, and frankly, we believe, directly contradicts the testimony that the Debtor has indicated that they intend to elicit from Mr. Seery and shows how unreasonable the efforts were here.

THE COURT: All right. Well, I think my ruling needs to be consistent, then, with the ruling with regard to the Houlihan information. I don't have an Alvarez & Marsal witness. It would be hearsay without the Alvarez & Marsal person here to testify about it. I think it would be offered for the truth of the matter asserted. And so I'm not going to allow that.

So, does that bring us down to just this one category of Mr. Moentmann and his work product?

MS. TOMKOWIAK: I believe so, Your Honor, in terms

of, you know, can he testify about his, you know, his own valuation, his own analysis of what he believes that these assets are worth and the flaws that he's identified in the Houlihan valuations as well, which I think, with respect to his own analysis, you know, I believe it would be helpful for the Court to hear the numbers and, you know, the flaws in what Houlihan has done. That's part of his opinions. And I think he could do that without, you know, referencing specific numbers, if that's what the Court would prefer.

THE COURT: All right. So I'm going to go back again to Mr. Morris and Ms. Mascherin. I'm inclined to let Mr. Moentmann testify, and I can -- he can refer to his report that's here under seal. And as long as he doesn't make references to numbers of Houlihan, Alvarez & Marsal, I'm not sure I'm convinced it would hurt the future marketing effort. Again, wouldn't the market just say this is one objector's opinion and they either give it weight or not?

MR. MORRIS: Your Honor, I probably should have said this earlier. I am going to have a very short *voir dire*. And I think, you know, if you would allow me to do that, the Debtor expects to move to exclude this witness in its entirety, in his entirety. He's a lovely man, I'm sure he knows his work very well, but I don't think it's worth the time, money, and effort to continue down this path on a 9019 motion. And so we will be making that motion.

I suppose if that motion is denied, you know, if he can be limited in the manner you're describing, we could probably live with that. But we do intend to make that motion.

THE COURT: All right. Ms. Mascherin, anything to add?

MS. MASCHERIN: No, Your Honor.

THE COURT: Okay. So that is the path we'll take. We'll let Ms. Tomkowiak call Mr. Moentmann. We'll either allow it or exclude it depending on where I go on that request. And then, if he does testify, he will be directed to just cross-reference his report that's here under seal and not mention numbers of other experts that he may be critical of.

All right. So, with that, Ms. Tomkowiak, you may make your opening statement.

OPENING STATEMENT ON BEHALF OF UBS SECURITIES, LLC

MS. TOMKOWIAK: Okay. Thank you, Your Honor. And to -- just to be crystal clear, I do intend in that statement to refer to the conclusions, his own, not those of anybody else.

THE COURT: All right.

(Pause.)

MS. TOMKOWIAK: Your Honor, as I -- I also appreciate you taking the time to read all of our papers. As you know, UBS strongly believes that the settlement is not fair, it is not equitable, and it is not in the best interest of the estate.

It is the Debtor's burden, that nobody disagrees about that, to show that it has exercised business judgment within a range of reasonableness. And the Debtor has not submitted to this Court any evidence whatsoever to meet that burden. The Debtor -- Mr. Seery testified at his deposition that he agreed that the only thing before the Court to determine whether or not the settlement is fair and equitable is their motion and that's it.

As you've observed, no one from Houlihan Lokey intends to come here and testify today. There is no evidence before you to independently evaluate the true value of these two very large issues, as the Debtor's counsel described them. It's just Mr. Seery and his say so of what he thinks is reasonable. And we don't think that that is enough to show that the settlement is reasonable, we think there's been a complete abdication of business judgment here, and we don't think this is in the best interest of the estate.

We believe that the Debtor and Redeemer have negotiated a sweetheart deal, frankly, that gives Redeemer a ginormous windfall and deprives the estate of its right to these meaningful assets that could be available to UBS and to other creditors.

And, so, yes, in addition to harming the estate, this deal is absolutely to the detriment of UBS, and we are a significant unsecured creditor whose rights are affected by

this deal. Our views must be taken into consideration under the Fifth Circuit law that Ms. Mascherin cited to. And respectfully, we just don't think that the Debtor has met its burden for giving Your Honor the full picture necessary to fully understand the value of this settlement compared to the arbitration award on which it's supposedly based.

I wanted to briefly talk a little bit about that arbitration award, if you can go to the next slide. So, again, that we all agree that the claim is based upon an arbitration award. No court has ever confirmed this award. It's not a final judgment. I want to walk you briefly through the components of that award as they're relevant here. So, Gail, if you could pull that up.

You know, Redeemer asserted a number of claims against Highland and they're laid out here, including the panel's findings. The first row is the uncontested claims. And by that, I mean that, you know, no one has disputed that portions of them should be subject to vacatur in Delaware law.

The next component, there are legal fees and costs that the panel awarded to Redeemer. Next, we have the deferred fee claim. And this was alluded to in the openings of the Debtor and Redeemer as well. And the panel agreed with Redeemer that Highland had, to quote the Debtor's counsel, helped itself to over $32 million in fees that were supposed to be deferred until the end of liquidation of the Crusader Fund.

The panel awarded Redeemer damages, but it did not relieve Redeemer of its obligation to pay the Debtor those fees in the future when they are due. And I don't think that is reasonably in dispute here.

The Cornerstone award, as we've all acknowledged, that was a finding by the panel that Highland did not act appropriately in liquidating Cornerstone and Crusader's interest in Cornerstone. And so the panel awarded Redeemer nearly $70 million for that claim. Or, I'm sorry, over $70 million for that claim. And that was based on the panel's view at the time, around a year or so ago, that the fair market value of Crusader's interest in Cornerstone was $48 million, approximately, and then plus pre-judgment interest, for a total of $71 million.

And then there was also this claim relating to the Barclay's interest. This particular award was included by the panel as a modification to its first final award. That second final award also increased the amount of pre-judgment interest that Redeemer was receiving under the arbitration award by extending the period of time by which they could receive that.

It's that portion of the Barclay's claim here, which is approximately $30 million, and then another $6 million of pre-judgment interest. That is the subject of the motion to vacate that was filed in Delaware a long time ago and was set to be heard the day that the Debtor filed this case for

bankruptcy.

So, the sum of these components, in terms of what Redeemer was owed, is approximately $190 million, but the story does not end there, as the Debtor and Redeemer would like you to believe. And I think, in fact, they acknowledge, you know, this is not a straightforward arbitration award, because there are reciprocal obligations that Redeemer still owed to the Debtor. And Gail, if you could click here.

So, what's reflected here are the various setoffs and other issues that we believe you need to consider when you think about the true value of the arbitration award. So the first one is the Cornerstone shares. We all agree that the arbitration award required -- required Redeemer, simultaneously with payment of the damages award, to give back, to tender back to the Debtor, absolutely no question, not in dispute, they were required to give those shares back to the Debtor.

And so we've assigned here, just for purposes about thinking about the arbitration award at the time it was issued, a value of $48 million, which, again, is the fair market value that the panel concluded was appropriate for Cornerstone at the time this award was issued, which, again, was a long time ago.

And then there was the payment of deferred fees. I think you heard a lot about those today. These are the fees that,

again, the panel found that Highland took them too soon, but they are required to get -- they are -- they have a right to get them at some future point in time when the Crusader Funds are fully liquidated. And so nothing about the arbitration award relieved Redeemer of its obligation to pay those fees, even though, necessarily, and as you can see by their name, they were deferred until some future point in time.

And then finally here, you know, any -- we -- there's a certain amount of contested claims. And, again, that relates to the Barclay's claim and with respect to the amount of pre-judgment interest that was included in the second final award.

That -- you know, Mr. Seery, I think, testified at his deposition that he believed they had little chance of succeeding on that motion, and they've assigned that zero value in their settlement and gave one hundred percent of the value of that to Redeemer. We believe that's inappropriate and we believe that even if you take 50-50, although, you know, we think it should be higher than that, but even if you just assume for settlement purposes that they might win that issue, they might lose that issue, and you take 50 percent of those contested amounts that are subject to vacatur by the Delaware Court, or frankly, by this Court, then, accounting for that litigation risk, you should remove another $18 million from the value of this arbitration award.

And so, at the end of the day, you've got an adjusted

award of around $90 million, and that's what we believe is the true value of the award.

If you go to the next slide. We really just have two large problems with the proposed settlement. The first is the Cornerstone shares. And, again, without getting into the numbers, they are -- indisputably, the Debtor's fair market value calculation is based on the very lowest end of the valuation range prepared by Houlihan Lokey for Crusader, not the Debtor. It's a bit confusing, but Houlihan Lokey actually provided two different valuations: one for Crusader, one for the Debtor. They used the one provided for Crusader, and they took the very lowest end of that range as of March 2020. They did it despite having a different valuation that had a higher range and despite the Debtor's own policy of typically marking assets at the mid-point.

They provided no basis for using a valuation in March, when the COVID pandemic was in its very initial stages. The market was very, very low. They've only said and we expect Mr. Seery to testify that, well, that's when the parties first started negotiating this deal. But the settlement wasn't finalized until, you know, six months later, and the Debtor is not bound by that valuation or some handshake deal. They could have but they did not insist that more current numbers were used.

And our expert, you know, we intend to offer his testimony

that they've used some very flawed assumptions and that the 30.5 is well below any range of reasonableness that you could assign to the shares.

And then really the -- you know, we don't think that the Debtor has appropriately taken litigation risk into account. You know, they've given a very large litigation discount for a claim regarding the deferred fees and this applicability of the Faithless Servant Doctrine that hasn't even been filed. I mean, that -- that litigation is hypothetical. It's not pending. It's a future dispute that isn't even ripe yet. And yet they've applied a very large litigation discount for that claim.

Conversely, they've applied a zero litigation discount for a claim that has been fully briefed to the Delaware court in the form of a motion to vacate. And again, inexplicably, they just (inaudible) amount and provided Redeemer with a hundred percent of the value of that claim.

Can you go to the next slide?

You will hear from our expert, Mr. Moentmann. He's a principal at Grant Thornton. He has over 30 years of experience in valuations. He specializes in healthcare valuations.

I heard Ms. Mascherin say that we would like to turn this into a valuation case. Well, frankly, we don't see how valuation is not relevant when the settlement includes the

forfeiture of a very, very meaningful asset such as Cornerstone.

He's going to testify, again, that, in his opinion, when he has looked at all of the information and corrected for these assumptions, that the true value of Crusader's ownership in Cornerstone as of June is, you know, as great as -- as much as triple the value that has been assigned to it by Highland as the "perceived fair market value."

We believe that this is the value that the estate is giving up. The estate has the right to those shares, and we believe that in forfeiting the right to them they're giving up a meaningful asset that -- that's -- has a much greater value than the amount taken into account by -- in the settlement.

And by the way, no one disputes that this asset is performing better today than it was in June, and certainly than it was in March, when they took the very, very lowest of the range of valuations done at that time.

What that means is that, under the proposed settlement, Redeemer actually does far better than it ever could under the underlying arbitration award.

And if we can go to the next slide, where I have hopefully provided redacted -- yep. And what that means is what the Debtor has said and what Mr. Seery has testified is that he expects the Debtor to be solvent. He expects that Redeemer will recover one hundred percent of its allowed claim in real

or one hundred dollars. And so what that means here is that they get to keep their $137 million allowed claim. They're receiving a release of their obligation to pay $32.3 million in deferred fees --

MS. MASCHERIN: I'm sorry, Your Honor. I must object. This line I believe at the bottom essentially includes the same, if you do the math, the very same values that are discussed in the confidential documents that were just the subject of their sidebar discussion.

THE COURT: All right. That does seem to be the case, Ms. Tomkowiak. Agree? I can go backwards and figure out --

MS. TOMKOWIAK: Yes, I do apologize. We --

THE COURT: -- what that redacted number is. So, yes, move on to another screen, please.

MS. TOMKOWIAK: We redacted these on the fly, Your Honor, and we just didn't redact the full column.

THE COURT: Okay.

MS. TOMKOWIAK: So we apologize for that. I believe it has now been fixed.

THE COURT: Okay.

MS. TOMKOWIAK: Sarah, does that address your concern? So, --

MS. MASCHERIN: No, that's -- no, you're -- you still have a reference in the last column, Counsel.

MS. TOMKOWIAK: The 30.5? That's public. That is --

MS. MASCHERIN: No, the other number, Counsel. The other number comes from confidential documents.

THE COURT: Okay. I thought the --

MS. MASCHERIN: Unless I was misreading it.

THE COURT: I think it was Grant Thornton. There was a -- there was the public number, the 30.5 March number, and then there was the Grant Thornton number. I think she revised it where those were the only two remaining, correct?

MS. TOMKOWIAK: Correct.

THE COURT: Okay.

MS. MASCHERIN: I apologize, Your Honor. I misread it.

THE COURT: Okay. Go ahead.

MS. TOMKOWIAK: Okay. Gail, if you could put that back up.

The bottom line, then, Your Honor, is that when you take into account one hundred percent recovery in real dollars on the allowed claim, release of the obligation to pay $32.3 million in deferred fees in the future, retaining Crusader's interest in Cornerstone as opposed to giving it back to the estates, we believe that Redeemer could be receiving an actual recovery of over one hundred percent of its filed claim under the arbitration award. Grant Thornton's estimate, you know, over $60 million -- $60 million over its allowed claim.

But even, even using the 30.5 perceived market value that the Debtor assigned to Cornerstone in the settlement, they still recover more than one hundred percent on their claim, as reflected in that Final column.

THE COURT: All right. Ms. Tomkowiak, we have gone well over the ten minutes. I know there have been lots of starts and stops, but you need to wrap it up pretty soon. Okay?

MS. TOMKOWIAK: Will do. Absolutely. All right. And I guess I'll just -- I don't -- I don't have any more slides.

I will just say that there's a genuine dispute, I think that is apparent now, about the value of Cornerstone. We don't think the Debtor has provided the Court with any evidence, let alone sufficient evidence to accept their valuation of this asset. We don't think Mr. Seery will testify that he's ever talked to Houlihan about this valuation. Houlihan is not here to defend their methodology. And we, fundamentally, we agree that settlement is desirable, we understand that, particularly here in this complex case, and that it is tempting to approve and allow all of this litigation to go away.

Quite frankly, UBS still believes that its claim can be settled and the mediation is still open and we're hopeful that we can resolve our claim, too, and we're making every effort

to do that. But this, this settlement is designed to overpay Redeemer, frankly. We feel like it has bought their support and they're working together with the Debtor to object to our claim.

We think that, at minimum, the settlement should not be approved without further information being provided to the Court in the form of real evidence or an independent valuation of Cornerstone being done.

Alternatively, Your Honor, the final thing I will say is that, in the alternative, if Your Honor is inclined to approve the settlement, the -- one of the terms of the settlement requires the -- Redeemer and the Debtor to work together to sell Cornerstone over a period of time. In the event that sale occurs and the purchase price is, as UBS suspects it will be, well above the value that's been calculated by the Debtor, then we believe that it would be appropriate for the Court to take Crusader's proceeds of that sale into consideration at the time of plan confirmation, when distributions are to be made, and any upside should be taken into account when calculating Redeemer's actual recovery.

THE COURT: All right.

MS. TOMKOWIAK: I appreciate your indulgence, Your Honor, and that's all I have.

THE COURT: All right. Thank you. Mr. Morris, shall we go ahead and have Mr. Seery testify now?

MR. MORRIS: I'd be delighted.

THE COURT: All right. Mr. Seery, welcome back. I need to swear you in. Please raise your right hand.

JAMES P. SEERY, DEBTOR'S WITNESS, SWORN

THE COURT: All right. Thank you. You may proceed.

THE WITNESS: Can you hear me, Your Honor?

THE COURT: We can hear you loud and clear. Thank you.

MR. MORRIS: Thank you.

DIRECT EXAMINATION

BY MR. MORRIS:

Q Good morning, Mr. Seery. Before we get into the substance, let me just ask you. Is it your -- have you rolled over here?

A I'm not known for that. The answer is no.

Q Okay. When were you appointed an independent director?

A In January of this year.

Q Okay. And you were appointed as the CEO in July; is that right?

A That's correct.

Q And the Court approved that in the form of an order; is that right?

A Yes, it is.

Q Okay. I want to move this along as efficiently as I can, so let me ask you an open-ended question: Can you describe

for the Court the diligence that you and the independent directors did to familiarize yourself with the claims that are being made by the Redeemer Committee and the Crusader Funds?

A Yes. From the start, and obviously we have several litigation claims, but Redeemer was a significant litigation claim and they sit on the Committee. So right from the start, even before the appointment as an independent director, I and I'm relatively certain Mr. Dubel, read the Redeemer partial arbitration award and then the final arbitration award. After our appointment and our selection of Mr. Nelms as the third director, I am quite sure that Mr. Nelms did the same thing.

So we looked at the awards, investigated with the Debtor's team the underlying nature of the awards, what led to the disputes. Then we worked with counsel, going through the underlying case issues that the arbitration raised. And in particular, the disputes between the partial final award and the final award.

And that took place through our initial appointment, after we got our feet wet, as I said, early in February and in March, because we thought this was one of the key issues we had to determine: Would we continue to litigate with Redeemer or would we seek to reach an accommodation and a compromise with respect to their arbitration award?

Q And did counsel provide you with written analyses, including advice concerning the nature and scope of the

Redeemer Committee's arbitration award?

A As with each of the claims that we've looked at, we've had counsel, and I think the time records reflect it, do significant work researching the underlying claims, getting to know the underlying case law. In this case, looking at the arbitration awards. Thinking about the defenses. Thinking about and analyzing the issues that Highland raised, challenging the final award. Analyzing the situation of the Delaware Chancery Court, including the appeals. And then report to us as an independent board on those issues.

Our practice -- you know, I don't have a specific recollection if this is the case of every one of the claims -- our practice is to have a board meeting after those documents that counsel's produced have been reviewed. Our practice is to challenge them. Our practice is to challenge them quite vigorously and send counsel back to do more work and hopefully educate us in a way that we have a good understanding of the risks and rewards with respect to various options with respect to each of the litigation claims.

Q And did the board spend time and did you personally spend time considering and getting advice on the issue of the Faithless Servant defense?

A We did. To be frank, it's one that, despite having a lot of experience in these areas, I had not heard of it before. So the board requested that counsel do research and provide

additional written information regarding the defense, its likelihood of success, and particularly with respect to the facts that are outlined in the partial award and in the final award and how those might impact attempts that we would have to get around that defense.

Q All right. Let's shift from the diligence that you and your fellow board members did to the manner of the negotiations. Did you (audio gap) participate in the negotiations?

A I'm sorry. There was a -- there was a beep.

Q Did you -- do you have personal knowledge as to the negotiations that led to the agreement?

A I did, yes.

Q All right. Again, can you just describe in general terms for the Court the process that the Debtor undertook in negotiating the agreement that led to this motion?

A Well, there was extensive back and forth, as I think everyone in the case knows, that we started with a hundred percent case, and we negotiated that with Redeemer very aggressively. Redeemer brought in Crusader at times. We negotiated various points to -- where they gave and we did, back and forth. We went back and did additional research on some of their claims with respect to -- and particularly with respect to the interests, which we can get into in detail, that are extinguished in the award. We spent a ton of time

not only with our counsel but also with the Highland team to understand the underlying history, how those interests were obtained, whether they -- what did they cost when they originally purchased them, how they potentially were found to violate the -- the scheme. And then negotiated those points with Redeemer.

Q And just to complete the record, did you personally speak with one or more principals who were representing the interests of the Redeemer Committee to negotiate any aspect of the settlement?

A I did. We had many discussions, all telephonic, negotiating the particular terms. We also had a number of meetings with counsel with the entire board, with the professional -- the personnel who represented Redeemer plus their professionals, plus counsel and representatives of Crusader in Zoom calls. So there were multiple sessions, both on the phone directly with the Redeemer principal who sits on the Committee as well as with the Redeemer principal and his counsel.

Q All right. Let's talk about the adjustments that were made to the gross value of the arbitration award of $190 million. Just to identify them, they include the issue of the deferred fee. Do I have that right?

A Yes. I think you summarized it in the opening quite well. Highland had, in the scheme that was approved originally to

liquidate the Crusader Fund, Highland had agreed to a fee arrangement where the vast majority of the fees were deferred, and they were deferred until the end of the liquidation -- *i.e.*, until all of the assets in the Crusader Fund had been liquidated and funds were distributed, and then Highland would be entitled to receive its fees. And along the lines, for a variety of reasons that the arbitration panel did not give much credence to, Highland took them before the end of the liquidation.

Q And did the Debtor decide to reach a compromise with respect to the amount of fees that it might have been owed had it successfully requested them at the end of the day?

A We did. We obviously, or maybe not so obviously, but we did start with asking for the full reduction, with the argument that this liquidation will get done quickly, we've only got a couple assets left in Crusader, and we should be entitled to the full setoff.

Redeemer's position and Crusader's position was, wait a second, you're asking us to pay you fees on account of a scheme that you were breaching while you were supposedly earning these fees, and then you took the fees that you earned while you breached it early. And they were of the belief that they did not have to pay any of those fees. So we negotiated off of those two positions.

The arbitration award does not deal with the fees. It

talks about the repayment of the $32 million plus the interest, but it doesn't say what happens later. And it's a -- it's a failing or (inaudible) in this, you know, for Highland, but it doesn't -- it certainly doesn't give Highland the award of the fees.

And we had similar arguments with respect to briefing before the panel, arguments before the panel, where we were arguing that we were -- we'd be entitled to get those fees at the end, and that Redeemer and Crusader knew it, but there were some holes in those arguments.

Q Let's see if we can identify that. Ultimately, the board agreed with the Redeemer Committee and the Crusader Fund to accept a credit today for two-thirds the value of the total deferred fee; is that right?

A That's the math in terms of what the reduction in the claim is. It was hard-fought in that we wanted to make a decision if we could get a full settlement with a number of components or whether we would try to get pieces and litigate the other piece. Redeemer wasn't interested in a partial settlement. It was either full or litigate. And that left us, we thought, exposed, both with respect to the time and cost as well as the risk of a complete loss, which we factored into our settlement.

Among other things, you know, and this will permeate the case, and we'll talk about it with Acis as well, this case,

the business runs the way it runs. It does have revenues and the team does provide service to a number of counterparties and they do a great job. So the employees of Highland are able to execute and perform a valuable service to their shared service counterparties and the funds to which they provide investment management services. But these litigations have been hanging over this case for most of ten years. And it's remarkable in that, every time we try to settle one, someone else wants to keep them going.

Q All right. Let's just talk about some of the factors that the Debtor considered or may have considered in agreeing to the compromise that you've described. Did the Debtor take into account the possibility that if there was no agreement that there would be a separate litigation on the question of setoff and how the compensation would have been -- how the compensation would go back and forth?

A Certainly. And we considered -- we considered whether that litigation would happen in the Bankruptcy Court in front of Judge Jernigan or whether we would be sent back to the aforementioned Chancery Court, which as counsel for UBS noted, those arguments have already been briefed. And the risks with respect to both avenues in terms of pursuing a -- either a knockout win or a partial win, the time delay, and then the risk of a knockout loss or a partial loss.

And so we thought about that with respect to each of the

settlement components.

Q All right. So, under the agreement, will the Debtor get the value of $21 million with respect to the deferred fees immediately upon the allowance of the claim?

A Well, it reduces the claim. So I think that that's a fair -- that's a fair way to look at it. And each of the board members analyzed it with that perspective.

Q And did you and the board members try to make any determination as to how long the Debtor would have to wait before it had the opportunity to request or demand the deferred fee?

A We did. It's hard to estimate. So I think that it's, in a vacuum, the Crusader Fund should be able to liquidate pretty quickly. The problem is that the Crusader Fund's liquidation are tied to Highland's liquidation or monetization. And the timing on that, depending on the parties, can be uncertain. We would hope to be able to monetize the assets quickly, but we also are contemplating a litigation trustee. And as we've seen, that -- that litigation can take some time with these parties.

In addition, while we -- we had a grand bargain opportunity, we continue to negotiate with Mr. Dondero, who's made a material effort with his counsel on an ongoing but certainly a recent movement. And that could expedite it. It's very uncertain as to how long -- how long a complete

liquidation would take. If we -- if we were able to reach an agreement with Mr. Dondero, we hopefully can, at least with respect to part of the case, resolve it quickly. And I think that that would be more of a pot plan type approach.

The problem with a pot plan is that we still have a number of unresolved litigation claims that will take time to resolve.

Q All right. So let's just focus on what would happen if we didn't have the agreement. And just assume for the sake of argument that at some point in the future, however many years that may be, the Crusader Fund has completed its liquidation. Do you have any reason to believe that at that time the Crusader Fund would roll over and no longer assert the Faithless Servant defense in the face of a demand for the deferred fee?

A Well, I guess you'd have to look at it two ways. If -- if the fees do not reduce the Crusader claim, Redeemer's claim, then there would be nothing to roll over on. Because what's really important that everybody has to understand is Highland got the fees. It took them. It took the cash. And so the only -- the only way that you have a deferral of recovery of that fees, those fees, is if you pay back hundred-cent dollars to Redeemer and Crusader, which would include the $32 million plus the interest.

Q Okay. Are there any other reasons that you can think of

at this time that the board and you as CEO took into account in deciding on the compromise of the deferred fee issue?

A Of the fee component? Well, I think -- I think that -- that really summarized it. It's not that complex. The only -- the complexity is really if you consider not settling, what are your avenues to, if you will, be able to keep the full amount of the fees and interest.

Q So, would it be fair to describe it as taking a certain two-thirds of the fee today rather than a speculative chance of getting a full fee at some undetermined time in the future, after spending money to litigate the Faithless Servant defense?

A I think that that -- that's very -- to be honest, it may cabin it too much. We looked at this as a total settlement. And so it's not just one piece. And in an effort to move this case forward, we looked for the reasonableness of each transaction as a whole, and I think that's a more full way to look at it. We could litigate with Redeemer and Crusader for another two years, maybe. I'm sure that there's ways to keep it going and diminish all the assets of the estate in litigation costs. But we thought that this was a fair and equitable settlement as a whole, and this component we thought was pretty straightforward. Getting the full amount of fees, which we would have liked, we thought was not something that we had much success -- much chance of a success if we

litigated this.

Q Okay. Let's shift to Cornerstone. Can you just describe for the Court what Cornerstone is and who the stakeholders are. I think you -- I think you may have (garbled), but just for context.

A Cornerstone is a portfolio company. It's Cornerstone Healthcare Group. It's a portfolio company of Highland, in that Highland owns about three percent of the equity. Restoration Capital Partners, which is a liquidating fund, and Highland, as the advisor to that fund, owns about 55 percent, and Crusader owns about 52 [sic] percent. Cornerstone operates in the LTAC space, which is Long Term Acute Care, Senior, and Behavior Health. Senior living. And it has a home hospice, a smaller home hospice and home -- home business that also helps with rehab, and which -- and some of those are newer acquisitions.

It's a -- it's a company that I believe Highland first got involved with in 2007, I believe. And so it's been another asset that's a long-term holding. We have a solid management team. We like the -- we like the team a lot. We think that they've performed and done a great job in incredibly difficult circumstances, you know, through the first half of this year. Against -- against that, some of the related entities, the CLOs, have a loan, a term loan, and there's also other mortgage debt and equipment financing at Cornerstone.

Q And do you understand that the Crusader Fund's interest in Cornerstone is a subject of the arbitration award?
A Yes.
Q And can you describe for the Court your understanding of what the panel found and determined with respect to that asset?
A The panel found that basically Highland has an obligation to purchase Cornerstone back from -- those Cornerstone shares back from Crusader. And it assigned a value of $48 million to those shares, which was considerably in excess of fair market value at the time of the award, we believed, as well as at all times since then.
Q And you reached an agreement with the Redeemer Committee on the treatment of the Crusader Fund's interest in Cornerstone; is that right?
A Yes.
Q Can you describe the treatment of that interest for the Court?
A What we agreed with Crusader is that we wouldn't buy back the shares, because we don't have the capital to do that, that we would reduce their total claim by about $30 million.
Q Okay. Before we get to that specific point, are there other aspects of the settlement agreement that concern the Cornerstone asset?
A Well, we -- the other piece of Cornerstone is really a

Crusader issue. As I laid out the share holdings, the combined Highland interest, if you will, is about 58 percent. Crusader's is 42 percent. This is a private company. It does not trade. It -- it is -- it was controlled by the majority shareholders. And Crusader was interested in trying to find some liquidity in either their shares --

(Audio cuts out.)

THE COURT: Uh-huh. Mr. Seery?

THE WITNESS: And so we --

THE COURT: Mr. Seery, we lost you for about 20 seconds there. You were speaking but we couldn't hear you. So repeat the last 20 seconds, please.

THE WITNESS: I'm sorry. I'm sorry, Your Honor. That cut out. Highland owns or controls 58 percent, with RCP as the main holder in Highland holding about three percent. Highland's the manager for RCP. Crusader is a minority holder. It has 42 percent. It really has no say or control over the company and what it does.

Crusader was looking to create the opportunity to either get real liquidity in for this interest, not just us reducing our claim, or -- or at least the appearance of that, frankly. And so what we have agreed is that, since RCP is actually a liquidating fund and we want to monetize the asset, that we will work with Crusader to try to monetize Cornerstone in 2021.

Now, it -- there's -- the way the agreement works is that we'll work in good faith to try to do that. If we're not able to do that, there's really no -- there's no breach. There's no -- there's no damages. There's no -- no penalty. And the reason for that is that monetizing this asset may take work. The management team, as I mentioned, is excellent. They're doing a great job. And we're working with the management team to assure their long-term commitment to the business and the line of interests.

But there may be different ways to monetize this asset. It may be that we sell parts of it. May be that we invest in parts of it. It may be that we sell the whole company. It may be that we would go to meet a banker with the management team, that the banker says don't do it now, you should do x, y, and z in order to enhance the value. While RCP is liquidating, we are looking to procure value for their stake in -- in Cornerstone. And we'll take all of those issues into account. And even if Redeemer wants -- or Crusader wants to sell but RCP doesn't and management doesn't, it's unlikely that this asset will trade.

That said, as I mentioned, we are looking to see if we can monetize it, and we are looking to try to cash out and liquidate Redeemer -- RCP's interests as well.

Q As part of the negotiations that -- the board has agreed to certain milestones and a schedule for the sale and

marketing of the asset?

A We did. But as I mentioned earlier, I think this had a lot more lead for Crusader than it exactly had for -- for me and for Highland. We've talked to RCP about it and we talked to management at Cornerstone about it.

Milestones with respect to a sale process, you know, usually, the only thing you know for certain is that they likely won't be met. And, really, they depend on the market. If you tried to do the same milestones in 2020 as are -- our aspiration to put up for 2021, there's no chance of that. And so we'll have to see what the market looks like, and most importantly, what the management team thinks is in the best interest of the enterprise and what the bankers think is in the best interest of the enterprise and then -- and question -- equally importantly is what RCP wants to do.

Q All right. Now let's turn to the $30.5 million value. I think you heard counsel for UBS refer to our pleading as -- I forget what the exact term was, but an indicator or predictor of -- of fair market value. Did you hear her in that commentary?

A I heard it, yes.

Q Okay. And do you have a view as to whether that was necessarily the best characterization of the -- of the --

A Yeah, I -- I think the reports that we get monthly and that all investment firms get monthly are where they're

referred to as fair value valuations. And they help set the NAV.

There's a reason they're not called fair market value. There's no market test whatsoever. And so they are -- they are -- they are desktop model-driven valuations. You look for comparables. You look for a DCF. You do a bottoms-up in terms of asset value, depending on the type of asset. And you try to come up with a reasonable way to assess the value of the asset.

They are not market tests. So, and I can give you dozens of examples of why they're not, really simple examples of why they're not, as to -- as to fair market.

Nevertheless, we use them and rely on them. And investors use them and rely on them. And Houlihan Lokey is probably the preeminent firm doing this in the U.S.

Q Do you believe, if 30.5 doesn't represent a fair market value, do you believe that it is nevertheless a fair and reasonable place to come for purposes of the negotiation with the Redeemer Committee?

A Certainly. It's typically within our range of reasonableness. We look at, you know, where we have NAVs. We considered the issues with respect to the business. You know, we -- we thought about the total of 48. We considered where third parties, you know, might want to purchase it. But we did not go get a market test.

I'm quite certain that if UBS wanted to make a bid because they thought it was so low, that if they took the advice of their expert, they would have a willing seller, and -- and Crusader would sell. We would certainly have a willing seller in RCP. We'd -- happy to negotiate in the range that they threw out. It's a giant bank. They should probably buy it if it's that cheap.

Q Do you communicate with either officers or directors of Cornerstone on a regular basis?

A I wouldn't say on a regular basis. I do -- I do communicate with them. We have a team that serves as the board of directors at Cornerstone, and they -- they deal on a regular daily and weekly basis with the Cornerstone team, and then they feed me the information and we analyze it and we send them back.

So I have talked to the team at Cornerstone. I've discussed the business with them and the approach we're taking in the case, because it's obviously important to them. Their -- their stock is -- it's a -- it's a big company. Their stock is owned by a liquidating fund managed by Highland, a liquidating fund suing Highland, and a small amount by Highland. So I've tried to keep them up to speed. As I -- as I said, we like the team. We think they're -- they're good and we want to see them stay.

Q And does your work with the team and the communications

that you've just described, do they help to inform you as to the fairness and the reasonableness of the number that you arrived at with the Redeemer Committee?

A It certainly -- it certainly factored in. Yeah. We looked at the overall quality of the business, where it was in the -- in cycle, the market that we're in now in terms of where they have to perform, and considered the NAVs that we have as well as the litigation risk with respect to -- with respect to Crusader.

Q Do you have a view as to whether Cornerstone has done anything in terms of its business model or business generally that would cause valuation to fluctuate, or is it more attributable to the fluctuations of the marketplace?

A Oh, well, I don't think that the value of Cornerstone has moved or should move materially through the year. It probably was depressed from a perception standpoint early, and I think the team has done a good job. They've grown EBITDA from where it was on a trailing basis to, you know, I think quite well. And so the business is in a good, steady place.

The LTAC business is performing very well and I think is -- is -- has proven itself to be a valuable asset in the -- in the COVID. The senior living business is more challenged. That business relies on a lot of capital, which we are capital-constrained compared to some of the competitors. And if we look at the public comps for those, those businesses, I

think it's fair to say that some of the larger ones are challenged. And I think the company has done a nice job.

But if -- I guess the question is, has -- do I think it's materially different than it was early in the year? Depending on perceptions, just like the market, you know, there's highs and lows, but the company is doing a nice job. I think they're planning on a steady pace.

Q Did -- you testified to it just a moment ago, but let's talk about the Houlihan Lokey reports. Without going into any substance, can you tell me how many assets or portfolio companies does the Debtor commission Houlihan Lokey to produce valuation reports similar to the one that's been described there?

A Yeah. I don't have the exact number, because the Debtor doesn't just do it for its portfolio companies. We have to perform shared services for a myriad of funds, including public funds, and Houlihan provides the -- the NAVs with respect to their Level 2 and 3 assets as well.

Q And does the Debtor rely on those reports in the ordinary course of its business?

A It does, yes.

Q Can you describe for the Court how the Debtor relies on the Houlihan Lokey reports?

A In front of -- you know, Level -- Level 1 are assets that have a market that you can look to directly to figure out the

value of your asset. Think about Apple stock.

Level 2 assets are there is a market, but it may be more -- more of a trade-by-appointment market. Think about not the bigger high-yields, but high-yield loans, distressed or stressed names where there's not a ton of market activity.

And Level 3 assets are ones where there's not real good discernible market inputs and you try to value those on a market -- on a model basis.

So, we use Houlihan reports in order to set the exit value of various funds. We use it to report to the creditors in our case. We use it for, as I said, like RCP, which is a fund that gets -- strikes a NAV every month. And we use it with respect to the CLO assets that we manage.

Q And to the best of your recollection, was the $30.5 million number that has been agreed upon, was that within the range of any of the Houlihan Lokey reports that you reviewed as you were considering whether or not to enter into the agreement?

A The number we agreed, the 30.5, was in the range, and it was in the range when we -- when we struck this deal, which I think was April-May. So I think it would fit in the range in the May Houlihan valuation. I don't know about each month. As I said, there are -- because it's a desktop and model-driven valuation, there are anomalies that show up. And we try to review those with Houlihan to try to make it as

accurate -- use as accurate information as they can. But that, you know, their numbers in their model over model, we like to use it consistently. And you'll see that with respect to any kind of assets that get this type of valuation before the -- as opposed to a market valuation.

Q Okay. Before we leave the topic, let me just ask you: Is there anything else that you recall taking into account when -- when you and the board decided to accept the $30.5 million number?

A Well, we -- we didn't just -- we didn't just accept it. As I say, we negotiated starting at 48, which we didn't think there was a chance that we could sell it for that value. And we negotiated with the Crusader and Redeemer interests to try to come up with a settled amount.

So the same issues with respect to the deferred fees factored in here. Again, it's a package deal, so we looked at the litigation, the timing, the risk of not being able to get a deal done and the damages that we would have, the potential impact on RCP and Highland's interest in Cornerstone, the impact on the management team at Cornerstone, the litigation about the -- of who owns the equity interests. And so all of those factors in trying to get to a deal weigh in as we analyzed whether to do this transaction.

Q All right. I want to shift gears to one argument that has been made by --

THE COURT: Mr. Morris? I'm just letting you know, you've gone 35 minutes. And I said I wouldn't, like, get the shepherd hooks out after 30 minutes, but let's try to wrap it up so we finish today. Okay?

MR. MORRIS: Yeah. No problem, Your Honor. I really appreciate it. In fact, I'm going to wait and let UBS question Mr. Seery on its theory concerning going back to Chancery Court and I'll just skip that, because it's not -- it's not -- not my -- it's not our issue anyway.

BY MR. MORRIS:

Q Mr. Seery, let me just finish up, then, and see if we can identify the various litigations that are being resolved if this settlement approved. Would the settlement resolve the Delaware Chancery Court litigation, to the best of your knowledge?

A Yes, it would.

Q Are you aware that there's litigation pending between the Redeemer Committee and the Debtor in the Cayman Islands?

A I -- I've heard of it. To be frank, we haven't looked at it. It was part of the original discussions around all of the open issues, but we expect that will be resolved as well.

Q And are you aware that there are two pending litigations in Bermuda between the Redeemer Committee and the Debtor?

A Same -- same answer. We looked at those. We understood what they -- you know, in terms of a board perspective.

Counsel spent time on them. From a board perspective, it was more of a sideshow. Those will be resolved. We thought the main event was the arbitration award and the issues in Delaware.

Q Okay. And did the -- did the elimination of the -- of all of those litigations, the fees that might be incurred with respect to them, the litigation risk, was that also a factor in the board's determination to accept this settlement?

A Yeah, it always is. And again, not just the fees with respect to this particular litigation but the overall case. So it factors into analyzing whether this is a good, fair deal for the entire estate and whether each component works to support that overall thesis.

Q Okay. Last question. Can you explain to the Court why the Debtor believes that this settlement is in the best interest of the Debtor's estate?

A Hopefully, I've encapsulated that in the prior testimony, but I think that, with respect to settling this claim, this one was more straightforward than many of them, notwithstanding the complexity of the arbitration award, because there was an arbitration award. And it had been litigated in front of the arbitration panel, which was an esteemed panel, for a couple years, with tons of testimony, tons of documents, and a partial finding and then a final award that really hit on all the various issues with respect

to disputes among the parties.

And if we don't settle it at all, I think we're going to be back in for potentially a lengthy litigation, depending on what happens in the Chancery Court. If we lose in the Chancery Court, it's a significant impact to the estate. So we viewed this as reasonable. We continually updated it and -- our analysis, and, you know, feel confident that this is in the best interest of the estate, the Highland interests, the creditors, the investors.

MR. MORRIS: I have no further questions, Your Honor.

THE COURT: All right. Pass the witness.

Ms. Mascherin, when I was doing my time calculations earlier, I didn't take you into account. Do you have any examination that's not duplicative of Mr. Morris?

MS. MASCHERIN: I'll make this easy, Your Honor. No.

THE COURT: Thank you. Ms. Tomkowiak, it is your turn to examine Mr. Seery. Go ahead.

MR. CLUBOK: Your Honor?

MS. TOMKOWIAK: Thank you, Your Honor. My colleague, Andy Clubok, will be cross-examining. Appreciate it.

THE COURT: All right. Mr. Clubok, go ahead.

MR. CLUBOK: Yes, Your Honor. Ms. Tomkowiak is going to let me do this part of the proceeding.

CROSS-EXAMINATION

BY MR. CLUBOK:

Q Mr. Seery, you just testified that the $30.5 million assigned credit for Cornerstone was within the range of the Houlihan Lokey reports that you get on a monthly basis. Correct?

A Yes.

Q Okay. And, in fact, the -- have you reviewed the latest Houlihan Lokey reports?

A I have.

Q Okay. And isn't it the case that -- or, what's the date of that report, by the way?

A There's a draft in for September and there was one for August.

Q So, that draft report for September has not been provided to us, and certainly not been submitted to the Court.

Let me ask you, then, about the August valuation. It's fair to say that $30.5 -- well, what Houlihan does is that they give you a low and a high, and that's the so-called range in the value of Cornerstone, in their valuation reports. Correct?

A They do.

Q And typically what Highland does is it assumes the midpoint is the best number to use for that -- for what it uses those reports for. Correct?

A Yes. Yeah.

Q Okay. And in the August 2020 Houlihan report, there is a

low to high range, and in fact, 30.5 falls below the lowest point in that range. Isn't that true?

A I don't recall the specifics of the report.

Q Well, you said that 30.5 falls within the range, and my question to you, sir, is would you agree that, at least in the August report, which is the latest that has been provided to us, just, actually, about 24 hours ago, that 30.5 is below the lowest point of the range and not within the range? Would you agree with that?

A I don't know the answer off the top of my head. If I had the report, I could look at it.

Q Yes, please. If you could look at the report and confirm that.

A I don't have it.

Q Oh, I'm sorry. You said you don't have it? I see.

MR. CLUBOK: Your Honor, I'm mindful of your order and I don't want to run afoul of it, but Mr. Seery testified under oath that he believes that 30.5 is in the range of the Houlihan report, which I will proffer to you that it is not. It is below the range. I would like to present the report to show at least Mr. Seery that contention. I'm not using it for hearsay to prove the truth. Frankly, I think the Houlihan reports (echo) themselves what a reasonable expert will say. But they certainly are in a range that is above the 30.5.

THE COURT: All right.

MR. CLUBOK: So I'd like to --

THE COURT: Let me start with your premise that he testified inconsistently. My notes are that he said at the time they struck the deal in April or May that this value was within the range of the Houlihan modeling. Okay? So is someone able to correct me one way or another? That -- I may have written it down wrong, but that's what I thought I heard and wrote down. Mr. --

MR. MORRIS: Your Honor?

THE COURT: Go ahead.

MR. MORRIS: Very briefly.

THE COURT: Go ahead.

MR. CLUBOK: If I may, I believe that is -- Your Honor, I do believe that's what he said on the direct, but I think under cross I asked him if it was in the range of the most -- for the most recent report, and he said it was. That's what I thought he just testified to in response to my question. And if -- if that's the -- if -- Your Honor, if there was a court reporter -- I don't have a real-time transcript, so maybe I misheard it. But --

THE COURT: Well, Mr. Seery, why don't you just say again what the answer to that question is, if we're confused what you said. Go ahead.

THE WITNESS: Yeah. I think Your Honor had it correctly. When we struck the deal, this was within the

range, because I checked.

The ranges do move, and they have moved considerably, which is one of the interesting things about these kinds of valuations. Because it's model-input, it does move around even though there's not a market to say that someone would pay more or less for their stock. So, there would be times during 2020 that that number would be outside of the range. And even in the -- in the May time frame, the April-May, I don't remember exact numbers off the top of my head, it would be in the -- in the lower end of the range.

THE COURT: Okay. Proceed.

MR. CLUBOK: Okay. I'll proceed with that, Your Honor.

THE COURT: Okay.

BY MR. CLUBOK:

Q So we're clear, Mr. Seery, as we sit here today, the last completed valuation, the most recent completed final valuation, which was during August, for Houlihan Lokey has a current range such that the lowest point of that range is above the $30.5 million number, correct?

A I don't recall off the top of my head. You've represented it. I wouldn't quibble with it.

Q And, in fact, the midpoint of the most current Houlihan Lokey valuation is significantly higher than $30.5 million; isn't that true?

MR. MORRIS: Objection to the form of the question.

THE COURT: Sustained.

MR. CLUBOK: Your Honor, I -- this is where I would like the read the exact numbers. I have the exact numbers right here. I'm looking at them.

THE COURT: We --

MR. CLUBOK: And I -- I'm going -- I can impeach him.

THE COURT: We've already addressed this issue that we would need a Houlihan witness if you're going to give details about a Houlihan report. And he testified he didn't know. He wouldn't quibble with you. So I think that was sort of a lack of foundation objection Mr. Morris waged, and I'm sustaining it. Okay.

MR. CLUBOK: Okay.

BY MR. CLUBOK:

Q Did you, before submitting the settlement to the Court, check the range of the most current available Houlihan Lokey report before the settlement was submitted to the Court?

A I -- I think I may have. I don't -- I don't recall specifically.

Q Okay. If we compare to the motion that you submitted, and I think you explained that before the motion was filed you read it carefully and discussed it with your lawyers and had opportunity to ask questions with the other directors about the entirety of the motion. Is that correct?

A I think -- I think we -- we fought about the word carefully. I try to read everything carefully, but I assumed you were trying to pin me down to some -- some super-fine reading. I did read the motion. I did comment on the motion. Yes.

Q Okay. Now, if we can put the motion up, please. This is Debtor's motion. It's Docket No. 1099, I believe. Yes. You were asked by Mr. Morris about the language that was supposedly used in the motion that my colleague, Ms. Tomkowiak, referenced in her opening. I just want to turn to that exact language that was used in your motion. It's on Page 10, Paragraph 31. And what it said in your motion is that the damage award will be reduced by approximately $30.5 million to account for the perceived fair market value of those shares.

Well, the first question I have is, before this was submitted -- well, strike that. Fair to say you have not performed what you would consider to be a fair market valuation of the shares, or caused that to be performed before filing this motion, correct?

A Yes.

Q Okay. But you did have documents from Houlihan Lokey that reports a -- what they called a fair valuation, and that gives a range of what Houlihan Lokey calls a fair valuation, and you have them -- have available to you every month for the

Cornerstone shares, correct?

A Yes.

Q And do you know whether or not the fair valuation of the most current Houlihan Lokey report that you had in your possession prior to causing this to be submitted to the Court put that fair valuation at, say, at least 50 percent higher than 30.5?

A I don't know and I -- off the top of my head, I don't have in front of me. I said I wouldn't quibble with you, but I don't want to accede to your math.

Q You wouldn't -- but you wouldn't quibble, based on your -- you know enough to know about Cornerstone today that you wouldn't quibble with that rough math? Correct?

A Without -- without -- I believe that the valuation in the more current Houlihan values is higher than it was in May. I don't know if it's higher than it was at the beginning of the year off the top of my head. And I don't know whether 50 percent is the right number or 40 percent or 52 percent. I take you at your word that it's higher and that this number doesn't fall within the range.

Q Okay. Now let's go back, because you said, well, it did fall within the range at one point. I guess you said back in May it fell within the range. Is that correct?

A I believe that's correct, yes.

Q Okay. So there was a Houlihan Lokey report that was

available to you in May of 2020 that had a range where $30.5 million fell within, correct?

A There's a report every month. I'm not sure exactly which report we looked at.

Q Well, the point on the -- I believe you did testify, this is what the Judge heard, too, that there is a report that you looked at around April or May that had a range from Houlihan Lokey, and 30.5 fell within that range, and that's what you used to in your mind justify the reasonableness of the $30.5 million at that time. Is that correct?

MR. MORRIS: Objection to the form of the question.

THE COURT: Overruled.

MR. MORRIS: Mischaracterizes.

THE COURT: Overruled. He can answer.

THE WITNESS: The answer is to, with respect to that piece of the discussion, which went along with Mr. Morris's analysis, yes. And it did fall the within the range.

BY MR. CLUBOK:

Q Right. And, in fact, --

MR. CLUBOK: Your Honor, I would like to proffer that the Houlihan Lokey report that was dated -- that was available in April and May had a range that was, in fact, higher at the low point than 30.5. And if we could use that document to impeach Mr. Seery, or we could demonstrate, proffer evidence that's not for hearsay but they're offering it for the truth

of the matter asserted. We think that (inaudible) and certainly shows -- it impeaches Mr. Seery telling you repeatedly that 30.5 at least fell within that range.

THE COURT: Well, I --

MR. MORRIS: Your Honor, may I be heard?

THE COURT: I overrule -- I heard him say that at various points during 2020 the modeling of Houlihan would go to different points. I'm not sure what you think you're impeaching. What --

MR. MORRIS: Your Honor, may I --

THE COURT: Okay. Mr. Morris, go ahead.

MR. CLUBOK: Well, Your Honor, I mean, --

THE COURT: Mr. Morris, go ahead.

MR. MORRIS: Your Honor, I would also point out, Your Honor, consistent with exactly what you just said, that UBS's witness, expert witness, which is one of the reasons why I think he ought to be excluded, expressly says in his report that the value came within the range of the Houlihan Lokey valuation. I think it was from March. But he makes the admission expressly. Expressly. It's --

MR. CLUBOK: That is not true. There is a Houlihan Lokey report that I'm looking at right now that was for March of 20 -- I know Mr. Seery just said off the top of his head that the values fluctuate. There is -- I will represent there is no Houlihan Lokey report since March, which was the lowest

point of COVID, through today, that ever had a range that was provided to Highland where 30.5 falls within, as opposed to below the range. So we have the reports. We have every report they produced to us. We asked for all of them. We've got them. We could offer them to the Court and you would see that Mr. Seery's statement off the top of his head that it is in the middle or that it varies or have been telling you that it fluctuates and the ranges go up and down is just not true, --

THE COURT: All right.

MR. CLUBOK: -- based on the actual Houlihan reports that we have that they just provided to us a few days ago.

THE COURT: Okay. Let me take this in parts. I've already ruled that the Houlihan reports will not get in, the main reason out of two or three reasons being that it's hearsay without a Houlihan person here. Okay? And someone could have subpoenaed a Houlihan person and maybe I would have been enforced that subpoena. All right?

But second, I just want to be clear what I'm hearing. What I heard -- again, I've taken notes occasionally. The testimony that I guess you're wanting to use the Houlihan reports to impeach is that Mr. -- I heard Mr. Seery say that when the deal was struck, the proposed compromise with the Redeemer Committee was struck in April or May, that he thought this $30.5 million value was in the range of the modeling --

the models or the valuations that Houlihan had done. And I have inferred from other comments and testimony that it was a March -- it was March Houlihan modeling that he was looking at at that point.

As for anything else, I'm not sure he used the word -- the words ups and downs. I think he used the words that if you would check at various points in time during 2020, Houlihan's modeling showed different numbers for valuation, but he relied on the information in the April-May time frame when the deal was struck.

All right. So, based on what I've heard, I don't think there is some independent grounds to try to get the Houlihan reports in now as impeachment.

All right. So that's the ruling. Continue.

MR. CLUBOK: Okay.

BY MR. CLUBOK:

Q Today's fair market value of Cornerstone, in your best judgment, with all the information you have available to you, for 42 percent, is significantly above $30.5 million, correct?

A Fair market value? I don't have that information. I don't -- I don't think that today, if you wanted to transact those shares, in my opinion, other than an insider, that you could sell those shares today for $30.5 million.

Q If the shares were being marketed and sold together, as the settlement requires the Debtor to do in good faith over

the next year, the fair value estimates currently today available to the Debtor show that it's worth significantly more than $30.5 million; isn't that true?

A The Houlihan share value marks show a higher value, yes. They're not fair market. Let's make sure we are precise.

Q Understood. Houlihan uses the phrase "fair value" in its reports. And the current marks that you pay Houlihan to provide to Highland shows today, October 20th, 2020, that the value of 42 percent of Cornerstone is significantly higher than $30.5 million, correct? The fair value? Whether or not --

A I believe it's -- I believe it's higher. And the last one we have is 8/31. I just don't remember the amount that it is.

Q Okay. You did not offer that information into evidence in support of your motion? You chose not to do that, correct?

A I -- I chose -- I think -- I don't know what counsel put in other than -- than me.

Q Well, you are aware, actually, that the only evidence that counsel put in the record to support this motion is the motion itself and your testimony?

MR. MORRIS: Objection, Your Honor. He -- he's here testifying. And --

(Audio interruption.)

MR. MORRIS: We'll -- we'll be putting our exhibits in as well. But to continually refer to the motion itself as

the only evidence is just not right.

THE COURT: Okay. Overruled.

MR. CLUBOK: I'll move on, Your Honor.

THE COURT: Okay.

MR. MORRIS: Thank you.

BY MR. CLUBOK:

Q You said in your direct that Houlihan -- you called them the premier -- you used some superlative. Said they're the premier valuation experts or something for -- for modeling or -- some superlative about Houlihan. Do you recall that?

A Yes, I do. In terms of providing third-party valuations to investment funds and others, I think they are the premier firm.

Q Okay. Who -- you don't know who at Houlihan actually works on the valuations for Cornerstone, correct?

A I don't, no.

Q You have no idea what the credentials are of anybody at Houlihan who have done any work to help prepare those valuations that you've got other than from them, correct?

A That's not true.

Q You're -- do you know the names of any of these -- their people?

A No.

Q Okay. You've never spoken to any of them, correct?

A In regard to this assignment? No.

Q Yeah. You've never asked for anyone at Houlihan who works on valuing Cornerstone to be available to you as part of due diligence in preparing for this settlement review, though. Correct?

A I -- I have not, no.

Q You yourself have never done a valuation of a health company, healthcare company on your own, correct?

A On my own? No.

Q You have -- you've never heard -- I asked you on Saturday, but before Saturday, at least, you'd never heard of something called the Gordon Growth Model for estimating terminal value with respect to healthcare funds. That is correct?

A I had not heard of it before Saturday, no.

Q You have no idea whether or not the choice of using a low exit multiple as compared to using a Gordon Growth method would affect a proper DCF analysis for analyzing a healthcare company like Cornerstone, correct?

A No. That's not true.

Q Well, you don't know that the Gordon Growth method -- you don't know how the Gordon Growth method factors into any analysis of DCF, correct?

A That's not true.

MR. CLUBOK: Could we put up Mr. Seery's deposition?

BY MR. CLUBOK:

Q Well, you certainly don't know how the Gordon Growth

method factors into Houlihan's analysis of Cornerstone, correct?

A I don't think they use it. They show on their valuations a terminal multiple. And they do a DCF and do a terminal multiple, which is the way virtually everybody does it in these kinds of assets, because Gordon Growth focuses on continued growth businesses that continually grow their dividends.

Q Well, now, that -- that statement you gave about Gordon Growth method, that's something you just learned between Saturday and today, correct?

A That is correct.

Q Okay. Who told you that?

A I both looked it up and talked to professionals.

Q Who, exactly?

A I'd rather not say the names of my friends who provide me help on these things.

Q Well, with all due respect, Mr. Seery, if it relates to the basis for a statement you make, I'd just like the source of that statement.

MS. LAMBERT: Your Honor, I object on the ground of relevance. I've -- I've held my tongue for overall, but I don't think this is really germane to the issues.

THE COURT: Sustained.

MR. MORRIS: I join in the objection.

THE COURT: I sustain.

BY MR. CLUBOK:

Q You expect, Mr. Seery -- well, per the settlement, proposed settlement, Crusader would have (garbled) that a claim valued -- a stipulated claim of about $137 million. Correct?

A That's correct.

Q And also Redeemer would be allowed to keep their 42 percent interest in Cornerstone that the arbitration award had otherwise said needed to be tendered to Highland, correct?

A That's correct.

Q You, based on your current analysis, expect that the -- Redeemer would be fully paid in the full amount of that allowed claim of roughly $137 million, according to current thinking of the Debtors and creditors in the estate. Is that correct?

A I can only speak to my thinking, and that we put forth relatively conservative numbers in our projections, that assuming that the denominator ends up where I believe it should end up, which is the number of claims in the case, which assumes UBS has a zero claim, and that Mr. Daugherty's claim is capped at the amount that we've -- we've agreed to in our papers, which I believe is around $3.7 million, and that HarbourVest has a zero claim, and then there are some assumptions around operating costs, I believe that we will be

able to pay these claims in full.

Q Well, but you've made it clear to Redeemer that your current expectation is to be able to pay that $137 million allowed claim in full, if everything goes the way you just described you think it should go or you believe it will go?

A I've never had that discussion with Redeemer.

Q You have advised Redeemer in words or substance that you expect there to be full payment of a $137 million allowed claim under the settlement? Is that true?

A I don't believe I have.

Q You don't believe you've ever (inaudible) that, in words or substance, with either Redeemer or any of its counsel?

A I don't believe I have, no.

Q Okay.

MR. CLUBOK: Just one moment, Your Honor, while I (inaudible).

(Pause.)

BY MR. CLUBOK:

Q Mr. Morris asked you, asked you whether you roll over. You said no. Then he asked you whether you thought that Redeemer would roll over on one of their claims completely, and you said no.

With respect to one point in the settlement, the EERS (phonetic) interest, those (inaudible) that Highland currently holds, if there was a settlement it would it extinguish

roughly five to six million dollars of your current valuations. Is that right?

A I think that's about right.

Q And those -- that five to six million in value is one of the issues that would be subject to a ruling on the vacatur motion that we talked about, the idea that -- that additional substantive elements were added to the arbitration award after the first part of the award. Is that correct?

A I believe that's one of the issues that -- that I am briefed.

Q Yeah. And on that issue, under this settlement, you're giving a hundred percent credit to Crusader's or Redeemer's claims with respect to that particular element. Correct?

A That's correct.

Q And, in fact, you're giving a hundred percent credit to all of Redeemer's claims with respect to the amounts that were disputed under the argument that claims added after the first final arbitration award are impermissible, correct?

A I'm -- I just -- I'm not -- I'm not sure what you're asking me there. I'm sorry.

Q Well, for example, that Barclay's claim is another claim that's worth about $30 million in total. And that's -- that's about $21 million awarded, about $9 million pre-judgment interest. That $30 million, like the EERS, is subject to this argument that it shouldn't be properly -- it was impermissibly

awarded by the arbitration panel because it came after the first final award. Correct?

A I think that there's an argument to that effect, correct.

Q Yeah. And under the proposed settlement, you're giving it a hundred percent -- you're giving a zero percent settlement discount, or a very -- a zero percent settlement discount for Highland, correct?

A That's correct.

Q Thank you.

MR. CLUBOK: I have nothing further.

THE COURT: All right. Redirect?

MR. MORRIS: Just a few questions, Your Honor.

THE COURT: Okay.

REDIRECT EXAMINATION

BY MR. MORRIS:

Q Mr. Seery, if the Debtor walks away from this agreement, has the Debtor done any analysis and taken advice on the likelihood of succeeding in Chancery Court?

A The Debtor has, yes.

Q And can you share with the Court the Debtor's view as to the likelihood of success in the Chancery Court?

MR. CLUBOK: Objection. Objection, Your Honor. Just, number one, I don't think that's -- to the extent that that's going to rely on advice of counsel, I just (inaudible). We're going to get a -- the percentage that's based on --

waiving the privilege. I raised that ahead of time.

MR. MORRIS: I appreciate that, counsel. We're certainly not intending to waive the privilege. I'm just asking for a statement as to the Debtor's position as to why it does not believe it is likely to succeed in Chancery Court. I'm not asking him to share any confidential communications, but thank you for the comment.

THE COURT: Okay. Please proceed.

MR. CLUBOK: Um, --

THE COURT: Mr. Seery, you can answer.

THE WITNESS: Thank you, Your Honor. When we looked at the Chancery Court, there is a number of the issues the Debtor raised previously in the arbitration. There was a partial award that clearly says it's a partial award. And then the Debtor raised a number of procedural issues that there were additions to the partial award between the partial and the final. And the final goes through those in detail with this panel that, as we said, is -- was esteemed and had lot of work on it.

For example, in one section, they gave the whole rationale in the partial and they left out the damage number. So they -- they had ruled basically fully against the Debtor, but without giving a number. And so Highland attempted to argue that to the arbitration panel in between the partial and the final. The arbitration panel said that's a scrivener's error,

we're allowed to do this, and they went through the analysis.

Our counsel looked at these issues again. And we thought that the likelihood of success at the Chancery Court to re-raise these issues was very low. So we did factor it in and we did analyze it. It wasn't something that we missed. We just didn't think it was a fruitful opportunity to litigate in the Chancery Court.

MR. MORRIS: I have no further questions, Your Honor.

THE COURT: All right. Any recross?

MR. CLUBOK: No, Your Honor.

THE COURT: All right.

MR. MORRIS: Your Honor, may I just move my exhibits into evidence, and then I'll rest?

THE COURT: Okay. You may.

MR. MORRIS: Okay. The Debtor would like, then, to move into evidence exhibits that are marked 1 through 4. And to be specific, and we can take them one at a time, Exhibit 1 is Proof of Claim #72. That was filed, I believe, on behalf of the Crusader Funds.

MR. CLUBOK: Your Honor, objection on hearsay grounds, Your Honor. It has been offered into evidence.

THE COURT: All right.

MR. CLUBOK: It's the proof of claim.

MR. MORRIS: Object to the compromise. I'm not -- it is the proof -- I'm not offering it for the truth of the

matter asserted at all, actually.

THE COURT: Okay.

MR. CLUBOK: That's fine. If it's not being offered for the truth of the matter asserted, but just for those purposes, then we have no objection.

THE COURT: Okay. So that --

MR. MORRIS: Correct.

THE COURT: -- is admitted. And to be clear where this appears in the Court record, Docket Entry #1178, Debtor's witness and exhibit list, I think it was attached to that as Exhibit 1. That's admitted.

(Debtor's Exhibit 1 is received into evidence.)

MR. MORRIS: Exhibit 2 is Proof of Claim #81, is the proof of claim filed by the Redeemer Committee. The Debtor respectfully moves that exhibit into evidence as well.

THE COURT: Okay. Same sort of concept, for notice purposes only, it's admitted.

(Debtor's Exhibit 2 is received into evidence.)

MR. MORRIS: Okay. And the Debtor also moves into evidence the declaration of John Morris submitted in support of the 9019 motion and the exhibits annexed thereto. To be clear, Exhibit 1 to my declaration is the stipulation of settlement. Exhibits 2, 3, and 4 are the partial final award, the modification award, and the final award. Those three documents have been filed under seal pursuant to a sealing

motion which is on our exhibit list as Exhibit #4. And I think there might also be duplicate copies of the proofs of claim attached to my declaration as well. But we'd move all of those documents into evidence, subject to the sealing order.

THE COURT: All right. Any objection? All right.

MR. CLUBOK: No objection, for the non-hearsay purposes of those.

THE COURT: All right. So, Exhibit 3, with all of those subparts, some of which are under seal, are admitted.

(Debtor's Exhibit 3, including subparts, is received into evidence.)

MR. MORRIS: I do want to clarify, Your Honor, that with respect to the three parts of the award, we're offering them for the truth of the matter asserted insofar as they are the findings of fact and the conclusions of law of the arbitration panel.

MR. CLUBOK: No objection.

THE COURT: Okay.

MR. MORRIS: Thank you, Your Honor.

THE COURT: Thank you.

MR. CLUBOK: Your Honor, and I do have a -- also similar housekeeping. And I raise this with a trembling voice because I really am -- very respectfully. I'd just like to make a proffer that there are four Houlihan Lokey exhibits

that have been recently produced to us in the last few days.

THE COURT: Okay.

MR. CLUBOK: If I can just make my proffer, then I'll stop.

THE COURT: Let me -- let me stop -- let me stop you. I'm not sure Mr. Morris was finished yet with the exhibits he was going to offer. Let me clarify.

Are you finished, Mr. Morris?

MR. CLUBOK: Oh, I apologize.

MR. MORRIS: Just -- just to be clear, I think I was, but Exhibit #4, which is the sealing order, we also offer into evidence, just to support the sealing of Exhibits 2, 3, and 4 to my declaration.

THE COURT: All right. Well, I can certainly take judicial notice of that and we'll go ahead for clarity and admit that as a witness -- as an exhibit.

(Debtor's Exhibit 4 is received into evidence.)

THE COURT: All right. So, with that, you rest, Mr. Morris?

MR. MORRIS: Yes, Your Honor.

THE COURT: All right. Now, Mr. Clubok, you were saying?

MR. CLUBOK: I appreciate it, Your Honor. There are -- we had a document request. We were provided four Bates-labeled productions within the last few days of Houlihan Lokey

reports that are dated March 2020, June 2020, July 2020, and August 2020, the only ones that they've been -- have been provided to us during that time period.

I understand Your Honor ruled that they are hearsay and can't come in for the truth of the matter, but we believe that they should properly be admitted for the purpose of notice, the fact that that information is available to Mr. Seery, and also, frankly, for impeachment if we are allowed to present that for the Court's view, at least under seal. I believe we've already submitted two of them under seal on Friday night. The other two, we just got like last night or the wee hours of the morning yesterday. And we would like to proffer that there are four Houlihan Lokey exhibits that were made available to us that should be admitted for non-hearsay purposes.

THE COURT: All right. Well, I once again will make clear for the record that I am not admitting those. I think they are hearsay. I think you would need the creator or supervisor of the reports here to properly offer them into evidence.

I also think that, as I said earlier, I'm not required to conduct a mini-trial and accept every piece of possible evidence of valuation. I am supposed to, you know, consider facts and circumstances that bear on the wisdom of the compromise. And so I've heard valuation testimony from Mr.

Seery and what he considered the range of reasonableness.

Anyway, I primarily rely on the hearsay problem here in not admitting these four exhibits. So that is the ruling.

If you want to put them into the record under seal for purposes of maybe appeal purposes -- he or she made an error, she didn't accept this stuff -- then obviously you can submit them under seal for the court reporter to keep them in the record. So I assume you'll coordinate after the hearing getting those into the court reporter's hands under seal. Okay?

MR. CLUBOK: Thank you, Your Honor. Thank you very much. Appreciate it.

THE COURT: Okay. So, I guess at this point we've had the Debtor rest and we're going to go to UBS's evidence. I want to make the most efficient use of time possible. And let me clarify. I had told you all I would stop at 12:30 Central time. It's 12:19. My quandary is that I have a 1:30 status conference in an adversary proceeding in another case, and then I have a 2:30 hearing that should not last very long in yet another case. So I have told you all you can come back at 3:00 o'clock.

Is there anything worthwhile you think we can accomplish in ten minutes, or shall we just break? What do you all think?

MR. CLUBOK: What I do think, Your Honor, is if we

have the ten minutes, maybe we can work to make sure that we have addressed any other confidentiality issues and make sure that Mr. Morris and his law firm are comfortable with what we're going to do with our next witness so we don't have an accidental foot fault. I think that can be useful. We'll spend the time doing that to make sure that --

THE COURT: Okay. You mean talk offline?

MR. CLUBOK: Yeah. The attorneys will talk amongst themselves and just --

THE COURT: Okay.

MR. CLUBOK: We don't want to accidentally put something up that is going to be objected to. We'd rather show it -- now show it to Mr. Morris in advance and hopefully work it out so that we don't have to accidentally put something in the record they're, you know, going to object to.

THE COURT: All right. Well, I am good with that. And so let's talk about a couple of additional things. My courtroom deputy I think has put up the instructions for how to reconnect at 3:00 o'clock, because obviously we're going to have to break this off and I have other video hearings. So, you know, contact my courtroom deputy if you don't see those instructions. The instructions should be on the website, as far as numbers and passwords and whatnot to use for the new setting or the new resumption of this hearing at 3:00 o'clock.

The next thing I will say is I think I told you all we

could go until 5:00 or 5:30-ish. I do want to again be efficient and break when it makes sense to break. I have availability to come back tomorrow at 9:30 in the morning. So maybe you all could be thinking ahead with regard to the Acis motion. You know, do you want to start late today and do your darnedest to finish, or is that a pipe dream and we'll have to come back tomorrow?

MR. MORRIS: Your Honor, just speaking for the Debtor, I don't think that we're going to have -- I don't anticipate having any of the same confidentiality issues.

THE COURT: Uh-huh.

MR. MORRIS: I think that this was handled as efficiently as it could under the circumstances. I have a better sense of how to get this done. I'm hopeful that we won't need but a few more minutes to finish the Redeemer, and I'd like to try to get to as much of the Acis part as we can.

THE COURT: Okay. Well, we will shoot to try to get it done today if we can. And if that means we need to go a little later that I've projected, we will, if we can avoid coming back tomorrow.

All right. So I shall see you all at 3:00 o'clock Central time. Okay.

MS. PATEL: Your Honor, if I -- this is Rakhee Patel. If I could, just quickly on the Acis issue, I am unavailable tomorrow morning, so I just wanted to put everybody -- to put

that out there. I haven't discussed that with either Mr. Morris or Mr. Demo. But unfortunately, I've got an unmovable conflict tomorrow morning. So, if it did run over, I wouldn't be available. So if we could finish it today, that would be greatly appreciated.

THE COURT: All right. Well, I have in my notes that we'll have Mr. Seery again. And Mr. Daugherty was listed as a witness, possible witness, by his lawyer. And then Ms. Rappaport as a possible expert witness. I'm not a hundred percent clear what the scope of that testimony would be. I don't know if there are objections. But if we do in fact have three witnesses, it may be a challenge finishing tonight. But, you know, I will go past 5:00 or 5:30, but not insanely past those hours. Okay? I don't want to be up here at 9:00 o'clock when we have staff who isn't getting paid overtime. So, all right.

MR. MORRIS: We're grateful, Your Honor.

THE COURT: Okay. Thank you. We stand adjourned.

MS. PATEL: Thank you, Your Honor.

THE CLERK: All rise.

(A recess ensued from 12:24 p.m. until 3:01 p.m.)

THE CLERK: All rise.

THE COURT: All right. Please be seated. Welcome back. We are going to resume our Highland hearing. It looks like we've got a lot of folks on the phone once again.

When we broke at 12:20, the Debtor had rested on the motion to approve the compromise with the Redeemer Committee and the Crusader Fund, and we were about to hear from UBS and their evidence objecting to the settlement.

Any housekeeping matters before we turn it over to Mr. Clubok?

All right. Well, Mr. Clubok, are you there? Are you ready to call your witness?

MR. CLUBOK: Your Honor, it's actually Ms. Tomkowiak.

THE COURT: Oh.

MS. TOMKOWIAK: I going to handle this portion of the hearing.

THE COURT: Okay.

MS. TOMKOWIAK: And we are ready to call Mr. (audio gap).

THE COURT: Mr. Moentmann? Is that how you say the name? Is it Mr. Moentmann?

MS. TOMKOWIAK: Yes, Your Honor.

THE COURT: All right.

MR. MOENTMANN: That's -- yes, that's correct.

THE COURT: All right. Mr. Moentmann, I need to swear you in. So there you are. I can see you now. Please raise your right hand.

W. KEVIN MOENTMANN, UBS SECURITIES, LLC'S WITNESS, SWORN

THE COURT: All right. You may proceed.

MS. TOMKOWIAK: Great.

DIRECT EXAMINATION

BY MS. TOMKOWIAK:

Q And Mr. Moentmann, I understand that you've prepared some demonstratives to assist with your testimony; is that correct?

A That is correct.

Q Okay.

MR. MORRIS: Excuse me. May I -- as I previewed earlier, I have a motion. I'd like to *voir dire*. It'll be about 12 questions, and then I'd like to make a motion to exclude the witness's testimony. May I?

THE COURT: All right. Well, Ms. Tomkowiak, you knew this was coming. Anything you want to say at this point?

MS. TOMKOWIAK: I don't think this is the motion. I mean, I haven't -- I haven't -- I heard that earlier, but no preview as to the grounds for a motion were provided.

THE COURT: All right. Mr. Morris, what about that?

MR. MORRIS: It's *voir dire*, Your Honor. I would just like to ask questions to see if this witness can provide testimony consistent with Federal Rule of Evidence 702. I just took his deposition yesterday.

THE COURT: Okay. You may proceed with *voir dire*.

MR. MORRIS: Okay. Thank you.

VOIR DIRE EXAMINATION

BY MR. MORRIS:

Q Sir, you had never heard of Cornerstone before this case; is that right?
A That's correct.
Q And you were retained just a couple of weeks ago; is that right?
A Yes.
Q And you spent approximately 20 or 30 hours preparing your analysis, right?
A Yes. Up until my deposition on Saturday, yes.
Q Yes. And without getting into the details, one of the biggest drivers in the difference between the values that you come up with and the values that Houlihan Lokey comes up with is a difference in one aspect of the methodology, whereby you use what's called the Growth Model and Houlihan Lokey uses exit -- exit multiples. Do I have that right?
A That is one area, yes.
Q And it's one of the biggest areas; isn't that right?
A It's -- yes and no.
Q Okay. But you'll agree that the use of exit multiples in the manner that Houlihan Lokey has done is an accepted practice in the valuation industry; isn't that right?
A If the multiples selected are reasonable, yes.
Q Okay. The methodology is certainly accepted; is that right?
A It's -- it's not the prevalent one that is accepted.

Q Okay. And your firm is Grant Thornton; is that right?
A Yes. That's right.
Q And Grant Thornton prepares valuation reports similar in nature to the ones that Houlihan Lokey prepares; is that right?
A Yes, we do.
Q And in fact, you personally consider Houlihan Lokey to be a competitor; is that fair?
A Yes.
Q And you've reviewed Houlihan Lokey reports before being engaged in this matter, haven't you?
A I have.
Q And based on your professional experience, you believe Houlihan Lokey has a good reputation in the field of valuation; isn't that correct?
A I believe it is a reputable firm, yes.
Q In fact, you're aware that from time to time Grant Thornton's own audit clients have used Houlihan Lokey's valuation services; isn't that right?
A I couldn't tell you specifically which clients, but I'm sure they have, given the large number of audit clients that we have, yes.
Q And those audit clients use Houlihan Lokey even though Houlihan Lokey uses a methodology different from the one employed by Grant Thornton; isn't that right?

A I couldn't say that affirmatively. I don't know if they use a different methodology when they're performing the valuation for our audit client.

Q Okay. You're aware, though, that your audit clients not only use Houlihan Lokey but they actually rely on Houlihan Lokey's valuation services; is that fair?

A Again, I'm assuming they do, just given the large number of audit clients. We have, you know, thousand plus audit clients, I would imagine, so I would assume that Houlihan is doing some of them.

Q Okay. And --

A (overspoken)

Q I'm sorry to interrupt.

A Yeah. I was just -- I was actually just getting to answer your question. So I'm sure they do and rely on Houlihan for valuation.

Q Okay. Thank you, sir. Putting aside your own personal views as reflected in your declaration, you have no reason to believe that it was unreasonable for the Debtor to utilize Houlihan Lokey's reports in this instance; isn't that correct?

A Well, I think I've pointed out several areas where I think, given the assumptions made, that it -- it is unreasonable.

Q Okay. I'm going to ask the question one more time and ask you to listen very carefully. Putting aside your own personal

views as reflected in your declaration, you have no reason to believe that it was unreasonable for the Debtor to utilize Houlihan Lokey's reports in this instance; isn't that correct?

A Putting aside my -- my different viewpoint from a valuation -- as a valuation professional, yes.

Q Okay.

MR. MORRIS: Your Honor, Rule 702 requires that qualified experts may only offer opinion testimony if four specific conditions are satisfied.

One of those conditions is that the opinion testimony will help a trier of fact understand the evidence or determine a fact at issue. The only issue in this case is whether or not this settlement is fair or reasonable. This is not a valuation fight. This is not a fight over whether or not the Debtor is maximizing value. This is a dispute over whether or not the Debtor is properly exercising its business judgment, whether it's done a fair and reasonable investigation and diligence of the matters at issue. And I think, given the witness's testimony just now that his own clients use Houlihan Lokey and that he has no reason to believe that it would be unreasonable for the Debtor to use Houlihan Lokey in this instance, I don't see (garbled) respect to the witness. Because I'm not challenging his qualifications. This is not a *Daubert* motion. I just don't see how this is at all useful to you as the trier of fact to understand the evidence and

determine a fact at issue.

Thank you, Your Honor.

THE COURT: Okay. Your response, Ms. Tomkowiak?

MS. TOMKOWIAK: Well, Your Honor, I feel like it's important to acknowledge that -- he's saying this is not a *Daubert* motion. This is not a 702 issue. This witness is extremely qualified to provide his opinion on the valuation of Cornerstone, which is an issue in the settlement. It does go exactly to the question that Your Honor is being asked to evaluate, which is, you know, is this settlement fair, equitable, and in the best interest of the estates?

I don't understand this hypothetical about, putting aside your opinion, do you have a view? I mean, his opinion is his view. And I believe that it is absolutely relevant. He should be allowed to testify to it. His testimony is based on facts and data. It's the product of a reliable methodology that everybody agrees, you know, can be applied to value an asset. Is to apply that methodology to the facts of this case.

So, you know, I understand that the Debtor chose not to put on any evidence regarding the value of this incredibly meaningful asset that they decided to give up in this settlement, but that doesn't mean that UBS shouldn't be allowed to do so in support of its valid objection to the settlement.

THE COURT: Okay.

MS. TOMKOWIAK: So, I object and I believe we should be allowed to proceed with our examination of Mr. Moentmann.

THE COURT: Okay. I overrule the objection. I'm going to allow some testimony. Go ahead.

MS. TOMKOWIAK: Thank you. Okay.

DIRECT EXAMINATION, RESUMED

BY MS. TOMKOWIAK:

Q And Mr. Moentmann, I think you prepared some slides to assist with your testimony today; is that correct?

A That's correct.

Q Can you pull those up? All right. So, very briefly, let's just go to the first slide. Please tell the Court, where do you currently work?

A Yes. I work at Grant Thornton.

Q How long have you worked at Grant Thornton?

A For just over four years.

Q Briefly, what are your responsibilities at Grant Thornton?

A I'm the principal in the firm responsible for providing valuation services. I provide those services extensively in the healthcare industry to a variety of healthcare entities.

Q Where were you employed prior to (garbled)?

A I believe the question was prior employment. Was at a -- was at another professional services firm, CBIZ.

Q And what was your role at CBIZ?

A My role at CBIZ, which is publicly-traded professional services firm, was similar. I was a managing director responsible for the Central Region, but provided valuation services really across the country, and, again, extensively in the healthcare industry.

Q What's your educational background?

A Yes. I'm -- my undergraduate degree was -- was a finance degree from University of Missouri Columbia. I received my MBA, again with a finance emphasis, from Washington University in St. Louis.

Q Do you have any professional certifications?

A Yes. Two. One, the CFA. And the second, the CEIV. That's a newer designation. I received it through the AICPA. It's Certified -- as you can see there, it's Certified in Entity and Intangible Valuations. But it addresses specifically fair value determinations for publicly-traded entities.

Q Over the course of your career, how many valuations have you performed?

A I wish I'd kept a log, but over the course of thirty-plus years, you know, maybe fifty or so a year, so well over a thousand. Maybe close to two thousand.

Q How many of those have involved healthcare companies?

A My focus has been on healthcare really since the early '90s, so maybe two-thirds of my valuation work and experience

has been healthcare-related.

Q Broadly speaking, when performing a valuation, what do you do?

A Yes. All valuations, whether it's on a business or an asset, regardless of the industry, we're looking at three approaches to value: An income approach, a market approach, and an asset or cost approach.

Q Are these methodologies commonly used and accepted by your peers as well?

A Yes. Yes, they're widely accepted.

Q And when you're performing a valuation of a healthcare company, in your day-to-day -- your role at your job, what is the purpose of that valuation work?

A It ranges. Oftentimes, we're brought in pre-transaction to assist healthcare entities with their M&A activity. If we're assisting not-for-profits, it's a combination of their M&A activity as well as providing regulatory support if that valuation is ever challenged. We also provide valuations post-transaction for financial reporting purposes.

Q And did you apply those same methodologies that you use in your ordinary job to the assignment in this case?

A Yes, I did.

Q How many times have you testified under oath as an expert?

A Probably over -- over the last thirty years, maybe every other year, so maybe -- maybe fifteen times.

Q Has any court ever rejected you as an expert?

A No.

MS. TOMKOWIAK: Your Honor, at this time, pursuant to Rule 702, I'd just like to tender Mr. Moentmann as an expert in the field of valuation.

THE COURT: Any comment?

MR. MORRIS: No objection.

THE COURT: All right.

MR. MORRIS: No objection.

THE COURT: He is so accepted.

BY MS. TOMKOWIAK:

Q Mr. Moentmann, what were you asked to do in this case?

A Yes. I was asked to assess the valuation of Cornerstone based on the most recent information available, which in this case were certain valuation reports that were prepared for 2020. The latest available up until a few days ago were the June 30 reports.

Q Have you -- have you formed any opinions?

A Yes. We have.

Q Let's talk about your opinions. So if you can go to the next slide. Can you please explain to the Court what your first opinion is?

A Yes. The first opinion reflects my calculation of Crusader's ownership interest in Cornerstone. It shows, as presented in the second bullet on the slide here, that the

subject equity interest ranges in value from $48 through $87 million.

Q If you can go to the next slide. Can you walk the Court through your second opinion that's reflected on this slide?

A Yes. Yes, the -- the second opinion here focuses on various issues that we identified in our review of the information that was made available.

The first issue was the selection of very low market multiples. The multiples used in the -- in the valuations relative to what we observed in the marketplace were low, and we did not see any explanatory information as to the selection of those multiples.

The second, it was previewed a few minutes ago, and I don't want to get too complex here, but involved the use of the -- or, the estimate of the terminal value, their methodology. And this was in the income approach that was referenced earlier. The methodology that was used was market multiples. They were essentially the same market multiples that were applied in the market approach, rather than a Gordon Growth method. And as I mentioned a few minutes ago, the Gordon Growth method is what we typically see. It is the more common of its -- in my experience.

I answered a question both yes and no because one could use the market approach, an exit multiple, I think it was -- as it was called in the question. But that exit multiple

still needs to be consistent with market data, and to the first point here, we think that -- you know, I think -- I feel the exit multiples is -- is low, in my opinion.

The third issue here involves a CARES Act loan that the company has on its books. It's a $30 million liability. The observation here is that, based on the information available, we don't know to what extent, if any, this CARES Act loan is forgivable.

Q Okay. And then I see the last bullet there references inconsistencies between valuations. What do you mean by that?

A Yeah. The last bullet applies less to our conclusion and more our observation of -- Houlihan had prepared reports as of the same date for different clients, for Highland as well as Crusader. And we're observing that they had a different value opinion depending upon -- a different value range depending on who the client was, even though the valuation was performed as of the same date.

Q And I think you said you reviewed multiple valuations provided by Houlihan. Were the issues you identified here -- in particular, the first and second issues -- present in all of the valuations that you reviewed for Houlihan, regardless of the particular time period?

A Yes. They were prevalent in all. I would say the CARES Act loan I believe did not hit the books until April, so may not have been prevalent in the early -- the early -- the

valuations prior to them.

Q What happens when you use, in your opinion, the right assumptions?

A The use of the -- the right assumptions, is your question? Right. I -- the use of the right -- could you repeat the question?

THE COURT: Yes. Could you repeat your answer? You broke off a little bit, sir.

MR. MORRIS: Your Honor, I've -- I've objected to the question.

THE COURT: Oh. I didn't hear you were -- okay. You objected to the question. And what is your basis?

MR. MORRIS: Just the use of the phrase the right approach. Don't know if his opinion is any or more less valid than any other opinion.

THE COURT: All right.

MS. TOMKOWIAK: Your Honor, I'm -- I can -- I'm happy to rephrase the question.

THE COURT: Okay.

BY MS. TOMKOWIAK:

Q What happens when you use the approaches that you use, Mr. Moentmann?

A Yes. The use of the assumptions that -- that I believe are reasonable result in a valuation range -- actually, the valuation range presented earlier.

Q You listened to Mr. Seery testify both at his deposition and in court today; is that right?

A Yes, I did.

Q What are your reactions to his testimony as it relates to the Cornerstone value?

A I've -- I had a handful of reactions to the testimony. One was with regard to fair value and fair market value. And as someone who's been in the valuation industry for over thirty years, both premises of value, fair value and fair market value, represent a valuation firm's, whether it's Houlihan or Grant Thornton, it is that firm's opinion and best estimate of a market participant value. Both definitions, whether it's fair value or fair market value, focuses on market participant, market participant concepts.

Another observation was the -- the use of -- the Gordon Growth method only being applicable for dividend-paying companies. And I can assure you, that's -- that is not the case. This -- there are some methods, the discounted cash flow method and -- and/or the Gordon Growth method, the use of the Gordon Growth method to calculate a residual value or a terminal value is used for all companies, regardless of whether they're dividend-paying or not.

Q What is the most -- and by what, I mean by -- not the information itself, but the date -- what is the most recent value -- valuation information that you've been provided with

respect to Cornerstone?

A We -- we recently received a valuation, I think within the last day or two, as of August 31st.

Q And so that was after you prepared and submitted the declaration that you submitted in this case?

A Yes.

Q If we could go to that slide.

MS. TOMKOWIAK: So, consistent with Your Honor's rulings, you know, we would proffer that we have this information, the valuation performed by Houlihan in August, but we have redacted it per this morning's rulings regarding confidentiality.

BY MS. TOMKOWIAK:

Q Mr. Moentmann, my question is, without talking about the numbers themselves, based on your of view of that valuation, you know, what did it show in terms of, you know, trends in the -- or performance with respect to the valuation of Cornerstone?

A The valuation reflected an upward trend. Really, a continued upward trend in the valuation of Cornerstone.

Q Were you able to tell if that was -- what that was based on? Again, broadly speaking.

A Based on a quick review of it, yes. The -- that upward trend in value was being driven primarily by the company's continued strong performance and improvement in -- in

earnings.

Q If you took this latest valuation information, this latest valuation into account in your own analysis, what impact would it have?

A It would have a positive impact. The August information reflecting the company's performance through August was strengthening and is -- it would increase our valuation.

Q Let's go to the next point on the slide. So, I know that you had summarized the various valuations that you have reviewed. And, again, we have all of these valuations. We have all of these numbers. Pursuant with the Court's rulings this morning, we have redacted the numbers themselves except for the $30.5 million that the Debtor has already put in the public record and your own valuation. Do you understand -- have you reviewed the Debtor's motion for approval of the settlement that we've been discussing today?

A Yes.

Q And you understand that in that motion they've represented that, for settlement purposes, they valued Crusader's ownership interest in Cornerstone at a perceived fair market value of $30.5 million?

MR. MORRIS: Objection to the form of the question.

THE COURT: Okay. What exactly was it about the question that you found objectionable?

MR. MORRIS: The number is the result of

negotiations. And I think Mr. Seery testified quite clearly that the notion of perceived market value, you know, probably was a little bit misstated. It's -- it's a negotiated number. That's where we are. That's all.

THE COURT: Okay. If you could rephrase, I sustain that objection.

BY MS. TOMKOWIAK:

Q You understand that the damage award in this case is, according to the Debtor in the motion that it's filed, it's reducing the Redeemer award by approximately $30.5 million to account for the value that they've assigned to the Cornerstone shares owned by Crusader, right?

A Yes. That's my understanding.

Q In your opinion and based on the accepted valuation methodologies and standards in your field, is $30.5 million within the range of reasonable valuation of Crusader's interest in Cornerstone today, based on the information available to you?

MR. MORRIS: Objection to the form of the question.

THE COURT: Overruled.

MR. MORRIS: The use of the phrase --

THE COURT: Okay.

MR. MORRIS: Thank you.

THE COURT: I overrule.

THE WITNESS: No. As shown here, our opinion of

value is presented at the bottom here. I found $48 to $87 million, I mean, is significantly in excess of the agreed-to amount.

BY MS. TOMKOWIAK:

Q Right. And then the same question as of June 30, 2020. In your opinion and based on the accepted methodologies and valuation standards in your field, is $30.5 million within any range of a reasonable valuation of Crusader's interest in Cornerstone, even as of June 30, 2020?

A Again, though, I misspoke on the earlier question. I was referencing June on the earlier question. The August valuation, as mentioned earlier, I think it would be only higher than this. In both cases, no.

MS. TOMKOWIAK: Subject to redirect, I don't have any further questions.

THE COURT: All right. Pass the witness. Mr. Morris, any questions?

MR. MORRIS: Just a few, Your Honor.

CROSS-EXAMINATION

BY MR. MORRIS:

Q Your valuation hasn't been market-tested, has it, sir?

A I'm not sure I understand the question of market testing.

Q It's not the result of any negotiation, is it?

A No, it is not.

Q Okay. And your valuation was prepared for purposes of

this motion; isn't that right?
A Yes, it was.
Q And you understand that the reports that were prepared by Houlihan Lokey were prepared for the client's sole benefit, not for purposes of litigation; is that right?
A Well, I'm not sure I understand that. I did not review the engagement letter.
Q Okay. But you do understand that they -- because you reviewed a number of monthly reports, you -- withdrawn. You do understand that these reports are prepared monthly for the benefit of Highland; is that right?
MS. TOMKOWIAK: Objection. This witness lacks foundation on that.
THE COURT: Overruled. He can answer if he knows.
THE WITNESS: That's my understanding from the testimony of Mr. Seery.
BY MR. MORRIS:
Q And in fact, you said that your firm prepares reports similar in nature to the Houlihan reports, right?
A Yes.
Q And you don't prepare them in the ordinary course of your business for purposes of litigation; is that right?
A Can you repeat the question?
Q Do you -- do you participate in the preparation of monthly reports on behalf of clients?

A No, not in the context of -- of establishing an NAV.
Q Okay. I believe you testified that you could use a market approach; there's nothing in the rules or principles of valuation methodology that prohibits the use of a market approach; is that right?
A Yes. I testified that a market approach is one of the three primary approaches to value.
Q And I think -- I think on one of the slides there were a couple of issues that were raised, and I think you testified or you were asked whether the issues identified were prevalent in each of the Houlihan Lokey reports. Do you remember that?
A Yes.
Q And that's -- they were prevalent because Houlihan Lokey used consistently the same methodology; is that right?
A Yes. They used the same methodology.
Q And that's the methodology that you don't think they should use but they think they should use; is that fair?
A With respect to the income approach, that's -- that is correct.
Q Okay. Have you ever seen anybody publicly criticize Houlihan Lokey for using a market approach as a methodology?
A Again, the question -- I think your question is specifically to the use of the market approach within the income approach and calculation of an exit multiple. I have not seen any public statements regarding that topic.

Q And in fact, you can't identify any peer-reviewed article or industry publication that specifically says that the Gordon Growth Model is the preferred methodology as opposed to the one employed by Houlihan Lokey; isn't that right?

A I can't point you to a peer-reviewed article, but I can tell you from our review of peers what is the prevalent methodology.

Q Okay. But nobody's out there writing that; that's your interpretation of the marketplace. Is that fair?

A Well, I would say if the marketplace -- there are publications that state how a discounted cash flow analysis is to be performed. There's courses out there that address this. So, --

Q Did you ever -- did you ever tell any of your clients who use Houlihan Lokey that they shouldn't do it because Houlihan Lokey uses a flawed methodology?

A I've never been asked or had the opportunity to comment on Houlihan's valuation work.

Q In the competitive nature, in the competitive field of competing for clients, you never tried to tell you clients, don't use Houlihan, use Grant Thornton, we've got a better method?

A I don't run into Houlihan that often in the healthcare industry. I've got too much work myself to -- I find it poor practice to badmouth my competition.

Q Good for you. I'm not surprised. Do you think -- do you think Houlihan Lokey artificially manipulated their analysis to come up with a lowball number?

A I don't -- I don't know what Houlihan -- I have no idea what Houlihan was thinking with regard to their assumptions in their analysis.

Q Did you make any attempt to reach out to anybody at Houlihan to speak to them about their methodologies and the areas that you claim to have identified?

A No, I did not contact Houlihan.

Q Can you think of -- does Houlihan have a reputation in the industry for undervaluing assets?

A I'm not aware of Houlihan's reputation for overvaluing or undervaluing assets.

Q So you, in your thirty years of practice, you've never heard anything that causes you to conclude that Houlihan has a reputation for undervaluing assets; is that fair?

A That's fair.

Q Okay. Can you think of any motivation that Houlihan Lokey would have to undervalue the assets that are reflected in Cornerstone?

A No, I'm not aware of Houlihan's motivations.

Q Okay. You said that the company was on an upward trend; is that right?

A Yes. Specifically, the LTAC business, yes.

Q And do you recall yesterday I asked you about the cause of any fluctuation in the value of Cornerstone and you told me that it was the result of market forces and maybe COVID issues?

A Yes. The upward trend could be attributed to market forces, including COVID issues.

Q Right. Do you remember yesterday I'd asked you whether, since coming to your conclusions, you've gone to your clients and -- or informed your colleagues to try to find a buyer of this grossly-undervalued asset? Remember I asked you about that?

A Yes. I recall the question very well.

Q And you hadn't done so, right?

A I think it would be against our ethical guidelines, so I have not done that.

Q Have you made any attempt to confer with either the Redeemer Committee or the Debtor to see if you could, you know, maybe Grant Thornton could act as a broker to, you know, use their valuation report to sell this asset?

A No. We are not in the brokerage business.

Q Okay.

MR. MORRIS: I have no further questions, Your Honor.

MS. MASCHERIN: Your Honor, I have just a few questions --

THE COURT: Okay.

MS. MASCHERIN: -- on cross, if I may.

THE COURT: You may. Go ahead, Ms. Mascherin.

MS. MASCHERIN: Thank you, Your Honor.

CROSS-EXAMINATION

BY MS. MASCHERIN:

Q Mr. Moentmann, am I correct that the earliest numbers that you've referred to in the two different value estimates that you gave on your last slide, the earliest of those dates was June 30th of 2020? Is that correct?

A Yes, that is correct.

Q And that was based upon your review of Houlihan Lokey valuation reports dated as -- for -- for the date as June 30th, 2020, correct?

A Yes. It was their reports as of that same date.

Q And would you agree, sir, based on your experience in performing valuations, that that likely indicates a valuation report that was prepared sometime after June 30th of 2020, so as to take into consideration the company's performance during the month of June?

A Yes, I would agree.

Q And do you have any idea, sir, when it was that either the Crusader Fund or Highland Capital Management received valuation reports for the Cornerstone asset valued as of June 30th of 2020?

A I don't recall specifically. I thought it was in -- in

July. It ought to have been subsequent to the June 30 date.
Q And you heard Mr. Seery testify this morning that the negotiations that led to the compromised setoff for the value of the Cornerstone asset took place in the March/April/May time frame? Did you hear that testimony?
A Yes.
Q Now, in your report, sir, your declaration, and in your testimony today, you made reference to certain different reports that were prepared by Houlihan Lokey for different clients. Do you recall that testimony, sir?
A Yes.
Q And what you meant by that is that, on the one hand, a team from Houlihan Lokey does regular valuation reports under contract for the Debtor, valuing the 50 -- approximately 58 percent or so interest that the Debtor owns or manages in Cornerstone; is that correct?
A Yes.
Q And would you agree that the Debtor and its managed fund, Restoration Capital Partners, together own the majority interest of the shares in Cornerstone?
A Yes. I believe I even pointed that out in my declaration, yes.
Q Right. And Crusader, on the other hand, owns something in the low forty percents of the shares of Cornerstone, correct?
A Correct.

Q And would you agree, sir, that the -- based upon the documents you've seen, the Crusader Fund's manager, Alvarez & Marsal, contracts as well with a team from Houlihan Lokey to value Cornerstone's interest in the Crusader -- or, in the Cornerstone asset?

A Could you -- could you repeat the question?

Q Sure. You've seen documents that lead you to know, sir, that Crusader likewise uses Houlihan Lokey to value Crusader's low forty percent share of the Cornerstone asset, correct?

A Yes.

Q And you would agree that Cornerstone -- or, that Crusader's interest in Cornerstone is a minority position?

A Yes.

Q And you would agree that the Houlihan Lokey valuations that are provided to Crusader value Crusader's interest in Cornerstone on a non-marketable minority interest basis, correct?

A That's right.

Q And wouldn't you expect, sir, based upon your experience, that there would be a difference in the value of -- in the fair value estimate for a minority position in a privately-traded company as compared to an estimate of value of a majority interest in that same company?

A Generally speaking, yes.

MS. MASCHERIN: No further questions, Your Honor.

THE COURT: All right. Redirect?

MS. TOMKOWIAK: Yes.

THE COURT: Okay.

MS. TOMKOWIAK: I just have one, one question.

REDIRECT EXAMINATION

BY MS. TOMKOWIAK:

Q Sir, even setting aside your opinion regarding the errors and the flawed methodologies in the Houlihan reports, is it fair to say that, just looking at the most recent valuation that you were provided, in your opinion is $30.5 million within any reasonable range of valuation for Crusader's share of Cornerstone?

MR. MORRIS: Objection to the form of the question.

THE COURT: Overruled.

THE WITNESS: No.

BY MS. TOMKOWIAK:

Q So, your answer?

A Yes. My response was no. Again, based on our analysis and the valuation range that was presented, we don't -- I don't believe it would be reasonable.

Q Okay.

MS. TOMKOWIAK: I have no further questions.

THE COURT: Any recross on that --

MR. MORRIS: Nothing, Your Honor.

THE COURT: -- question?

MR. MORRIS: Nothing, Your Honor.

THE COURT: I have one follow-up question.

EXAMINATION BY THE COURT

THE COURT: I tend to think, and maybe I'm being affected by certain healthcare Chapter 11s I've had in recent months, but is it a tough time to value a healthcare business like Cornerstone in 2020, with COVID? Are there challenges, or am I making something up here?

THE WITNESS: I'd say it depends on the segment within the healthcare industry. Some segments are of benefit. I recently called three or four public companies in the healthcare industry on behalf of a client that was selling with -- a business within -- a segment of those within the healthcare industry, and found all four public companies to be highly interested and still very active in their acquisition process.

THE COURT: Okay.

THE WITNESS: But I am aware there are some companies that have been impacted. And that's -- that's the appearance people --

THE COURT: Okay. Well, and maybe I asked it in too general a way. I mean, the understanding I have of Cornerstone is there's the long-term acute care business, which you said is on an upward track, but then we have senior living facilities as another big segment. So, focusing not

generally but more on private company in these segments in healthcare, are there challenges with a company like this, valuing it in a post-COVID/still under COVID times?

THE WITNESS: I think this is a segment with the healthcare industry that -- where that challenge does not exist. They're well-positioned for what's happening to the population demographically within the United States. I think the performance of the company during this time period is reflective of the ability to continue to perform well and make the evaluation process easier, if you will, or less -- less impacted as compared to some of the other healthcare industry peers.

THE COURT: So your answer is no, you don't think there's any challenge valuing Cornerstone right now because of the pandemic?

THE WITNESS: That's correct.

THE COURT: Okay. How big a segment of its revenue is the senior care segment?

THE WITNESS: From a valuation perspective, on an enterprise level, I believe it accounted for 10 to 20 percent --

THE COURT: Okay.

THE WITNESS: -- of the aggregate enterprise value.

THE COURT: Okay.

THE WITNESS: That's including all the real estate.

Yes.

THE COURT: Okay. All right. Thank you.

I always give the lawyers a chance, if they want to ask any follow-up questions, only based on the Court's question, I think that's fair. So, anyone feel the need to ask a follow-up question based on my questions?

MR. MORRIS: Just one, Your Honor.

THE COURT: Okay.

RECROSS EXAMINATION

BY MR. MORRIS:

Q And that is, talking about COVID, does your valuation assume that Cornerstone has received cash from the government that is forgivable?

A We presented our value in a range to reflect that the cash that was received, the $30 million that I referenced, could be completely repayable or could be completely forgivable. We weren't privy to information with regard to the forgiveness of that liability.

Q Okay. But that, that liability and that influx of cash is something that is unique to the COVID period. Is that fair?

A It's -- it's fair. The cash is, or was, at least in the -- in the company, although, as mentioned earlier, so is the liability. So, on the one hand, it's neutral. I received $30 million of cash; I have a liability for $30 million --

Q Certainly --

A -- (overspoken).

Q Certainly helps cash flow, doesn't it?

A Yes. And that's why I made the statement about -- it does help liquidity, yeah.

MR. MORRIS: Okay. No further questions, Your Honor.

THE COURT: All right. Either Ms. Mascherin or Tomkowiak?

All right. Well, thank you, Mr. Moentmann. We appreciate your testimony.

THE WITNESS: Thank you.

THE COURT: All right. Ms. Tomkowiak, do you have any other evidence?

MS. TOMKOWIAK: I don't have any other witnesses, Your Honor. Give me one moment, Your Honor, to confer with my colleagues.

THE COURT: Okay.

(Pause.)

MR. CLUBOK: Your Honor, I don't know if this is particularly out of order, but I'm going to just ask Your Honor if we may also proffer. There were two Houlihan Lokey valuations that were prepared for Redeemer and also a presentation that was produced to us by Redeemer, all of those excluded by your order this morning. We just would like to be able to offer them under the same terms that we offered the Houlihan valuations for -- that were prepared for Highland.

We'll put them under seal and just proffer them for the record. We think the collection of all that shows a very different story than what Mr. Seery described. But we would get that for the time being, yes, Your Honor, as to avoid that.

THE COURT: All right. So, just to be clear, you've offered those and I have declined to admit those for reasons I've stated earlier today. But you can put them in the record as an offer of proof under seal, so that if there's any appeal the higher court can see what it was that I refused to allow. Okay? So you're going to have to get with the courtroom deputy later and submit those under seal to be kept in the record in case there's an appeal, okay?

MR. CLUBOK: Thank you, Your Honor.

THE COURT: All right. Any other evidence from UBS, then? I think that's it, right?

MR. MORRIS: Your Honor, I would just -- I'd just ask that it change sides to (garbled). In fairness (garbled), put them all in, rather than being selective.

THE COURT: Okay. So you're saying that if -- you want all --

MR. MORRIS: Otherwise (inaudible) better.

THE COURT: -- all of the Houlihan -- all of the Houlihan reports should go in as part of the offer for proof? Because your argument is if some of them were allowed in and

it was error, then all of them should go in. Is that your point?

MR. MORRIS: Correct.

THE COURT: Okay.

MR. MORRIS: Correct.

THE COURT: So I don't know how far you mean to go back in the past.

MR. MORRIS: Sure. Just to be very specific, from March, I think, until August is the last one that has been prepared by Houlihan, and it's been provided to UBS.

THE COURT: All right. So, Mr. Clubok, that is what you're going to submit to the courtroom deputy to be your offer of proof on this, March through August.

MR. CLUBOK: And first, Your Honor, that's fine, Your Honor, with also the clear intention by doing that it reflects that information, then -- and since -- now, since Mr. Morris added that, then I'd (inaudible) there's also some sealed testimony of Mr. Seery during his deposition that I didn't get into because it was all, I thought, excluded under the same rubric. And so the point-counterpoint, if Mr. Morris has an offer of proof, that's fine, but if we just pull the whole record in, the whole line, everything we got into, we could put it in as an offer of proof and combine the information Mr. Morris said and then the deposition testimony of Mr. Seery's deposition. I would have explored all of this had I been

allowed to get into it. We make that as an offer of proof.

THE COURT: Okay.

MR. MORRIS: Your Honor?

THE COURT: I'm very confused.

MR. MORRIS: Yeah, the Debtor -- this is -- this is -- they offered the reports, Your Honor made the ruling, and they're doing this because they actually made an offer of proof. They actually sought to introduce this into evidence. They had Mr. Seery on the stand. They could have done the exact same thing. They can't clean it up now.

THE COURT: Agree.

MR. CLUBOK: We -- hold on a second.

THE COURT: I sustain that objection.

MR. CLUBOK: Your Honor, if I can just respond here.

THE COURT: I sustain that objection, okay?

All right. Anything else?

All right. Anything in rebuttal, Mr. Morris?

MR. MORRIS: No, Your Honor.

THE COURT: All right. I'll hear closing arguments.

CLOSING ARGUMENT ON BEHALF OF THE DEBTOR

MR. MORRIS: Your Honor, I do want to keep this relatively brief because I think the Debtor was easily -- are you hearing background?

THE COURT: We're hearing a little bit of background. Is that -- was that on Mr. Morris's end?

THE CLERK: Yes, because he's moving around.

THE COURT: Okay. I think it was just because you were moving around, according to the court reporter. So, anyway, but --

MR. MORRIS: I apologize.

THE COURT: -- I'm timing. Let's keep it within --

MR. MORRIS: It's five minutes.

THE COURT: -- you know, five to ten minutes per argument, okay? You may proceed.

MR. MORRIS: Yeah. Thank you very much, Your Honor. I think this is a very, very simple case under the standards of 9019, a standard the Court is quite familiar with. And I don't think there's any dispute between or among the parties is focusing on the terms of the compromise, determining the probability of success in litigation, the complexity and likely duration of the litigation, other factors that courts in the Fifth Circuit have interpreted to mean the paramount interests of creditors, with proper deference to their reasonable views, and the extent to which the settlement is truly the product of arm's-length bargaining and not fraud or collusion.

I'll take the last point first, Your Honor, because it's just so simple. There's absolutely compelling evidence that this settlement was the product of lengthy negotiations between counsel, between principals, between counsel and

principals. You've heard Mr. Seery testify quite credibly that there was a lot of back and forth. And obviously, there is no evidence of fraud and collusion. So I think we get a hundred percent on that prong of the ledger.

With respect to the paramount interests of creditors, Your Honor, as the evidence shows, the Debtor, in choosing to exercise its judgment to enter into this settlement, will be ending litigation, I think, in five different courts in three different countries, litigation that has cost the estate an enormous amount of money, and they're doing so on terms that are really fair and reasonable. And that is the standard, Your Honor. It is not, is the Debtor maximizing value? While you always hope to do so, that's really difficult when you're in a 9019 motion. I've never heard of a movant either have the burden or even suggest that somehow they're entering into a compromise that maximizes value.

We've heard from the one witness that UBS offered. I -- there's no reason to challenge his qualifications. I'm sure that he's a perfectly able professional. But I think the Court should take into account the context in which he prepared his analysis. That analysis was prepared in a mere 20 or 30 hours. It was prepared solely for purposes of this litigation. And to his credit, the witness testified unambiguously that his own clients rely on Houlihan Lokey. There's nothing -- fraud in the methodology that Houlihan

Lokey employs. And the ultimate question is that he has no reason to believe that it was unreasonable for the Debtor to rely on the Houlihan Lokey report.

The evidence also showed, Your Honor, though, that the Houlihan Lokey report was not the only data point that Mr. Seery considered. He testified unambiguously and unchallenged that he also communicated with Cornerstone's management, with Cornerstone's board of directors, that he gets regular updates about the financial condition and the performance of the business, and that he specifically used that information to validate the (garbled) further negotiation on this (echoing).

With respect to the reasonable deference of creditors, Your Honor -- I don't know if somebody's -- can put their phone on mute.

With respect to the reasonable deference of creditors, Your Honor, there's only one creditor here who is challenging the Debtor's motion, and not surprisingly, that creditor, UBS, has had a very longstanding dispute itself with -- with the Redeemer Committee. And I think it would be fair if the Court took that into account in terms of litigation and perhaps prejudice and bias.

The likelihood of success, I think, goes to UBS's argument that the Debtor really should walk away from this deal and go back to Chancery Court to relitigate the issues that the panel has already decided with respect to whether the procedural

issues and the rendering of the award were proper.

You know, we've had a chance to analyze. Mr. Seery actually, I think, described in some detail how the panel came about, about its decision. I think he testified quite clearly that Highland would be a particularly unsympathetic litigant in the Chancery Court, having voluntarily participated in arbitration for years, an arbitration pursuant to which the parties engaged in substantial discovery.

Your Honor has the evidentiary -- not the evidentiary record, but Your Honor has the very extraordinarily detailed findings of the panel. Those findings refer to substantial evidence, both documented and testimonial evidence. The findings made severe credibility findings, a lot of which, quite frankly, are not flattering to the Debtor. And Mr. Seery specifically testified that he took all of that into account in assessing the probability or the likelihood of success of going back to Chancery Court and prevailing.

With respect to the compromise that was made on the deferred fees, in all honesty, Your Honor, I don't see how that can be challenged on any rational basis. If you followed UBS's path, we would have, in the first instance, another litigation over setoff. And once that litigation was resolved, whether it's hundred-cent dollars or bankruptcy dollars, the Debtor would have to return that to Redeemer Committee and then wait until this bankruptcy is over before

it can even ask for the deferred fee.

You've heard very, very clear, unambiguous testimony, unchallenged testimony, from Mr. Seery that when they finally do get around to making that request, they're going to be involved in another litigation. Why? Because during the negotiations, the Redeemer Committee made it crystal clear that it was relying on the Faithless Servant defense. Is it one that is, you know, common? It's not common, but it has been used successfully. And the fear that Mr. Seery specifically described is that the findings in the arbitration award might give credence to the Faithless Servant defense. And having gone through the setoff litigation, having paid the money, having waited the time, having spent the cost to litigate the issue again, they might lose. And I think if Your Honor reads the partial final award, you may come to the same conclusion.

Whether you do or you don't, Your Honor, the point is that the evidence is crystal clear that there is a very strong foundational evidentiary basis for the Debtor's decision to enter into this award, and there's no question that it meets the standard of 9019.

Again, Your Honor, we would remind the Court, not that I need to, but that the test here isn't maximization of value. It's not getting the most that you possibly can. It's taking everything into account. Is this in the best interest of the

estate? And I do not think this is a close call.

Unless Your Honor has any questions, I have nothing further.

THE COURT: I did have one follow-up question on the deferred fee compromise. I'm wondering if you could generally quantify: Assuming a hundred percent success for UBS, I'm trying to figure out how big a discount the 20 percent -- I mean, the $20 million number was. Because I understand $32 million is what Highland paid itself early. But then I understand the component, the award component of the $190 million arbitration award, it was $43.105 million because of, I guess, interest, calculating interest from the date they paid themselves the $32 million until the time of the award. Right? And the award, was it March of 2018 or September 2018?

MR. MORRIS: The partial final award was March.

THE COURT: Yes.

MR. MORRIS: The final award was May.

THE COURT: Okay. So I assume, then, we keep calculating interest post --

MR. MORRIS: Until the petition date.

THE COURT: Until the petition date.

MR. MORRIS: Yeah.

THE COURT: So we're at -- and it was a high interest rate, right? Nine percent? High these days, right? Nine percent?

MR. MORRIS: Well, just to be clear, Your Honor, you're absolutely right, you have a great memory, it is nine percent. But that's statutory interest in New York.

THE COURT: Right.

MR. MORRIS: Those of us who live in New York always call it the absolute best investment you could make if you actually have a liquid defendant. I mean, nine percent guaranteed.

THE COURT: I'd rather have that --

MR. MORRIS: No doubt --

THE COURT: I'd rather have that than my mutual fund right now. So, --

MR. MORRIS: Yeah.

THE COURT: So we're talking close to $50 million. But that's not even the whole story, right? Because they, they'll get it -- not only would they maybe never have to pay it back because of this Faithless Servant award, but even if they did have to pay it back, it wouldn't be until the Crusader Fund was liquidated, --

MR. MORRIS: Correct.

THE COURT: -- and litigation?

MR. MORRIS: Which can't happen until this -- which can't happen until this case is completed, --

THE COURT: So, --

MR. MORRIS: -- which means the estate claims that

are going to be prosecuted by the UCC and any of its successors against Mr. Dondero and his affiliates, all of that has to play out. And UBS, more than anybody in this courtroom, should know how long it takes to litigate with Mr. Dondero. Maybe he'll have a change of heart. Maybe something different will happen. But based on prior experience, I don't think this Court or anybody should make any assumptions as to this case being ended quickly.

THE COURT: Okay.

MR. MORRIS: Just based on history.

THE COURT: All right. Thank you. I'll go to friendly parties next.

Ms. Mascherin, anything you wanted to say as far as closing argument?

MS. MASCHERIN: Yes, Your Honor. Thank you.

CLOSING ARGUMENT ON BEHALF OF THE REDEEMER COMMITTEE

MS. MASCHERIN: First of all, with regard to the deferred fees, I think Your Honor has already made all the points that I would have made had I argued that. Suffice it to say that I think any reasonable person would conclude that it is a reasonable compromise for the Debtor to retain two-thirds of the $32.3 million that the Debtor, as the panel found, as Mr. Seery testified, helped itself to in early 2016. That amount -- there's no assurance that that amount would ever come back to the estate upon complete liquidation of the

Fund, and the Redeemer Committee at least is quite confident that, whether or not a settlement here, the factual findings that were made in that arbitration certainly were replete with findings of breaches of fiduciary duty, of willful misconduct, and of other misconduct which would provide a firm basis for showing that Highland was, in fact, a faithless servant.

I would submit that's why the Redeemer Committee fired them as manager of the Fund when it -- when the Committee learned that they had taken the $32.3 million without the right to take it.

With regard to the likelihood of success assessment, Your Honor, I would submit that the record is likewise clear. The only issue that UBS raises with regard to the litigation, the compromise of the litigation, has to do with two procedural challenges that the Debtor had raised when -- in the proceedings to confirm the award in Delaware. As Your Honor knows, arbitration awards under the Federal Arbitration Act are pretty close to sacrosanct. The grounds on which an arbitration award can be challenged are quite limited.

The two procedural arguments that the Debtor made, one having to do with whether pre-judgment interest should continue to run after the date of partial final award, and the other dealing with the relief that the panel, as Mr. Seery testified, inadvertently omitted due to a scrivener's error with respect to what was referred to in the arbitration as the

Barclay's claim, both of those procedural issues were raised by the Debtor and were ruled upon by the arbitration panel. And the panel found that it -- that because its first award was specifically denominated as a partial award and not a final award, that the panel had jurisdiction to award additional pre-judgment interest for the small period between March and May, which is all that was at issue with respect to that disputed pre-judgment interest amount.

And likewise, the panel found that it had the power under the AAA rules to correct the scrivener's error, the clerical error that resulted in the omission -- the inadvertent omission from the partial final award of the damages amount that the panel was awarding for the finding it made in the partial final award that Highland Capital Management had taken -- had improperly taken for its own account any of the partnership's interest that had belonged to Barclay's, and Highland had done that despite the Committee's express disapproval of the terms of a settlement with Barclay's.

Importantly, Your Honor, the AAA rules specifically allocate to the panel the jurisdiction to interpret the AAA rules. And the Fifth Circuit has held that in circumstances like this, where the applicable arbitration awards -- or arbitration rules give the arbitrator the jurisdiction to interpret the rules, the arbitrator's findings bind the parties to the arbitrator's interpretation, so long as it is

within reasonable limits, even where reasonable judges and arbitrators could interpret the AAA rules differently. That's coming from the *Communication Workers of America, AFL-CIO v. Southwestern Bell Telephone Company* case, 953 F.3d 822, a Fifth Circuit decision from this year, 2020, Your Honor. And that's cited in our -- in the Debtor's motion to approve the settlement.

So I think it certainly is the case that the Debtor made a reasonable assessment that it would be unlikely to succeed if it continued to prosecute in Delaware that motion to vacate those two small parts of the arbitration award.

Finally, Your Honor, with regard to the Cornerstone asset, let me review what the current state of facts is with regard to that asset. And I feel that I must need to -- I must do this this because Ms. Tomkowiak, if I said that correctly, Ms. Tomkowiak suggested a couple of times that the Cornerstone asset somehow is an asset of the Debtor's estate. She made reference to the Debtor forfeiting the Cornerstone asset or giving up the Cornerstone asset. That is, simply put, Your Honor, a fallacy.

As things stand right now, the Crusader Fund owns approximately 42 percent of the shares of Cornerstone. The Debtor and its managed fund, Restoration Capital Partners, owns the rest. The panel ordered the Debtor, as part of its award, to pay the Crusader Fund $48 million in principal plus

approximately $24 million in pre-judgment interest on that amount, for a total of $72 million. And the award specifically provides that, upon payment of that amount to the Crusader Fund, the Crusader Fund should transfer its 42 percent interest in Cornerstone to the Debtor.

Your Honor, it is undisputed that the Debtor doesn't have $72 million to pay to purchase those shares. We heard Mr. Seery today testify that the Debtor doesn't want to acquire those shares. The Debtor is in liquidation. So what the parties did here was reach a compromise.

In addition to the substantial offset of the arbitration award relating to the two-thirds of the deferred fees that I already spoke about, the parties also agreed to offset a negotiated amount for a fair market value of Crusader's minority 42 percent shares in Cornerstone as of the time of the negotiations, as Mr. Seery testified, in the spring, late spring of 2020. That offset that the parties agreed to as a compromise was $30.5 million.

Now, to be clear, Crusader and the Redeemer Committee would have the right not to enter into any settlement and to ask Your Honor to confirm the arbitration award or to go back to Delaware and seek to lift the stay to have the award confirmed there. And if we did that, then we would continue to hold a claim for seventy -- you know, a portion of which $72 million would be for, for sale of that -- of those

Cornerstone shares to the Debtor.

But Your Honor, that's a fantasy. We much prefer to enter into a settlement here. We think that the -- I would submit that the compromise that my clients and the Debtor reached to allow the Debtor not to have to purchase those shares, to allow for what the parties agreed to as a reasonable offset to the claim amount to account for the fact that the Debtor will not be purchasing their shares, is eminently fair. And it's of great value to the estate. The estate doesn't have to pay to buy those shares and the Debtor gets, in addition, the benefit of the Redeemer Committee and the Crusader Fund agreeing to compromise to try to monetize its minority position in Cornerstone, along with the majority position that's held by Highland Capital Management and its managed fund, Restoration Capital Partners.

And as Mr. Seery testified, there are -- Restoration Capital Partners is majority-owned by a number of independent investors. They're entitled to the best value for their shares in Cornerstone. My clients are entitled to the best value for its shares in Cornerstone. And Highland is entitled to the best value for the shares it owns in Cornerstone. And that value can only be maximized, Your Honor, if the company is available to be monetized as a whole.

So I would submit, Your Honor, the compromise is eminently reasonable. The Debtor, I believe, has met its burden of,

under the applicable Fifth Circuit case law, of demonstrating that the compromise is reasonable and is fair to the estate and to the creditors of the estate. And we would ask that Your Honor approve the settlement. Thank you.

THE COURT: Thank you. Ms. Tomkowiak, you're next.

MS. TOMKOWIAK: Thank you, Your Honor.

CLOSING ARGUMENT ON BEHALF OF UBS SECURITIES, LLC

MS. TOMKOWIAK: I'll try to keep (garbled) I'm responding to two.

Your Honor, the -- this settlement is not fair, equitable, or (garbled). We don't think it's a close call, either. Whether you look at each component or you evaluate it as a whole, as Mr. Seery purports to do, we think that the Debtor did in fact roll over. The bottom line there is that the compromises made by the Debtor result in Redeemer getting more than a hundred percent recovery on their claim, in real hundred-dollars, even using the very lowest possible value that anybody has calculated for Crusader's Cornerstone shares, as the Debtor did.

It's the Debtor's burden to show that it exercised business judgment here within a range of reasonableness. They haven't submitted any evidence to meet that burden or to allow this Court to conduct the independent analysis that it's supposed to do before approving this deal.

Again, the analysis of problems with it -- including with

respect to the way that the parties have allocated litigation risk, giving a lot of value to claims which have not even begun to be litigated and giving zero value to claims which, in fact, are at the very late stages of litigation in Delaware and could be dealt with in short order.

But the biggest problem, again, with the settlement is that instead of the estate getting a meaningful asset that could be worth up to $80 million, Redeemer effectively gets to keep it and -- for $30 million.

We believe that the Debtor has grossly undervalued those shares. Their fair market value calculation, or whatever they want to call it -- they called it in their motion their fair market value calculation -- is based on the very lowest end of a valuation range prepared by Houlihan Lokey back in the spring, despite the availability of much more recent information.

Mr. Seery has provided no basis for using a valuation back in March, and particularly in the midst of the uncertainty caused by the developing pandemic at the time. The testimony was, so that's when we started to negotiate this deal. But the settlement was not finalized until six months later. And so if there was a lot of back and forth, as Mr. Morris just said in his closing, well, I guess that happened, you know, six months ago, when apparently the Debtor has chosen to freeze inexplicably the value of this asset.

Again, there is no evidence that that $30.5 million is fair or within any range of reasonableness. Not only did the Debtor not put in any evidence, it was successful in excluding evidence that went directly to the valuation of this asset.

Despite succeeding on that, Mr. Seery did not quibble with my colleague Mr. Clubok's questioning. He agreed with the general proposition that the current value of Cornerstone is higher today than what's been taken account into the settlement.

This is a settlement of a, you know, a $190 million claim, and UBS notes that the Debtor has scores of financial advisors who are being paid tens of millions of dollars every month to analyze claims and assets. We see their fee statements. And not a single one of them, including Houlihan Lokey, anyone at the premier firm of Houlihan Lokey whose names Mr. Seery did not even know, are here to testify today. Or any of the other financial advisors.

According to our expert, who is, you know, the only evidence that is before this Court, Mr. Moentmann -- he does this for a living; he values healthcare companies in the real world, unlike Mr. Seery, who does not -- the value assigned to Cornerstone in the settlement falls below any reasonable range of what Cornerstone is worth today or even what it was worth back in June, let alone back in March.

And yes, he prepared his opinion for purposes of this

litigation, but he's not a professional testifier. This is what he does for a living. He testifies once every couple of years. And he did a valuation analysis exactly like what he would do in the real world for a healthcare company, as he's done for the past 30 years.

And when he corrects for the significant flaws in the assumptions used by Houlihan Lokey, the true value of the asset that the Debtor is giving up -- they're giving up the right to receive it. I understand that they don't have it, but they -- the arbitration award explicitly said that they have the right to get it. It is -- it should be theirs. And they're giving up that asset. And according to Mr. Moentmann, when he accounts for all of the significant flaws in the assumptions used, that asset is worth double or triple what the Debtor has assigned to it for settlement purposes.

Now, again, Mr. Seery testified today that he expects Redeemer will recover one hundred percent of its allowed $137 million claim in real dollars. I don't -- based on those numbers alone, I don't understand, respectfully, Ms. Mascherin's argument that the Debtor somehow doesn't have the ability to purchase the shares for $48 million.

I also, frankly, don't understand the argument that the value can only be maximized when monetizing this asset as a whole. And to be clear, I understand that argument, but I don't get why that can only happen in a settlement where

Redeemer and the Debtor agree to work together to do that, as opposed to the Debtor getting Crusader's portion of the Cornerstone shares, as it was required to, and then working to monetize that asset as a whole.

My final few points, Your Honor. I think the value of Cornerstone -- it's been said a lot today that this is not a valuation case, but it matters when you are looking at an asset with potentially a $50 million swing in the true value of it. That matters in the context of a case where the Debtor has said that they expect to distribute $195 million to creditors. So giving -- giving up the right to this asset matters. And yes, it hurts the remaining major creditor, which is UBS.

Now, Mr. Morris talked about, you know, UBS's motive and our supposed prejudice and bias. And we have no longstanding dispute with the Redeemer Committee. Ironically, it's actually the Debtor and Redeemer who have had their longstanding dispute. But now they've teamed up to object to our claim and to, you know, strike this deal that we believe provides Redeemer with a more than one hundred percent recovery windfall.

So, Your Honor, we think the settlement should not be approved, and we only -- don't think it should be approved without holding the Debtor to its burden to provide actual evidence, including evidence of the value of the Cornerstone

shares that are forfeited in this settlement.

And alternatively, I would just reiterate what I said in my opening, that if you are inclined to approve the settlement anyways, in the event that a sale of Cornerstone does occur in the future and the purchase price is well above the value that that asset has been assigned here, then we request that the Court take the proceeds of that sale into consideration at the time of plan confirmation when the distributions are to be made. And it should -- the outcome of that sale should be taken into account when calculating Redeemer's recovery.

THE COURT: Okay.

MS. TOMKOWIAK: Thank you, Your Honor.

THE COURT: Thank you.

Well, I thank you all for your hard work in the pleadings as well as the presentations here today. I assure you that we've read the paperwork very carefully and considered all your evidence carefully today.

As we know, with regard to this motion to approve compromise of controversy, the Court is guided by Bankruptcy Rule 9019. And that rule does not say a heck of a lot, but we've got lots of jurisprudence to guide the Court. Cases such as the *AWECO* case, the *Jackson Brewing* case, the *TMT Trailer Ferry* case, *Cajun Electric*, *Foster Mortgage*, all of these were cited in the papers. And the legal standards that those cases instruct this Court to use are the Court has to

evaluate whether the compromise and settlement is fair and equitable and in the best interest of creditors when considering three things: One, the probability of success on the merits in future litigation, with due consideration for uncertainty of law and fact; two, the complexity and likely duration of litigation and any attendant inconvenience and delay; and three, all other factors bearing on the wisdom of the compromise.

The Court is also supposed to consider the paramount interests of the creditors.

So I will back up and find that we have had all required notice of this motion. And when applying those legal standards I just outlined, the Court finds that this settlement is eminently reasonable, fair and equitable, in the best interest of creditors, and so therefore I am approving it.

I will note a couple of pieces of evidence, or more than a couple, a few pieces of evidence that were especially persuasive to me. First, I will say that Mr. Seery's testimony was very credible to me. And I do believe that he did not consider this a laydown by any means, and I don't think it was by any means. The facts are that this settles many, many years of litigation, as someone said, in five different fora, in three different countries. And there was a nine-day trial in front of a very respected arbitration panel.

And I agree with the verbiage of Ms. Mascherin that the arbitration award is very much sacrosanct. This isn't a situation where, you know, if I lifted the stay and allowed things to go forward in the Delaware Court to see if they would confirm the arbitration award, it's not a situation where there would be a heck of a lot of arguments the Debtor could make to refute the $190 million award or knock it down very much. Things like fraud, misconduct, a very narrow set of circumstances would have to be demonstrated. It certainly wouldn't sit in the shoes of an appellate court.

So I think that is a very relevant factor that certainly shows the Debtor didn't lay down here. The Debtor's options were narrow with regard to challenging very many aspects of the arbitration award.

I believe that Mr. Seery and the board did a lot of due diligence as far as evaluating their options here. I believe that there were good-faith arm's-length negotiations. And specifically, the reductions, if you will, seem extremely reasonable to this Court.

With regard to the $20 million credit on the $190 million award for the deferred fees, it appears to me the Debtor got a pretty good deal on that one. You know, it looks like to me we really started at a number around $43 million that would have gone up with time in interest. And there was a strong argument that, once the Debtor paid that back, that there

would be no obligation to ever kick in under the Faithful Servant Doctrine for the Redeemer Committee/Crusader to ever have to pay it back again to the Debtor. So I think that $20 million number settled on is a very fair number.

With regard to the $30.5 million number for the Cornerstone credit that has been so contentious today, I respect the arguments, but ultimately it bears emphasizing this was a negotiated amount, not a situation where there was a precise valuation that was even required.

And I think it is very significant that we're talking about a minority interest, a 42 percent minority interest that Highland was required to buy back. And one could almost take judicial notice that minority interests in private companies are darn hard to value, and some might say should be discounted.

And while I found Mr. Moentmann to certainly be well qualified and explained well his different views, at bottom, I don't find them to be as persuasive as Mr. Seery, in that he has spent two weeks on the assignment and 20 to 30 hours. You know, certainly, I think reasonable minds can differ, but at bottom the $30.5 million number was within the range of reasonableness for a compromise on this amount.

I'll just emphasize further that, with regard to Cornerstone, I felt like the $30 million CARES Act loan should be regarded as a huge question mark, uncertainty, as far as

affected value. The fact that no one knows if it's forgivable or not, well, that's a pretty big deal. And it's just one of many reasons I think there's a big range of possibilities here, so that the number that the Debtor settled on is certainly within the range of reasonableness.

All right. So, with that, I approve the compromise and will look to Debtor's counsel to submit a form of order. All right. Thank you again.

We now are going to turn to Acis, and let's talk about timing. Mr. Morris, are you the key presenter on this one or is Mr. Demo going to be?

MR. MORRIS: No, I will be the presenter on this one, though Mr. Demo will address the Court certainly with respect to two of the legal issues on the Daugherty objection. But otherwise this one is all mine as well.

THE COURT: All right. So, shall we roll to extremely brief opening statements? I guess one thing I'll need you to tell me is, do we really have five objections, or do we have two? Have the sort of limited objections been resolved, or no?

MR. MORRIS: Your Honor, that is an excellent question. They haven't been resolved consensually, but they ought to be, based on the testimony from Saturday's deposition. And if I can, I'd be happy to just start with that issue first, if you'll just give me a moment.

(Pause.)

THE COURT: Okay.

OPENING STATEMENT ON BEHALF OF THE DEBTOR

MR. MORRIS: Okay. Putting aside Mr. Dondero and Mr. Daugherty for the moment, there are three other objections: One by CLO (garbled). That was filed at Docket No. 1177. One by Highland CLO Funding Limited, filed at Docket No. 1191. And one filed by HarbourVest at Docket No. 1195.

I believe all three of these objections or responses either objected to or reserved their right to object to one provision of the settlement agreement pursuant to which the Debtor would have the obligation to transfer its rights in an entity called Highland HCF Advisors Limited to Acis if the Debtor had received written advice from nationally-recognized external counsel that it is even permissive -- permissible to make that transfer.

That can be found, Your Honor -- the settlement agreement is Exhibit 1 to my declaration, and I believe when I offer that into evidence it'll be Exhibit #3. But that's where the settlement can be found, and this is Paragraph 1(c). And that matter really, from the Debtor's perspective, has been resolved. Mr. Seery testified on Saturday and he will testify again today that the Debtor has obtained the advice of the WilmerHale firm, I believe, and that advice is that it is -- they cannot give the comfort that if they transferred that

asset that it would be legally permissible and that the Debtor would bear no risk.

So, from my perspective, that objection or reservation of rights, depending on the party, should be resolved.

There were two other issues, I think, raised. I know it was HarbourVest. I'm not sure who the other one was. But they're both related to whether or not the release applied to them. HarbourVest in particular objected on the ground that the release -- to make sure that the release doesn't release any claims that HarbourVest may have. It does not, Your Honor. I think a plain reading of the release shows that HarbourVest is not implicated.

In addition, HCLOF also -- HarbourVest is an investor in HCLOF. And HarbourVest -- HCLOF, rather, Your Honor, is specifically excluded from the release. So HarbourVest is not included, and HCLOF, the entity in which HarbourVest invested, is actually specifically carved out of the release, so that there's no ambiguity.

So I think, on that basis, Your Honor, perhaps it would be most efficient to hear from those three particular parties. You know, Mr. Seery will testify, and if you want to take him out of turn and do that now on the issue of the advisors and the advice that he's received, I'd be happy to do that.

THE COURT: All right. Well, maybe we should first hear from our objectors.

Let me start with HarbourVest. I have misplaced for a minute my appearance. I think it was Ms. Weisgerber. Was it Ms. Weisgerber who was appearing for HarbourVest?

MS. WEISGERBER: Yes.

THE COURT: Okay.

MS. WEISGERBER: Yes, Your Honor.

THE COURT: Do you -- have you heard what you need to hear to withdraw your limited objection, or no?

MS. WEISGERBER: Your Honor, I think we're -- we're pleased to hear those updates from the Debtor. I think, from our perspective, we'd just look to a couple of housekeeping matters regarding documentation of this. Specifically with respect to the release point, in the settlement itself there are certain entities that are explicitly carved out of the release, and we would ask that HarbourVest be included as an explicitly carved-out party, for the avoidance of doubt, whether that appears in the settlement agreement or in the order approving the settlement.

So, I'll pause on that, and then I'll just turn to the second issue, to confirm if the Debtors are amenable to that.

MR. MORRIS: Well, we don't have the exclusive right in this regard. If you'll give me one moment, I'm going to just confer --

(Pause.)

MR. MORRIS: -- the Court to the next issue, if you

may, while I'm trying to resolve this. Because that is certainly our intent. We never intended HarbourVest to be part of this. And we would have no objection if the Court, either through an order or otherwise, made it clear that HarbourVest is not subject to the release.

MS. PATEL: Well, let me chime in. Mr. Morris, if it's me that you're looking to confer with, I'm not sure, or if it's Mr. Seery, but I think I can go ahead and address this.

And, Your Honor, just to back up for a quick second on this issue, I wanted to just, of course, remind not only the Court but the other parties of the overall structure here. And as Your Honor may remember, Acis is the portfolio manager for certain CLOs in which Highland CLO Funding owns the -- either the majority or all of the equity strip and equity piece.

Separate and apart from that, Highland CLO Funding's investors, conversely, are an entity by the name of CLO Holdco, who has filed a limited reservation of rights, solely, frankly, on the HCF Advisor transfer piece. More on that in a minute, if you care to hear it. But, and also HarbourVest. And HarbourVest, just to refresh the Court's recollection and the other parties, was the secret third-party investor that you heard oodles and oodles and oodles of testimony regarding during the Acis bankruptcy case.

And then Highland and certain Highland employees' retirement funds own the other remaining two percent equity interest in Highland CLO Funding.

So what we're really talking about here, Your Honor, in connection with HarbourVest, is something that is one step removed from even the equity piece. So I just want to be on record as saying, number one, Acis would dispute very hotly that any duties -- and whether any duties are owed to entities such as CLO Holdco or HarbourVest or HCLOF. There is -- it's frankly beyond the scope of the hearing today. And our position is that, certainly as it relates to HarbourVest or CLO Holdco, Acis owes no duties by virtue of its role as portfolio manager to the Acis CLOs.

Secondly, Your Honor, let's go to the issue of whether there are even any potential claims. And with respect to that, you know, there's at least, if not by implication, and perhaps not in connection directly with HarbourVest, but others that are objecting, so I'll just go ahead and address the issue now: There are implications of some sort of mismanagement. And I and Acis want to be clear on record as saying those are obviously hotly-disputed issues as well. Your Honor, frankly, those types of implications or claims are unfounded and specious with respect to any mismanagement allegations, and are frankly offensive, given the facts here. Many are based by certain of the objectors and have -- on

prior -- testimony provided prior to the confirmation and have been soundly rejected by this Bankruptcy Court.

Second, these Acis CLOs, frankly, Your Honor, have performed either as well or better than the broad CLO market since Brigade took over from Highland. And as you may recall, Your Honor, Brigade started behind a $300 million eight-ball created by former Highland Capital Management leadership. So to argue that there is some form of Acis mismanagement is frankly just jaw-dropping.

All of this, Your Honor, is particularly remarkable in light of the fact that these deals are some of the only deals now -- and by deals, I mean, the Acis CLOs -- passed through the investment period. They haven't been reset. Acis has tried to engage in reset discussions, and Your Honor heard about this in the Acis status conference and in the Acis bankruptcy, but I want to make sure it's on the record here: Acis tried to engage in reset discussions with HCLOF -- again, the entity in which HarbourVest, et al. have the investments -- but they've been rebuffed, and in fact have been sued by HCLOF's investor once removed, CLO Holdco, and then ultimately the DAF (phonetic), and been named in all the scorched-earth litigation that HCLOF has brought against Acis and Mr. Terry in this Court and all around the world.

So, this allegation that there is some form of mismanagement and that there are claims that need to be

reserved, again, I think are angels on the heads of pins.

Nevertheless, I think, to the extent it makes somebody feel better to include that language in there, I think HarbourVest's rights -- and I'll be specific to HarbourVest here, since they're the party raising the issue -- to the extent that they are concerned that the release somehow impacts them, to the extent that they flow through HCLOF, I think that they're already covered. But if you want some belt-and-suspenders language that they're not included either, that their rights that flow through HCLOF are also excluded from release, then I suppose that's okay.

THE COURT: All right. So, we got the agreement of Acis that, for belts and suspenders, they are agreeable to language in any order approving this settlement, if there should be one, they're agreeable to clarification that HarbourVest claims are not released pursuant to this settlement.

So, Mr. Morris, back to you.

Mr. Seery, you all would be good with that extra language?

MR. MORRIS: Yes, Your Honor.

THE COURT: All right. So, with that assurance, Ms. -- I'm sorry, Ms. Weisgerber, you are withdrawing the HarbourVest objection. Is that correct?

MS. WEISGERBER: I just wanted to address briefly the other issue regarding the transfer of Highland HCF Advisor and

confirm, so it will not go forward, whether it will either be carved out of the settlement agreement or whether the Court will not be approving that transfer as part of the settlement order. Again, just confirm that it's been excepted, it's not going forward, but we just want to be -- it to be confirmed that, with our concerns if later the Debtors got subsequent legal advice and attempted to engage in a transfer. I think, again, we always say belts and suspenders, Your Honor, but, you know, my client has a history here that we'd like to be certain about what we're getting when dealing with all the parties here.

THE COURT: Well, Mr. Morris, --

MR. MORRIS: Your Honor?

THE COURT: -- we heard you say that you didn't get the legal advice you needed and so you aren't going to be transferring direct or indirect interests in HHCF pursuant to the settlement agreement. Is there something you can add to -- I don't know. This is it. There's --

MR. MORRIS: Your Honor?

THE COURT: Go ahead.

MR. MORRIS: If you want to put it in an order, that's fine, but I don't see any reason to go and tinker over language in the settlement agreement. If Your Honor, you'll make a finding based on Mr. Seery's testimony that the Debtor has received advice, and based on that advice, the asset will

not be transferred. And that'll be part of the order, it seems to me. We don't need to do this.

THE COURT: All right. So, Ms. Patel, you agree? It's not happening?

MS. PATEL: That's -- that is correct, Your Honor. We understand that the Debtor attempted to and has otherwise complied with the terms of the settlement agreement. They had -- they did not get that opinion from nationally-recognized counsel. And Acis understands where that ended up.

THE COURT: Okay.

MS. PATEL: So, no. No problem.

THE COURT: All right. So there, there's your answer, Ms. Weisgerber, on both of your points.

So I'll move on, I guess, to Highland CLO Funding now. Are you in a position to say if your objections are resolved by these announcements? Ms. Matsumura, are you there?

MS. MATSUMURA: Your Honor, my colleague, Mr. Maloney, had joined the call, but perhaps he's having technical difficulties.

Our -- based on what's been said here, our reservation or rights has been resolved.

Of course, the other issue that we had that I don't think Mr. Morris addressed was the business of the appeal. I don't think we need anything else said on that. We just wanted to note for the record that we don't consent to dismissing our

portion of that appeal.

THE COURT: Okay. Well, let's turn, then, to Mr. Kane, CLO Holdco. Have you heard what you needed to hear to get comfortable?

MR. KANE: Yes, Your Honor. John Kane for CLO Holdco. The discussion about the satisfaction of our concerns on Section 1(c) of the settlement agreement has resolved our concerns.

THE COURT: Okay. Very good.

All right. So we're down, I guess, to Mr. Dondero and Mr. Daugherty. All right . Mr. Morris, did you want to make anything further as far as an opening statement, or call your witness?

MR. MORRIS: Yes. You know what, I'm happy to call the witness, and then I'll reserve my time for closing argument, if Your Honor (garbled).

MR. DEMO: Mr. Morris, this is Greg Demo. Just as one more brief item before we do that, certain of the employees are also being released by this agreement. We've had conversations with their counsel. They didn't file a formal reservation, but they asked a few clarifying questions, which I believe that we and Ms. Patel are in agreement with. And so those employees who are being released by the settlement with Acis, we did want to clarify on the record that the release does not affect any of their rights against

-- to assert a claim against the estate. Some of these employees have filed proofs of claim. Others may have administrative claims. And the settlement does not affect their rights under those claims.

The settlement also does not affect their rights under the -- to vote for or against the plan.

And then, finally, if any of those employees are subpoenaed or subject to discovery requests, it does not affect their right to truthfully respond to those.

THE COURT: All right. Anyone disagree with that announcement? (No response.) All right.

MS. PATEL: Acis confirms, confirms the agreement, Your Honor.

THE COURT: Okay. Thank you.

All right. So I promised people you will get ample time to do closing arguments, but I think, given how late in the day it is, we need to just go to the evidence. And so, Mr. Morris, you call Mr. Seery?

MR. MORRIS: Yes, Your Honor. The Debtor calls James Seery.

THE COURT: All right. Mr. Seery, are you there? Can you hear me?

MR. SEERY: I am, Your Honor. Can you hear me?

THE COURT: We can hear you. We can't see you yet, but if you'll say "Testing 1, 2" it'll pick you up.

MR. SEERY: Testing 1, 2.

THE COURT: All right. There you are. All right. Well, I've sworn you in once today. Do you understand you're still under oath?

MR. SEERY: I do, Your Honor.

THE COURT: All right. You may proceed.

MR. MORRIS: All right. Thank you very much, Your Honor.

I don't know if anybody else has had the issue, but there were a couple of times when the screen froze for a second or three. So we'll just see how it goes.

THE COURT: Okay.

JAMES P. SEERY, DEBTOR'S WITNESS, PREVIOUSLY SWORN

DIRECT EXAMINATION

BY MR. MORRIS:

Q Good afternoon, Mr. Seery. We're here on the 9019 motion for Acis. Can you describe for the Court generally the diligence that you and the independent board members did to educate yourself about the claims that the Debtor had against Acis and the claims that Acis had against the Debtor?

A Yes. Recognizing that we're making a separate record, I will -- I'll do all the points, but I'll try to do them slightly more quickly, since it's very similar to what I testified with respect to Redeemer.

When we were appointed as directors, we initially did a

lot of work around various claimants and what claims they had, particularly those who were on the Creditors' Committee. And that necessarily led us to dig into the Acis bankruptcy case and the issues surrounding both Mr. Terry and Acis, of which the Court is very familiar.

Starting on the very first day of the case, when -- first day that we were appointed, we actually met with Mr. Terry and his counsel, discussed the issues that they raised with respect to their claims and what they thought were substantial claims coming out of the Acis bankruptcy against the Highland estate.

After that, we engaged our counsel to research the claims, to do significant work around the legal issues.

Early on, as those -- as that work was going on, Mr. Nelms and I ended up going to a meeting with Mr. Terry and Ms. Patel, extensive debriefing on their claims and challenging a number of the positions that they had. We took that back and did extensive work with the team, which is the team at both Highland, in terms of the underlying factual issues related to the Acis case, as well as the legal issues both from Acis and as were articulated by Ms. Patel and Mr. Terry.

When they filed their claim, we dug into that completely and analyzed it both with respect to the legal and factual issues, and had numerous meetings with the board and with counsel with respect to each and every section of the

complaint, as well as the -- how that would dovetail into our case.

Q Did you have an opportunity to review any of the Court's decisions in the Acis bankruptcy case?

A Yes, we did. We -- I did, and I know that each Mr. Nelms and Mr. Dubel did as well.

There were numerous decisions, including the confirmation of orders and the (inaudible) that started, you know, back in the arbitration decision, which we also all read, and then right into the case, into the plan of reorganization, and the specifics with respect to the various transfers that were articulated or laid out in the Acis complaint.

Q Did you receive advice and review yourself the advice on issues, on legal issues such as those arising out of the *Mirant* decision, and did you read that case?

A I read -- I read *Mirant*. I read all of the cases cited in *Mirant*. I think I read most of its progeny, although it's got a lot of different avenues that courts have taken. I was familiar with the case as an investor because we invested in the Mirant debt back in -- when *Mirant* had filed, and so I was familiar and aware of it.

I think the issues with respect to *Mirant* are some of the things that I was already familiar with, but we dug in again, and I certainly reread the cases.

Q And did the board request and did (inaudible) extensive

analyses, written memorandum covering the issues surrounding the Acis claims?

A Like the Redeemer case, the Redeemer issues, we requested memoranda from the Debtor's counsel. Debtor's counsel did extensive work on the issues, both with respect to the Acis case as well as the complaint coming out of the case. We had extensive meetings regarding that memoranda, and then sent counsel back to work harder and to come back, challenging their assumptions and some of their conclusions. So it was -- it was an aggressive effort by the team.

In addition, we incorporated the Highland team because they had the factual underpinnings. We had our own analysis, but we wanted to see if there was something we were missing to really challenge some of the assumptions that we were making with respect to the claims.

Q Thank you.

MR. MORRIS: Your Honor, a lot of the factual background is really contained in the Court's own rulings from the Acis case, so we're not going to spend any time on that. I would ask the Court to take judicial notice of its own decisions, including the decisions not of this Court but of the District Court on appeal with respect to the matters that were handled in the Acis bankruptcy.

THE COURT: Okay. I'll do that.

MR. MORRIS: Is that --

THE COURT: I'll do that.

MR. MORRIS: Okay. Thank you.

BY MR. MORRIS:

Q Mr. Seery, during the course of your diligence, did you learn that Acis and the Debtor and related parties were litigating in different forums?

A It didn't -- yeah, the answer is yes. We understood that. We also, you know, received copies of litigation, and even from related-party litigation, from my lawyer, Ms. Patel, the lawyer for Mr. Terry, with respect to various litigations, including the Guernsey litigation and litigation initiated in New York. Obviously, the underlying pleadings from the bankruptcy adversary proceeding in Acis that became the basis of the proof of claim in this case.

Q And did you learn that there were also proceedings that were pending, or frankly, that were commenced after you were appointed, in the Texas state court system related to certain of Highland's employees?

A Yes, and those, those we learned from the employees. Basically, I think coming out of the Acis case and the positions that Mr. Terry had, litigation was initiated against certain employees that we thought was pretty aggressive litigation, frankly. And it was certainly disturbing, even if -- even if one is indemnified as an employee and there is some insurance, it's unsettling to be sued. So it's certainly sent

a ripple through the organization.

Q And under the proposed settlement that the Debtor has negotiated with Acis and (garbled), is the litigation that you've just described going to end, at least for the Debtor, the employees that signed the releases, and the affiliates that are specifically identified in the release?

A Yes. As a management team and a board of directors, but also as a CEO, it's critical to us to try to get as much of this litigation resolved as possible.

As the Court is aware, this is some other litigation that's gone on for a really long time. It's multi-front. It involves multiple parties. It has collateral damage like the employees. And we wanted to try to resolve all of that litigation, to the extent that we could. We can't bind this, as the Court heard earlier some of the -- those who had reservation of rights. We can't bind entities that we don't own or control. And if it's an entity that we manage, it would have to be in the best interests of that entity in order for us to bind that entity.

So we wanted it to be as full as possible. We wanted it to be -- if we were going to have a settlement, that it had to be obviously fair and beneficial to the estate. And if we weren't, we were going to take a pretty aggressive litigation posture vis-à-vis the claims.

Q All right. Let's shift from -- well, before I shift, is

there anything that you think the Court wants to hear in regard to the diligence that you and the board did to educate yourself about the nature, scope, and value of the Acis claims, Mr. and Mrs. Terry's claims, and the Debtor's claims against Acis?

A I think the one additional factor that we have in this claim as opposed to Redeemer -- because Redeemer, although it wasn't completely done before the mediation, and there were certainly hard negotiations after the mediation started, it was outside of mediation. In addition to all the work that we did leading up to our objection to claim, our initial negotiations with Ms. Patel as counsel for Acis, and then Mr. Terry and his own counsel, we also prepared for the mediation. And that was an incredible amount of work, to really examine our own positions, understanding the failings, the weaknesses, and also the strengths, set up what we thought was the most appropriate way to proceed in a mediation there. We hoped to come out with a settlement, if possible, but knowing (inaudible). So we had an additional step with respect to the Acis claim that we didn't have in the Redeemer.

Q Well, let's talk about the period prior to the mediation, because obviously you weren't able to, as in your testimony, you weren't able to reach an agreement prior to that. But can you describe for the Court in general terms how the negotiations went, who took part in the negotiations, so the

Court has a good mindset as to the level of arm's length of discussions that took place?

A Well, in the pre-mediation negotiations, we, as I said, had had extensive dealings with and among counsel, and the board was kept regularly informed of any of those discussions. In addition, each of the board members -- Mr. Dubel, Mr. Nelms, and myself -- had direct negotiations with Mr. Terry regarding the very specific pieces of his complaint or of the Acis complaint. And those were numerous, and they went on for a considerable amount of time.

We initially made settlement offers to Acis and to Mr. Terry, really, around the -- around the crucible of what this -- monetization plan. As I mentioned earlier this morning, we still hoped to have a more grand bargain, and maybe that will get rid of more litigation. As I mentioned further, Mr. Dondero' has made a proposal that I think is -- certainly merits additional work. But we, we set up the plan that is on file that will in front of the Court on Thursday, and it's the alternative plan, but it sets up a crucible that if you are -- if we're unable to settle, we're going to litigate claims. And we're still going to be open to settling. I think that -- that sort of fostered some early pre-mediation dialogue with Acis and Mr. Terry to set up a possibility that something could get done.

Q Is it fair to say that at certain points during these

negotiations frustration set in? Did they -- were they difficult negotiations? Were they -- how would you characterize them?

A I would say, to be perfectly fair, and not at all aggrandizing to anybody or flattering, they were arm's length and they were hard negotiations, but they were extremely professional. So I don't think there was, you know, ever any particular difficulty, animus, you know, pre-mediation. The mediation might have gotten a little hot, but at the mediation, we don't want to go into details, but it was very -- it was very professional. It was very arm's-length but it was very professional. It was -- it was slow going.

Q I do want to spend just a moment talking about the objection that the Debtor filed to the Acis claim. Do you recall that the Debtor filed an objection to the Acis claim?

A Yes.

Q Do you recall the arguments? You know, in general, what was the position that the Debtor took with respect to the Acis claim in its objection?

A I think our objection had three main components. Number one, and maybe it had good merit, it's legally valid, but some very technical objections. So, we objected to some specific allegations regarding either constructive fraudulent conveyances or fraudulent conveyances, whereas the Acis complaint alleges that the Debtor got them, and some of our

objections were things like no, we didn't get them, a subsidiary got it. And so that would be a technical objection, which I think has merit. You know, as an equitable argument, it could certainly be argued that, well, you control that a hundred percent or 99-1/2 percent, so how do you say you didn't get the benefit? So there were those types of issues.

Some of them were, I think, what I would call (inaudible), that they were excellent arguments and they would have been very difficult for Acis and Mr. Terry to ever overcome.

The other big overriding objection that we had was that we -- we wanted to get around the *Mirant* holding and really lean on the equities of the case. And so our position was that, while -- while Acis and Mr. Terry had gone through a difficult time, they had a plan of reorganization, and ultimately -- ultimately, Mr. Terry would receive the full amount of his original arbitration award, less the amount he paid for the equity, and that that should probably be enough from an equitable perspective to satisfy him, as opposed to having claims against our estate. Our estate.

And the third, which ties into this, was an interesting Supreme Court case, and it just -- *Punta* -- it'll come back to me. Which was an argument, I think it's a good argument, hasn't been really applied in bankruptcy often, but that the buyer of an estate doesn't get to get the benefit of claims

because -- against the former owners of the estate or the company because that was factored into the price.

I think the challenge with that is, in the bankruptcy context, these claims are often preserved and always pursued. Or often pursued. So there was a challenge to that part of it. But I think we were -- you know, we had solid technical grounds on many of the objections, and we had, I think, a good, creative argument on merit -- on *Mirant* that really was dependent, though, on the perception of the equities of the case.

Q Okay. There is a mediation privilege here, so I don't want to divulge anything about the mediation or the end -- the following. Just some very specific questions. Did the -- was -- did the Court enter an order pursuant to which the Debtor, Acis, and others participated in the mediation?

A Yes.

Q Did the Debtor submit a mediation statement in connection with the mediation?

A Yes, an extensive one.

Q And was the agreement -- I think it's already been revealed to the Court, but we'll do it again -- was the settlement -- were the settlement terms agreed upon during the mediation?

A Yes. And the -- just to be clear and not to reveal the specifics, that part of mediation was very hard-fought. And

then in order to get the actual terms of the deal done, which was exceedingly difficult -- were just good negotiations on each side, I think -- that was done just directly between the parties without the mediators. The actual drafting of the provisions, the structuring of the releases, the limitations on those releases, those were negotiated by the parties without the mediators. The product -- the settlement is a product of the mediation, but those specific pieces were actually done between the parties directly, without the mediators.

Q Thank you for the clarification. So, at some point early in the summer, the Debtor files an objection, pursuant to which it claims it has no liability. Is that fair?

A I -- I think that's fair, yeah. I think we -- we believed we had a defense to -- at least some defense to every one of their points.

Q And then you come out of the mediation and you have this agreement that we're now asking the Court to approve; is that right?

A That's correct.

Q Okay. Can you just explain to the Court the factors that you and your fellow board members took into account, considered, debated, in deciding that this was a fair and reasonable deal?

A Sure. We -- we did believe we had good, meritorious

defenses, and certainly defenses that we put up in good faith, but we had a lot of risk. And so when we went through each count, we thought about the risks that the prior rulings of the Court were in the Acis case and how that might affect our own attempt to deflect our liability.

Some of them, we looked at and we thought those were actually, if we could get that settlement as part of it, it would be a pretty straightforward trade. So with respect to an intercompany note that's about $10 million, it was arguably (inaudible) transferred from -- from Acis, it was transferred -- its claim was it was transferred to Highland. Highland paid on the note. It was actually transferred to an entity that Highland owns and controls. That transfer was done without consideration, was about $10 million. We would have been liable on that note.

We now believe that, for example, that one, we had very little defense on other than a technical defense, and that we would have -- we'd have -- not going to have any liability on it because we effectively owe it to ourself, and now we believe it can be recharacterized or should have been recharacterized as equity in the first instance.

So, there are a number of provisions like that. And it's a long complaint. There are a number of allegations that are duplicative, but things like changing the fees. We thought that you could argue that the fee change was a market change

and made sense in the context of what Highland was doing, and I think that's a good, valid defense. The problem with it was the timing. And like a lot of the things in the Acis case, the timing did not help with respect to the equities tilting in favor of Highland. They tilted more towards Acis and Mr. Terry.

So when we went through count by count, we put risk probabilities and thought about whether we would be able to prevail or whether there was an opportunity to settle.

In addition, you know, just like Redeemer, if this case is going to get resolved, we're going to have to reach settlements. They're not going to be our opportune -- not going to be the best outcome that we would hope. Our best outcome was zero. Our best outcome with Redeemer would have been to deduct everything. But these are settlements that we think are fair and reasonable based upon the risks of -- the likelihood of success, the risks and the rewards of the -- the timing, and the cost.

Q And the cost that we're referring to is the cost of litigation; do I have that right?

A That's correct.

Q Okay.

A But by the way, just the cost on these settlements is not just the cost of the two sides' litigation. It's we have a bankruptcy case that, you know, as I've testified before,

Highland's employees do a really good job doing the job they do. The company has a small operating burn. The case is just chewing up the value of the assets. And if everything litigates until the end, we're not going to be in a position to make very good distributions at all.

So there's a compelling argument that we should be trying to settle any claims that are meritorious. We have no reason to settle claims that are not meritorious, but claims that are meritorious, we should try to settle if we can.

Q Okay. Let's talk for a moment about some of the claims other than the main Acis claims, because there's a few, and I just -- quickly. Claim No. 156 is characterized in our -- as the Terry claim. That's the claim that relates to the taking of the retirement funds. Can you just explain to the Court the board's rationale and their reasoning in deciding to treat the claim in the manner that is being proposed under the settlement?

A Yeah, I think this one is again pretty straightforward, that Highland, you know, had arguable justification for the treatment of that account. We went through it pretty closely. It ended up with Mr. Terry and Mrs. Terry receiving no value from the -- the value from his -- from his 401(k). And we thought that this was a claim that was pretty straightforward that should have been settled years ago. And that -- and it's not a large amount of money, but it's, we think, in the

context of the case, the right answer was to simply settle that one for the full value of the claim.

Q Thank you. And Claim #155 is defined as the Acis, LP claim. I think that's the claim arising out of the NWCC litigation in New York. Can you just describe briefly for the Court what that -- your understanding of what that claim is and why the Debtor has chosen to enter into the agreement for the settlement of that claim?

A Yeah. And this is another one. It's not as personal and difficult in terms of settling it, but it is one that's nettlesome. Highland -- it's a long saga, but Highland had retained a party to assist with some (inaudible) kind of financing. It turned out it didn't either want or need it. It turned over the contract. It owed a small amount of money under the contract. And then it just didn't pay. And that party sued in New York Supreme Court, and then Highland was deleterious. Its counsel just failed to respond.

Ultimately, after getting an extension, its counsel responded. Its counsel responded, including with respect to Acis. Unfortunately, Acis was controlled by a trustee, so Acis then never -- never got the proper notices. And the case proceeded to Acis's detriment, and this is the cost of the fees to try to undo that, which ultimately Acis was able to do. It's still, I believe, a defendant in the case, but was able to -- to separate from default-type judgments and risks

it had incurred because Highland's counsel had not properly dealt with the case.

Ultimately, the case went against Highland. I think it's one that should not have gone against it. And what was a very small amount that was owed is now a few hundred grand.

Q Hmm. And then the last piece of the puzzle, I believe, is the satisfaction of the fees incurred in connection with Guernsey. Can you describe for the Court your understanding of what that provision of the settlement pertains to and why the Debtor believes it's in the best interests of creditors to do that?

A Yes. The Guernsey litigation was brought by HCLOF in Guernsey. The Debtor was not part of it. However, the Debtor has an advisory agreement through HCF that we talked about earlier. And Acis and Mr. Terry took the view that we had the ability to stop that litigation. We actually went out and had outside counsel tell us we did not have that ability. And after doing -- doing work on it. But it was one of those issues, again, a nettlesome one, where HCLOF lost in Guernsey. Guernsey is a loser-pays jurisdiction. And this is one of those items that I suspect that, because of our case as a manager, it was something that was really important to Mr. Terry. And for the amount of the settlement, in order to get the overall deal done, we agreed that we would compromise that amount, his statutory amount, and then he could litigate for

his full fees.

So, rather than have either HCLOF or Acis go and spend additional dollars to litigate in Guernsey to determine the fees -- which we don't really know how that would have come out, but there's at least a minimum, the statutory amount -- we compromised it.

Q Last question, as I did with the earlier settlement: We've touched, I think, on all of the factors at play under a 9019 analysis, but can you just explain to the Court in your own words why you and the Debtor and the independent board members believe that this settlement is in the paramount interests of creditors?

A Well, we, again, we went through a rigorous examination of the risks and rewards of the litigation. The timing, the costs overall to the estate, and the claims that Acis and Mr. Terry had. The challenge that we had is that, where we are in the case, it's not just creditors that are at -- potentially on the other side, the creditors of Highland on the other side. And that means that there's a risk that a finder of fact, looking at the totality here, based upon *Mirant* and the subsequent cases, when you balance the equities, they may not always find that they tilt in Highland's favor. So the risks that they would tilt against us was material, and that left us open to potentially a significant award.

In addition, as I mentioned, of the total amount, we think

that the note was one that we actually owe, and we owe it to somebody, but now we owe it to ourselves. So of the total settlement amount, $10 million really is self-funding because we're not going to have to pay that obligation.

So our view is that, overall, this is a -- like the Redeemer. It's a fair total settlement that we can reach with Acis and Mr. Terry. We can wrap up a number of litigations, including litigations against the employees, and that is -- even though I think it's got good, meritorious defenses, having that over one settlement, harder to bring this case to a close, and we'd be -- we'd be relying every day on those very employees. And I can tell you for certain that it was important to them to eliminate that risk from their day-to-day lives.

Q You know, I apologize, there was one other question I wanted to ask with respect to the probability of success on the merits. Did you and the independent board take into account the credibility findings that this Court made in prior decisions and the equities that the Court might interpret based on the Court's prior findings in assessing the likelihood of success on the merits?

A Yes. And the risk that we saw, frankly, is that if we were just dealing in the pure world of constructive fraudulent conveyance and we were dealing in a pure world where equities were balanced and didn't tilt against us, then we would be

more likely to push the litigation angle of it. I think this case still should settle, but it would give us more likelihood that we would have a probability of winning.

With the prior decisions, it puts a significant amount of risk on the *Mirant* equities argument. And once we -- if we were to lose that, or if it was to be found that these were actual fraudulent conveyances, and based upon some of the prior testimony, one might assess that there were some risks there, that certainly leads us to believe that this is a fair settlement.

MR. MORRIS: Your Honor, I have no further questions and no further witnesses. But I would like at this time to move for the introduction -- for the admission into evidence of certain exhibits.

THE COURT: All right. Point me to where those appear on the docket again.

MR. MORRIS: Yeah. I really apologize. That's the one docket number I don't have. I think we filed it on Friday evening, if that helps.

THE COURT: Okay. Just a moment. Okay. Let me back up. Your witness and exhibit list is at Docket 1202.

MR. MORRIS: Okay.

THE COURT: And I'm sorry, you're wanting to move into evidence all of the items on here, or no?

MR. MORRIS: The four items, the first four items on

there.

THE COURT: All right. So the three proofs of claim at issue and then the declaration of Mr. Demo that I think was just attaching the settlement agreement and related items, correct?

MR. MORRIS: That's exactly right, Your Honor. Mr. Demo's declaration can be found at Docket No. 1088.

THE COURT: All right.

MR. MORRIS: And there was just the two exhibits, the settlement agreement and the release. And the Debtor respectfully moves for the admission into evidence of those documents.

THE COURT: All right. Any objection? (No response.) All right. Those four exhibits are admitted. Again, they are found at Docket Entry 1202.

(Debtor's Exhibits are received into evidence.)

THE COURT: All right. So you have the passed the witness. First, any friendly examination that is not duplicative? Ms. Patel, anything from you?

MS. PATEL: No, Your Honor. We'd reserve anything for redirect, if at all.

THE COURT: All right. So I'll turn now to counsel, I guess, for Mr. Dondero first. Any cross-examination?

MR. WILSON: Yes, Your Honor. This is John Wilson for Mr. Dondero.

THE COURT: Mr. Wilson, you have cross?

MR. WILSON: Yes, ma'am.

THE COURT: All right. Go ahead.

CROSS-EXAMINATION

BY MR. WILSON:

Q Good afternoon, Mr. Seery. Can you hear me?

A I can, yes.

Q All right. And we met over Zoom on Saturday, but again, I'm John Wilson and I represent James Dondero. I just wanted to ask you a few questions. And we -- Mr. Dondero and I don't want to re-plow a lot of ground, but you described earlier about how, when you were appointed to the independent board, you began meeting with members of the Official Committee of Unsecured Creditors and then to try to determine what their claims were and began to undertake an analysis of those. Would that be fair?

A Yes.

Q And in the process of doing so, the board instructed the Pachulski firm to undertake specific legal analysis of the Acis claims and all the causes of action asserted therein; is that correct?

A That's correct.

Q And in fact, the board worked closely with counsel to analyze the Acis proof of claim, correct?

A I -- you broke up. Did we work closely?

Q Yes.
A Yes, we did.
Q All right. And you described that you requested memoranda and conducted meetings with counsel, instructed counsel to go back and work harder. Is that a fair characterization of what you testified to a minute ago?
A I think that is part of it, yes.
Q Okay. So, through this process, when you were analyzing the Acis proof of claim and becoming familiar with the particular claims asserted therein, you became aware that this was the subject of an adversary proceeding in the Acis bankruptcy, correct?
A Yes.
Q And in fact, that there is -- the Acis proof of claim attaches the second amended claim from the Acis versus Highland adversary proceeding; is that correct?
A You broke up at the end, but I think the answer is yes, if it was that it attaches the second amended complaint. I believe that's correct.
Q Right. And that Acis v. Highland adversary proceeding had been the subject of litigation at the time the Highland bankruptcy was filed, right?
A I believe yes, it had commenced.
Q And that litigation had been proceeding for actually many months, correct?

A Yeah. The Acis case and the adversary had been initiated well before our filing.
Q Right. And you became aware through your analysis and attempts to discover information about this claim that discovery was being conducted in that adversary proceeding; that's correct?
A I don't know that I ever saw any of the specifics of discovery. I assume there was discovery.
Q Well, and I think you testified on Saturday that you were aware that discovery was being conducted in the adversary proceeding.
A I mean, I'm sure -- I'm sure I knew that there was discovery in the adversary, but I don't -- I don't have a specific recollection of what the discovery was. That's not something --
Q Right. And my question wasn't whether you reviewed all the discovery. It was just that you were aware that it was being conducted, correct?
A I was aware that it had. I don't know that it was current at the time that we got involved.
Q Now, I think that -- I think you've offered testimony that you worked with the Pachulski firm in developing the written objection that was ultimately filed to the Acis proof of claim?
A That's correct.

Q And before that objection was filed, you and the other members of the board reviewed it, right?
A Yes.
Q And the other members -- you and the other members of the board took the position or agreed with the position taken in the written objection, correct?
A Yes.
Q And the board approved the written objection before it was filed?
A That's correct.
Q And so ultimately the Pachulski firm filed Highland's objection to Acis' proof of claim on June 23rd, 2020?
A I believe that's correct. I don't know the date off the top of my head.
Q And would you agree with me that the Highland objection took a pretty aggressive stance with regard to the Acis proof of claim?
A I agree, yes.
Q And in fact, the Highland objection took the position that the Acis claim should be disallowed in its entirety; is that right?
A That's correct.
Q I've got Bryan Assink from my firm here with me, and he's, excuse me, going to try to share a document on -- on the webcam. What we're going to look at is Exhibit G, which is

actually -- it's Dondero Exhibit G, which is actually the Highland objection to the Acis proof of claim. Can you see that on your screen?

A I can, yes.

Q All right. And if you look at the top of that, the very top where it has the file stamp that shows that -- it shows that it was indeed filed on 6/23/20, and it's Docker No. 771. Can you go to Page 3 now? And I don't want to work through the entire 65 pages of this document, but I'd like to kind of work through some of the -- some of the statements made in the preliminary statement that I think are intended as a -- somewhat of a summary of the positions taken in the document.

But if you look on Page -- if you look on Page 3, about halfway down, the beginning of that Paragraph No. 2, where it says, (inaudible) Terry keeps a $75 million windfall, which would come not at Dondero's expense but from the pockets of the Debtor's innocent creditors, including unsecured trade creditors, the Redeemer Committee, the Highland Crusader Fund, with an arbitration award of $191,824,557, and UBS Securities (inaudible).

And so Highland took the position on June 23rd that Mr. Terry was seeking a $75 million windfall, correct?

A That's correct.

Q And they took the position that that windfall was not going to come at Mr. Dondero's expense but instead at the

expense of Debtor's innocent creditors, correct?

A That's what we said, yes.

MR. WILSON: All right. Can you go to Page --

BY MR. WILSON:

Q Now, this is the next page of the document, Page 4, where it says that James Dondero and Mark Okada were Acis's sole owners, and it's hornbook law that sole owners do not owe fiduciary duties to their company.

MR. WILSON: Can we go to the top of Page 5?

(Pause.)

MR. WILSON: Sorry. Having technical difficulties.

BY MR. WILSON:

Q And starting at the bottom of that paragraph, it says that Delaware law does not permit creditors of a limited partnership to sue third parties for breach of fiduciary duties, nor does it permit a trustee to sue on their behalf. These claims are not and cannot as a matter of law be brought for the benefit of Acis's foreign creditors.

And so on June 23rd, 2020, Highland was thinking that the breach of the -- the breach of fiduciary duty claims could not be brought as valid claims in the Highland bankruptcy, correct?

A Yes.

MR. WILSON: And then go to the bottom of Paragraph B.

BY MR. WILSON:

Q It says -- the last sentence of Paragraph B says that even if the equities are applied as this Court once held they may, there is no equity in permitting a new owner to sue persons for conspiring with the old owner in order to parlay a $1 million investment into $75 million, at the expense of this Debtor's creditors.

And once again, you're taking the -- I'm sorry -- Highland is taking the position that there is no equity in Acis's claim because they're parlaying a $1 million investment into $75 million at the expense of Debtor's creditors. And that was Highland's position on June 23rd, 2020, correct?

A That's correct.

MR. WILSON: Go to Page -- actually, just go down a little bit.

BY MR. WILSON:

Q And then with respect to the fraudulent transfer claims, Highland took the position that, third, the fraudulent transfer claims fail and may be summarily resolved because the Debtor did not receive the benefit of the alleged fraudulent transfers since, with one exception, it was not the transferee of the transferred rights.

So Highland had taken the position on June 23rd, 2020 that the fraudulent transfer claims must be fail and can be summarily resolved, correct?

A That's correct.

MR. WILSON: All right. Go to D on the next page.

BY MR. WILSON:

Q And here in Paragraph D, it says there is nothing left of the former Acis estate. Creditors were paid, Old Equity was cancelled, and New Equity is held by a purchaser who paid $1 million, no different than if he had done so at an auction. There is no estate to benefit.

So, and then it continues on, authorities before and after *Mirant* hold that the (inaudible) recovery should be limited based on equitable considerations. Unlike *Mirant*, in this Court's *Texas Rangers* decision, this is not a case in which the recovery will enable the debtor to satisfy outstanding claims, obligations, or one in which creditors are forced to take equity instead of cash and are depending on its value for recovery on their claims. There is no estate and no equity to support Mr. Terry's windfall.

So, Highland, on June 23rd, 2020, was taking the position that there was no estate to benefit because all the creditors have been paid and Old Equity was transferred and New Equity was held by Josh Terry; is that correct?

A That's correct.

Q In Paragraph E, that's where Highland discusses how the (inaudible) Doctrine holds that the purchase of controlling equity in a company may not be used to control through

corporate machinery to turn around and assert claims against the prior owners if the claims arose prior to the date when the purchaser took control.

So Highland was saying on June 23rd, 2020 that the (inaudible) Doctrine prohibited many of Terry's claims? Or Acis's claims, I'm sorry. Is that correct?

A That's correct.

Q All right. Now, on Paragraph F. Acis (inaudible) seeking $7 million in so-called overpayments have no legal basis and should be summarily disallowed.

So Highland took the position on June 23rd, 2020 that the overpayment claims can be summarily disposed and had no legal basis, correct?

A That's correct, sir.

Q And 11G says that Acis's civil conspiracy claim also fails as a matter of law because that claim is not recognized. So now -- H. Acis's tortious interference claim fails as a matter of law because it does not apply to at-will contracts. I, Acis's breach of contract claim, like its claim for breach of fiduciary duty, rests on the fallacy that Acis had legal interests that were distinct from those of its sole owners. J, alter ego liability was inadequately pled (inaudible) claim, and moreover, is unavailable on the alleged grounds.

MR. WILSON: The top of the next page.

BY MR. WILSON:

Q And then K, you talk about Debtor's defenses that are meritorious but may not be able to be decided summarily.

So, on these 55 pages of this claim, there's a lot of legal argument and briefing over the objections, but I think you would have to agree with me that Highland asserted the position that every single one of the 34 Acis claims could be resolved by summary disposition, correct?

A I don't -- I don't think that's correct. I think we said that numerous of the claims could be dealt with by summary disposition, and certain other ones we had meritorious defenses that would have to be litigated because they were fact-based.

Q But in any event, you would agree with me that the bulk of this claim was argued could be disposed by summary disposition, correct?

A That's correct.

MR. WILSON: All right. Now --

BY MR. WILSON:

Q And I think you told me on Saturday that, with respect to your -- Highland's claim that there's no estate to benefit in Acis, that if there was an estate it would be Josh Terry; is that correct?

A I don't believe that's correct, no.

Q You don't believe that that's correct or you don't believe that you testified to that?

A I'd probably say both.

Q Well, maybe I can refresh your recollection as to that.

MR. WILSON: Page --

BY MR. WILSON:

Q We've produced the infamous video. I'm going to try to pull up Page 38 of the deposition that you gave on October 17, 2020.

MR. WILSON: It's at the top.

BY MR. WILSON:

Q So starting at Line 3, where it says, I don't think that will be necessary, but in practical terms it's Acis's estate, now just Terry. Mr. Morris asserted an objection. And the answer was, Yeah, I think we would certainly from a litigation perspective try to cabin it that way. And there are a bunch of technical reasons for that, but it's certainly a bit broader than that. There's not a big creditor body, but there are still a few creditors. He is, in my understanding, the only shareholder -- there are, you know, in fact, customers, albeit the management of the investment outsourced some of the funds, so we would -- you know, we tried and attempted to draft it in a way that cabined it to a couple different creditors that could be paid off in --

MR. MORRIS: And Your Honor? Your Honor, if I may, just in the future I would respectfully request that if my witness or my client is going to be cross-examined with

deposition testimony, and I've lodged an objection specifically to preserve the objection, that the Court rule on the objection before the answer is read into the record. Thank you.

THE COURT: All right. So, I'm sorry, you had --

MR. MORRIS: Yeah.

THE COURT: Let me be clear if you have a pending objection at the moment.

MR. MORRIS: If it's not -- if the Court doesn't deem it too late, since it's already been read into the record, yes, I would just ask the Court to rule on the objection that I made during the deposition. That's why we do that.

THE COURT: Okay. Well, I got lost, I suppose, on what the objection was that was lodged during the deposition.

MR. MORRIS: I objected to the form of the question to the extent it calls for a legal conclusion.

THE COURT: All right.

MR. WILSON: And Your Honor, I'm --

MR. MORRIS: I just want it to be clear that if the Court sustains the objection, that whatever Mr. Seery testified to is not going to be somehow binding as some kind of legal conclusion. That's all.

THE COURT: All right.

MR. WILSON: Your Honor, my response to that --

THE COURT: Response, Mr. Wilson?

MR. WILSON: Yes. My response to that objection will be that I did not ask him for a legal conclusion. I asked him a question in practical terms, if Acis's estate now is just Terry.

THE COURT: Okay. I overrule the objection.

MR. MORRIS: All right. Thank you, Your Honor.

THE WITNESS: So I think I answered it correctly. You asked me what I thought, and I said, from a -- this answer is from a litigation perspective. That's the position we took, yes. I think a moment ago you asked me what I thought now from a factual perspective. Most of the issues are laid out in my answer.

BY MR. WILSON:

Q Turn with me to -- on Page 9. I'm now going to direct your attention to Paragraph 4 of the Highland objection on Page 9, which says, The rights of creditors to be paid were the legal basis of the Acis plan injunction, which is why the injunction terminates once those creditors are paid in full. Mr. Terry elected to acquire new equity for $1 million. He is not entitled to receive another $75 million by claiming that Acis was damaged by those transfers, much less from the pockets of the Debtor's unpaid creditors. To impose on the former partners and third parties such as the Debtor a duty to restore $75 million to the former business, not to pay its creditors but for the sole benefit of successor owner who

bought the diminished entity for $1 million, would be a legally groundbreaking windfall, to say the least. The Acis claim can and should summarily be disallowed in its entirety on the record before the Court.

And so does that paragraph to you pretty much sum up Highland's position on the Acis claim as of June 23rd, 2020?

A Yes. That's the position we took.

Q And the board believed in good faith that these arguments it was making were meritorious, correct?

A That's correct.

Q And the board had a good faith belief that the legal contentions made in Highland's objection were warranted by existing law, correct?

A The legal what?

Q The legal contentions were warranted by existing law.

A Yes.

Q And the board had a good faith belief that the factual contentions in Highland's objection had evidentiary support, correct?

A That's correct.

Q And so Highland had a good faith belief that Acis's claim could be disposed of, disposed of in its entirety on summary judgment. Correct?

A Largely, yes.

Q And you agree with me that if claims can be disposed of

summarily, that would be a shorter and less expensive legal process than a trial on those issues?

A If they are summarily dismissed, that is correct.

Q And in fact, an agreement was reached by the parties in this case that Highland and Acis would file motions for summary judgment regarding the Highland objection to the Acis claim by September 16th, 2020, and that those motions would be heard on October 20th, which is today. Do you recall that?

MR. MORRIS: Objection, --

MR. WILSON: I'm sorry, go ahead.

THE WITNESS: That's fine. We don't need to agree. We took a very aggressive position that we wanted to get to court as quickly as we could to put pressure on the Acis side.

BY MR. WILSON:

Q But my point in asking you these questions is -- so they took the position that there was summary adjudication available for these claims in the -- in the Bankruptcy Court. Is that correct? Would you agree with that?

A We were definitely scheduled to have that, yes.

Q Okay. Because I read the Debtor's omnibus reply that came in yesterday. And on Page 7, it says there was no indication that summary adjudication is available in this Court. And I just wanted to make that clear, that there was actually an agreed-upon procedure that was approved by the Court. So Highland's initial position was that if Highland paid the Acis

claim they were going to give a $75 million windfall to Terry, correct? And we've just gone through reading a few times in the objection. Can you agree with that?

A Yes.

Q But I think that you have previously described how there's a counterargument to that windfall from Terry's perspective. Is that right?

A There is a counterargument, yes.

Q And what would that counterargument be?

A In sum, when you look at *Mirant* and the related cases, they do talk about restoring the estate. And so while we -- we believed an argument was I think strong that the initial injunction in Acis quote/unquote made Mr. Terry whole, there's a strong argument to be made that the estate has claims and that the owner of an estate who buys it through a plan open to everybody is entitled to try to benefit from those claims. So the recovery for the benefit of that enterprise is permitted, and that just happens to be what the law is.

Moreover, while we said it was inequitable, there's a counterargument that Mr. Terry would make, which is that he's been -- he had a claim that could have been settled easily and could have been paid off and it wasn't. Instead, there was a long litigation. And it came about because assets from Acis were pulled out of Acis. It's a pretty straightforward factual recitation that we get from the prior decisions of

this Court. And there's a strong equitable argument that Mr. Terry makes that his life has been turned upside down and there's a lot of damage that comes from that. Now, we have, as we lay out, what we thought were meritorious defenses, but they do rely a lot on the equities.

Q Right. And we'll get to it now. In your deposition on Saturday, I think you described this with a little more color.

(Pause.)

BY MR. WILSON:

Q On Lines 7 through 13, you were discussing the Highland position related to the windfall, but starting I think and you said equally on the other side, we could say that the man's life was ripped out from him, that his position was taken away, that he got an arbitration award that arguably the Debtor and the Debtor's management at the time stripped away all the assets (inaudible) to try to leave him with no recovery. And then when he sought a recovery, they sought to sue him in every jurisdiction in the world to make sure to ruin the guy's life and put him in a position where, while for some it might seem a windfall, to him it might seem just.

MR. WILSON: And skip down toward -- go on to that next answer.

BY MR. WILSON:

Q Where it says, that it took a bunch of years of his life and destroyed his career is not really our issue.

So these are the equities that you were considering when you -- when the board decided to settle this claim, this Acis claim?

A Overall. This is my summation. I wouldn't want to engraft it necessarily on Mr. Dubel and Mr. Nelms. But certainly this general position. I'm not quite sure why you read it out. But yes, that's the other side, in a nutshell.

MR. MORRIS: Your Honor, this is -- this is John Morris. Mr. Seery made a point, frankly, that I was thinking of, but it is an important point. There's really, in my experience, no need to go to a deposition transcript unless it's being used for impeachment purposes. If Counsel has a question of my witness, I would -- I would respectfully request that he simply ask it.

THE COURT: All right.

MR. MORRIS: Thank you.

THE COURT: Mr. Wilson, what do you have to say about that?

MR. WILSON: Yes, Your Honor.

THE COURT: I think he's correct. Anything you want to challenge about that point?

MR. WILSON: Well, not really, Your Honor. I could -- I could ask the questions, but I just, in that instance, I thought it was easier to get the exact testimony on the record. I don't think it's inadmissible for any purpose. And

he's, you know, he's welcome to comment on it if he needs to or put it in context or -- I mean, if there's a (inaudible) or something else, you know, I'll live with that. I was just doing it for ease, instead of having to ask him a bunch of individual pointed questions.

THE COURT: Okay. Well, we've got him here, so let's just -- you know, we've got him here so we don't need to use the deposition unless, you know, there's some impeachment purpose.

So let me just ask you. You have -- you've been going 27 minutes on cross. I really want to break tonight at a point that makes sense, which to me suggests we should finish this witness. How much longer do you feel like you need?

MR. WILSON: I believe I'm at least halfway done, if not further along, Your Honor.

THE COURT: All right. Well, hmm. I'm going to ask you to just speed it up. I'm going to stop -- well, here's the deal. We have maybe two more witnesses, right? You all have named Professor Rappaport, and Mr. Daugherty is named as a witness. And I said I would come back tomorrow, but I'm trying to respect the fact that Acis's counsel, their lead counsel is not available tomorrow. So add to this complication that, as we have been conducting this hearing this afternoon, four objections to the disclosure statement have been filed that at some point -- that at some I need to

read and a lot of other lawyers in the room need to read. And I'm -- what is our hearing? It's Thursday. Is it 9:30 in the morning Thursday? Yes. My law clerk is saying yes. So we're running --

MS. MASCHERIN: I believe that's right.

THE COURT: We're running out of available hours here. So, with respect, Mr. Wilson, I'm going to give you 15 more minutes. So we're going to pass the witness --

MR. KATHMAN: Your Honor, this is --

THE COURT: Yes?

MR. KATHMAN: Your Honor, this is Jason Kathman. And I don't know if this helps or makes things more difficult, but I think my cross of Mr. Seery is at least probably 20 or 30 minutes, and so I'm just telling you now, if the Court's thinking about breaking now, and to give Mr. Wilson another 15 minutes, I'm not a five-minute cross-examination. I don't think I'm an hour, but it's certainly more than five minutes. So, again, I say that. I don't know if that helps or hurts, but I wanted to pass that information if it affects the Court's decision-making.

THE COURT: Okay. Mr. Wilson, continue. You've got 15 minutes to wrap it up.

MR. WILSON: Thank you, Your Honor.

BY MR. WILSON:

Q Now, Mr. Seery, is it true that prior to filing that

Highland objection that we just reviewed that Highland made an offer to settle the Acis claim for $4 million?

A We did. We made an initial settlement offer to Acis for $4 million plus withdrawing our claims in the Acis case.

Q Okay. And around that same time, did Highland make an offer to settle UBS's $1 billion proof of claim for approximately $20 million?

A I think that's about the right amount, yes.

Q Okay. And you believe the Debtor in this case is solvent, correct?

A Yeah. I believe, and I think I testified earlier, and also on Saturday, that I believe that we have projections that, if we are able to hit them, we have to improve on them, and we have to keep our costs down, and if we have a claim amount for UBS which we think is zero, and we do believe that's the case, as well as zero for HarbourVest, which I argue is the same, and Mr. Daugherty I believe it's 3.7, that we would be very close to paying claims in full, yes.

Q So, based on those assumptions, you believe there'll be room for equity to participate under the currently-filed plan?

A It would be -- it would be close, yeah, but there's a potential, certainly. It would be close. But again, to -- again, there's -- again, there's -- these are not -- it's not a matter of distributing a sack of cash. These are assets that we have to manage and then sell into the market. And as

we had testimony earlier on Cornerstone, these are not big, giant high-grade companies. These are private, smaller companies with issues and risks.

Q Okay. And it's your information that the allowed amount of the UBS claims should be zero, right?

A Yes.

Q And I won't ask you again to give your reasons for that. And can you -- there's been lots of argument and talk about this all day today, but I think it's a pretty simple question. But you would agree with me that, in the Fifth Circuit, and that's based on U.S. Supreme Court precedent, that a bankruptcy court should not approve a settlement unless it's fair and equitable and in the best interest of the estate, correct?

A I think that's generally the standard, yes.

Q Right. And you believe that, although Highland's 9019 motion to approve the Acis settlement doesn't actually use the phrase "fair and equitable," I believe you testified that you believe the Acis settlement is fair and equitable; is that correct?

A Yes, I do believe that.

Q And can you briefly describe for me why that is that you have that belief?

A Yeah. I believe I testified earlier that a lot of our defenses were, you know, technical defenses, or that we have

the -- we had some straight legal defenses which we think are very good, and then a lot of them rested on *Mirant* and the equities. And that we felt strongly about the legal defenses. The technicals are more difficult because I think a court of equity could look through them. And the *Mirant* was really a question of the -- of the equities and how they tilt.

And so you have to think your way through those based upon the prior experience of this Court and Acis's prior litigation, and there's, frankly, prior rulings talking about certain of the valuations and the transfers. And the risks on those were significant.

If we could win on *Mirant* and argue that there is no real estate, I think that would be -- would have been an interesting argument, and in a different circuit we may have had a stronger argument. I think that *Mirant* in particular, which, although I guess not for me to say, but I don't think it's the right law, but it's the law. And so we have to -- we have to adhere to the legal framework that we have, as well as the factual underpinnings of the case, including the history in Acis.

And so we think that, in the context of this case, settling this multi-year litigation that involves a myriad of different parties, a myriad of different courts, is a fair and equitable settlement for this estate to try to move it forward.

Q And you believe that the equities in this case tilt heavily in favor of Terry and heavily against Highland, correct?
A I wouldn't -- I wouldn't -- I wouldn't want to say that directly. I don't think that that's necessarily the case. I think that they tilt -- they tilt in Mr. -- in Acis's favor and Mr. Terry's favor on a lot of the key issues. And I think one could argue that they're heavily -- they heavily tilt on -- you know, I think that there's a lot of -- there are certainly equities in Highland's favor in terms of the Highland team and what they do and how they perform, and the creditors in the Highland estate and their claims against Highland, but there are certainly -- certain of the equities tilt very favorably towards Mr. Terry and Acis.
Q And in applying those standards that the Fifth Circuit sets for approving a 9019 motion, do you understand that the Fifth Circuit has instructed courts to consider certain factors such as the probability of success on the litigation? Is that correct?
A Yes.
Q And did you consider that factor in reaching a settlement with Acis?
A We did, yes.
Q And we've talked about how Highland maintained the position as of June 23rd, 2020 that the Acis claims should be

disallowed in its entirety, correct?

A That's correct.

Q All right. And the next factor that the Court is supposed to consider is the expected duration and expense of litigation. Did you consider that factor?

A We did.

Q And we talked about how it was Highland's position on June 23rd, 2020 that all of Acis's claims were amenable to summary disposition, which is, as you agree, substantially less expensive and time-consuming than a full trial, correct?

A Yes. If you are successful, it's much more efficient, yes.

Q And did the board conduct a specific analysis as to the time and expense that the litigation -- of the litigation anticipated to resolve the Acis claim would require?

A I'm not sure what you mean by a specific analysis. It was certainly part of our analysis that if we went forward with summary judgment, we felt strongly that we had a real opportunity to prevail on a certain number of the claims. However, if we lost, we were going to be at a significant disadvantage because that would have meant most likely then showing that there were factual issues and most likely would have hinted that there were some equitable issues. And that would have put us in a very difficult position both in litigating those claims and pushing the case forward.

Q Did the board come up with a specific number or a range of numbers that it considered?

A I don't recall a specific number. I think at the deposition you asked me what I thought it would cost to try these claims. And from probably just one side I could come up with that number. But as I testified before, there's multiple sides here. And the case also continues to burn, from a legal and professional fee perspective, additional overhead as that trial would go on.

Q Okay. And even if the Acis settlement is approved, and we know now that the Redeemer settlement is approved, the UBS claim remains outstanding, which will require lengthy litigation, correct?

A I disagree with that. The UBS claim does remain outstanding, but we have summary judgment papers in front of the Court, and they're very narrow issues. We think that the vast majority of UBS's claims, which are against foreign subsidiaries with no recourse to the Debtor whatsoever, are going to be disposed of. So we're going to be down to what we think are equally weak or unfortunately factual claims on fraudulent conveyances. And -- but they're minimal dollar amounts.

Q And did the board conduct an analysis of how long that litigation is going to take?

A A specific analysis to how long a fraudulent conveyance

litigation would take? We haven't done a specific one, but we've thought about it. This one's pretty straightforward because it's not going to be real complicated in order to value the assets because the assets that were returned by HFP -- there's a much more difficult process for UBS because they don't have a claim against HFP, which is the transferor. They have a -- they have to get an alter ego first. So it is -- it is -- there's a number of steps. But the defenses and the valuation is very easy because these are assets that were, just prior to the -- in the same year as the fraudulent conveyance, I think, or maybe 14 months after, had been purchased by Multi Strat, which was a firm that had third-party investors as well.

Q Okay. And I just want to ask a handful more questions, because I think I'm running out of time. But one of the other factors that the Fifth Circuit looks at is whether the settlement was reached by an arm's-length transaction. And I would ask what you believe arm's-length bargaining means.

A What I think arm's-length bargaining means?

Q Yes.

A I think it's two parties that are on opposite sides, that do not have undue influence on each other, that do not have -- there's no collusion. There's no side deals. That they're negotiating fairly and they're negotiating in their own interests. That is the typical definition of arm's length.

Q And I believe that Highland has maintained a mediation privilege as to the specific negotiations that were undertaken in this case, but it's your position that this settlement was conducted pursuant to an arm's-length bargaining?

A Absolutely. With or without the mediation. We have no -- no interests in -- nor does anyone else -- with Acis or with Mr. Terry or his counsel. These were hard-fought. They were multifaceted. They involved a lot of analysis. They did involve the mediators and their -- their leaning on one side or the other. We don't what they said specifically to Acis. I only know what they said to our side. But it was the product of a mediation.

But even without the mediation, this was -- this would have been arm's length because it's folks without undue influence on each other and no interests in each other's sides.

Q Okay. If this settlement is approved, will it end all the litigation regarding Acis's claims?

A Unfortunately, I don't think so. And we had a little bit of a preview of that earlier. And frankly, unfortunately for our cases, is limited by what we can do in our own case. But it will end all litigation with respect to Acis and Mr. Terry and Highland and the entities owned by Highland more than 51 percent, or more than 50 -- 50 or more percent, I think it is. Anyone that we directly manage. And all of the employees at

Highland. So, in retrospect, it does solve all the litigations related to Highland vis-à-vis Acis, Highland employees, Mr. Terry and Mrs. Terry.

Q All right. But you'd agree with me that the substance of many of these claims have been asserted against other parties and they're pending in other places, including an adversary proceeding in the Acis bankruptcy case?

A There are some. And to be fair, you know, we considered whether we should try to involve third parties. There's lawsuits against law firms that Acis and Mr. Terry have brought. I don't know who brought each one. There's against individual lawyers. We just -- we can only solve the problems that we have control over and we can solve. I would love to have been more expansive, but we didn't have, you know, the facility or the legal right to do those, and we didn't want to try to bring in more parties than we could or we would never get this done.

Q Okay. Is it your position that we need the -- that any two of the three large unsecured creditors who are members of the Creditors' Committee, which you probably know them, referring to Acis, UBS, and Redeemer, that you need the support of two of those three to support the plan?

A I would say to do -- to do any kind of grand bargain, we would need at least two of those three. And to have the Committee not object, because it's a four-person Committee, we

would need two of four.

But I do think that, you know, with respect to the plan that we have, we're going to need probably two of those creditors, at least two of those creditors to support it. And those negotiations are equally hard-fought, and the positions that we're taking, you know, we're -- we feel very confident in and we intend to pursue them.

THE COURT: All right.

BY MR. WILSON:

Q And so was that one of the motives --

THE COURT: Last question.

BY MR. WILSON:

Q -- for settling the Acis claim?

THE COURT: Last question, Mr. Wilson. It's been 15 minutes.

MR. WILSON: Okay. Thank you, Your Honor.

THE COURT: Last question.

BY MR. WILSON:

Q Yes. So my question was: Was that part of your motive for settling with Acis?

A Certainly, settling with Acis, settling with everybody, you know, to try to resolve the case, if they're fair settlements and in the best interest of the estate, we would do it. We obviously are not settling with everybody. There are claims that we think are (inaudible) and don't merit real

dollars, and we've been unable to settle those claims because of that.

But yes, settling -- settling with Acis, settling with, you know, any of the creditors, we think is critical to try and move this case forward. You know, we would love to have everybody settle. As I said, there are some claims we think are worth zero and we would love to settle them at a dollar. That may require some judicial intervention.

Q All right. Thank you, Mr. Seery.

MR. WILSON: That was my last question.

THE COURT: All right. Let's talk about whether we're going to break or not.

Mr. Morris, is there any way you can predict how long your redirect might take, not knowing what Mr. Kathman is going to ask?

MR. MORRIS: At the moment, I have none, Your Honor.

THE COURT: Okay. Then I'm going to ask -- Mr. Seery, I'm going to put your opinion above all others because you have been testifying --

THE WITNESS: Sure.

THE COURT: -- a long time. If I cut -- if I limit Mr. Daugherty's cross to 20 minutes, would you rather do that and be done tonight or do you need to break? It's late, obviously.

THE WITNESS: Your Honor, I'm open. I do most of my

work for the estate, and so it's really your call and your staff's call. If you want to do it tomorrow, I'm certainly ready to do that. If you want to do it tonight, we'll just keep going. Either way.

THE COURT: All right.

THE WITNESS: I'm completely open. And I didn't mean to throw it back at you like that, but, you know, you have a staff and I -- I just have a small abode here.

THE COURT: Okay. Mr. Kathman, you've got 20 minutes for your cross. And, you know, I'm sorry. We've just been going a long time today and we just had a very extensive cross by Mr. Wilson, so I'm hoping you can give some non-duplicative cross for us. All right.

CROSS-EXAMINATION

BY MR. KATHMAN:

Q Mr. Seery, like Mr. Wilson, we met on Saturday at your deposition, correct?

A That's correct.

MR. KATHMAN: And for the record, Jason Kathman for Patrick Daugherty.

BY MR. KATHMAN:

Q Mr. Seery, Acis makes its money from managing CLOs, correct?

A That's my understanding, yes.

Q Okay. And Acis was essentially Highland's CLO business;

isn't that right?
A I think that's fair, yes.
Q Okay. In fact, I think your words were Acis was just a shell for Highland; isn't that right?
A I don't know if I said -- I think Acis as a corp was a shell. I don't -- so I want to make sure we're not saying shill. But having a shell corporation, there's nothing wrong with it, that's where the Acis -- that's where the Highland business was moved to, into the Acis corporate loan, and Acis then took off from there. But it's the Highland -- it was the Highland business, my understanding.
Q Highland's CLO business was moved to Acis and Acis ran Highland's CLO business, correct?
A That's correct.
Q Okay. In fact, I think your testimony on Saturday was Acis was Highland, right?
A Well, they're two -- they're two separate corporations. There's nothing -- there's nothing wrong with being two separate corporations. But Acis was Highland in that Highland provided the employees. I don't believe at the time -- there were partners in Acis, but I don't think there were employees in Acis. I think they were all from -- from the Highland business. And the payroll, everybody who worked there I believe was on the Highland payroll.
Q Acis is the manager of certain CLOs, right?

A That's correct.
Q Okay. And as the manager of those CLOs, it owes certain fiduciary duties to its client, the CLOs, correct?
A Yes. I think that's a fair assessment.
Q Okay. Under the Advisors Act, right?
A Yeah. That's correct.
Q And not just the CLOs, but also the investors in those CLOs, correct?
A Well, I think it's actually more (garbled). I think it's actually more the investors. The CLO is just a thing, so it's sort of hard to owe a fiduciary duty to just a thing which is just an investment vehicle.
Q Understood. So you would agree with me, then, Acis, as the manager of the CLOs, owed fiduciary duties to the investors in those CLOs.
A That's my understanding, yes.
Q Okay. And in exercising those duties, the manager, under the Advisors Act, has a duty to subordinate its interest to the interests of those investors in the CLOs, correct?
A I think, I think generally when you think about the fiduciary duty, and I think that we -- I want to make sure I'm very specific about this -- is that the manager has a duty -- fiduciary duties -- there's a whole bunch of legal analysis of what they are -- but they are significant, serious (inaudible) that the manager owes to the investors. And to the extent

that the manager's interests would somehow be -- somehow interfere with the investors in the CLO, he's supposed to -- he or she is supposed to subordinate those to the benefit of the investors.

Q Okay. So I think your answer, I think the answer to my question was yes, the manager has to subordinate its interests to the interests of the investors in the CLO, correct?

A Yeah. But your problem -- words was pretty loaded. That's why I had to -- no self-interest. Not fees. There's a whole bunch of different analysis. So I think it's fair to say yes. I don't want to quibble with you about your presentation. But we had a long discussion about this on Saturday.

MR. MORRIS: Your Honor, if I may, I don't want to interrupt Counsel's flow, but I'm not sure what the purpose of this is, but I just want to make it clear that Mr. Seery is not being offered as an expert on fiduciary duties, and to the extent any of these questions are designed to elicit some type of binding result on the Debtor, I would object.

THE COURT: What about that, Mr. Kathman?

MR. KATHMAN: Your Honor, may I respond?

THE COURT: Please.

MR. KATHMAN: I would like to respond to that, Your Honor. There was a hearing held on March 4th in this hearing where the Debtor put Mr. Seery on the stand and he testified

pretty extensively about what his duties are under the Advisors Act. They were trying to pay people. Ms. Hayward had him under direct examination and Mr. Seery testified there about what the duties are under the Advisors Act.

So to the extent that Mr. Seery has already been asked questions in this case about what an advisor's duties are under the Advisors Act, I think that that has opened the door and he can answer questions on what his understanding and belief is under the Advisors Act.

MR. MORRIS: Your Honor?

MS. MASCHERIN: Your Honor, I'm going to also join in with a relevance objection, and I fail to see how testimony at a March hearing that was not a 9019 motion, what possible relevance that has here.

THE COURT: Okay. How about the relevance objection, Mr. Kathman? I'm a little concerned.

MR. KATHMAN: Sure, I'll answer the relevance objection, Your Honor. The main thrust of one of our objections is that the Acis releases are too -- are essentially premature at this point. And the testimony I think you're going to hear from Mr. Seery is that he didn't consider at all whether Acis had violated its own Advisors Act obligation to any of its investors. He's going to testify he doesn't know who the investors are in the Acis CLOs and whether Acis may have liability for violation of the Advisors

Act. That just purely wasn't something that he considered in determining whether to grant these releases that are -- or agree to these releases that were included in the settlement agreement.

And so what I want to know, Your Honor, is, is there potential liability that's there? And I'm getting at the question, I'm asking Mr. Seery, did he consider those things? His answer is going to be no. I took his deposition on Saturday. And that's relevant, Your Honor, because as Mr. Clemente -- and I'm almost done, Your Honor. As Mr. Clemente said a couple of months ago, these things all looked at individually can a lot of time be justified, but when you put it in context and you look at the broader scope of things, you have to examine all of these settlements and all of these motions in the broader context.

And our argument, Your Honor, is that there's a whole lot of litigation pending right now. We have the Committee that has a deadline to potentially bring causes of action against Highland CLO Funding. There's a HarbourVest objection on file right now that involves stuff going on with Highland CLO Funding. And all of those facts relate to potential obligations that Acis has to Highland CLO Funding. You heard Ms. Patel talk about that relation earlier when she was speaking.

And so, Your Honor, part of our argument is that until we

know what the result of all of that litigation is, that these releases are just a little premature. And Mr. Seery's testimony is going to be he didn't consider any of that in determining whether to approve the settlement.

MR. MORRIS: Your Honor, may --

THE COURT: You say these releases, plural. I mean, we've already heard that HCLOF and Holdco and HarbourVest are carved out.

MR. KATHMAN: I understand.

THE COURT: So it's all about the Highland release, right? Or no? I mean, I don't know who you're talking about.

MR. KATHMAN: The answer to that question, Your Honor, is the Committee, again, has specifically said in this Court that they investigated the quote/unquote Byzantine empire. They're undertaking an investigation right now of whether to bring alter ego causes of action and fraudulent transfer causes of action.

So the concern that I have and the concern my client has is if at some point Highland CLO Funding and all of these entities that are in the Highland Byzantine get collapsed back into Highland, Highland has no ability to go back and point the finger at Acis because it's given that release away, it's given that release away in the settlement agreement.

THE COURT: I'm not understanding. Okay. Let's start with this fundamental. Acis went through its own

bankruptcy. So I guess you're talking about post-confirmation Acis.

MR. KATHMAN: Correct.

THE COURT: January 2018 --

MR. KATHMAN: Correct.

THE COURT: -- is the only Acis that claims can be asserted against, okay?

MR. KATHMAN: Correct. Yes.

THE COURT: Post-January --

MS. PATEL: 2019, Your Honor, to be clear.

THE COURT: Oh, 2019? Okay.

MS. PATEL: Yes, Your Honor.

THE COURT: Time flies.

MS. PATEL: Our plan went effective actually February of 2019.

THE COURT: Time flies. So, can we agree that nobody has any ability -- well, I say nobody. I mean, there are -- there's the proof of claim of Highland. There's the administrative expense claim in Acis's case that are being -- that's been compromised. But if anyone is going to say Acis is part of an alter ego type theory, it's too late, right? It's too late because --

A VOICE: Not the --

MR. MORRIS: Exactly.

THE COURT: That's not your argument? Then --

MR. KATHMAN: No, Your Honor.

THE COURT: -- I'm confused what, what the argument is.

MR. KATHMAN: Your Honor, my argument is that Highland CLO Funding or CLO Holdco or any of the entities that the Committee is targeting, okay, --

THE COURT: Uh-huh.

MR. KATHMAN: -- there are -- there are entities. Back in July, remember Mr. Clemente came before this Court and you put a 90-day deadline --

THE COURT: Right. Right.

MR. KATHMAN: -- on him to investigate those claims and causes of action.

THE COURT: Uh-huh. Uh-huh.

MR. KATHMAN: Okay? That was just recently extended, I think, last week. If any of those entitles, CLO Holdco, Highland CLO Funding, or any other of those entities that the Committee might target for alter ego, not Acis, --

THE COURT: Uh-huh.

MR. KATHMAN: -- if any of those entities are ultimately determined to be the alter ego and are collapsed back into Highland, and those entities, like Highland CLO Funding, which the Debtor is carving out of this release, --

THE COURT: Uh-huh.

MR. KATHMAN: -- or CLO Holdco, which it's carving

out of the release, --

THE COURT: Uh-huh.

MR. KATHMAN: -- if those entities end up getting clawed back, or even fraudulent transfers for the CLOs that were transferred to those entities get brought back into Highland, --

THE COURT: Uh-huh.

MR. KATHMAN: -- Highland can't sue for anything that Acis did post-confirmation because it's giving those releases away in the settlement. I see I lost you.

THE COURT: Well, I -- I mean yes, that's the point of the settlement.

A VOICE: Yeah.

THE COURT: But I'm not sure -- I'm not sure where the questioning about fiduciary duties, where it ties into this.

MR. KATHMAN: It's really, Your Honor -- and I can probably skip a lot of this by asking Mr. Seery a penultimate question: Did he consider any of this in determining whether to approve the settlement or not? That will shortcut it. That will shortcut it because his answer is going to be no, that wasn't considered as a part of this settlement.

MR. MORRIS: Your Honor?

MS. PATEL: I still don't --

MR. MORRIS: Yeah. I would just -- I would just

point out that his reliance on the UCC, which hasn't even filed an objection to this motion, is misplaced for that very reason. I don't see how he gets to piggyback on something Mr. Clemente said a couple months ago in a different context in a motion today in which the UCC doesn't take a position. It's -- this is just so far afield, Your Honor.

THE COURT: All right. Mr. Kathman, I'm going to sustain what is essentially a relevance objection. I'm not connecting the dots on -- since we established at the beginning of this hearing that there would be no release of HCLO Funding or CLO Holdco or HarbourVest, no mutual releases, I feel like the scenario you have defined as being your concern, what if the Committee decides to bring causes of action against them or seek alter ego remedies, I don't know how that's impacted by this proposed settlement. I just don't get it.

MR. KATHMAN: Yeah. Can I answer that, Your Honor,

THE COURT: Please.

MR. KATHMAN: -- and address that concern?

THE COURT: Please.

MR. KATHMAN: Okay. This really isn't the crux of what our objection is, Your Honor. Is that if you -- and I'm not asking the Court to, I'm just -- to agree with me. What I'm proposing is that, in the event Highland CLO Funding has some cause of action against Acis for breach of the Advisors

Act, okay, under the settlement as it is sitting right now carved out, no problems. Correct? But if --

THE COURT: So, for post-January 2019, yeah.

MR. KATHMAN: Right. All I'm saying -- and I'm talking about --

THE COURT: The others are barred by the confirmation order, okay?

MR. KATHMAN: I'm talking about post -- post-confirmation Acis causes of action, Your Honor.

THE COURT: Uh-huh. Uh-huh.

MR. KATHMAN: If Highland CLO Funding were to have causes of action for that, as currently proposed, yes, it's carved out in the settlement agreement. But in the event Highland CLO Funding is collapsed into the Debtor, okay, those are causes of action that the Debtor would then have. Because if Highland CLO Funding is collapsed into the Debtor, the Debtor then possesses those causes of action against Acis for violations of the Investors Act. But the Debtor would not be able to bring those causes of action for violations of the Investors Act because of these releases in the settlement agreement. My point is it's premature.

THE COURT: I'm not sure I agree with you legally. I mean, can you give me some authority for that?

MR. KATHMAN: I don't, Your Honor. To be honest with you, no, off the top of your head, I do not have authority

that if it's collapsed back in there the -- if Highland -- well, I --

THE COURT: I disagree with the premise so I'm going to find the line of questioning irrelevant, okay? So please move on.

MR. MORRIS: Thank you.

MR. KATHMAN: Can I ask my penultimate question?

THE COURT: Go ahead.

BY MR. KATHMAN:

Q The penultimate question being: Mr. Seery, in determining whether to approve this settlement, did you consider whether Acis might have violated its Investors -- its Advisors Act duties to the investors in the Acis CLO?

MR. MORRIS: Objection.

MS. MATSUMURA: Objection, relevance.

THE COURT: Sustained.

MS. MATSUMURA: Sorry. This is Rebecca Matsumura from Highland CLO Funding. I just want to state on the record that we also object to the premise of this line of questioning and don't understand why he would be raising these on behalf of our client, and we would object to whatever alter ego argument he seems to be suggesting.

THE COURT: All right.

MS. MATSUMURA: Thank you.

THE COURT: All right.

MR. KATHMAN: Your Honor, I don't have any further questions.

THE COURT: Okay. All right. Any redirect, Mr. Morris?

MR. MORRIS: No, Your Honor.

THE COURT: All right. Well, Mr. Seery, thank you. That concludes your testimony, unless someone recalls you for rebuttal tomorrow.

All right. So we're going to recess, and we'll start back at 9:30 in the morning.

Do we want to talk a little bit about -- well, Mr. Morris, are you resting? I shouldn't have assumed you're resting. I think this was your only witness, correct?

MR. MORRIS: He was. We -- exhibits -- rebuttal. And so we -- we went through the --

THE COURT: We did.

MR. MORRIS: -- Exhibits 1 through 4.

THE COURT: We did.

MR. MORRIS: So the Debtor does rest, Your Honor. And I think it'll be up to Mr. Daugherty and Mr. Dondero as to whether Mr. Daugherty is going to testify. He was on a witness list. And whether Professor Rappaport is going to testify. I think those are the only two potential witnesses, if they're still planning on doing it.

THE COURT: All right. Well, let me double-check

with Ms. Patel. I can't remember if you filed a witness and exhibit list. Did you have any separate evidence on this? You did file a witness and exhibit -- but it didn't say, it didn't designate a witness. It just said --

MS. PATEL: It did not, Your Honor.

THE COURT: Okay. So you're not going to put on any evidence?

MS. PATEL: We are not putting on any additional evidence, Your Honor. Our witness and exhibit list was essentially a "Me, too" along with the Debtor.

THE COURT: Okay. So the Debtor has rested.

And Mr. Kathman, can I presume you're putting on Mr. Daugherty if we reconvene tomorrow morning?

MR. KATHMAN: Well, that would have been a good presumption before this argument here, Your Honor. I'm going to talk to my client about that, because if Your Honor's not going to hear any testimony about potential causes of action that may exist and potential liabilities out there, that may alleviate the need for Mr. Daugherty's testimony. So I'm going to talk to him. And what I'd like to do is reserve my right to call him tomorrow morning, but I can't tell you definitively one way or the other as I sit here.

THE COURT: All right. And then Mr. Wilson, can you tell us about witnesses you plan to call? Was there anyone besides Professor Rappaport?

MR. WILSON: No, Your Honor. We had two witnesses on our list, one of which was Mr. Seery, and I've covered everything we need to cover with him, so I wasn't going to recall him in our case in chief.

We do have potential scheduling issues with Professor Rappaport. She is a practicing professor, and her teaching schedule does not allow her to appear tomorrow morning. She has somewhat of a limited schedule. She told us that Thursday morning or Tuesday --

THE COURT: I'm sorry, she told you what?

MR. WILSON: That she was available Thursday morning or Tuesday. Or next Tuesday.

THE COURT: All right. Well, I'm sorry. We gave this hearing date quite a while back. So you're saying even if I went tonight until 8:00 o'clock she wasn't available tonight; is that correct?

MR. WILSON: Well, I do believe she has another hour available today.

THE COURT: Well, you know, it is 6:37 Central time, and we've been going a very long time today. Remember, I've had two other hearings besides these.

Let me ask this: Is there any objection to Professor Rappaport? I'm not sure what the nature of her testimony is going to be. And were there any objections, or no?

MR. MORRIS: You know, Your Honor, I actually was

planning on making another motion. Can we just take two minutes and let me confer with my colleagues? If -- what I'm considering, if it would be okay with counsel for Mr. Dondero, is to just let the report in for what it is, without testimony. I don't know if that's something that they would consider. And then subject to, you know, consulting with my client, that would be something that I might recommend in order to move this along.

It sets forth her opinions. I'm not sure -- you know, and if I don't object to it, I'm not sure why we need to hear from the witness.

THE COURT: All right. What about that, Mr. Wilson?

MR. WILSON: If you'll allow me a real quick consult with my co-counsel, I'll give you an answer.

THE COURT: Okay.

MR. MORRIS: Can we just take three minutes, Your Honor?

THE COURT: Yes.

MR. MORRIS: Not a long break.

THE COURT: But yes, please, three minutes. There may be people wanting to watch the World Series, but others of us are just tired. Okay.

MR. MORRIS: Thanks so much.

THE COURT: Okay. Three minutes.

(A recess ensued from 6:40 p.m. to 6:43 p.m.)

MS. PATEL: Your Honor, during the break if we could also -- if Mr. Kathman wouldn't mind asking his client, I believe Mr. Daugherty's on the hearing as well, if they could make a decision. Assuming a couple dominoes fall into place, if Mr. Daugherty's not going to testify, and assuming Professor Rappaport's report is going to come in, I'm hoping you close this tonight or talk about when we're going to do closing those arguments if they're going to be lengthy.

MR. KATHMAN: Your Honor, Ms. Patel has always -- maybe sometimes, maybe not always, but sometimes a step ahead of me. I have spoken with Mr. Daugherty and we're not going to call him.

THE COURT: You are not going to call him? That's what you said?

MR. KATHMAN: No.

THE COURT: Okay.

MR. KATHMAN: No, we are not going to call him, Your Honor.

THE COURT: Okay.

MR. MORRIS: The Debtor is prepared to allow her report to come in without testimony. And without objection.

THE COURT: I'm sorry, say again?

MR. MORRIS: Your Honor, the Debtor would consent, if Mr. Dondero consents, the Debtor would consent to the admission of Professor Rappaport's report into evidence

without objection, provided there's no testimony.

THE COURT: All right. So do we have Mr. Wilson back?

MR. WILSON: Yes, Your Honor. Mr. Dondero will agree to the admission of Professor Rappaport's report in lieu of her testimony.

I would ask a couple things. Number one, that I be allowed an opportunity to admit the exhibits on my exhibit list, which include the report and Professor Rappaport's CV.

And then the second thing I would ask is that Judge Lynn had prepared a closing argument and we would like sufficient time to -- for him to give that before the close of this hearing.

THE COURT: All right. Well, as far as Dondero's exhibits, they are at Docket #1194. There are --

MR. KATHMAN: Your Honor, can I make a suggestion with closing arguments, I mean, potentially?

THE COURT: Okay. Let me take these in steps. We have Exhibits A through AA, A through Z plus AA, that I think you're offering. That's --

MR. WILSON: Well, Your Honor, briefly, we're not going to try to put in the Seery depo, the Seery video, or the Nancy Rappaport depo.

THE COURT: Okay.

MR. WILSON: I guess we'll just do Dondero Exhibits A

through X.

THE COURT: A through X have been offered. Does anyone object?

MR. MORRIS: Just one second, Your Honor.

THE COURT: Okay.

(Pause.)

MR. MORRIS: Only to Exhibit P as in Peter. That is the expert report. And as long as it's not being offered for the truth of the matter asserted, it's being offered solely for the purposes of expert testimony, the Debtor has no objections to any other of the proffered A through X.

THE COURT: All right. Any other objections?

All right. With that caveat -- Mr. Wilson, I assume you don't have any issue with the caveat on the Rappaport report. So with that, I'll --

MR. WILSON: No, there is none.

THE COURT: I'll admit these.

(James Dondero's Exhibits A through X are received into evidence.)

THE COURT: If I go to the docket, the expert report of Professor Rappaport is actually there on the docket at 1194.

MR. WILSON: (inaudible). Yes, Your Honor.

THE COURT: Okay. So I need to read that before we come back tomorrow, and I guess see if there's anything else

on here I haven't looked at.

So what we will do is we'll come back tomorrow morning for closing arguments. And Mr. -- well, let me ask. I was going to say 9:30, but would 10:00 o'clock, by chance, be a little bit better? That'll help me look at this Professor Rappaport report. I don't know how long it is, but --

MR. MORRIS: I will be available whatever time is convenient for the Court. Can you give us some guidance as to how long you will tolerate closing statements?

THE COURT: Tolerate. Your word. I think, you know, 20 minutes each ought to be plenty.

MR. MORRIS: That's fair.

THE COURT: So we'll start at 10:00 o'clock Central and we'll hear those closing arguments. And when we're done tomorrow or with this issue, I'd love to get a preview as far as the disclosure statement hearing Thursday at 9:30. I think I told you four. Five objections were filed in the last, you know, few hours we've been in court. Every member of the Creditors' Committee plus the Creditors' Committee filed an objection. And I have not looked at them to know how lengthy they are. But I'd love to get a preview on whether you're going to be working and trying to resolve these and maybe we'll start and adjourn, or if we're going to have a knock-down drag-out. Okay?

MR. KATHMAN: Your Honor, I would like to offer two

exhibits. I don't think they're controversial. It's just the Debtor's plan and disclosure statement. They were our PHD 23 and 24. They're filed at Docket #1079 and 1080 in the case. It's the Debtor's plan and disclosure statement. I can't imagine there's any objection to those.

THE COURT: Okay.

MR. MORRIS: No objection.

THE COURT: All right. Those will be admitted.

(Patrick Daugherty's Exhibit 23 and 24 are received into evidence.)

THE COURT: All right. So we'll see you at 10:00 o'clock in the morning.

MS. PATEL: Your Honor?

MR. ANNABLE: Your Honor?

MS. PATEL: If I may.

THE COURT: Briefly.

MS. PATEL: My apologies. I know I kind of started off late in the hearing, but as I explained earlier today, I have an in-movable conflict tomorrow morning. Mr. Shaw will handle closing arguments for us. And may I be excused from appearing tomorrow?

THE COURT: You are excused. Thank you. All right. Good night.

MS. PATEL: Thank you, Your Honor.

MR. ANNABLE: Your Honor? Your Honor?

THE CLERK: All rise.

MR. ANNABLE: This is Zach Annable. Your Honor? Your Honor?

THE COURT: This better be good, Mr. Annable.

MR. ANNABLE: I apologize. This is just a housekeeping matter. For purposes of the continued hearing tomorrow morning, I know it's too late for your staff to probably set up the WebEx meeting information, but if you could have Ms. Ellis distribute that to me tomorrow morning, I will try to make sure to get it out to everybody. Just letting you know we will need a new WebEx invitation for the hearing tomorrow morning.

THE COURT: All right.

MR. MORRIS: Thank you. Thank you. Good catch.

THE CLERK: She's probably listening anyway. She usually listens.

THE COURT: Yes. She -- hang on. Knowing Traci, she is listening.

(Pause.)

THE COURT: Well, she surprised me. She didn't pick up the phone. I promise you, she'll be all over it, so we'll --

THE CLERK: I'll send an e-mail.

THE COURT: Yes. Mike's sending her an e-mail right now, so you all will have it in plenty of time to get

connected. Okay. Thank you. Mr. Annable, that was worth it. Okay?

MR. ANNABLE: Thank you, Your Honor.

THE CLERK: All rise.

(Proceedings concluded at 6:51 p.m.)

--oOo--

CERTIFICATE

I certify that the foregoing is a correct transcript to the best of my ability from the electronic sound recording of the proceedings in the above-entitled matter.

/s/ Kathy Rehling **10/22/2020**

_____ _____

Kathy Rehling, CETD-444 Date
Certified Electronic Court Transcriber

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Exhibit 7

Acis CLO 2013-1 Ltd.

Optional Redemption Notice

April 30, 2018

Acis CLO 2013-1 Ltd.
c/o Appleby Trust (Cayman) Ltd.
PO Box 1350
Grand Cayman KY1-1108, Cayman Islands
Attention: The Directors

U.S. Bank National Association
190 South LaSalle St., 10th Floor
Chicago, IL 60603
Attn: Corporate Trust Services – Acis CLO 2013-1
Facsimile: 312-332-8010

Acis Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201

Re: Acis CLO 2013-1 Ltd.

Dear Sir or Madam:

Reference is hereby made to that certain Indenture, dated as of March 18, 2013 (as amended, modified or supplemented from time to time, the "**Indenture**"), among Acis CLO 2013-1 Ltd. (the "**Issuer**"), Acis CLO 2013-1 LLC and U.S. Bank National Association (the "**Trustee**"). Capitalized terms used but not defined herein shall have the meanings set forth in the Indenture.

In accordance with Sections 9.2 and 14.3 of the Indenture, the undersigned Holders of at least 66 2/3% of the Aggregate Outstanding Amount of the Subordinated Notes hereby direct the Issuer, the Trustee and the Portfolio Manager to effect an Optional Redemption of all Secured Notes and the Subordinated Notes in full on June 14, 2018.

Sincerely,

HIGHLAND CLO FUNDING, LTD. (f/k/a Acis Loan Funding, Ltd.)

By: ______________________
Name: William Scott
Title: Director

By: ______________________
Name: Heather Bestwick
Title: Director

NEXPOINT STRATEGIC
OPPORTUNITIES FUND (f/k/a NexPoint
Credit Strategies Fund)

By: ______________________
Name: Frank Waterhouse
Title: Treasurer, Principal Accounting
Officer and Principal Financial Officer

DREXEL LIMITED

By: ______________________

Name: S. DUNN G.P. DEAN

Title: **For and on behalf of Enmyn Limited**
Corporate Director

Acis CLO 2014-3 Ltd.

Optional Redemption Notice

April 30, 2018

Acis CLO 2014-3 Ltd.
c/o MaplesFS Limited
P.O. Box 1093
Boundary Hall, Cricket Square
Grand Cayman KY1-1102, Cayman Islands
Attention: The Directors

U.S. Bank National Association
190 South LaSalle Street, 8th Floor
Chicago, IL 60603
Re: ACIS CLO 2014-3 LTD.
Facsimile: 312-332-8010

Acis Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201

Re: Acis CLO 2014-3 Ltd.

Dear Sir or Madam:

Reference is hereby made to that certain Indenture, dated as of February 25, 2014 (as amended, modified or supplemented from time to time, the "**Indenture**"), among Acis CLO 2014-3 Ltd. (the "**Issuer**"), Acis CLO 2014-3 LLC and U.S. Bank National Association (the "**Trustee**"). Capitalized terms used but not defined herein shall have the meanings set forth in the Indenture.

In accordance with Sections 9.2 and 14.3 of the Indenture, the undersigned Holder of at least a Majority of the Aggregate Outstanding Amount of the Subordinated Notes hereby directs the Issuer, the Trustee and the Portfolio Manager to effect an Optional Redemption of all Secured Notes and the Subordinated Notes in full on June 14, 2018.

Sincerely,

HIGHLAND CLO FUNDING, LTD. (f/k/a Acis Loan Funding, Ltd.)

By: ______________________
Name: William Scott
Title: Director

By: ______________________
Name: Heather Bestwick
Title: Director

Acis CLO 2014-4 Ltd.

Optional Redemption Notice

April 30, 2018

Acis CLO 2014-4 Ltd.
c/o MaplesFS Limited
P.O. Box 1093
Boundary Hall, Cricket Square
Grand Cayman KY1-1102, Cayman Islands
Attention: The Directors

U.S. Bank National Association
190 South LaSalle Street, 8th Floor
Chicago, IL 60603
Re: ACIS CLO 2014-4 LTD.
Facsimile: 312-332-8010

Acis Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201

Re: Acis CLO 2014-4 Ltd.

Dear Sir or Madam:

Reference is hereby made to that certain Indenture, dated as of June 5, 2014 (as amended, modified or supplemented from time to time, the "**Indenture**"), among Acis CLO 2014-4 Ltd. (the "**Issuer**"), Acis CLO 2014-4 LLC and U.S. Bank National Association (the "**Trustee**"). Capitalized terms used but not defined herein shall have the meanings set forth in the Indenture.

In accordance with Sections 9.2 and 14.3 of the Indenture, the undersigned Holder of at least 66 2/3% of the Aggregate Outstanding Amount of the Subordinated Notes hereby directs the Issuer, the Trustee and the Portfolio Manager to effect an Optional Redemption of all Secured Notes and Subordinated Notes in full on June 14, 2018.

Sincerely,

HIGHLAND CLO FUNDING, LTD. (f/k/a Acis Loan Funding, Ltd.)

By: ____________________
Name: William Scott
Title: Director

By: ____________________
Name: Heather Bestwick
Title: Director

Acis CLO 2014-5 Ltd.

Optional Redemption Notice

April 30, 2018

Acis CLO 2014-5 Ltd.
c/o MaplesFS Limited
P.O. Box 1093
Boundary Hall, Cricket Square
Grand Cayman KY1-1102, Cayman Islands
Attention: The Directors

U.S. Bank National Association
190 South LaSalle Street, 8th Floor
Chicago, IL 60603
Re: ACIS CLO 2014-5 LTD.
Facsimile: 312-332-8010

Acis Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201

Re: Acis CLO 2014-5 Ltd.

Dear Sir or Madam:

Reference is hereby made to that certain Indenture, dated as of November 18, 2014 (as amended, modified or supplemented from time to time, the "**Indenture**"), among Acis CLO 2014-5 Ltd. (the "**Issuer**"), Acis CLO 2014-5 LLC and U.S. Bank National Association (the "**Trustee**"). Capitalized terms used but not defined herein shall have the meanings set forth in the Indenture.

In accordance with Sections 9.2 and 14.3 of the Indenture, the undersigned Holderof at least 66 2/3% of the Aggregate Outstanding Amount of the Subordinated Notes hereby directs the Issuer, the Trustee and the Portfolio Manager to effect an Optional Redemption of all Secured Notes and Subordinated Notes in full on June 14, 2018.

Sincerely,

HIGHLAND CLO FUNDING, LTD. (f/k/a Acis Loan Funding, Ltd.)

By: ______________________
Name: William Scott
Title: Director

By: ______________________
Name: Heather Bestwick
Title: Director

Acis CLO 2015-6 Ltd.

Optional Redemption Notice

April 30, 2018

Acis CLO 2015-6 Ltd.
c/o MaplesFS Limited
P.O. Box 1093
Boundary Hall, Cricket Square
Grand Cayman KY1-1102, Cayman Islands
Attention: The Directors

U.S. Bank National Association
190 South LaSalle Street, 8th Floor
Chicago, IL 60603
Re: ACIS CLO 2015-6 LTD.
Facsimile: 312-332-8010

Acis Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201

Re: Acis CLO 2015-6 Ltd.

Dear Sir or Madam:

Reference is hereby made to that certain Indenture, dated as of April 16, 2015 (as amended, modified or supplemented from time to time, the "**Indenture**"), among Acis CLO 2015-6 Ltd. (the "**Issuer**"), Acis CLO 2015-6 LLC and U.S. Bank National Association (the "**Trustee**"). Capitalized terms used but not defined herein shall have the meanings set forth in the Indenture.

In accordance with Sections 9.2 and 14.3 of the Indenture, the undersigned Holder of at least 66 2/3% of the Aggregate Outstanding Amount of the Subordinated Notes hereby directs the Issuer, the Trustee and the Portfolio Manager to effect an Optional Redemption of all Secured Notes and Subordinated Notes in full on June 14, 2018.

Sincerely,

HIGHLAND CLO FUNDING, LTD. (f/k/a Acis Loan Funding, Ltd.)

By: ____________________
Name: William Scott
Title: Director

By: ____________________
Name: Heather Bestwick
Title: Director

Exhibit 8

CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed June 21, 2018

United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE: **ACIS CAPITAL MANAGEMENT, L.P., ACIS CAPITAL MANAGEMENT GP, LLC,** **Debtors.**	§ § § § § § § §	**Case No. 18-30264-SGJ-11** **Case No. 18-30265-SGJ-11** **(Jointly Administered Under Case No. 18-30264-SGJ-11)** **Chapter 11**
ROBIN PHELAN, Chapter 11 Trustee, **Plaintiff,** **vs.** **HIGHLAND CAPITAL MANAGEMENT, L.P., HIGHLAND CLO FUNDING, LTD. f/k/a ACIS LOAN FUNDING, LTD., CLO HOLDCO, LTD., NEUTRA, LTD., ACIS CLO 2014-3 LTD., ACIS CLO 2014-4 LTD., ACIS CLO 2014-5 LTD., ACIS CLO 2015-6 LTD., ACIS CLO 2014-3 LLC, ACIS CLO 2014-4 LLC, ACIS CLO 2014-5 LLC, and ACIS CLO 2015-6 LLC,** **Defendants.**	§ § § § § § § § § § § § § § § § § §	**Adversary No. 18-3212-SGJ**

<u>EX PARTE TEMPORARY RESTRAINING ORDER</u>

On the ex parte application for a Temporary Restraining Order by Robin Phelan, the Chapter 11 Trustee (the "Trustee") for Acis Capital Management, L.P., ("Acis LP") and ("Acis GP, with Acis LP, "Debtors") pursuant to Federal Rule of Civil Procedure 65, incorporated by Federal Rule of Bankruptcy Procedure 7065, after considering the facts contained in the Verified Original Complaint and Application for Temporary Restraining Order and Preliminary Injunction (the "Complaint")[1] and the Trustee's verification of the Complaint, the Court finds that there is compelling evidence that irreparable harm is imminent to the Debtors, the Debtors' estates, the Debtors' rights, the Debtors' creditors, and to interested third parties (collectively the "Parties"), and if the Court does not issue a temporary restraining order enjoining the actions described herein, the Parties will be irreparably injured. As the basis for this order, the Court states the following:

1. The facts set forth in the Complaint present a clear showing that immediate and irreparable injury, loss, or damage will result to the Parties before the Restrained Parties (as hereinafter defined) or any other parties can be heard in opposition to this Order.

[1] Capitalized term(s) not expressly defined herein shall have the same meaning(s) as such term(s) have in the Complaint.

2. Rakhee Patel, counsel for the Trustee, represented to this Court and certified in writing that Rakhee Patel did not attempt to give notice to the Restrained Parties. Given the facts set forth in the Complaint, the Court finds that notice is not necessary, as it appears that Highland previously disregarded this Court's earlier orders (the earlier TRO) and continued to make trades that violated this Court's orders. As evidenced by the Emails (as defined by the Motion for an Ex Parte Temporary Restraining Order, or in the Alternative, Emergency Hearing on the Application for Temporary Restraining Order), Highland, on less than 24-hours' notice, seeks to liquidate hundreds of millions of dollars of CLO collateral, arguably in violation of the PMAs and the Indentures, and also in likely violation of Sections 362 and 363 of the Bankruptcy Code. The Court is concerned that Highland will issue trades which effectively begin liquidating the CLOs in the time between when notice of the requested relief is given and when this Court sets a hearing on the temporary restraining order. The Court is also concerned in that, on June 14, 2018, counsel for Highland CLO Funding, Ltd. f/k/a Acis Loan Funding, Ltd. ("HCLOF") told the Court that HCLOF had withdrawn its earlier-issued First Optional Redemption Notices but reserved the right to reissue the notices at some future date, stating: "That process has, in fact, concluded. That was done obviously for multiple reasons. My client doesn't believe that this is the appropriate time to be effectuating such a redemption for its own economic reasons, setting aside the complications it's obviously caused for others in this room. But needless to say, that, too, is an effort to try to bring, as I believe the Court has requested, and others have, some sanity to this process."[2] Because the First Optional Redemption Notices had been withdrawn, the Trustee did not proceed with the hearing the Court had scheduled on the Trustee's Motion to Extend the TRO. The Trustee has presented evidence to the Court with its newest request for another TRO that, ***on June 15, 2018, the very next day after making these statements to the Court—and the day after the hearing on the Motion to Extend the TRO was to have taken place, and after the TRO had expired, and—despite representing to the Court through counsel that it was essentially "standing down" for some period of time to bring some "sanity" to this process—***HCLOF, without requesting relief from the stay under section 362(d) of the Bankruptcy Code or requesting authority to take such action under section 363(b) of the Bankruptcy Code, again advised the Trustee that it had directed the Issuers to effectuate the Optional Redemption on July 30, 2018. The Court finds that notice is not required as there is no less drastic means to protect the Trustee's interests.

[2] See Docket No. 298 at p. 7, ll. 15-22, Transcript of Hearing Held June 14, 2018.

3. The Parties will suffer immediate and irreparable harm in the form of substantial losses to the Parties and third parties' financial interests if the Trustee, Highland Capital Management, L.P. ("Highland"), HCLOF, CLO Holdco, Ltd. ("Holdco"), Neutra, Ltd. ("Neutra," and together with HCLOF, and Holdco, the "Highland Affiliates"), Acis CLO 2014-3 Ltd. ("CLO-3"), Acis CLO 2014-4 Ltd. ("CLO-4"), Acis CLO 2014-5 Ltd. ("CLO-5"), Acis CLO 2015-6 Ltd. ("CLO-6," and together with CLO-3, CLO-4, and CLO-5, the "Issuers"), Acis CLO 2014-3 LLC ("CLO-3 LLC"), Acis CLO 2014-4 LLC ("CLO-4 LLC"), Acis CLO 2014-5 LLC ("CLO-5 LLC"), and Acis CLO 2015-6 LLC ("CLO-6 LLC," and together with CLO-3 LLC, CLO-4 LLC, CLO-5 LLC, the "Co-Issuers"), and other parties (the Trustee, Highland, the Highland Affiliates, the Issuers, and the Co-Issuers are referred to herein as the "Restrained Parties") are not immediately restrained and enjoined from effectuating the Optional Redemption, call, or other liquidation of the Acis CLOs. "Optional Redemption" is defined by and effectuated pursuant to to Sections 9.2 of each of the following: (i) that certain Indenture, dated as of March 18, 2013, issued by CLO-1, as issuer, CLO-1 LLC, as co-Issuer and US Bank as Trustee (the "CLO-1 Indenture"); (ii) that certain Indenture, dated as of February 25, 2014, issued by CLO-3, as issuer, CLO-3 LLC, as co-Issuer and US Bank, as Trustee (the "CLO-3 Indenture"); (iii) that certain Indenture, dated as of June 5, 2014, issued by CLO-4, as issuer, CLO-4 LLC, as co-Issuer and US Bank, as Trustee (the "CLO-4 Indenture"); (iv) that certain Indenture, dated as of November 18, 2014, issued by CLO-5, as issuer, CLO-5 LLC, as co-Issuer and US Bank, as Trustee (the "CLO-5 Indenture"); and (v) that certain Indenture, dated as of April 16, 2015, issued by CLO-6, as issuer, CLO-6 LLC, as co-Issuer and US Bank, as Trustee (the "CLO-6 Indenture"). CLO-1 Indenture, CLO-3 Indenture, CLO-4 Indenture, CLO-5 Indenture, and CLO-6 Indenture are collectively referred to herein as the "Indentures"). The Optional Redemption, call, or other liquidation of the Acis CLOs threatens to liquidate or harm valuable property of the Debtors, the Debtors' rights, the Debtors' estates, and other assets in this matter, to the detriment of the Parties. For the avoidance of doubt, Optional Redemption as used herein refers to an Optional Redemption previously or currently issued by the Restrained Parties and any other attempt to liquidate the CLOs now or in the future by any means.

4. Injunctive relief is necessary to prevent imminent and irreparable injury to the Parties in the form of substantial losses to the Parties and third parties' financial interests related to the Optional Redemption, call, or other liquidation of the Acis CLOs and the threatened liquidation of valuable property of the Debtors, the Debtors' rights, the Debtors' estates, and other assets in this matter. The losses that would result in the event a temporary restraining order is not issued cannot be presently measured by any certain pecuniary standard, are not reasonably quantifiable, and cannot be adequately compensated with monetary damages; thus, the Parties and interested third parties otherwise have no adequate remedy at law.

5. The Trustee has a "substantial likelihood of success on the merits" of a claim regarding: (i) violation of the automatic stay if this temporary restraining order is not issued, (ii) failure of Defendants to comply with the legal requirements of implementing an optional redemption, (iii) failing to obtain court authority under Section 363 to effectuate an optional redemption, and (iv) confirmation of an effective plan of reorganization.

6. The balancing of the harms weighs in favor of issuing the temporary injunction because any harm to Highland, or any of the Highland Affiliates, is substantially outweighed by the damage that would be caused to Parties if the Optional Redemption, call, or other liquidation of the Acis CLOs is not enjoined.

7. Public policy supports restraining the actions described herein and allowing the Trustee to exercise his fiduciary duties to maximize the value of the estate for the benefit of the Parties by allowing the Trustee to direct and control the refinancing, sale, or other monetization of Debtors' property, the Debtors' rights, the Debtors' estates, and other assets in this matter.

IT IS THEREFORE ORDERED that all Restrained Parties[3] and their officers, agents, servants, employees, attorneys, and any other person or entity acting on the Restrained Parties' behalf are enjoined for a period of fourteen (14) days from:

a. proceeding with, effectuating, or otherwise taking any action in furtherance of any Optional Redemption, call, or other liquidation of the Acis CLOs previously or currently issued by the Restrained Parties and any other attempt to liquidate the CLOs now or in the future by any means;

b. trading any CLO collateral, whether in furtherance of the Optional Redemption, call, or other liquidation of the Acis CLOs or otherwise, without the express and explicit written authorization of the Trustee; and

c. sending, mailing, or otherwise distributing any notice to the holders of the Acis CLOs in connection with the effectuation of any Optional Redemption, call, or other liquidation of the Acis CLOs.

IT IS FURTHER ORDERED that pursuant to Federal Rule of Bankruptcy Procedure 7065, the Trustee is not required to provide security or bond in connection with this Order.

IT IS FURTHER ORDERED that this Order expires on 12:00 p.m. (Central Daylight Time) on July 5, 2018, unless further extended by this Court or by agreement of the parties.

IT IS FURTHER ORDERED that a preliminary injunction hearing is set before the Honorable Stacey G.C. Jernigan on **July 5, 2018 at 9:30 am.** (Central Daylight Time), at the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, 1100 Commerce Street, Room 1428 (Courtroom No. 1), Dallas, Texas 75242.

IT IS FURTHER ORDERED that the Court will hold as status conference on this matter before the Honorable Stacey G.C. Jernigan on **June 22, 2018 at 10:45 a.m.** (Central Standard Time), at the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, 1100 Commerce Street, Room 1428 (Courtroom No. 1), Dallas, Texas 75242.

END OF ORDER

Exhibit 9

CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed June 29, 2018

United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:	§	**Case No. 18-30264-SGJ-11**
	§	**Case No. 18-30265-SGJ-11**
ACIS CAPITAL MANAGEMENT, L.P., ACIS CAPITAL MANAGEMENT GP, LLC,	§ § § § §	**(Jointly Administered Under Case No. 18-30264-SGJ-11)**
Debtors.	§ §	**Chapter 11**

ROBIN PHELAN, Chapter 11 Trustee,	§	
Plaintiff,	§ § §	
vs.	§ §	**Adversary No. 18-03212-SGJ**
HIGHLAND CAPITAL MANAGEMENT, L.P., HIGHLAND CLO FUNDING, LTD. f/k/a ACIS LOAN FUNDING, LTD., CLO HOLDCO, LTD., NEUTRA, LTD., ACIS CLO 2014-3 LTD., ACIS CLO 2014-4 LTD., ACIS CLO 2014-5 LTD., ACIS CLO 2015-6 LTD., ACIS CLO 2014-3 LLC, ACIS CLO 2014-4 LLC, ACIS CLO 2014-5 LLC, and ACIS CLO 2015-6 LLC,	§ § § § § § § § § § §	
Defendants.	§ §	

AGREED EXTENSION OF TEMPORARY RESTRAINING ORDER

On June 21, 2018, on the ex parte application for a Temporary Restraining Order by Robin Phelan, the Chapter 11 Trustee (the "Trustee") for Acis Capital Management, L.P., ("Acis LP") and ("Acis GP, with Acis LP, "Debtors"), pursuant to Federal Rule of Civil Procedure 65, incorporated by Federal Rule of Bankruptcy Procedure 7065, after considering the facts contained in the Verified Original Complaint and Application for Temporary Restraining Order and Preliminary Injunction (the "Complaint")[1] and the Trustee's verification of the Complaint, the Court found that: (i) there was evidence that irreparable harm was imminent to the Debtors, the Debtors' estates, the Debtors' rights, the Debtors' creditors, and to interested third parties (collectively the "Parties"); and (ii) if the Court did not issue a temporary restraining order enjoining the actions described herein, the Parties will be irreparably injured, this Court entered the *Ex Parte Temporary Restraining Order* [Case No. 18-30264, Docket No. 310, Adversary No. 18-03212, Docket No. 3](the "Second TRO"). Based upon the agreement of the Trustee and the Restrained Parties to extend the Second TRO (the "Extension Agreement"), the Court states the following:

1. The Parties will suffer immediate and irreparable harm in the form of substantial losses to the Parties and third parties' financial interests if the Trustee, Highland Capital Management, L.P. ("Highland"), Highland CLO Funding, Ltd. f/k/a Acis Loan Funding, Ltd. ("HCLOF"), CLO Holdco, Ltd. ("Holdco"), Neutra, Ltd. ("Neutra," and together with HCLOF, and Holdco, the "Highland Affiliates"), Acis CLO 2014-3 Ltd. ("CLO-3"), Acis CLO 2014-4 Ltd. ("CLO-4"), Acis CLO 2014-5 Ltd. ("CLO-5"), Acis CLO 2015-6 Ltd. ("CLO-6," and together with CLO-3, CLO-4, and CLO-5, the "Issuers"), Acis CLO 2014-3 LLC ("CLO-3 LLC"), Acis CLO 2014-4 LLC ("CLO-4 LLC"), Acis CLO 2014-5 LLC ("CLO-5 LLC"), and Acis CLO 2015-6 LLC ("CLO-6 LLC," and together with CLO-3 LLC, CLO-4 LLC, CLO-5 LLC, the "Co-Issuers"), and other parties (the Trustee, Highland, the Highland Affiliates, the Issuers, and the Co-Issuers are referred to herein as the "Restrained Parties") are not immediately restrained and enjoined from effectuating the Optional Redemption, call, or other liquidation of the Acis CLOs. "Optional Redemption" is defined by and effectuated pursuant to Sections 9.2 of each of the following: (i) that certain Indenture, dated as of March 18,

[1] Capitalized term(s) not expressly defined herein shall have the same meaning(s) as such term(s) have in the Complaint.

2013, issued by CLO-1, as issuer, CLO-1 LLC, as co-Issuer and US Bank as Trustee (the "CLO-1 Indenture"); (ii) that certain Indenture, dated as of February 25, 2014, issued by CLO-3, as issuer, CLO-3 LLC, as co-Issuer and US Bank, as Trustee (the "CLO-3 Indenture"); (iii) that certain Indenture, dated as of June 5, 2014, issued by CLO-4, as issuer, CLO-4 LLC, as co-Issuer and US Bank, as Trustee (the "CLO-4 Indenture"); (iv) that certain Indenture, dated as of November 18, 2014, issued by CLO-5, as issuer, CLO-5 LLC, as co-Issuer and US Bank, as Trustee (the "CLO-5 Indenture"); and (v) that certain Indenture, dated as of April 16, 2015, issued by CLO-6, as issuer, CLO-6 LLC, as co-Issuer and US Bank, as Trustee (the "CLO-6 Indenture"). CLO-1 Indenture, CLO-3 Indenture, CLO-4 Indenture, CLO-5 Indenture, and CLO-6 Indenture are collectively referred to herein as the "Indentures"). The Optional Redemption, call, or other liquidation of the Acis CLOs threatens to liquidate or harm valuable property of the Debtors, the Debtors' rights, the Debtors' estates, and other assets in this matter, to the detriment of the Parties. For the avoidance of doubt, Optional Redemption as used herein refers to an Optional Redemption previously or currently issued by the Restrained Parties and any other attempt to liquidate the CLOs now or in the future by any means.

2. Injunctive relief is necessary to prevent imminent and irreparable injury to the Parties in the form of substantial losses to the Parties and third parties' financial interests related to the Optional Redemption, call, or other liquidation of the Acis CLOs and the threatened liquidation of valuable property of the Debtors, the Debtors' rights, the Debtors' estates, and other assets in this matter. The losses that would result in the event a temporary restraining order is not issued cannot be presently measured by any certain pecuniary standard, are not reasonably quantifiable, and cannot be adequately compensated with monetary damages; thus, the Parties and interested third parties otherwise have no adequate remedy at law.

3. The Trustee has a "substantial likelihood of success on the merits" of a claim regarding: (i) violation of the automatic stay if this temporary restraining order is not issued, (ii) failure of Defendants to comply with the legal requirements of implementing an optional redemption, (iii) failing to obtain court authority under Section 363 to effectuate an optional redemption, and (iv) confirmation of an effective plan of reorganization.

4. The balancing of the harms weighs in favor of issuing the temporary injunction because any harm to Highland, or any of the Highland Affiliates, is substantially outweighed by the damage that would be caused to Parties if the Optional Redemption, call, or other liquidation of the Acis CLOs is not enjoined.

5. Public policy supports restraining the actions described herein and allowing the Trustee to exercise his fiduciary duties to maximize the value of the estate for the benefit of the Parties by allowing the Trustee to direct and control the refinancing,

sale, or other monetization of Debtors' property, the Debtors' rights, the Debtors' estates, and other assets in this matter.

IT IS THEREFORE ORDERED, pursuant to Federal Rule of Civil Procedure 65(b)(2), made applicable herein by Federal Rule of Bankruptcy Procedure Rule 65, based on the Extension Agreement between the Trustee and the Restrained Parties, that all Restrained Parties[2] and their officers, agents, servants, employees, attorneys, and any other person or entity acting on the Restrained Parties' behalf are enjoined from:

a. proceeding with, effectuating, or otherwise taking any action in furtherance of any Optional Redemption, call, or other liquidation of the Acis CLOs previously or currently issued by the Restrained Parties and any other attempt to liquidate the CLOs now or in the future by any means;

b. trading any CLO collateral, whether in furtherance of the Optional Redemption, call, or other liquidation of the Acis CLOs or otherwise, without the express and explicit written authorization of the Trustee; and

c. sending, mailing, or otherwise distributing any notice to the holders of the Acis CLOs in connection with the effectuation of any Optional Redemption, call, or other liquidation of the Acis CLOs.

IT IS FURTHER ORDERED that pursuant to Federal Rule of Bankruptcy Procedure 7065, the Trustee is not required to provide security or bond in connection with this Order.

IT IS FURTHER ORDERED that based on the Extension Agreement of the Restrained Parties, this Order expires on 12:01 p.m. (Central Daylight Time) on July 9, 2018, unless further extended by this Court or by agreement of the parties.

IT IS FURTHER ORDERED that based on the Extension Agreement, the preliminary injunction hearing set before the Honorable Stacey G.C. Jernigan on July 5, 2018, at 9:30 a.m. (Central Standard Time), at the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, 1100 Commerce Street, Room 1428 (Courtroom No. 1), Dallas, Texas 75242 is reset to **July 6, 2018, at 9:30 a.m.** (Central Standard Time), at the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, 1100 Commerce Street, Room 1428 (Courtroom No. 1), Dallas, Texas 75242. No further notice of the preliminary injunction hearing prosecuted by the Trustee is needed.

END OF ORDER

Agreed to and accepted:

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Exhibit 10

The following constitutes the ruling of the court and has the force and effect therein described.

Signed January 31, 2019

United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:	§	
	§	
ACIS CAPITAL MANAGEMENT, L.P.,	§	**CASE NO. 18-30264-SGJ-11**
	§	**(Chapter 11)**
Debtor.	§	

IN RE:	§	
	§	
ACIS CAPITAL MANAGEMENT GP, L.L.C.,	§	**CASE NO. 18-30265-SGJ-11**
	§	**(Chapter 11)**
	§	
Debtor.	§	

BENCH RULING AND MEMORANDUM OF LAW IN SUPPORT OF: (A) FINAL APPROVAL OF DISCLOSURE STATEMENT; AND (B) CONFIRMATION OF CHAPTER 11 TRUSTEE'S THIRD AMENDED JOINT PLAN

Before this court is a request by the Chapter 11 Trustee (herein so called) for final approval of the adequacy of a disclosure statement and for confirmation of his Third Amended

Joint Plan of Reorganization,[1] as amended, modified or supplemented (the "Plan"), for the two above-referenced debtors: (1) Acis Capital Management, L.P. (the "Debtor-Acis"), a Delaware limited partnership, and (2) Acis Capital Management GP, LLC, a Delaware limited liability company (the general partner of the Debtor-Acis; collectively, the "Debtors"). The two chapter 11 cases have been administratively consolidated.[2]

The hearing on these matters transpired over multiple days in December 2018, and the court considered the testimony of more than a dozen witnesses, more than 700 exhibits, and hundreds of pages of legal briefing. Based on the foregoing, the court ***overrules all objections*** and will confirm the Plan, including all proposed modifications to it. The Chapter 11 Trustee has demonstrated, by a preponderance of the evidence, that the Plan, as modified, satisfies the applicable provisions of the Bankruptcy Code including but not limited to Sections 1122, 1123, 1127, and 1129 of the Bankruptcy Code.[3] The court also approves on a final basis the adequacy of the accompanying disclosure statement to the Plan, determining that it meets the requirements set forth in Section 1125 of the Bankruptcy Code. Notice and solicitation with respect to the

[1] Exhs. 508 & 509; *see also* DE ## 660, 661, 693, 702, & 769. References to "DE # __" from time to time in this ruling relate to the docket number at which a pleading or other item appears in the docket maintained in these administratively consolidated Bankruptcy Cases, in Case # 18-30264.

[2] Note that the Debtor-Acis is, essentially, the debtor that is the operating company. As a general partner, Acis Capital Management GP, LLC is legally obligated on all of the operating company's debt. *See* 6 Del. C. § 17-403(b) ("Except as provided in this chapter, a general partner of a limited partnership has the liabilities of a partner in a partnership that is governed by the Delaware Uniform Partnership Law in effect on July 11, 1999 (6 Del. C. § 1501 et seq.) to persons other than the partnership and the other partners."); *see also* 6 Del. C. § 15-306(a) ("(a) Except as otherwise provided in subsections (b) and (c) of this section, all partners are liable jointly and severally for all obligations of the partnership unless otherwise agreed by the claimant or provided by law"). The Plan jointly addresses both of the Debtors' debts.

[3] *Heartland Fed. Sav. & Loan Ass'n v. Briscoe Enters. (In re Briscoe Enters.)*, 994 F.2d 1160, 1165 (5th Cir. 1993); *In re Sears Methodist Ret. Sys.*, No. 14-32821-11, 2015 Bankr. LEXIS 709, at *8 (Bankr. N.D. Tex. Mar. 5, 2015); *In re Couture Hotel Corp.*, 536 B.R. 712, 732 (Bankr. N.D. Tex. 2015); *In re Mirant Corp.*, No. 03-46590, 2007 Bankr. LEXIS 4951, at *19-20 (Bankr. N.D. Tex. Apr. 27, 2007).

Plan is determined to have complied with the applicable Bankruptcy Rules and due process. The court provides reasoning for its ruling below. The court directs the Chapter 11 Trustee to submit to the court for signing the proposed Findings of Fact and Conclusions of Law and Order that were filed at DE # 814. This Bench Ruling supplements those Findings of Fact and Conclusions of Law and Order and, where appropriate, should be considered additional findings and conclusions as contemplated by Fed. R. Bankr. Proc. 7052.

I. Background.[4]

The above-referenced bankruptcy cases (the "Bankruptcy Cases") have been pending since January 30, 2018 and have been astonishingly contentious. The Chapter 11 Trustee has been in place since on or about May 14, 2018. The Plan (which is the fourth one proposed by the Chapter 11 Trustee) has been objected to by three related entities: (a) Highland Capital Management, L.P. ("Highland"), (b) Highland CLO Funding Ltd. ("HCLOF Guernsey"), and (c) Neutra, Ltd. ("Neutra Cayman"). The Chapter 11 Trustee loosely refers to these three objectors (the "Objectors") as "the Highlands" because they are not only related to each other (*i.e.,* they are all, directly or indirectly, part of the Highland 2,000-member corporate organizational structure), but they also have been in "lockstep" with one another in objecting to virtually every position taken by the Chapter 11 Trustee during the Bankruptcy Cases.[5] These Objectors' parties-in-interest status will be explained below.

[4] For a complete set of background facts, the court incorporates herein by reference its Findings of Fact and Conclusions of Law in Support of Orders for Relief Issued After Trial on Contested Involuntary Petitions, entered April 13, 2018. DE # 118. Exh. 243.

[5] It is also undisputed that, prior to the appointment of the Chapter 11 Trustee, ***the Debtors*** and Highland were affiliated and had a close relationship. Exhs. 17, 18, 22-27, 251, 619 & 649.

In simplest terms, the Debtor-Acis, which was formed in the year 2011, is primarily a CLO portfolio manager. [6] It manages hundreds of millions of dollars' worth of CLOs (which is an acronym for "collateralized loan obligations"). Specifically, it provides fund management services to various special purpose entities that hold CLOs. The Debtor-Acis was providing management services for five such special purpose entities (the "Acis CLOs") as of the time that it and its general partner were put into the involuntary Bankruptcy Cases. The parties have informally referred to the special purpose entities themselves as the "CLO Issuers" or "CLO Co-Issuers" but, to be clear, these special purpose entities (hereinafter, the "CLO SPEs") are structured as follows: (a) on the asset side of their balance sheets, the entities own pieces of senior debt owed by large corporations and, therefore, earn revenue from the variable interest payments made by those corporations on such senior debt; and (b) on the liability side of their balance sheets, the entities have obligations in the form of notes (*i.e.*, tranches of fixed interest rate notes) on which the CLO SPEs themselves are obligated—the holders of which notes are mostly institutions and pension funds (these tranches of notes are usually rated anywhere from Triple A to Single B, depending upon things such as their interest rate and perceived risk). The CLO SPEs make a profit, based on the spread or "delta" between: (a) the variable rates of interest paid on the assets that the CLO SPEs own (*i.e.*, the basket of senior notes); and (b) the fixed rates of interest that the CLO SPEs must pay on their own tranches of debt. At the bottom of the CLO SPEs' capital structure is their equity (sometimes referred to as "subordinated notes," but these "notes" are genuinely equity). As portfolio manager, the Debtor-Acis manages the CLO SPEs' pools of assets (by buying and selling senior loans to hold in the CLO SPEs'

[6] The Debtor-Acis has managed other funds, from time to time, besides CLOs.

portfolios) and communicates with investors in the CLO SPEs. The CLO SPEs' tranches of notes are traded on the Over-the-Counter market.

To be perfectly clear, none of the CLO SPEs themselves are in bankruptcy. This has never been threatened or a concern. Only the Debtor-Acis which ***manages*** the CLO business is in bankruptcy. For the most part, the CLO SPEs have continued somewhat "business as usual" during the Chapter 11 Bankruptcy Cases (*i.e.*, they have continued to receive interest payments on their baskets of loans; the usual interest payments on their tranches of debt have been paid;[7] and baskets of loans have been bought and sold from time to time). The CLO SPEs have retained their own separate counsel during the Chapter 11 cases, have appeared from time-to-time on matters, and are not currently objecting to the Plan. There is also an indenture trustee (U.S. Bank National Association) for the CLO SPEs' debt, that has seemingly faithfully carried on its role during the Chapter 11 Bankruptcy Cases without many objections to the bankruptcy process—only making occasional statements aimed at ensuring that the indentures for the CLOs are not interfered with or disrespected. The indenture trustee has retained and appeared through its own separate counsel during the Chapter 11 Bankruptcy Cases and is not currently objecting to the Plan.

Historically, the Debtor-Acis has had four main sets of contracts that were at the heart of its business and allowed it to function. The Chapter 11 Trustee has from time-to-time credibly

[7] The evidence reflected that there have been a couple of occasions recently when there were insufficient funds to make distributions to the equity. *E.g.*, Transcript 12/11/18 (PM) [DE # 790], at p. 15 (line 2) through p. 16 (line 18). But it appears to this court that these missed distributions were due to actions of Highland—as later explained herein—in improperly, surreptitiously attempting to liquidate the Acis CLOs, from the time period after the Chapter 11 Trustee was appointed, until the bankruptcy court issued an injunction to temporarily halt Highland's actions. *E.g.*, Transcript 12/11/18 (AM) [DE # 789], p. 67 (line 14) through p. 68 (line 6).

testified that these agreements essentially created an "eco-system" that allowed the Acis CLOs to be effectively and efficiently managed by the Debtor-Acis.

1. The PMAs with the CLO SPEs.[8]

First, the Debtor-Acis has various portfolio management agreements (the "PMAs") ***with the CLO SPEs***, pursuant to which the Debtor-Acis earns management fees. The PMAs have been the primary "assets" (loosely speaking) of the Debtor-Acis (to be more precise, the PMAs are executory contracts pursuant to section 365 of the Bankruptcy Code). They are what generate revenue for the Debtor-Acis.

2. The Sub-Advisory Agreement with Highland.[9]

Second, the Debtor-Acis had a Sub-Advisory Agreement (herein so called) with an insider, ***Highland*** (*i.e.*, one of the Objectors). Highland's "insider" status will be further explained below. Pursuant to this agreement, the Debtor-Acis essentially sub-contracted for the use of Highland front-office personnel/advisors to perform management services for the Debtor-Acis (*i.e.*, so that the Debtor-Acis could fulfill its obligations to the CLO SPEs under the PMAs). The Debtor-Acis paid handsome fees to Highland pursuant to this agreement. This, too, was an executory contract pursuant to section 365 of the Bankruptcy Code. As explained below, this agreement was rejected (with bankruptcy court approval)[10] by the Chapter 11 Trustee during the Bankruptcy Cases, when the Chapter 11 Trustee credibly represented that he had not only found resources to provide these services at a much lower cost to the estate, but he also had begun to

[8] Exhs. 6-10.

[9] Exh. 17.

[10] *See* 11 U.S.C. § 365(a).

believe that Highland was engaging in stealth efforts to liquidate the Acis CLOs, to the detriment of the Debtor-Acis's creditors.[11]

3. The Shared Services Agreement with Highland.[12]

Third, the Debtor-Acis also had a Shared Services Agreement (herein so called) with Highland, pursuant to which the Debtor-Acis essentially sub-contracted for the use of Highland's back-office services (again, so that the Debtor-Acis could fulfill its obligations to the CLO SPEs under the PMAs). To be clear, the Debtor-Acis had no employees of its own—only a couple of officers and members. The Debtor-Acis paid handsome fees to Highland for the personnel and back-office services that Highland provided to the Debtor-Acis. This, too, was an executory contract pursuant to section 365 of the Bankruptcy Code. As explained below, this agreement was also rejected by the Chapter 11 Trustee during the Bankruptcy Cases (with bankruptcy court approval) for the same reasons that the Sub-Advisory Agreement with Highland was rejected.

4. The Equity PMA.[13]

Fourth, until a few weeks before the Bankruptcy Cases were filed, the Debtor-Acis also had yet another portfolio management agreement (distinct from its PMAs with the CLO SPEs) whereby the Debtor-Acis provided services not just to the CLO SPEs themselves, but separately to the equity holder in the CLO SPEs. This portfolio management agreement with the equity holder in the CLO SPEs is sometimes referred to by the parties as the "ALF PMA," but it would probably be easier to refer to it as the "Equity PMA" (for ease of reference, the court will refer to

[11] *See* Transcript 12/11/18 (AM) [DE # 789], at p. 48 (line 15) through p. 49 (line 16); p. 50 (line 12) through p. 52 (line 7).

[12] Exh. 18.

[13] Exh. 11.

it as the "Equity/ALF PMA"). [14] The Debtor-Acis did not earn a specific fee pursuant to the Equity/ALF PMA, but the Chapter 11 Trustee and certain of his witnesses credibly testified that the Debtor-Acis considered the agreement valuable and very important, because it essentially gave the Debtor-Acis the ability to control the whole Acis CLO eco-system—in other words, gave the Debtor-Acis the ability to make substantial decisions on behalf of the CLO SPEs' ***equity***—distinct from making decisions for the CLO SPEs themselves pursuant to the PMAs. The more credible evidence before the court suggests that the Equity/ALF PMA delegated to the portfolio manager (*i.e.*, the Debtor-Acis) the right to control the terms of any liquidation of collateral in an optional redemption under the terms of the CLO indentures.[15] In any event, shortly before the Bankruptcy Cases were filed, agents of Highland and/or others controlling the Debtor-Acis (including but not limited to Mr. James Dondero—the chief executive officer of both the Debtor-Acis and of Highland): (a) caused the Debtor-Acis to terminate this Equity/ALF PMA (notably, the counter-party to this agreement, the equity owner, would have only been able to terminate it "for cause"[16]); and (b) then caused the equity owner to enter into a new Equity PMA with a newly formed offshore entity called Highland HCF Advisor, Ltd. ("Highland HCF").[17] Mr. Dondero, in addition to being the chief executive of Highland and the Debtor-Acis, also became the president of the newly formed Highland HCF.[18] The Equity/ALF PMA

[14] There were actually different iterations of the Equity/ALF PMA including one dated August 10, 2015, and another dated December 22, 2016.

[15] Transcript 12/18/18 [DE # 804], at pp. 77-78. *See also* Exh. 11 at §§ 5 and 6.

[16] The Equity/ALF PMA provided that the Debtor-Acis could only be removed as portfolio manager "for cause" at § 14(a)-(e). Exh. 11. On the contrary, the Debtor-Acis could terminate the Equity/ALF PMA without cause upon at least ninety (90) days' notice, pursuant to § 13(a)-(c). Exh. 11.

[17] Exh. 23 (testimony of Scott Ellington), p. 175 (lines 6-25); *see also* Transcript 12/11/18 (AM) [DE # 789], at p. 54 (line 11) through p. 55 (line 5).

[18] *Id.* at p. 266 (lines 1-4).

would have been an executory contract of the Debtor-Acis, pursuant to section 365 of the Bankruptcy Code, if it had not been terminated shortly before the Bankruptcy Cases. The court has heard credible testimony that leads it to conclude that the Equity/ALF PMA would have been assumed by the Debtor-Acis, pursuant to section 365 of the Bankruptcy Code, if not terminated by agents of Highland on the eve of bankruptcy. The court has heard credible testimony that it is important for a portfolio manager to have not only the PMAs with the CLO SPEs themselves, but also with the equity owners of the CLO SPEs.

II. A Few More Basics About CLOs.

In the world of CLOs (like other public debt instruments) there are occasionally redemptions, refinancings, and resets. A redemption is essentially when the equity in the CLO, before maturity, calls for the liquidation of the collateral in the CLO and the repayment of the tranches of notes, so that the CLO comes to an end. A refinancing is when a lower interest rate can be accomplished in the market place on the tranches of debt of the CLO, but the maturity date and other terms remain in place (similar to a refinancing on a home mortgage). This can happen typically after a two-year non-call period. A reset is when the maturity date, the reinvestment period, or other changes in the terms of a CLO (beyond simply interest rate) are accomplished.[19]

It should be noted that the top tranche of notes in the CLO SPEs (AAA-rated) is considered the "controlling" class, and a majority of holders in this class can terminate the CLO manager (*i.e.*, the Debtor-Acis LP) for cause on 45 days' notice, but these folks have apparently been content to ignore the Bankruptcy Cases and the fighting between the Debtor-Acis and

[19] *See generally* Transcript 2/9/2018 [DE # 26], at p. 74-75.

Highland (as further described below)—no doubt because they are earning their fixed income stream without a hitch. And the bottom tranche of "notes" in the CLO SPEs (the equity) has voting rights and is a capital provider and, in certain ways, controls the CLO SPEs, by virtue of having the ability to make a redemption call after a certain "no-call" period—which would force a liquidation of the basket of loans in the CLO, with the proceeds paying down the tranches of notes, starting at the top with the Triple A's. But, by virtue of the Equity/ALF PMA, the Debtor-Acis was really acting for the equity. It seems substantially likely to the court that this is why Highland and its agents caused the Debtor-Acis to terminate the Equity/ALF PMA (which, as mentioned above, was an agreement that the equity could have only terminated "for cause"—and it appears there would have been no "cause").

III. The Non-Insider Creditors.

The Debtor-Acis does not have many creditors. The non-insider creditors are, for the most part, Joshua Terry ("Mr. Terry") and a few vendors (most of which are law firms).

Mr. Terry commenced the Bankruptcy Cases with the filing of involuntary bankruptcy petitions. Mr. Terry was the human being who formerly, quite successfully served as the portfolio manager for the Debtor-Acis for many years. Mr. Terry was terminated under contentious circumstances on June 9, 2016, after getting into disagreements with Mr. Dondero. Mr. Terry was technically an employee of Highland itself (like all employees are, in the Highland family of companies—no matter which subsidiary or affiliate they work for). After his employment termination, Highland sued Mr. Terry in September 2016. Mr. Terry asserted claims back against Highland and both of the above-referenced Debtors. The litigation was referred to arbitration, and, after a ten-day arbitration trial in September 2017 before "JAMS," Mr. Terry obtained an Arbitration Award (herein so called), on October 20, 2017, jointly and

severally, against both of the Debtors in the amount of $7,949,749.15, plus post-award interest at the legal rate. A Final Judgment (the "Terry Judgment") confirming the Arbitration Award was entered on December 18, 2017, in the same amount as that contained in the Arbitration Award—$7,949,749.15.

Mr. Terry commenced the Bankruptcy Cases when he became concerned that the Debtor-Acis was being rendered insolvent and unable to pay creditors including himself, due to actions undertaken by Highland and its agents immediately after entry of the Arbitration Award (*e.g.*, transfers of assets, contracts, and business away from the Debtor-Acis).

The Debtor-Acis also is obligated on large administrative expense claims, since: (a) a Chapter 11 Trustee was appointed very early—due to what the bankruptcy court perceived to be massive conflicts of interest with regard to the Debtors' management; and (b) the Objectors have opposed virtually every action taken by the Chapter 11 Trustee during the Bankruptcy Cases, resulting in many long hearings.

IV. The Objectors (all of which are "Insiders").

There are no non-insider creditors objecting to the Plan. Mr. Terry supports the Plan. The CLO SPEs and Indenture Trustee do not oppose the Plan. None of the vendors oppose the Plan. The U.S. Trustee is not opposing the Plan. As a technical matter, two impaired classes of creditors voted to accept the Plan.[20] ***So who are the Objectors to the Plan (which Plan will be further described below) and what is their party-in-interest status here?***

As earlier mentioned, the Objectors are: (a) Highland, (b) HCLOF Guernsey, and (c) Neutra Cayman. As noted earlier, the Chapter 11 Trustee frequently refers to them collectively as "The Highlands"—but the Objectors do not like this conflation. At one time Highland and

[20] Classes 2 and 3. *See* Exh. 613.

HCLOF Guernsey had the same lawyers. They do not anymore. However, they frequently file joint pleadings and take the same positions. Highland and Neutra Cayman do still have the same lawyers.

1. Highland.

Highland is a Dallas, Texas-based company that is a Registered Investment Advisor. Highland was founded in 1993 by Mr. Dondero, originally with a 75% ownership interest, and Mark K. Akada ("Mr. Akada"), originally with a 25% ownership interest. As mentioned earlier, Mr. Dondero is the chief executive of Highland. Highland, through its organizational structure of approximately 2,000 separate business entities, manages approximately $14-$15 billion of investor capital in vehicles including CLOs, private equity funds, and mutual funds. Highland provides employees to entities in the organizational structure, such as it did with the Debtor-Acis, through the mechanism of shared services agreements and sub-advisory agreements (as mentioned above). ***Notably, Highland's chief executive, Mr. Dondero, served as the President of the Debtor-Acis at all relevant times prepetition***.[21] Highland claims to be a large creditor of the Debtor-Acis for services provided to the Debtor-Acis under the Shared Services Agreement and the Sub-Advisory Agreement. The Chapter 11 Trustee disputes these claims and has asserted numerous claims back against Highland in an adversary proceeding (the "Highland Entities Adversary Proceeding").

In any event, Highland is a ***disputed insider creditor***. It is an "insider," as contemplated by Bankruptcy Code section 101(31)(C), because it, beyond any shadow of a doubt, controlled the Debtor-Acis until these Bankruptcy Cases developed to the point of having a Chapter 11

[21] One witness, Hunter Covitz, referred to the Debtor-Acis as the "structured credit arm of Highland." Transcript 12/13/18 (AM) [DE # 793], at p. 57.

Trustee take charge of the Debtor-Acis. Highland does not seem to dispute that it is an insider.[22] But, for the avoidance of doubt, Highland should be considered an insider of the Debtor-Acis for at least the following reasons: (a) the same human being (Mr. Dondero) was president of the Debtor-Acis and was the chief executive of Highland; (b) Highland's General Counsel, Scott Ellington, testified that Mr. Dondero controlled them both;[23] and (c) Highland provided the Debtor-Acis with employees and management services pursuant to the Sub-Advisory Agreement and Shared Services Agreement.[24]

Additionally, the court believes that the Chapter 11 Trustee made a convincing argument in connection with Plan confirmation (and his justification for the separate classification of Highland's claim in the Plan from other general unsecured creditors) that Highland should also be regarded as a "competitor" of the Debtor-Acis at this juncture, since they are both in the fund management business and Highland's control over the Debtor-Acis has now been divested. Highland's competitor status, in addition to its insider status, warrants additional scrutiny of its

[22] Under section 101(31) of the Bankruptcy Code, an insider includes certain enumerated parties, such as an officer of the debtor, affiliate, *etc.* Further, the list of enumerated "insiders" is not exclusive or exhaustive. *See Wilson v. Huffman (In re Missionary Baptist Foundation of Am., Inc.),* 712 F.2d 206, 210 (5th Cir. 1983). Recently, the United States Supreme Court stated: "Courts have additionally recognized as insiders some persons not on that [101(31)] list—commonly known as 'nonstatutory insiders.' The conferral of that status often turns on whether the person's transactions with the debtor (or another of its insiders) were at arm's length." *U.S. Bank N.A. v. Vill. at Lakeridge, LLC*, 138 S. Ct. 960, 963 (2018). The Fifth Circuit has noted that "cases which have considered whether insider status exists generally have focused on two factors in making that determination: (1) the closeness of the relationship between the parties and (2) whether the transaction . . . [was] conducted at arm's length." *Browning Interests v. Allison* (*In re Holloway)*, 955 F.2d 1008, 1011 (5th Cir. 1992).

[23] *E.g.*, Exh. 23, at pp. 160 (line 15) through 161 (line 4); p. 196 (lines 14-19); p. 219 (lines 1-21).

[24] *See* 11 U.S.C. §§ 101(2)(D); (31)(C)(5). The court notes that, although Highland has, from time to time, alleged that Mr. Terry is a "non-statutory insider" of the Trustee, it has never put on any credible evidence to support this contention.

motivations in objecting to the Plan. More importantly, it provides a sound legal and business justification for separately classifying its claim in the Plan.

2. HCLOF Guernsey.

The second Objector, HCLOF Guernsey, is an entity formed in the island nation of Guernsey. It has two allegedly independent Directors from Guernsey who have provided testimony in connection with confirmation of the Plan. It was enormously clear to the court (as will be elaborated upon below) that the two Directors of HCLOF Guernsey are—stated in the kindest way possible—mere "figureheads" for HCLOF Guernsey and they defer to Highland ***entirely*** to tell them what to do, what to say, and when. In any event, HCLOF Guernsey is the owner of the equity in the CLO SPEs (as earlier mentioned, this equity is sometimes referred to as the "subordinated notes" in the CLO SPEs). According to HCLOF Guernsey's 2017 Annual Report and Audited Financials, all of its subordinated notes issued by the Acis CLOs are physically held at and are pledged to HCLOF Guernsey's lender, NexBank, which happens to be a Dallas bank that is an affiliate of Highland.[25] HCLOF Guernsey was created in the year 2015 and was formerly known as "ALF."[26] Its name was changed on October 30, 2017 (ten days after Mr. Terry's Arbitration Award was entered), to allegedly distance itself from the Debtor-Acis. The equity owner HCLOF Guernsey, in turn, has three equity owners: (i) a 49% equity owner that is a charitable fund (*i.e.*, a donor advised fund or "DAF") that was seeded with contributions from ***Highland***, is managed/advised by ***Highland***, and whose ***independent trustee is a long-time friend of Highland's chief executive officer, Mr. Dondero***; (ii) 2% is owned by ***Highland employees***; and (iii) a 49% equity owner that is a third-party institutional investor based in

[25] Exh. 647.

[26] "ALF" is short-hand for Acis Loan Funding, Ltd.

Boston, Massachusetts that only recently invested in HCLOF Guernsey (*i.e.*, in November 2017, just after the Terry Arbitration Award was issued), and desires to remain passive and anonymous (hereinafter, the "Passive Investor").[27] Notably, the Debtor-Acis itself owned a small percentage of HCLOF Guernsey, in addition to providing management services to it, until October 24, 2017 (four days after the Terry Arbitration Award was issued).

The court has allowed HCLOF Guernsey to vigorously participate in the confirmation hearing (and other hearings during the Bankruptcy Cases), although its party-in-interest status has been questionable. So how is HCLOF Guernsey a party-in-interest? The answer is a bit of a stretch—but the court has decided it is impacted by the Plan, so it should have the right to object. Its party-in-interest status has evolved during the Bankruptcy Cases.

First, early on in these Bankruptcy Cases, HCLOF Guernsey (together with Highland) sued the Chapter 11 Trustee in the above-mentioned "Highland Entities Adversary Proceeding"—mostly, if not entirely, seeking injunctive relief. At that point, the Chapter 11 Trustee treated HCLOF Guernsey as a disputed creditor,[28] since it was seeking equitable relief that could arguably be monetized.[29] However, HCLOF Guernsey subsequently withdrew its requests for relief in that Highland Entities Adversary Proceeding. But then, the Chapter 11 Trustee subsequently filed claims ***against*** HCLOF Guernsey in the Highland Entities Adversary Proceeding (along with his claims against Highland and a couple of other Highland entities) asserting avoidance actions and other causes of action against HCLOF Guernsey (among other

[27] The testimony was that the Passive Investor committed to a $150 million investment ($75 million immediately and $75 million callable over the next several years).

[28] In fact, on August 15, 2018, the Chapter 11 Trustee filed a proof of claim on behalf of HCLOF Guernsey. HCLOF Guernsey has since objected to the proof of claim.

[29] *See* 11 U.S.C. §§ 101(5)(B) & 101(10).

things, the Chapter 11 Trustee alleged that HCLOF Guernsey schemed with Highland to terminate the Equity/ALF PMA, in a step toward systematically dismantling the Debtor-Acis of its value). Thus, HCLOF Guernsey may ultimately owe money to this estate. But most importantly, HCLOF Guernsey should be deemed a party-in-interest because of a proposed temporary injunction in the Plan that essentially would enjoin (for a finite, defined period) HCLOF Guernsey from exercising certain of its rights with regard to its equity in the CLO SPEs, pending resolution of the Highland Entities Adversary Proceeding. This temporary injunction in the Plan, directed towards HCLOF Guernsey and affiliates, will be further described below.

3. Neutra Cayman.

Neutra Cayman is a Cayman island exempted company that is the equity owner ***of the Debtor-Acis itself*** (in contrast to HCLOF Guernsey, which only owns equity in the CLO SPEs). Neutra Cayman only acquired its equity interest in the Debtor-Acis the day after the Terry Judgment was entered (on December 18, 2017), and for no consideration, from the Dugaboy Investment Trust (a family trust on which Mr. Dondero's sister is named trustee, that previously owned 74.9% of the Debtor-Acis) and from Mr. Akada (who previously owned 25% of the Debtor-Acis).[30] The court concludes that Neutra Cayman has standing to object to the Plan,

[30] The court is repeatedly referring to the Debtor-Acis but, to be clear, there are two consolidated Debtors: Acis Capital Management, L.P. ("Acis LP") and Acis Capital Management GP, LLC ("Acis GP/LLC"). *See* note 2, *supra*. When Acis LP was first formed, it was owned by one general partner (Acis GP/LLC, with a .1% interest) and it had three limited partners: (a) the Dugaboy Investment Trust (a Dondero family trust of which either Mr. Dondero or his sister, Nancy Dondero, have been the trustee at all relevant times) with a 59.9% interest; (b) Mr. Terry with a 25% interest; and (c) Mr. Akada with a 15% interest. When Acis GP/LLC was formed (*i.e.*, the .1% owner of Acis LP), its sole member was the Dugaboy Investment Trust. After Mr. Terry was terminated by Highland, his 25% limited partnership interest in Acis LP was forfeited and divided among the two remaining limited partners: Mr. Akada (increasing his interest by 10% up to 25%), and the Dugaboy Investment Trust (increasing its interest by 15% up to 74.9%). But, most importantly, on the day after entry of Mr. Terry's Final Judgment (*i.e.*, on December 18, 2017), both Mr. Akada and the Dugaboy Investment Trust conveyed their entire limited partnership interests in Acis LP—25% and 74.9%, respectively—to Neutra Cayman. The Dugaboy Investment Trust also conveyed its 100% membership interest in Acis GP/LLC to Neutra Cayman.

since it is an equity owner of the Debtors (albeit only having acquired its equity about a month before the bankruptcy). As with HCLOF Guernsey, the court also concludes that Neutra-Cayman is absolutely, beyond any reasonable doubt, controlled by Highland, as explained further below.

V. The Plan.

The Plan is fairly simple, considering the complexity of the business and the relationships, and the contentiousness of the Bankruptcy Cases. Again, there aren't many creditors.

The Plan proposes[31] that the Debtor-Acis, as a "Reorganized Debtor," will continue with the business operations of the Debtors after the Effective Date[32] of the Plan. Specifically, the Debtor-Acis will assume, pursuant to section 365 of the Bankruptcy Code, its CLO PMAs and continue to serve as the portfolio manager to the CLO SPEs (and as to any resets of the CLOs therein). The Reorganized Debtor will continue to earn fees and will pay claims from post-Effective Date income as provided in the Plan. The Reorganized Acis will actively pursue additional fund management contracts. Again, there is no objection by the CLO SPEs to the Plan, and the indenture trustee on the tranches of CLO notes has no objection.

Mr. Terry (again, the former human manager of the Debtor-Acis and also the largest creditor) shall receive 100% of the equity interests in the Reorganized Debtor, in exchange for a negotiated $1 million reduction in his partially secured claim.[33] The remainder of his claim will

[31] This is merely a high-level summary of the Plan. The Plan terms, as modified, shall in all ways govern, not this summary.

[32] The "Effective Date" is defined, essentially, as the first business day which is fourteen (14) days after entry of an order confirming the Plan, if the confirmation order is not stayed.

[33] Mr. Terry has asserted partial secured status as to his claim in the proofs of claim he has filed in these cases. The Chapter 11 Trustee credibly testified that there was no other logical party to take the equity of

be treated as an unsecured claim. Each unsecured creditor will receive on the Plan Effective Date an unsecured cash flow note in the full amount of its claim, which notes will mature three years after the Effective Date of the Plan, with equal quarterly payments of principal and interest, at 5% interest per annum. These cash flow notes are expected to yield payment in full (actually 102%) to the unsecured creditors.[34]

As for the sub-advisory and shared services agreements with Highland, as noted earlier, the Chapter 11 Trustee, with bankruptcy court approval, has already (as of August 2018) rejected these during the Bankruptcy Cases, pursuant to section 365 of the Bankruptcy Code. The Chapter 11 Trustee caused the Debtor-Acis to subsequently contract, with bankruptcy court approval, with a different entity, Brigade Capital Management, L.P. ("Brigade"), to provide the sub-advisory and shared services going forward, for a minimum two-year term (unless the Reorganized Debtor and Brigade otherwise agree), at a much cheaper cost than Highland.[35] Thus, Brigade will provide sub-servicing and sub-advisory services to the Reorganized Debtor.

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the Reorganized Debtor, at this juncture, and that he had negotiated this reduction to Mr. Terry's secured claim, and he thought it was justified by the circumstances of this case. While the Objectors have argued that the secured status of Mr. Terry's claim may be subject to challenge under section 547(b) of the Bankruptcy Code, section 547(b) is discretionary (*e.g.*, a "trustee may avoid any transfer" that might be avoidable as a preference). The Chapter 11 Trustee credibly emphasized that this was negotiated treatment of an asserted secured claim, and he had no "exclusivity" on proposing a plan if someone else had wanted to propose something different. Transcript 12/11/18 (AM) [DE # 789], at p. 70 (line 3) through p. 71 (line 2).

[34] Insider claims—namely Highland—are separately classified from general unsecured claims under the Plan. To the extent such claims are ultimately allowed (after any allowed defenses and offsets), and to the extent such claims are not equitably subordinated by Bankruptcy Court adjudication, these claims will receive the same treatment as other general unsecured claims (cash flow notes). To the extent any of these claims are ultimately allowed but equitably subordinated, they will receive subordinated promissory notes, accruing interest at 5% per annum, that will not be payable until all non-subordinated claims have been paid in full (they will have maturity dates to occur on the earlier of: (i) the date that is two years after the date all Unsecured Cash Flow Notes have been paid in full, or (ii) five years after the Effective Date). The expected recovery under the Plan for the insider claims is from 65% to 100%.

[35] An entity named Cortland Capital Markets Services LLC ("Cortland") is actually providing some of the back-office shared services agreement type functions.

As for the Equity/ALF PMA, it is not an agreement with the Debtor-Acis anymore to either be assumed or rejected, pursuant to section 365. However, in the Highland Entities Adversary Proceeding, the Chapter 11 Trustee seeks to avoid the termination of the Equity/ALF PMA. Pursuant to the Plan, the Reorganized Debtor will be vested with certain Assets of the Debtors, including Estate Claims and Estate Defenses, to be administered and liquidated by the Reorganized Debtor.

1. The Highland Entities Adversary Proceeding (Adv. Proc. No. 18-03212).

Suffice it to say that the Highland Entities Adversary Proceeding is a somewhat significant part of the Plan; it is what justifies the temporary injunction that is a critical part of the Plan. With regard to the Highland Entities Adversary Proceeding, the Defendants in it (there are five of them) are: (i) Highland; (ii) HCLOF Guernsey; (iii) Highland HCF (*i.e.*, the Cayman Island entity that was recently formed to essentially replace the Debtor-Acis under the Equity/ALF PMA); (iv) Highland CLO Management, Ltd. ("Highland Management") (an entity registered in the Cayman Islands on October 27, 2017—seven days after Mr. Terry's Arbitration Award); and (v) Highland CLO Holdings, Ltd. (yet another entity incorporated in the Cayman Island on October 27, 2017). The Highland Entities Adversary Proceeding is essentially a multi-faceted fraudulent transfer action. The statutory predicates for the relief sought are sections 502, 542, 544, 547, 548, and 550 of the Bankruptcy Code and Texas Business & Commerce Code § 24.001 et seq. ("TUFTA").

Distilled to its essence, the Highland Entities Adversary Proceeding argues that Highland, along with its related Co-Defendants, ***orchestrated a systematic transfer of value away from the Debtor-Acis to other Highland entities*** (all of those transferee-entities are offshore entities—whereas the Debtor-Acis is a Delaware entity), beginning almost immediately after Mr. Terry

was terminated in June 2016, and continuing on during Mr. Terry's litigation/arbitration with the Debtor-Acis, and then rapidly unfolding after the Arbitration Award. This was allegedly done to denude the Debtor-Acis of value and make the Debtors "judgment proof." This was allegedly also done to ensure that the Debtor-Acis's very valuable business as portfolio manager would be taken over by other Highland entities and remain under Highland's and Mr. Dondero's control.[36]

The evidence is rather startling on this point. Among other things, pursuant to amendments made to the Debtor-Acis's Sub-Advisory Agreement and Shared Services Agreements with Highland, starting soon after Mr. Terry was terminated, the fees owed by the Debtor-Acis to Highland under these agreements shot up to an enormously higher level. Then, in April 2017, a new CLO was issued (or actually a former Acis CLO was reset) and a new Highland-affiliated Cayman Island entity was ultimately put in place to manage it instead of the Debtor-Acis (even though the Debtor-Acis managed all other CLOs in the Highland corporate empire). Numerous other transactions were undertaken through the Fall of 2017, removing assets and agreements away from the Debtor-Acis. For example, a multi-million dollar note receivable owed to the Debtor-Acis by Highland was transferred out of the Debtor-Acis,[37] and

[36] Exh. 627.

[37] On November 3, 2017, the Debtor-Acis, Highland, and Highland Management (a newly created, offshore Highland affiliate) entered into that certain Agreement for Assignment and Transfer of Promissory Note (the "Note Assignment and Transfer Agreement"). Exh. 225. The Note Assignment and Transfer Agreement, among other things, transferred a $9.5 million principal amount promissory note executed by Highland and payable to the Debtor-Acis (the "Note"), Exh. 218, from the Debtor-Acis to Highland Management (the "Note Transfer"). The Assignment and Transfer Agreement memorializing this transaction is signed by Mr. Dondero for the Debtor-Acis. The document recites that (i) Highland is no longer willing to continue providing support services to the Debtor-Acis, (ii) the Debtor-Acis, therefore, can no longer fulfill its duties as a collateral manager, and (iii) Highland Management agrees to step into the collateral manager role if the Debtor-Acis will assign the Note to it. Notably, Highland Management was registered in the Cayman Islands on October 27, 2017, roughly a week before the Note Transfer. Thus, Highland Management had no portfolio or collateral management experience whatsoever when it entered the Assignment and Transfer Agreement. To the contrary, it appears Highland Management was an entity that was created specifically to hold the Note and eventually take possession of the CLO PMAs in an international forum that would be difficult for Mr. Terry to reach. The Debtor-

shares in HCLOF Guernsey held by the Debtor-Acis were sold back to HCLOF Guernsey (four days after the Arbitration Award). And then the Equity/ALF PMA was terminated so that the Debtor-Acis would no longer have management-control over HCLOF Guernsey as its portfolio manager—arguably putting Highland in a position to liquidate the Acis CLOs and put the Debtor-Acis out of business. Specifically, on October 27, 2017, just seven days after Mr. Terry's Arbitration Award, the Debtor-Acis ostensibly terminated its own portfolio management rights under the Equity/ALF PMA[38] and transferred its authority and its valuable portfolio management rights—for no value—to Highland HCF, an affiliate of Highland. It appears that the only alleged consideration for these transfers, to the extent there was any, was the satisfaction of purported debts owed to other Highland entities or their representatives.

Acis appears to have received no or insufficient consideration for the Note Transfer. The primary consideration for the Note Transfer was an alleged payable due from the Debtor-Acis to Highland in the approximate amount of $7.5 million for participation fees, which was transferred to Highland Management shortly before the Note Assignment and Transfer Agreement was entered. The validity of the alleged "participation fees" is unknown. The remainder of the consideration for the Note Transfer is a promise to pay certain expenses of the Debtor-Acis, which has apparently never occurred. In any event, it appears highly likely that the Note Transfer took away the Note as an asset from which Mr. Terry could collect his judgment.

[38] As mentioned earlier, the Equity/ALF PMA provided that the Debtor-Acis could only be removed as portfolio manager by the equity owner (now known as HCLOF Guernsey) ***"for cause"*** at § 14(a)-(e). Exh. 11. Meanwhile, the Debtor-Acis could terminate the Equity/ALF PMA without cause upon at least ninety (90) days' notice, pursuant to § 13(a)-(c). Exh. 11. It would appear that these terms were wholly ignored by the persons orchestrating the Equity/ALF PMA termination. It appears that the Debtor-Acis was simply manipulated to consent and agree to its removal and replacement as portfolio manager of HCLOF Guernsey. This transfer of the Debtor-Acis's portfolio management rights to the offshore entity Highland HCF was accomplished by way of a new portfolio management agreement entered into by the equity owner (now known as HCLOF Guernsey) and Highland HCF on October 27, 2017, which empowered Highland HCF with the same broad authority to direct the management of HCLOF Guernsey as was previously held by the Debtor-Acis LP under the Equity/ALF PMA. *See* Exh. 19, October 27, 2017 PMA §§ 1 & 5(a)-(q). This agreement appears to have been further solidified in a second portfolio management agreement dated November 15, 2017. Exh. 215. The Debtor-Acis received no consideration for this transfer.

The Highland Defendants argue that the Equity/ALF PMA (its termination being arguably the most significant transfer referenced in the Highland Entities Adversary Proceeding) did not have value. But the evidence convinces the court that it absolutely did. A witness, Mr. Zachary Alpern, credibly testified that the portfolio manager (under the Equity/ALF PMA) made decisions regarding the underlying financial instruments including seeking an optional redemption and negotiating a reset. Mr. Alpern also credibly testified about the importance, in the CLO industry, of the portfolio manager having control of a CLO's equity to ensure an "evergreen fee stream."[39] Additionally, Mr. Terry also credibly testified that the portfolio manager (not the CLO equity interest holder) has the right to control the terms of the liquidation of collateral in an optional redemption under the terms of the indentures.[40] The Chapter 11 Trustee also credibly testified that the Equity/ALF PMA allowed the Debtor-Acis to have control of an optional redemption.[41] Finally, a witness, Mr. Klein, credibly testified about the value of the Equity/ALF PMA and the negative impact of its transfer on the Debtor-Acis LP. [42]

To be clear, Highland and HCLOF Guernsey have argued in opposition to the Chapter 11 Trustee's position that it is HCLOF Guernsey—the actual equity holder of the CLO SPEs—that had/has the absolute power and authority to control the CLO SPEs' destinies and it is ludicrous to suggest otherwise. However, not only does the Equity/ALF PMA appear to this court to have delegated the relevant power and authority ***to the Debtor-Acis***, but Highland's own expert on this

[39] Exh. 404, Transcript 8/23/18 (AM) at pp. 65-67, 81-93 and Transcript 8/23/18 (PM) at pp. 34-35, 38-40, 46, and 49.

[40] Transcript 12/18/18 [DE # 804], at pp. 77-78. *See also* Exh. 405, Transcript 8/27/18 (AM) at pp. 63-75.

[41] Exh. 405, Transcript 8/27/18 (AM) at p. 53.

[42] Exh. 405, Transcript 8/27/18 (PM) at pp. 143-144, 147-159 and 205-207.

topic, Mr. Castro, testified that the "actual humans" who would make the decision for HCLOF Guernsey as to whether to request an optional redemption of the Acis CLOs were not the HCLOF Guernsey directors but, rather, Highland executives Mr. Dondero, Mr. Okada, and Highland employee Mr. Covitz (acting for Highland HCF).[43] Moreover, Mr. Alpern credibly testified that, before the Terry Arbitration Award, the Debtor-Acis, as the portfolio manager under the Equity/ALF PMA, rather than the HCLOF Guernsey's directors, issued the notices of optional redemption for HCLOF Guernsey.[44]

The court concludes that the Chapter 11 Trustee has demonstrated a likelihood of success on the merits with regard to his claims set forth in the Highland Entities Adversary Proceeding. Therefore, the Temporary Injunction that is part of the Plan is supportable (as further explained below). Of course, the nature and extent of the rights ultimately recovered by the Debtor-Acis will either be determined in the Highland Entities Adversary Proceeding or, as HCLOF Guernsey's own Guernsey expert conceded, in a binding arbitration in Dallas, Texas under the terms of the Equity/ALF PMA.[45]

2. The Plan Injunction.

The most controversial aspect of the Plan—the aspect of it that seems to be the primary focus of the Objectors—is a ***portion*** of an injunction in the Plan (the "Temporary Injunction"). The Temporary Injunction would ***temporarily*** enjoin the following parties ***from effectuating an optional redemption or liquidating the Acis CLOs*** and related actions: (i) Highland; (ii) HCLOF

[43] Exh. 406, Transcript 8/28/18 (PM) at pp. 61-63.

[44] Exh. 404, Transcript 8/23/18 (AM) at pp. 85-89 and Exhs. 323-325 (Notices of Optional Redemption signed by the Debtor-Acis as portfolio manager of HCLOF).

[45] Transcript 12/13/18 (PM) [DE #794], at pp. 116, 118-19, 122, 124 (Corfield); *see also*, p. 140 (McGuffin).

Guernsey; (iii) CLO Holdco, Ltd. (the donor advised fund, seeded with Highland contributions and managed by Highland that owns 49% of HCLOF Guernsey); (iv) Neutra Cayman; (v) Highland HCF (the Cayman Island entity created shortly before the Bankruptcy Cases to replace the Debtor-Acis under the Equity/ALF PMA); (vi) Highland Management (the Highland-created entity that entered into a portfolio management agreement with a new Acis-CLO that was established in 2017); and (vii) any affiliates of Highland and their respective employees, agents, representatives, transferees, assigns, and successors.[46] This Temporary Injunction is proposed to only last until the earlier of when: (a) the creditors of the Debtors are paid in full; (b) resolution of the Highland Entities Adversary Proceeding; (c) a material breach in the Plan; or (d) the bankruptcy court terminates the Temporary Injunction upon request of a party-in-interest. ***Fully consensual resets of the Acis CLOs are permissible if HCLOF Guernsey, as the equity owner in the CLO SPEs, chooses to agree to resets***. The basis for the Temporary Injunction is as follows: The Chapter 11 Trustee has asserted numerous claims in the Highland Entities Adversary Proceeding against Highland, HCLOF Guernsey, and affiliates, including claims to recover the Debtor-Acis's rights under the Equity/ALF PMA.[47] The Temporary Plan Injunction essentially provides for the continuation, after the Effective Date, of injunctive relief that the bankruptcy court previously granted in its Preliminary Injunction Order (the "Preliminary Injunction") [DE # 21 in Adversary No. 18-03212-sgj] entered on July 10, 2018 in the Highland Entities Adversary Proceeding. The Preliminary Injunction was originally set to expire by its

[46] There is another portion of this Plan injunction that is more of a general plan injunction (*i.e.*, very typical) that would prohibit actions against the Debtors, Reorganized Debtor and the Estate Assets, based on acts occurring before the Effective Date, which would be permanent and would not expire upon the occurrence of any event that causes the Temporary Plan Injunction to expire.

[47] *See* Exh. 627, Trustee's Counterclaims and Claim Objection.

own terms upon confirmation of the Plan but would be extended pursuant to an order confirming the Plan, through the Effective Date of the Plan.

As the Fifth Circuit has stated, the four elements to justify a preliminary injunction are (a) substantial likelihood of success on the merits; (b) substantial threat that the plaintiff will suffer irreparable injury; (c) the threatened injury outweighs any harm the injunction might cause the defendant; and (d) the injunction is in the public interest.[48] Each element is present in these cases.

Immediate and Irreparable Harm. The court finds and concludes that the Temporary Injunction is legally permissible, necessary, and appropriate to avoid immediate and irreparable harm to the Reorganized Debtor (*i.e.*, evisceration of the Acis CLOs, by parties with unclean hands, that would have no authority to effectuate a liquidation of the CLOs, absent the prepetition wrongful termination of the Equity/ALF PMA). Mr. Scott, a director of HCLOF Guernsey, testified that, absent the Temporary Plan Injunction, HCLOF Guernsey would call for an optional redemption of the Acis CLOs.[49] The testimony of Ms. Bestwick, the other director of HCLOF Guernsey, also implied that, when the injunction expires, HCLOF Guernsey would redeem the Acis CLOs so that they could once again be managed by Highland.[50] The Chapter 11 Trustee credibly testified that if the Acis CLOs are liquidated, there is nothing for the Debtor-Acis to manage.[51] The Chapter 11 Trustee credibly testified that the Temporary Plan Injunction

[48] *Byrum v. Landreth*, 566 F.3d 442, 445 (5th Cir. 2009); *Women's Med. Ctr. of N.W. Houston v. Bell*, 248 F.3d 411, 419 n.15 (5th Cir. 2001); *Hoover v. Morales*, 164 F.3d 221, 224 (5th Cir. 1998).

[49] Exh. 721, Mr. Scott Depo. at pp. 204.

[50] Exh. 719, Bestwick Depo. at p. 112.

[51] Exh. 405, Transcript 8/27/18 (AM) at p. 40.

is very important because it protects the revenues under the Acis PMAs, which is a source of potential recovery to creditors under the Plan.[52] Mr. Terry credibly testified that the Temporary Plan Injunction is a critical component of the Plan and that the Debtor-Acis would have no going concern value without it. In fact, without the Plan Injunction, Mr. Terry will be precluded from reorganizing the business and paying creditors.[53]

The Objectors have argued that the Chapter 11 Trustee cannot suffer irreparable harm because he has an adequate remedy at law. This argument misses the mark. The destruction of the Debtors' ongoing business, which has the potential to repay creditors under the Plan in two years, constitutes irreparable harm. The fact that the estate possesses a number of avoidance claims for damages against Highland and its affiliates, and could potentially obtain damages on such claims, does not render the destruction of the Debtor-Acis's ongoing business any less harmful. Indeed, according to the Fifth Circuit:

> [T]he mere fact that economic damages may be available does not always mean that a remedy at law is 'adequate.' For example, some courts have found that a remedy at law is inadequate if legal redress may be obtained only by pursuing a multiplicity of actions.[54]

Likelihood of Success on the Merits. The Chapter 11 Trustee has also demonstrated a likelihood of succeeding on the merits in the Highland Entities Adversary Proceeding.

[52] Transcript 12/11/18 (AM) [DE # 789], at pp. 71-72.

[53] Transcript 12/12/18 (AM) [DE # 791], at pp. 40-41, 54-55.

[54] *Janvey v. Alguire*, 647 F.3d 585, 600 (5th Cir. 2011) (citing *Lee v. Bickell*, 292 U.S. 415, 421 (1934) ("we are not in doubt, the multiplicity of actions necessary for redress at law [is] sufficient . . . to uphold the remedy by injunction.")).

The record contains substantial evidence of both intentional and constructive fraudulent transfers with regard to the Equity/ALF PMA and other assets.[55] The numerous prepetition transfers that occurred around the time of and after the Terry Arbitration Award appear more likely than not to have been made to deprive the Debtor-Acis of value and with actual intent to hinder, delay or defraud the Debtors' creditors. Highland's only purported business justifications for the prepetition transfers were that the Passive Investor demanded it and that the Debtor-Acis's brand was toxic in the market place.[56] However, these business justifications were not supported (and, in fact, were contradicted) by the evidence.

Indeed, while representatives of Highland and its affiliates said that the Passive Investor's demands were the reason for the termination (*i.e.*, essentially a "transfer") of the Equity/ALF PMA, the Passive Investor's representative testified that this was untrue and that these alleged demands were never made by the Passive Investor.[57] In fact, the Passive Investor was just that—a passive, minority investor in HCLOF Guernsey with no ability to influence or control any of

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[55] *E.g.*, Exh. 22, Transcript 2/6/18 at pp. 82-109, 130, 202-244, and the exhibits discussed therein; Exh. 201, Transcript 3/21/18 at pp. 110-133 & 186-191; Exh. 24, Transcript 3/22/18 at pp. 71-75 & pp. 204-205; Transcript 12/11/18 [DE # 789], at pp. 52-56; *see also* Transcript 8/27/18 (AM) [DE # 552], at p. 52; Transcript 12/12/18 (PM) [DE # 792], at pp. 92-98;

[56] Highland General Counsel Scott Ellington testified that the Passive Investor said it had no interest in doing business with the Debtor-Acis because the Debtor-Acis brand was purportedly toxic and, consequently, nothing associated with the Debtor-Acis could be managed or marketed as a CLO. Exh. 23, Transcript 2/7/18 at pp. 55-58. Mr. Ellington further testified that the Passive Investor demanded that the Equity/ALF PMA be transferred. Exh. 23, Transcript 2/7/18 at pp. 203-204. Mr. Ellington also testified that, because the Passive Investor would be putting in additional capital in connection with any reset CLOs, it had the ability to "start calling the shots" and dictate the terms of any reset transactions. Exh. 23, Transcript 2/7/18 at p. 226. Additionally, Highland executive Mark Okada testified that a reset transaction could not be performed by the Debtor-Acis because the market would not accept the Debtor-Acis as a portfolio manager and the Debtor-Acis was no longer risk-retention compliant. Exh. 25, Transcript 3/23/18 at p. 53. Additionally, Mr. Dondero testified that the "Boston investor" deal was contingent on getting away from the Debtor-Acis and getting a new collateral manager. Exh. 25, Transcript 3/23/18 at pp. 143-144.

[57] *See* Exh. 720 and excerpts read in to the trial record on 12/11/18 (PM) at pp. 149-157.

the actual investment decisions.[58] The only other business justification Highland and HCLOF Guernsey have suggested for the prepetition transfers was that the Debtor-Acis "was a shell" and not capable of being risk retention compliant.[59] However, Highland portfolio manager Hunter Covitz testified that in October 2017, prior to the Terry Arbitration Award, there was a structure in place that would comply with risk retention.[60] Mr. Covitz could not convincingly distinguish why the "shell" status of the Debtor-Acis was distinguishable from the "shell" status of other Highland-related entities that were the recipients of various fraudulent transfers.[61] Mr. Covitz also subsequently admitted that the Passive Investor did not request that the Debtor-Acis end its involvement with HCLOF Guernsey through the Equity/ALF PMA fraudulent transfer or request that ALF change its name to HCLOF [Guernsey].[62] Mr. Covitz's testimony contradicted the testimony provided by Scott Ellington, General Counsel[63] and Mr. Dondero.[64] And, at bottom, if the Debtor-Acis was a thinly capitalized "shell," it appears to be only because Highland systematically made it that way after the Terry Arbitration Award.

The evidence established overwhelmingly that there is a substantial likelihood that the transfers were part of an intentional scheme to keep assets away from Mr. Terry as a creditor. Highland put on an expert, Mr. Greenspan, who testified that he did not consider whether the

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[58] Exh. 720, Depo. of Passive Investor representative at pp. 32-33.

[59] Transcript 12/13/18 (AM) [DE # 793], at pp. 55-58.

[60] Transcript 12/13/18 (AM) [DE # 793], at pp. 77-78.

[61] Transcript 12/13/18 (AM) [DE # 793], at p. 78; Transcript 12/18/18 [DE # 804], at pp. 59-63.

[62] Transcript 12/13/18 (AM) [DE # 793], at p. 103.

[63] *See* Exh. 23, Transcript 2/7/18 at pp. 177-178.

[64] *See* Ex. 25, Transcript 3/23/28 at pp. 143-44.

Equity/ALF PMA transfer was an "actual" fraudulent transfer, but only considered whether the transfer was "constructively" fraudulent.[65] While Highland has taken the position that termination of the Equity/ALF PMA was not a transfer, Mr. Greenspan testified that the termination of a contract can constitute a transfer and acknowledged that the definition of a transfer in the Bankruptcy Code does not include a value component.[66]

Balance of Harms. The Chapter 11 Trustee has also shown the balance of harms weighs in his and the estates' favor in granting the Plan's Temporary Injunction. The Chapter 11 Trustee is entitled to the Temporary Injunction pending resolution of the claims asserted in the Highland Entities Adversary Proceeding. The Chapter 11 Trustee credibly testified that the Temporary Plan Injunction is important to the Plan, because it allows the cash flow from the CLO management to be collected by the Reorganized Debtor, and that is the source of revenue available at this time to pay creditors.[67] Mr. Terry also credibly testified that the Temporary Plan Injunction is a critical component of the Plan necessary to preserve the Debtors' going concern value and allow the Reorganized Debtor to generate new business and repay creditors.[68] Conversely, in this court's view, there is no real harm to Highland or the Co-Defendants because they can ask for a reset under the Plan.[69] Mr. Scott, a director of HCLOF Guernsey, testified that

[65] Transcript 12/12/18 (PM) [DE # 792], at pp. 116-117 and 161.

[66] Transcript 12/12/18 (PM) [DE # 792], at pp. 92-98. Section 548(a)(1)(A) of the Bankruptcy Code only requires that a transfer be made with actual intent to hinder, delay or defraud creditors. In the context of an intentionally fraudulent transfer claim, questions of value are immaterial. 11 U.S.C. § 548(a)(1)(A). The definition of "transfer" under the Texas Uniform Fraudulent Transfer Act ("TUFTA") also does not include a value component. Tex. Bus. & Comm. Code Ann. § 24.002(12) (West, Westlaw through 2017).

[67] Transcript 12/11/18 (AM) [DE # 789], at pp. 71-72.

[68] Transcript 12/12/18 (AM) [DE # 791], at pp. 40-41, 54-55.

[69] Transcript 12/11/18 (AM) [DE # 792], at p. 92.

HCLOF Guernsey can sell its interest in the subordinated notes in the market.[70] The Chapter 11 Trustee credibly testified that the Temporary Plan Injunction would not impair the value of the subordinated notes because a rational investor would not want to liquidate the Acis CLOs, but rather would acquire them to do a reset under the Plan.[71] Mr. Terry credibly testified that even if the Acis CLOs are not reset, it still does not make sense to redeem the Acis CLOs.[72]

Public Interest. Finally, issuance of the Plan Injunction is consistent with public policy. Public policy favors the equitable collecting of a debtor's assets, maximizing the value of those assets, and distributing the proceeds in an orderly fashion in accordance with the priorities and safeguards set forth in the Bankruptcy Code, rather than in an uncontrolled, piecemeal, and potentially wasteful way. Public policy also supports successful reorganizations.[73] The public interest is furthered by confirming a plan that saves the Debtor-Acis's business operations and allows it to pay its creditors under a successful plan of reorganization. The public interest is also furthered by maintaining the status quo through the Temporary Plan Injunction so that the avoidance action relating to the Equity ALF PMA can be determined on its merits. The public interest is not furthered by allowing potential wrongdoers to complete the last step in what appears likely to have been a scheme to strip the Debtor-Acis of its assets, steal its business, and leave it unable to pay creditors. The public interest is not furthered by leaving the Debtors

[70] Exh. 721, Mr. Scott Depo. at p. 28.

[71] Transcript 12/11/18 (PM) [DE # 790], at pp. 23-24.

[72] Transcript 12/12/18 (AM) [DE #791], at p. 82.

[73] *Tex. Comptroller of Pub. Accounts v. Transtexas Gas Corp. (In re Transtexas Gas Corp.)*, 303 F.3d 571, 580 (5th Cir. 2002).

without sufficient resources to pursue and effectively litigate potentially valuable causes of action.

In sum, the court finds and concludes that the proposed Plan injunction (including the Temporary Injunction) is legally permissible and justified under all the circumstances. It is narrowly tailored to address the specific harm to which it is directed and comports with governing case and statutory authority and applicable rules of bankruptcy and civil procedure. The Plan Injunction is consistent with Fifth Circuit precedent.[74] Such an injunction would not violate section 524(e) of the Bankruptcy Code. That subsection provides that "discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt."[75] The Plan Injunction would not affect the liability of any entity, or the liability of any property. The injunction would only temporarily prohibit Highland and its Co-Defendants from exercising one form of economic recourse, thereby preserving the status quo while the Chapter 11 Trustee and/or Reorganized Debtor has a fair opportunity to prosecute the

[74] The Fifth Circuit, in an unpublished opinion, has recognized the propriety of an injunction to preserve the status quo in cases where equitable relief is sought. *See Animale Group v. Sunny's Perfume, Inc.*, 256 F. App'x 707, 709 (5th Cir. 2007) ("Because Defendants seek equitable relief, the district court was authorized to preserve the status quo by entering a limited asset freeze."). The Chapter 11 Trustee's claims in the Highland Entities Adversary Proceeding to avoid fraudulent transfers seek equitable relief. *See United States ex rel. Rahmen v. Oncology Assocs., P.C.*, 198 F.3d 489, 498 (4th Cir. 1999) ("The complaint's request to void transfers as fraudulent—a form of rescission—is also an equitable remedy."); *Dong v. Miller*, No. 16-CV-5836 (NGG) (JO), 2018 U.S. Dist. LEXIS 48506, at *30-31 (E.D.N.Y. Mar. 23, 2018) ("The setting-aside of a fraudulent conveyance is a form of equitable relief."). *See also Iantosca v. Step Plan Servs.*, 604 F.3d 24, 33 (1st Cir. 2010) (affirming preliminary injunction where creditors had a "colorable claim that appellants' own supposed interest under the settlement rests upon a fraudulent conveyance"); *Seidel v. Warner (In re Atlas Fin. Mortg., Inc.)*, Adv. No. 13-03222, 2014 Bankr. LEXIS 140 at *10 (Bankr. N.D. Tex. Jan. 14, 2014) (granting preliminary injunction where complaint sought avoidance of fraudulent transfers under the Bankruptcy Code and the Texas Uniform Fraudulent Conveyance Act); *Paradigm Biodevices, Inc. v. Centinel Spine, Inc.*, No. 11 Civ. 3489 (JMF), 2013 U.S. Dist. LEXIS 66858, at *7 (S.D.N.Y. May 9, 2013) (authority to grant preliminary injunction existed because plaintiff alleged not only a legal claim for money damages, but also an equitable claim to avoid fraudulently transferred assets).

[75] 11 U.S.C. § 524(e).

Highland Entities Adversary Proceeding.[76] Likewise, the proposed injunction does not contravene any other provision of the Bankruptcy Code or the Bankruptcy Rules.[77] Finally, the Chapter 11 Trustee's avoidance claim relating to the Equity/ALF PMA transfer under TUFTA also provides a statutory basis for injunctive relief.[78]

3. Feasibility of the Plan—Specific Findings and Conclusions Regarding Mr. Terry and Brigade.

The Objectors have challenged the feasibility of the Plan.[79] The court finds and concludes that the preponderance of the evidence supported the feasibility of the Plan. Among other things, the Chapter 11 Trustee credibly testified that Mr. Terry has an excellent track record as a portfolio manager, and that there is no reason why Mr. Terry will not be able to obtain new business—that is, new portfolios to manage which will provide additional revenue streams for the Reorganized Debtor.[80] The evidence was credible and compelling that Mr. Terry

[76] *See In re Seatco, Inc.*, 259 B.R. 279, 283-84 (Bankr. N.D. Tex. 2001) (approving temporary injunction of suit against nondebtor on guaranty of debt treated in plan).

[77] *Compare Omni Mfg. v. Smith (In re Smith),* 21 F.3d 660, 666-67 (5th Cir. 1994) (disapproving injunction extending time to file proof of claim beyond limits set in Bankruptcy Rules 3003(c)(3) and 9006(b)(1)); *Chiasson v. Bingler (In re Oxford Mgmt.),* 4 F.3d 1329, 1334 (5th Cir. 1993) (disapproving injunction ordering payment that altered distribution scheme set forth in § 726(b)); *Unites States v. Sutton*, 786 F.2d 1305, 1308 (5th Cir. 1986) (disapproving injunction ordering spousal support payments contrary to § 523(a)(5)).

[78] Tex. Bus. & Comm. Code Ann. § 24.008 (West, Westlaw through 2017) (providing a creditor may obtain "an injunction against further disposition by the debtor or the transferee, or both, of the asset transferred or of other property . . . [or] any other relief the circumstances may require."). TUFTA's injunction provision is construed broadly and courts have found that "[a] claim for fraudulent transfer under Texas law contemplates the issuance of a preliminary injunction." *Sargeant v. Al Saleh*, 512 S.W.3d 399, 413 (Tex. App.—Corpus Christi 2016, no pet.); *accord, Janvey v Alguire*, 647 F.3d 585, 602-03 (5th Cir. 2011).

[79] 11 U.S.C. § 1129(a)(11).

[80] Transcript 12/11/18 (AM) [DE # 789], at p. 90 (lines 5-12). Moreover, to the extent there are any gaps, recoveries from the Highland Entities Adversary Proceeding might eventually be available for ongoing operations and payment of creditors.

will be capable of fulfilling the equity owner position in the Reorganized Debtor (stepping in to essentially run the Reorganized Debtor) and will be able to ensure the feasibility of the Plan. He is well qualified to reorganize the Debtor-Acis. Mr. Terry testified that his role with the Reorganized Debtor will be similar to the role he very successfully performed for the Debtor-Acis.[81] The Debtor-Acis received numerous awards during Mr. Terry's service as the portfolio manager of the Acis CLOs.[82] The arbitration panel that issued the Arbitration Award found that Mr. Terry was terminated for essentially doing the right thing for investors.[83] Mr. Terry credibly testified that numerous market participants have expressed an interest in working with the Reorganized Debtor if the Plan is confirmed.[84]

Moreover, the court finds and concludes that Brigade (who stepped in as sub-advisor in place of Highland during the Bankruptcy Cases and is a registered investment advisor) is qualified to serve as a sub-advisor to the Reorganized Acis. Mr. Jared Worman, a portfolio manager for Brigade,[85] credibly testified that Brigade, founded in the year 2007, currently has $20 billion of total assets under management, $5 billion of which consists of six U.S. CLOs, two U.S. CDOs, and three European CLOs.[86] Mr. Worman credibly testified that Brigade has issued 17 CLOs and has reset or refinanced several of them.[87] Mr. Worman and Mr. Terry credibly

[81] Transcript 12/11/18 (PM) [DE # 790], at pp. 172-73.

[82] Transcript 12/11/18 (PM) [DE # 790], at pp. 162-163 and Exh. 752.

[83] Transcript 12/11/18 (PM) [DE # 790], at pp. 161-62.

[84] Transcript 12/12/18 (AM) [DE # 791], at pp. 16-18.

[85] Mr. Worman has an undergraduate degree from Emory University and an MBA from Wharton.

[86] Transcript 12/11/18 (PM) [DE # 790], at p. 84.

[87] Transcript 12/11/18 (PM) [DE # 790], at p. 86.

testified that Brigade is willing to serve as sub-advisor to the Reorganized Acis for fifteen basis points.[88] Highland attempted to show with evidence and argument that Brigade had made some failed trades since stepping in as sub-advisor to the Acis CLOs and that this perhaps made them unfit to serve in this role. But Mr. Terry credibly testified that the fact that a few failed trades were made by Brigade does not make them unfit to serve as sub-advisor to Reorganized Acis, and that trades out of compliance with the applicable CLO tests occasionally happen, and Brigade has handled them appropriately.[89] In fact, the evidence suggested that at least ten failed trades occurred while Highland was acting as sub-advisor to the Debtor-Acis.[90]

Highland's suggestions that Brigade is not up to the task to manage the Reorganized Debtor are specious. Likewise, HCLOF Guernsey's insistence that it will not be getting the benefit of its bargain if the Acis CLOs are not managed by Highland personnel going forward appears to be a manufactured position aimed at thwarting Mr. Terry at all costs. Not only is there no credible evidence of Brigade mismanagement but, to the contrary, it appears that Highland (prior to the Debtor-Acis's rejection of the Sub-Advisory Agreement and Shared Services Agreement), intentionally liquidated assets of the CLO SPEs and built up cash without reasonable justification. Specifically, Mr. Terry credibly testified that there were $85 million in purchases in the Acis CLOs in the hours leading up to the entry of the orders for relief, but virtually no purchases of loans in the CLOs afterwards—only sales.[91] And Mr. Worman further

[88] Transcript 12/11/18 (PM) [DE # 790], at p. 89; Transcript 12/12/18 (AM) [DE # 791], at p. 62.

[89] Transcript 12/11/18 (PM) [DE # 790], at pp. 182-83; Transcript 12/18/18 [DE # 804], at pp. 72-73.

[90] *See* Exhs. 727, 728; Transcript 12/11/18 (PM) [DE # 790], at pp. 71-74, 182-83.

[91] Transcript 12/12/18 (AM) [DE # 791], at pp. 18-19, 28-31; Transcript 12/18/18 [DE # 804], at pp. 87-89; *see also,* Terry Demonstrative.

credibly testified that Highland, while acting as sub-advisor, allowed approximately $380 million in cash to build up in the Acis CLOs. Meanwhile, Brigade has subsequently reduced that cash balance by $280 million to approximately $100 million.[92] Mr. Worman also credibly testified that Brigade has purchased approximately $300 million in loans for the Acis CLOs.[93] The Chapter 11 Trustee and Mr. Terry both credibly testified that the build-up of cash in the Acis CLOs while Highland was sub-advisor, rather than the loans acquired by Brigade, left the Acis CLOs without sufficient interest income to make a distribution to the equity holders.[94] Certain contradictory testimony of Hunter Covitz was not convincing that: (a) there were very few conforming loans available to be purchased for the Acis CLOs in the approximately four months that elapsed between the entry of the Order for Relief and the time when Highland was terminated as sub-advisor;[95] and (b) it made more sense to accumulate cash to pay down the AAA notes rather than invest in new loans.[96] The court found more convincing the testimony of Mr. Terry: (a) that there was $310 billion of performing loans rated above CCC in the S&P loan index in May of 2018 available for purchase in CLO-6 that would have satisfied the weighted average life test;[97] (b) that Highland purchased loans for CLO-7 that would have satisfied the weighted average life constraints in the Debtor-Acis's CLO-4, CLO-5, and CLO-6;[98] and (c)

[92] Transcript 12/11/18 (PM) [DE # 790], at p. 100.

[93] Transcript 12/11/18 (PM) [DE # 790], at pp. 70, 94.

[94] Transcript 12/11/18 (AM) [DE # 789], at pp. 67-69; Transcript 12/11/18 (PM) [DE # 790], at pp. 70-71; Transcript 12/12/18 (AM) [DE # 791] at pp. 34-37.

[95] Transcript 12/13/18 (AM) [DE # 793], at pp. 12-13.

[96] Transcript 12/13/18 (AM) [DE # 793], at pp. 13-16.

[97] Transcript 12/18/18 [DE # 804], at p. 87.

[98] Transcript 12/18/18 [DE # 804], at pp. 87-88.

that, although there was no change in market conditions, Highland essentially stopped buying collateral for the Acis CLOs[99] after the entry of the Orders for Relief.[100]

4. Resets—Non-impairment of Anyone's Rights.

The Plan only contemplates ***consensual*** resets of the Acis CLOs—in other words, only if HCLOF Guernsey requests resets.[101] Messrs. Worman and Terry both credibly testified that they believed the Reorganized Acis and Brigade could perform a consensual reset of the Acis CLOs.[102] Mr. Terry credibly testified that other asset managers have been able to issue or reset CLOs after a bankruptcy proceeding.[103] Mr. Terry also credibly testified that he wants to come to a resolution with HCLOF Guernsey and consensually reset the Acis CLOs.[104]

HCLOF Guernsey has taken the position that it and its new Passive Investor (new as of mid-November 2017—just before the Bankruptcy Cases) only want to be involved with CLOs that are managed by Highland or Highland affiliates. Is the Plan impairing their rights—to the extent the Plan (and any subsequent re-sets) brings in Brigade as the sub-advisor to the Reorganized Debtor (whereas Highland was in that sub-advisor role before)? It appears no. The

[99] Transcript 12/18/18 [DE # 804], at pp. 88-89.

[100] Highland has also argued that the Plan is not feasible because the administrative expense claims are extremely high (to which the Chapter 11 Trustee responds, it is of Highland's making, since Highland has objected to literally every action proposed by the Chapter 11 Trustee). The court does not believe there is a legitimate feasibility problem here. Not only has the court not ruled yet on final professional fee applications, but the Chapter 11 Trustee represented that certain professionals have agreed to defer their fees (beyond payment in full on the Effective Date) as necessary.

[101] *See* Plan § 6.08.

[102] Transcript 12/11/18 (PM) [DE # 790], at pp. 86-90, 176-178; Transcript 12/12/18 (AM) [DE # 793], at pp. 16-18.

[103] Transcript 12/11/18 (PM) [DE # 790], at pp. 179-180.

[104] Transcript 12/18/18 [DE # 804], at p. 74.

Offering Memorandum between HCLOF Guernsey and the Passive Investor, dated November 15, 2017, pursuant to which the Passive Investor agreed to invest in HCLOF Guernsey, provided that there may be a change in circumstances following the date of the Offering Memorandum and that any forward-looking statements in the Offering Memorandum involved risks and uncertainties "because they relate to events and depend on circumstances that may or may not occur in the future."[105] Heather Bestwick, one of the HCLOF Guernsey directors, testified that the Offering Memorandum does not require HCLOF Guernsey to invest only in Highland-managed funds[106] and instead expressly provides that HCLOF Guernsey will invest in "CLOs managed by other asset managers."[107] Another witness, Mr. McGuffin, testified that the HCLOF Guernsey directors' fiduciary duties require them to act independently and objectively in the best interests of HCLOF Guernsey, and also require them to consider a change in circumstances.[108] HCLOF Guernsey's counsel, HCLOF Guernsey's director, and the Passive Investor have all testified that they would consider doing a reset with the Reorganized Acis in the event the Plan is confirmed.[109]

Mr. Terry credibly testified that a reset of the Acis CLOs can occur after the expiration of the reinvestment periods of the Acis CLOs.[110] The Plan is feasible regardless of whether a reset of the Acis CLOs is requested by HCLOF Guernsey. Messrs. Phelan and Terry both credibly

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[105] *See* Exh. 90, HCLOF Guernsey Offering Memorandum, at pp. 4-5.

[106] *See* Exh. 719, Bestwick Depo., at pp. 109, 118-121.

[107] *See* Exh. 90, HCLOF Offering Memorandum, at p. 12**.**

[108] Transcript 12/13/18 (PM) [DE # 794], at pp. 142-145.

[109] *See* Exh. 602, p. 12 of 70 (statement by HCLOF Guernsey's Counsel); Exh. 719 at pp. 166-167 (Heather Bestwick); Exh. 720, p. 72.

[110] Transcript 12/18/18 [DE # 804], at pp. 82-83.

testified that the Reorganized Debtor will have cash flow from multiple potential sources—including the revenues from the CLO PMAs with the Acis CLOs, potential new business developed by the Reorganized Acis, and the outcome of any potential litigation claims.[111]

VI. General Credibility Assessments.

In ruling in a contested matter such as confirmation, and weighing the preponderance of the evidence, the credibility of witnesses and contradictions in their testimony naturally can be significant. Here, there were some noteworthy problems and contradictions with some of the testimony provided by the Objectors' witnesses. They are summarized below.

1. Scott Ellington: A Seemingly Manufactured Narrative to Justify Prior Actions.

Scott Ellington testified on February 7, 2018 at the trial on the involuntary petitions, and the court was asked to consider his testimony again in connection with confirmation (he did not attend the confirmation hearing). He is the General Counsel, Chief Legal Officer, and a Partner at Highland. Mr. Ellington testified that the Debtor-Acis's name is "toxic" in the market place and that, due to the litigation with Mr. Terry and allegations in that litigation, "nothing can be associated with the Acis brand and be managed as a CLO or marketed as a CLO."[112] Mr. Ellington elaborated that it had been determined in late 2016 or 2017 that re-sets or re-financings of the Acis CLOs were a prudent thing to pursue (in fact, there was indeed a trend of refinancings and resets for this vintage of CLOs in the market place) and, in connection with that, the Debtor-Acis's contracts and assets needed to be diverted to different, newly created entities because: (a) the "Acis" name was toxic and underwriters and investors were not going to

[111] Transcript 12/11/18 (AM) [DE # 789], at pp. 72, 88-90; Transcript 12/12/18 (AM) [DE # 791], at p. 53.

[112] Exh. 23, p. 55 (line 17) through p. 56 (line 7); p. 98 (lines 8-12).

be interested in re-financings or resets for CLOs managed by the Debtor-Acis;[113] and (b) the new Passive Investor wanted the Debtor-Acis out of the picture.[114] Mr. Ellington further elaborated: "The equity, you know, calls the tune, so to speak, in terms of the CLO . . .."[115] In summary, an overarching theme of Mr. Ellington's testimony was that the Debtor-Acis was tainted or toxic in the marketplace and the Passive Investor wanted the Debtor-Acis out of the picture—thus, this was the motivation for the prepetition transactions orchestrated by Highland prior to the Bankruptcy Cases. The problems with the Scott Ellington testimony were at least two-fold. First, there is no credible evidence that the Debtor-Acis is/was toxic in the market place. In fact, in April 2017 (well after the litigation with Mr. Terry commenced), the Debtor-Acis issued a new CLO (CLO-7). And in market publications as recently as August 21, 2017, Highland was touting the ***Acis*** structure stating "our vehicle will allow us to issue between six and 12 CLOs over the next few years."[116] Second, the Passive Investor denies demanding that the Debtor-Acis be removed as the CLO manager. Term sheets as recent as August 21, 2017 contemplated the Debtor-Acis as the continuing portfolio manager of CLOs, with apparently no protestations by the Passive Investor.[117]

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[113] *E.g., Id.* at p. 177 (line 21) though p. 178 (line 12); p. 184 (lines 13-17) ("The underwriters in this case, Mizuho, Goldman, et al., the equity, they said we want every possible relation to anything that could be legacy Acis or Acis-related affiliates to be severed").

[114] *Id.* at p. 202 (lines 11-13) ("we have third-party investors that said we don't want to be involved in this brand; and their equity is one of the reasons that new CLOs can be launched"); p. 203 (lines 7-8) ("It was call the deal and terminate the CMAs or transfer the CMAs"); p. 223 (lines 8-12) ("Because if the involuntary remains, and I'm just – I'm just being frank – we've already been told by equity holders, including the separate account, BBK, that you may have seen on some of the exhibits, they're pulling everything.").

[115] *Id.* at p. 74 (lines 3-6).

[116] Exh. 801, pp. 3 & 5.

[117] Exh. 802, p.1.

2. Michael Pugatch: The Passive Investor Made Into a Scapegoat.

The reality is that Highland, indeed, started working on the concept of doing resets of some of the older vintage Acis CLOs in at least early 2017 (and perhaps late 2016). Highland, in fact, completed a reset of one Acis CLO in April 2017 (with the Debtor-Acis still in place as the portfolio manager for that reset in April 2017). As part of that process of implementing resets for the Acis CLOs, Highland worked on bringing in a new investor or investors to have a share of the equity tranche of the Acis CLOs. Highland finally obtained the commitment of the Passive Investor in November 2017, after starting initial discussions with them in the second quarter of 2017.[118] A representative for the Passive Investor referred to itself as "passive" in a deposition.[119] Concepts and documentation for the Passive Investor's investment in the Acis CLOs were discussed for a while during 2017. As recently as August 2017, the negotiations with the Passive Investor appeared to contemplate the Debtor-Acis still as the portfolio manager for the CLOs.[120] Then the arbitration trial with Mr. Terry began in September 2017 and the Terry Arbitration Award was issued on October 20, 2017. Suddenly, it appears that the dismantling of the Debtor-Acis began with all deliberate speed. The court believes, based on the totality of the evidence, that it was Highland who did not want the Debtor-Acis as CLO manager going forward, so that Highland could keep reaping the benefits of the reset CLOs. Specifically, when deposed on the topic, a representative for the Passive Investor, Mr. Pugatch, denied the accuracy of Mr. Ellington's testimony, stating that the Passive Investor "viewed Acis and Highland as interchangeable from the perspective of the—you know, the actual investment

[118] *See* Exh. 720, Pugatch Deposition Transcript dated November 27, 2018, p. 18, lines 14-20.

[119] *Id.* at p. 22 (lines 2-3) ("we're you know, 49 percent sort of passive minority investor").

[120] Exh. 802, p. 1.

opportunity."[121] When asked, "Are you aware that Scott Ellington, general counsel for HCM, testified that [the Passive Investor] said with absolute certainty that they had no interest in doing business with Acis because the Acis brand was purportedly toxic and, consequently, nothing associated with Acis could be managed or marketed as a CLO?" Mr. Pugatch testified that he had read that testimony and that the statement was not true.[122] He further stated that "the ultimate sort of name change did not come from [the Passive Investor]."[123] In fact, when further asked whether the Passive Investor knew why Acis CLO Funding Limited changed its name to Highland CLO Funding Limited (*i.e.*, HCLOF Guernsey), Mr. Pugatch testified, "We were told that it was a change in the brand or the name, as requested by Highland."[124] And when asked "Did [the Passive Investor] request that the name be changed?" he answered "No."[125] When asked whether the Passive Investor considered "Acis toxic in the industry?" Mr. Pugatch answered: "No. What I would say is, when the suggested name change did occur, there were commercial reasons given to us as to why that would be beneficial in terms of the ongoing management of those CLOs and the intended investment thesis around the investment that we had made, which seemed to make commercial sense."[126] When Mr. Pugatch was asked, "Those reasons were given by Highland, correct?" he replied "Correct" and confirmed that they were not demanded by the Passive Investor.[127] Mr. Pugatch was emphatic that the Passive Investor was

[121] *Id.* at p. 30 (lines 19-20).

[122] *Id.* at p. 31 (lines 6-19).

[123] *Id.* (lines 24-25).

[124] *Id.* at p. 27 (lines 24-25).

[125] *Id.* at p. 28 (lines 1-3).

[126] *Id.* at p. 32 (lines 1-8).

[127] *Id.* at p. 32 (lines 9-12).

just that—a passive investor—that did not have the ability to "start calling the shots" and dictate the terms of any reset transactions.[128] When asked if the Passive Investor was concerned about the Terry Arbitration Award, Mr. Pugatch replied: "The award itself, no. I think the only thing we were concerned about or focused on was that vis-à-vis our equity investment in Highland CLO Funding Limited and, in turn, the equity that that vehicle held in the various CLOs was appropriately, you know, ring-fenced or not exposed to any potential damages or economic loss in value as a result of that arbitration award."[129]

The Passive Investor further testified that Brigade has "a fine reputation in the market" but that it had no interaction with them historically.[130] The Passive Investor also testified that it was concerned about the cash buildups that had happened recently due to actions while Highland had still been the sub-advisor on the Acis CLOs.[131]

3. The Seemingly Rehearsed Testimony of the Two HCLOF Guernsey Witnesses.

The court was presented with video depositions of HCLOF Guernsey's two non-executive directors (*i.e.*, its only directors): Mr. William Scott[132] and Ms. Heather Bestwick.[133] It was very apparent to the court that HCLOF Guernsey is controlled by Highland in every way. Putting things in the kindest way possible, Mr. Scott and Ms. Bestwick appear to be nominal figureheads who are paid to act like they are in charge, while they are not. They are both

[128] *Id.* at p. 32 (lines 16-17); pp. 33-35.

[129] *Id.* at p. 43 (lines 3-9); p. 89.

[130] *Id.* at p. 68 (lines 11-13).

[131] *Id.* at p. 82, lines 9-24.

[132] *See* Exh. 721.

[133] *See* Exh. 719.

basically professional directors-for-hire, for companies that choose to form/organize in the nation of Guernsey.

Ms. Bestwick testified that she is a nonexecutive director for six companies in Guernsey (none of the others are in the CLO business).[134] She testified that she earned £35,000 per year to serve as a director of HCLOF Guernsey.[135] She testified that she was selected by Highland[136] and that Highland also made the decision to hire HCLOF Guernsey's law firm in the Bankruptcy Cases.[137] Ms. Bestwick, when questioned as to why the Equity/ALF PMA it had with the Debtor-Acis was terminated shortly after the Terry Arbitration Award was issued, testified that she was told it was "a condition precedent to the new Passive Investor" coming in and that she was told this by Highland.[138] She also testified that she had never talked to the Passive Investor (who, of course, is a 49% owner of HCLOF Guernsey)[139] or Grant Scott (the trustee of the charitable organization that owns 49% of HCLOF Guernsey).[140] She reiterated that she only talks to Highland employees. She also was under the impression that terminating the Equity/ALF PMA would improve marketability of the CLOs going forward but that it was the same people and "business as usual for us."[141] She testified that she learned of the Terry

[134] *Id.* at pp. 7-8; p. 21 (line 5) through p. 22 (line 20); p. 26 (lines 10-12).

[135] *Id.* at p. 43 (lines 18-19).

[136] *Id.* at p. 42 (lines 17-25).

[137] *Id.* at p. 53 (lines 7-20).

[138] *Id.* at p. 16 (line 13) through p. 17 (line 23); p. 58 (line 21) through p. 60 (line 17).

[139] *Id.* at p. 188 (lines 12-15).

[140] *Id.* at p. 188 (line 19) through p. 189 (line 9).

[141] *Id.* at p. 189 (lines 12-15); p. 200 (line 22).

Arbitration Award in mid-April 2018 (some six months after the fact)[142] and "[y]ou'd have to ask Highland"[143] why it did not inform her sooner. Her testimony was clear that she defers to Highland on everything, stating that as directors they were "heavily reliant on our service providers, and that means Highland."[144] With regard to a lawsuit that HCLOF Guernsey filed against Mr. Terry in Guernsey during the Bankruptcy Cases, she testified that it was neither her nor the other director, William Scott's, idea.

Mr. Scott, the other HCLOF Guernsey director, is a "professional director" for 10-15 Guernsey companies[145]—all of which are "paying assignments."[146] He became rather incensed when testifying, at the suggestion that he and Ms. Bestwick were not in control of HCLOF Guernsey, stating that board minutes and other documents would show that they took a great level of interest in running the company.[147] He testified that he earned £40,000 per year to serve as a director of HCLOF Guernsey and that, due to the extra work of the Bankruptcy Cases, he also was charging another £350 per hour, after the first 35 hours[148] (the court notes, anecdotally, that it required participation in court hearings by a director of HCLOF Guernsey each time that HCLOF Guernsey took a position in court). Mr. Scott confirmed that he was not aware of the litigation with Mr. Terry nor the Acis Bankruptcy Cases until April 2018.[149] He also testified

[142] *Id.* at p. 61 (lines 3-19); p. 130 (line 14) through p. 136 (line 2).

[143] *Id.* at p. 137 (line 21).

[144] *Id.* at p. 152 (lines 18-19).

[145] *See* Exh. 721 at p 8 (line 9) through p. 9 (line 5); p. 79 (lines 20-25).

[146] *Id.* at p. 80 (lines 3-5).

[147] *Id.* at p. 13 (lines 1-12); p. 22 (line 23) through p. 23 (line 12).

[148] *Id.* at p. 80 (lines 6-18).

[149] *Id.* at p. 132 (line 20) through p. 135 (line 10).

that Highland had proposed the legal counsel HCLOF Guernsey used in the Bankruptcy Cases and that he had never disagreed with Highland's advice.[150] He confirmed that all investment decisions were made by Highland and that he and Ms. Bestwick's role was to "police" service providers.[151] Like Ms. Bestwick, Mr. Scott testified that they were told that the Passive Investor had made it a condition precedent to their investment in HCLOF Guernsey that "Acis depart."[152] But he had not talked to the Passive Investor.[153] As if all this deference to Highland were not enough, HCLOF Guernsey's lender is NexBank (an affiliate of Highland—which is based in Dallas, not Guernsey) and HCLOF Guernsey has given its actual equity notes to NexBank as security for its loans from NexBank.[154] Also, interestingly, when asked about the adversary proceeding that HCLOF Guernsey filed against the Chapter 11 Trustee a few months ago in the Bankruptcy Cases (*i.e.*, the Highland Entities Adversary Proceeding—it was originally commenced by Highland and HCLOF Guernsey as Plaintiffs), Mr. Scott testified that "we haven't sued the trustee, he has sued us" but later acknowledged his mistake when corrected by counsel.

This court is not naïve—it realizes that so-called "fiduciary services firms" are apparently a typical thing in the world of off-shore jurisdictions that are large financial centers.[155] Maybe

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[150] *See generally id.* at pp. 277-280.

[151] *Id.* at p. 106 (lines 1-7).

[152] *Id.* at p. 254 (line 20) through p. 260.

[153] *Id.* at p. 155 (lines 2-25).

[154] *See* Exh. 719 at p. 213 (line 2-22); Exh. 721 at p. 129 (line 10) through p. 130 (line 13).

[155] During the testimony of both Ms. Bestwick and Mr. Scott, the court was reminded of an old TV commercial in which an actor states, "I am not a doctor, but I play one on TV." The court could not help but conclude that these were not real directors but were playing them (when legally necessary).

the system works, for the most part and in many business contexts. But not when trying to convince a bankruptcy court of the bona fides of transactions that look like attempts to denude another party of value and/or to thwart creditors. And not when accusations are made that you are the alter ego of the party (Highland) who orchestrated the company's creation. The evidence was overwhelming that: (a) the HCLOF Guernsey Directors do whatever they are told to do by Highland; (b) they do not talk to anyone else but Highland; (c) they have never challenged Highland; (d) they let Highland pick and consult with their lawyers; and (e) they were not made aware by Highland of the Terry Arbitration Award, the Terry Judgment, the involuntary bankruptcy petitions, or pleadings that lawyers filed in the Bankruptcy Cases on HCLOF Guernsey's behalf.

In summary, the testimony of these two HCLOF Guernsey Directors was of little or no value in convincing the court that the Objector, HCLOF Guernsey, has valid concerns of its own (separate from Highland's) with regard to the bona fides of the Plan.

VII. Conclusion.

This Bench Ruling and Memorandum Opinion is intended to address some of the most pertinent facts and issues raised in connection with confirmation of the Plan. Among other things, the court believed it was necessary to stress, in a separate ruling: (a) ***the unique status of the Objectors*** (they are "insiders" as defined in the Bankruptcy Code whose prepetition actions suggest unclean hands—this seems highly relevant to consider, when there are no non-insider creditors or other relevant parties objecting to the Plan); (b) ***the appropriateness and legality of the proposed Plan Injunction*** that would temporarily prevent nonconsensual redemptions/liquidations (it is in all ways justified given the allegations in the Highland Entities Adversary Proceeding and under the traditional four-prong test for preliminary injunctions); and

(c) ***the feasibility of the Plan*** (Mr. Terry and Brigade are well qualified to perform their contemplated roles).

The court will separately sign the Findings of Fact, Conclusions of Law and Order Confirming Plan submitted by the Chapter 11 Trustee to address all other relevant issues.

End of Bench Ruling and Memorandum Opinion

Exhibit 11

CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed January 31, 2019

United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:	§	**Case No. 18-30264-SGJ-11**
ACIS CAPITAL MANAGEMENT, L.P.,	§	**Case No. 18-30265-SGJ-11**
ACIS CAPITAL MANAGEMENT GP, LLC,	§	
	§	**(Jointly Administered Under Case**
DEBTORS.	§	**No. 18-30264-SGJ-11)**
	§	
	§	**Chapter 11**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING FINAL APPROVAL OF DISCLOSURE STATEMENT AND CONFIRMING THE THIRD AMENDED JOINT PLAN FOR ACIS CAPITAL MANAGEMENT, L.P. AND ACIS CAPITAL MANAGEMENT GP, LLC, AS MODIFIED

On December 11, 12 and 13, 2018, the Court held a hearing (the "Combined Hearing") to consider (a) final approval of the *Disclosure Statement Pursuant to Section 1125 of the United States Bankruptcy Code with Respect to the Third Amended Joint Plan for Acis Capital Management, L.P. and Acis Capital Management GP, LLC* (the "Disclosure Statement") [Docket No. 661] and (b) confirmation of the *Third Amended Joint Plan for Acis Capital Management, L.P. and Acis Capital Management GP, LLC* (the "Third Amended Plan") [Docket No. 660], a

copy of which is attached hereto as **Exhibit "1,"** as modified by (i) the *First Modification to the Third Amended Joint Plan for Acis Capital Management, L.P. and Acis Capital Management GP, LLC* (the "First Modification") [Docket No. 693], a copy of which is attached hereto as **Exhibit "2,"** and (ii) the *Second Modification to the Third Amended Joint Plan for Acis Capital Management, L.P. and Acis Capital Management GP, LLC* (the "Second Modification") [Docket No. 702], a copy of which is attached hereto as **Exhibit "3,"** as supplemented by the *Supplement to Second Modification to the Third Amended Joint Plan for Acis Capital Management, LP and Acis Capital Management GP, LLC* [Docket No. 769], a copy of which is attached hereto as **Exhibit "4,"** filed by Robin Phelan (the "Chapter 11 Trustee"), as Chapter 11 Trustee for Acis Capital Management, L.P. ("Acis LP") and Acis Capital Management GP, LLC ("Acis GP," and together with Acis LP, the "Debtors"). The Third Amended Plan, as modified by the First Modification and Second Modification (as supplemented), is hereafter referred to as the "Plan;" *provided that*, as provided in the last sentence of paragraph 13 of this Order, the schedule of assumed executory contracts attached hereto as Exhibit 5 to this Order replaces, is substituted for, and supersedes Exhibit B to the Third Amended Plan. Capitalized terms used in this Order, unless otherwise specifically defined herein, shall be given the same meaning as in the Plan and/or the Disclosure Statement.

The Combined Hearing was commenced at the time and date scheduled. Based on the testimony, evidence admitted, judicial notice of the records of the Chapter 11 Cases, and the arguments of counsel, the Court makes this *Findings of Fact, Conclusions of Law, and Order Granting Final Approval of Disclosure Statement and Confirming the Third Amended Joint Plan for Acis Capital Management, L.P. and Acis Capital Management GP, LLC, as Modified* ("Order").

ACCORDINGLY, IT IS HEREBY DETERMINED, FOUND, ADJUDGED, DECREED AND ORDERED THAT:

A. *Findings and Conclusions*. All findings of fact or conclusions of law made by the Court on the record at the Combined Hearing are hereby incorporated in their entirety into this Order. All findings of fact contained in the Court's *Findings of Fact and Conclusions of Law in Support of Orders for Relief Issued After Trial on Contested Involuntary Bankruptcy Petitions* entered on April 13, 2018 [Docket No. 118] are hereby incorporated in their entirety into this Order. The findings and conclusions set forth herein and in the record of the Combined Hearing constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 as made applicable herein by Bankruptcy Rule 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

B. *Jurisdiction; Venue; Core Proceeding*. The Court has jurisdiction over these bankruptcy cases pursuant to 28 U.S.C. sections 157(b) and 1334. Venue is proper before this Court pursuant to 28 U.S.C. sections 1408 and 1409. Final approval of the Disclosure Statement and confirmation of the Plan are core proceedings pursuant to 28 U.S.C. section 157(b)(2)(A), (L) and (O) over which the Court has exclusive jurisdiction and full constitutional jurisdiction and authority to enter final orders with respect thereto.

C. *Eligibility for Relief*. The Debtors were and are eligible for relief under section 109 of the Bankruptcy Code.[1]

D. *Commencement and Joint Administration of the Debtors' Cases*. On January 30, 2018, Joshua N. Terry ("Terry") filed involuntary petitions under chapter 7 of the Bankruptcy Code against both of the Debtors in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Court"). Acis LP's bankruptcy case was assigned Case No. 18-30264, and Acis GP's bankruptcy case was assigned Case No. 18-30265. The involuntary petitions were contested and the Court held a multi-day trial spanning March 21, 22, 23, 27 and

[1] Unless otherwise indicated, section references are to the Bankruptcy Code.

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29, 2018. On April 13, 2018, the Court entered an *Order for Relief in an Involuntary Case* in both cases [Docket No. 119 in Case No. 18-30264 and Docket No. 114 in Case No. 18-30265]. Diane G. Reed (the "Chapter 7 Trustee") was appointed Chapter 7 Trustee in both cases. On motion of the Chapter 7 Trustee, the Court entered an *Order Directing Joint Administration* [Docket No. 137],[2] which provides for the joint administration of the Debtors' respective bankruptcy cases under Case No. 18-30264.

E. *Conversion of the Debtors' Cases and Appointment of the Chapter 11 Trustee*. On motion of the Chapter 7 Trustee, the Court entered an *Order Granting Trustee's Expedited Motion to Convert Cases to Chapter 11* [Docket No. 205] on May 11, 2018, converting the Debtors' bankruptcy cases to cases under chapter 11 of the Bankruptcy Code. On motion of Terry, the Court entered an *Order Granting Emergency Motion for an Order Appointing A Trustee for the Chapter 11 Estates of Acis Capital Management, L.P. and Acis Capital Management GP, LLC Pursuant to Bankruptcy Code Section 1104(A)* [Docket No. 206] on May 11, 2018, directing the United States Trustee (the "U.S. Trustee") to appoint a Chapter 11 Trustee in the Chapter 11 Cases. The U.S. Trustee appointed Robin Phelan as Chapter 11 Trustee in the Chapter 11 Cases. Mr. Phelan's appointment as Chapter 11 Trustee in Acis LP's case was approved pursuant to an *Order Approving Appointment of Chapter 11 Trustee* [Docket No. 221] entered by the Court on May 17, 2018 and his appointment as Chapter 11 Trustee in Acis GP's case was approved pursuant to an *Order Approving Appointment of Chapter 11 Trustee* [Docket No. 184 in Case No. 18-30265] entered by the Court on June 12, 2018.

F. *No Official Committee of Unsecured Creditors*. The U.S. Trustee has not appointed an official committee of unsecured creditors in the Chapter 11 Cases.

G. *Claims Bar Date*. October 15, 2018 was originally fixed as the deadline for all holders of alleged Claims (except for governmental units) to file proofs of Claim. However, on

[2] Unless otherwise indicated, all references to the "Docket" refer to the Docket in Case No. 18-30264.

motion of the Chapter 11 Trustee, the Court entered the Bar Date Order on July 9, 2018 [Docket No. 387]. Pursuant to the Bar Date Order, August 1, 2018 was established as the deadline for all holders of alleged Claims (except for governmental units) to file proofs of Claim and October 10, 2018 was established as the deadline for governmental units to file proofs of Claim.

H. *Adequacy of Disclosure Statement*. The Disclosure Statement contains "adequate information," as that term is defined in section 1125 of the Bankruptcy Code and satisfies all requirements of section 1125 of the Bankruptcy Code.

I. *Solicitation Order Compliance*. On October 3, 2018, the Chapter 11 Trustee filed his *Chapter 11 Trustee's Amended Motion for Entry of Order (A) Conditionally Approving Disclosure Statement; (B) Scheduling Combined Hearing on Final Approval of Disclosure Statement and Confirmation of Second Amended Joint Plan, and Setting Related Deadlines; (C) Approving Forms for Voting and Notice; and (D) Granting Related Relief* (the "Conditional Approval Motion") [Docket No. 622]. The Chapter 11 Trustee filed a *Supplement to Amended Motion for Entry of Order (A) Conditionally Approving Disclosure Statement; (B) Scheduling Combined Hearing on Final Approval of Disclosure Statement and Confirmation of Second Amended Joint Plan, and Setting Related Deadlines; (C) Approving Forms for Voting and Notice; and (D) Granting Related Relief* (the "Supplement to Conditional Approval Motion") [Docket No. 646] on October 19, 2018. The Court conducted a hearing on the Conditional Approval Motion, as supplemented, on October 24, 2018. On October 25, 2018, the Court entered an *Order (I) Conditionally Approving Disclosure Statement, (II) Scheduling Combined Hearing on Final Approval of Disclosure Statement and Confirmation of Second Amended Joint Plan, and Setting Related Deadlines, (III) Approving Forms for Voting and Notice, and (IV) Approving Related Matters* (the "Solicitation Order") [Docket No. 659] granting the Conditional Approval Motion. The Conditional Approval Motion was filed in connection with a second amended plan of reorganization and disclosure statement with respect thereto. However, for convenience and ease of review, the modifications to the second amended plan and disclosure

statement with respect thereto, including modifications discussed at the October 24, 2018 hearing, were incorporated into the Third Amended Plan and Disclosure Statement filed on October 25, 2018. Consequently, the Solicitation Order approved solicitation of votes on the Third Amended Plan and distribution of the Disclosure Statement in connection with solicitation of votes on the Third Amended Plan. Pursuant to the Solicitation Order, the Court, among other things: (a) conditionally approved the Disclosure Statement for use in soliciting votes on the Third Amended Plan; (b) established procedures and deadlines for the solicitation and submission of votes to accept or reject the Third Amended Plan (the "Solicitation Procedures"); (c) fixed deadlines for objections to final approval of the Disclosure Statement and/or confirmation of the Third Amended Plan and related briefing deadlines; (d) fixed a deadline for serving notice of the Combined Hearing; and (e) set the Combined Hearing to commence on December 11, 2018, at 9:30 a.m., Central Time. The Solicitation Order approved the following documents (collectively the "Solicitation Materials") to be served on Creditors entitled to vote on the Third Amended Plan:

(i) the Third Amended Plan;

(ii) the Disclosure Statement;

(iii) the Ballots for voting on the Third Amended Plan;

(iv) the Solicitation Order;

(v) a Notice (the "Combined Hearing Notice") [Docket No. 667] reflecting the deadlines and other information relating to the Combined Hearing; and,

(vi) a letter (the "Transmittal Letter") from counsel for the Chapter 11 Trustee.

The Solicitation Order directed the Chapter 11 Trustee to serve the Solicitation Materials on holders of Claims in Classes 2 and 3 and Subclasses 4A and 4B under the Third Amended Plan. The Solicitation Order also authorized the tabulation of Ballots on a consolidated basis. The Solicitation Order further directed the Chapter 11 Trustee to serve on various parties defined in the Supplement to Conditional Approval Motion as the "Noteholders," "Highlands" and

"Notice Parties" certain notices and copies of the following documents (the "Notice-Only Materials"): the Disclosure Statement, the Third Amended Plan, the Solicitation Order and the Combined Hearing Notice. The Chapter 11 Trustee has complied with the Solicitation Order, including the Solicitation Procedures contained therein, in all respects.

J. *Transmittal and Mailing of Solicitation Materials; Notice*. Due, adequate, and sufficient notice of the Third Amended Plan, Disclosure Statement and Combined Hearing, together with all deadlines for voting on the Third Amended Plan and for objecting to final approval of the Disclosure Statement and/or confirmation of the Third Amended Plan, has been given to known holders of Claims and Interests and, to the extent required, to all other known parties-in-interest, in compliance with the applicable Bankruptcy Rules and the Solicitation Order, as evidenced by the: (i) Combined Hearing Notice (and Certificate of Service included therewith) filed at Docket No. 667; (ii) *Notice of Solicitation of Third Amended Joint Plan for Acis Capital Management, L.P. and Acis Capital Management GP, LLC to Noteholders* (and Certificate of Service included therewith) filed at Docket No. 664; (iii) *Notice of Solicitation of Third Amended Joint Plan for Acis Capital Management, L.P. and Acis Capital Management GP, LLC to Highland Entities* (and Certificate of Service included therewith) filed at Docket No. 665; (iv) *Notice of Solicitation of Third Amended Joint Plan for Acis Capital Management, L.P. and Acis Capital Management GP, LLC to Notice Parties* (and Certificate of Service included therewith) filed at Docket No. 666; and (v) *Certificate of Service* filed at Docket No. 676. The packages containing the Solicitation Materials, the packages containing the Notice-Only Materials, and all other materials relating in any way to the solicitation process were transmitted and served in substantial compliance with the Solicitation Order and in accordance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Solicitation Procedures set forth in the Solicitation Order, and all other applicable rules, laws and regulations.

K. *Adequacy of Solicitation*. The Chapter 11 Trustee distributed packages containing the Solicitation Materials to the holders of Claims entitled to vote on the Third

Amended Plan and sufficient time was prescribed for such holders of Claims to vote on the Third Amended Plan in substantial compliance with the Solicitation Order and the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Solicitation Procedures set forth in the Solicitation Order, and all other applicable rules, laws and regulations. Transmittal and service were adequate and sufficient, and no further notice is or shall be required. In addition, holders of Claims not entitled to vote on the Amended Plan, and certain other parties-in-interest, were provided with certain non-voting materials approved by the Court in compliance with the Solicitation Order. All procedures used to distribute the Solicitation Materials to holders of Claims entitled to vote on the Third Amended Plan were fair and conducted in good faith and in accordance with the Bankruptcy Code, Bankruptcy Rules, the Solicitation Procedures contained in the Solicitation Order, and all other applicable rules, laws and regulations.

L. *Good Faith Solicitation – Section 1125(e)*. Based on the Record, the Chapter 11 Trustee and Estate Professionals have acted in good faith within the meaning of sections 1125(e) and 1129(a)(3), and in compliance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Solicitation Order, in connection with all of their respective activities relating to the solicitation of acceptances of the Third Amended Plan and their participation in the activities described in section 1125, and are entitled to the protections afforded by section 1125(e).

M. *Voting Tabulation*. In accordance with the Solicitation Order, on December 3, 2018 the *Tabulation of Ballots in Connection with Confirmation of the Third Amended Joint Plan for Acis Capital Management, L.P. and Acis Capital Management GP, LLC* (the "Ballot Tabulation") [Docket No. 746] was filed and served on all parties that filed a timely objection to confirmation of the Plan. All procedures used to tabulate the Ballots (which were tabulated on a consolidated basis) were fair and conducted in accordance with the Solicitation Order, the Bankruptcy Code, the Bankruptcy Rules, and all other applicable rules, laws and regulations.

N. *Classes Deemed to Have Accepted or Rejected the Third Amended Plan*. As set forth in the Third Amended Plan and Disclosure Statement: (i) Class 1 is unimpaired and is conclusively deemed to have accepted the Third Amended Plan pursuant to section 1126(f), and (ii) Class 5, consisting of Interests in the Debtors, is Impaired, but because the Third Amended Plan provides that holders of Class 5 Interests shall not receive or retain any property on account of their Interests, Class 5 is conclusively deemed to have rejected the Third Amended Plan pursuant to section 1126(g).

O. *Impaired Classes of Creditors Voting to Accept or Reject the Third Amended Plan*. Based upon the Ballot Tabulation, the Court finds that the following Impaired Classes have voted on the Third Amended Plan as follows:

(i) Class 2 (the Terry Partially Secured Claim) voted to accept the Third Amended Plan as follows:

Ballots Accepting		Ballots Rejecting	
Amount	Number	Amount	Number
$8,060,827.84 100%	1 100%	$0.00 0.00%	0 0.00%

Two Ballots were submitted by Terry in Class 2. One of the Ballots was based on a proof of Claim recorded in the Claims Register for Case No. 18-30264 as Claim No. 26-1 and filed by Terry for the benefit of his IRAs ("Claim No. 26"). Highland filed an objection [Docket No. 522] on August 17, 2018 seeking an order disallowing Claim No. 26 and striking any vote (on a prior plan of reorganization) by Terry on account of Claim No. 26. Although the Ballot Tabulation reflects the Ballot submitted by Terry on account of Claim No. 26, the Court disregards that Ballot and does not take it into account in its determination regarding acceptance of the Third Amended Plan. The other Ballot submitted by Terry accepted the Third Amended Plan.

(ii) Class 3 (General Unsecured Claims) voted to accept the Third Amended Plan as follows:

Ballots Accepting		Ballots Rejecting	
Amount	Number	Amount	Number
$667,550.00 100%	2 100%	$0.00 0.00%	0 0.00%

Three Ballots were submitted in Class 3. One of the Ballots was submitted by Jennifer G. Terry. Such Ballot is based on a proof of Claim recorded in the Claims Register for Case No. 18-30264 as Claim No. 25-1 and filed by Jennifer G. Terry for the benefit of her IRAs and 401k ("Claim No. 25"). Highland filed an objection [Docket No. 521] on August 17, 2018 seeking an order disallowing Claim No. 25 and striking any vote (on a prior plan of reorganization) by Jennifer G. Terry on account of Claim No. 25. Although the Ballot Tabulation reflects the Ballot submitted by Jennifer G. Terry on account of Claim No. 25, the Court disregards that Ballot and does not take it into account in its determination regarding acceptance of the Plan. The other two Ballots submitted in Class 3 accepted the Third Amended Plan.

(iii) Class 4 (Insider Claims) voted to reject the Third Amended Plan as follows:

Ballots Accepting		Ballots Rejecting	
Amount	Number	Amount	Number
$0.00 0.00%	0 0.00%	$4,172,140.38 100%	1 100%

Based on the foregoing, and as evidenced by the Ballot Tabulation, at least one Impaired Class of Claims (excluding the acceptance by any Insiders of the Debtors) has voted to accept the Third Amended Plan in accordance with the requirements of sections 1124 and 1126 of the Bankruptcy Code.

P. *Modifications to the Third Amended Plan*. The modifications to the Third Amended Plan set forth in the First Modification, the Second Modification (as supplemented), and as set forth in this Order constitute non-material or technical changes and do not materially or adversely affect or change the treatment of any Claims against or Interests in the Debtors

under the Third Amended Plan (the "<u>Non-Material Modifications</u>"). The filing of the First Modification on November 8, 2018 constitutes due and sufficient notice thereof under the circumstances of these Chapter 11 Cases. The filing of the Second Modification on November 16, 2018 (as supplemented on December 10, 2018) constitutes due and sufficient notice thereof under the circumstances of these Chapter 11 Cases. The Non-Material Modifications neither require additional disclosure under section 1125 of the Bankruptcy Code nor re-solicitation of votes on the Plan under section 1126 of the Bankruptcy Code and Bankruptcy Rules 3018 and 3019. In accordance with section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, all holders of Claims against the Debtors who voted to accept the Third Amended Plan are hereby deemed to have accepted the Third Amended Plan as modified consistent with the Non-Material Modifications. No Holder of a Claim against the Debtors who has voted to accept the Third Amended Plan shall be permitted to change its acceptance to a rejection as a consequence of the Non-Material Modifications. The Non-Material Modifications incorporated in the Plan comply with section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019.

Q. *<u>Bankruptcy Rule 3016</u>*. The Plan is dated and identifies the Chapter 11 Trustee as the Person submitting it, thereby satisfying Bankruptcy Rule 3016(a). The filing of the Disclosure Statement satisfied Bankruptcy Rule 3016(b). The Plan provides for the Temporary Plan Injunction (as defined herein), which constitutes an injunction against conduct not otherwise enjoined under the Bankruptcy Code. The Plan and Disclosure Statement both describe in specific and conspicuous language all acts to be enjoined and identify the entities subject to the Temporary Plan Injunction. Therefore, the Plan and Disclosure Statement satisfy the requirements of Bankruptcy Rule 3016(c).

R. *<u>Bankruptcy Rule 3017</u>.* The Chapter 11 Trustee has given notice of the Combined Hearing as required by the applicable provisions of Bankruptcy Rule 3017 and the Solicitation Order. The materials transmitted and notice given by the Chapter 11 Trustee to holders of Claims entitled to vote on the Third Amended Plan and the materials transmitted by

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the Chapter 11 Trustee to holders of Interests and other parties-in-interest satisfy the applicable provisions of Bankruptcy Rules 3017(d)-(f) and the Solicitation Order. Therefore, the requirements of Bankruptcy Rule 3017 have been satisfied.

S. *Bankruptcy Rule 3018*. The solicitation of votes to accept or reject the Third Amended Plan satisfies Bankruptcy Rule 3018. The Third Amended Plan was transmitted to all holders of Claims entitled to vote, sufficient time was prescribed for such parties to accept or reject the Third Amended Plan, and the Solicitation Materials used and Solicitation Procedures followed comply with sections 1125 and 1126, thereby satisfying the requirements of Bankruptcy Rule 3018. Further, the Chapter 11 Trustee filed the Ballot Tabulation in accordance with the provisions of the Solicitation Order.

T. *Burden of Proof*. The Chapter 11 Trustee, as proponent of the Plan, has the burden of proving the elements of sections 1122, 1123 and 1129 of the Bankruptcy Code by a preponderance of the evidence. The Court finds that the Chapter 11 Trustee has met each element of such burden with respect to the Plan.

U. *Judicial Notice*. The Court takes judicial notice of the entire record of proceedings in the Chapter 11 Cases and related adversary proceedings, including, without limitation, all pleadings, notices, and other documents filed, all orders entered, and all evidence and arguments made, proffered or adduced at the hearings held before the Court during the Chapter 11 Cases and related adversary proceedings, including, without limitation, the Combined Hearing. Any resolutions of objections to final approval of the Disclosure Statement or confirmation of the Plan explained on the record at the Combined Hearing are hereby incorporated by reference.

V. *The Record*. The record established at the Combined Hearing (the "Record") to support final approval of the Disclosure Statement and confirmation of the Plan includes:

(i) All documents identified by the Chapter 11 Trustee at the Combined Hearing and all exhibits admitted into evidence at the Combined Hearing, including but not limited to admitted exhibits which are listed on the *Joint*

Witness and Exhibit List [Docket No. 767] filed jointly by the Chapter 11 Trustee, Highland and HCLOF with the Court on December 7, 2018;

(ii) The Ballot Tabulation;

(iii) The testimony of witnesses; and

(iv) The statements and arguments of counsel.

W. *Objections to Final Approval of Disclosure Statement and Confirmation of Plan*. The Solicitation Order established November 26, 2018 as the deadline for filing objections to final approval of the Disclosure Statement and/or confirmation of the Plan. The following objections to final approval of the Disclosure Statement and/or confirmation of the Plan (the "Objections") were timely filed in accordance with the Solicitation Order:

(i) *Objection by Stinson Leonard Street LLP to Debtors' Second Modification to the Third Amended Joint Plan* [Docket No. 720];

(ii) *Joint Objection of Highland Capital Management, L.P. and Highland CLO Funding, Ltd. to Final Approval of Disclosure Statement and to Confirmation of the Third Amended Joint Plan for Acis Capital Management, L.P. and Acis Capital Management GP, LLC* [Docket no. 722]; and

(iii) *Objection of Neutra Ltd. to Final Approval of Disclosure Statement and to Confirmation of the Third Amended Joint Plan for Acis Capital Management, L.P. and Acis Capital Management GP, LLC* [Docket No. 723].

X. *Transfer and Vesting of Assets*. Pursuant to Article VI of the Plan, all Assets shall be transferred to and vested in the Reorganized Debtor as of the Effective Date. The transfer of the Assets to the Reorganized Debtor pursuant to the Plan is consistent with, and authorized by, section 1123(a)(5)(B) of the Bankruptcy Code and will be fully effectuated through this Order as of the Effective Date without the necessity of any other or further assignment or transfer.

Y. *Claim Objections and Resolutions*. Pursuant to the Plan, the Reorganized Debtor has the sole power and exclusive standing and authority to object to any Claim. Without limiting the generality of the foregoing, the Reorganized Debtor shall have the power: (i) to

object to any Claim on any legal or equitable basis; (ii) to seek subordination of any Claim on any legal or equitable basis; (iii) to assert any right of setoff or recoupment, including without limitation, any such right pursuant to section 553 of the Bankruptcy Code; (iv) to assert any and all Estate Defenses to any Claim, whether legal or equitable, including any affirmative defenses or any right of setoff; (v) to assert all Estate Claims as a counterclaim against any Claim, whether arising out of the same or different transactions, both for an affirmative recovery and as an offset against any such Claim; and (vi) to object to any Claims on the basis of section 502(d). Vesting such exclusive power and standing in the Reorganized Debtor is reasonable and appropriate, and is authorized by, and in compliance with, section 1123(b)(3) of the Bankruptcy Code.

Z. *Compliance with the Requirements of Section 1129 of the Bankruptcy Code*. The Plan complies with the applicable provisions of the Bankruptcy Code, as follows:

(i) *Section 1129(a)(1) – Compliance of the Plan with the Applicable Provisions of the Bankruptcy Code*. The Plan complies with all applicable provisions of the Bankruptcy Code as required by section 1129(a)(1) of the Bankruptcy Code, including sections 1122 and 1123.

(a) *Sections 1122 and 1123(a)(1) – Proper Classification*. The classification of Claims and Interests in the Plan is proper under the Bankruptcy Code. Pursuant to sections 1122(a) and 1123(a)(1), the Plan provides for the separate classification of Claims and Interests into six (6) Classes (Class 1, Class 2, Class 3, Subclass 4A, Subclass 4B and Class 5), based on differences in the legal nature and priority of such Claims and Interests (other than Claims for Administrative Expenses, Priority Tax Claims and U.S. Trustee's quarterly fees, which are not required to be designated as separate Classes pursuant to section 1123(a)(1)). Based upon the Record, valid business, factual and legal reasons exist for the separate classification of the various Classes of Claims and Interests created under the Plan, the classifications were not created for any improper purpose and the creation of such Classes

does not unfairly discriminate between or among holders of Claims or Interests. In accordance with section 1122(a), each Class of Claims and Interests contains only Claims or Interests that are substantially similar to the other Claims or Interests within that Class. Accordingly, the requirements of sections 1122(a) and 1123(a)(1) of the Bankruptcy Code have been satisfied.

(b) *Section 1123(a)(2) – Specification of Unimpaired Classes*. The Plan specifies that Claims in Class 1 are unimpaired under the Plan. Therefore, the requirements of section 1123(a)(2) of the Bankruptcy Code have been satisfied.

(c) *Section 1123(a)(3) – Specification of Treatment of Impaired Classes*. Other than Class 1, all Classes of Claims and Interests (Class 2, Class 3, Subclass 4A, Subclass 4B and Class 5) are Impaired under the Plan. The Plan specifies the treatment of each Impaired Class of Claims and Interests under the Plan. The treatment of Impaired Classes of Claims and Interests is specified in Article IV of the Plan. Therefore, the requirements of section 1123(a)(3) of the Bankruptcy Code have been satisfied.

(d) *Section 1123(a)(4) – No Discrimination*. The Plan provides for the same treatment for each Claim or Interest in each respective Class unless the holder of a particular Claim or Interest has agreed to a less favorable treatment of such Claim or Interest. Therefore, the requirements of section 1123(a)(4) of the Bankruptcy Code have been satisfied.

(e) *Section 1123(a)(5) – Adequate Means for Plan Implementation*. The Plan provides for adequate and proper means for the Plan's implementation. This includes means for implementation set forth in Article VI of the Plan. Therefore, the requirements of section 1123(a)(5) of the Bankruptcy Code have been satisfied.

(f) *Section 1123(a)(6) – Prohibition on Issuance of Non-Voting Securities*. The Debtors are not corporations. Therefore, section 1123(a)(6) of the Bankruptcy Code is inapplicable.

(g) *Section 1123(a)(7) – Selection of Officers, Directors and Trustees*. Under the Plan, Terry shall receive 100% of the equity interests in the Reorganized Debtor. The

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Plan does not provide for the selection or appointment of any officers or directors of the Reorganized Debtor as of the Effective Date and Terry, as the sole owner of the Reorganized Debtor, shall be free to structure the Reorganized Debtor's management as he wishes. Therefore, to the extent section 1123(a)(7) of the Bankruptcy Code is applicable to the Plan, its requirements have been satisfied.

(h) *Section 1123(a)(8) – Payment of Individual Debtor's Earnings*. The Debtors are not individuals. Therefore, section 1123(a)(8) of the Bankruptcy Code is inapplicable.

(i) *Section 1123(b) – Discretionary Contents of the Plan*. The Plan contains various provisions that are properly construed as discretionary and not required for confirmation of the Plan under the Bankruptcy Code. As set forth below, all such discretionary provisions comply with section 1123(b) of the Bankruptcy Code, are not inconsistent with the applicable provisions of the Bankruptcy Code and are hereby approved. Therefore, section 1123(b) of the Bankruptcy Code has been satisfied.

(1) *Section 1123(b)(1) – Impairment / Unimpairment of Claims and Interests*. The Plan impairs or leaves unimpaired each Class of Claims and Interests. Therefore, the Plan is consistent with section 1123(b)(1) of the Bankruptcy Code.

(2) *Section 1123(b)(2) – Assumption / Rejection of Executory Contracts and Unexpired Leases*. Article XI of the Plan provides that all of the Debtors' Executory Contracts and Unexpired Leases shall be deemed rejected upon the Effective Date unless an Executory Contract or Unexpired Lease (a) has been previously assumed or rejected pursuant to an order of the Court, (b) is identified in **Exhibit 5** to this Order to be (i) assumed or (ii) assumed and assigned, or (c) is the subject of a motion to assume filed on or before the Confirmation Date. Therefore, the Plan is consistent with section 1123(b)(2) of the Bankruptcy Code.

(3) *Section 1123(b)(3) – Settlement / Retention of Claims and Causes of Action*. The Chapter 11 Trustee has delineated the Estate Claims and Estate Defenses to be retained in the Plan. The terms "Estate Claims" and "Estate Defenses" are defined in sections 1.55 and 1.56 of the Plan, respectively, and together include all claims, causes of action, defenses, affirmative defenses, counterclaims, or offsets held by the Debtors' Estate. The identification and retention of the Estate Claims and Estate Defenses in the Plan is reasonable and appropriate and reflects a proper exercise of the good faith business judgment of the Chapter 11 Trustee. Articles VI and IX of the Plan, including Exhibit A to the Plan, contain a specific and unequivocal reservation of Estate Claims and Estate Defenses as required under applicable Fifth Circuit authority. The Estate Claims and Estate Defenses are expressly, specifically, and unequivocally retained and reserved pursuant to Articles VI and IX of the Plan (including Exhibit A to the Plan) in accordance with section 1123(b)(3)(B) of the Bankruptcy Code. Unless otherwise expressly stated in the Plan or this Order, all Estate Claims and Estate Defenses are hereby reserved for the benefit of the Reorganized Debtor and the Reorganized Debtor shall be entitled to file, prosecute and/or settle each of the Estate Claims so reserved in accordance with the terms of the Plan. The provisions of the Plan regarding reservation of Estate Claims and Estate Defenses are appropriate and in the best interests of the Debtors, the Estate, and holders of Claims and Interests.

(4) *Section 1123(b)(5) – Modification of Creditors' Rights*. With the exception of holders of Class 1 Claims, which are unimpaired, the Plan modifies the rights of all holders of Claims against the Debtors. Accordingly, the Plan is consistent with section 1123(b)(5) of the Bankruptcy Code.

(ii) *Section 1129(a)(2) – Compliance of the Chapter 11 Trustee with the Applicable Provisions of the Bankruptcy Code*. The Chapter 11 Trustee, as proponent of the Plan, has complied with all applicable provisions of the Bankruptcy Code as required by section 1129(a)(2) of the Bankruptcy Code, including sections 1122, 1123, 1124, 1125, 1126, 1127 and

1128 of the Bankruptcy Code and Bankruptcy Rules 3017, 3018 and 3019. Votes to accept or reject the Third Amended Plan were solicited after the Court conditionally approved the adequacy of the Disclosure Statement. The Chapter 11 Trustee and his present and former representatives, advisors, attorneys, professionals and agents have solicited and tabulated the votes on the Third Amended Plan and have participated in the activities described in section 1125 of the Bankruptcy Code fairly and in good faith within the meaning of section 1125(e) of the Bankruptcy Code, and in a manner consistent with the applicable provisions of the Solicitation Order, the Bankruptcy Code, the Bankruptcy Rules, and all other applicable rules, laws and regulations, and are entitled to the protections afforded by section 1125(e) of the Bankruptcy Code. The Chapter 11 Trustee and his present and former representatives, advisors, attorneys, professionals and agents have participated in good faith and in compliance with the applicable provisions of the Bankruptcy Code with respect to the offering, issuance and distribution of recoveries under the Plan and, therefore, are not (and on account of such distributions, will not be) liable at any time for the violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of the Third Amended Plan or distributions made pursuant to the Plan, so long as distributions are made consistent with and pursuant to the Plan.

(iii) *Section 1129(a)(3) – Proposal of the Plan in Good Faith*. The Chapter 11 Trustee has proposed the Plan (and all other agreements, documents and instruments necessary to effectuate the Plan) in good faith and not by any means forbidden by law, thereby satisfying section 1129(a)(3) of the Bankruptcy Code. In determining that the Plan has been proposed in good faith, the Court has examined and considered the totality of the circumstances surrounding the formulation of the Plan, including both the Record at the Combined Hearing and the record of the Chapter 11 Cases. The Chapter 11 Trustee's good faith is evident from the facts and Record of the Combined Hearing. The Chapter 11 Trustee proposed the Plan for legitimate and honest purposes.

(iv) *Section 1129(a)(4) – Court Approval of Certain Payments as Reasonable*. All payments made or to be made by the Reorganized Debtor for services or for costs and expenses in or in connection with the Chapter 11 Cases or in connection with the Plan and incident to the Chapter 11 Cases, have either been approved by, or are subject to final approval of, the Court as reasonable. Notwithstanding anything to the contrary in the Plan, the provisions of section 3.01(e) of the Plan governing the filing of final fee applications by Estate Professionals and allowance of Administrative Expense Claims of Estate Professionals apply to the Chapter 11 Trustee. Compensation sought by the Chapter 11 Trustee through a final fee application shall be subject to final approval of the Court as reasonable in accordance with section 330(a)(3) of the Bankruptcy Code. Therefore, the requirements of section 1129(a)(4) of the Bankruptcy Code are satisfied.

(v) *Section 1129(a)(5) – Disclosure of Identity of Proposed Management, Compensation of Insiders and Consistency of Management Proposals with the Interests of Creditors and Public Policy.* Under the Plan, Terry, who does not constitute an Insider, shall receive 100% of the equity interests in the Reorganized Debtor. The Plan does not provide for appointment of any officers or directors of the Reorganized Debtor as of the Effective Date and Terry, as the sole owner of the Reorganized Debtor, shall be free to structure the Reorganized Debtor's management as he wishes. Terry's identity and affiliations have been fully disclosed and, to the extent that Terry serves as an officer of the Reorganized Debtor after confirmation of the Plan, Terry's appointment to any such role is consistent with the interests of Creditors, holders of Interests and public policy. Therefore, the requirements of section 1129(a)(5) of the Bankruptcy Code are satisfied.

(vi) *Section 1129(a)(6) – No Rate Changes*. The Plan does not contain any rate changes subject to the jurisdiction of any governmental regulatory commissions and will not require governmental regulatory approval. Therefore, section 1129(a)(6) is not applicable to the Chapter 11 Cases.

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(vii) *Section 1129(a)(7) – Best Interest of Creditors Test*. The Plan satisfies section 1129(a)(7). The Liquidation Analysis attached as Exhibit 4 to the Disclosure Statement and the other exhibits and evidence proffered or adduced at the Combined Hearing related thereto: (a) are persuasive and credible; (b) have not been controverted by other evidence; (c) are based upon sound methodology; and (d) conclusively establish that each holder of an Impaired Claim or Interest either (1) has accepted the Plan, or (2) will receive or retain under the Plan, on account of such holder's Claim or Interest, property of a value, as of the Effective Date, that is not less than the amount that such holder would receive or retain if the Debtors were liquidated under chapter 7 of the Bankruptcy Code on such date.

(viii) *Section 1128(a)(8) – Conclusive Presumption of Acceptance by Unimpaired Classes; Acceptance of Plan by Each Impaired Class*. Class 1 is unimpaired under the Plan and is conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code. Classes 2 and 3 are Impaired under the Plan and have voted to accept the Plan. Class 4 is Impaired under the Plan and voted to reject the Plan. Class 5 is Impaired under the Plan. Holders of Class 5 Interests will not receive or retain any property on account of their Interests under the Plan and are therefore conclusively deemed to have rejected the Plan under section 1126(g) of the Bankruptcy Code. Notwithstanding the fact that the Plan was not accepted by all Classes of Impaired Claims and Interests, the Plan is confirmable because it satisfies sections 1129(a)(10) and 1129(b) of the Bankruptcy Code.

(ix) *Section 1129(a)(9) – Treatment of Claims Entitled to Priority Pursuant to Section 507(a) of the Bankruptcy Code*. The treatment of Allowed Claims for Administrative Expenses and Priority Tax Claims under Article III of the Plan satisfies the requirements of, and complies in all respects with, section 1129(a)(9) of the Bankruptcy Code. Accordingly, the requirements of section 1129(a)(9) are satisfied.

(x) *Section 1129(a)(10) – Acceptance by at Least One Impaired Class*. As set forth in the Ballot Tabulation and in this Order, Classes 2 and 3 voted to accept the Plan. As

such, at least one Class of Claims that is Impaired under the Plan has accepted the Plan without including the acceptance of the Plan by any Insider. Therefore, the requirements of section 1129(a)(10) of the Bankruptcy Code have been satisfied.

(xi) *Section 1129(a)(11) – Feasibility of the Plan*. The evidence submitted at the Combined Hearing regarding feasibility, together with all evidence proffered or advanced at or prior to the Combined Hearing, (a) is persuasive and credible, (b) has not been controverted by other evidence, and (c) establishes that confirmation of the Plan is not likely to be followed by the liquidation or the need for further financial reorganization of the Reorganized Debtor. Accordingly, the requirements of section 1129(a)(11) of the Bankruptcy Code have been satisfied.

(xii) *Section 1129(a)(12) – Payment of Bankruptcy Fees*. The Plan provides that all fees due and payable under 28 U.S.C. section 1930 as of the Confirmation Date will be paid in full on the Effective Date or as soon thereafter as is practicable, thus satisfying the requirements of section 1129(a)(12) of the Bankruptcy Code.

(xiii) *Section 1129(a)(13), (14), (15) and (16) – Non-Applicability*. The Debtors do not provide any retiree benefits within the meaning of section 1114, do not owe any domestic support obligations, are not individuals, and are not non-profit corporations. Thus, sections 1129(a)(13), 1129(a)(14), 1129(a)(15) and 1129(a)(16) do not apply to the Chapter 11 Cases.

(xiv) *Section 1129(b) – Confirmation of the Plan Over Non-Acceptance of Impaired Classes*. Class 4 is Impaired under the Plan and voted to reject the Plan. Holders of Class 5 Interests are deemed to have rejected the Plan. Nevertheless, the Plan may be confirmed pursuant to section 1129(b) of the Bankruptcy Code notwithstanding that the requirements of section 1129(a)(8) have not been met because the Chapter 11 Trustee has demonstrated by a preponderance of the evidence that the Plan (a) satisfies all of the other requirements of section 1129(a) of the Bankruptcy Code and (b) does not "discriminate unfairly" and is "fair and equitable" as to each Impaired Class which has not voted to accept (or is

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deemed to reject) the Plan. The Plan therefore satisfies the requirements of section 1129(b) of the Bankruptcy Code and may be confirmed despite the fact that not all Impaired Classes have voted to accept the Plan.

(xv) *Section 1129(c) – Only One Plan*. Other than the Plan (including previous versions thereof), no other plan has been filed in the Chapter 11 Cases. Accordingly, the requirements of section 1129(c) of the Bankruptcy Code are satisfied.

(xvi) *Section 1129(d) – Principal Purpose of the Plan is Not the Avoidance of Taxes*. The principal purpose of the Plan is not the avoidance of taxes or the avoidance of application of Section 5 of the Securities Act of 1933 and there has been no filing by a Governmental Unit asserting any such attempted avoidance. Therefore, the requirements of section 1129(d) of the Bankruptcy Code are satisfied.

(xvii) *Section 1129(e) – Small Business Case*. Neither of the Chapter 11 Cases is a "small business case," as that term is defined in the Bankruptcy Code and, accordingly, section 1129(e) is inapplicable to the Chapter 11 Cases.

AA. *Executory Contracts and Unexpired Leases*. The Chapter 11 Trustee has satisfied the provisions of section 365 of the Bankruptcy Code with respect to the assumption and rejection of the Executory Contracts and Unexpired Leases pursuant the Plan. The Chapter 11 Trustee has exercised reasonable business judgment prior to the Combined Hearing in determining whether to assume or reject each of the Executory Contracts and Unexpired Leases as set forth in Article XI of the Plan, **Exhibit "5"** to this Order, or otherwise. Each assumption or rejection of an Executory Contract or Unexpired Lease pursuant to this Order and in accordance with Article XI of the Plan, or otherwise by order of this Court, shall be valid, legal, and binding upon the applicable Debtor, Reorganized Debtor, Estate, and all non-Debtor persons or entities party to such Executory Contract or Unexpired Lease. Executory Contracts and Unexpired Leases not previously assumed by order of this Court and which the Chapter 11 Trustee has determined to assume are identified in **Exhibit "5"** to this Order.

Because no defaults exist under the Executory Contracts and Unexpired Leases identified in **Exhibit "5"** to this Order, the Chapter 11 Trustee is not required to make any cure payments, provide any other compensation, cure any nonmonetary defaults, or provide adequate assurance of future performance under section 365(b) of the Bankruptcy Code as a condition to the assumption of such Executory Contracts and Unexpired Leases.

BB. *Compromise and Settlement*. The Court finds and concludes that, pursuant to section 1123(b)(3)(A) of the Bankruptcy Code and Bankruptcy Rule 9019, in consideration of the Distributions and other benefits provided under the Plan, the provisions of the Plan constitute a good faith compromise and settlement of all Impaired Claims and Interests. Such settlement and compromise, which was made at arms'-length in exchange for good and valuable consideration, is in the best interests of the holders of Impaired Claims and Interests, is within the range of possible litigation outcomes, and is fair, equitable, and reasonable. Each element of the compromise and settlement reflected in the Plan is integrated and inexorably linked.

CC. *Plan Injunction*. The Plan Injunction is necessary and appropriate to facilitate the transactions and distributions to Creditors pursuant to the Plan. The Plan Injunction constitutes an essential and integral part of the Plan without which the holders of Claims against the Debtors could potentially interfere with implementation and performance of the Plan. The Plan Injunction protects the best interests of the holders of Allowed Claims and facilitates the efficient performance of the Plan. Consequently, the Plan Injunction is appropriate pursuant to sections 105(a) and 1123(a)(5) of the Bankruptcy Code.

DD. *Temporary Plan Injunction*. The Temporary Plan Injunction (as defined herein) is a temporary injunction which provides for the continuation, after the Effective Date, of injunctive relief the Court previously granted in its *Preliminary Injunction Order* (the "Preliminary Injunction") [Docket No. 21 in Adversary No. 18-03212-sgj] entered on July 10, 2018 in the Trustee's Adversary. The Preliminary Injunction was originally set to expire by its own terms

upon confirmation of the Plan, but is extended by this Order through the Effective Date of the Plan. Based on the record of prior proceedings in the Chapter 11 Cases, including in the Trustee's Adversary, and the Record at the Combined Hearing, no grounds have been shown to give the Court reason to reconsider any findings supporting its prior Preliminary Injunction. Furthermore, as set forth below, the Record at the Combined Hearing demonstrates that the four elements required for issuance of injunctive relief are present, the Temporary Plan Injunction is necessary and appropriate in all respects, and it complies with the applicable requirements of the Bankruptcy Rules.

(i) *Substantial Likelihood of Success on the Merits*. In the Highland Adversary, the Chapter 11 Trustee has asserted a counterclaim seeking to avoid the prepetition transfer of Acis LP's rights under the ALF PMA (the "ALF PMA Transfer") as a fraudulent transfer under the Bankruptcy Code and the Texas Uniform Fraudulent Transfer Act. Such fraudulent transfer actions seek an equitable remedy and involve claims to specific assets of Highland HCF. But for the ALF PMA Transfer, HCLOF could not have attempted to direct and effectuate an optional redemption of the Acis CLOs (which it has twice attempted to do postpetition in the Chapter 11 Cases). The rights transferred in the ALF PMA Transfer appear to have been fraudulently transferred for no apparent value. The Court found in the Preliminary Injunction, and the Court finds again for purposes of this Order, that the Chapter 11 Trustee has demonstrated a substantial likelihood of success on the merits of his claim to avoid the ALF PMA Transfer as a fraudulent transfer.

(ii) *Irreparable Harm*. Revenue to be generated by the Reorganized Debtor under the PMAs is a primary source of funding Distributions to Creditors under the Plan. Absent the Temporary Plan Injunction, HCLOF will be free to direct an optional redemption before this Court can adjudicate the fraudulent transfer actions with respect to the ALF PMA Transfer. Such an optional redemption – or similar call or liquidation of the Acis CLOs – would not only render such fraudulent transfer actions moot, but would effectively terminate and destroy all

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value in the PMAs. This would, in turn, effectively destroy the Reorganized Debtor's ability to perform under the Plan to the detriment of the Reorganized Debtor, Creditors and other parties-in-interest. Consequently, the Reorganized Debtor faces immediate and irreparable harm if the Temporary Plan Injunction is not issued.

(iii) *Balance of Harms*. The balance of harms weighs in favor of issuing the Temporary Plan Injunction because any alleged harm to HCLOF, Highland or their affiliates is substantially outweighed by the imminent and irreparable harm that would be suffered by the Reorganized Debtor, Creditors and other parties-in-interest if the Temporary Plan Injunction is not issued and an optional redemption, call or other liquidation of the Acis CLOs follows. At a minimum, the Temporary Plan Injunction is appropriate to maintain the status quo pending adjudication of the fraudulent transfer actions with respect to the ALF PMA Transfer. Highland, HCLOF and their affiliates will not suffer any material, recognizable harm if temporarily enjoined from pursuing an optional redemption, call or other liquidation of the Acis CLOs before the Court adjudicates the fraudulent transfer actions concerning the ALF PMA Transfer and thereby determines whether HCLOF has any legitimate right to direct an optional redemption, call or other liquidation of the Acis CLOs in the first instance.

(iv) *Public Policy*. Public policy favors maximization of a debtor's assets and successful reorganization. Because an optional redemption, call or other liquidation of the Acis CLOs would destroy the value of the PMAs and the Reorganized Debtor's ability to perform under the Plan, issuance of the Temporary Plan Injunction is consistent with public policy. Furthermore, public policy favors disposition of cases on their merits. Absent the Temporary Plan Injunction, HCLOF could be expected to immediately direct an optional redemption, call or other liquidation of the Acis CLOs following confirmation of the Plan, thus rendering the fraudulent transfer actions concerning the ALF PMA Transfer moot. Issuance of the Temporary Plan Injunction will avoid the potential for such fraudulent transfer actions being mooted prior to adjudication of such actions on their merits and is consistent with public policy.

(v) *Section 105(a)*. Section 105(a) empowers this Court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions" of the Bankruptcy Code. 11 U.S.C. § 105(a). The Temporary Plan Injunction is essential to the Reorganized Debtor's ability to perform the Plan and to maintain the status quo during prosecution of the fraudulent transfer actions concerning the ALF PMA Transfer. The Temporary Plan Injunction is therefore both necessary and appropriate to carry out the provisions of the Bankruptcy Code in the Chapter 11 Cases.

(vi) *Compliance with Technical Requirements*. Bankruptcy Rule 3020(c) requires that the Temporary Plan Injunction (a) describe the acts enjoined in reasonable detail; (b) be specific in its terms with regard to the injunction; and (c) identify the entities subject thereto. The Temporary Plan Injunction satisfies each of these requirements. The description of acts enjoined is specific and particular and the language of the Temporary Plan Injunction is therefore reasonably detailed. The Temporary Plan Injunction is also specific in its terms, as its language clearly describes the condition triggering the injunction and the specific events which will serve to terminate it. The Temporary Plan Injunction also specifically identifies the entities subject to its terms. Federal Rule of Civil Procedure 65(d)(1), made applicable by Bankruptcy Rule 7065, also requires that the Temporary Plan Injunction be specific in its terms and describe the enjoined acts in reasonable detail. Federal Rule of Civil Procedure 65(d)(1) further requires that the reasons for issuance of the Temporary Plan Injunction are stated. The reasons for this Court's issuance of the Temporary Plan Injunction are stated herein. Therefore, the Temporary Plan Injunction satisfies all requirements of the applicable Bankruptcy Rules.

EE. *Substantive Consolidation of the Debtors*. The Court finds and concludes that the substantive consolidation of the Debtors for the purpose of implementing the Plan, including for purposes of distributions under the Plan, is in the best interests of the Debtors, the Estate, and holders of Claims and Interests. Substantive consolidation recognizes the Debtors' common business purpose and the fact that Acis GP's liability is derived from the liabilities of

Acis LP based on Acis GP's status as general partner of Acis LP. The Court further finds that substantive consolidation of the Debtors constitutes an integral part of the Plan.

FF. *Retention of Jurisdiction*. This Court finds and concludes that this Court's retention of jurisdiction as set forth herein and in the Plan comports with 28 U.S.C. sections 157 and 1334. Consequently, the Court may properly retain jurisdiction over the matters set forth in Article XV of the Plan.

GG. *Implementation of Other Necessary Documents and Agreements*. All documents and agreements necessary to implement the Plan are essential elements of the Plan and entry into and consummation of the transactions contemplated by each of such documents and agreements is in the best interests of the Debtors, the Estate, and holders of Claims and Interests. The Chapter 11 Trustee has exercised reasonable business judgment in determining which agreements to enter into and has provided sufficient and adequate notice of such documents and agreements. The terms and conditions of such documents and agreements have been negotiated in good faith, at arm's length, are fair and reasonable, and are reaffirmed and approved.

HH. *Conditions Precedent to the Effective Date*. Each of the conditions precedent to the Effective Date, as set forth in Article XIII of the Plan, has been satisfied or waived in accordance with the provisions of the Plan, or is reasonably likely to be satisfied or waived.

II. *Satisfaction of Confirmation Requirements*. Based upon the foregoing, all other filed pleadings, exhibits and documents filed in connection with confirmation of the Plan and all evidence and arguments made, proffered, or adduced at the Combined Hearing, the Plan satisfies the requirements for confirmation set forth in section 1129 of the Bankruptcy Code.

ORDER

Based on the foregoing, it is hereby ORDERED:

1. Findings of Fact and Conclusions of Law. The above-referenced findings of fact and conclusions of law are incorporated by reference as though fully set forth herein. To the

extent any of the prior findings of fact or conclusions of law constitutes an order of this Court, they are adopted as such.

2. Objections to Final Approval of Disclosure Statement and Confirmation of Plan. To the extent that any of the Objections have not been resolved, withdrawn, waived or settled prior to entry of this Order or otherwise resolved as stated on the Record of the Combined Hearing or as set forth in this Order, they are hereby overruled on their merits.

3. Final Approval of Disclosure Statement. The Disclosure Statement is hereby approved on a final basis as containing adequate information as required by section 1125 of the Bankruptcy Code.

4. Confirmation of Plan. All requirements for confirmation of the Plan have been satisfied. The Third Amended Plan, as modified by the First Modification and Second Modification (as supplemented) and as modified herein, is hereby CONFIRMED in accordance with section 1129 of the Bankruptcy Code, and all terms and conditions set forth in the Plan are hereby APPROVED. The terms of the Plan are incorporated by reference into, and as an integral part of, this Order.

5. Solicitation and Notice. Notice of the Combined Hearing complied with the terms of the Solicitation Order, was appropriate and satisfactory based on the circumstances of the Chapter 11 Cases and was in compliance with the applicable provisions of the Bankruptcy Code and the Bankruptcy Rules. The solicitation of votes on the Third Amended Plan and the Solicitation Materials complied with the Solicitation Procedures, was appropriate and satisfactory based upon the circumstances of the Chapter 11 Cases, and was in compliance with the applicable provisions of the Bankruptcy Code and Bankruptcy Rules.

6. Plan Classification Controlling. The terms of the Plan shall solely govern the classification of Claims and Interests for purposes of distributions to be made thereunder. The classifications set forth on the Ballots tendered to or returned by the Holders of Claims in connection with voting on the Plan: (a) were set forth thereon solely for purposes of voting to

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accept or reject the Plan; (b) do not necessarily represent, and in no event shall be deemed to modify or otherwise affect, the actual classification of Claims under the Plan for distribution purposes; (c) may not be relied upon by any holder of a Claim as representing the actual classification of such Claim under the Plan for distribution purposes; and (d) shall not be binding upon the Debtors and the Reorganized Debtor except for voting purposes.

7. Resolution of Stinson Objection. Stinson Leonard Street LLP ("Stinson") has asserted a Claim against the Debtors for $158,552.98. On July 31, 2018, Stinson initially asserted its Claim as an unsecured Claim by filing proof of Claim number 12 in the Acis LP case and proof of claim number 2 in the Acis GP case. Those Claims represent a single Claim for satisfaction of a total alleged debt of $158,552.89. All proofs of Claim filed by Stinson will be referred to collectively as the "Stinson Claim." The Stinson Claim is treated as part of Class 3 under the Plan. On November 9, 2018, Stinson amended the Stinson Claim to assert a secured Claim based on a possessory lien on legal files belonging to the Debtors. The Chapter 11 Trustee currently intends to object to the Stinson Claim, including Stinson's claim to secured status. Stinson filed an Objection to the Plan on November 26, 2018 [Docket No. 720] which was subsequently withdrawn based on this proposed paragraph being included in any Order confirming the Plan. This paragraph resolves Stinson's Objection as follows: Notwithstanding any contrary provision of the Plan or this Order, the Stinson Claim, to the extent it is Allowed by a Final Order of the Bankruptcy Court as a Secured Claim, shall be considered a separate class under the Plan and paid by the Reorganized Debtor within thirty (30) days after entry of such Final Order. To the extent it is an Allowed Secured Claim, the Stinson Claim will be removed from Class 3. To the extent it is an Allowed General Unsecured Claim, the Stinson Claim will remain a Class 3 Claim. This recognizes that the Stinson Claim may be allowed as partly secured (*i.e.* only secured to the extent of the value of its collateral) and be paid accordingly. The Chapter 11 Trustee reserves all rights to object to Stinson's proofs of Claim, and Stinson reserves all rights to defend its proofs of Claim.

8. Plan Implementation. Upon the Effective Date of the Plan, the Chapter 11 Trustee and the Reorganized Debtor are hereby authorized and directed to take all actions necessary or appropriate to implement, effectuate or consummate the Plan, the terms of this Order and the transactions respectively contemplated therein, and to otherwise fully perform and execute their duties under the Plan or this Order. Without limiting the generality of the foregoing, pursuant to section 1142(b) of the Bankruptcy Code, each and every Person (including, without limitation, the Chapter 11 Trustee, HCLOF, Highland, any and all affiliates of HCLOF and Highland, the Issuers and Co-Issuers, and the Indenture Trustee), to the extent necessary, is hereby directed to execute or deliver, or to join in the execution or delivery of, any instrument required to effect the transfers of property dealt with under the Plan and this Order, and to perform all other acts necessary for the consummation of the Plan. Further pursuant to section 1142(b) of the Bankruptcy Code, to the extent that any Person fails to execute or deliver any instrument required to effect the transfers of property pursuant to the Plan and this Order, the Chapter 11 Trustee is hereby authorized to execute and deliver on behalf of any such Person (including, without limitation, HCLOF, Highland, and any and all affiliates of HCLOF and Highland) any instrument required to effect the transfers of property pursuant to the Plan and this Order. In the event of an appeal of this Order, the Chapter 11 Trustee and the Reorganized Debtor are hereby authorized and directed to take all steps necessary to make the Plan effective and, from and after the Effective Date, execute their duties, responsibilities and obligations under the Plan, this Order and the Plan Documents unless and until this Order is stayed by order of a court of appropriate jurisdiction.

9. Restructuring Transactions. On the Effective Date or as soon as reasonably practicable thereafter, the Reorganized Debtor may take all actions as may be necessary or appropriate to effect any transaction described in, approved by, contemplated by, or necessary to effectuate the Plan; provided, however, that no such restructuring transactions may violate the terms of any assumed Executory Contract or Unexpired Lease.

10. Approval of Plan Documents. The form and substance of the Plan Documents are all hereby APPROVED. The Chapter 11 Trustee is authorized and directed, without the need for further corporate or other organizational action by or on behalf of the Debtors or further order or authorization of this Court, to take such actions and do all things as may be necessary or required to implement and effectuate the Plan Documents and to make the Plan effective.

11. Transfer and Vesting of Assets; Assumption of Obligations. On the Effective Date, without the execution of any other or further document or any further order by the Court, all Assets shall be deemed as fully, completely and irrevocably transferred to, and vested in, the Reorganized Debtor in accordance with the Plan. All transfers of Assets to the Reorganized Debtor shall be free and clear of all Liens, Claims, rights, Interests and charges, except as otherwise expressly provided in the Plan or any agreement, instrument, or other document incorporated therein, or this Order. Upon the Effective Date, the Reorganized Debtor shall be deemed to have assumed the obligations to make all Distributions pursuant to the Plan and this Order.

12. Estate Claims and Estate Defenses. Upon the Effective Date, without the necessity of the execution of any further documents or further order of the Court, all Estate Claims and Estate Defenses, including without limitation all Estate Claims and Estate Defenses identified in Exhibit A to the Plan, shall be deemed as fully, completely and irrevocably transferred to, and vested in, the Reorganized Debtor. From and after the Effective Date, the Reorganized Debtor shall have the exclusive standing and authority to assert, prosecute, collect, compromise and settle all Estate Claims and Estate Defenses pursuant to the terms of the Plan.

13. Treatment of Executory Contracts and Unexpired Leases. The Executory Contract and Unexpired Lease provisions of Article XI of the Plan, as modified herein, are hereby approved in their entirety. The assumption of Executory Contracts and Unexpired Leases as set forth in the Plan, this Order, and **Exhibit "5"** to this Order are hereby approved.

Because no defaults exist under the Executory Contracts and Unexpired Leases identified in **Exhibit "5"** to this Order, the Chapter 11 Trustee is not required to make any cure payments, provide any other compensation, cure any nonmonetary defaults, or provide adequate assurance of future performance under section 365(b) of the Bankruptcy Code as a condition to the assumption of such Executory Contracts and Unexpired Leases. All other Executory Contracts and Unexpired Leases that have not been previously assumed or rejected shall be deemed as rejected as of the Effective Date in accordance with the terms of the Plan. All Rejection Claims must be filed within the time specified in section 11.03 of the Plan, failing which any such Rejection Claim shall be forever barred and precluded from receiving any Distribution pursuant to the Plan. Notwithstanding anything to the contrary herein or in the Plan, Exhibit 5 to this Order hereby replaces, is substituted for, and supersedes Exhibit B to the Third Amended Plan and any explicit or inferred references herein or in the Plan to Exhibit B to the Third Amended Plan shall refer to Exhibit 5 to this Order.

14. Executory Contracts with Issuers and Co-Issuers. Pursuant to the Plan and as provided in this Order, the Debtors are authorized to assume executory contracts that include as a party ACIS CLO 2014-3 Ltd., ACIS CLO 2014-4 Ltd., ACIS CLO 2014-5 Ltd., ACIS CLO 2015-6 Ltd., ACIS CLO 2014-3 LLC, ACIS CLO 2014-4 LLC, ACIS CLO 2014-5 LLC, and/or ACIS CLO 2015-6 LLC solely if and to the extent that one or more of the Debtors is a signatory to each such executory contract.

15. Approval of Brigade as Sub-Advisor and Shared Services Provider. Pursuant to an *Order Granting Emergency Motion to Approve Replacement Sub-Advisory and Shared Services Providers, Brigade Capital Management, LP and Cortland Capital Markets Services LLC* [Docket No. 464] entered on August 1, 2018, the Court authorized the Chapter 11 Trustee to engage Brigade Capital Management, LP ("Brigade") and Cortland Capital Markets Services LLC to perform the services previously provided by Highland under the Sub-Advisory Agreement and Shared Services Agreement, on an interim basis. The Chapter 11 Trustee

selected Brigade as the party to provide both sub-advisory and shared services to the Reorganized Debtor. Based on the record of prior proceedings in the Chapter 11 Cases and the Record at the Combined Hearing, the Chapter 11 Trustee has demonstrated that Brigade is fully qualified to perform such services, and that the Chapter 11 Trustee's selection of Brigade is an exercise of his sound business judgment. Furthermore, adequate assurance of future performance by Brigade has been shown. Therefore, the selection of Brigade as the provider to the Reorganized Debtor of the sub-advisory and shared services previously provided by Highland under the Sub-Advisory Agreement and Shared Services Agreement is hereby approved in all respects.

16. Substantive Consolidation. The substantive consolidation of the Debtors for purposes of implementation of and distributions under the Plan is hereby approved as of the Effective Date such that on the Effective Date: (a) all assets and liabilities of the Debtors will be deemed merged; (b) all guaranties by one Debtor of the obligations of the other Debtor will be deemed eliminated so that any Claim against any Debtor and any guarantee thereof executed by the other Debtor and any joint or several liability of the Debtors will be deemed to be one obligation of the consolidated Debtors; and (c) each and every Claim filed or to be filed in the case of either of the Debtors will be deemed filed against the consolidated Debtors and will be deemed one Claim against and a single obligation of the consolidated Debtors.

17. Compromise and Settlement. Pursuant to section 363 of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration of the classification, potential Distributions and other benefits provided under the Plan, the provisions of the Plan shall constitute a good faith compromise and settlement of all Claims, Interests and controversies subject to, or dealt with, under the Plan, including, without limitation, all Claims against the Debtors or Estate arising prior to the Effective Date, whether known or unknown, foreseen or unforeseen, asserted or unasserted, fixed or contingent, arising out of, relating to or in connection with the business or affairs of, or transactions with, the Debtors or the Estate. The entry of this Order constitutes the

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Court's approval of each of the foregoing compromises or settlements embodied in the Plan, and all other compromises and settlements provided for in the Plan, as well as a finding by the Court that such compromises and settlements are in the best interest of the Debtors, the Estate, holders of Claims and Interests, and other parties-in-interest, and are fair, equitable and within the range of reasonableness. The rights afforded in the Plan and the treatment of all Claims and Interests therein are in exchange for, and in complete satisfaction and release of, all Claims and Interests of any nature whatsoever against and in the Debtors, the Estate, and the Assets. Except as otherwise provided in the Plan or this Order, all Persons shall be precluded and forever barred by the Plan Injunction from asserting against the Debtors and their affiliates, successors, assigns, the Reorganized Debtor or the Reorganized Debtor's assets, the Estate, or the Assets, any event, occurrence, condition, thing, or other or further Claims or causes of action based upon any act, omission, transaction, or other activity of any kind or nature that occurred or came into existence prior to the Effective Date, whether or not the facts of or legal bases therefore were known or existed prior to the Effective Date.

18. Discharge. Except for the obligations expressly set forth in the Plan or this Order, on the Effective Date, the Debtors, the Reorganized Debtor and their successors in interest and assigns shall be deemed and they each are discharged and released to the fullest extent permitted by applicable law, including pursuant to section 1141(d)(1) of the Bankruptcy Code, from any and all Claims, Interests, demands, debts and liabilities that arose before the Effective Date. Without limiting the generality of the foregoing, the discharge shall apply to and cover both known and unknown Claims although the Court makes no determination in this Order as to which Creditors may constitute holders of unknown Claims. In addition, all such discharged Claims, both known and unknown, shall be subject to the Plan Injunction.

19. Injunctions. The following injunction provisions set forth in Article XIV of the Plan are hereby approved and authorized in their entirety:

(a) Permanent General Plan Injunction:

EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THE PLAN, AS OF THE EFFECTIVE DATE ALL HOLDERS OF CLAIMS AGAINST, OR INTERESTS IN, THE DEBTORS, THE ESTATE OR ANY OF THE ASSETS THAT AROSE PRIOR TO THE EFFECTIVE DATE ARE HEREBY PERMANENTLY ENJOINED AND PROHIBITED FROM THE FOLLOWING: (a) THE COMMENCING OR CONTINUATION IN ANY MANNER, DIRECTLY OR INDIRECTLY, OF ANY ACTION, CASE, LAWSUIT OR OTHER PROCEEDING OF ANY TYPE OR NATURE AGAINST THE DEBTORS, THE ESTATE, THE REORGANIZED DEBTOR, OR THE REORGANIZED DEBTOR'S ASSETS WITH RESPECT TO ANY SUCH CLAIM OR INTEREST ARISING OR ACCRUING BEFORE THE EFFECTIVE DATE, INCLUDING WITHOUT LIMITATION THE ENTRY OR ENFORCEMENT OF ANY JUDGMENT, OR ANY OTHER ACT FOR THE COLLECTION, EITHER DIRECTLY OR INDIRECTLY, OF ANY CLAIM OR INTEREST AGAINST THE DEBTORS, THE ESTATE, THE REORGANIZED DEBTOR, OR THE REORGANIZED DEBTOR'S ASSETS; (b) THE CREATION, PERFECTION OR ENFORCEMENT OF ANY LIEN, SECURITY INTEREST, ENCUMBRANCE, RIGHT OR BURDEN, EITHER DIRECTLY OR INDIRECTLY, AGAINST THE DEBTORS, THE ESTATE, THE REORGANIZED DEBTOR, OR THE REORGANIZED DEBTOR'S ASSETS, OR (c) TAKING ANY ACTION IN RELATION TO THE DEBTORS, THE ESTATE, THE REORGANIZED DEBTOR, OR THE REORGANIZED DEBTOR'S ASSETS, EITHER DIRECTLY OR INDIRECTLY, WHICH VIOLATES OR DOES NOT CONFORM OR COMPLY WITH THE PROVISIONS OF THE PLAN APPLICABLE TO SUCH CLAIM OR INTEREST.

The above injunction is an integral term of this Order and shall be fully binding upon, and enforceable against, all Persons through and as a part of this Order. Furthermore, notwithstanding anything to the contrary in the Plan or this Order, the above injunction is permanent and shall not expire upon the occurrence of any event that causes the Temporary Plan Injunction to expire.

(b) Temporary Injunction Against the Liquidation of the Acis CLOs and Related Actions (the "Temporary Plan Injunction"):

EXCEPT TO THE EXTENT NECESSARY TO ALLOW HCLOF, THE REORGANIZED DEBTOR AND BRIGADE TO EFFECTUATE THE RESET OF ONE OR MORE OF THE ACIS CLOS IN ACCORDANCE WITH SECTION 6.08 OF THE PLAN, PURSUANT TO SECTIONS 105(a), 1123(a)(5), 1123(b)(6), AND 1142(b) OF THE BANKRUPTCY CODE, THE ENJOINED PARTIES (DEFINED BELOW) ARE HEREBY ENJOINED FROM: (a) PROCEEDING WITH, EFFECTUATING, OR OTHERWISE TAKING (i) ANY ACTION IN FURTHERANCE OF ANY OPTIONAL REDEMPTION, CALL, OR OTHER LIQUIDATION OF THE ACIS CLOS PREVIOUSLY OR CURRENTLY ISSUED BY ANY SUCH PARTIES, AND (ii) ANY OTHER ATTEMPT TO LIQUIDATE THE ACIS CLOS BY ANY MEANS, (b) TRADING ANY ACIS CLO COLLATERAL IN FURTHERANCE OF ANY OPTIONAL REDEMPTION, CALL, OR OTHER LIQUIDATION OF THE ACIS CLOS, (c) EXERCISING ANY RIGHTS TO ASK OR DIRECT THE ISSUERS, CO-ISSUERS OR INDENTURE TRUSTEE TO PERFORM ANY ACTION IN RELATION TO THE ACIS CLOS THAT THE ENJOINED PARTIES ARE PROHIBITED FROM TAKING UNDER THE TERMS OF THE PLAN INJUNCTION, (d) INTERFERING IN ANY WAY WITH THE CAPITAL MARKETS PROCESS OF RESETTING ANY ACIS CLO, AND (e) SENDING, MAILING, OR OTHERWISE DISTRIBUTING ANY NOTICE TO THE HOLDERS OF

THE NOTES IN THE ACIS CLOS IN CONNECTION WITH THE EFFECTUATION OF ANY OPTIONAL REDEMPTION, CALL, OR OTHER LIQUIDATION OF THE ACIS CLOS, UNTIL THE EARLIER TO OCCUR OF: (w) THE DATE UPON WHICH A FINAL ORDER IS ENTERED RESOLVING THE ESTATE'S AVOIDANCE CLAIMS AGAINST ALL ENJOINED PARTIES RELATING TO ACIS LP'S RIGHTS UNDER THE ALF PMA; (x) THE DATE UPON WHICH ALL ALLOWED CLAIMS AGAINST THE DEBTORS HAVE BEEN PAID IN FULL, (y) THE ENTRY OF AN ORDER BY THE BANKRUPTCY COURT FINDING THAT A MATERIAL DEFAULT HAS OCCURRED UNDER THE TERMS OF THE PLAN, OR (z) THE ENTRY OF A SUBSEQUENT ORDER BY THE BANKRUPTCY COURT PROVIDING OTHERWISE WITH RESPECT TO ONE OR MORE OF THE ACIS CLOS. FOR PURPOSES OF THIS PARAGRAPH, THE TERM "ENJOINED PARTIES" SHALL INCLUDE HIGHLAND, HCLOF, CLO HOLDCO, NEUTRA, HIGHLAND HCF, HIGHLAND CLOM, ANY AFFILIATES OF HIGHLAND, AND THEIR RESPECTIVE EMPLOYEES, AGENTS, REPRESENTATIVES, TRANSFEREES, ASSIGNS, AND SUCCESSORS. FOR PURPOSES OF CLARIFICATION AND AVOIDANCE OF DOUBT, NOTHING IN THIS PARAGRAPH SHALL PRECLUDE ORDINARY DAY-TO-DAY TRADING OF THE COLLATERAL IN THE ACIS CLOS BY THE REORGANIZED DEBTOR.

The above Temporary Plan Injunction is an integral term of this Order and the Temporary Plan Injunction shall be fully binding upon, and enforceable against, the Enjoined Parties through and as a part of this Order. For the avoidance of doubt, the occurrence of any event specified in the Temporary Plan Injunction that results in expiration of the Temporary Plan Injunction shall not cause any of the other injunctive relief set forth in the first paragraph of section 14.03 of the Plan and paragraph 18(a) of this Order to expire, such other injunctive relief being permanent.

20. Notwithstanding anything to the contrary in the Plan or this Order, nothing in the Plan or in this Order shall discharge, release, enjoin or otherwise bar (a) any liability of the Debtors, the Estate, the Reorganized Debtor, or the Reorganized Debtor's assets ("Released Parties") to a Governmental Unit arising on or after the Confirmation Date with respect to events occurring after the Confirmation Date, provided that the Released Parties reserve the right to assert that any such liability is a Claim that arose on or prior to the Confirmation Date and constitutes a Claim that is subject to the deadlines for filing proofs of Claim, (b) any liability to a Governmental Unit that is not a Claim subject to the deadlines for filing proofs of Claim, (c) any valid right of setoff or recoupment of a Governmental Unit, and (d) any police or regulatory action by a Governmental Unit. In addition, nothing in the Plan or this Order discharges, releases, precludes or enjoins any environmental liability to any Governmental Unit that any

Person other than the Released Parties would be subject to as the owner or operator of the property after the Effective Date. For the avoidance of any doubt, nothing in this paragraph shall be construed to limit the application of the Plan Injunction to any Claim which was subject to any bar date applicable to such Claim.

21. Extension of the Preliminary Injunction. Notwithstanding anything to the contrary in the terms of the Preliminary Injunction entered in the Trustee's Adversary, the Preliminary Injunction shall not expire upon confirmation of the Plan. The Preliminary Injunction is hereby extended to and through the Effective Date of the Plan and shall remain in full force and effect until the Effective Date of the Plan.

22. Exculpation. The exculpation provisions set forth in section 16.06 of the Plan are hereby approved in all respects.

23. Priority and Secured Tax Claims. The treatment of Priority Tax Claims and Secured Tax Claims is specified in the Plan. Nothing in the Plan or this Order shall modify or affect the Lien rights of a Taxing Authority under applicable non-bankruptcy law. In the event of a default on the payment of a Priority Tax Claim or Secured Tax Claim under the Plan, the Taxing Authority to which the payment is owed may pursue all administrative and judicial remedies under applicable law to collect the unpaid Priority Tax Claim or Secured Tax Claim.

24. Injunctions and Automatic Stay. Except as otherwise provided in the Plan or this Order, all injunctions or stays in effect in the Chapter 11 Cases pursuant to sections 105 or 362 of the Bankruptcy Code or any order of the Court, and extant on the Confirmation Date (excluding any injunctions or stays contained in the Plan or this Order) shall remain in full force and effect until the Effective Date. All injunctions or stays contained in the Plan or this Order shall remain in full force and effect in accordance with their terms.

25. Setoffs. Except as otherwise expressly provided for in the Plan, pursuant to the Bankruptcy Code (including section 553 of the Bankruptcy Code), applicable nonbankruptcy law, or as may be agreed to by the holder of a Claim, the Reorganized Debtor may set off

against any Allowed Claim and the Distributions to be made pursuant to the Plan on account of such Allowed Claim (before such Distribution is made), any Claims, rights, Estate Claims and Estate Defenses of any nature that the Debtors may hold against the holder of such Allowed Claim, to the extent such Claims, rights, Estate Claims and Estate Defenses against such holder have not been otherwise compromised or settled on or prior to the Effective Date (whether pursuant to the Plan or otherwise); provided, however, that neither the failure to effect such a setoff nor the allowance of any Claim or Interest pursuant to the Plan shall constitute a waiver or release of any such Claims, rights, Estate Claims and Estate Defenses that the Estate may possess against such Claimant. In no event shall any Claimant or Interest holder be entitled to setoff any Claim or Interest against any Claim, right, or Estate Claim of the Debtors without the consent of the Debtors or the Reorganized Debtor unless such holder files a motion with the Court requesting the authority to perform such setoff notwithstanding any indication in any proof of Claim or otherwise that such holder asserts, has, or intends to preserve any right of setoff pursuant to section 553 of the Bankruptcy Code or otherwise.

26. Recoupment. Except as otherwise expressly provided for in the Plan, in no event shall any holder of Claims or Interests be entitled to recoup any Claim or Interest against any Claim, right, account receivable, or Estate Claim of the Debtors or the Reorganized Debtor unless (a) such holder actually provides notice thereof in writing to the Debtors or the Reorganized Debtor of its intent to perform a recoupment; (b) such notice includes the amount to be recouped by the holder of the Claim or Interest and a specific description of the basis for the recoupment, and (c) the Debtors or the Reorganized Debtor have provided a written response to such Claim or Interest holder, stating unequivocally that the Debtors or the Reorganized Debtor consents to the requested recoupment. The Debtors and the Reorganized Debtor shall have the right, but not the obligation, to seek an order of the Court allowing any or all of the proposed recoupment. In the absence of a written response from the Debtors or the

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Reorganized Debtor consenting to a recoupment or an order of the Court authorizing a recoupment, no recoupment by the holder of a Claim or Interest shall be allowed.

27. Preservation of Causes of Action. Articles VI and IX of the Plan, including Exhibit A to the Plan, contain a specific and unequivocal reservation of Estate Claims and Estate Defenses as required under applicable Fifth Circuit authority. The Estate Claims and Estate Defenses are expressly, specifically, and unequivocally retained and reserved pursuant to Articles VI and IX of the Plan (including Exhibit A to the Plan) in accordance with section 1123(b)(3)(B) of the Bankruptcy Code. Such reservation of the Estate Claims and Estate Defenses is hereby approved. **No person may rely on the absence of a specific reference in the Plan or the Disclosure Statement to any cause of action against them as any indication that the Debtors or the Reorganized Debtor will not pursue any and all available causes of action (including all Estate Claims, Estate Defenses and Avoidance Actions) against any Person, except as otherwise provided in the Plan.** Unless any causes of action against a Person are expressly waived, relinquished, exculpated, released, compromised or settled in the Plan or a Final Order, such causes of action are hereby expressly reserved (including all Estate Claims, Estate Defenses and Avoidance Actions) for later adjudication and, therefore, no preclusion doctrine, including without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable or otherwise) or laches, shall apply to such causes of action upon or after the confirmation or consummation of the Plan.

28. Unless otherwise expressly stated in the Plan or this Order, all Estate Claims and Estate Defenses are hereby reserved for the benefit of the Reorganized Debtor notwithstanding the occurrence of the Effective Date or the rejection or repudiation of any Executory Contract or Unexpired Lease during the Chapter 11 Cases or pursuant to the Plan. All such reserved Estate Claims and Estate Defenses shall be vested with the Reorganized Debtor and the Reorganized Debtor shall have the exclusive right, authority and standing to assert, file,

prosecute, enforce, abandon, settle, compromise, release, withdraw, or litigate to judgment each of the Estate Claims and Estate Defenses so reserved in accordance with the terms of the Plan without the consent or approval of any third party or further notice to or action, order or approval of the Court.

29. Subordinated Claims. The allowance, classification and treatment of all Allowed Claims and Interests and the respective Distributions and treatments under the Plan take into account and conform to the relative priority and rights of the Claims and Interests in each Class in connection with any contractual, legal and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, the Bankruptcy Code, or otherwise. Pursuant to section 510 of the Bankruptcy Code, the Reorganized Debtor reserves the right to seek to re-classify any Allowed Claim or Interest in accordance with any contractual, legal or equitable subordination relating thereto.

30. Release of Liens. Except as otherwise provided in the Plan, this Order, or in any contract, instrument, or other agreement or document entered into or delivered in connection with the Plan, on the Effective Date all Liens against any Assets transferred to and vested in the Reorganized Debtor are hereby deemed to be released, terminated and nullified without the necessity of further order of this Court.

31. Provisions Governing Distributions. The distribution provisions of Articles VII and VIII of the Plan shall be, and hereby are, approved in their entirety; provided, however, that notwithstanding anything to the contrary set forth in Section 7.02 of the Plan, the Reorganized Debtor may, but shall not be required to, reserve for Distributions to holders of Allowed Subclass 4B Claims. The Reorganized Debtor shall make all Distributions required under the Plan.

32. Procedures for Resolving Contested and Contingent Claims. The Claims resolution procedures contained in Article X of the Plan are hereby approved.

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33. Section 1145 Exemption. The solicitation of acceptances and rejections of the Plan was exempt from the registration requirements of the Securities Act of 1933 and applicable state securities laws, and no other nonbankruptcy law applies to the solicitation.

34. Exemption from Certain Transfer Taxes and Recording Fees. Section 1146(a) shall apply to the transfers of Assets pursuant to the Plan and, therefore, such transfers may not be taxed under any law imposing a stamp tax or similar tax.

35. Governmental Approvals Not Required. This Order shall constitute all approvals and consents required, if any, by the laws, rules or regulations of any state or any other governmental authority with respect to the implementation or consummation of the Plan and any documents, instruments or agreements, and any amendments or modifications thereto, and any other acts referred to in or contemplated by the Plan, the Disclosure Statement and any documents, instruments or agreements, and any amendments or modifications thereto.

36. Allowance and Payment of Certain Administrative Expense Claims

(a) Administrative Expense Claims (Generally). The holder of a Claim for an Administrative Expense, other than (i) such a Claim by an Estate Professional, (ii) an Ordinary Course Claim, (iii) a Claim for U.S. Trustee fees under 28 U.S.C. § 1930, or (iv) an Allowed Administrative Expense, must file with the Court and serve upon the Reorganized Debtor and its counsel, as set forth in the Plan, a written notice of such Claim for an Administrative Expense within thirty (30) days after the Effective Date (the "Administrative Bar Date"). Such notice of Claim for an Administrative Expense shall include at a minimum: (i) the name, address, telephone number and fax number (if applicable) or email address of the holder of such Claim, (ii) the amount of such Claim, and (iii) the basis of such Claim. ***The failure to timely and properly file and serve a notice of Claim for an Administrative Expense on or before the Administrative Bar Date shall result in such Claim for an Administrative Expense being forever barred and discharged without further order of the Court and the holder thereof shall be barred from receiving any Distribution from the Reorganized Debtor on account***

of such Claim for an Administrative Expense. A Claim for an Administrative Expense with respect to which a notice of Claim for an Administrative Expense has been timely and properly filed and served shall become an Allowed Administrative Expense if no objection is filed within thirty (30) days after the date of filing and service of the applicable notice of Claim for an Administrative Expense, or such later date as may be approved by the Court on motion of a party in interest, without notice or a hearing. If an objection is filed within such 30-day period (or any extension thereof), the Claim for an Administrative Expense shall become an Allowed Administrative Expense only to the extent allowed by a Final Order.

(b) Estate Professional Compensation. All final requests for compensation or reimbursement by any Estate Professional shall be filed no later than sixty (60) days after the Effective Date in accordance with the Plan. A Claim for an Administrative Expense by an Estate Professional in respect of which a final fee application has been properly filed shall become an Allowed Administrative Expense only to the extent allowed by Final Order and, if so Allowed, shall be paid in accordance with the terms of the Plan. Notwithstanding anything to the contrary in the Plan, the provisions of the Plan governing the filing of final fee applications by Estate Professionals and allowance of Administrative Expense Claims of Estate Professionals apply to the Chapter 11 Trustee. Compensation or reimbursement sought by the Chapter 11 Trustee through a final fee application shall be subject to final approval of the Court as reasonable in accordance with section 330(a)(3) of the Bankruptcy Code.

(c) U.S. Trustee Fees. Any U.S. Trustee fees incurred pursuant to 28 U.S.C. § 1930 which are past due as of the Confirmation Date shall be paid in full by the Chapter 11 Trustee on or before the earlier of (i) December 21, 2018, or (ii) that day which is ten (10) days after the Confirmation Date. After the Confirmation Date, the Reorganized Debtor shall continue to pay U.S. Trustee fees as they accrue until a final decree is entered and the Chapter 11 Cases are closed.

37. Effectuating Documents and Further Transactions. The Chapter 11 Trustee and the Reorganized Debtor, and their respective representatives, agents and attorneys, may take all actions to execute, deliver, file, or record such contracts, instruments, releases, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and implement the provisions of the Plan without the need for any approvals, authorizations, actions, or consents except for those expressly required pursuant hereto. This Order shall constitute all approvals and consents required, if any, by the laws, rules and regulations of all states and any other governmental authority with respect to the implementation or consummation of the Plan and any documents, instruments, agreements, any amendments or modifications thereto and any other acts and transactions referred to in or contemplated by the Plan, the Plan Documents, the Disclosure Statement, and any documents, instruments, and agreements and any amendments or modifications thereto.

38. Filing and Recording. This Order is and shall be binding upon and shall govern the acts of all entities including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state and local officials, and all other persons and entities who may be required, by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any document or instruments. Each and every federal, state and local government agency is hereby directed to accept any and all documents and instruments necessary, useful or appropriate to effectuate, implement and consummate the transactions contemplated by the Plan and this Order.

39. Inconsistency between Documents. In the event of an inconsistency between the terms of the Plan and the terms of the Disclosure Statement, the Plan shall control. In the event of any inconsistency between the terms of the Plan or the terms of the Disclosure Statement and the terms of this Order, this Order shall control.

40. References to Plan Provisions. The failure specifically to include or to refer to any particular article, section, or provision of the Plan or any related document in this Order shall not diminish or impair the effectiveness of such article, section, or provision, it being the intent of the Court that the Plan and any related documents be confirmed in their entirety.

41. Applicable Nonbankruptcy Law. Pursuant to sections 1123(a) and 1142(a) of the Bankruptcy Code, the provisions of the Plan and this Order shall apply and be enforceable notwithstanding any otherwise applicable nonbankruptcy law.

42. Notice of Entry of the Confirmation Order. No later than the third Business Day after the entry of this Order, the Chapter 11 Trustee shall serve a copy of this Order pursuant to Bankruptcy Rules 2002(f)(7), 2002(k) and 3020(c) on all holders of Claims and Interests, the U.S. Trustee, the Persons specifically identified in the Temporary Plan Injunction as subject thereto, and all other known parties-in-interest.

43. Notice of the Effective Date. No later than the third Business Day after the occurrence of the Effective Date, the Reorganized Debtor shall file a notice of occurrence of the Effective Date with the Clerk of the Court and shall serve a copy on all holders of Claims and Interests, the U.S. Trustee, the Persons specifically identified in the Temporary Plan Injunction as subject thereto, and all other known parties-in-interest. Such notice shall include notice of (a) the Administrative Bar Date, (b) the deadline for filing Rejection Claims set forth in section 11.03 of the Plan, and (c) the deadline for filing final requests for compensation and reimbursement by Estate Professionals. The filing of such notice shall conclusively establish that all conditions precedent have been satisfied or waived and shall constitute adequate and sufficient notice to all parties entitled thereto of the occurrence of the Effective Date.

44. Retention of Jurisdiction. The Court may properly, and upon the Effective Date shall, to the full extent set forth in the Plan, retain jurisdiction over all matters arising in, arising under, and related to, the Chapter 11 Cases, including the matters set forth in Article XV of the Plan and section 1142 of the Bankruptcy Code. Without limitation as to the generality of the

preceding sentence, the Court retains exclusive jurisdiction (a) to interpret and enforce this Order and the Plan; (b) to enforce the provisions of this Order and the Plan; (c) to resolve any disputes arising under or related to this Order or the Plan; and (d) over all transactions contemplated in this Order and the Plan. All Persons are hereby forever prohibited and enjoined from taking any action (including, without limitation, legal action) that would adversely affect or interfere with the ability of any Person to complete any of the transfers of property contemplated by this Order and the Plan other than in this Court or in connection with any appeals from this Court.

45. Headings. Paragraph headings contained in this Order are for convenience of reference only and shall not affect the meaning or interpretation of this Order.

46. Final Order. This Order is a final order and the period in which an appeal must be filed shall commence upon the entry hereof.

47. Appeal or Motion for Reconsideration; Reversal. In the event this Order is appealed or a motion for reconsideration is filed, the Chapter 11 Trustee and the Reorganized Debtor, and their respective representatives, agents and attorneys, are all hereby authorized to proceed with the consummation and performance of the Plan unless and until this Order is stayed, reversed or modified by a court of competent jurisdiction. If any or all of the provisions of this Order are hereafter reversed, modified, or vacated by subsequent order of this Court or any other court of competent jurisdiction, such reversal, modification, or vacatur shall not affect the validity of the acts or obligations incurred or undertaken under or in connection with the Plan prior to the Chapter 11 Trustee's or Reorganized Debtor's receipt of written notice of any such order. Notwithstanding any such reversal, modification, or vacatur of this Order, any such act or obligation incurred or undertaken pursuant to, and in reliance on, this Order prior to the effective date of such reversal, modification or vacatur shall be governed in all respects by the provisions of this Order and the Plan (including the Plan Documents) and any amendments or modifications thereto.

END OF ORDER

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L:\JPROSTOK\ACIS Capital Management (Trustee Rep)\Plan and Disclosure Statement\Confirmation Order (3rd Amended Plan) 1.31.18.docx

EXHIBIT “1”

[Third Amended Joint Plan for Acis Capital Management, L.P. and Acis Capital Management GP, LLC – Dkt. No. 660]

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:	§	**Case No. 18-30264-SGJ-11**
	§	**Case No. 18-30265-SGJ-11**
ACIS CAPITAL MANAGEMENT, L.P.,	§	
ACIS CAPITAL MANAGEMENT GP, LLC,	§	**(Jointly Administered Under Case**
	§	**No. 18-30264-SGJ-11)**
DEBTORS.	§	
	§	**Chapter 11**

THIRD AMENDED JOINT PLAN FOR ACIS CAPITAL MANAGEMENT, L.P. AND ACIS CAPITAL MANAGEMENT GP, LLC

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DATED: October 25, 2018
Dallas, Texas

ARTICLE I.
DEFINITIONS

A. Defined Terms. In addition to such other terms as are defined in other sections of the Plan, the following terms shall have the meanings set forth below (such meanings to be equally applicable to both the singular and plural, masculine and feminine forms of the terms defined).

1.01. "Acis CLOs" refers collectively to CLO-3, CLO-4, CLO-5, and CLO-6.

1.02. "Acis GP" means Acis Capital Management, GP, LLC, one of the Debtors in the above-referenced Chapter 11 Cases.

1.03. "Acis LP" means Acis Capital Management, LP, one of the Debtors in the above-referenced Chapter 11 Cases.

1.04. "Administrative Bar Date" means the deadline to file Claims for Allowance as an Administrative Expense set forth in section 3.01(c) of the Plan.

1.05. "Administrative Expense" means any cost or expense of administration of the Chapter 11 Cases allowed under subsections 503(b) and 507(a)(1) of the Bankruptcy Code, including, without limitation, any actual and necessary expenses of preserving the Estate of the Debtors, any actual and necessary expenses of operating the business of the Debtors, all compensation or reimbursement of expenses to the extent allowed by the Bankruptcy Court under section 330 or 503 of the Bankruptcy Code, and any fees or charges assessed against the estates of the Debtors under section 1930, chapter 123 of title 28 of the United States Code.

1.06. "Affiliate" has the meaning ascribed to such term in section 101(2) of the Bankruptcy Code.

1.07. "ALF PMA" means that certain Portfolio Management Agreement by and between Acis LP and Acis Loan Funding, Ltd. dated December 22, 2016.

1.08. "Allowed," when used with respect to a Claim (other than an Administrative Expense), means a Claim (a) to the extent it is not Contested; or (b) a Contested Claim, proof of which was filed timely with the Bankruptcy Court, and (i) as to which no Objection was filed by the Objection Deadline, or (ii) as to which an Objection was filed by the Objection Deadline, to the extent, if any, such Claim is ultimately allowed by a Final Order; *provided, however*, if a Claim is to be determined in a forum other than the Bankruptcy Court, such Claim shall not become Allowed until determined by Final Order of such other forum and allowed by Final Order of the Bankruptcy Court. "Allowed," when used with respect to an Administrative Expense, shall mean an Administrative Expense approved by application to the Bankruptcy Court.

1.09. "Assets" includes all right, title, and interest in and to all property of every type or nature owned or claimed by the Debtors as of the Petition Date, together with all such property of every type or nature subsequently acquired by the Debtors through the Effective Date, whether real or personal, tangible or intangible, and wherever located, and including, but not limited to, property as defined in section 541 of the Bankruptcy Code. Without limiting the foregoing, this shall include all

1.10. "Available Cash" means any Cash over and above the amount needed for the Reorganized Debtor to maintain business operations and pursue the Estate Claims, as determined in the sole discretion of the Reorganized Debtor.

1.11. "Avoidance Action" means a cause of action assertable by the Debtors pursuant to Chapter 5 of the Bankruptcy Code, including without limitation, actions brought or which may be brought under sections 542, 543, 544, 545, 547, 548, 549, 550, or 553 of the Bankruptcy Code. Such causes of action may be asserted to recover, among other things, the transfers listed in the Debtors' respective Schedules, including in response to Question 3 of the statements of financial affairs.

1.12. "Ballot" means the form of ballot provided to holders of Claims or Interests entitled to vote pursuant to Bankruptcy Rule 3017(d), by which each such holder may accept or reject the Plan.

1.13. "Bankruptcy Code" means the Bankruptcy Reform Act of 1978, as amended and codified at Title 11 of the United States Code.

1.14. "Bankruptcy Court" means the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, or such other court having jurisdiction over all or any part of the Chapter 11 Cases.

1.15. "Bankruptcy Rules" means the Federal Rules of Bankruptcy Procedure, as amended from time to time, as applicable to the Chapter 11 Cases, including applicable local rules of the Bankruptcy Court.

1.16. "Brigade" means Brigade Capital Management, LP.

1.17. "Business Day" means any day other than Saturday, Sunday, a legal holiday, or a day on which national banking institutions in Texas are authorized or obligated by law or executive order to close.

1.18. "Cash" means legal tender of the United States of America, cash equivalents and other readily marketable securities or instruments, including, but not limited to, readily marketable direct obligations of the United States of America, certificates of deposit issued by banks or commercial paper.

1.19. "Chapter 11 Cases" refers collectively to the Acis LP bankruptcy case, Case No. 18-30264-sgj11, and the Acis GP bankruptcy case, Case No. 18-30265-sgj11, which are being jointly administered under Case No. 18-30264-sgj11.

1.20. "Chapter 11 Trustee" refers to Robin Phelan, the chapter 11 trustee for the Debtors.

1.21. "Claim" means (a) a right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured (including potential and unmatured tort and contract claims), disputed, undisputed, legal, equitable, secured or unsecured, or (b) a right to an equitable remedy for breach of performance if such breach gives rise to a right of payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured (including potential and unmatured tort and contract claims), disputed, undisputed, secured or unsecured.

1.22. "Claimant" means the holder of a Claim.

1.23. "Class" means a class of Claims or Interests as described in the Plan.

1.24. "CLO" means collateralized loan obligations.

1.25. "CLO-1" means Acis CLO 2013-1 LTD.

1.26. "CLO-1 Indenture" means that certain Indenture, dated as of March 18, 2013, issued by CLO-1, as issuer, Acis CLO 2013-1 LLC, as co-Issuer and US Bank, as Indenture Trustee.

1.27. "CLO-1 PMA" means that certain Portfolio Management Agreement by and between Acis LP and CLO-1, dated March 18, 2013.

1.28. "CLO-3" means Acis CLO 2014-3 LTD.

1.29. "CLO-3 Indenture" means that certain Indenture, dated as of February 25, 2014, issued by CLO-3, as issuer, Acis CLO 2014-3 LLC, as co-Issuer and US Bank, as Indenture Trustee

1.30. "CLO-3 PMA" means that certain Portfolio Management Agreement by and between Acis LP and CLO-3, dated February 25, 2014.

1.31. "CLO-4" means Acis CLO 2014-4 LTD.

1.32. "CLO-4 Indenture" means that certain Indenture, dated as of June 5, 2014, issued by CLO-4, as issuer, Acis CLO 2014-4 LLC, as co-Issuer and US Bank, as Indenture Trustee.

1.33. "CLO-4 PMA" means that certain Portfolio Management Agreement by and between Acis LP and CLO-4, dated June 5, 2014.

1.34. "CLO-5" means Acis CLO 2014-5 LTD.

1.35. "CLO-5 Indenture" means that certain Indenture, dated as of November 18, 2014, issued by CLO-5, as issuer, Acis CLO 2014-5 LLC, as co-Issuer and US Bank, as Indenture Trustee.

1.36. "CLO-5 PMA" means that certain Portfolio Management Agreement by and between Acis LP and CLO-5, dated November 18, 2014.

1.37. "CLO-6" means Acis CLO 2015-6 LTD.

1.38. "CLO-6 Indenture" means that certain Indenture, dated as of April 16, 2015, issued by CLO-6, as issuer, Acis CLO 2015-6 LLC, as co-Issuer and US Bank, as Indenture Trustee.

1.39. "CLO-6 PMA" means that certain Portfolio Management Agreement by and between Acis LP and CLO-6, dated April 16, 2015.

1.40. "CLO Holdco" means CLO Holdco, Ltd.

1.41. "Collateral" means any Asset subject to a valid and enforceable Lien to secure payment of a Claim.

1.42. "Confirmation Date" means the date of entry of the Confirmation Order.

1.43. "Confirmation Hearing" means the hearing conducted by the Bankruptcy Court pursuant to section 1128 of the Bankruptcy Code and Bankruptcy Rule 3020(b) to consider confirmation of the Plan, as such hearing may be continued from time to time.

1.44. "Confirmation Order" means the order of the Bankruptcy Court confirming the Plan in accordance with the provisions of Chapter 11 of the Bankruptcy Code.

1.45. "Contested," when used with respect to a Claim, means a Claim against the Debtors that is listed in the Debtors' Schedules as disputed, contingent, or unliquidated; that is listed in the Debtors' Schedules as undisputed, liquidated, and not contingent and as to which a proof of Claim has been filed with the Bankruptcy Court, to the extent the proof of Claim amount exceeds the scheduled amount; that is not listed in the Debtors' Schedules, but as to which a proof of Claim has been filed with the Bankruptcy Court; or as to which an objection has been or may be timely filed and has not been denied by Final Order. To the extent an objection relates to the allowance of only a part of a Claim, such Claim shall be a Contested Claim only to the extent of the objection.

1.46. "Creditor" means a "creditor," as defined in section 101(10) of the Bankruptcy Code.

1.47. "Cure Claim" means the payment or other performance required to cure any existing default under an Executory Contract or Unexpired Lease.

1.48. "Debtors" means, collectively, Acis GP and Acis LP, the debtors in the above-captioned Chapter 11 Cases.

1.49. "Disallowed," when used with respect to all or any part of a Claim or Interest, means that portion of a Claim or Interest to which an objection or motion to disallow has been sustained by a Final Order.

1.50. "Disclosure Statement" means the Disclosure Statement filed with respect to the Plan, as it may be amended, modified, or supplemented from time to time.

1.51. "Distribution" means any payment or other disbursement of property pursuant to the Plan.

1.52. "Effective Date" means the first Business Day which is fourteen (14) days after the Confirmation Date if the Confirmation Order is not stayed or, if the Confirmation Order is stayed, the first Business Day following the lifting, dissolution, or removal of such stay which is at least fourteen (14) Business Days after the Confirmation Date, and upon which all conditions to the effectiveness of the Plan set forth in Article XIII below are satisfied.

1.53. "Estate" shall collectively refer to the bankruptcy estates of the Debtors in the Chapter 11 Cases.

1.54. "Estate Accounts Receivable" shall include all accounts receivable of the Estate, including from all sums payable to the Debtors on account of goods or services provided by the Debtors.

1.55. "Estate Claims" shall include all claims and causes of action held by the Debtors' Estate, including, without limitation, the Estate Claims listed on the attached **Exhibit A** and all Avoidance Actions.

1.56. ""Estate Defenses" means all defenses, affirmative defenses, counterclaims, or offsets by the Debtors' Estate against any Person, including but not limited to any Creditor.

1.57. "Estate Insurance" means any insurance policy or interest in an insurance policy in which the Estate has an interest or rights.

1.58. "Estate Professionals" means those Persons employed pursuant to an order of the Bankruptcy Court in accordance with sections 327, 328, and 1103 of the Bankruptcy Code or who are entitled to compensation or reimbursement pursuant to sections 503(b)(3)(D) or 506(b) of the Bankruptcy Code.

1.59. "Executory Contract" means any executory contract which is subject to section 365 of the Bankruptcy Code and which is not an Unexpired Lease.

1.60. "Final Order" means an order or judgment of the Bankruptcy Court or any other court or adjudicative body, as to which the time to appeal or seek rehearing or petition for certiorari shall have expired or which order or judgment shall no longer be subject to appeal, rehearing, or certiorari proceeding and with respect to which no appeal, motion for rehearing, or certiorari proceeding or stay shall then be pending.

1.61. "General Unsecured Claim" means any Claim against the Debtors that is not an Administrative Expense, Priority Tax Claim, Priority Non-Tax Claim, Secured Tax Claim, Secured Claim, or Insider Claim, but includes any Rejection Claims pursuant to section 502(g) of the Bankruptcy Code.

1.62. "Governmental Unit" means a "governmental unit" as such term is defined in section 101(27) of the Bankruptcy Code.

1.63. "HCLOF" means Highland CLO Funding, Ltd.

1.64. "Highland" means Highland Capital Management, L.P.

1.65. "Highland Adversary" means Adversary Proceeding No. 18-03078-sgj.

1.66. "Highland Claim" means all Claims asserted by Highland or any Affiliates of Highland against the Debtors, including any Claim resulting from the termination of the Sub-Advisory Agreement and Shared Services Agreement.

1.67. "Highland CLOM" means Highland CLO Management, Ltd.

1.68. "Highland HCF" means Highland HCF Advisors, Ltd.

1.69. "Impaired" means, when used with reference to a Claim or Interest, a Claim or Interest that is impaired within the meaning of section 1124 of the Bankruptcy Code.

1.70. "Indentures" refers collectively to the CLO-1 Indenture, the CLO-3 Indenture, the CLO-4 Indenture, the CLO-5 Indenture, and the CLO-6 Indenture.

1.71. "Indenture Trustee" refers to US Bank solely in its capacity as Indenture Trustee under the CLO-1 Indenture, the CLO-3 Indenture, the CLO-4 Indenture, the CLO-5 Indenture and the CLO-6 Indenture, as applicable

1.72. "Initial Distribution Date," when used with respect to any Contested Claim or Rejection Claim, shall mean the later of (i) the first Business Day at least thirty (30) days after the date on which any such Contested Claim or Rejection Claim becomes an Allowed Claim, or (ii) if the payment terms of Article IV of this Plan applicable to each such Claim specify a different date, then the date as calculated pursuant to the terms of Article IV of this Plan applicable to each such Claim. The Initial Distribution Date shall be separately determined with respect to each Contested Claim or Rejection Claim based upon the date each such Claim becomes an Allowed Claim.

1.73. "Insider" means a Person described in section 101(31) of the Bankruptcy Code.

1.74. "Insider Claim" means any Claim asserted by Insiders of the Debtors, including but not limited to any Claim asserted by Highland or any Affiliate thereof, unless otherwise indicated in the Plan.

1.75. "Interests" means any equity or stock ownership interest in the Debtors.

1.76. "Issuers and Co-Issuers" means CLO-1, CLO-3, CLO-4, CLO-5, CLO-6, Acis CLO 2013-1, Acis CLO-2014-3, LLC, Acis CLO 2014-4, LLC, Acis CLO 2014-5, LLC, and Acis 2015-6, LLC.

1.77. "Lien" means any mortgage, lien, charge, security interest, encumbrance, or other security device of any kind affecting any asset or property of the Debtors contemplated by section 101(37) of the Bankruptcy Code.

1.78. "Management Fees" shall, when used in relation to any of the Acis CLOs, have the meaning set forth in the applicable Indenture.

1.79. "Neutra" means Neutra, Ltd.

1.80. "Objection" means (a) an objection to the allowance of a Claim interposed by any party entitled to do so within the applicable period of limitation fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, and (b) as to any Taxing Authority, a proceeding commenced under section 505 of the Bankruptcy Code to determine the legality or amount of any tax.

1.81. "Objection Deadline" shall mean the later of (a) ninety (90) days following the Effective Date, unless otherwise extended by order of the Bankruptcy Court, or (b) as to any Rejection Claim filed after the Effective Date, ninety (90) days after the date on which the proof of Claim reflecting the Rejection Claim is filed.

1.82. "Optional Redemption" shall, when used in relation to any of the Acis CLOs, have the meaning set forth in the applicable Indenture.

1.83. "Person" means any individual, corporation, general partnership, limited partnership, association, joint stock company, joint venture, estate, trust, unincorporated organization, government, or any political subdivision thereof or other entity.

1.84. "Petition Date" means January 30, 2018.

1.85. "Plan" means this Third Amended Joint Chapter 11 plan, either in its present form or as it may be altered, amended, or modified from time to time.

1.86. "Plan Documents" means the documents that aid in effectuating the Plan as specifically identified as such herein and filed with the Bankruptcy Court.

1.87. "Plan Rate" means a rate of interest of five percent (5%) per annum.

1.88. "PMAs" refers collectively to the CLO-1 PMA, CLO-3 PMA, CLO-4 PMA, CLO-5 PMA, and CLO-6 PMA.

1.89. "Priority Claim" means a Claim (other than a Claim for an Administrative Expense) to the extent that it is entitled to priority in payment under section 507(a) of the Bankruptcy Code.

1.90. "Priority Non-Tax Claim" means a Priority Claim other than a Priority Tax Claim.

1.91. "Priority Tax Claim" means a Claim of a Governmental Unit of the kind specified in subsection 507(a)(8) of the Bankruptcy Code.

1.92. "Professional" means those persons retained pursuant to an order of the Bankruptcy Court in accordance with sections 327 and 1103 of the Bankruptcy Code.

1.93. "Pro Rata Distribution" means an optional Distribution made in accordance with section 4.03(c), 4.04(e), or 4.04(i) of the Plan. Each Creditor entitled to receive a portion of a Pro Rata Distribution shall receive such Creditor's Pro Rata Share of such Distribution.

1.94. "Pro Rata Share' means, as to the holder of a specific Claim, the ratio that the amount of such holder's Claim bears to the aggregate amount of all Claims included in the particular Class or category in which such holder's Claim is included.

1.95. "Refinancing Proceeds" shall, when used in relation to any of the Acis CLOs, have the meaning set forth in the applicable Indenture.

1.96. "Rejection Claim" means a Claim arising under section 502(g) of the Bankruptcy Code as a consequence of the rejection of any Executory Contract or Unexpired Lease.

1.97. "Reorganized Debtor" refers collectively to the Debtors, as reorganized, acting from and after the Effective Date if the Plan is confirmed based on the terms and provisions herein.

1.98. "Reserve" or "Reserves" means any reserves set aside by the Reorganized Debtor pursuant to this Plan, including reserves set aside to fund any Distributions, make payments pursuant to the Plan, or pursue the Estate Claims.

1.99. "Schedules" means the schedules of assets and liabilities and the statements of financial affairs filed by the Debtors as required by section 521 of the Bankruptcy Code and Bankruptcy Rule 1007, as such schedules or statements have been or may be subsequently amended.

1.100. "Secured Claim" means (a) a Claim secured by a lien on any Assets, which lien is valid, perfected, and enforceable under applicable law and is not subject to avoidance under the Bankruptcy Code or applicable nonbankruptcy law, and which is duly Allowed, but only to the

extent of the value of the holder's interest in the Collateral that secures payment of the Claim; (b) a Claim against the Debtors that is subject to a valid right of recoupment or setoff under section 553 of the Bankruptcy Code, but only to the extent of the Allowed amount subject to recoupment or setoff as provided in section 506(a) of the Bankruptcy Code; and (c) a Claim deemed or treated under the Plan as a Secured Claim; provided, that, to the extent that the value of such interest is less than the amount of the Claim which has the benefit of such security, the unsecured portion of such Claim shall be treated as a General Unsecured Claim unless, in any such case the Class of which the Claim is a part makes a valid and timely election in accordance with section 1111(b) of the Bankruptcy Code to have such Claim treated as a Secured Claim to the extent Allowed.

1.101. "Secured Tax Claim" means any ad valorem tax Claim that arises or is deemed to have arisen on or before the Petition Date, irrespective of the date on which such Claim is assessed or due.

1.102. "Shared Services Agreement" means that certain Fourth Amended and Restated Shared Services Agreement by and between Acis LP and Highland dated March 17, 2017.

1.103. "Sub-Advisory Agreement" means that certain Third Amended and Restated Sub-Advisory Agreement by and between Acis LP and Highland dated March 17, 2017

1.104. "Subordinated Notes" means the subordinated notes in the Acis CLOs held by HCLOF, and expressly does not include any subordinated notes in the Acis CLOs held by any other party.

1.105. "Substantial Consummation" means the day on which a Creditor first receives a Distribution of any kind under the terms and provisions of the Plan.

1.106. "Taxing Authority" shall include the State of Texas or any subdivision thereof, including without limitation any political subdivision of the State of Texas assessing ad valorem taxes against any of the Assets.

1.107. "Terry" means Joshua N. Terry.

1.108. "Terry Partially Secured Claim" means any Claim asserted against the Debtors by Terry, including as asserted in Proof of Claim No. 1 in both Chapter 11 Cases and Proof of Claim No. 26 against Acis LP.

1.109. "Unclaimed Property" means any cash, Distribution, or any other property of the Debtors unclaimed for a period of one (1) year after the applicable Initial Distribution Date.

1.110. "Unexpired Lease" means any unexpired lease or agreement which is subject to section 365 of the Bankruptcy Code and which is not an Executory Contract.

1.111. "US Bank" means U.S. Bank National Association.

1.112. "Other Acis-Managed Funds" refers collectively to CLO-1, Acis CLO 2013-2, Ltd., Hewitt's Island CLO 1-R, Ltd, and BayVK R2 Lux S.A., SICAV-FIS.

B. Interpretation. Unless otherwise specified, all section, article and exhibit references in the Plan are to the respective section in, article of, or exhibit to, the Plan, as the

same may be amended, waived, or modified from time to time. The headings in the Plan are for convenience and reference only and shall not limit or otherwise affect the provisions hereof. The rules of construction set forth in section 102 of the Bankruptcy Code, other than section 102(5) of the Bankruptcy Code, apply to construction of the Plan. For the purposes of construction of the Plan, "or" is disjunctive.

C. Other Terms. The words "herein," "hereof," "hereto," "hereunder," and others of similar import refer to the Plan as a whole and not to any particular section, subsection, or clause contained in the Plan. References herein to "after notice and hearing" or other similar language shall have the same meaning as in section 102(1) of the Bankruptcy Code. Otherwise, a term used herein that is not specifically defined herein shall have the meaning ascribed to that term, if any, in the Bankruptcy Code.

D. Exhibits and Plan Documents. All Exhibits to the Plan and all Plan Documents are incorporated into the Plan by this reference and are a part of the Plan as if set forth in full herein. Any Plan Documents may be filed with the Clerk of the Bankruptcy Court prior to the commencement of the Confirmation Hearing. Holders of Claims and Interests may obtain a copy of the Plan Documents, once filed, by a written request sent to the following address: Forshey & Prostok, LLP, 777 Main Street, Suite 1290, Fort Worth, Texas 76102, Attention: Linda Breedlove; Fax number (817) 877-4151; email: lbreedlove@forsheyprostok.com.

ARTICLE II.
CLASSIFICATION OF CLAIMS AND INTERESTS

2.01. The following is a designation of the Classes of Claims and Interests under the Plan. Administrative Expenses, Priority Claims of the kinds specified in sections 507(a)(2) and 507(a)(3) of the Bankruptcy Code and Priority Tax Claims have not been classified, are excluded from the following Classes in accordance with section 1123(a)(1) of the Bankruptcy Code, and their treatment is set forth in Article III of the Plan. A Claim shall be deemed classified in a particular Class only to the extent that the Claim qualifies within the description of that Class. A Claim is included in a particular Class only to the extent that the Claim is an Allowed Claim in that Class.

Class 1 – Secured Tax Claims
Class 2 – Terry Partially Secured Claim
Class 3 – General Unsecured Claims
Class 4 – Insider Claims
Class 5 – Interests

2.02. Impaired Classes of Claims and Interests. Class 1 is unimpaired. Classes 2 through 5 are Impaired.

2.03. Impairment or Classification Controversies. If a controversy arises as to the classification of any Claim or Interest, or as to whether any Class of Claims or Interests is Impaired under the Plan, the Bankruptcy Court shall determine such controversy as a part of the confirmation process.

ARTICLE III.
TREATMENT OF UNCLASSIFIED CLAIMS

3.01. Administrative Expenses

(a) The Reorganized Debtor shall pay, in accordance with the ordinary business terms applicable to each such expense or cost, the reasonable and ordinary expenses incurred in operating the Debtors' businesses or administering the Estate before the Effective Date ("Ordinary Course Claims"). The remaining provisions of this section 3.01 shall not apply to the Ordinary Course Claims, except that if there is a dispute relating to any such Ordinary Course Claim, the Reorganized Debtor may move the Bankruptcy Court to apply the provisions of Article III below relating to Contested Claims and require the holder of the Contested Ordinary Course Claim to assert such Claim through the Chapter 11 Cases.

(b) Each holder of an Allowed Administrative Expense (other than Ordinary Course Claims and Administrative Expense Claims by Estate Professionals), shall receive (i) the amount of such holder's Allowed Administrative Expense in one Cash payment on the later of the Effective Date or the tenth (10^{th}) Business Day after such Administrative Expense becomes an Allowed Administrative Expense, or (ii) such other treatment as may be agreed to in writing by such Administrative Expense Creditor and the Reorganized Debtor, or as otherwise ordered by the Bankruptcy Court.

(c) Unless the Bankruptcy Court orders to the contrary or the Reorganized Debtor agrees to the contrary in writing, the holder of a Claim for an Administrative Expense, other than such a Claim by an Estate Professional, an Ordinary Course Claim, or an Administrative Expense which is already Allowed, shall file with the Bankruptcy Court and serve upon the Reorganized Debtor and its counsel a written notice of such Claim for an Administrative Expense within thirty (30) days after the Effective Date. This deadline is the "Administrative Bar Date." Such notice shall include at a minimum: (i) the name, address, telephone number and fax number (if applicable) or email address of the holder of such Claim, (ii) the amount of such Claim, and (iii) the basis of such Claim. **Failure to timely and properly file and serve such notice by the Administrative Bar Date shall result in such Claim for an Administrative Expense being forever barred and discharged and the holder thereof shall be barred from receiving any Distribution from the Reorganized Debtor on account of such Claim for an Administrative Expense**.

(d) A Claim for an Administrative Expense, for which a proper notice was filed and served under subsection 3.01(c) above, shall become an Allowed Administrative Expense if no Objection is filed within thirty (30) days of the filing and service of such notice. If a timely Objection is filed, the Claim shall become an Allowed Administrative Expense only to the extent allowed by a Final Order.

(e) The procedures contained in subsections 3.01(a), (c) and (d) above shall not apply to Administrative Expense Claims asserted by Estate Professionals, who shall each file and submit an appropriate final fee application to the Bankruptcy Court no later than sixty (60) days after the Effective Date. A Claim for an Administrative Expense by an Estate Professional in respect of which a final fee application has been properly filed and served shall become an Allowed Administrative Expense only to the extent Allowed by order of the Bankruptcy Court and, if so Allowed, shall be paid in accordance with subsection 3.01(b) above. Professional fees and expenses to any Estate Professional incurred on or after the Effective Date may be paid by the Reorganized Debtor without necessity of application to or order by the Bankruptcy Court.

(f) If the Reorganized Debtor asserts any Estate Claims as counterclaims or defenses to a Claim for Administrative Expense, the Administrative Expense Claim shall be determined through an adversary proceeding before the Bankruptcy Court. The Bankruptcy

Court shall have exclusive jurisdiction to adjudicate and Allow all Claims for any Administrative Expense.

3.02. Priority Non-Tax Claims. Each holder of an Allowed Priority Non-Tax Claim shall receive (i) the amount of such holder's Allowed Priority Non-Tax Payment in one Cash payment on the later of the Effective Date or the tenth (10^{th}) Business Day after such Priority Non-Tax Claim becomes an Allowed Priority Non-Tax Claim and a determination has been made that such Allowed Priority Non-Tax Claim is not subject to equitable subordination under section 510(c) of the Bankruptcy Code, or (ii) such other treatment as may be agreed to in writing by such Administrative Expense Creditor and the Reorganized Debtor, or as otherwise ordered by the Bankruptcy Court.

3.03. Priority Tax Claims. Each holder of an Allowed Priority Tax Claim shall receive (a) one Cash payment in an amount equal to the principal amount of such Allowed Priority Tax Claim, plus interest at the rate and in the manner prescribed by applicable state law from the later of the Petition Date or the first day after the last day on which such Priority Tax Claim may be paid without penalty, no later than sixty (60) days after each such Claim becomes an Allowed Claim, or (b) such other treatment as may be agreed to in writing by the holder of the Priority Tax Claim and the Reorganized Debtor.

3.04. U.S. Trustee's Fees. The Reorganized Debtor shall pay the U.S. Trustee's quarterly fees incurred pursuant to 28 U.S.C. § 1930(a)(6) which are due as of the Confirmation Date in full on the Effective Date or as soon thereafter as is practicable. After the Confirmation Date, the Reorganized Debtor shall continue to pay quarterly fees as they accrue until a final decree is entered and the Chapter 11 Cases are closed. The Reorganized Debtor shall file with the Bankruptcy Court and serve on the U.S. Trustee quarterly financial reports for each quarter, or portion thereof, that the Chapter 11 Cases remain open.

ARTICLE IV.
TREATMENT OF CLASSIFIED CLAIMS AND INTERESTS

4.01. Class 1 – Secured Tax Claims. Each holder of an Allowed Secured Tax Claim shall receive (a) one Cash payment in an amount equal to the principal amount of such Allowed Secured Tax Claim, plus interest at the rate and in the manner prescribed by applicable state law from the later of the Petition Date or the first day after the last day on which such Secured Tax Claim may be paid without penalty, on the Initial Distribution Date, or (b) such other treatment as may be agreed to in writing by the holder of the Secured Tax Claim and the Reorganized Debtor. The Liens securing such Secured Tax Claims shall remain unimpaired and unaffected until each such Class 1 Claim is paid in full. All Distributions on account of Allowed Class 1 Claims shall be made by the Reorganized Debtor. Class 1 is unimpaired. Holders of Class 1 Claims are conclusively presumed to have accepted the Plan and, accordingly, are not entitled to vote on the Plan.

4.02. Class 2 – Terry Partially Secured Claim. In exchange for a one million dollar ($1,000,000.00) reduction in the amount of the Terry Partially Secured Claim, Terry shall receive one hundred percent (100%) of the equity interests in the Reorganized Debtor as of the Effective Date. The remaining balance of any Allowed Terry Partially Secured Claim shall be treated and paid as a Class 3 General Unsecured Claim. Class 2 is Impaired. The Holder of the Class 2 Terry Partially Secured Claim is entitled to vote on the Plan.

4.03. Class 3 – General Unsecured Claims.

(a) Each holder of an Allowed General Unsecured Claim shall receive a promissory note issued by the Reorganized Debtor (each an "Unsecured Cash Flow Note") on the later of (a) that date that is as soon as practicable after the Effective Date, or (b) that date that is as soon as practicable after such holder's General Unsecured Claim becomes an Allowed Class 3 Claim. Each Unsecured Cash Flow Note shall be dated as of the Effective Date, bear interest at the Plan Rate and shall mature on that date that is the three (3) years after the Effective Date.

(b) To the extent of Available Cash, the Reorganized Debtor shall make substantially equal quarterly Distributions of principal and accrued interest to each holder of an Unsecured Cash Flow Note, with the first such quarterly Distribution being due and payable on the 180th day after the Effective Date. Thereafter, like Distributions shall be made each quarter by the Reorganized Debtor until the Unsecured Cash Flow Note is paid in full. Notwithstanding the foregoing, in the event that an Unsecured Cash Flow Note is first issued more than one hundred eighty (180) days after the Effective Date, the first Distribution made on account of such Unsecured Cash Flow Note shall be made upon the date that the next Distribution would otherwise be due, but such first Distribution shall also include amounts that would have been distributed to the holder of such Unsecured Cash Flow Note had such Unsecured Cash Flow Note been issued prior to ninety (90) days after the Effective Date, such that the first Distribution shall bring all payments current on account of such Unsecured Cash Flow Note. If on any date on which a quarterly Distribution is due to the holder of an Unsecured Cash Flow Note the remaining principal and accrued interest owing on account of such Unsecured Cash Flow Note is less than the regular quarterly Distribution amount, the Reorganized Debtor shall make a Distribution to the holder of such Unsecured Cash Flow Note in an amount sufficient to fully satisfy the remaining principal and accrued interest owed, but no more. Nothing contained herein shall preclude the Reorganized Debtor from prepaying any Unsecured Cash Flow Note.

(c) If the Reorganized Debtor obtains additional Cash, through litigation recoveries or otherwise, and the Reorganized Debtor determines, in its sole discretion, that the Reorganized Debtor holds Available Cash sufficient to allow one or more Pro Rata Distributions to be made to holders of Allowed Class 3 Claims and Allowed Subclass 4A Claims, the Reorganized Debtor may, but shall not be required to, make one or more Pro Rata Distributions to holders of Allowed Class 3 Claims and Allowed Subclass 4A Claims. The amount of the Pro Rata Distribution made to each such holder shall be determined as if Class 3 and Subclass 4A constituted a single Class. Any such additional Distributions shall be applied to reduce the outstanding balance of each holder's Unsecured Cash Flow Note.

(d) Class 3 is Impaired. Holders of Class 3 Claims are entitled to vote on the Plan.

4.04. Class 4 – Insider Claims. Holders of Class 4 Insider Claims shall be treated as follows:

(a) Class 4 Claims shall be divided into two (2) subclasses. Subclass 4A shall consist of all Allowed Class 4 claims which are not subject to equitable subordination. Subclass 4B shall consist of all Class 4 claims which are determined by the Bankruptcy Court to be subject to equitable subordination. If only a part of a Class 4 Claim is subject to equitable subordination, then the portion of such claim subject to equitable subordination shall be included in Subclass 4B and the remainder not subject to equitable subordination shall be included in Subclass 4A. Subclass 4A and Subclass 4B will vote separately on the Plan, although Subclass 4B is currently an empty class.

(b) All Class 4 Claims (regardless of which subclass) shall be and remain subject to all Estate Defenses and all Estate Claims, including any rights of offset, recoupment, and/or to an affirmative recovery against the Holder of any Class 4 Claim.

(c) Each holder of an Allowed Subclass 4A Claim shall receive an Unsecured Cash Flow Note on the later of (a) that date that is as soon as practicable after the Effective Date, or (b) that date that is as soon as practicable after such holder's Subclass 4A Claim becomes an Allowed Subclass 4A Claim. Each Unsecured Cash Flow Note shall be dated as of the Effective Date, bear interest at the Plan Rate and shall mature on that date that is the three (3) years after the Effective Date.

(d) To the extent of Available Cash, the Reorganized Debtor shall make substantially equal quarterly Distributions of principal and accrued interest to each holder of an Unsecured Cash Flow Note, with the first such quarterly Distribution being due and payable on the 180th day after the Effective Date. Thereafter, like Distributions shall be made each quarter by the Reorganized Debtor until the Unsecured Cash Flow Note is paid in full. Notwithstanding the foregoing, in the event that an Unsecured Cash Flow Note is first issued more than one hundred eighty (180) days after the Effective Date, the first Distribution made on account of such Unsecured Cash Flow Note shall be made upon the date that the next Distribution would otherwise be due, but such first Distribution shall also include amounts that would have been distributed to the holder of such Unsecured Cash Flow Note had such Unsecured Cash Flow Note been issued prior to ninety (90) days after the Effective Date, such that the first Distribution shall bring all payments current on account of such Unsecured Cash Flow Note. If on any date on which a quarterly Distribution is due to the holder of an Unsecured Cash Flow Note the remaining principal and accrued interest owing on account of such Unsecured Cash Flow Note is less than the regular quarterly Distribution amount, the Reorganized Debtor shall make a Distribution to the holder of such Unsecured Cash Flow Note in an amount sufficient to fully satisfy the remaining principal and accrued interest owed, but no more. Nothing contained herein shall preclude the Reorganized Debtor from prepaying any Unsecured Cash Flow Note.

(e) If the Reorganized Debtor obtains additional Cash, through litigation recoveries or otherwise, and the Reorganized Debtor determines, in its sole discretion, that the Reorganized Debtor holds Available Cash sufficient to allow one or more Pro Rata Distributions to be made to holders of Allowed Class 3 Claims and Allowed Subclass 4A Claims, the Reorganized Debtor may, but shall not be required to, make one or more Pro Rata Distributions to holders of Allowed Class 3 Claims and Allowed Subclass 4A Claims. The amount of the Pro Rata Distribution made to each such holder shall be determined as if Class 3 and Subclass 4A constituted a single Class. Any such additional Distributions shall be applied to reduce the outstanding balance of each holder's Unsecured Cash Flow Note.

(f) Unless otherwise provided by Order of the Bankruptcy Court, holders of Allowed Subclass 4B claims shall not be entitled to any Distribution from the Reorganized Debtor until all Allowed Claims included in Classes 1 through 3 and Subclass 4A, including all Unsecured Cash Flow Notes, have been paid in full.

(g) Holders of Allowed Subclass 4B Claims shall receive a subordinated promissory note issued by the Reorganized Debtor ("Subordinated Unsecured Cash Flow Note") on the later of (a) that date that is as soon as practicable after the Effective Date, or (b) that date that is as soon as practicable after such holder's Subclass 4A Claim becomes an Allowed Subclass 4A Claim. Each Subordinated Unsecured Cash Flow Note shall be dated as of the Effective Date, bear interest at the Plan Rate and shall mature on the earlier to occur of (i) the date that is two

(2) years after the date all Unsecured Cash Flow Notes have been paid in full, or (ii) five (5) years after the Effective Date.

(h) To the extent of Available Cash, the Reorganized Debtor shall make substantially equal quarterly Distributions of principal and accrued interest to each holder of a Subordinated Unsecured Cash Flow Note, with the first such quarterly Distribution being due and payable on the 90th day after the payment in full of the Unsecured Cash Flow Notes. Thereafter, like Distributions shall be made each quarter by the Reorganized Debtor until the Subordinated Unsecured Cash Flow Note is paid in full. Notwithstanding the foregoing, in the event that a Subordinated Unsecured Cash Flow Note is first issued after payments have been made on one or more other Subordinated Unsecured Cash Flow Notes, the first Distribution made on account of such Subordinated Unsecured Cash Flow Note shall be made upon the date that the next Distribution would otherwise be due, but such first Distribution shall also include amounts that would have been distributed to the holder of such Subordinated Unsecured Cash Flow Note had such Subordinated Unsecured Cash Flow Note been issued at the time the first payment on any Subordinated Unsecured Cash Flow Note was made, such that the first Distribution shall bring all payments current on account of such Subordinated Unsecured Cash Flow Note. If on any date on which a quarterly Distribution is due to the holder of a Subordinated Unsecured Cash Flow Note the remaining principal and accrued interest owing on account of such Subordinated Unsecured Cash Flow Note is less than the regular quarterly Distribution amount, the Reorganized Debtor shall make a Distribution to the holder of such Subordinated Unsecured Cash Flow Note in an amount sufficient to fully satisfy the remaining principal and accrued interest owed, but no more. Nothing contained herein shall preclude the Reorganized Debtor from prepaying any Subordinated Unsecured Cash Flow Note.

(i) Subject to section 4.04(f) above, if the Reorganized Debtor obtains additional Cash, through litigation recoveries or otherwise, and the Reorganized Debtor determines, in its sole discretion, that the Reorganized Debtor holds Available Cash sufficient to allow one or more Pro Rata Distributions to be made to holders of Allowed Subclass 4B Claims, the Reorganized Debtor may, but shall not be required to, make one or more Pro Rata Distributions to holders of Allowed Subclass 4B Claims. Any such additional Distributions shall be applied to reduce the outstanding balance of each holder's Subordinated Unsecured Cash Flow Note.

(j) The Reorganized Debtor may establish appropriate Reserves as to any Contested Claim included in Class 4.

(k) Class 4 is Impaired. Holders of Class 4 Claims are entitled to vote on the Plan.

4.05. Class 5 – Interests. All Interests in the Debtors shall be extinguished and shall cease to exist as of the Effective Date. The holders of such Interests shall not receive or retain any property on account of such Interests under the Plan. Class 5 is Impaired. Holders of Class 5 Interests are conclusively presumed to have rejected the Plan and, accordingly, are not entitled to vote on the Plan.

ARTICLE V.
ACCEPTANCE OR REJECTION OF THE PLAN

5.01. Classes Entitled to Vote. Creditors in Classes 2 through 4 are entitled to vote and shall vote separately to accept or reject the Plan. Any unimpaired Class shall not be entitled to vote to accept or reject the Plan. Any unimpaired Class is deemed to have accepted the Plan under section 1126(f) of the Bankruptcy Code.

5.02. Class Acceptance Requirement. A Class of Claims shall have accepted the Plan if it is accepted by at least two-thirds (2/3) in amount and more than one-half (1/2) in number of the Allowed Claims in such Class that have voted on the Plan.

5.03. Cramdown. This section shall constitute the request by the Plan proponent, pursuant to section 1129(b) of the Bankruptcy Code, that the Bankruptcy Court confirm the Plan notwithstanding the fact that the requirements of section 1129(a)(8) of the Bankruptcy Code have not been met.

ARTICLE VI.
MEANS FOR IMPLEMENTATION OF THE PLAN

6.01. Vesting of Assets. As of the Effective Date, pursuant to sections 1141(b) and (c) of the Bankruptcy Code, all Assets, including the PMAs, all Cash, Estate Accounts Receivable, Estate Insurance, Estate Claims and Estate Defenses, shall be transferred from the Estate to, and vested in, the Reorganized Debtor, free and clear of all rights, title, interests, claims, liens, encumbrances and charges, except as expressly set forth in the Plan. On and after the Effective Date, the Reorganized Debtor may operate its business and may use, acquire or dispose of property without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules, other than those restrictions expressly imposed by the Plan or the Confirmation Order. Without limiting the foregoing, the Reorganized Debtor may pay the charges that it incurs on or after the Effective Date for all fees, disbursements, expenses or related support services of Professionals (including fees relating to the preparation of professional fee applications) without application to, or approval of, the Bankruptcy Court.

6.02. Continued Existence of the Debtors. The Debtors shall continue to exist after the Effective Date, with all the powers available to such legal entities, in accordance with applicable law and pursuant to their constituent documents. On or after the Effective Date, each Reorganized Debtor may, within its sole and exclusive discretion, take such action as permitted by applicable law and its constituent documents as it determines is reasonable and appropriate.

6.03. Retention and Assertion of Causes of Action and Defenses.

(a) Except as expressly set forth in this Plan, all causes of action, claims, counterclaims, defenses and rights of offset or recoupment (including but not limited to all Estate Claims, Estate Defenses and Avoidance Actions) belonging to the Debtors (collectively, the "Retained Causes of Action") shall, upon the occurrence of the Effective Date, be reserved, retained and preserved for, and transferred to, received by and vested, in the Reorganized Debtor for the benefit of the Debtors and the Debtors' estates. Without limitation, the Retained Causes of Action include the claims and causes of action described on **Exhibit A** attached hereto.

(b) Except as expressly set forth in this Plan, the rights of the Reorganized Debtor to commence, prosecute or settle the Retained Causes of Action shall be retained, reserved, and preserved notwithstanding the occurrence of the Effective Date. **No Person may rely on the absence of a specific reference in the Plan or the Disclosure Statement to any cause of action against them as any indication that the Debtors or the Reorganized Debtor will not pursue any and all available causes of action (including all Estate Claims, Estate Defenses and Avoidance Actions) against them. The Debtors and their Estate expressly reserve all rights to prosecute any and all of the Retained Causes of Action (including all**

Estate Claims, Estate Defenses and Avoidance Actions) against any Person, except as otherwise provided in this Plan. Unless any causes of action against a Person are expressly waived, relinquished, exculpated, released, compromised or settled in this Plan or a Final Order, the Debtors expressly reserve all causes of action (including all Estate Claims, Estate Defenses and Avoidance Actions) for later adjudication, and, therefore, no preclusion doctrine, including without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable or otherwise) or laches, shall apply to such causes of action upon or after the confirmation or consummation of the Plan. The Debtors and the Reorganized Debtor may also assert Estate Defenses as a defense to the allowance of any Claim not otherwise Allowed.

6.04. Assumption of Obligations to Make Distributions. The Reorganized Debtor shall be deemed to have assumed the obligations to make all Distributions pursuant to this Plan.

6.05. Actions by the Debtors and the Reorganized Debtor to Implement Plan. The entry of the Confirmation Order shall constitute all necessary authorization for the Debtors and the Reorganized Debtor to take or cause to be taken all actions necessary or appropriate to consummate, implement or perform all provisions of this Plan on and after the Effective Date, and all such actions taken or caused to be taken shall be deemed to have been authorized and approved by the Bankruptcy Court without further approval, act or action under any applicable law, order, rule or regulation, including without limitation, (a) all transfers of Assets, including to the Reorganized Debtor, that are to occur pursuant to the Plan; (b) the cancellation of Interests and issuance of 100% of the equity interests in the Reorganized Debtor to Terry; (c) the performance of the terms of the Plan and the making of all Distributions required under the Plan; and (d) subject to the terms of the Plan, entering into any and all transactions, contracts, or arrangements permitted by applicable law, order, rule or regulation.

6.06. Termination of Highland as Shared Services Provider and Sub-Advisor. The Bankruptcy Court authorized the Chapter 11 Trustee to terminate the Shared Services Agreement and Sub-Advisory Agreement and engage Brigade to perform the services previously provided by Highland. The Shared Services Agreement and Sub-Advisory Agreement were terminated by the Chapter 11 Trustee on or about August 1, 2018, and the services previously performed by Highland were transitioned to Brigade on an interim basis. Brigade has agreed to continue to provide shared services and sub-advisory services to the Reorganized Debtor with respect to the Acis CLOs and the Other Acis-Managed Funds (and any reset Acis CLOs) subject to a minimum two (2) year term unless otherwise agreed as between the Reorganized Debtor and Brigade. Consequently, any agreement between the Reorganized Debtor and Brigade shall provide that Brigade cannot be removed without cause for a period of two (2) years except as may be otherwise agreed as between the Reorganized Debtor and Brigade.

6.07. Continued Portfolio Management by the Reorganized Debtor. The PMAs and any other Executory Contracts and Unexpired Leases identified on Exhibit B to the Plan or in the Confirmation Order shall be assumed and the Reorganized Debtor shall, from an after the Effective Date, serve as the portfolio manager with respect to the Acis CLOs and the Other Acis-Managed Funds (and any reset Acis CLOs). Consistent with Section 15 of the PMAs, the Reorganized Debtor may only be removed as portfolio manager under the assumed PMAs for cause as set forth in the PMAs.

6.08. Reset of the Acis CLOs. HCLOF has maintained that it desires to reset the Acis CLOs. The Reorganized Debtor, with the assistance of Brigade as its shared services provider and sub-advisor, is prepared to promptly seek to perform such reset transactions as set forth herein.

HCLOF shall have the right to submit one or more notice(s) of Optional Redemption solely for the purpose of effectuating a reset of one or more of the Acis CLOs under this section 6.08 of the Plan utilizing Refinancing Proceeds (a "Reset Optional Redemption") for each of the Acis CLOs. If HCLOF requests a Reset Optional Redemption of an Acis CLO, the Reorganized Debtor, with the assistance of Brigade, shall thereafter seek to reset the Acis CLOs, either consecutively or simultaneously, in its good faith business judgment and consistent with then-prevailing market terms; *provided, however*, (i) the Management Fees to be charged by the Reorganized Debtor to any reset Acis CLOs shall remain the same going forward and shall not be increased, and no transaction fee shall be charged by the Reorganized Debtor (other than, for avoidance of doubt, transaction expense reimbursements consistent with market standards), and (ii) HCLOF shall be granted a right of first refusal for any funding of debt or equity required to effectuate a reset of each of the Acis CLOs. The terms of the Indentures shall control any Reset Optional Redemption. If HCLOF elects not to reset one or more of the Acis CLOs, then the Acis CLOs will continue to be managed in accordance with market standards.

6.09. Post-Effective Date Service List. Pleadings filed by any party-in-interest with the Bankruptcy Court after the Effective Date shall be served on the following Persons (collectively the "Service List"): (a) any Person directly affected by the relief sought in the pleading, (b) the U.S. Trustee, (c) parties which have filed a Notice of Appearance in the Chapter 11 Cases, and (d) the Reorganized Debtor.

6.10. Section 505 Powers. All rights and powers pursuant to section 505 of the Bankruptcy Code are hereby reserved to the Estate and shall be transferred to, and vested in, the Reorganized Debtor as of the Effective Date.

6.11. Section 510(c) Powers. All rights and powers to seek or exercise any right or remedy of equitable subordination are hereby reserved to the Estate and shall be transferred to, and vested in, the Reorganized Debtor as of the Effective Date as an Estate Defense.

6.12. Section 506(c) Powers. The Estate hereby reserves all rights and powers pursuant to section 506(c) of the Bankruptcy Code, and all such rights shall be specifically transferred to, and vested in, the Reorganized Debtor.

6.13. Plan Injunction. The Reorganized Debtor shall each have full power, standing and authority to enforce the Plan Injunction against any Person, either through an action before the Bankruptcy Court or any other tribunal having appropriate jurisdiction.

6.14. Cancellation of Interests. Except as otherwise specifically provided herein, upon the Effective Date of the Plan: (a) all Interests in the Debtors shall be cancelled; and (b) all obligations or debts of, or Claims against, the Debtors on account of, or based upon, the Interests shall be deemed as cancelled, released and discharged, including all obligations or duties by the Debtors relating to the Interests in any of their respective formation documents, including Acis LP's limited partnership agreement and bylaws, Acis GP's articles of formation and company agreement, or any similar formation or governing documents.

ARTICLE VII.
PROVISIONS GOVERNING DISTRIBUTION

7.01. Distributions from Reorganized Debtor. The Reorganized Debtor shall be responsible for making Distributions to holders of Allowed Claims only to the extent this Plan requires Distributions to be made by the Reorganized Debtor. The priority of Distributions from the

Reorganized Debtor shall be in accordance with the terms of this Plan and the Confirmation Order as follows:

(a) First, to satisfy Allowed Class 1 Secured Tax Claims;

(b) Second, to satisfy Allowed Administrative Expenses and Allowed Priority Claims in accordance with Article III above, including all U.S. Trustee quarterly fees due and owing as of the Effective Date;

(c) Third, to make Distributions to holders of any Allowed Class 3 General Unsecured Claims and Allowed Subclass 4A Claims; and

(e) Fourth, to make Distributions to holders of any Allowed Subclass 4B Claims

7.02. Reserves. The Reorganized Debtor may estimate, create and set aside Reserves as may be necessary or appropriate, including without limitation, Reserves on account of Contested Claims. The Reorganized Debtor may, but shall not be required to, move the Bankruptcy Court to approve: (a) the amount of, and terms on which, such Reserves shall be held, maintained and disbursed, or (b) the amount and timing of any proposed interim Distribution to holders of Allowed Class 3 Claims and Allowed Subclass 4A Claims. The Reorganized Debtor may elect to seek approval by the Bankruptcy Court for the creation and amount of any Reserves or regarding the amount or timing of any Distribution on account of any Allowed Claims. Except as otherwise expressly provided herein, the Reorganized Debtor, in the exercise of its good faith business judgment, may transfer funds out of any of the Reserves as necessary or appropriate. However, the Reorganized Debtor shall not be required to create separate accounts for such Reserves which may be created and memorialized by entries or other accounting methodologies, which may be revised from time-to-time, to enable the Reorganized Debtor to determine the amount of Cash available for Distributions under the Plan. Subject to any specific deadlines set forth herein, the Reorganized Debtor, shall determine, from time-to-time, in the exercise of the Reorganized Debtor's good faith business judgment: (x) the amount of Cash available for Distribution, (y) the timing of any Distributions, and (z) the amount and creation of any Reserves for Contested Claims. The Reorganized Debtor shall not be entitled to reserve for, and this section 7.02 does not apply to, Distributions to holders of Allowed Subclass 4B Claims.

7.03. Prosecution and Settlement of Estate Claims. Upon the Effective Date, the Reorganized Debtor (a) shall automatically be substituted in place of the Chapter 11 Trustee as the party representing the Estate in respect of any pending lawsuit, motion or other pleading pending before the Bankruptcy Court or any other tribunal, and (b) is authorized to file a notice on the docket of each adversary proceeding or the Chapter 11 Cases regarding such substitution. The Reorganized Debtor shall have exclusive standing and authority to prosecute, settle or compromise Estate Claims for the benefit of the Estate in the manner set forth in this Plan.

7.04. Plan Injunction. The Reorganized Debtor shall be entitled to the full protection and benefit of the Plan Injunction and shall have standing to bring any action or proceeding necessary to enforce the Plan Injunction against any Person.

7.05. Relief from the Bankruptcy Court. The Reorganized Debtor shall be authorized to seek relief from the Bankruptcy Court or any other tribunal having jurisdiction as to any matter relating or pertaining to the consummation, administration or performance of this Plan, including without

limitation seeking any relief from the Bankruptcy Court which the Reorganized Debtor deems necessary or appropriate to the performance of its duties or the administration of this Plan.

ARTICLE VIII.
SOURCE OF DISTRIBUTIONS

8.01. Source of Distributions. All Distributions under this Plan shall be made by the Reorganized Debtor in the manner provided in this Plan and the Confirmation Order.

8.02. Timing and Amount of Distributions. No Distribution shall be made on account of any Claim until such Claim is Allowed, except as otherwise set forth in this Plan or otherwise ordered by the Bankruptcy Court. No Distribution shall be made on account of any Contested Claim until such Claim is Allowed. Except as expressly set forth in the Plan or in the Confirmation Order, the Reorganized Debtor shall, in the exercise of its good faith business judgment, determine the timing and amount of all Distributions which are required to be made under the Plan, consistent with the goal of making such Distributions as expeditiously as reasonably possible. The Reorganized Debtor may, but shall not be required to, seek approval of, or any other appropriate relief from, the Bankruptcy Court with respect to any of such Distributions. Any Unclaimed Property may be paid into the registry of the Bankruptcy Court or otherwise distributed in accordance with the orders of the Bankruptcy Court.

8.03. Means of Cash Payment. Cash payments pursuant to this Plan shall be made by check drawn on, or by wire transfer from, a domestic bank, or by other means agreed to by the payor and payee.

8.04. Record Date for Distributions. As of the close of business on the Effective Date (the "Distribution Record Date"), the register for Claims will be closed, and there shall be no further changes in the holders of record of any Claims. Although there is no prohibition against the transfer of any Claim by any Creditor, the Reorganized Debtor shall have no obligation to recognize any transfer of a Claim occurring after the Distribution Record Date, and the Reorganized Debtor shall instead be authorized and entitled to recognize and deal for all purposes under this Plan, including for the purpose of making all Distributions, with only those holders of Claims so reflected as of the Distribution Record Date. However, the Reorganized Debtor may, in the exercise of its good faith business judgment, agree to recognize transfers of Claims after the Distribution Record Date, but shall have no obligation to do so.

8.05. Delivery of Distributions. All Distributions, deliveries and payments to the holders of any Allowed Claims shall be made to the addresses set forth on the respective proofs of Claim filed in the Chapter 11 Cases by such Claimants or, if the Distribution is to be made based on a Claim reflected as Allowed in the Schedules, at the address reflected in the Schedules. Any such Distribution, delivery or payment shall be deemed as made for all purposes relating to this Plan when deposited in the United States Mail, postage prepaid, addressed as required in the preceding sentence. If any Distribution is returned as undeliverable, no further Distribution shall be made on account of such Allowed Claim unless and until the Reorganized Debtor is notified of such holder's then current address, at which time all missed Distributions shall be made to the holder of such Allowed Claim. However, all notices to the Reorganized Debtor reflecting new or updated addresses for undeliverable Distributions shall be made on or before one hundred twenty (120) days after the date of the attempted Distribution or such longer period as the Reorganized Debtor may fix in the exercise of its sole discretion. After such date, all Unclaimed Property shall revert to the Reorganized Debtor and the Claim of any holder with respect to such property shall be discharged and forever barred.

8.06. W-9 Forms. Each holder of an Allowed Claim must provide a W-9 form or other such necessary information to comply with any withholding requirements of any Governmental Unit (collectively the "W-9 Form") to the Reorganized Debtor prior to receiving any Distribution from the Reorganized Debtor. In the event a holder of an Allowed Claim does not provide a W-9 Form to the Reorganized Debtor within thirty (30) days of the Effective Date, the Reorganized Debtor shall, at an appropriate time, issue a written request to each holder of an Allowed Claim that has not previously provided a W-9 Form to the Reorganized Debtor. The request shall be in writing and shall be delivered to the last address known to the Debtors or Reorganized Debtor, as appropriate. The request shall conspicuously advise and disclose that failure to provide a W-9 Form to the Reorganized Debtor within thirty (30) days shall result in a waiver of any right or rights to a Distribution from the Reorganized Debtor. In the event any holder of an Allowed Claim fails to provide the Reorganized Debtor with a W-9 Form within thirty (30) days after the date of written request described herein, then the holder of such Allowed Claim shall be deemed to have waived the right to receive any Distribution whatsoever from the Reorganized Debtor.

8.07. Time Bar to Cash Payments. Checks issued in respect of Allowed Claims shall be null and void if not cashed within ninety (90) days of the date of issuance thereof. Requests for reissuance of any check shall be made directly to the issuer of the check by the holder of the Allowed Claim with respect to which such check originally was issued. Any Claim in respect of such a voided check shall be made on or before one hundred twenty (120) days after the date of issuance of such check or such longer period as the Reorganized Debtor may fix. After such date, all Claims in respect of void checks shall be discharged and forever barred.

8.08. Cure Period. Except as otherwise set forth herein, the failure by the Reorganized Debtor to timely perform any term, provision or covenant contained in this Plan, or to make any payment or Distribution required by this Plan to any Creditor, or the failure to make any payment or perform any covenant on any note, instrument or document issued pursuant to this Plan, shall not constitute an event of default unless and until the Reorganized Debtor has been given thirty (30) days written notice of such alleged default in the manner provided in this Plan, and provided an opportunity to cure such alleged default. Until the expiration of such thirty (30) day cure period, the Reorganized Debtor shall not be in default, and performance during such thirty (30) day cure period shall be deemed as timely for all purposes. Such written notice and passage of the thirty (30) day cure period shall constitute conditions precedent to declaring or claiming any default under this Plan or bringing any action or legal proceeding by any Person to enforce any right granted under this Plan.

8.09. Pre-Payment of Claims. Unless the Plan expressly prohibits or conditions the pre-payment of an Allowed Claim, the Reorganized Debtor may pre-pay any Allowed Claim in whole or in part at any time and may do so without penalty.

8.10. Distributions after Substantial Consummation. All Distributions of any kind made to any Creditor after Substantial Consummation and any and all other actions taken under this Plan after Substantial Consummation shall not be subject to relief, reversal or modification by any court unless the implementation of the Confirmation Order is stayed by an order granted under Bankruptcy Rule 8005.

ARTICLE IX.
RETENTION OF ESTATE CLAIMS AND ESTATE DEFENSES.

9.01. Retention of Estate Claims. Except as otherwise specifically provided in this Plan, pursuant to section 1123(b)(3) of the Bankruptcy Code, all Estate Claims shall be transferred to, and vested in, the Reorganized Debtor, both for purposes of seeking an affirmative recovery against any Person and for the purposes of offset, recoupment or defense against any Claim asserted against the Estate or Reorganized Debtor. All Estate Claims shall be deemed to have been transferred to, and vested in, the Reorganized Debtor as of the Effective Date based on the entry of the Confirmation Order.

Without limiting the effectiveness or generality of the foregoing reservation, out of an abundance of caution, the Debtors and the Estate hereby specifically reserves, retains, and preserves the Estate Claims reflected in the attached **Exhibit A**. Reference is here made to **Exhibit A** which constitutes an integral part of this Plan. The provisions of this Article of the Plan, as well as the descriptions and disclosures relating to the Estate Claims in the Disclosure Statement, are provided in the interest of providing maximum disclosure of the Estate Claims of which Debtors are presently aware and shall not act as a limitation on the potential Estate Claims that may exist. It is the specific intention of this Plan that all Avoidance Actions and all associated remedies, and any other Estate Claims, whether arising before or after the Petition Date, and whether arising under the Bankruptcy Code or applicable state or federal non-bankruptcy laws, shall all be reserved, retained and preserved under this Plan to be transferred to, and vested in, the Reorganized Debtor. All Estate Claims are reserved, retained and preserved both as causes of action for an affirmative recovery and as counterclaims and for the purposes of offset or recoupment against any Claims asserted against the Estate.

9.02. Retention of Estate Defenses. Except as otherwise specifically provided in this Plan, pursuant to section 1123(b)(3) of the Bankruptcy Code, all Estate Defenses shall be transferred to, and vested in, the Reorganized Debtor. For this purpose, all Estate Defenses are hereby reserved, retained and preserved by the Debtors and the Estate, including without limitation all such Estate Defenses available to the Estate pursuant to section 558 of the Bankruptcy Code, and shall be deemed as transferred to, and vested in, the Reorganized Debtor as of the Effective Date based on the entry of the Confirmation Order.

9.03. Assertion of Estate Claims and Estate Defenses. The Reorganized Debtor shall have, and be vested with, the exclusive right, authority and standing to assert all Estate Claims and Estate Defenses for the benefit of the Reorganized Debtor.

ARTICLE X.
PROCEDURES FOR RESOLVING AND TREATING CONTESTED AND CONTINGENT CLAIMS

10.01. Claims Listed in Schedules as Disputed. Any General Unsecured Claim which is listed in the Schedules as unliquidated, contingent or disputed, and for which no proof of Claim has been timely filed, shall be considered as Disallowed as of the Effective Date without the necessity of any further action by the Reorganized Debtor or further order of the Bankruptcy Court other than the entry of the Confirmation Order.

10.02. Responsibility for Objecting to Claims and Settlement of Claims. The Reorganized Debtor shall have the exclusive standing and authority to either object to any Claim or settle and compromise any Objection to any Claim, including as follows:

(a) From and after the Effective Date, the Reorganized Debtor shall have the sole and exclusive right to (i) file, settle, or litigate to Final Order any Objections to any Claims; and (ii) seek to subordinate any Claim. Any Contested Claim may be litigated to Final Order by the Reorganized Debtor; and

(b) From and after the Effective Date, the Reorganized Debtor shall have the sole and exclusive right to settle, compromise or otherwise resolve any Contested Claim without the necessity of any further notice or approval of the Bankruptcy Court. Bankruptcy Rule 9019 shall not apply to any settlement or compromise of a Contested Claim after the Effective Date.

10.03. Objection Deadline. All Objections to Claims shall be served and filed by the Objection Deadline; provided, however, the Objection Deadline shall not apply to Claims which are not reflected in the claims register, including any alleged informal proofs of Claim. The Reorganized Debtor may seek to extend the Objection Deadline pursuant to a motion filed on or before the then applicable Objection Deadline with respect to any Claim. Any such motion may be granted without notice or a hearing. In the event that the Reorganized Debtor files such a motion and the Bankruptcy Court denies such motion, the Objection Deadline shall nevertheless be automatically extended to that date which is ten (10) Business Days after the date of entry of the Bankruptcy Court's order denying such motion. Any proof of Claim other than one based upon a Rejection Claim and which is filed more than thirty (30) days after the Effective Date shall be of no force and effect and need not be objected to by the Reorganized Debtor. Nothing contained herein shall limit the right of the Reorganized Debtor to object to Claims, if any, filed or amended after the Objection Deadline.

10.04. Response to Claim Objection. If the Reorganized Debtor files an Objection to any Claim, then the holder of such Claim shall file a written response to such Objection within twenty-four (24) days after the filing and service of the Objection upon the holder of the Contested Claim. Each such Objection shall contain appropriate negative notice advising the Creditor whose Claim is subject to the Objection of the requirement and time period to file a response to such Objection and that, if no response is timely filed to the Objection, the Bankruptcy Court may enter an order that such Claim is Disallowed without further notice or hearing. The negative notice language in the Objection shall satisfy the notice requirement in section 3007(a) of the Bankruptcy Rules, and the Reorganized Debtor shall not be required to send a separate notice of the Objection to the Creditor whose Claim is subject to the Objection.

10.05. Distributions on Account of Contested Claims. If a Claim is Contested, then the dates for any Distributions as to such Contested Claim shall be determined based upon its date of Allowance, and thereafter Distribution shall be made on account of such Allowed Claim pursuant to the provisions of the Plan. No Distribution shall be made on account of a Contested Claim until Allowed. Until such time as a contingent Claim becomes fixed and absolute by a Final Order Allowing such Claim, such Claim shall be treated as a Contested Claim for purposes of estimates, allocations, and Distributions under the Plan. Any contingent right to contribution or reimbursement shall continue to be subject to section 502(e) of the Bankruptcy Code.

10.06. No Waiver of Right to Object. Except as expressly provided in this Plan, nothing contained in the Disclosure Statement, this Plan, or the Confirmation Order shall waive, relinquish, release or impair the Reorganized Debtor's right to object to any Claim.

10.07. Offsets and Defenses. The Reorganized Debtor shall be vested with and retain all Estate Claims and Estate Defenses, including without limitation all rights of offset or recoupment and all counterclaims against any Claimant holding a Claim. Assertion of counterclaims by the

Reorganized Debtor against any Claim asserted against the Estate or Reorganized Debtor shall constitute "core" proceedings.

10.08. Claims Paid or Reduced Prior to Effective Date. Notwithstanding the contents of the Schedules, Claims listed therein as undisputed, liquidated and not contingent shall be reduced by the amount, if any, that was paid by the Debtors prior to the Effective Date, including pursuant to orders of the Bankruptcy Court. To the extent such payments are not reflected in the Schedules, such Schedules will be deemed amended and reduced to reflect that such payments were made. Nothing in the Plan shall preclude the Debtors or the Reorganized Debtor from paying Claims that the Debtors were authorized to pay pursuant to any Final Order entered by the Bankruptcy Court prior to the Confirmation Date.

ARTICLE XI.
EXECUTORY CONTRACTS AND UNEXPIRED LEASES

11.01. Assumption and Rejection of Executory Contracts. All Executory Contracts and Unexpired Leases of the Debtors shall be deemed rejected by the Debtors upon the Effective Date unless an Executory Contract or Unexpired Lease (a) has been previously assumed or rejected pursuant to an order of the Bankruptcy Court, (b) is identified in **Exhibit B** to this Plan and/or the Confirmation Order to be (i) assumed or (ii) assumed and assigned, or (c) is the subject of a motion to assume filed on or before the Confirmation Date. The Plan shall constitute a motion to reject all Executory Contracts and Unexpired Leases except as stated in this paragraph. However, the Debtors may file a separate motion for the assumption or rejection of any Executory Contract or Unexpired Lease at any time through the Confirmation Date.

11.02. Cure Payments. All payments that may be required by section 365(b)(1) of the Bankruptcy Code to satisfy any Cure Claim shall be made by the Reorganized Debtor as soon as reasonably practical after the Effective Date or upon such terms as may be otherwise agreed between the Reorganized Debtor and the holder of such Cure Claim; *provided, however*, in the event of a dispute regarding the amount of any Cure Claim, the cure of any other defaults, or any other matter pertaining to assumption or assignment of an Executory Contract, the Reorganized Debtor shall make such cure payments and cure such other defaults, all as may be required by section 365(b)(1) of the Bankruptcy Code, following the entry of a Final Order by the Bankruptcy Court resolving such dispute.

11.03. Bar to Rejection Claims. Except as otherwise ordered by the Bankruptcy Court, any Rejection Claim based on the rejection of an Executory Contract or Unexpired Lease shall be forever barred and shall not be enforceable against the Reorganized Debtor or the Reorganized Debtor's assets unless a proof of Claim is filed with the Bankruptcy Court and served upon the Reorganized Debtor and its counsel by the earlier of thirty (30) days after the Effective Date or thirty (30) days after entry of the Final Order approving rejection of such Executory Contract or Unexpired Lease.

11.04. Rejection Claims. Any Rejection Claim not barred by section 11.03 of the Plan shall be classified as a Class 3 General Unsecured Claim subject to the provisions of sections 502(b)(6) and 502(g) of the Bankruptcy Code; *provided, however*, that any Rejection Claim by a lessor based upon the rejection of an unexpired lease of real property, either prior to the Confirmation Date, upon the entry of the Confirmation Order, or upon the Effective Date, shall be limited in accordance with section 502(b)(6) of the Bankruptcy Code and state law mitigation requirements. All Rejection Claims shall be deemed as Contested Claims until Allowed. Nothing contained herein shall be deemed an admission by the Debtors or the Reorganized

Debtor that such rejection gives rise to or results in a Claim or shall be deemed a waiver by the Debtors or the Reorganized Debtor of any objections or defenses to any such Rejection Claim if asserted.

11.05. Reservation of Rights. Nothing contained in the Plan shall constitute an admission by the Debtors that any contract or lease is in fact an Executory Contract or Unexpired Lease or that the Debtors or the Reorganized Debtor have any liability thereunder. If there is a dispute regarding whether a contract or lease is or was executory or unexpired at the time of assumption or rejection, the Reorganized Debtor shall have thirty (30) days following entry of a Final Order resolving such dispute to alter the treatment of such contract or lease.

ARTICLE XII.
SUBSTANTIVE CONSOLIDATION OF THE DEBTORS

12.01. Pursuant to the Confirmation Order, the Bankruptcy Court shall approve the substantive consolidation of the Debtors for the sole purposes of implementing the Plan, including for purposes of voting and Distributions to be made under the Plan. Pursuant to such order: (a) all assets and liabilities of the Debtors will be deemed merged; (b) all guarantees by one Debtor of the obligations of the other Debtor will be deemed eliminated so that any Claim against any Debtor and any guarantee thereof executed by the other Debtor and any joint or several liability of the Debtors will be deemed to be one obligation of the consolidated Debtors; and (c) each and every Claim filed or to be filed in the Chapter 11 Case of either Debtor will be deemed filed against the consolidated Debtors and will be deemed one Claim against and a single obligation of the consolidated Debtors.

ARTICLE XIII.
CONDITIONS PRECEDENT TO CONFIRMATION AND EFFECTIVENESS OF PLAN

13.01. Conditions to Confirmation and Effectiveness of Plan. The Plan shall not become effective until the following conditions shall have been satisfied and which may occur concurrently with the Effective Date: (a) the Confirmation Order shall have been entered, in form and substance acceptable to the Chapter 11 Trustee; (b) the necessary Plan Documents have been executed and delivered, and (c) all other conditions specified by the Chapter 11 Trustee have been satisfied. Any or all of the above conditions other than (a) may be waived at any time by the Chapter 11 Trustee.

13.02. Notice of the Effective Date. On or as soon as reasonably practical after the occurrence of the Effective Date, the Reorganized Debtor shall cause a notice of the Effective Date to be filed with the Bankruptcy Court and served on all Creditors and parties-in-interest.

13.03. Revocation of Plan. The Chapter 11 Trustee may revoke and withdraw the Plan at any time before the Effective Date. If the Chapter 11 Trustee revokes or withdraws the Plan, or if confirmation of the Plan does not occur, then this Plan shall be deemed null and void and nothing contained in the Plan shall be deemed to constitute a waiver or release of any Claims by or against the Debtors, as the case may be, or any other Person, or to prejudice in any manner the rights of the Debtors or any other Person in any further proceedings involving the Debtors.

ARTICLE XIV.
EFFECT OF THE PLAN ON CLAIMS AND INTERESTS

14.01. Compromise and Settlement

(a) Pursuant to section 363 of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration of the classification, potential Distributions and other benefits provided under the Plan, the provisions of the Plan shall constitute a good faith compromise and settlement of all Claims, Interests and controversies subject to, or dealt with, under this Plan, including, without limitation, all Claims against the Debtors or Estate arising prior to the Effective Date, whether known or unknown, foreseen or unforeseen, asserted or unasserted, fixed or contingent, arising out of, relating to or in connection with the business or affairs of, or transactions with, the Debtors or the Estate. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of each of the foregoing compromises or settlements embodied in this Plan, and all other compromises and settlements provided for in the Plan, and the Bankruptcy Court's findings shall constitute its determination that such compromises and settlements are in the best interest of the Debtors, the Estate, Creditors and other parties-in-interest, and are fair, equitable and within the range of reasonableness. The rights afforded in the Plan and the treatment of all Claims and Interests herein shall be in exchange for, and in complete satisfaction and release of, all Claims and Interests of any nature whatsoever against and in the Debtors, the Estate, and the Assets. Except as otherwise provided herein, all Persons shall be precluded and forever barred by the Plan Injunction from asserting against the Debtors and their affiliates, successors, assigns, the Reorganized Debtor or the Reorganized Debtor's Assets, or the Estate, any event, occurrence, condition, thing, or other or further Claims or causes of action based upon any act, omission, transaction, or other activity of any kind or nature that occurred or came into existence prior to the Effective Date, whether or not the facts of or legal bases therefore were known or existed prior to the Effective Date.

(b) It is not the intent of this Plan that confirmation of the Plan shall in any manner alter or amend any settlement and compromise (including those contained in agreed orders) between the Debtors and any Person that has been previously approved by the Bankruptcy Court (each, a "Prior Settlement"). To the extent of any conflict between the terms of the Plan and the terms of any Prior Settlement, the terms of the Prior Settlement shall control and such Prior Settlement shall be enforceable according to its terms.

14.02. Discharge. The Debtors and their successors in interest and assigns shall be deemed discharged and released pursuant to section 1141(d)(1) of the Bankruptcy Code from any and all Claims provided for in the Plan.

14.03. **PLAN INJUNCTION.**

THIS SECTION IS REFERRED TO HEREIN AS THE "PLAN INJUNCTION." EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, AS OF THE EFFECTIVE DATE ALL HOLDERS OF CLAIMS AGAINST, OR INTERESTS IN, THE DEBTORS, THE ESTATE OR ANY OF THE ASSETS THAT AROSE PRIOR TO THE EFFECTIVE DATE ARE HEREBY PERMANENTLY ENJOINED AND PROHIBITED FROM THE FOLLOWING: (a) THE COMMENCING OR CONTINUATION IN ANY MANNER, DIRECTLY OR INDIRECTLY, OF ANY ACTION, CASE, LAWSUIT OR OTHER PROCEEDING OF ANY TYPE OR NATURE AGAINST THE DEBTORS, THE ESTATE, THE REORGANIZED DEBTOR, OR THE REORGANIZED DEBTOR'S ASSETS WITH RESPECT TO

ANY SUCH CLAIM OR INTEREST ARISING OR ACCRUING BEFORE THE EFFECTIVE DATE, INCLUDING WITHOUT LIMITATION THE ENTRY OR ENFORCEMENT OF ANY JUDGMENT, OR ANY OTHER ACT FOR THE COLLECTION, EITHER DIRECTLY OR INDIRECTLY, OF ANY CLAIM OR INTEREST AGAINST THE DEBTORS, THE ESTATE, THE REORGANIZED DEBTOR, OR THE REORGANIZED DEBTOR'S ASSETS; (b) THE CREATION, PERFECTION OR ENFORCEMENT OF ANY LIEN, SECURITY INTEREST, ENCUMBRANCE, RIGHT OR BURDEN, EITHER DIRECTLY OR INDIRECTLY, AGAINST THE DEBTORS, THE ESTATE, THE REORGANIZED DEBTOR, OR THE REORGANIZED DEBTOR'S ASSETS, OR (c) TAKING ANY ACTION IN RELATION TO THE DEBTORS, THE ESTATE, THE REORGANIZED DEBTOR, OR THE REORGANIZED DEBTOR'S ASSETS, EITHER DIRECTLY OR INDIRECTLY, WHICH VIOLATES OR DOES NOT CONFORM OR COMPLY WITH THE PROVISIONS OF THIS PLAN APPLICABLE TO SUCH CLAIM OR INTEREST. THE PLAN INJUNCTION SHALL ALSO BE INCORPORATED INTO THE CONFIRMATION ORDER.

IN ADDITION TO THE FOREGOING, EXCEPT TO THE EXTENT NECESSARY TO ALLOW HCLOF, THE REORGANIZED DEBTOR AND BRIGADE TO EFFECTUATE THE RESET OF ONE OR MORE OF THE ACIS CLOS IN ACCORDANCE WITH SECTION 6.08 OF THE PLAN, PURSUANT TO SECTIONS 105(a), 1123(a)(5), 1123(b)(6), AND 1142(b) OF THE BANKRUPTCY CODE, THE ENJOINED PARTIES (DEFINED BELOW) ARE HEREBY ENJOINED FROM: (a) PROCEEDING WITH, EFFECTUATING, OR OTHERWISE TAKING (i) ANY ACTION IN FURTHERANCE OF ANY OPTIONAL REDEMPTION, CALL, OR OTHER LIQUIDATION OF THE ACIS CLOS PREVIOUSLY OR CURRENTLY ISSUED BY ANY SUCH PARTIES, AND (ii) ANY OTHER ATTEMPT TO LIQUIDATE THE ACIS CLOS BY ANY MEANS, (b) TRADING ANY ACIS CLO COLLATERAL IN FURTHERANCE OF ANY OPTIONAL REDEMPTION, CALL, OR OTHER LIQUIDATION OF THE ACIS CLOS, (c) EXERCISING ANY RIGHTS TO ASK OR DIRECT THE ISSUERS, CO-ISSUERS OR INDENTURE TRUSTEE TO PERFORM ANY ACTION IN RELATION TO THE ACIS CLOS THAT THE ENJOINED PARTIES ARE PROHIBITED FROM TAKING UNDER THE TERMS OF THE PLAN INJUNCTION, (d) INTERFERING IN ANY WAY WITH THE CAPITAL MARKETS PROCESS OF RESETTING ANY ACIS CLO, AND (e) SENDING, MAILING, OR OTHERWISE DISTRIBUTING ANY NOTICE TO THE HOLDERS OF THE NOTES IN THE ACIS CLOS IN CONNECTION WITH THE EFFECTUATION OF ANY OPTIONAL REDEMPTION, CALL, OR OTHER LIQUIDATION OF THE ACIS CLOS, UNTIL THE EARLIER TO OCCUR OF: (w) THE DATE UPON WHICH A FINAL ORDER IS ENTERED RESOLVING THE ESTATE'S AVOIDANCE CLAIMS AGAINST ALL ENJOINED PARTIES RELATING TO ACIS LP'S RIGHTS UNDER THE ALF PMA; (x) THE DATE UPON WHICH ALL ALLOWED CLAIMS AGAINST THE DEBTORS HAVE BEEN PAID IN FULL, (y) THE ENTRY OF AN ORDER BY THE BANKRUPTCY COURT FINDING THAT A MATERIAL DEFAULT HAS OCCURRED UNDER THE TERMS OF THE PLAN, OR (z) THE ENTRY OF A SUBSEQUENT ORDER BY THE BANKRUPTCY COURT PROVIDING OTHERWISE WITH RESPECT TO ONE OR MORE OF THE ACIS CLOS. FOR PURPOSES OF THIS PARAGRAPH, THE TERM "ENJOINED PARTIES" SHALL INCLUDE HIGHLAND, HCLOF, CLO HOLDCO, NEUTRA, HIGHLAND HCF, HIGHLAND CLOM, ANY AFFILIATES OF

HIGHLAND, AND THEIR RESPECTIVE EMPLOYEES, AGENTS, REPRESENTATIVES, TRANSFEREES, ASSIGNS, AND SUCCESSORS. FOR PURPOSES OF CLARIFICATION AND AVOIDANCE OF DOUBT, NOTHING IN THIS PARAGRAPH SHALL PRECLUDE ORDINARY DAY-TO-DAY TRADING OF THE COLLATERAL IN THE ACIS CLOS BY THE REORGANIZED DEBTOR.

Notwithstanding anything to the contrary in the Plan: (a) third-party professionals employed by the Reorganized Debtor shall not be released or exculpated from any losses, claims, damages, liabilities, or expenses arising from their duties and services provided to the Reorganized Debtor; and (b) any third-party professionals employed by the Reorganized Debtor shall only be entitled to be indemnified by the Reorganized Debtor to the extent provided by applicable law.

Notwithstanding anything to the contrary in the Plan or Confirmation Order, nothing in the Plan or in the Confirmation Order shall discharge, release, enjoin or otherwise bar (i) any liability of the Debtors, the Estate, the Reorganized Debtor, or the Reorganized Debtor's assets ("Released Parties") to a Governmental Unit arising on or after the Confirmation Date with respect to events occurring after the Confirmation Date, provided that the Released Parties reserve the right to assert that any such liability is a Claim that arose on or prior to the Confirmation Date and constitutes a Claim that is subject to the deadlines for filing proofs of claim, (ii) any liability to a Governmental Unit that is not a Claim subject to the deadlines for filing proofs of Claim, (iii) any valid right of setoff or recoupment of a Governmental Unit, and (iv) any police or regulatory action by a Governmental Unit. In addition, nothing in the Plan or Confirmation Order discharges, releases, precludes or enjoins any environmental liability to any Governmental Unit that any Person other than the Released Parties would be subject to as the owner or operator of the property after the Effective Date. For the avoidance of any doubt, nothing in this paragraph shall be construed to limit the application of the Plan Injunction to any Claim which was subject to any bar date applicable to such Claim.

14.04. Setoffs. Except as otherwise expressly provided for in the Plan, pursuant to the Bankruptcy Code (including section 553 of the Bankruptcy Code), applicable nonbankruptcy law, or as may be agreed to by the holder of a Claim, the Reorganized Debtor may set off against any Allowed Claim and the Distributions to be made pursuant to the Plan on account of such Allowed Claim (before such Distribution is made), any Claims, rights, Estate Claims and Estate Defenses of any nature that the Debtors may hold against the holder of such Allowed Claim, to the extent such Claims, rights, Estate Claims and Estate Defenses against such holder have not been otherwise compromised or settled on or prior to the Effective Date (whether pursuant to the Plan or otherwise); provided, however, that neither the failure to effect such a setoff nor the allowance of any Claim or Interest pursuant to the Plan shall constitute a waiver or release of any such Claims, rights, Estate Claims and Estate Defenses that the Estate may possess against such Claimant. In no event shall any Claimant or Interest holder be entitled to setoff any Claim or Interest against any Claim, right, or Estate Claim of the Debtors without the consent of the Debtors or the Reorganized Debtor unless such holder files a motion with the Bankruptcy Court requesting the authority to perform such setoff notwithstanding any indication in any proof of Claim or otherwise that such holder asserts, has, or intends to preserve any right of setoff pursuant to section 553 of the Bankruptcy Code or otherwise.

14.05. Recoupment. Except as otherwise expressly provided for in the Plan, in no event shall any holder of Claims or Interests be entitled to recoup any Claim or Interest against any Claim, right, account receivable, or Estate Claim of the Debtors or the Reorganized Debtor unless (a) such holder actually provides notice thereof in writing to the Debtors or the Reorganized Debtor of its intent to perform a recoupment; (b) such notice includes the amount to be

recouped by the holder of the Claim or Interest and a specific description of the basis for the recoupment, and (c) the Debtors or the Reorganized Debtor have provided a written response to such Claim or Interest holder, stating unequivocally that the Debtors or the Reorganized Debtor consents to the requested recoupment. The Debtors and the Reorganized Debtor shall have the right, but not the obligation, to seek an order of the Bankruptcy Court allowing any or all of the proposed recoupment. In the absence of a written response from the Debtors or the Reorganized Debtor consenting to a recoupment or an order of the Bankruptcy Court authorizing a recoupment, no recoupment by the holder of a Claim or Interest shall be allowed.

14.06. Turnover. On the Effective Date, any rights of the Estate to compel turnover of Assets under applicable nonbankruptcy law and pursuant to section 542 or 543 of the Bankruptcy Code shall be deemed transferred to and vested in the Reorganized Debtor.

14.07. Automatic Stay. The automatic stay pursuant to section 362 of the Bankruptcy Code, except as previously modified by the Bankruptcy Court, shall remain in effect until the Effective Date of the Plan as to the Debtors, the Estate and all Assets. As of the Effective Date, the automatic stay shall be replaced by the Plan Injunction.

ARTICLE XV.
JURISDICTION OF COURTS AND MODIFICATIONS TO THE PLAN

15.01. Retention of Jurisdiction. Pursuant to sections 1334 and 157 of title 28 of the United States Code, the Bankruptcy Court shall retain exclusive jurisdiction of all matters arising in, arising under, and related to the Chapter 11 Cases and the Plan, to the full extent allowed or permitted by applicable law, including without limitation for the purposes of invoking sections 105(a) and 1142 of the Bankruptcy Code, and for, among other things, the following purposes:

(a) To hear and determine any and all objections to, or applications or motions concerning, the allowance of Claims or the allowance, classification, priority, compromise, estimation, or payment of any Administrative Expense;

(b) To hear and determine any and all applications for payment of fees and expenses pursuant to this Plan to any Estate Professional pursuant to sections 330 or 503 of the Bankruptcy Code, or for payment of any other fees or expenses authorized to be paid or reimbursed under this Plan, and any and all objections thereto;

(c) To hear and determine pending applications for the rejection, assumption, or assumption and assignment of Executory Contracts and Unexpired Leases and the allowance of Claims resulting therefrom, and to determine the rights of any party in respect to the assumption or rejection of any Executory Contract or Unexpired Lease;

(d) To hear and determine any and all adversary proceedings, applications, or contested matters, including relating to the allowance of any Claim;

(e) To hear and determine all controversies, disputes, and suits which may arise in connection with the execution, interpretation, implementation, consummation, or enforcement of the Plan or in connection with the enforcement of any remedies made available under the Plan, including without limitation, (i) adjudication of all rights, interests or disputes relating to any of the Assets, (ii) the valuation of all Collateral, (iii) the determination of the validity of any Lien or claimed right of offset or recoupment; and (iv) determinations of Objections to Contested Claims;

(f) To liquidate and administer any disputed, contingent, or unliquidated Claims, including the Allowance of all Contested Claims;

(g) To administer Distributions to holders of Allowed Claims as provided herein;

(h) To enter and implement such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, reversed, revoked, modified, or vacated;

(i) To enable the Reorganized Debtor to prosecute any and all proceedings which may be brought to set aside transfers, Liens or encumbrances and to recover any transfers, Assets, properties or damages to which the Reorganized Debtor may be entitled under applicable provisions of the Bankruptcy Code or any other federal, state or local laws, including causes of action, controversies, disputes and conflicts between the Reorganized Debtor and any other party, including but not limited to, any causes of action or Objections to Claims, preferences or fraudulent transfers and obligations or equitable subordination;

(j) To consider any modification of the Plan pursuant to section 1127 of the Bankruptcy Code, to cure any defect or omission, or reconcile any inconsistency in any order of the Bankruptcy Court, including, without limitation the Confirmation Order;

(k) To enforce the discharge and Plan Injunction against any Person;

(l) To enter and implement all such orders as may be necessary or appropriate to execute, interpret, construe, implement, consummate, or enforce the terms and conditions of this Plan and the transactions required or contemplated pursuant thereto;

(m) To hear and determine any motion or application which the Reorganized Debtor is required or allowed to commence before the Bankruptcy Court pursuant to this Plan;

(n) To hear and determine any other matter not inconsistent with the Bankruptcy Code and title 28 of the United States Code that may arise in connection with or related to the Plan;

(o) To determine proceedings pursuant to section 505 of the Bankruptcy Code;

(p) To enter a final decree closing the Chapter 11 Cases; and

(q) To determine any other matter or dispute relating to the Estate, the Estate Claims, the Estate Defenses, the Assets, or the Distributions by the Reorganized Debtor.

15.02. Abstention and Other Courts. If the Bankruptcy Court abstains from exercising, or declines to exercise, jurisdiction or is otherwise without jurisdiction over any matter arising out of or relating to the Chapter 11 Cases, this Article of the Plan shall have no effect upon and shall not control, prohibit or limit the exercise of jurisdiction by any other court having competent jurisdiction with respect to such matter.

15.03. Non-Material Modifications. The Reorganized Debtor may, with the approval of the Bankruptcy Court and without notice to all holders of Claims and Interests, correct any defect, omission, or inconsistency in the Plan in such manner and to such extent as may be necessary or desirable. The Reorganized Debtor may undertake such nonmaterial modification pursuant

to this section insofar as it does not adversely change the treatment of the Claim of any Creditor or the Interest of any Interest holder who has not accepted in writing the modification.

15.04. Material Modifications. Modifications of this Plan may be proposed in writing by the Chapter 11 Trustee at any time before confirmation, provided that this Plan, as modified, meets the requirements of sections 1122 and 1123 of the Bankruptcy Code, and the Chapter 11 Trustee shall have complied with section 1125 of the Bankruptcy Code. This Plan may be modified at any time after confirmation and before its Substantial Consummation, provided that the Plan, as modified, meets the requirements of sections 1122 and 1123 of the Bankruptcy Code, and the Bankruptcy Court, after notice and a hearing, confirms the Plan, as modified, under section 1129 of the Bankruptcy Code, and the circumstances warrant such modification. A holder of a Claim or Interest that has accepted or rejected this Plan shall be deemed to have accepted or rejected, as the case may be, such Plan as modified, unless, within the time fixed by the Bankruptcy Court, such holder changes its previous acceptance or rejection.

ARTICLE XVI.
MISCELLANEOUS PROVISIONS

16.01. Severability. Should the Bankruptcy Court determine any provision of the Plan is unenforceable either on its face or as applied to any Claim or Interest or transaction, the Reorganized Debtor may modify the Plan so that any such provision shall not be applicable to the holder of any Claim or Interest. Such a determination of unenforceability shall not (a) limit or affect the enforceability and operative effect of any other provision of the Plan or (b) require the resolicitation of any acceptance or rejection of the Plan.

16.02. Oral Agreements; Modification of Plan; Oral Representations or Inducements. The terms of the Plan, Disclosure Statement and Confirmation Order may only be amended in writing and may not be changed, contradicted or varied by any oral statement, agreement, warranty or representation. None of the Debtors, any representative of the Estate, including Robin Phelan in his capacity as Chapter 11 Trustee, nor their attorneys have made any representation, warranty, promise or inducement relating to the Plan or its confirmation except as expressly set forth in this Plan, the Disclosure Statement, or the Confirmation Order or other order of the Bankruptcy Court.

16.03. Waiver. The Reorganized Debtor shall not be deemed to have waived any right, power or privilege pursuant to the Plan unless the waiver is in writing and signed by the Reorganized Debtor. There shall be no waiver by implication, course of conduct or dealing, or through any delay or inaction by the Reorganized Debtor, of any right pursuant to the Plan, including the provisions of this anti-waiver section. The waiver of any right under the Plan shall not act as a waiver of any other or subsequent right, power or privilege.

16.04. Notice. Any notice or communication required or permitted by the Plan shall be given, made or sent as follows:

(a) If to a Creditor, notice may be given as follows: (i) if the Creditor has not filed a proof of Claim, then to the address reflected in the Schedules, or (ii) if the Creditor has filed a proof of Claim, then to the address reflected in the proof of Claim.

(b) If to the Reorganized Debtor, notice shall be sent to the following addresses:

Jeff P. Prostok Suzanne K. Rosen Forshey Prostok LLP 777 Main Street, Suite 1290 Fort Worth, Texas 76102	Josh Terry c/o Brian P. Shaw Rogge Dunn Group, PC 1201 Elm Street, Suite 5200 Dallas, Texas 75270

(c) Any Creditor desiring to change its address for the purpose of notice may do so by giving notice to the Reorganized Debtor of its new address in accordance with the terms of this section.

(d) Any notice given, made or sent as set forth above shall be effective upon being (i) deposited in the United States Mail, postage prepaid, addressed to the addressee at the address as set forth above; (ii) delivered by hand or messenger to the addressee at the address set forth above; (iii) telecopied to the addressee as set forth above, with a hard confirmation copy being immediately sent through the United States Mail; or (iv) delivered for transmission to an expedited or overnight delivery service such as FedEx.

16.05. Compliance with All Applicable Laws. If notified by any governmental authority that it is in violation of any applicable law, rule, regulation, or order of such governmental authority relating to its business, the Reorganized Debtor shall comply with such law, rule, regulation, or order; provided, however, that nothing contained herein shall require such compliance if the legality or applicability of any such requirement is being contested in good faith in appropriate proceedings and, if appropriate, an adequate Reserve has been set aside on the books of the Reorganized Debtor.

16.06. Duties to Creditors; Exculpation. Neither the Chapter 11 Trustee nor any agent, representative, accountant, financial advisor, attorney, shareholder, officer, affiliate, member or employee of the Chapter 11 Trustee or the Debtors, including but not limited to Estate Professionals (collectively, the "Exculpated Parties"), shall ever owe any duty to any Person (including any Creditor) other than the duties owed to the Debtors' bankruptcy Estate, for any act, omission, or event in connection with, or arising out of, or relating to, any of the following: (a) the Debtors' Chapter 11 Cases, including all matters or actions in connection with or relating to the administration of the Estate, (b) the Plan, including the proposal, negotiation, confirmation and consummation of the Plan, or (c) any act or omission relating to the administration of the Plan after the Effective Date. All such Exculpated Parties shall be fully exculpated and released from any and all claims and causes of action by any Person, known or unknown, in connection with, or arising out of, or relating to, any of the following: (x) the Debtors' Chapter 11 Cases, including all matters or actions in connection with or relating to the administration of the Estate, (y) the Plan, including the proposal, negotiation, confirmation and consummation of the Plan, or (z) any act or omission relating to the administration of the Plan after the Effective Date, except for claims and causes of action arising out of such Exculpated Party's gross negligence or willful misconduct.

16.07. Binding Effect. The Plan shall be binding upon, and shall inure to the benefit of, the Reorganized Debtor, the holders of the Claims or Liens, and their respective successors-in-interest and assigns.

16.08. Governing Law, Interpretation. Unless a rule of law or procedure supplied by federal law (including the Bankruptcy Code and Bankruptcy Rules) is applicable, the internal laws of the State of Texas shall govern the construction and implementation of the Plan and any Plan

Documents without regard to conflicts of law. The Plan shall control any inconsistent term or provision of any other Plan Documents.

16.09. Payment of Statutory Fees. All accrued U.S. Trustee Fees as of the Confirmation Date shall be paid by the Reorganized Debtor on or as soon as practicable after the Effective Date, and thereafter shall be paid by the Reorganized Debtor as such statutory fees become due and payable.

16.10. Filing of Additional Documents. On or before Substantial Consummation of the Plan, the Reorganized Debtor may file with the Bankruptcy Court such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan.

16.11. Computation of Time. Bankruptcy Rule 9006 shall apply to the calculation of all time periods pursuant to this Plan. If the final day for any Distribution, performance, act or event under the Plan is not a Business Day, then the time for making or performing such Distribution, performance, act or event shall be extended to the next Business Day. Any payment or Distribution required to be made hereunder on a day other than a Business Day shall be due and payable on the next succeeding Business Day.

16.12. Elections by the Reorganized Debtor. Any right of election or choice granted to the Reorganized Debtor under this Plan may be exercised, at the Reorganized Debtor's election, separately as to each Claim, Creditor or Person.

16.13. Release of Liens. Except as otherwise expressly provided in this Plan or the Confirmation Order, all Liens against any of the Assets transferred to and vested in the Reorganized Debtor shall be deemed to be released, terminated and nullified without the necessity of any order by the Bankruptcy Court other than the Confirmation Order.

16.14. Rates. The Plan does not provide for the change of any rate that is within the jurisdiction of any governmental regulatory commission after the occurrence of the Effective Date.

16.15. Compliance with Tax Requirements. In connection with the Plan, the Reorganized Debtor shall comply with all withholding and reporting requirements imposed by federal, state and local Taxing Authorities and all Distributions under the Plan shall be subject to such withholding and reporting requirements. Notwithstanding the above, each holder of an Allowed Claim or Interest that is to receive a Distribution under the Plan shall have the sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any governmental unit, including income, withholding and other tax obligations, on account of such Distribution under the Plan.

16.16. Notice of Occurrence of the Effective Date. Promptly after occurrence of the Effective Date, the Reorganized Debtor, as directed by the Bankruptcy Court, shall serve on all known parties-in-interest and holders of Claims and Interests, notice of the occurrence of the Effective Date.

16.17. Notice of Entry of Confirmation Order. Promptly after entry of the Confirmation Order, the Chapter 11 Trustee, as directed by the Bankruptcy Court in the Confirmation Order, shall serve on all known parties-in-interest and holders of Claims and Interests, notice of entry of the Confirmation Order.

Dated: October 25, 2018.

Respectfully submitted,

ACIS CAPITAL MANAGEMENT, L.P.

By: */s/ Robin Phelan*
Robin Phelan
Chapter 11 Trustee

ACIS CAPITAL MANAGMENET GP, LLC

By:*/s/ Robin Phelan*
Robin Phelan
Chapter 11 Trustee

APPROVED:

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EXHIBIT A

TO THIRD AMENDED JOINT PLAN FOR ACIS CAPITAL MANAGEMENT, LP AND ACIS CAPITAL MANAGEMENT GP, LLC

[ESTATE CLAIMS]

EXHIBIT "A"
to
Joint Plan for Acis Capital Management, LP and Acis Capital Management GP, LLC

1. Defined Terms. This Exhibit "A" constitutes an integral part of the Plan of which it is a part. Defined terms in the Plan are to be given the same meaning in this Exhibit "A". The rules of construction set forth in Article I.B. of the Plan shall likewise apply to this Exhibit "A".

2. Estate Claims Reserved, Retained and Preserved. All Estate Claims are hereby reserved, retained and preserved, and shall all be transferred to, and vested in, the Reorganized Debtor pursuant to this Plan, and shall include without limitation all of the Estate Claims described below. In reserving, retaining, and preserving Estate Claims against any named Person or category of Persons, it is the intent of this Plan to so reserve, retain, and preserve any and all Estate Claim against each such Person or category of Persons, including all such Estate Claims pursuant to any applicable common law, based on any contract or agreement or based upon any law, statute or regulation of any political entity, including the United States and any state or political subdivision thereof, as well as all applicable remedies, whether legal or equitable. Without limiting the generality of the foregoing, the reservation, retention, and preservation of Estate Claims against any Person, and the term "Estate Claims," shall encompass all Estate Claims against any such Person, including without limitation, all such Estate Claims for breach of contract, all rights to enforce any contract, any form of estoppel, fraud, constructive fraud, abuse of process, malicious prosecution, defamation, libel, slander, conversion, trespass, intentional infliction of emotional distress or other harm, negligence, gross negligence, breach of any duty owed under either applicable law or any contract, breach of any fiduciary duty or duty of loyalty or due care, aiding and/or abetting breach of fiduciary duty, aiding and/or abetting breach of duty of loyalty or due care, alter ego, veil piercing, self-dealing, usurpation of corporate opportunity, ultra vires, turnover of Estate Assets, unauthorized use of Estate Assets, including intellectual property rights or Assets owned by the Debtors or Chapter 11 Trustee, quantum merit, tortious interference, duress, unconscionability, undue influence, and unjust enrichment, as well as any cause of action for conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act, or claims arising from or relating to the filing of the involuntary bankruptcy petitions against the Debtors.

3. Highland Claims. All Estate Claims against Highland are reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims asserted by the Chapter 11 Trustee in Adversary Proceeding No. 18-03078-sgj (the "Highland Adversary") and Adversary Proceeding No. 18-03212-sgj (the "Trustee's Adversary"). The Estate Claims against Highland shall include all Estate Claims set forth in paragraph 2 above, including without limitation, the following:

(a) All such Claims asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Highland Adversary;

(b) All such Claims asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Trustee's Adversary;

(c) All such Claims and Defenses asserted by the Chapter 11 Trustee or Estate, or which could be asserted by the Chapter 11 Trustee or Estate, based on the facts or transactions alleged in any other adversary proceedings or Claim Objections filed by the Chapter 11 Trustee or Estate;

(d) All Avoidance Actions against Highland, including any claims to avoid and recover amounts transferred by the Debtors to Highland under the Shared Services Agreement or Sub-Advisory Agreement;

(e) All Claims for breach of the Shared Services Agreement or Sub-Advisory Agreement;

(f) All Claims against Highland for amounts paid by the Debtors to Highland under the Shared Services Agreement and Sub-Advisory Agreement, including any Claim that Highland overcharged Acis LP for services under such agreements, charged excessive fees in violation of Acis LP's limited partnership agreement and/or Acis GP's limited liability company agreement, and/or that the Shared Services Agreement and Sub-Advisory Agreement or any related or predecessor agreements are void or voidable based on ultra vires or any other theories of avoidance and recovery, including turnover, conversion and Avoidance Actions under the Bankruptcy Code;

(g) All Claims for breach of the PMAs or the Indentures;

(h) All Claims for breach of fiduciary duty or duty of loyalty or due care owed to the Debtors or Chapter 11 Trustee;

(i) All Claims for aiding and/or abetting breach of fiduciary duty, breach of duty loyalty or due care, or any other unlawful act;

(j) All Clams for usurpation of a corporate opportunity belonging to either of the Debtors, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs;

(k) All claims for tortious interference, including in relation to Universal-Investment-Luxembourg S.A. and BayVK R2 Lux S.A., SICAV-FIS;

(l) All Claims against Highland for the turnover of Estate Assets, including Estate property that the Chapter 11 Trustee may use, sell or lease under section 363 of the Bankruptcy Code including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate, as well as the turnover of any books, documents, records and papers relating to the Debtors' property or financial affairs;

(m) All Claims against Highland for the unauthorized use of Estate Assets including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate;

(n) All Claims, rights or remedies for Equitable Subordination or Recharacterization of any Claim by Highland against the Debtors, Chapter 11 Trustee, or Estate;

(o) All Claims based on alter ego or rights to pierce the corporate veil of Acis LP as to any Person, including as against Highland or any Affiliates thereof, James D. Dondero, Mark K. Okada, or any other officers, directors, equity interest holders, or Persons otherwise in control of Acis LP;

(p) All Claims based on alter ego or rights to pierce the corporate veil of Highland as to any Person, including as against any Affiliates of Highland, James D. Dondero, Mark K. Okada, or any other officers, directors, equity interest holders, or Persons otherwise in

control of Highland, and,

(q) All Claims for conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act.

4. HCLOF Claims. All Estate Claims against HCLOF are reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims asserted by the Chapter 11 Trustee in the Highland Adversary and the Trustee's Adversary. The Estate Claims against HCLOF shall include all Estate Claims set forth in paragraph 2 above, including without limitation, the following:

(a) All such Claims against HCLOF asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Highland Adversary;

(b) All such Claims against HCLOF asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Trustee's Adversary;

(c) All such Claims and Defenses asserted by the Chapter 11 Trustee or Estate, or which could be asserted by the Chapter 11 Trustee or Estate, based on the facts or transactions alleged in any other adversary proceedings or Claim Objections filed by the Chapter 11 Trustee or Estate;

(d) All Avoidance Actions against HCLOF;

(e) All Claims for breach of the PMAs or the Indentures;

(f) All Claims for breach of fiduciary duty or duty of loyalty or due care owed to the Debtors or Chapter 11 Trustee;

(g) All Claims for aiding and/or abetting breach of fiduciary duty, breach of duty loyalty or due care, or any other unlawful act;

(h) All Clams for usurpation of a corporate opportunity belonging to either of the Debtors, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs;

(i) All Claims against HCLOF for the turnover of Estate Assets, including Estate property that the Chapter 11 Trustee may use, sell or lease under section 363 of the Bankruptcy Code including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate, as well as the turnover of any books, documents, records and papers relating to the Debtors' property or financial affairs;

(j) All Claims against HCLOF for the unauthorized use of Estate Assets including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate;

(k) All Claims, rights or remedies for Equitable Subordination or Recharacterization of any Claim by HCLOF against the Debtors, Chapter 11 Trustee, or Estate;

(l) All Claims based on alter ego or rights to pierce the corporate veil of

HCLOF as to any Person, including as against any Affiliates of HCLOF or Highland, William Scott, Heather Bestwick, or any other officers, directors, equity interest holders, or Persons otherwise in control of HCLOF; and,

(m) All Claims for conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act.

5. Highland HCF Advisor, Ltd. Claims. All Estate Claims against Highland HCF Advisor, Ltd. ("Highland HCF") are reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims asserted by the Chapter 11 Trustee in the Highland Adversary. The Estate Claims against Highland HCF shall include all Estate Claims set forth in paragraph 2 above, including without limitation, the following:

(a) All such Claims against Highland HCF asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Highland Adversary;

(b) All such Claims against Highland HCF asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Trustee's Adversary;

(c) All such Claims and Defenses asserted by the Chapter 11 Trustee or Estate, or which could be asserted by the Chapter 11 Trustee or Estate, based on the facts or transactions alleged in any other adversary proceedings or Claim Objections filed by the Chapter 11 Trustee or Estate;

(d) All Avoidance Actions against Highland HCF;

(e) All Claims for breach of fiduciary duty or duty of loyalty or due care owed to the Debtors or Chapter 11 Trustee;

(f) All Claims for aiding and/or abetting breach of fiduciary duty, breach of duty loyalty or due care, or any other unlawful act;

(g) All Clams for usurpation of a corporate opportunity belonging to either of the Debtors, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs;

(h) All Claims against Highland HCF for the turnover of Estate Assets, including Estate property that the Chapter 11 Trustee may use, sell or lease under section 363 of the Bankruptcy Code including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate, as well as the turnover of any books, documents, records and papers relating to the Debtors' property or financial affairs;

(i) All Claims against Highland HCF for the unauthorized use of Estate Assets including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate;

(j) All Claims, rights or remedies for Equitable Subordination or Recharacterization of any Claim by Highland HCF against the Debtors, Chapter 11 Trustee, or Estate;

(k) All Claims based on alter ego or rights to pierce the corporate veil of Highland HCF as to any Person, including as against any Affiliates of Highland HCF or Highland, or any other officers, directors, equity interest holders, or Persons otherwise in control of Highland HCF; and,

(l) All Claims for conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act.

6. Highland CLO Management, Ltd. Claims. All Estate Claims against Highland CLO Management, Ltd. ("Highland CLOM") are reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims asserted by the Chapter 11 Trustee in the Highland Adversary. The Estate Claims against Highland CLOM shall include all Estate Claims set forth in paragraph 2 above, including without limitation the following:

(a) All such Claims against Highland CLOM asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Highland Adversary;

(b) All such Claims against Highland CLOM asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Trustee's Adversary;

(c) All such Claims and Defenses asserted by the Chapter 11 Trustee or Estate, or which could be asserted by the Chapter 11 Trustee or Estate, based on the facts or transactions alleged in any other adversary proceedings or Claim Objections filed by the Chapter 11 Trustee or Estate;

(d) All Avoidance Actions against Highland CLOM;

(e) All Claims for breach of fiduciary duty or duty of loyalty or due care owed to the Debtors or Chapter 11 Trustee;

(f) All Claims for aiding and/or abetting breach of fiduciary duty, breach of duty loyalty or due care, or any other unlawful act;

(g) All Clams for usurpation of a corporate opportunity belonging to either of the Debtors, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs;

(h) All Claims against Highland CLOM for the turnover of Estate Assets, including Estate property that the Chapter 11 Trustee may use, sell or lease under section 363 of the Bankruptcy Code including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate, as well as the turnover of any books, documents, records and papers relating to the Debtors' property or financial affairs;

(i) All Claims against Highland CLOM for the unauthorized use of Estate Assets including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate;

(j) All Claims, rights or remedies for Equitable Subordination or Recharacterization of any Claim by Highland CLOM against the Debtors, Chapter 11 Trustee, or

Estate;

(k) All Claims based on alter ego or rights to pierce the corporate veil of Highland CLOM as to any Person, including as against any Affiliates of Highland CLOM or Highland, or any other officers, directors, equity interest holders, or Persons otherwise in control of Highland CLOM; and,

(l) All Claims for conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act.

7. CLO Holdco, Ltd. Claims. All Estate Claims against CLO Holdco, Ltd. ("CLO Holdco") are reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims asserted by the Chapter 11 Trustee in the Trustee's Adversary. The Estate Claims against CLO Holdco shall include all Estate Claims set forth in paragraph 2 above, including without limitation, the following:

(a) All such Claims against CLO Holdco asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Highland Adversary;

(b) All such Claims against CLO Holdco asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Trustee's Adversary;

(c) All such Claims and Defenses asserted by the Chapter 11 Trustee or Estate, or which could be asserted by the Chapter 11 Trustee or Estate, based on the facts or transactions alleged in any other adversary proceedings or Claim Objections filed by the Chapter 11 Trustee or Estate;

(d) All Avoidance Actions against CLO Holdco;

(e) All Claims for breach of fiduciary duty or duty of loyalty or due care owed to the Debtors or Chapter 11 Trustee;

(f) All Claims for aiding and/or abetting breach of fiduciary duty, breach of duty loyalty or due care, or any other unlawful act;

(g) All Clams for usurpation of a corporate opportunity belonging to either of the Debtors, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs;

(h) All Claims against CLO Holdco for the turnover of Estate Assets, including Estate property that the Chapter 11 Trustee may use, sell or lease under section 363 of the Bankruptcy Code including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate, as well as the turnover of any books, documents, records and papers relating to the Debtors' property or financial affairs;

(i) All Claims against CLO Holdco for the unauthorized use of Estate Assets including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate;

(j) All Claims, rights or remedies for Equitable Subordination or Recharacterization of any Claim by Highland against the Debtors, Chapter 11 Trustee, or Estate;

(k) All Claims based on alter ego or rights to pierce the corporate veil of CLO Holdco as to any Person, including as against any Affiliates of CLO Holdco or Highland, or any other officers, directors, equity interest holders, or Persons otherwise in control of CLO Holdco; and,

(l) All Claims for conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act.

8. Neutra, Ltd. Claims. All Estate Claims against Neutra, Ltd. ("Neutra") are reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims asserted by the Chapter 11 Trustee in the Trustee's Adversary. The Estate Claims against Neutra shall include all Estate Claims set forth in paragraph 2 above, including without limitation the following:

(a) All such Claims against Neutra asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Highland Adversary;

(b) All such Claims against Neutra asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Trustee's Adversary;

(c) All such Claims and Defenses asserted by the Chapter 11 Trustee or Estate, or which could be asserted by the Chapter 11 Trustee or Estate, based on the facts or transactions alleged in any other adversary proceedings or Claim Objections filed by the Chapter 11 Trustee or Estate;

(d) All Avoidance Actions against Neutra;

(e) All Claims for breach of fiduciary or duty of loyalty or due care owed to the Debtors or Chapter 11 Trustee;

(f) All Claims for aiding and/or abetting breach of fiduciary duty, breach of duty loyalty or due care, or any other unlawful act;

(g) All Clams for usurpation of a corporate opportunity belonging to either of the Debtors, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs;

(h) All Claims against Neutra for the turnover of Estate Assets, including Estate property that the Chapter 11 Trustee may use, sell or lease under section 363 of the Bankruptcy Code including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate, as well as the turnover of any books, documents, records and papers relating to the Debtors' property or financial affairs;

(i) All Claims against Neutra for the unauthorized use of Estate Assets including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate;

(j) All Claims, rights or remedies for Equitable Subordination or Recharacterization of any Claim by Neutra against the Debtors, Chapter 11 Trustee, or Estate;

(k) All Claims based on alter ego or rights to pierce the corporate veil of Acis LP as to any Person, including as against Neutra, Highland, or any Affiliates thereof, James D. Dondero, Mark K. Okada, or any other officers, directors, equity interest holders, or Persons otherwise in control of Acis LP;

(l) All Claims based on alter ego or rights to pierce the corporate veil of Neutra as to any Person, including as against any Affiliates of Neutra or Highland, or any other officers, directors, equity interest holders, or Persons otherwise in control of Neutra; and,

(m) All Claims for conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act.

9. Claims against Issuers, Co-Issuers and Indenture Trustee. All Estate Claims against CLO-3, CLO-4, CLO-5, and CLO-6 (collectively, the "Issuers"), Acis CLO 2014-3 LLC, Acis CLO 2014-4 LLC, Acis CLO 2014-5 LLC, and Acis CLO 2015-6 LLC (collectively, the "Co-Issuers"), and the Indenture Trustee are reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims asserted by the Chapter 11 Trustee in the Trustee's Adversary. The Estate Claims against the Issuers, Co-Issuers and/or Indenture Trustee shall include all Estate Claims set forth in paragraph 2 above, including without limitation the following:

(a) All such Claims against the Issuers, Co-Issuers, and/or Indenture Trustee asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Highland Adversary;

(b) All such Claims against the Issuers, Co-Issuers, and/or Indenture Trustee asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Trustee's Adversary;

(c) All such Claims and Defenses asserted by the Chapter 11 Trustee or Estate, or which could be asserted by the Chapter 11 Trustee or Estate, based on the facts or transactions alleged in any other adversary proceedings or Claim Objections filed by the Chapter 11 Trustee or Estate;

(d) All Avoidance Actions against the Issuers, Co-Issuers and/or Indenture Trustee;

(e) All Claims for breach of the Indentures, PMAs or any other agreements between Acis LP and the Issuers, Co-Issuers, and/or Indenture Trustee;

(f) All Claims for breach of fiduciary duty or duty of loyalty or due care owed to the Debtors or Chapter 11 Trustee;

(g) All Claims for aiding and/or abetting breach of fiduciary duty, breach of duty loyalty or due care, or any other unlawful act;

(h) All Clams for usurpation of a corporate opportunity belonging to either of the Debtors, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs;

(i) All Claims against the Issuers, Co-Issuers and/or Indenture Trustee for the turnover of Estate Assets, including Estate property that the Chapter 11 Trustee may use, sell or lease under section 363 of the Bankruptcy Code including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate, as well as the turnover of any books, documents, records and papers relating to the Debtors' property or financial affairs;

(j) All Claims against the Issuers, Co-Issuers and/or Indenture Trustee for the unauthorized use of Estate Assets including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate;

(k) All Claims, rights or remedies for Equitable Subordination or Recharacterization of any Claim by the Issuers or Co-Issuers against the Debtors, Chapter 11 Trustee, or Estate; and,

(l) All Claims for conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act.

10. Highland Affiliate Claims. All Estate Claims against any Affiliates of Highland are reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims asserted by the Chapter 11 Trustee in the Highland Adversary and the Trustee's Adversary. The Estate Claims against any Affiliates of Highland shall include all Estate Claims set forth in paragraph 2 above, including without limitation the following:

(a) All such Claims against any Highland Affiliate asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Highland Adversary;

(b) All such Claims against any Highland Affiliate asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Trustee's Adversary;

(c) All such Claims and Defenses asserted by the Chapter 11 Trustee or Estate, or which could be asserted by the Chapter 11 Trustee or Estate, based on the facts or transactions alleged in any other adversary proceedings or Claim Objections filed by the Chapter 11 Trustee or Estate;

(d) All Avoidance Actions against any Highland Affiliate;

(e) All Claims for breach of fiduciary duty or duty of loyalty or due care owed to the Debtors or Chapter 11 Trustee;

(f) All Claims for aiding and/or abetting breach of fiduciary duty, breach of duty loyalty or due care, or any other unlawful act;

(g) All Clams for usurpation of a corporate opportunity belonging to either of the Debtors, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs;

(h) All Claims against any Highland Affiliate for the turnover of Estate Assets, including Estate property that the Chapter 11 Trustee may use, sell or lease under section 363 of the Bankruptcy Code including, without limitation, any intellectual property rights or Assets

owned by the Debtors or Estate, as well as the turnover of any books, documents, records and papers relating to the Debtors' property or financial affairs;

(i) All Claims against any Highland Affiliate for the unauthorized use of Estate Assets including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate;

(j) All Claims, rights or remedies for Equitable Subordination or Recharacterization of any Claim by any Highland Affiliate against the Debtors, Chapter 11 Trustee, or Estate;

(k) All Claims based on alter ego or rights to pierce the corporate veil of Acis LP as to any Person, including as against Highland, Neutra, or any Affiliates thereof, James D. Dondero, Mark K. Okada, or any other officers, directors, equity interest holders, or Persons otherwise in control of Acis LP;

(l) All Claims based on alter ego or rights to pierce the corporate veil of any Highland Affiliate as to any Person, including as against any other Affiliates of Highland or any officers, directors, equity interest holders, or Persons otherwise in control of any Highland Affiliates; and,

(m) All Claims for conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act.

11. Dondero Claims. All Estate Claims as defined in paragraph 2 above against James D. Dondero, individually, are hereby reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims against James D. Dondero for fraud, constructive fraud, breach of fiduciary duty, breach of duty of loyalty or due care, aiding and abetting breach of fiduciary duty, aiding and abetting breach of duty of loyalty or due care, self-dealing, ultra vires, conversion, usurpation of corporate opportunity, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs, tortious interference, including in relation to Universal-Investment-Luxembourg S.A. and BayVK R2 Lux S.A., SICAV-FIS, conflict of interest, negligence, gross negligence, all Avoidance Actions, breach of contract, breach of the Shared Services Agreement, breach of the Sub-Advisory Agreement, breach of the Debtors' limited partnership agreement or limited liability company agreement, conspiracy to commit any unlawful act, aiding and abetting any unlawful act, and assisting, encouraging, and/or participating in any unlawful act, as well as any Claim to pierce the corporate veil of any entity to hold James D. Dondero individually liable.

12. Okada Claims. All Estate Claims as defined in paragraph 2 above against Mark K. Okada, individually, are hereby reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims against Mark K. Okada for fraud, constructive fraud, breach of fiduciary duty, breach of duty of loyalty or due care, aiding and abetting breach of fiduciary duty, self-dealing, ultra vires, conversion, usurpation of corporate opportunity, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs, tortious interference, including in relation to Universal-Investment-Luxembourg S.A. and BayVK R2 Lux S.A., SICAV-FIS, conflict of interest, negligence, gross negligence, all Avoidance Actions, breach of contract, breach of the Shared Services Agreement, breach of the Sub-Advisory Agreement, breach of the Debtors' limited partnership agreement or limited liability company agreement, conspiracy to commit any unlawful act, aiding and abetting any

unlawful act, and assisting, encouraging, and participating in any unlawful act, as well as any Claim to pierce the corporate veil of any entity to hold Mark K. Okada individually liable.

13. <u>Preference Claims</u>. All Avoidance Actions pursuant to section 547 of the Bankruptcy Code against any Person are hereby reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor for any payment made to any Person by either of the Debtors within ninety (90) days of the Petition Date (which was January 30, 2018), or made by either of the Debtors to any insider within one (1) year of the Petition Date. A non-exhaustive list of Persons who are believed to have received payments from either of the Debtors during the 90-day preference period, and the one-year preference period for Insiders, is attached to this **Exhibit "A"** as **Schedule "1"**. The Plan reserves, retains and preserves for the benefit of the Estate and Reorganized Debtor all potential Claims arising out of or relating to the transfers reflected in **Schedule "1"**, including all Avoidance Actions pursuant to section 547 of the Bankruptcy Code. All rights and remedies are also reserved. retained and preserved with respect to the transfers reflected in **Schedule "1"** pursuant to section 550 of the Bankruptcy Code.

Schedule "1" reflects transfers made by the Debtors during the 90 days prior to the Petition Date and transfers made by the Debtors to any insiders within one (1) year of the Petition Date. While the Plan reserves, retains and preserves all Avoidance Actions relating to the transfers reflected in **Schedule "1"**, the Chapter 11 Trustee recognizes that certain of these transfers may not constitute a preferential transfer pursuant to section 547(b) of the Bankruptcy Code as a transfer made in the ordinary course of business transactions or based upon new value subsequently given by the transferee. Consequently, the listing of a payment on **Schedule "1"** does not necessarily mean that a transferee will ever be sued to avoid and recover the payment, the transfer, or the value thereof, but only that the Plan reserves, retains and preserves all rights (including Avoidance Actions) as to that payment.

14. <u>Claims Against Officers, Managers and Members</u>. All Estate Claims as defined in paragraph 2 above are hereby reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor against all present and past officers, employees, members and managers of the Debtors, including all such Estate Causes of Action based on breach of fiduciary duty, aiding and abetting breach of fiduciary duty, breach of duty of loyalty or due care, aiding and abetting breach of duty of loyalty or due care, self-dealing, usurpation of corporate opportunity, gross negligence or conspiracy. Without limiting the generality of the foregoing, this shall include all D&O Claims as against any present or former officer, director, employee, member, manager, or partner.

15. <u>Retention of Claims Against Specific Persons or Categories of Persons</u>. In addition to the foregoing, all Estate Claims as defined in paragraph 2 above are hereby reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor against the following Persons:

(a) William Scott;

(b) Heather Bestwick;

(c) Any other Person who may be so named at a later date by the Reorganized Debtor.

16. Counterclaims. All Estate Claims as defined in paragraph 2 above are reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor both as a basis for an affirmative recovery against the Person against whom such Claims are asserted and as a counterclaim or offset against any Person who asserts a Claim against the Estate or Reorganized Debtor.

17. Piercing the Corporate Veil. With respect to all Estate Claims against any Person, all rights to pierce or ignore the corporate veil are hereby reserved, retained and preserved for the benefit of the Estate and the Reorganized Debtor. Without limiting the generality of the foregoing, this shall include: (a) any right to pierce the corporate veil, including reverse piercing, on any theory or basis, including alter ego or any theory of sham to perpetrate a fraud, and (b) any Claim or basis to pierce the corporate veil of any entity with respect to establishing personal liability against James D. Dondero or Mark K. Okada.

18. Avoidance Actions. All Avoidance Actions are hereby reserved, retained and preserved as to all Persons. The reservation, retention and preservation of such Avoidance Actions shall include the reservation, retention and preservation for the benefit of the Estate and Reorganized Debtor of all rights and remedies pursuant to section 550 of the Bankruptcy Code.

19. Estate Defenses. All Estate Defenses are hereby reserved, retained and preserved in favor of the Estate and Reorganized Debtor as against any Person asserting any Claim against the Estate. This includes asserting all Estate Claims as an offset to, or counterclaim or right of recoupment against, any Person asserting a Claim against the Estate. All defenses and affirmative defenses pursuant to applicable law are hereby reserved, retained and preserved for the benefit of the Estate and the Reorganized Debtor, including without limitation, accord and satisfaction, assumption of risk, contributory negligence, duress, estoppel, failure of consideration, fraud, illegality, laches, license, payment, release, *res judicata*, collateral estoppel, statute of frauds, statute of limitations or repose, discovery rule, adverse domination doctrine or similar doctrines, set off, recoupment, waiver, and all other defenses to Claims under the Bankruptcy Code, including under sections 502(b)(4) and 502(d).

20. Equitable Subordination. All rights or remedies for Equitable Subordination are hereby reserved, retained and preserved in favor of the Estate and Reorganized Debtor against any Person asserting any Claim against the Estate, including all such rights or remedies pursuant to section 510(c) of the Bankruptcy Code. Without limiting the generality of the foregoing, this shall include all rights and remedies to Equitable Subordination as to any Claim asserted by Highland, any Affiliates of Highland, or any officers, directors, employees or equity interest owners of the Debtors, Highland, or any Affiliates thereof.

21. Recharacterization. All rights or remedies to recharacterize any Claim as an equity interest in either of the Debtors are hereby reserved, retained and preserved in favor of the Estate and Reorganized Debtor against any Person asserting any Claim against the Estate. Without limiting the generality of the foregoing, this shall include all rights and remedies to recharacterize any Claim asserted by Highland, any Affiliates of Highland, or any officers, directors, employees or equity interest owners of the Debtors, Highland, or any Affiliates thereof.

Schedule 1 to Exhibit "A" to

Second Amended Joint Plan for Acis Capital Management, LP and Acis Capital Management GP, LLC

NAME	ADDRESS	DATE OF PAYMENT	PAYMENT AMOUNT	REASON FOR PAYMENT ON SCHEDULES
Payments within 90 Days of Petition Date				
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	11/2/2017	$234,013.63	Services
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	11/3/2017	$941,958.57	Services
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	12/8/2017	$89,655.14	Services
David Simek	31 Woodacres Road Brookville, NY 11545	11/15/2017	$2,068.13	Services
David Simek	31 Woodacres Road Brookville, NY 11545	11/30/2017	$24,266.71	Services
David Simek	31 Woodacres Road Brookville, NY 11545	12/12/2017	$1,718.79	Services
David Simek	31 Woodacres Road Brookville, NY 11545	12/29/2017	$25,000.00	Services
FINRA	1735 K Street, NW Washington, DC 20006	11/22/2017	$70.00	Suppliers or Vendors
Highland CLO Management, Ltd.	PO Box 309, Ugland House Grand Cayman, KY1-1104, Cayman Islands	12/19/2017	$2,830,459.22	Services
Payments to Insiders within One Year of Petition Date				
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	2/1/2017	$976,688.47	Contractual Payment
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	2/1/2017	$1,096,033.37	Services
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	2/2/2017	$3,574.80	Expense Reimbursement
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	2/14/2017	$67.44	Expense Reimbursement
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	4/17/2017	$315,574.30	Services
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	4/18/2017	$438,497.51	Services

Schedule 1 to Exhibit "A" to

Second Amended Joint Plan for Acis Capital Management, LP and Acis Capital Management GP, LLC

NAME	ADDRESS	DATE OF PAYMENT	PAYMENT AMOUNT	REASON FOR PAYMENT ON SCHEDULES
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	4/18/2017	$375,855.01	Contractual Payment
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	4/19/2017	$330,249.69	Services
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	5/1/2017	$974,426.41	Services
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	5/31/2017	$2,809,518.47	Unsecured loan repayments including interest
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	5/31/2017	$581,036.15	Services
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	7/18/2017	$373,167.08	Contractual Payment
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	8/1/2017	$971,603.02	Contractual Payment
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	8/7/2017	$1,339,422.12	Services
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	8/16/2017	$53.41	Expense Reimbursement
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	10/18/2017	$372,872.82	Contractual Payment
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	10/18/2017	$728,702.26	Services
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	10/24/2017	$501,979.18	Unsecured loan repayments including interest
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	10/25/2017	$46,648.82	Expense Reimbursement
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	10/25/2017	$67,966.85	Expense Reimbursement
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	11/1/2017	$967,223.91	Contractual Payment

EXHIBIT B

TO THIRD AMENDED JOINT PLAN FOR ACIS CAPITAL MANAGEMENT, LP AND ACIS CAPITAL MANAGEMENT GP, LLC

[EXECUTORY CONTRACTS ASSUMED UNDER THE PLAN]

EXHIBIT B
Executory Contracts and Unexpired Leases
to Be Assumed by the Trustee

Party	Contract Description	Contract Date	Cure Amount
Acis CLO 2013-1 Chemical Holdings, LLC 1209 Orange Street Wilmington, DE 19801	Limited Liability Company Agreement	October 28, 2016	$0
Acis CLO 2013-1, Ltd. c/o Estera Trust (f/k/a Appleby Trust) Clifton House 75 Fort St., P.O. Box 1350 Grand Cayman, Cayman Islands KY1-1108	Limited Liability Company Agreement	October 28, 2016	$0
Acis CLO 2013-1 Ltd. c/o Estera Trust (f/k/a Appleby Trust) Clifton House 75 Fort St., P.O. Box 1350 Grand Cayman, Cayman Islands KY1-1108	Collateral Administration Agreement	March 18, 2013	$0
U.S. Bank National Association 190 S. LaSalle Street, 8th Floor Chicago, IL 60603 Attention: Global Corporate Trust – Acis CLO 2013-1	Collateral Administration Agreement	March 18, 2013	$0
Acis CLO 2013-1 Ltd. c/o Estera Trust (f/k/a Appleby Trust) Clifton House 75 Fort St., P.O. Box 1350 Grand Cayman, Cayman Islands KY1-1108	Portfolio Management Agreement	March 18, 2013	$0
Acis CLO 2013-1 Ltd. c/o Estera Trust (f/k/a Appleby Trust) Clifton House 75 Fort St., P.O. Box 1350 Grand Cayman, Cayman Islands KY1-1108	Indenture	March 18, 2013	$0
Acis CLO 2013-1 LLC 850 Library Ave., Suite 204 Newark, DE 19711	Indenture	March 18, 2013	$0

EXHIBIT B
Executory Contracts and Unexpired Leases
to Be Assumed by the Trustee

Party	Contract Description	Contract Date	Cure Amount
U.S. Bank National Association 190 S. LaSalle Street, 8th Floor Chicago, IL 60603 Attention: Global Corporate Trust – Acis CLO 2013-1	Indenture	March 18, 2013	$0
Acis CLO 2013-1 Ltd. c/o Estera Trust (f/k/a Appleby Trust) Clifton House 75 Fort St., P.O. Box 1350 Grand Cayman, Cayman Islands KY1-1108	Supplemental Indenture	February 26, 2014	$0
Acis CLO 2013-1 LLC 850 Library Ave., Suite 204 Newark, DE 19711	Supplemental Indenture	February 26, 2014	$0
U.S. Bank National Association 190 S. LaSalle Street, 8th Floor Chicago, IL 60603 Attention: Global Corporate Trust – Acis CLO 2013-1	Supplemental Indenture	February 26, 2014	$0
Acis CLO 2013-1, Ltd. c/o Estera Trust (f/k/a Appleby Trust) Clifton House 75 Fort St., P.O. Box 1350 Grand Cayman, Cayman Islands KY1-1108	Governing Documents (Requested from HCM)	--	$0
Acis CLO 2013-2 Chemical Holdings, LLC 1209 Orange Street Wilmington, DE 19801	Limited Liability Company Agreement (requested from HCM)	--	$0
Acis CLO 2013-2 Ltd. c/o Estera Trust (f/k/a Appleby Trust) Clifton House 75 Fort St., P.O. Box 1350 Grand Cayman, Cayman Islands KY1-1108	Limited Liability Company Agreement (requested from HCM)	--	$0

EXHIBIT B
Executory Contracts and Unexpired Leases
to Be Assumed by the Trustee

Party	Contract Description	Contract Date	Cure Amount
Acis CLO 2013-2 Ltd. c/o Estera Trust (f/k/a Appleby Trust) Clifton House 75 Fort St., P.O. Box 1350 Grand Cayman, Cayman Islands KY1-1108	Collateral Administration Agreement	October 3, 2013	$0
The Bank of New York Mellon Trust Co., N.A. 601 Travis Street, 16th Floor Houston, Texas 77002 Attn: Global Corporate Trust – Acis CLO 2013-2	Collateral Administration Agreement	October 3, 2013	$0
Acis CLO 2013-2 Ltd. c/o Estera Trust (f/k/a Appleby Trust) Clifton House 75 Fort St., P.O. Box 1350 Grand Cayman, Cayman Islands KY1-1108	Portfolio Management Agreement	October 3, 2013	$0
Acis CLO 2013-2 Ltd. c/o Estera Trust (f/k/a Appleby Trust) Clifton House 75 Fort St., P.O. Box 1350 Grand Cayman, Cayman Islands KY1-1108	Indenture	October 3, 2013	$0
Acis CLO 2013-2 LLC 850 Library Ave., Suite 204 Newark, DE 19711	Indenture	October 3, 2013	$0
The Bank of New York Mellon Trust Co., N.A. 601 Travis Street, 16th Floor Houston, Texas 77002 Attn: Global Corporate Trust – Acis CLO 2013-2	Indenture	October 3, 2013	$0
Acis CLO 2013-2 Ltd. c/o Estera Trust (f/k/a Appleby Trust) Clifton House 75 Fort St., P.O. Box 1350 Grand Cayman, Cayman Islands KY1-1108	Governing Document (requested from HCM)	--	$0

EXHIBIT B
Executory Contracts and Unexpired Leases
to Be Assumed by the Trustee

Party	Contract Description	Contract Date	Cure Amount
Acis CLO 2014-3 Chemical Holdings, LLC 1209 Orange Street Wilmington, DE 19801	Limited Liability Company Agreement	October 28, 2016	$0
Acis CLO 2014-3 Ltd. c/o MaplesFS Limited P.O. Box 1093, Boundary Hall, Cricket Sq Grand Cayman, Cayman Islands KY1-1102	Limited Liability Company Agreement	October 28, 2016	$0
Acis CLO 2014-3 Ltd. c/o MaplesFS Limited P.O. Box 1093, Boundary Hall, Cricket Sq Grand Cayman, Cayman Islands KY1-1102	Collateral Administration Agreement	February 25, 2014	$0
U.S. Bank National Association 190 S. LaSalle Street, 8th Floor Chicago, IL 60603 Attention: Global Corporate Trust – Acis CLO 2014-3	Collateral Administration Agreement	February 25, 2014	$0
Acis CLO 2014-3 Ltd. c/o MaplesFS Limited P.O. Box 1093, Boundary Hall, Cricket Sq Grand Cayman, Cayman Islands KY1-1102	Portfolio Management Agreement	February 25, 2014	$0
Acis CLO 2014-3 Ltd. c/o MaplesFS Limited P.O. Box 1093, Boundary Hall, Cricket Sq Grand Cayman, Cayman Islands KY1-1102	Indenture	February 25, 2014	$0
Acis CLO 2014-3 LLC 850 Library Ave., Suite 204 Newark, DE 19711	Indenture	February 25, 2014	$0

EXHIBIT B
Executory Contracts and Unexpired Leases
to Be Assumed by the Trustee

Party	Contract Description	Contract Date	Cure Amount
U.S. Bank National Association 190 S. LaSalle Street, 8th Floor Chicago, IL 60603 Attention: Global Corporate Trust – Acis CLO 2014-3	Indenture	February 25, 2014	$0
Acis CLO 2014-3 Ltd. c/o MaplesFS Limited P.O. Box 1093, Boundary Hall, Cricket Sq Grand Cayman, Cayman Islands KY1-1102	Memorandum and Articles of Association of Acis CLO 2014-3 Ltd.	December 24, 2013	$0
Acis CLO 2014-4 Chemical Holdings, LLC 1209 Orange Street Wilmington, DE 19801	Limited Liability Company Agreement	October 28, 2016	$0
Acis CLO 2014-4 Ltd. c/o MaplesFS Limited P.O. Box 1093, Boundary Hall, Cricket Sq Grand Cayman, Cayman Islands KY1 -1102	Limited Liability Company Agreement	October 28, 2016	$0
Acis CLO 2014-4 Ltd. c/o MaplesFS Limited P.O. Box 1093, Boundary Hall, Cricket Sq Grand Cayman, Cayman Islands KY1 -1102	Collateral Administration Agreement	June 5, 2014	$0
U.S. Bank National Association 190 S. LaSalle Street, 8th Floor Chicago, IL 60603 Attention: Global Corporate Trust – Acis CLO 2014-4	Collateral Administration Agreement	June 5, 2014	$0
Acis CLO 2014-4 Ltd. c/o MaplesFS Limited P.O. Box 1093, Boundary Hall, Cricket Sq Grand Cayman, Cayman Islands KY1-1102	Portfolio Management Agreement	June 5, 2014	$0

EXHIBIT B
Executory Contracts and Unexpired Leases
to Be Assumed by the Trustee

Party	Contract Description	Contract Date	Cure Amount
Acis CLO 2014-4 Ltd. c/o MaplesFS Limited P.O. Box 1093, Boundary Hall, Cricket Sq Grand Cayman, Cayman Islands KY1-1102	Indenture	June 5, 2014	$0
Acis CLO 2014-4 LLC 850 Library Ave., Suite 204 Newark, DE 19711	Indenture	June 5, 2014	$0
U.S. Bank National Association 190 S. LaSalle Street, 8th Floor Chicago, IL 60603 Attention: Global Corporate Trust – Acis CLO 2014-4	Indenture	June 5, 2014	$0
Acis CLO 2014-4 Ltd. c/o MaplesFS Limited P.O. Box 1093, Boundary Hall, Cricket Sq Grand Cayman, Cayman Island KY1-1102	Memorandum and Articles of Association of Acis CLO 2014-4 Ltd.	April 1, 2014	$0
Acis CLO 2014-5 Chemical Holdings, LLC 1209 Orange Street Wilmington, DE 19801	Limited Liability Company Agreement	October 28, 2016	$0
Acis CLO 2014-5 Ltd. c/o MaplesFS Limited P.O. Box 1093, Boundary Hall, Cricket Sq Grand Cayman, Cayman Islands KY1-1102	Limited Liability Company Agreement	October 28, 2016	$0
Acis CLO 2014-5 Ltd. c/o MaplesFS Limited P.O. Box 1093, Boundary Hall, Cricket Sq Grand Cayman, Cayman Islands KY1-1102	Collateral Administration Agreement	November 18, 2014	$0

EXHIBIT B
Executory Contracts and Unexpired Leases
to Be Assumed by the Trustee

Party	Contract Description	Contract Date	Cure Amount
U.S. Bank National Association 190 S. LaSalle Street, 8th Floor Chicago, IL 60603 Attention: Global Corporate Trust – Acis CLO 2014-5	Collateral Administration Agreement	November 18, 2014	$0
Acis CLO 2014-5 Ltd. c/o MaplesFS Limited P.O. Box 1093, Boundary Hall, Cricket Sq Grand Cayman, Cayman Islands KY1-1102	Portfolio Management Agreement	November 18, 2014	$0
Acis CLO 2014-5 Ltd. c/o MaplesFS Limited P.O. Box 1093, Boundary Hall, Cricket Sq Grand Cayman, Cayman Islands KY1-1102	Indenture	November 18, 2014	$0
Acis CLO 2014-5 LLC 850 Library Ave., Suite 204 Newark, DE 19711	Indenture	November 18, 2014	$0
U.S. Bank National Association 190 S. LaSalle Street, 8th Floor Chicago, IL 60603 Attention: Global Corporate Trust – Acis CLO 2014-5	Indenture	November 18, 2014	$0
Acis CLO 2014-5 Ltd. c/o MaplesFS Limited P.O. Box 1093, Boundary Hall, Cricket Sq Grand Cayman, Cayman Islands KY1 -1102	Memorandum and Articles of Association of Acis CLO 2014-5 Ltd.	August 21, 2014	$0
Acis CLO 2015-6 Chemical Holdings, LLC 1209 Orange Street Wilmington, DE 19801	Limited Liability Company Agreement	October 28, 2016	$0

EXHIBIT B
Executory Contracts and Unexpired Leases
to Be Assumed by the Trustee

Party	Contract Description	Contract Date	Cure Amount
Acis CLO 2015-6 Ltd. c/o MaplesFS Limited P.O. Box 1093, Boundary Hall, Cricket Sq Grand Cayman, Cayman Islands KY1-1102	Limited Liability Company Agreement	October 28, 2016	$0
Acis CLO 2015-6 Ltd. c/o MaplesFS Limited P.O. Box 1093, Boundary Hall, Cricket Sq Grand Cayman, Cayman Islands KY1-1102	Collateral Administration Agreement	April 16, 2015	$0
U.S. Bank National Association 190 S. LaSalle Street, 8th Floor Chicago, IL 60603 Attention: Global Corporate Trust – Acis CLO 2015-6	Collateral Administration Agreement	April 16, 2015	$0
Acis CLO 2015-6 Ltd. c/o MaplesFS Limited P.O. Box 1093, Boundary Hall, Cricket Sq Grand Cayman, Cayman Islands KY1-1102	Portfolio Management Agreement	April 16, 2015	$0
Acis CLO 2015-6 Ltd. c/o MaplesFS Limited P.O. Box 1093, Boundary Hall, Cricket Sq Grand Cayman, Cayman Islands KY1-1102	Indenture	April 16, 2015	$0
Acis CLO 2015-6 LLC 850 Library Ave., Suite 204 Newark, DE 19711	Indenture	April 16, 2015	$0
U.S. Bank National Association 190 S. LaSalle Street, 8th Floor Chicago, IL 60603 Attention: Global Corporate Trust – Acis CLO 2015-6	Indenture	April 16, 2015	$0

EXHIBIT B
Executory Contracts and Unexpired Leases
to Be Assumed by the Trustee

Party	Contract Description	Contract Date	Cure Amount
Acis CLO 2015-6 Ltd. P.O. Box 1093, Boundary Hall, Cricket Sq Grand Cayman, KY1-1102, Cayman Islands	Memorandum and Articles of Association of Acis CLO 2015-6 Ltd.	February 11, 2015	$0
Acis CLO Value Fund II (Cayman), LP. P.O. Box 309, Ugland House Grand Cayman, Cayman Islands KY1-1104	Investment Management Agreement	May 1, 2016	$0
Acis CLO Value Fund II GP, LLC P.O. Box. 309, Ugland House Grand Cayman, Cayman Islands KY1-1104	Investment Management Agreement	May 1, 2016	$0
Acis CLO Value Fund II, LP. 300 Crescent Court Suite 700 Dallas, TX 75201	Investment Management Agreement	May 1, 2016	$0
Acis CLO Value GP, LLC 1209 Orange Street Wilmington, DE 19801	Limited Liability Company Agreement	July 19, 2010	$0
Acis CLO Value Master Fund II, LP. P.O. Box 309, Ugland House Grand Cayman, Cayman Islands KY1-1104	Investment Management Agreement	May 1, 2016	$0
Acis CLO Value Fund II (Cayman), L.P. P.O. Box 309, Ugland House Grand Cayman, Cayman Islands KY1-1104	Third Amended and Restated Exempted Limited Partnership Agreement	May 1, 2016	$0
Acis CLO Value Master Fund II, L.P. P.O. Box 309, Ugland House Grand Cayman, Cayman Islands KY1-1104	Third Amended and Restated Exempted Limited Partnership Agreement	May 1, 2016	$0
Acis Loan Funding, Ltd. 300 Crescent Court Suite 700 Dallas, TX 75201	FATCA and Non-FATCA Services Agreement	June 23, 2017	$0

EXHIBIT B
Executory Contracts and Unexpired Leases
to Be Assumed by the Trustee

Party	Contract Description	Contract Date	Cure Amount
BayVK R2 Lux S.A., SICAV FIS 15 rue de Flaxweiler L-6776 Grevenmacher	Power of Attorney	February 20, 2015	$0
BayVK R2 Lux S.A., SICAV-FIS 15 rue de Flaxweiler L-6776 Grevenmacher	Agreement for the Outsourcing of the Asset Management of BayVK R2 Lux S.A., SICAV-FIS	February 27, 2015	$0
BayVK R2 Lux S.A., SICAV-FIS 15 rue de Flaxweiler L-6776 Grevenmacher	Service Level Agreement	February 27, 2015	$0
BNP Paribas Securities Services Luxembourg Branch 60 Avenue John F. Kennedy 1855 Luxembourg	Power of Attorney 86578	February 20, 2015	$0
Hewett's Island CLO 1-R, Ltd. *clo* Maples Finance Limited P.O. Box 1093, Queensgate House Grand Cayman, Cayman Islands KY1-1102	Confidentiality Agreement	April 11, 2011	$0
Hewett's Island CLO 1-R, Ltd. *clo* Maples Finance Limited P.O. Box 1093, Queensgate House Grand Cayman, Cayman Islands KY1-1102	Governing Documents (Requested from HCM)	--	$0
Hewett's Island CLO 1-R, Ltd. *clo* Maples Finance Limited P.O. Box 1093, Queensgate House Grand Cayman, Cayman Islands KY1-1102	Management Agreement	July 18, 2011	$0
Hewett's Island CLO 1-R, Ltd. *clo* Maples Finance Limited P.O. Box 1093, Queensgate House Grand Cayman, Cayman Islands KY1-1102	Collateral Administration Agreement (Requested from HCM)	November 20, 2007	$0

EXHIBIT B
Executory Contracts and Unexpired Leases
to Be Assumed by the Trustee

Party	Contract Description	Contract Date	Cure Amount
Hewett's Island CLO 1-R, Ltd. *clo* Maples Finance Limited P.O. Box 1093, Queensgate House Grand Cayman, Cayman Islands KY1-1102	Indenture	November 20, 2007	$0
Deutsche Bank Trust Company Americas 1761 East St. Andrew Place Santa Ana, CA 92705 Attn: CDO Business Unit – Hewett's Island CLO 1-R	Indenture	November 20, 2007	$0
State Street (Guerney Limited) First Floor, Dorey Court, Admiral Park, St. Peter Port, Guernsey	FATCA and Non-FATCA Services Agreement	June 23, 2017	$0
U.S. Bank National Association 190 S. LaSalle Street, 8th Floor Chicago, IL 60603 Attention: Global Corporate Trust – Acis CLO 2015-6	Confidentiality Agreement	March 5, 2014	$0
Universal-lnvestment-Luxembourg S.A. 15 rue de Flaxweiler L-6776 Grevenmacher	Agreement for the Outsourcing of the Asset Management of BayVK R2 Lux S.A., SICAV-FIS	February 27, 2015	$0
Universal-Investment-Luxembourg S.A. 15 rue de Flaxweiler L-6776 Grevenmacher	Power of Attorney	February 20, 2015	$0
Universal-Investment-Luxembourg S.A. 15 rue de Flaxweiler L-6776 Grevenmacher	Service Level Agreement	February 27, 2015	$0
Acis Loan Funding, Ltd. First Floor, Dorey Court St. Peter Port, Guernsey GYI 6HJ Channel Islands	Portfolio Management Agreement	December 22, 2016	$0

EXHIBIT B
Executory Contracts and Unexpired Leases
to Be Assumed by the Trustee

Party	Contract Description	Contract Date	Cure Amount
Acis Capital Management, LP c/o ***PHELANLAW*** 4214 Woodfin Drive Dallas, Texas 75220	Amended and Restated Agreement of Limited Partnership	January 21, 2011	$0
Acis Capital Management GP, LLC c/o ***PHELANLAW*** 4214 Woodfin Drive Dallas, Texas 75220	Amended and Restated Limited Liability Company Agreement	January 21, 2011	$0

For the avoidance of doubt, to the extent not otherwise included above, the Trustee intends to assume any additional executory contracts that relate to the funds set forth below as may be necessary or beneficial to the Reorganized Debtor under the Plan:

1. Acis CLO 2013-1, Ltd.
2. Acis CLO 2013-2, Ltd.
3. Acis CLO 2014-3, Ltd.
4. Acis CLO 2014-4, Ltd.
5. Acis CLO 2014-5, Ltd.
6. Acis CLO 2015-6, Ltd.
7. Acis CLO Value Fund II, L.P.
8. Acis CLO Value Fund II (Cayman), L.P.
9. Acis CLO Master Fund II, L.P.
10. BayVK R2 Lux S.A., SICAV FIS
11. Hewitt's Island CLO 1-R, Ltd.
12. Acis Loan Funding, Ltd.

The Trustee reserves the right to amend or supplement this Exhibit B.

EXHIBIT “2”

[First Modification to the Third Amended Joint Plan for Acis Capital Management, L.P. and Acis Capital Management GP, LLC – Dkt. No. 693]

Rakhee V. Patel – State Bar No. 00797213
Phillip Lamberson – State Bar No. 00794134
Joe Wielebinski – State Bar No. 21432400
Annmarie Chiarello – State Bar No. 24097496
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ROBIN PHELAN, CHAPTER 11 TRUSTEE

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COUNSEL FOR ROBIN PHELAN,
CHAPTER 11 TRUSTEE

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:	§	CHAPTER 11 CASES
ACIS CAPITAL MANAGEMENT, L.P.,	§	CASE NO. 18-30264-sgj11
ACIS CAPITAL MANAGEMENT GP, LLC,	§	(Jointly Administered)
Debtors.	§	

FIRST MODIFICATION TO THE THIRD AMENDED JOINT PLAN FOR ACIS CAPITAL MANAGEMENT, LP AND ACIS CAPITAL MANAGEMENT GP, LLC

Robin Phelan ("Trustee"), the Chapter 11 Trustee for Acis Capital Management, LP and Acis Capital Management GP, LLC (the "Debtors"), files this First Modification (the "First Modification") to the *Third Amended Joint Chapter 11 Plan for Acis Capital Management, LP and Acis Capital Management GP, LLC* [Docket No. 660] (the "Plan").

1. Reference is here made to the Plan for all purposes. This First Modification modifies the Plan.

2. **Modification to Section 1.09.** Section 1.09 of the Plan is hereby modified to read

as follows:

> 1.09 "Assets" includes all right, title, and interest in and to all property of every type or nature owned or claimed by the Debtors as of the Petition Date, together with all such property of every type or nature subsequently acquired by the Debtors through the Effective Date, whether real or personal, tangible or intangible, and wherever located, and including, but not limited to, property as defined in section 541 of the Bankruptcy Code.

3. The change to section 1.09 above merely corrects a typographical error in the definition of the term "Assets." Specifically, the revised definition removes the incomplete phrase "Without limiting the foregoing, this shall include all" from the end of the definition of Assets.

4. **Modification to Exhibit "A".** The copy of the Exhibit "A" reflecting Estate Claims is hereby deleted in its entirety and replaced with the version of the "Exhibit A" attached hereto as **Exhibit "1."**

5. A copy of the document reflecting the modifications to Exhibit A to the Plan in redline format is attached hereto as **Exhibit "2."**

6. This First Modification is a non-material change. It merely corrects a typographical error and revises the Estate Claims being reserved, retained and preserved under the Plan. Further, even if this First Modification were deemed material, it does not adversely affect any creditor because no ballots have yet been received in relation to the Plan and this First Modification is being sent to all creditors and parties in interest eighteen (18) days in advance of the deadline for parties to submit ballots and any objections to the Plan. Consequently, creditors and parties in interest will have an adequate opportunity to evaluate this modification prior to voting on the Plan.

Dated: November 8, 2018.

Respectfully submitted,

ACIS CAPITAL MANAGEMENT, L.P.

By: /s/ *Robin Phelan*
Robin Phelan
Chapter 11 Trustee

ACIS CAPITAL MANAGMENET GP, LLC

By: /s/ *Robin Phelan*
Robin Phelan
Chapter 11 Trustee

APPROVED:

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document and the attached exhibits were served electronically via the Court's Electronic Court Filing (ECF) notification system and via U.S. Mail, postage prepaid (and via Express Mail to out of country recipients) on the parties on the service lists attached as **Exhibit "3"** hereto on November 8, 2018.

/s/ Jeff P. Prostok
Jeff P. Prostok

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Exhibit "1"

[Revised Exhibit "A" to the Third Amended Joint Plan]

EXHIBIT "A"
to
Joint Plan for Acis Capital Management, LP and Acis Capital Management GP, LLC

1. Defined Terms. This Exhibit "A" constitutes an integral part of the Plan of which it is a part. Defined terms in the Plan are to be given the same meaning in this Exhibit "A". The rules of construction set forth in Article I.B. of the Plan shall likewise apply to this Exhibit "A".

2. Estate Claims Reserved, Retained and Preserved. All Estate Claims are hereby reserved, retained and preserved, and shall all be transferred to, and vested in, the Reorganized Debtor pursuant to this Plan, and shall include without limitation all of the Estate Claims described below. In reserving, retaining, and preserving Estate Claims against any named Person or category of Persons, it is the intent of this Plan to so reserve, retain, and preserve any and all Estate Claim against each such Person or category of Persons, including all such Estate Claims pursuant to any applicable common law, based on any contract or agreement or based upon any law, statute or regulation of any political entity, including the United States and any state or political subdivision thereof, as well as all applicable remedies, whether legal or equitable. Without limiting the generality of the foregoing, the reservation, retention, and preservation of Estate Claims against any Person, and the term "Estate Claims," shall encompass all Estate Claims against any such Person, including without limitation, all such Estate Claims for breach of contract, all rights to enforce any contract, any form of estoppel, fraud, constructive fraud, abuse of process, malicious prosecution, defamation, libel, slander, conversion, trespass, intentional infliction of emotional distress or other harm, negligence, gross negligence, negligent misrepresentation, fraudulent misrepresentation, vicarious liability, respondeat superior, breach of any duty owed under either applicable law or any contract, breach of any fiduciary duty or duty of loyalty or due care, aiding and/or abetting breach of fiduciary duty, aiding and/or abetting breach of duty of loyalty or due care, alter ego, veil piercing, self-dealing, usurpation of corporate opportunity, ultra vires, turnover of Estate Assets, unauthorized use of Estate Assets, including intellectual property rights or Assets owned by the Debtors or Chapter 11 Trustee, quantum merit, tortious interference, duress, unconscionability, undue influence, and unjust enrichment, as well as any cause of action for conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act, or claims arising from or relating to the filing of the involuntary bankruptcy petitions against the Debtors.

3. Highland Claims. All Estate Claims against Highland are reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims asserted by the Chapter 11 Trustee in Adversary Proceeding No. 18-03078-sgj (the "Highland Adversary") and Adversary Proceeding No. 18-03212-sgj (the "Trustee's Adversary"). The Estate Claims against Highland shall include all Estate Claims set forth in paragraph 2 above, including without limitation, the following:

(a) All such Claims asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Highland Adversary;

(b) All such Claims asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Trustee's Adversary;

(c) All such Claims and Defenses asserted by the Chapter 11 Trustee or Estate, or which could be asserted by the Chapter 11 Trustee or Estate, based on the facts or transactions alleged in any other adversary proceedings or Claim Objections filed by the

Chapter 11 Trustee or Estate;

(d) All Avoidance Actions against Highland, including any claims to avoid and recover amounts transferred by the Debtors to Highland under the Shared Services Agreement or Sub-Advisory Agreement;

(e) All Claims for breach of the Shared Services Agreement or Sub-Advisory Agreement;

(f) All Claims against Highland for amounts paid by the Debtors to Highland under the Shared Services Agreement and Sub-Advisory Agreement, including any Claim that Highland overcharged Acis LP for services under such agreements, charged excessive fees in violation of Acis LP's limited partnership agreement and/or Acis GP's limited liability company agreement, and/or that the Shared Services Agreement and Sub-Advisory Agreement or any related or predecessor agreements are void or voidable based on ultra vires or any other theories of avoidance and recovery, including turnover, conversion and Avoidance Actions under the Bankruptcy Code;

(g) All Claims for breach of the PMAs or the Indentures;

(h) All Claims for breach of fiduciary duty or duty of loyalty or due care owed to the Debtors or Chapter 11 Trustee;

(i) All Claims for aiding and/or abetting breach of fiduciary duty, breach of duty loyalty or due care, or any other unlawful act;

(j) All Clams for usurpation of a corporate opportunity belonging to either of the Debtors, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs;

(k) All claims for tortious interference, including in relation to Universal-Investment-Luxembourg S.A. and BayVK R2 Lux S.A., SICAV-FIS;

(l) All Claims against Highland for the turnover of Estate Assets, including Estate property that the Chapter 11 Trustee may use, sell or lease under section 363 of the Bankruptcy Code including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate, as well as the turnover of any books, documents, records and papers relating to the Debtors' property or financial affairs;

(m) All Claims against Highland for the unauthorized use of Estate Assets including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate;

(n) All Claims, rights or remedies for Equitable Subordination or Recharacterization of any Claim by Highland against the Debtors, Chapter 11 Trustee, or Estate;

(o) All Claims based on alter ego or rights to pierce the corporate veil of Acis LP as to any Person, including as against Highland or any Affiliates thereof, James D. Dondero, Mark K. Okada, or any other officers, directors, equity interest holders, or Persons otherwise in control of Acis LP;

(p) All Claims based on alter ego or rights to pierce the corporate veil of

Highland as to any Person, including as against any Affiliates of Highland, James D. Dondero, Mark K. Okada, or any other officers, directors, equity interest holders, or Persons otherwise in control of Highland, and,

(q) All Claims for conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act.

4. HCLOF Claims. All Estate Claims against HCLOF are reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims asserted by the Chapter 11 Trustee in the Highland Adversary and the Trustee's Adversary. The Estate Claims against HCLOF shall include all Estate Claims set forth in paragraph 2 above, including without limitation, the following:

(a) All such Claims against HCLOF asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Highland Adversary;

(b) All such Claims against HCLOF asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Trustee's Adversary;

(c) All such Claims and Defenses asserted by the Chapter 11 Trustee or Estate, or which could be asserted by the Chapter 11 Trustee or Estate, based on the facts or transactions alleged in any other adversary proceedings or Claim Objections filed by the Chapter 11 Trustee or Estate;

(d) All Avoidance Actions against HCLOF;

(e) All Claims for breach of the PMAs or the Indentures;

(f) All Claims for breach of fiduciary duty or duty of loyalty or due care owed to the Debtors or Chapter 11 Trustee;

(g) All Claims for aiding and/or abetting breach of fiduciary duty, breach of duty loyalty or due care, or any other unlawful act;

(h) All Clams for usurpation of a corporate opportunity belonging to either of the Debtors, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs;

(i) All Claims against HCLOF for the turnover of Estate Assets, including Estate property that the Chapter 11 Trustee may use, sell or lease under section 363 of the Bankruptcy Code including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate, as well as the turnover of any books, documents, records and papers relating to the Debtors' property or financial affairs;

(j) All Claims against HCLOF for the unauthorized use of Estate Assets including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate;

(k) All Claims, rights or remedies for Equitable Subordination or Recharacterization of any Claim by HCLOF against the Debtors, Chapter 11 Trustee, or Estate;

(l) All Claims based on alter ego or rights to pierce the corporate veil of HCLOF as to any Person, including as against any Affiliates of HCLOF or Highland, William Scott, Heather Bestwick, or any other officers, directors, equity interest holders, or Persons otherwise in control of HCLOF; and,

(m) All Claims for conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act.

5. Highland HCF Advisor, Ltd. Claims. All Estate Claims against Highland HCF Advisor, Ltd. ("Highland HCF") are reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims asserted by the Chapter 11 Trustee in the Highland Adversary. The Estate Claims against Highland HCF shall include all Estate Claims set forth in paragraph 2 above, including without limitation, the following:

(a) All such Claims against Highland HCF asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Highland Adversary;

(b) All such Claims against Highland HCF asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Trustee's Adversary;

(c) All such Claims and Defenses asserted by the Chapter 11 Trustee or Estate, or which could be asserted by the Chapter 11 Trustee or Estate, based on the facts or transactions alleged in any other adversary proceedings or Claim Objections filed by the Chapter 11 Trustee or Estate;

(d) All Avoidance Actions against Highland HCF;

(e) All Claims for breach of fiduciary duty or duty of loyalty or due care owed to the Debtors or Chapter 11 Trustee;

(f) All Claims for aiding and/or abetting breach of fiduciary duty, breach of duty loyalty or due care, or any other unlawful act;

(g) All Clams for usurpation of a corporate opportunity belonging to either of the Debtors, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs;

(h) All Claims against Highland HCF for the turnover of Estate Assets, including Estate property that the Chapter 11 Trustee may use, sell or lease under section 363 of the Bankruptcy Code including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate, as well as the turnover of any books, documents, records and papers relating to the Debtors' property or financial affairs;

(i) All Claims against Highland HCF for the unauthorized use of Estate Assets including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate;

(j) All Claims, rights or remedies for Equitable Subordination or Recharacterization of any Claim by Highland HCF against the Debtors, Chapter 11 Trustee, or

Estate;

(k) All Claims based on alter ego or rights to pierce the corporate veil of Highland HCF as to any Person, including as against any Affiliates of Highland HCF or Highland, or any other officers, directors, equity interest holders, or Persons otherwise in control of Highland HCF; and,

(l) All Claims for conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act.

6. Highland CLO Management, Ltd. Claims. All Estate Claims against Highland CLO Management, Ltd. ("Highland CLOM") are reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims asserted by the Chapter 11 Trustee in the Highland Adversary. The Estate Claims against Highland CLOM shall include all Estate Claims set forth in paragraph 2 above, including without limitation the following:

(a) All such Claims against Highland CLOM asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Highland Adversary;

(b) All such Claims against Highland CLOM asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Trustee's Adversary;

(c) All such Claims and Defenses asserted by the Chapter 11 Trustee or Estate, or which could be asserted by the Chapter 11 Trustee or Estate, based on the facts or transactions alleged in any other adversary proceedings or Claim Objections filed by the Chapter 11 Trustee or Estate;

(d) All Avoidance Actions against Highland CLOM;

(e) All Claims for breach of fiduciary duty or duty of loyalty or due care owed to the Debtors or Chapter 11 Trustee;

(f) All Claims for aiding and/or abetting breach of fiduciary duty, breach of duty loyalty or due care, or any other unlawful act;

(g) All Clams for usurpation of a corporate opportunity belonging to either of the Debtors, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs;

(h) All Claims against Highland CLOM for the turnover of Estate Assets, including Estate property that the Chapter 11 Trustee may use, sell or lease under section 363 of the Bankruptcy Code including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate, as well as the turnover of any books, documents, records and papers relating to the Debtors' property or financial affairs;

(i) All Claims against Highland CLOM for the unauthorized use of Estate Assets including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate;

(j) All Claims, rights or remedies for Equitable Subordination or Recharacterization of any Claim by Highland CLOM against the Debtors, Chapter 11 Trustee, or Estate;

(k) All Claims based on alter ego or rights to pierce the corporate veil of Highland CLOM as to any Person, including as against any Affiliates of Highland CLOM or Highland, or any other officers, directors, equity interest holders, or Persons otherwise in control of Highland CLOM; and,

(l) All Claims for conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act.

7. CLO Holdco, Ltd. Claims. All Estate Claims against CLO Holdco, Ltd. ("CLO Holdco") are reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims asserted by the Chapter 11 Trustee in the Trustee's Adversary. The Estate Claims against CLO Holdco shall include all Estate Claims set forth in paragraph 2 above, including without limitation, the following:

(a) All such Claims against CLO Holdco asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Highland Adversary;

(b) All such Claims against CLO Holdco asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Trustee's Adversary;

(c) All such Claims and Defenses asserted by the Chapter 11 Trustee or Estate, or which could be asserted by the Chapter 11 Trustee or Estate, based on the facts or transactions alleged in any other adversary proceedings or Claim Objections filed by the Chapter 11 Trustee or Estate;

(d) All Avoidance Actions against CLO Holdco;

(e) All Claims for breach of fiduciary duty or duty of loyalty or due care owed to the Debtors or Chapter 11 Trustee;

(f) All Claims for aiding and/or abetting breach of fiduciary duty, breach of duty loyalty or due care, or any other unlawful act;

(g) All Clams for usurpation of a corporate opportunity belonging to either of the Debtors, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs;

(h) All Claims against CLO Holdco for the turnover of Estate Assets, including Estate property that the Chapter 11 Trustee may use, sell or lease under section 363 of the Bankruptcy Code including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate, as well as the turnover of any books, documents, records and papers relating to the Debtors' property or financial affairs;

(i) All Claims against CLO Holdco for the unauthorized use of Estate Assets including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate;

(j) All Claims, rights or remedies for Equitable Subordination or Recharacterization of any Claim by Highland against the Debtors, Chapter 11 Trustee, or Estate;

(k) All Claims based on alter ego or rights to pierce the corporate veil of CLO Holdco as to any Person, including as against any Affiliates of CLO Holdco or Highland, or any other officers, directors, equity interest holders, or Persons otherwise in control of CLO Holdco; and,

(l) All Claims for conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act.

8. Neutra, Ltd. Claims. All Estate Claims against Neutra, Ltd. ("Neutra") are reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims asserted by the Chapter 11 Trustee in the Trustee's Adversary. The Estate Claims against Neutra shall include all Estate Claims set forth in paragraph 2 above, including without limitation the following:

(a) All such Claims against Neutra asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Highland Adversary;

(b) All such Claims against Neutra asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Trustee's Adversary;

(c) All such Claims and Defenses asserted by the Chapter 11 Trustee or Estate, or which could be asserted by the Chapter 11 Trustee or Estate, based on the facts or transactions alleged in any other adversary proceedings or Claim Objections filed by the Chapter 11 Trustee or Estate;

(d) All Avoidance Actions against Neutra;

(e) All Claims for breach of fiduciary or duty of loyalty or due care owed to the Debtors or Chapter 11 Trustee;

(f) All Claims for aiding and/or abetting breach of fiduciary duty, breach of duty loyalty or due care, or any other unlawful act;

(g) All Clams for usurpation of a corporate opportunity belonging to either of the Debtors, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs;

(h) All Claims against Neutra for the turnover of Estate Assets, including Estate property that the Chapter 11 Trustee may use, sell or lease under section 363 of the Bankruptcy Code including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate, as well as the turnover of any books, documents, records and papers relating to the Debtors' property or financial affairs;

(i) All Claims against Neutra for the unauthorized use of Estate Assets

including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate;

(j) All Claims, rights or remedies for Equitable Subordination or Recharacterization of any Claim by Neutra against the Debtors, Chapter 11 Trustee, or Estate;

(k) All Claims based on alter ego or rights to pierce the corporate veil of Acis LP as to any Person, including as against Neutra, Highland, or any Affiliates thereof, James D. Dondero, Mark K. Okada, or any other officers, directors, equity interest holders, or Persons otherwise in control of Acis LP;

(l) All Claims based on alter ego or rights to pierce the corporate veil of Neutra as to any Person, including as against any Affiliates of Neutra or Highland, or any other officers, directors, equity interest holders, or Persons otherwise in control of Neutra; and,

(m) All Claims for conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act.

9. Claims against Issuers, Co-Issuers and Indenture Trustee. All Estate Claims against CLO-3, CLO-4, CLO-5, and CLO-6 (collectively, the "Issuers"), Acis CLO 2014-3 LLC, Acis CLO 2014-4 LLC, Acis CLO 2014-5 LLC, and Acis CLO 2015-6 LLC (collectively, the "Co-Issuers"), and the Indenture Trustee are reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims asserted by the Chapter 11 Trustee in the Trustee's Adversary. The Estate Claims against the Issuers, Co-Issuers and/or Indenture Trustee shall include all Estate Claims set forth in paragraph 2 above, including without limitation the following:

(a) All such Claims against the Issuers, Co-Issuers, and/or Indenture Trustee asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Highland Adversary;

(b) All such Claims against the Issuers, Co-Issuers, and/or Indenture Trustee asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Trustee's Adversary;

(c) All such Claims and Defenses asserted by the Chapter 11 Trustee or Estate, or which could be asserted by the Chapter 11 Trustee or Estate, based on the facts or transactions alleged in any other adversary proceedings or Claim Objections filed by the Chapter 11 Trustee or Estate;

(d) All Avoidance Actions against the Issuers, Co-Issuers and/or Indenture Trustee;

(e) All Claims for breach of the Indentures, PMAs or any other agreements between Acis LP and the Issuers, Co-Issuers, and/or Indenture Trustee;

(f) All Claims for breach of fiduciary duty or duty of loyalty or due care owed to the Debtors or Chapter 11 Trustee;

(g) All Claims for aiding and/or abetting breach of fiduciary duty, breach of duty loyalty or due care, or any other unlawful act;

(h) All Clams for usurpation of a corporate opportunity belonging to either of the Debtors, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs;

(i) All Claims against the Issuers, Co-Issuers and/or Indenture Trustee for the turnover of Estate Assets, including Estate property that the Chapter 11 Trustee may use, sell or lease under section 363 of the Bankruptcy Code including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate, as well as the turnover of any books, documents, records and papers relating to the Debtors' property or financial affairs;

(j) All Claims against the Issuers, Co-Issuers and/or Indenture Trustee for the unauthorized use of Estate Assets including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate;

(k) All Claims, rights or remedies for Equitable Subordination or Recharacterization of any Claim by the Issuers or Co-Issuers against the Debtors, Chapter 11 Trustee, or Estate; and,

(l) All Claims for conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act.

10. Highland Affiliate Claims. All Estate Claims against any Affiliates of Highland are reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims asserted by the Chapter 11 Trustee in the Highland Adversary and the Trustee's Adversary. The Estate Claims against any Affiliates of Highland shall include all Estate Claims set forth in paragraph 2 above, including without limitation the following:

(a) All such Claims against any Highland Affiliate asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Highland Adversary;

(b) All such Claims against any Highland Affiliate asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Trustee's Adversary;

(c) All such Claims and Defenses asserted by the Chapter 11 Trustee or Estate, or which could be asserted by the Chapter 11 Trustee or Estate, based on the facts or transactions alleged in any other adversary proceedings or Claim Objections filed by the Chapter 11 Trustee or Estate;

(d) All Avoidance Actions against any Highland Affiliate;

(e) All Claims for breach of fiduciary duty or duty of loyalty or due care owed to the Debtors or Chapter 11 Trustee;

(f) All Claims for aiding and/or abetting breach of fiduciary duty, breach of duty loyalty or due care, or any other unlawful act;

(g) All Clams for usurpation of a corporate opportunity belonging to either of the Debtors, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs;

(h) All Claims against any Highland Affiliate for the turnover of Estate Assets, including Estate property that the Chapter 11 Trustee may use, sell or lease under section 363 of the Bankruptcy Code including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate, as well as the turnover of any books, documents, records and papers relating to the Debtors' property or financial affairs;

(i) All Claims against any Highland Affiliate for the unauthorized use of Estate Assets including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate;

(j) All Claims, rights or remedies for Equitable Subordination or Recharacterization of any Claim by any Highland Affiliate against the Debtors, Chapter 11 Trustee, or Estate;

(k) All Claims based on alter ego or rights to pierce the corporate veil of Acis LP as to any Person, including as against Highland, Neutra, or any Affiliates thereof, James D. Dondero, Mark K. Okada, or any other officers, directors, equity interest holders, or Persons otherwise in control of Acis LP;

(l) All Claims based on alter ego or rights to pierce the corporate veil of any Highland Affiliate as to any Person, including as against any other Affiliates of Highland or any officers, directors, equity interest holders, or Persons otherwise in control of any Highland Affiliates; and,

(m) All Claims for conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act.

11. Dondero Claims. All Estate Claims as defined in paragraph 2 above against James D. Dondero, individually, are hereby reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims against James D. Dondero for fraud, constructive fraud, breach of fiduciary duty, breach of duty of loyalty or due care, aiding and abetting breach of fiduciary duty, aiding and abetting breach of duty of loyalty or due care, self-dealing, ultra vires, conversion, usurpation of corporate opportunity, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs, tortious interference, including in relation to Universal-Investment-Luxembourg S.A. and BayVK R2 Lux S.A., SICAV-FIS, conflict of interest, negligence, gross negligence, all Avoidance Actions, breach of contract, breach of the Shared Services Agreement, breach of the Sub-Advisory Agreement, breach of the Debtors' limited partnership agreement or limited liability company agreement, conspiracy to commit any unlawful act, aiding and abetting any unlawful act, and assisting, encouraging, and/or participating in any unlawful act, as well as any Claim to pierce the corporate veil of any entity to hold James D. Dondero individually liable.

12. Okada Claims. All Estate Claims as defined in paragraph 2 above against Mark K. Okada, individually, are hereby reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims against Mark K. Okada for fraud, constructive fraud, breach of fiduciary duty, breach of duty of loyalty or due care, aiding and abetting breach of fiduciary duty, self-dealing, ultra vires, conversion, usurpation of corporate opportunity, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs, tortious interference, including in relation to Universal-Investment-Luxembourg S.A. and BayVK R2 Lux S.A., SICAV-FIS, conflict of interest, negligence, gross negligence, all

Avoidance Actions, breach of contract, breach of the Shared Services Agreement, breach of the Sub-Advisory Agreement, breach of the Debtors' limited partnership agreement or limited liability company agreement, conspiracy to commit any unlawful act, aiding and abetting any unlawful act, and assisting, encouraging, and participating in any unlawful act, as well as any Claim to pierce the corporate veil of any entity to hold Mark K. Okada individually liable.

13. Preference Claims. All Avoidance Actions pursuant to section 547 of the Bankruptcy Code against any Person are hereby reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor for any payment made to any Person by either of the Debtors within ninety (90) days of the Petition Date (which was January 30, 2018), or made by either of the Debtors to any insider within one (1) year of the Petition Date. A non-exhaustive list of Persons who are believed to have received payments from either of the Debtors during the 90-day preference period, and the one-year preference period for Insiders, is attached to this **Exhibit "A"** as **Schedule "1"**. The Plan reserves, retains and preserves for the benefit of the Estate and Reorganized Debtor all potential Claims arising out of or relating to the transfers reflected in **Schedule "1"**, including all Avoidance Actions pursuant to section 547 of the Bankruptcy Code. All rights and remedies are also reserved. retained and preserved with respect to the transfers reflected in **Schedule "1"** pursuant to section 550 of the Bankruptcy Code.

Schedule "1" reflects transfers made by the Debtors during the 90 days prior to the Petition Date and transfers made by the Debtors to any insiders within one (1) year of the Petition Date. While the Plan reserves, retains and preserves all Avoidance Actions relating to the transfers reflected in **Schedule "1"**, the Chapter 11 Trustee recognizes that certain of these transfers may not constitute a preferential transfer pursuant to section 547(b) of the Bankruptcy Code as a transfer made in the ordinary course of business transactions or based upon new value subsequently given by the transferee. Consequently, the listing of a payment on **Schedule "1"** does not necessarily mean that a transferee will ever be sued to avoid and recover the payment, the transfer, or the value thereof, but only that the Plan reserves, retains and preserves all rights (including Avoidance Actions) as to that payment.

14. Claims Against Officers, Managers and Members. All Estate Claims as defined in paragraph 2 above are hereby reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor against all present and past officers, employees, members and managers of the Debtors, including all such Estate Causes of Action based on breach of fiduciary duty, aiding and abetting breach of fiduciary duty, breach of duty of loyalty or due care, aiding and abetting breach of duty of loyalty or due care, self-dealing, usurpation of corporate opportunity, gross negligence or conspiracy. Without limiting the generality of the foregoing, this shall include all D&O Claims as against any present or former officer, director, employee, member, manager, or partner.

15. Claims Against Former Attorneys and Law Firms. All Estate Claims as defined in paragraph 2, above, including Claims for breach of any fiduciary duty or duty of loyalty or due care, conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act, including knowingly aiding, abetting, or assisting with a fraudulent transfer to avoid paying a judgment, negligent or fraudulent misrepresentation, vicarious liability, and respondeat superior, as well as all Claims for legal or professional malpractice, are hereby reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor against all law firms and attorneys who and which rendered legal services to the Debtors on a prepetition basis including, but not limited to, the following:

(a) Cole Schotz, P.C.

(b) Michael D. Warner

(c) Jacob Frumkin

(d) Warren A. Usatine

(e) McKool Smith

(f) Gary Cruciani

(g) Michael Fritz

(h) Carson Young

(i) Lackey Hershman, LLP

(j) Stinson Leonard Street LLP

(k) Paul Lackey, Esq.

(l) Michael Aigen, Esq.

(m) Abrams & Bayliss, LLP

(n) Kevin G. Abrams

(o) A. Thompson Bayliss

(p) Jones Day

(q) Hilda C. Galvan

(r) Michael Weinberg

(s) Reid Collins & Tsai, LLP

(t) Lisa Tsai

(u) Stanton, LLP

(v) James M. Stanton

(w) Hunton Andrews Kurth

(x) Marc Katz

(y) Greg Waller

(z) any other law firm or attorney who may be so named at a later date by the Reorganized Debtor.

16. Retention of Claims Against Specific Persons or Categories of Persons. In addition to the foregoing, all Estate Claims as defined in paragraph 2 above are hereby reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor against the following Persons:

(a) William Scott;

(b) Heather Bestwick;

(c) Any other Person who may be so named at a later date by the Reorganized Debtor.

17. Counterclaims. All Estate Claims as defined in paragraph 2 above are reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor both as a basis for an affirmative recovery against the Person against whom such Claims are asserted and as a counterclaim or offset against any Person who asserts a Claim against the Estate or Reorganized Debtor.

18. Piercing the Corporate Veil. With respect to all Estate Claims against any Person, all rights to pierce or ignore the corporate veil are hereby reserved, retained and preserved for the benefit of the Estate and the Reorganized Debtor. Without limiting the generality of the foregoing, this shall include: (a) any right to pierce the corporate veil, including reverse piercing, on any theory or basis, including alter ego or any theory of sham to perpetrate a fraud, and (b) any Claim or basis to pierce the corporate veil of any entity with respect to establishing personal liability against James D. Dondero or Mark K. Okada.

19. Avoidance Actions. All Avoidance Actions are hereby reserved, retained and preserved as to all Persons. The reservation, retention and preservation of such Avoidance Actions shall include the reservation, retention and preservation for the benefit of the Estate and Reorganized Debtor of all rights and remedies pursuant to section 550 of the Bankruptcy Code.

20. Estate Defenses. All Estate Defenses are hereby reserved, retained and preserved in favor of the Estate and Reorganized Debtor as against any Person asserting any Claim against the Estate. This includes asserting all Estate Claims as an offset to, or counterclaim or right of recoupment against, any Person asserting a Claim against the Estate. All defenses and affirmative defenses pursuant to applicable law are hereby reserved, retained and preserved for the benefit of the Estate and the Reorganized Debtor, including without limitation, accord and satisfaction, assumption of risk, contributory negligence, duress, estoppel, failure of consideration, fraud, illegality, laches, license, payment, release, *res judicata*, collateral estoppel, statute of frauds, statute of limitations or repose, discovery rule, adverse domination doctrine or similar doctrines, set off, recoupment, waiver, and all other defenses to Claims under the Bankruptcy Code, including under sections 502(b)(4) and 502(d).

21. Equitable Subordination. All rights or remedies for Equitable Subordination are hereby reserved, retained and preserved in favor of the Estate and Reorganized Debtor against any Person asserting any Claim against the Estate, including all such rights or remedies pursuant to section 510(c) of the Bankruptcy Code. Without limiting the generality of the foregoing, this shall include all rights and remedies to Equitable Subordination as to any Claim asserted by Highland, any Affiliates of Highland, or any officers, directors, employees or equity interest owners of the Debtors, Highland, or any Affiliates thereof.

22. Recharacterization. All rights or remedies to recharacterize any Claim as an equity interest in either of the Debtors are hereby reserved, retained and preserved in favor of the Estate and Reorganized Debtor against any Person asserting any Claim against the Estate. Without limiting the generality of the foregoing, this shall include all rights and remedies to recharacterize any Claim asserted by Highland, any Affiliates of Highland, or any officers, directors, employees or equity interest owners of the Debtors, Highland, or any Affiliates thereof.

Schedule 1 to Exhibit "A" to

Third Amended Joint Plan for Acis Capital Management, LP and Acis Capital Management GP, LLC

NAME	ADDRESS	DATE OF PAYMENT	PAYMENT AMOUNT	REASON FOR PAYMENT ON SCHEDULES
Payments within 90 Days of Petition Date				
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	11/2/2017	$234,013.63	Services
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	11/3/2017	$941,958.57	Services
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	12/8/2017	$89,655.14	Services
David Simek	31 Woodacres Road Brookville, NY 11545	11/15/2017	$2,068.13	Services
David Simek	31 Woodacres Road Brookville, NY 11545	11/30/2017	$24,266.71	Services
David Simek	31 Woodacres Road Brookville, NY 11545	12/12/2017	$1,718.79	Services
David Simek	31 Woodacres Road Brookville, NY 11545	12/29/2017	$25,000.00	Services
FINRA	1735 K Street, NW Washington, DC 20006	11/22/2017	$70.00	Suppliers or Vendors
Highland CLO Management, Ltd.	PO Box 309, Ugland House Grand Cayman, KY1-1104, Cayman Islands	12/19/2017	$2,830,459.22	Services
Payments to Insiders within One Year of Petition Date				
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	2/1/2017	$976,688.47	Contractual Payment
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	2/1/2017	$1,096,033.37	Services
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	2/2/2017	$3,574.80	Expense Reimbursement
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	2/14/2017	$67.44	Expense Reimbursement
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	4/17/2017	$315,574.30	Services
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	4/18/2017	$438,497.51	Services

Schedule 1 to Exhibit "A" to

Third Amended Joint Plan for Acis Capital Management, LP and Acis Capital Management GP, LLC

NAME	ADDRESS	DATE OF PAYMENT	PAYMENT AMOUNT	REASON FOR PAYMENT ON SCHEDULES
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	4/18/2017	$375,855.01	Contractual Payment
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	4/19/2017	$330,249.69	Services
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	5/1/2017	$974,426.41	Services
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	5/31/2017	$2,809,518.47	Unsecured loan repayments including interest
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	5/31/2017	$581,036.15	Services
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	7/18/2017	$373,167.08	Contractual Payment
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	8/1/2017	$971,603.02	Contractual Payment
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	8/7/2017	$1,339,422.12	Services
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	8/16/2017	$53.41	Expense Reimbursement
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	10/18/2017	$372,872.82	Contractual Payment
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	10/18/2017	$728,702.26	Services
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	10/24/2017	$501,979.18	Unsecured loan repayments including interest
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	10/25/2017	$46,648.82	Expense Reimbursement
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	10/25/2017	$67,966.85	Expense Reimbursement
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	11/1/2017	$967,223.91	Contractual Payment

Exhibit “2”

[Redline – Plan Exhibit “A”]

EXHIBIT "A"
to
Joint Plan for Acis Capital Management, LP and Acis Capital Management GP, LLC

1. Defined Terms. This Exhibit "A" constitutes an integral part of the Plan of which it is a part. Defined terms in the Plan are to be given the same meaning in this Exhibit "A". The rules of construction set forth in Article I.B. of the Plan shall likewise apply to this Exhibit "A".

2. Estate Claims Reserved, Retained and Preserved. All Estate Claims are hereby reserved, retained and preserved, and shall all be transferred to, and vested in, the Reorganized Debtor pursuant to this Plan, and shall include without limitation all of the Estate Claims described below. In reserving, retaining, and preserving Estate Claims against any named Person or category of Persons, it is the intent of this Plan to so reserve, retain, and preserve any and all Estate Claim against each such Person or category of Persons, including all such Estate Claims pursuant to any applicable common law, based on any contract or agreement or based upon any law, statute or regulation of any political entity, including the United States and any state or political subdivision thereof, as well as all applicable remedies, whether legal or equitable. Without limiting the generality of the foregoing, the reservation, retention, and preservation of Estate Claims against any Person, and the term "Estate Claims," shall encompass all Estate Claims against any such Person, including without limitation, all such Estate Claims for breach of contract, all rights to enforce any contract, any form of estoppel, fraud, constructive fraud, abuse of process, malicious prosecution, defamation, libel, slander, conversion, trespass, intentional infliction of emotional distress or other harm, negligence, gross negligence, negligent misrepresentation, fraudulent misrepresentation, vicarious liability, respondeat superior, breach of any duty owed under either applicable law or any contract, breach of any fiduciary duty or duty of loyalty or due care, aiding and/or abetting breach of fiduciary duty, aiding and/or abetting breach of duty of loyalty or due care, alter ego, veil piercing, self-dealing, usurpation of corporate opportunity, ultra vires, turnover of Estate Assets, unauthorized use of Estate Assets, including intellectual property rights or Assets owned by the Debtors or Chapter 11 Trustee, quantum merit, tortious interference, duress, unconscionability, undue influence, and unjust enrichment, as well as any cause of action for conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act, or claims arising from or relating to the filing of the involuntary bankruptcy petitions against the Debtors.

3. Highland Claims. All Estate Claims against Highland are reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims asserted by the Chapter 11 Trustee in Adversary Proceeding No. 18-03078-sgj (the "Highland Adversary") and Adversary Proceeding No. 18-03212-sgj (the "Trustee's Adversary"). The Estate Claims against Highland shall include all Estate Claims set forth in paragraph 2 above, including without limitation, the following:

(a) All such Claims asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Highland Adversary;

(b) All such Claims asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Trustee's Adversary;

(c) All such Claims and Defenses asserted by the Chapter 11 Trustee or Estate, or which could be asserted by the Chapter 11 Trustee or Estate, based on the facts or transactions alleged in any other adversary proceedings or Claim Objections filed by the

Chapter 11 Trustee or Estate;

(d) All Avoidance Actions against Highland, including any claims to avoid and recover amounts transferred by the Debtors to Highland under the Shared Services Agreement or Sub-Advisory Agreement;

(e) All Claims for breach of the Shared Services Agreement or Sub-Advisory Agreement;

(f) All Claims against Highland for amounts paid by the Debtors to Highland under the Shared Services Agreement and Sub-Advisory Agreement, including any Claim that Highland overcharged Acis LP for services under such agreements, charged excessive fees in violation of Acis LP's limited partnership agreement and/or Acis GP's limited liability company agreement, and/or that the Shared Services Agreement and Sub-Advisory Agreement or any related or predecessor agreements are void or voidable based on ultra vires or any other theories of avoidance and recovery, including turnover, conversion and Avoidance Actions under the Bankruptcy Code;

(g) All Claims for breach of the PMAs or the Indentures;

(h) All Claims for breach of fiduciary duty or duty of loyalty or due care owed to the Debtors or Chapter 11 Trustee;

(i) All Claims for aiding and/or abetting breach of fiduciary duty, breach of duty loyalty or due care, or any other unlawful act;

(j) All Clams for usurpation of a corporate opportunity belonging to either of the Debtors, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs;

(k) All claims for tortious interference, including in relation to Universal-Investment-Luxembourg S.A. and BayVK R2 Lux S.A., SICAV-FIS;

(l) All Claims against Highland for the turnover of Estate Assets, including Estate property that the Chapter 11 Trustee may use, sell or lease under section 363 of the Bankruptcy Code including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate, as well as the turnover of any books, documents, records and papers relating to the Debtors' property or financial affairs;

(m) All Claims against Highland for the unauthorized use of Estate Assets including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate;

(n) All Claims, rights or remedies for Equitable Subordination or Recharacterization of any Claim by Highland against the Debtors, Chapter 11 Trustee, or Estate;

(o) All Claims based on alter ego or rights to pierce the corporate veil of Acis LP as to any Person, including as against Highland or any Affiliates thereof, James D. Dondero, Mark K. Okada, or any other officers, directors, equity interest holders, or Persons otherwise in control of Acis LP;

(p) All Claims based on alter ego or rights to pierce the corporate veil of

Highland as to any Person, including as against any Affiliates of Highland, James D. Dondero, Mark K. Okada, or any other officers, directors, equity interest holders, or Persons otherwise in control of Highland, and,

(q) All Claims for conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act.

4. HCLOF Claims. All Estate Claims against HCLOF are reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims asserted by the Chapter 11 Trustee in the Highland Adversary and the Trustee's Adversary. The Estate Claims against HCLOF shall include all Estate Claims set forth in paragraph 2 above, including without limitation, the following:

(a) All such Claims against HCLOF asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Highland Adversary;

(b) All such Claims against HCLOF asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Trustee's Adversary;

(c) All such Claims and Defenses asserted by the Chapter 11 Trustee or Estate, or which could be asserted by the Chapter 11 Trustee or Estate, based on the facts or transactions alleged in any other adversary proceedings or Claim Objections filed by the Chapter 11 Trustee or Estate;

(d) All Avoidance Actions against HCLOF;

(e) All Claims for breach of the PMAs or the Indentures;

(f) All Claims for breach of fiduciary duty or duty of loyalty or due care owed to the Debtors or Chapter 11 Trustee;

(g) All Claims for aiding and/or abetting breach of fiduciary duty, breach of duty loyalty or due care, or any other unlawful act;

(h) All Clams for usurpation of a corporate opportunity belonging to either of the Debtors, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs;

(i) All Claims against HCLOF for the turnover of Estate Assets, including Estate property that the Chapter 11 Trustee may use, sell or lease under section 363 of the Bankruptcy Code including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate, as well as the turnover of any books, documents, records and papers relating to the Debtors' property or financial affairs;

(j) All Claims against HCLOF for the unauthorized use of Estate Assets including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate;

(k) All Claims, rights or remedies for Equitable Subordination or Recharacterization of any Claim by HCLOF against the Debtors, Chapter 11 Trustee, or Estate;

(l) All Claims based on alter ego or rights to pierce the corporate veil of HCLOF as to any Person, including as against any Affiliates of HCLOF or Highland, William Scott, Heather Bestwick, or any other officers, directors, equity interest holders, or Persons otherwise in control of HCLOF; and,

(m) All Claims for conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act.

5. Highland HCF Advisor, Ltd. Claims. All Estate Claims against Highland HCF Advisor, Ltd. ("Highland HCF") are reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims asserted by the Chapter 11 Trustee in the Highland Adversary. The Estate Claims against Highland HCF shall include all Estate Claims set forth in paragraph 2 above, including without limitation, the following:

(a) All such Claims against Highland HCF asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Highland Adversary;

(b) All such Claims against Highland HCF asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Trustee's Adversary;

(c) All such Claims and Defenses asserted by the Chapter 11 Trustee or Estate, or which could be asserted by the Chapter 11 Trustee or Estate, based on the facts or transactions alleged in any other adversary proceedings or Claim Objections filed by the Chapter 11 Trustee or Estate;

(d) All Avoidance Actions against Highland HCF;

(e) All Claims for breach of fiduciary duty or duty of loyalty or due care owed to the Debtors or Chapter 11 Trustee;

(f) All Claims for aiding and/or abetting breach of fiduciary duty, breach of duty loyalty or due care, or any other unlawful act;

(g) All Clams for usurpation of a corporate opportunity belonging to either of the Debtors, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs;

(h) All Claims against Highland HCF for the turnover of Estate Assets, including Estate property that the Chapter 11 Trustee may use, sell or lease under section 363 of the Bankruptcy Code including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate, as well as the turnover of any books, documents, records and papers relating to the Debtors' property or financial affairs;

(i) All Claims against Highland HCF for the unauthorized use of Estate Assets including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate;

(j) All Claims, rights or remedies for Equitable Subordination or Recharacterization of any Claim by Highland HCF against the Debtors, Chapter 11 Trustee, or

Estate;

(k) All Claims based on alter ego or rights to pierce the corporate veil of Highland HCF as to any Person, including as against any Affiliates of Highland HCF or Highland, or any other officers, directors, equity interest holders, or Persons otherwise in control of Highland HCF; and,

(l) All Claims for conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act.

6. Highland CLO Management, Ltd. Claims. All Estate Claims against Highland CLO Management, Ltd. ("Highland CLOM") are reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims asserted by the Chapter 11 Trustee in the Highland Adversary. The Estate Claims against Highland CLOM shall include all Estate Claims set forth in paragraph 2 above, including without limitation the following:

(a) All such Claims against Highland CLOM asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Highland Adversary;

(b) All such Claims against Highland CLOM asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Trustee's Adversary;

(c) All such Claims and Defenses asserted by the Chapter 11 Trustee or Estate, or which could be asserted by the Chapter 11 Trustee or Estate, based on the facts or transactions alleged in any other adversary proceedings or Claim Objections filed by the Chapter 11 Trustee or Estate;

(d) All Avoidance Actions against Highland CLOM;

(e) All Claims for breach of fiduciary duty or duty of loyalty or due care owed to the Debtors or Chapter 11 Trustee;

(f) All Claims for aiding and/or abetting breach of fiduciary duty, breach of duty loyalty or due care, or any other unlawful act;

(g) All Clams for usurpation of a corporate opportunity belonging to either of the Debtors, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs;

(h) All Claims against Highland CLOM for the turnover of Estate Assets, including Estate property that the Chapter 11 Trustee may use, sell or lease under section 363 of the Bankruptcy Code including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate, as well as the turnover of any books, documents, records and papers relating to the Debtors' property or financial affairs;

(i) All Claims against Highland CLOM for the unauthorized use of Estate Assets including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate;

(j) All Claims, rights or remedies for Equitable Subordination or Recharacterization of any Claim by Highland CLOM against the Debtors, Chapter 11 Trustee, or Estate;

(k) All Claims based on alter ego or rights to pierce the corporate veil of Highland CLOM as to any Person, including as against any Affiliates of Highland CLOM or Highland, or any other officers, directors, equity interest holders, or Persons otherwise in control of Highland CLOM; and,

(l) All Claims for conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act.

7. CLO Holdco, Ltd. Claims. All Estate Claims against CLO Holdco, Ltd. ("CLO Holdco") are reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims asserted by the Chapter 11 Trustee in the Trustee's Adversary. The Estate Claims against CLO Holdco shall include all Estate Claims set forth in paragraph 2 above, including without limitation, the following:

(a) All such Claims against CLO Holdco asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Highland Adversary;

(b) All such Claims against CLO Holdco asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Trustee's Adversary;

(c) All such Claims and Defenses asserted by the Chapter 11 Trustee or Estate, or which could be asserted by the Chapter 11 Trustee or Estate, based on the facts or transactions alleged in any other adversary proceedings or Claim Objections filed by the Chapter 11 Trustee or Estate;

(d) All Avoidance Actions against CLO Holdco;

(e) All Claims for breach of fiduciary duty or duty of loyalty or due care owed to the Debtors or Chapter 11 Trustee;

(f) All Claims for aiding and/or abetting breach of fiduciary duty, breach of duty loyalty or due care, or any other unlawful act;

(g) All Clams for usurpation of a corporate opportunity belonging to either of the Debtors, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs;

(h) All Claims against CLO Holdco for the turnover of Estate Assets, including Estate property that the Chapter 11 Trustee may use, sell or lease under section 363 of the Bankruptcy Code including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate, as well as the turnover of any books, documents, records and papers relating to the Debtors' property or financial affairs;

(i) All Claims against CLO Holdco for the unauthorized use of Estate Assets including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate;

(j) All Claims, rights or remedies for Equitable Subordination or Recharacterization of any Claim by Highland against the Debtors, Chapter 11 Trustee, or Estate;

(k) All Claims based on alter ego or rights to pierce the corporate veil of CLO Holdco as to any Person, including as against any Affiliates of CLO Holdco or Highland, or any other officers, directors, equity interest holders, or Persons otherwise in control of CLO Holdco; and,

(l) All Claims for conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act.

8. Neutra, Ltd. Claims. All Estate Claims against Neutra, Ltd. ("Neutra") are reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims asserted by the Chapter 11 Trustee in the Trustee's Adversary. The Estate Claims against Neutra shall include all Estate Claims set forth in paragraph 2 above, including without limitation the following:

(a) All such Claims against Neutra asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Highland Adversary;

(b) All such Claims against Neutra asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Trustee's Adversary;

(c) All such Claims and Defenses asserted by the Chapter 11 Trustee or Estate, or which could be asserted by the Chapter 11 Trustee or Estate, based on the facts or transactions alleged in any other adversary proceedings or Claim Objections filed by the Chapter 11 Trustee or Estate;

(d) All Avoidance Actions against Neutra;

(e) All Claims for breach of fiduciary or duty of loyalty or due care owed to the Debtors or Chapter 11 Trustee;

(f) All Claims for aiding and/or abetting breach of fiduciary duty, breach of duty loyalty or due care, or any other unlawful act;

(g) All Clams for usurpation of a corporate opportunity belonging to either of the Debtors, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs;

(h) All Claims against Neutra for the turnover of Estate Assets, including Estate property that the Chapter 11 Trustee may use, sell or lease under section 363 of the Bankruptcy Code including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate, as well as the turnover of any books, documents, records and papers relating to the Debtors' property or financial affairs;

(i) All Claims against Neutra for the unauthorized use of Estate Assets

including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate;

(j) All Claims, rights or remedies for Equitable Subordination or Recharacterization of any Claim by Neutra against the Debtors, Chapter 11 Trustee, or Estate;

(k) All Claims based on alter ego or rights to pierce the corporate veil of Acis LP as to any Person, including as against Neutra, Highland, or any Affiliates thereof, James D. Dondero, Mark K. Okada, or any other officers, directors, equity interest holders, or Persons otherwise in control of Acis LP;

(l) All Claims based on alter ego or rights to pierce the corporate veil of Neutra as to any Person, including as against any Affiliates of Neutra or Highland, or any other officers, directors, equity interest holders, or Persons otherwise in control of Neutra; and,

(m) All Claims for conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act.

9. Claims against Issuers, Co-Issuers and Indenture Trustee. All Estate Claims against CLO-3, CLO-4, CLO-5, and CLO-6 (collectively, the "Issuers"), Acis CLO 2014-3 LLC, Acis CLO 2014-4 LLC, Acis CLO 2014-5 LLC, and Acis CLO 2015-6 LLC (collectively, the "Co-Issuers"), and the Indenture Trustee are reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims asserted by the Chapter 11 Trustee in the Trustee's Adversary. The Estate Claims against the Issuers, Co-Issuers and/or Indenture Trustee shall include all Estate Claims set forth in paragraph 2 above, including without limitation the following:

(a) All such Claims against the Issuers, Co-Issuers, and/or Indenture Trustee asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Highland Adversary;

(b) All such Claims against the Issuers, Co-Issuers, and/or Indenture Trustee asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Trustee's Adversary;

(c) All such Claims and Defenses asserted by the Chapter 11 Trustee or Estate, or which could be asserted by the Chapter 11 Trustee or Estate, based on the facts or transactions alleged in any other adversary proceedings or Claim Objections filed by the Chapter 11 Trustee or Estate;

(d) All Avoidance Actions against the Issuers, Co-Issuers and/or Indenture Trustee;

(e) All Claims for breach of the Indentures, PMAs or any other agreements between Acis LP and the Issuers, Co-Issuers, and/or Indenture Trustee;

(f) All Claims for breach of fiduciary duty or duty of loyalty or due care owed to the Debtors or Chapter 11 Trustee;

(g) All Claims for aiding and/or abetting breach of fiduciary duty, breach of duty loyalty or due care, or any other unlawful act;

(h) All Clams for usurpation of a corporate opportunity belonging to either of the Debtors, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs;

(i) All Claims against the Issuers, Co-Issuers and/or Indenture Trustee for the turnover of Estate Assets, including Estate property that the Chapter 11 Trustee may use, sell or lease under section 363 of the Bankruptcy Code including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate, as well as the turnover of any books, documents, records and papers relating to the Debtors' property or financial affairs;

(j) All Claims against the Issuers, Co-Issuers and/or Indenture Trustee for the unauthorized use of Estate Assets including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate;

(k) All Claims, rights or remedies for Equitable Subordination or Recharacterization of any Claim by the Issuers or Co-Issuers against the Debtors, Chapter 11 Trustee, or Estate; and,

(l) All Claims for conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act.

10. Highland Affiliate Claims. All Estate Claims against any Affiliates of Highland are reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims asserted by the Chapter 11 Trustee in the Highland Adversary and the Trustee's Adversary. The Estate Claims against any Affiliates of Highland shall include all Estate Claims set forth in paragraph 2 above, including without limitation the following:

(a) All such Claims against any Highland Affiliate asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Highland Adversary;

(b) All such Claims against any Highland Affiliate asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Trustee's Adversary;

(c) All such Claims and Defenses asserted by the Chapter 11 Trustee or Estate, or which could be asserted by the Chapter 11 Trustee or Estate, based on the facts or transactions alleged in any other adversary proceedings or Claim Objections filed by the Chapter 11 Trustee or Estate;

(d) All Avoidance Actions against any Highland Affiliate;

(e) All Claims for breach of fiduciary duty or duty of loyalty or due care owed to the Debtors or Chapter 11 Trustee;

(f) All Claims for aiding and/or abetting breach of fiduciary duty, breach of duty loyalty or due care, or any other unlawful act;

(g) All Clams for usurpation of a corporate opportunity belonging to either of the Debtors, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs;

(h) All Claims against any Highland Affiliate for the turnover of Estate Assets, including Estate property that the Chapter 11 Trustee may use, sell or lease under section 363 of the Bankruptcy Code including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate, as well as the turnover of any books, documents, records and papers relating to the Debtors' property or financial affairs;

(i) All Claims against any Highland Affiliate for the unauthorized use of Estate Assets including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate;

(j) All Claims, rights or remedies for Equitable Subordination or Recharacterization of any Claim by any Highland Affiliate against the Debtors, Chapter 11 Trustee, or Estate;

(k) All Claims based on alter ego or rights to pierce the corporate veil of Acis LP as to any Person, including as against Highland, Neutra, or any Affiliates thereof, James D. Dondero, Mark K. Okada, or any other officers, directors, equity interest holders, or Persons otherwise in control of Acis LP;

(l) All Claims based on alter ego or rights to pierce the corporate veil of any Highland Affiliate as to any Person, including as against any other Affiliates of Highland or any officers, directors, equity interest holders, or Persons otherwise in control of any Highland Affiliates; and,

(m) All Claims for conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act.

11. Dondero Claims. All Estate Claims as defined in paragraph 2 above against James D. Dondero, individually, are hereby reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims against James D. Dondero for fraud, constructive fraud, breach of fiduciary duty, breach of duty of loyalty or due care, aiding and abetting breach of fiduciary duty, aiding and abetting breach of duty of loyalty or due care, self-dealing, ultra vires, conversion, usurpation of corporate opportunity, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs, tortious interference, including in relation to Universal-Investment-Luxembourg S.A. and BayVK R2 Lux S.A., SICAV-FIS, conflict of interest, negligence, gross negligence, all Avoidance Actions, breach of contract, breach of the Shared Services Agreement, breach of the Sub-Advisory Agreement, breach of the Debtors' limited partnership agreement or limited liability company agreement, conspiracy to commit any unlawful act, aiding and abetting any unlawful act, and assisting, encouraging, and/or participating in any unlawful act, as well as any Claim to pierce the corporate veil of any entity to hold James D. Dondero individually liable.

12. Okada Claims. All Estate Claims as defined in paragraph 2 above against Mark K. Okada, individually, are hereby reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims against Mark K. Okada for fraud, constructive fraud, breach of fiduciary duty, breach of duty of loyalty or due care, aiding and abetting breach of fiduciary duty, self-dealing, ultra vires, conversion, usurpation of corporate opportunity, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs, tortious interference, including in relation to Universal-Investment-Luxembourg S.A. and BayVK R2 Lux S.A., SICAV-FIS, conflict of interest, negligence, gross negligence, all

Avoidance Actions, breach of contract, breach of the Shared Services Agreement, breach of the Sub-Advisory Agreement, breach of the Debtors' limited partnership agreement or limited liability company agreement, conspiracy to commit any unlawful act, aiding and abetting any unlawful act, and assisting, encouraging, and participating in any unlawful act, as well as any Claim to pierce the corporate veil of any entity to hold Mark K. Okada individually liable.

13. Preference Claims. All Avoidance Actions pursuant to section 547 of the Bankruptcy Code against any Person are hereby reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor for any payment made to any Person by either of the Debtors within ninety (90) days of the Petition Date (which was January 30, 2018), or made by either of the Debtors to any insider within one (1) year of the Petition Date. A non-exhaustive list of Persons who are believed to have received payments from either of the Debtors during the 90-day preference period, and the one-year preference period for Insiders, is attached to this **Exhibit "A"** as **Schedule "1"**. The Plan reserves, retains and preserves for the benefit of the Estate and Reorganized Debtor all potential Claims arising out of or relating to the transfers reflected in **Schedule "1"**, including all Avoidance Actions pursuant to section 547 of the Bankruptcy Code. All rights and remedies are also reserved. retained and preserved with respect to the transfers reflected in **Schedule "1"** pursuant to section 550 of the Bankruptcy Code.

Schedule "1" reflects transfers made by the Debtors during the 90 days prior to the Petition Date and transfers made by the Debtors to any insiders within one (1) year of the Petition Date. While the Plan reserves, retains and preserves all Avoidance Actions relating to the transfers reflected in **Schedule "1"**, the Chapter 11 Trustee recognizes that certain of these transfers may not constitute a preferential transfer pursuant to section 547(b) of the Bankruptcy Code as a transfer made in the ordinary course of business transactions or based upon new value subsequently given by the transferee. Consequently, the listing of a payment on **Schedule "1"** does not necessarily mean that a transferee will ever be sued to avoid and recover the payment, the transfer, or the value thereof, but only that the Plan reserves, retains and preserves all rights (including Avoidance Actions) as to that payment.

14. Claims Against Officers, Managers and Members. All Estate Claims as defined in paragraph 2 above are hereby reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor against all present and past officers, employees, members and managers of the Debtors, including all such Estate Causes of Action based on breach of fiduciary duty, aiding and abetting breach of fiduciary duty, breach of duty of loyalty or due care, aiding and abetting breach of duty of loyalty or due care, self-dealing, usurpation of corporate opportunity, gross negligence or conspiracy. Without limiting the generality of the foregoing, this shall include all D&O Claims as against any present or former officer, director, employee, member, manager, or partner.

15. Claims Against Former Attorneys and Law Firms. All Estate Claims as defined in paragraph 2, above, including Claims for breach of any fiduciary duty or duty of loyalty or due care, conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act, including knowingly aiding, abetting, or assisting with a fraudulent transfer to avoid paying a judgment, negligent or fraudulent misrepresentation, vicarious liability, and respondeat superior, as well as all Claims for legal or professional malpractice, are hereby reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor against all law firms and attorneys who and which rendered legal services to the Debtors on a prepetition basis including, but not limited to, the following:

(a) Cole Schotz, P.C.

(b) Michael D. Warner

(c) Jacob Frumkin

(d) Warren A. Usatine

(e) McKool Smith

(f) Gary Cruciani

(g) Michael Fritz

(h) Carson Young

(i) Lackey Hershman, LLP

(j) Stinson Leonard Street LLP

(k) Paul Lackey, Esq.

(l) Michael Aigen, Esq.

(m) Abrams & Bayliss, LLP

(n) Kevin G. Abrams

(o) A. Thompson Bayliss

(p) Jones Day

(q) Hilda C. Galvan

(r) Michael Weinberg

(s) Reid Collins & Tsai, LLP

(t) Lisa Tsai

(u) Stanton, LLP

(v) James M. Stanton

(w) Hunton Andrews Kurth

(x) Marc Katz

(y) Greg Waller

(z) any other law firm or attorney who may be so named at a later date by the Reorganized Debtor.

~~15.~~16. Retention of Claims Against Specific Persons or Categories of Persons. In addition to the foregoing, all Estate Claims as defined in paragraph 2 above are hereby reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor against the following Persons:

(a) William Scott;

(b) Heather Bestwick;

(c) Any other Person who may be so named at a later date by the Reorganized Debtor.

~~16.~~17. Counterclaims. All Estate Claims as defined in paragraph 2 above are reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor both as a basis for an affirmative recovery against the Person against whom such Claims are asserted and as a counterclaim or offset against any Person who asserts a Claim against the Estate or Reorganized Debtor.

~~17.~~18. Piercing the Corporate Veil. With respect to all Estate Claims against any Person, all rights to pierce or ignore the corporate veil are hereby reserved, retained and preserved for the benefit of the Estate and the Reorganized Debtor. Without limiting the generality of the foregoing, this shall include: (a) any right to pierce the corporate veil, including reverse piercing, on any theory or basis, including alter ego or any theory of sham to perpetrate a fraud, and (b) any Claim or basis to pierce the corporate veil of any entity with respect to establishing personal liability against James D. Dondero or Mark K. Okada.

~~18.~~19. Avoidance Actions. All Avoidance Actions are hereby reserved, retained and preserved as to all Persons. The reservation, retention and preservation of such Avoidance Actions shall include the reservation, retention and preservation for the benefit of the Estate and Reorganized Debtor of all rights and remedies pursuant to section 550 of the Bankruptcy Code.

~~19.~~20. Estate Defenses. All Estate Defenses are hereby reserved, retained and preserved in favor of the Estate and Reorganized Debtor as against any Person asserting any Claim against the Estate. This includes asserting all Estate Claims as an offset to, or counterclaim or right of recoupment against, any Person asserting a Claim against the Estate. All defenses and affirmative defenses pursuant to applicable law are hereby reserved, retained and preserved for the benefit of the Estate and the Reorganized Debtor, including without limitation, accord and satisfaction, assumption of risk, contributory negligence, duress, estoppel, failure of consideration, fraud, illegality, laches, license, payment, release, *res judicata*, collateral estoppel, statute of frauds, statute of limitations or repose, discovery rule, adverse domination doctrine or similar doctrines, set off, recoupment, waiver, and all other defenses to Claims under the Bankruptcy Code, including under sections 502(b)(4) and 502(d).

~~20.~~21. Equitable Subordination. All rights or remedies for Equitable Subordination are hereby reserved, retained and preserved in favor of the Estate and Reorganized Debtor against any Person asserting any Claim against the Estate, including all such rights or remedies pursuant to section 510(c) of the Bankruptcy Code. Without limiting the generality of the foregoing, this shall include all rights and remedies to Equitable Subordination as to any Claim asserted by Highland, any Affiliates of Highland, or any officers, directors, employees or equity

interest owners of the Debtors, Highland, or any Affiliates thereof.

~~21.~~22. Recharacterization. All rights or remedies to recharacterize any Claim as an equity interest in either of the Debtors are hereby reserved, retained and preserved in favor of the Estate and Reorganized Debtor against any Person asserting any Claim against the Estate. Without limiting the generality of the foregoing, this shall include all rights and remedies to recharacterize any Claim asserted by Highland, any Affiliates of Highland, or any officers, directors, employees or equity interest owners of the Debtors, Highland, or any Affiliates thereof.

Schedule 1 to Exhibit "A" to

Third Amended Joint Plan for Acis Capital Management, LP and Acis Capital Management GP, LLC

NAME	ADDRESS	DATE OF PAYMENT	PAYMENT AMOUNT	REASON FOR PAYMENT ON SCHEDULES
Payments within 90 Days of Petition Date				
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	11/2/2017	$234,013.63	Services
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	11/3/2017	$941,958.57	Services
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	12/8/2017	$89,655.14	Services
David Simek	31 Woodacres Road Brookville, NY 11545	11/15/2017	$2,068.13	Services
David Simek	31 Woodacres Road Brookville, NY 11545	11/30/2017	$24,266.71	Services
David Simek	31 Woodacres Road Brookville, NY 11545	12/12/2017	$1,718.79	Services
David Simek	31 Woodacres Road Brookville, NY 11545	12/29/2017	$25,000.00	Services
FINRA	1735 K Street, NW Washington, DC 20006	11/22/2017	$70.00	Suppliers or Vendors
Highland CLO Management, Ltd.	PO Box 309, Ugland House Grand Cayman, KY1-1104, Cayman Islands	12/19/2017	$2,830,459.22	Services
Payments to Insiders within One Year of Petition Date				
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	2/1/2017	$976,688.47	Contractual Payment
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	2/1/2017	$1,096,033.37	Services
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	2/2/2017	$3,574.80	Expense Reimbursement
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	2/14/2017	$67.44	Expense Reimbursement
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	4/17/2017	$315,574.30	Services
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	4/18/2017	$438,497.51	Services

Schedule 1 to Exhibit "A" to

Third Amended Joint Plan for Acis Capital Management, LP and Acis Capital Management GP, LLC

NAME	ADDRESS	DATE OF PAYMENT	PAYMENT AMOUNT	REASON FOR PAYMENT ON SCHEDULES
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	4/18/2017	$375,855.01	Contractual Payment
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	4/19/2017	$330,249.69	Services
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	5/1/2017	$974,426.41	Services
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	5/31/2017	$2,809,518.47	Unsecured loan repayments including interest
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	5/31/2017	$581,036.15	Services
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	7/18/2017	$373,167.08	Contractual Payment
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	8/1/2017	$971,603.02	Contractual Payment
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	8/7/2017	$1,339,422.12	Services
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	8/16/2017	$53.41	Expense Reimbursement
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	10/18/2017	$372,872.82	Contractual Payment
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	10/18/2017	$728,702.26	Services
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	10/24/2017	$501,979.18	Unsecured loan repayments including interest
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	10/25/2017	$46,648.82	Expense Reimbursement
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	10/25/2017	$67,966.85	Expense Reimbursement
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	11/1/2017	$967,223.91	Contractual Payment

Exhibit “3”

[Service Lists]

Notice Service List
Acis Capital Mgmt./Phelan
#5980

BNP Paribas Securities Services
Luxembourg Branch
60 Avenue John F. Kennedy
1855 Luxembourg

United States Trustee
Lisa Lambert
1100 Commerce St., Room 976
Dallas, TX 75242

Acis CLO 2013-1 Chemical Holdings, LLC
Acis CLO 2013-2 Chemical Holdings, LLC
Acis CLO 2014-3 Chemical Holdings, LLC
1209 Orange Street
Wilmington, DE 19801-1120

Dallas County
c/o Laurie Spindler
Linebarger, Goggan, Blair & Sampson LLP
2777 N Stemrnons Frwy, No 1000
Dallas, TX 75207-2328

Dallas County
c/o Sherrel K Knighton
Linebarger Goggan Blair & Sampson, LLP
2777 N. Stemrnons Frwy Ste 1000
Dallas, TX 75207-2328

Acis CLO 2014-4 Chemical Holdings, LLC
Acis CLO 2014-5 Chemical Holdings, LLC
Acis CLO 2015-6 Chemical Holdings, LLC
1209 Orange Street
Wilmington, DE 19801-1120

Acis CLO Management, LLC
Acis CLO Value GP, LLC
1209 Orange Street
Wilmington, DE 19801-1120

Acis CLO Value Fund II (Cayman), L.P.
Acis CLO Value Fund II GP, LLC
Acis CLO Value Master Fund II, L.P.
PO Box 309, Ugland House
Grand Cayman, Cayman Islands KY1-1104

Acis CLO Value Fund II, L.P.
Acis Loan Funding, Ltd.
Acis Capital Management GP, LLC
300 Crescent Court, Suite 700
Dallas, TX 75201-7849

Acis Funding GP, Ltd.
Acis Funding L.P.
c/o Maples Corporate Services Limited
P0 Box 309, Ugland House
Grand Cayman, Cayman Islands KY1 -1104

CLO Holdco, Ltd.
c/o Intertrust Corp. Srvs. (Cayman) Ltd.
190 Elgin Ave., George Town
Grand Cayman, Cayman Islands KY1-9005

State Street (Guernsey) Limited
First Floor Dorey Court
Admiral Park, St. Peter Port, Guernsey

Mizuho Securities USA Inc.
320 Park Ave., 12th Floor
New York, NY 10022-6848

U. S. Bank National Association
Attn: Michael Zak
60 Livingston Ave., EP-MN-WS3D
Saint Paul, MN 55107-2292

The Dugaboy Investment Trust
300 Crescent Court, Suite700
Dallas, TX 75201-1876

US Bank National Association
c/o Daniel P. Novakov
Frost Brown Todd LLC
100 Crescent Court, Suite 350
Dallas, TX 75201-2348

US Bank National Association
c/o Mark D. Kotwick, Arlene Alves
Seward & Kissell LLP
One Battery Park Plaza
New York, NY 10004-1405

Acis Capital Management, LP
c/o Michael D. Warner
Cole Schotz P.C.
1700 City Center Tower II
301 Commerce St.
Fort Worth, TX 76102-4140

Robin Phelan, Chapter 11 Trustee
Phelenlaw
4214 Woodfin Drive
Dallas, TX 75220-6416

Acis Capital Management, LP
c/o Warren A. Usatine
Cole Schotz P.C.
25 Main Street
Hackensack, NJ 07601-7189

The Bank of N.Y. Mellon Trust Co., N.A.
225 Liberty Street
New York, NY 10286-0001

Texas Comptroller of Public Accounts
c/o John M. Stern, Asst. Attorney General
Bankruptcy & Collection Div. MC 008
PO Box 12548
Austin, TX 78711-2548

Securities and Exchange Commission
801 Cherry Street, Suite 1900, Unit 18
Fort Worth, TX 76102

BayVK R2 Lux S.A., SICAV-FIS
15 Rue de Flaxweiler
L-6776 Grevenmacher
Luxembourg

Office of the United States Attorney
3rd Floor, 1100 Commerce Street
Dallas, Texas 75242-1699

Office of the Attorney General
Main Justice Building, Room 5111
10th & Constitution Avenue, N.W.
Washington, D.C. 20530

Internal Revenue Service
Special Procedures – Insolvency
P.O. Box 7346
Philadelphia, PA 1901-7346

US Bank
PO Box 5229
Cincinnati, OH 45201-5229

Universal-Investment-Luxembourg S.A.
15 Rue de Flaxweiler
L-6776 Grevenmacher
Luxembourg

Universal-Inv.-Luxembourg SA/BayVK R2 Lux
c/o Andrew Zollinger
DLA Piper LLP
1717 Main St., Suite 4600
Dallas, TX 75201-4629

Diane G. Reed
Reed & Elmquist, PC
501 N. College St.
Waxahachie, TX 75165-3361

Hewett's Island CLO I-R, Ltd.
c/o Maples Finance Limited
PO Box 1093, Queensgate House
South Church St., George Town
Grand Cayman, Cayman Island KY1-1102

Universal-Inv.-Luxembourg SA/BayVK R2 Lux
c/o Thomas Califano/Shmuel Klahr
DLA Piper LLP
1251 Avenue of the Americas
New York, NY 10020-1104

Diane G. Reed
c/o David W. Elmquist
Reed & Elmquist, PC
501 N. College St.
Waxahachie, TX 75165-3361

Highland HCF Advisor, Ltd.
c/o Maples Corporate Services, Ltd.
P.O. Box 309, Ugland House,
South Church Street, George Town
Grand Cayman, Cayman Island KY1-1004

Highland HCF Advisor, Ltd.
c/o James Dondero, President
300 Crescent Court, Suite 700
Dallas, TX 75201

Highland CLO Management, Ltd.
c/o Maples Corporate Services, Ltd.
P.O. Box 309, Ugland House,
South Church Street, George Town
Grand Cayman, Cayman Island KY1-1004

Highland CLO Management, Ltd.
c/o Strand Advisors, Inc., Attn. James Dondero
300 Crescent Court, Suite 700
Dallas, TX 75201

Highland CLO Management, Ltd.
c/o Strand Advisors, Inc.
Corporation Trust Center
1209 Orange Street
Wilmington, DE 19801

Acis CLO 2013-1 Ltd.
Acis CLO 2013-2
c/o Estera Trust (f/k/a Appleby Trust)
Clifton House 75 Fort St., P.O. Box 1350
Grand Cayman, Cayman Islands KY 1-1108

U.S. Bank National Association
Attention: Global Corporate Trust –
Acis CLO 2013-1 and 2013-2190 S. LaSalle
Street, 8th Floor
Chicago, IL 60603

Acis CLO 2013-1 LLC
Acis CLO 2013-2 LLC
850 Library Ave., Suite 204
Newark, DE 19711

Acis CLO 2014-3 Ltd.
Acis CLO 2014-4 Ltd.
c/o MaplesFS Limited
P.O. Box 1093, Boundary Hall, Cricket Sq
Grand Cayman, Cayman Islands KY1-1102

U.S. Bank National Association
Attention: Global Corporate Trust –
Acis CLO 2014-3 and 2014-4190 S. LaSalle
Street, 8th Floor
Chicago, IL 60603

Acis CLO 2014-3 LLC
Acis CLO 2014-4
850 Library Ave., Suite 204
Newark, DE 19711

Acis CLO 2014-5 Ltd.
Acis CLO 2015-6 Ltd.
c/o MaplesFS Limited
P.O. Box 1093, Boundary Hall, Cricket Sq
Grand Cayman, Cayman Islands KY1-1102

U.S. Bank National Association
Attention: Global Corporate Trust –
Acis CLO 2014-5 and Acis CLO 2015-6190 S.
LaSalle Street, 8th Floor
Chicago, IL 60603

Acis CLO 2014-5 LLC
Acis CLO 2015-6 LLC
850 Library Ave., Suite 204
Newark, DE 19711

Acis CLO 2015-6 Ltd.
P.O. Box 1093, Boundary Hall, Cricket Sq
Grand Cayman, KY1-1102, Cayman Islands

Deutsche Bank Trust Company Americas
Attn: CDO Business Unit – Hewett's
Island CLO 1-R
1761 East St. Andrew Place
Santa Ana, CA 92705

Acis Loan Funding, Ltd.
First Floor, Dorey Court
St. Peter Port, Guernsey GYI 6HJ
Channel Islands

Acis CLO 2017-7 Ltd.
c/o MapleFS Limited, Attn: Directors
PO Box 1093, Boundary Hall, Cricket Sq.
Grand Cayman, Cayman Islands KY1 -1102

Highlands Service List
ACIS #5980

Highland CLO Funding Ltd.
c/o Mark M. Maloney/W. Austin Jowers
King & Spalding LLP
1180 Peachtree Street NE
Atlanta, GA 30309

Highland CLO Funding, Ltd.
First Floor, Dorey Court
Admiral Park, St. Peter Port
Guernsey GY1 6HJ, Channel Islands

Highland CLO Management, Ltd.
P.O. Box 309 Ugland House
South Church Street
George Town, Grand Cayman KY1-1004

Highland HCF Advisor, Ltd.
c/o Maples Corporate Services, Ltd.
P.O. Box 309, Ugland House,
South Church Street, George Town
Grand Cayman, Cayman Island KY1-1004

Neutra, Ltd.
c/o Daniel Elms/Heather Jobe/Scott Larson
Bell Nunnally & Martin LLP
3232 McKinney Ave., Suite 1400
Dallas, TX 75204

CLO Holdco, Ltd.
c/o Intertrust Corp. Srvs. (Cayman) Ltd.
190 Elgin Ave., George Town
Grand Cayman, Cayman Islands KY1-9005

The Dugaboy Investment Trust
300 Crescent Court, Suite700
Dallas, TX 75201-1876

Highland CLO Funding, Ltd.
c/o Paul R. Bessette/Rebecca Matsumura
King & Spalding LLP
500 West 2nd St., Suite 1800
Austin, TX 78701-4684

Highland CLO Funding, Ltd.
c/o Michael K. Hurst/Ben A. Barnes
Lynn Pinker Cox & Hurst LLP
2100 Ross Ave., Suite 2700
Dallas, TX 75201

Highland CLO Management, Ltd.
c/o Strand Advisors, Inc.
Corporation Trust Center
1209 Orange Street
Wilmington, DE 19801

Highland CLO Management, Ltd.
c/o Summit Management Ltd.
P.O. Box 32311
Grand Cayman, KY1-1209
Cayman Islands

Highland HCF Advisor, Ltd.
c/o James Dondero, President
300 Crescent Court, Suite 700
Dallas, TX 75201

Neutra, Ltd.
c/o Michael K. Hurst/Ben A. Barnes
Lynn Pinker Cox & Hurst LLP
2100 Ross Ave., Suite 2700
Dallas, TX 75201

CLO Holdco, Ltd.
c/o Daniel Elms/Heather Jobe/Scott Larson
Bell Nunnally & Martin LLP
3232 McKinney Ave., Suite 1400
Dallas, TX 75204

Highland CLO Funding, Ltd.
c/o Daniel Elms/Heather Jobe/Scott Larson
Bell Nunnally & Martin LLP
3232 McKinney Ave., Suite 1400
Dallas, TX 75204

Highland CLO Funding, Ltd.
c/o H. O'Neil, J. Binford, S. Beck, M. Bales
Foley Gardere Foley & Lardner, LLP
2021 McKinney Ave., Suite 1600
Dallas, TX 75201

Highland CLO Management, Ltd.
c/o Maples Corporate Services, Ltd.
P.O. Box 309, Ugland House,
South Church Street, George Town
Grand Cayman, Cayman Island KY1-1004

Highland CLO Management, Ltd.
c/o Summit Management Ltd.
Suite #4-210 Governor's Square
23 Lime Tree Bay Avenue
Grand Cayman, Cayman Islands

Highland CLO Management, Ltd.
c/o Strand Advisors, Inc.
Attn. James Dondero
300 Crescent Court, Suite 700
Dallas, TX 75201

Neutra, Ltd.
c/o H. O'Neil, J. Binford, S. Beck, M. Bales
Foley Gardere Foley & Lardner, LLP
2021 McKinney Ave., Suite 1600
Dallas, TX 75201

CLO Holdco, Ltd.
c/o H. O'Neil, J. Binford, S. Beck, M. Bales
Foley Gardere Foley & Lardner, LLP
2021 McKinney Ave., Suite 1600
Dallas, TX 75201

Noteholders List

[Confidential]

Creditors Service List
Acis Capital Mgmt./Phelan
#5980

Class 2

Joshua N. Terry
25 Highland Park Village
Suite 100-848
Dallas, TX 75205-2726

Joshua N. Terry
c/o Brian P. Shaw/John M. Lynch
Rogge Dunn Group, PC
1201 Elm St., Suite 5200
Dallas, TX 75270

Joshua N. Terry
350 9 Princeton Ave.
Dallas, TX 75205-3246

Class 3

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600 Travis, Suite 4200
Houston, TX 77002-2929

CSI Global Deposition Services
4950 N. O'Connor Road, Suite 152
Irving, TX 75062 - 2778

CT Corporation
P0 Box 4349
Carol Stream, IL 60197-4349

Case Anywhere LLC
21860 Burbank Blvd., Suite 125
Woodland Hills, CA 91367-7447

David Langford
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DeSoto, TX 75115-3652

David Simek
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Brookville, NY 11545-2911

Drexel Limited
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Miami Beach, FL 33139-1700

Elite Document Technology
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Dallas, TX 75201-6881

Highfield Equities, Inc.
3131 McKinney Ave., Suite 215
Dallas, TX 75204-2421

JAMS, Inc.
18881 Von Karman Ave., Suite 350
Irvine, CA 92612-6589

Jones Day
2727 N. Harwood Street
Dallas, TX 75201-1568

Lackey Hershman LLP
3102 Oak Lawn Ave., Suite 777
Dallas, TX 75219-4259

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Two Financial Center
60 South Street
Boston, MA 02111-2759

KPMG LLP
2323 Ross Ave., Suite 1400
Dallas, TX 75201-2721

KPMG LLP
Aon Center
200 E. Randolph St., Suite 5500
Chicago, IL 60601-6607

McKool Smith, P.C.
300 Crescent Court, Suite 1500
Dallas, TX 75201-6970

Reid Collins & Tsai, LLP
Building C, Suite 300
1301 S. Capital of Texas Highway
Austin, TX 78746-6550

Stanton Advisors LLC
300 Coles St., Apt. 802
Jersey City, NJ 07310-1047

Stanton Law Firm
9400 North Central Expwy., Suite 1304
Dallas, TX 75231-5047

The TASA Group, Inc.
1166 DeKalb Pike
Blue Bell, PA 19422- 1853

Acis CLO 2013-1, Ltd., et al.
c/o David Neier
Winston & Strawn LLP
200 Park Ave.
New York, NY 10166-4193

Acis CLO 2013-1 LLC
850 Library Ave., Suite 204
Newark, DE 19711

Acis CLO 2014-3 LLC
850 Library Ave., Suite 204
Newark, DE 19711

Acis CLO 2014-4 LLC
850 Library Ave., Suite 204
Newark, DE 19711

Acis CLO 2014-5 LLC
850 Library Ave., Suite 204
Newark, DE 19711

Acis CLO 2015-6 LLC
850 Library Ave., Suite 204
Newark, DE 19711

Directors - Acis CLO 2013-1 Ltd.
75 Fort St., Clifton House
PO Box 1350
George Town, Grand Cayman
Cayman Island, KY1-1108

Directors - Acis CLO 2014-3 Ltd.
PO Box 1093
KY1-1102, Cricket Square
Grand Cayman

Directors - Acis CLO 2014-4 Ltd.
PO Box 1093
KY1-1102, Cricket Square
Grand Cayman

Directors - Acis CLO 2014-5 Ltd.
PO Box 1093
KY1-1102, Cricket Square
Grand Cayman

Directors - Acis CLO 2015-6 Ltd.
PO Box 1093
KY1-1102, Cricket Square
Grand Cayman

Acis CLO 2013-1, Ltd.
c/o Appleby Trust, Attn: Directors
Clifton House 75 Fort St., P0 Box 13
Grand Cayman, Cayman Islands KY1-1108

Acis CLO 2013-2 Ltd.
c/o MaplesFS Limited, Attn: Directors
PO Box 1093, Boundary Hall, Cricket Sq.
Grand Cayman, Cayman Islands KY1-1102

Acis CLO 2014-3 Ltd.
c/o MaplesFS Limited, Attn: Directors
PO Box 1093, Boundary Hall, Cricket Sq.
Grand Cayman, Cayman Islands KY1-1102

Acis CLO 2014-4 Ltd.
c/o MapleFS Limited, Attn: Directors
PO Box 1093, Boundary Hall, Cricket Sq.
Grand Cayman, Cayman Islands KY1-1102

Acis CLO 2014-5 Ltd.
c/o MapleFS Limited, Attn: Directors
PO Box 1093, Boundary Hall, Cricket Sq.
Grand Cayman, Cayman Islands KY1-1102

Acis CLO 2015-6 Ltd.
c/o MapleFS Limited, Attn: Directors
PO Box 1093, Boundary Hall, Cricket Sq.
Grand Cayman, Cayman Islands KY1 -1102

Acis CLO 2017-7 Ltd.
c/o MapleFS Limited, Attn: Directors
PO Box 1093, Boundary Hall, Cricket Sq.
Grand Cayman, Cayman Islands KY1 -1102

Acis CLO 2013-1, Ltd., et al.
c/o Thomas Melsheimer/Lane Webster
Winston & Strawn LLP
2501 N. Harwood St., 17th Floor
Dallas, TX 75201

Jennifer G. Terry
25 Highland Park Village, Suite 100-848
Dallas, TX 75205

Hunton Andrews Kurth LLP
c/o M. Christine Klein, Dep. Gen. Counsel
Riverfront Plaza, East Tower
951 East Byrd St.
Richmond, VA 23219

Patrick H. Daugherty
3621 Cornell Ave.
Dallas, TX 75250

Stinson Leonard Street LLP
Attn: Paul Lackey
3102 Oak Lawn Ave., Suite 777
Dallas, TX 75219

Class 4

Highland Capital Management, LP
300 Crescent Court, Suite 700
Dallas, TX 75201-7849

Highland Capital Management, LP
1209 Orange Street
Wilmington, DE 19801-1120

Highland Capital Management, LP
c/o Michael K. Hurst/Ben A. Barnes
Lynn Pinker Cox & Hurst LLP
2100 Ross Ave., Suite 2700
Dallas, TX 75201

Highland Capital Management, LP, Highland
c/o H. O'Neil, J. Binford, S. Beck, M. Bales
Foley Gardere Foley & Lardner, LLP
2021 McKinney Ave., Suite 1600
Dallas, TX 75201

EXHIBIT “3”

[Second Modification to the Third Amended Joint Plan for Acis Capital Management, L.P. and Acis Capital Management GP, LLC – Dkt. No. 702]

Rakhee V. Patel – State Bar No. 00797213
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SPECIAL COUNSEL FOR ROBIN PHELAN, CHAPTER 11 TRUSTEE

Jeff P. Prostok – State Bar No. 16352500
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bforshey@forsheyprostok.com
srosen@forsheyprostok.com
mmaben@forsheyprostok.com

COUNSEL FOR ROBIN PHELAN, CHAPTER 11 TRUSTEE

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:	§	CHAPTER 11 CASES
ACIS CAPITAL MANAGEMENT, L.P.,	§	CASE NO. 18-30264-sgj11
ACIS CAPITAL MANAGEMENT GP, LLC,	§	(Jointly Administered)
Debtors.	§	

SECOND MODIFICATION TO THE THIRD AMENDED JOINT PLAN FOR ACIS CAPITAL MANAGEMENT, LP AND ACIS CAPITAL MANAGEMENT GP, LLC

Robin Phelan ("Trustee"), the Chapter 11 Trustee for Acis Capital Management, LP and Acis Capital Management GP, LLC (the "Debtors"), files this Second Modification (the "First Modification") to the *Third Amended Joint Chapter 11 Plan for Acis Capital Management, LP and Acis Capital Management GP, LLC* [Docket No. 660], as modified by the *First Modification to the Third Amended Joint Chapter 11 Plan for Acis Capital Management, LP and Acis Capital Management GP, LLC* [Docket No. 693] (together, the "Plan").

1. Reference is here made to the Plan for all purposes. This Second Modification

modifies the Plan.

2. **Modification to Exhibit "A".** The copy of the Exhibit "A" reflecting Estate Claims is hereby deleted in its entirety and replaced with the version of the "Exhibit A" attached hereto as **Exhibit "1."**

3. A copy of the document reflecting the modifications to Exhibit A to the Plan in redline format is attached hereto as **Exhibit "2."**

4. This Second Modification is a non-material change. It merely revises the Estate Claims being reserved, retained and preserved under the Plan. Further, even if this First Modification were deemed material, it is being sent to all creditors and parties in interest ten (10) days in advance of the deadline for parties to submit ballots and any objections to the Plan. Consequently, creditors and parties in interest will have an adequate opportunity to evaluate this modification prior to voting on the Plan or to change their previous acceptance or rejection upon consideration of the modification.

Dated: November 16, 2018.

Respectfully submitted,

ACIS CAPITAL MANAGEMENT, L.P.

By: /s/ *Robin Phelan*
Robin Phelan
Chapter 11 Trustee

ACIS CAPITAL MANAGMENET GP, LLC

By: /s/ *Robin Phelan*
Robin Phelan
Chapter 11 Trustee

APPROVED:

/s/ *Jeff P. Prostok*
Jeff P. Prostok – State Bar No. 16352500
J. Robert Forshey – State Bar No. 07264200
Suzanne K. Rosen – State Bar No. 00798518
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COUNSEL FOR ROBIN PHELAN, CHAPTER 11 TRUSTEE

APPROVED:

/s/ *Rahkee V. Patel*
Rakhee V. Patel – State Bar No. 00797213
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Joe Wielebinski – State Bar No. 21432400
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rpatel@winstead.com
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achiarello@winstead.com

SPECIAL COUNSEL FOR ROBIN PHELAN, CHAPTER 11 TRUSTEE

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document and the attached exhibits were served electronically via the Court's Electronic Court Filing (ECF) notification system and via U.S. Mail, postage prepaid (and via Express Mail to out of country recipients) on the parties on the service lists attached as **Exhibit "3"** hereto on November 16, 2018.

/s/ Jeff P. Prostok
Jeff P. Prostok

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Exhibit “1”

[Revised Exhibit “A” to the Third Amended Joint Plan]

EXHIBIT "A"
to
Joint Plan for Acis Capital Management, LP and Acis Capital Management GP, LLC

1. Defined Terms. This Exhibit "A" constitutes an integral part of the Plan of which it is a part. Defined terms in the Plan are to be given the same meaning in this Exhibit "A". The rules of construction set forth in Article I.B. of the Plan shall likewise apply to this Exhibit "A".

2. Estate Claims Reserved, Retained and Preserved. All Estate Claims are hereby reserved, retained and preserved, and shall all be transferred to, and vested in, the Reorganized Debtor pursuant to this Plan, and shall include without limitation all of the Estate Claims described below. In reserving, retaining, and preserving Estate Claims against any named Person or category of Persons, it is the intent of this Plan to so reserve, retain, and preserve any and all Estate Claim against each such Person or category of Persons, including all such Estate Claims pursuant to any applicable common law, based on any contract or agreement or based upon any law, statute or regulation of any political entity, including the United States and any state or political subdivision thereof, as well as all applicable remedies, whether legal or equitable. Without limiting the generality of the foregoing, the reservation, retention, and preservation of Estate Claims against any Person, and the term "Estate Claims," shall encompass all Estate Claims against any such Person, including without limitation, all such Estate Claims for breach of contract, all rights to enforce any contract, any form of estoppel, fraud, constructive fraud, abuse of process, malicious prosecution, defamation, libel, slander, conversion, trespass, intentional infliction of emotional distress or other harm, negligence, gross negligence, negligent misrepresentation, fraudulent misrepresentation, vicarious liability, respondeat superior, breach of any duty owed under either applicable law or any contract, breach of any fiduciary duty or duty of loyalty or due care, aiding and/or abetting breach of fiduciary duty, aiding and/or abetting breach of duty of loyalty or due care, alter ego, veil piercing, self-dealing, usurpation of corporate opportunity, ultra vires, turnover of Estate Assets, unauthorized use of Estate Assets, including intellectual property rights or Assets owned by the Debtors or Chapter 11 Trustee, quantum merit, tortious interference, duress, unconscionability, undue influence, and unjust enrichment, as well as any cause of action for conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act, or claims arising from or relating to the filing of the involuntary bankruptcy petitions against the Debtors.

3. Highland Claims. All Estate Claims against Highland are reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims asserted by the Chapter 11 Trustee in Adversary Proceeding No. 18-03078-sgj (the "Highland Adversary") and Adversary Proceeding No. 18-03212-sgj (the "Trustee's Adversary"). The Estate Claims against Highland shall include all Estate Claims set forth in paragraph 2 above, including without limitation, the following:

(a) All such Claims asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Highland Adversary;

(b) All such Claims asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Trustee's Adversary;

(c) All such Claims and Defenses asserted by the Chapter 11 Trustee or Estate, or which could be asserted by the Chapter 11 Trustee or Estate, based on the facts or transactions alleged in any other adversary proceedings or Claim Objections filed by the

Chapter 11 Trustee or Estate;

(d) All Avoidance Actions against Highland, including any claims to avoid and recover amounts transferred by the Debtors to Highland under the Shared Services Agreement or Sub-Advisory Agreement;

(e) All Claims for breach of the Shared Services Agreement or Sub-Advisory Agreement;

(f) All Claims against Highland for amounts paid by the Debtors to Highland under the Shared Services Agreement and Sub-Advisory Agreement, including any Claim that Highland overcharged Acis LP for services under such agreements, charged excessive fees in violation of Acis LP's limited partnership agreement and/or Acis GP's limited liability company agreement, and/or that the Shared Services Agreement and Sub-Advisory Agreement or any related or predecessor agreements are void or voidable based on ultra vires or any other theories of avoidance and recovery, including turnover, conversion and Avoidance Actions under the Bankruptcy Code;

(g) All Claims for breach of the PMAs or the Indentures;

(h) All Claims for breach of fiduciary duty or duty of loyalty or due care owed to the Debtors or Chapter 11 Trustee;

(i) All Claims for aiding and/or abetting breach of fiduciary duty, breach of duty loyalty or due care, or any other unlawful act;

(j) All Clams for usurpation of a corporate opportunity belonging to either of the Debtors, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs;

(k) All claims for tortious interference, including in relation to Universal-Investment-Luxembourg S.A. and BayVK R2 Lux S.A., SICAV-FIS;

(l) All Claims against Highland for the turnover of Estate Assets, including Estate property that the Chapter 11 Trustee may use, sell or lease under section 363 of the Bankruptcy Code including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate, as well as the turnover of any books, documents, records and papers relating to the Debtors' property or financial affairs;

(m) All Claims against Highland for the unauthorized use of Estate Assets including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate;

(n) All Claims, rights or remedies for Equitable Subordination or Recharacterization of any Claim by Highland against the Debtors, Chapter 11 Trustee, or Estate;

(o) All Claims based on alter ego or rights to pierce the corporate veil of Acis LP as to any Person, including as against Highland or any Affiliates thereof, James D. Dondero, Mark K. Okada, or any other officers, directors, equity interest holders, or Persons otherwise in control of Acis LP;

(p) All Claims based on alter ego or rights to pierce the corporate veil of

Highland as to any Person, including as against any Affiliates of Highland, James D. Dondero, Mark K. Okada, or any other officers, directors, equity interest holders, or Persons otherwise in control of Highland, and,

(q) All Claims for conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act.

4. HCLOF Claims. All Estate Claims against HCLOF are reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims asserted by the Chapter 11 Trustee in the Highland Adversary and the Trustee's Adversary. The Estate Claims against HCLOF shall include all Estate Claims set forth in paragraph 2 above, including without limitation, the following:

(a) All such Claims against HCLOF asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Highland Adversary;

(b) All such Claims against HCLOF asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Trustee's Adversary;

(c) All such Claims and Defenses asserted by the Chapter 11 Trustee or Estate, or which could be asserted by the Chapter 11 Trustee or Estate, based on the facts or transactions alleged in any other adversary proceedings or Claim Objections filed by the Chapter 11 Trustee or Estate;

(d) All Avoidance Actions against HCLOF;

(e) All Claims for breach of the PMAs or the Indentures;

(f) All Claims for breach of fiduciary duty or duty of loyalty or due care owed to the Debtors or Chapter 11 Trustee;

(g) All Claims for aiding and/or abetting breach of fiduciary duty, breach of duty loyalty or due care, or any other unlawful act;

(h) All Clams for usurpation of a corporate opportunity belonging to either of the Debtors, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs;

(i) All Claims against HCLOF for the turnover of Estate Assets, including Estate property that the Chapter 11 Trustee may use, sell or lease under section 363 of the Bankruptcy Code including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate, as well as the turnover of any books, documents, records and papers relating to the Debtors' property or financial affairs;

(j) All Claims against HCLOF for the unauthorized use of Estate Assets including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate;

(k) All Claims, rights or remedies for Equitable Subordination or Recharacterization of any Claim by HCLOF against the Debtors, Chapter 11 Trustee, or Estate;

(l) All Claims based on alter ego or rights to pierce the corporate veil of HCLOF as to any Person, including as against any Affiliates of HCLOF or Highland, William Scott, Heather Bestwick, or any other officers, directors, equity interest holders, or Persons otherwise in control of HCLOF; and,

(m) All Claims for conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act.

5. Highland HCF Advisor, Ltd. Claims. All Estate Claims against Highland HCF Advisor, Ltd. ("Highland HCF") are reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims asserted by the Chapter 11 Trustee in the Highland Adversary. The Estate Claims against Highland HCF shall include all Estate Claims set forth in paragraph 2 above, including without limitation, the following:

(a) All such Claims against Highland HCF asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Highland Adversary;

(b) All such Claims against Highland HCF asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Trustee's Adversary;

(c) All such Claims and Defenses asserted by the Chapter 11 Trustee or Estate, or which could be asserted by the Chapter 11 Trustee or Estate, based on the facts or transactions alleged in any other adversary proceedings or Claim Objections filed by the Chapter 11 Trustee or Estate;

(d) All Avoidance Actions against Highland HCF;

(e) All Claims for breach of fiduciary duty or duty of loyalty or due care owed to the Debtors or Chapter 11 Trustee;

(f) All Claims for aiding and/or abetting breach of fiduciary duty, breach of duty loyalty or due care, or any other unlawful act;

(g) All Clams for usurpation of a corporate opportunity belonging to either of the Debtors, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs;

(h) All Claims against Highland HCF for the turnover of Estate Assets, including Estate property that the Chapter 11 Trustee may use, sell or lease under section 363 of the Bankruptcy Code including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate, as well as the turnover of any books, documents, records and papers relating to the Debtors' property or financial affairs;

(i) All Claims against Highland HCF for the unauthorized use of Estate Assets including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate;

(j) All Claims, rights or remedies for Equitable Subordination or Recharacterization of any Claim by Highland HCF against the Debtors, Chapter 11 Trustee, or

Estate;

(k) All Claims based on alter ego or rights to pierce the corporate veil of Highland HCF as to any Person, including as against any Affiliates of Highland HCF or Highland, or any other officers, directors, equity interest holders, or Persons otherwise in control of Highland HCF; and,

(l) All Claims for conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act.

6. Highland CLO Management, Ltd. Claims. All Estate Claims against Highland CLO Management, Ltd. ("Highland CLOM") are reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims asserted by the Chapter 11 Trustee in the Highland Adversary. The Estate Claims against Highland CLOM shall include all Estate Claims set forth in paragraph 2 above, including without limitation the following:

(a) All such Claims against Highland CLOM asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Highland Adversary;

(b) All such Claims against Highland CLOM asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Trustee's Adversary;

(c) All such Claims and Defenses asserted by the Chapter 11 Trustee or Estate, or which could be asserted by the Chapter 11 Trustee or Estate, based on the facts or transactions alleged in any other adversary proceedings or Claim Objections filed by the Chapter 11 Trustee or Estate;

(d) All Avoidance Actions against Highland CLOM;

(e) All Claims for breach of fiduciary duty or duty of loyalty or due care owed to the Debtors or Chapter 11 Trustee;

(f) All Claims for aiding and/or abetting breach of fiduciary duty, breach of duty loyalty or due care, or any other unlawful act;

(g) All Clams for usurpation of a corporate opportunity belonging to either of the Debtors, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs;

(h) All Claims against Highland CLOM for the turnover of Estate Assets, including Estate property that the Chapter 11 Trustee may use, sell or lease under section 363 of the Bankruptcy Code including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate, as well as the turnover of any books, documents, records and papers relating to the Debtors' property or financial affairs;

(i) All Claims against Highland CLOM for the unauthorized use of Estate Assets including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate;

(j) All Claims, rights or remedies for Equitable Subordination or Recharacterization of any Claim by Highland CLOM against the Debtors, Chapter 11 Trustee, or Estate;

(k) All Claims based on alter ego or rights to pierce the corporate veil of Highland CLOM as to any Person, including as against any Affiliates of Highland CLOM or Highland, or any other officers, directors, equity interest holders, or Persons otherwise in control of Highland CLOM; and,

(l) All Claims for conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act.

7. CLO Holdco, Ltd. Claims. All Estate Claims against CLO Holdco, Ltd. ("CLO Holdco") are reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims asserted by the Chapter 11 Trustee in the Trustee's Adversary. The Estate Claims against CLO Holdco shall include all Estate Claims set forth in paragraph 2 above, including without limitation, the following:

(a) All such Claims against CLO Holdco asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Highland Adversary;

(b) All such Claims against CLO Holdco asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Trustee's Adversary;

(c) All such Claims and Defenses asserted by the Chapter 11 Trustee or Estate, or which could be asserted by the Chapter 11 Trustee or Estate, based on the facts or transactions alleged in any other adversary proceedings or Claim Objections filed by the Chapter 11 Trustee or Estate;

(d) All Avoidance Actions against CLO Holdco;

(e) All Claims for breach of fiduciary duty or duty of loyalty or due care owed to the Debtors or Chapter 11 Trustee;

(f) All Claims for aiding and/or abetting breach of fiduciary duty, breach of duty loyalty or due care, or any other unlawful act;

(g) All Clams for usurpation of a corporate opportunity belonging to either of the Debtors, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs;

(h) All Claims against CLO Holdco for the turnover of Estate Assets, including Estate property that the Chapter 11 Trustee may use, sell or lease under section 363 of the Bankruptcy Code including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate, as well as the turnover of any books, documents, records and papers relating to the Debtors' property or financial affairs;

(i) All Claims against CLO Holdco for the unauthorized use of Estate Assets including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate;

(j) All Claims, rights or remedies for Equitable Subordination or Recharacterization of any Claim by Highland against the Debtors, Chapter 11 Trustee, or Estate;

(k) All Claims based on alter ego or rights to pierce the corporate veil of CLO Holdco as to any Person, including as against any Affiliates of CLO Holdco or Highland, or any other officers, directors, equity interest holders, or Persons otherwise in control of CLO Holdco; and,

(l) All Claims for conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act.

8. Neutra, Ltd. Claims. All Estate Claims against Neutra, Ltd. ("Neutra") are reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims asserted by the Chapter 11 Trustee in the Trustee's Adversary. The Estate Claims against Neutra shall include all Estate Claims set forth in paragraph 2 above, including without limitation the following:

(a) All such Claims against Neutra asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Highland Adversary;

(b) All such Claims against Neutra asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Trustee's Adversary;

(c) All such Claims and Defenses asserted by the Chapter 11 Trustee or Estate, or which could be asserted by the Chapter 11 Trustee or Estate, based on the facts or transactions alleged in any other adversary proceedings or Claim Objections filed by the Chapter 11 Trustee or Estate;

(d) All Avoidance Actions against Neutra;

(e) All Claims for breach of fiduciary or duty of loyalty or due care owed to the Debtors or Chapter 11 Trustee;

(f) All Claims for aiding and/or abetting breach of fiduciary duty, breach of duty loyalty or due care, or any other unlawful act;

(g) All Clams for usurpation of a corporate opportunity belonging to either of the Debtors, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs;

(h) All Claims against Neutra for the turnover of Estate Assets, including Estate property that the Chapter 11 Trustee may use, sell or lease under section 363 of the Bankruptcy Code including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate, as well as the turnover of any books, documents, records and papers relating to the Debtors' property or financial affairs;

(i) All Claims against Neutra for the unauthorized use of Estate Assets

including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate;

(j) All Claims, rights or remedies for Equitable Subordination or Recharacterization of any Claim by Neutra against the Debtors, Chapter 11 Trustee, or Estate;

(k) All Claims based on alter ego or rights to pierce the corporate veil of Acis LP as to any Person, including as against Neutra, Highland, or any Affiliates thereof, James D. Dondero, Mark K. Okada, or any other officers, directors, equity interest holders, or Persons otherwise in control of Acis LP;

(l) All Claims based on alter ego or rights to pierce the corporate veil of Neutra as to any Person, including as against any Affiliates of Neutra or Highland, or any other officers, directors, equity interest holders, or Persons otherwise in control of Neutra; and,

(m) All Claims for conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act.

9. Claims against Issuers, Co-Issuers and Indenture Trustee. All Estate Claims against CLO-3, CLO-4, CLO-5, and CLO-6 (collectively, the "Issuers"), Acis CLO 2014-3 LLC, Acis CLO 2014-4 LLC, Acis CLO 2014-5 LLC, and Acis CLO 2015-6 LLC (collectively, the "Co-Issuers"), and the Indenture Trustee are reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims asserted by the Chapter 11 Trustee in the Trustee's Adversary. The Estate Claims against the Issuers, Co-Issuers and/or Indenture Trustee shall include all Estate Claims set forth in paragraph 2 above, including without limitation the following:

(a) All such Claims against the Issuers, Co-Issuers, and/or Indenture Trustee asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Highland Adversary;

(b) All such Claims against the Issuers, Co-Issuers, and/or Indenture Trustee asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Trustee's Adversary;

(c) All such Claims and Defenses asserted by the Chapter 11 Trustee or Estate, or which could be asserted by the Chapter 11 Trustee or Estate, based on the facts or transactions alleged in any other adversary proceedings or Claim Objections filed by the Chapter 11 Trustee or Estate;

(d) All Avoidance Actions against the Issuers, Co-Issuers and/or Indenture Trustee;

(e) All Claims for breach of the Indentures, PMAs or any other agreements between Acis LP and the Issuers, Co-Issuers, and/or Indenture Trustee;

(f) All Claims for breach of fiduciary duty or duty of loyalty or due care owed to the Debtors or Chapter 11 Trustee;

(g) All Claims for aiding and/or abetting breach of fiduciary duty, breach of duty loyalty or due care, or any other unlawful act;

(h) All Clams for usurpation of a corporate opportunity belonging to either of the Debtors, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs;

(i) All Claims against the Issuers, Co-Issuers and/or Indenture Trustee for the turnover of Estate Assets, including Estate property that the Chapter 11 Trustee may use, sell or lease under section 363 of the Bankruptcy Code including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate, as well as the turnover of any books, documents, records and papers relating to the Debtors' property or financial affairs;

(j) All Claims against the Issuers, Co-Issuers and/or Indenture Trustee for the unauthorized use of Estate Assets including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate;

(k) All Claims, rights or remedies for Equitable Subordination or Recharacterization of any Claim by the Issuers or Co-Issuers against the Debtors, Chapter 11 Trustee, or Estate; and,

(l) All Claims for conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act.

10. Claims Against Any Affiliates of Highland, HCLOF, Highland HCF, Highland CLOM, CLO Holdco, Neutra, and Their Respective Affiliates. All Estate Claims against any Affiliates of Highland, HCLOF, Highland HCF, Highland CLOM, CLO Holdco, Neutra, and Their Respective Affiliates (collectively, the "Affiliates" and each, an "Affiliate") are reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims asserted by the Chapter 11 Trustee in the Highland Adversary and the Trustee's Adversary. The Estate Claims against such Affiliates shall include all Estate Claims set forth in paragraph 2 above, including without limitation the following:

(a) All such Claims against any Affiliate asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Highland Adversary;

(b) All such Claims against any Affiliate asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Trustee's Adversary;

(c) All such Claims and Defenses asserted by the Chapter 11 Trustee or Estate, or which could be asserted by the Chapter 11 Trustee or Estate, based on the facts or transactions alleged in any other adversary proceedings or Claim Objections filed by the Chapter 11 Trustee or Estate;

(d) All Avoidance Actions against any Affiliate;

(e) All Claims for breach of fiduciary duty or duty of loyalty or due care owed to the Debtors or Chapter 11 Trustee;

(f) All Claims for aiding and/or abetting breach of fiduciary duty, breach of duty loyalty or due care, or any other unlawful act;

(g) All Clams for usurpation of a corporate opportunity belonging to either of

the Debtors, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs;

(h) All Claims against any Affiliate for the turnover of Estate Assets, including Estate property that the Chapter 11 Trustee may use, sell or lease under section 363 of the Bankruptcy Code including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate, as well as the turnover of any books, documents, records and papers relating to the Debtors' property or financial affairs;

(i) All Claims against any Affiliate for the unauthorized use of Estate Assets including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate;

(j) All Claims, rights or remedies for Equitable Subordination or Recharacterization of any Claim by any Affiliate against the Debtors, Chapter 11 Trustee, or Estate;

(k) All Claims based on alter ego or rights to pierce the corporate veil of Acis LP as to any Person, including as against Highland, HCLOF, Highland HCF, Highland CLOM, CLO Holdco, Neutra, the Affiliates, James D. Dondero, Mark K. Okada, or any other officers, directors, equity interest holders, or Persons otherwise in control of Acis LP;

(l) All Claims based on alter ego or rights to pierce the corporate veil of any Affiliate as to any Person, including as against Highland, HCLOF, Highland HCF, Highland CLOM, CLO Holdco, Neutra, the Affiliates, James D. Dondero, Mark K. Okada, or any officers, directors, equity interest holders, or Persons otherwise in control of any Affiliates; and,

(m) All Claims for conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act.

11. Dondero Claims. All Estate Claims as defined in paragraph 2 above against James D. Dondero, individually, are hereby reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims against James D. Dondero for fraud, constructive fraud, breach of fiduciary duty, breach of duty of loyalty or due care, aiding and abetting breach of fiduciary duty, aiding and abetting breach of duty of loyalty or due care, self-dealing, ultra vires, conversion, usurpation of corporate opportunity, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs, tortious interference, including in relation to Universal-Investment-Luxembourg S.A. and BayVK R2 Lux S.A., SICAV-FIS, conflict of interest, negligence, gross negligence, all Avoidance Actions, breach of contract, breach of the Shared Services Agreement, breach of the Sub-Advisory Agreement, breach of the Debtors' limited partnership agreement or limited liability company agreement, conspiracy to commit any unlawful act, aiding and abetting any unlawful act, and assisting, encouraging, and/or participating in any unlawful act, as well as any Claim to pierce the corporate veil of any entity to hold James D. Dondero individually liable.

12. Okada Claims. All Estate Claims as defined in paragraph 2 above against Mark K. Okada, individually, are hereby reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims against Mark K. Okada for fraud, constructive fraud, breach of fiduciary duty, breach of duty of loyalty or due care, aiding and abetting breach of fiduciary duty, self-dealing, ultra vires, conversion, usurpation of corporate opportunity, including in relation to Acis CLO 2017-7, Ltd and any other

Acis CLOs, tortious interference, including in relation to Universal-Investment-Luxembourg S.A. and BayVK R2 Lux S.A., SICAV-FIS, conflict of interest, negligence, gross negligence, all Avoidance Actions, breach of contract, breach of the Shared Services Agreement, breach of the Sub-Advisory Agreement, breach of the Debtors' limited partnership agreement or limited liability company agreement, conspiracy to commit any unlawful act, aiding and abetting any unlawful act, and assisting, encouraging, and participating in any unlawful act, as well as any Claim to pierce the corporate veil of any entity to hold Mark K. Okada individually liable.

13. Preference Claims. All Avoidance Actions pursuant to section 547 of the Bankruptcy Code against any Person are hereby reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor for any payment made to any Person by either of the Debtors within ninety (90) days of the Petition Date (which was January 30, 2018), or made by either of the Debtors to any insider within one (1) year of the Petition Date. A non-exhaustive list of Persons who are believed to have received payments from either of the Debtors during the 90-day preference period, and the one-year preference period for Insiders, is attached to this **Exhibit "A"** as **Schedule "1"**. The Plan reserves, retains and preserves for the benefit of the Estate and Reorganized Debtor all potential Claims arising out of or relating to the transfers reflected in **Schedule "1"**, including all Avoidance Actions pursuant to section 547 of the Bankruptcy Code. All rights and remedies are also reserved. retained and preserved with respect to the transfers reflected in **Schedule "1"** pursuant to section 550 of the Bankruptcy Code.

Schedule "1" reflects transfers made by the Debtors during the 90 days prior to the Petition Date and transfers made by the Debtors to any insiders within one (1) year of the Petition Date. While the Plan reserves, retains and preserves all Avoidance Actions relating to the transfers reflected in **Schedule "1"**, the Chapter 11 Trustee recognizes that certain of these transfers may not constitute a preferential transfer pursuant to section 547(b) of the Bankruptcy Code as a transfer made in the ordinary course of business transactions or based upon new value subsequently given by the transferee. Consequently, the listing of a payment on **Schedule "1"** does not necessarily mean that a transferee will ever be sued to avoid and recover the payment, the transfer, or the value thereof, but only that the Plan reserves, retains and preserves all rights (including Avoidance Actions) as to that payment.

14. Claims Against Officers, Managers and Members. All Estate Claims as defined in paragraph 2 above are hereby reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor against all present and past officers, employees, members and managers of the Debtors, including all such Estate Causes of Action based on breach of fiduciary duty, aiding and abetting breach of fiduciary duty, breach of duty of loyalty or due care, aiding and abetting breach of duty of loyalty or due care, self-dealing, usurpation of corporate opportunity, gross negligence or conspiracy. Without limiting the generality of the foregoing, this shall include all D&O Claims as against any present or former officer, director, employee, member, manager, or partner.

15. Claims Against Former Attorneys and Law Firms. All Estate Claims as defined in paragraph 2, above, including Claims for breach of any fiduciary duty or duty of loyalty or due care, conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act, including knowingly aiding, abetting, or assisting with a fraudulent transfer to avoid paying a judgment, negligent or fraudulent misrepresentation, vicarious liability, and respondeat superior, as well as all Claims for legal or professional malpractice, are hereby reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor against all law firms and attorneys who and which

rendered legal services to the Debtors on a prepetition basis including, but not limited to, the following:

(a) Cole Schotz, P.C.

(b) Michael D. Warner

(c) Jacob Frumkin

(d) Warren A. Usatine

(e) McKool Smith

(f) Gary Cruciani

(g) Michael P. Fritz

(h) Carson D. Young

(i) Nicholas Matthews

(j) Lackey Hershman, LLP

(k) Stinson Leonard Street LLP

(l) Jamie R. Welton

(m) Paul B. Lackey

(n) Michael Aigen

(o) Roger L. Mandel

(p) Abrams & Bayliss, LLP

(q) Kevin G. Abrams

(r) A. Thompson Bayliss

(s) Jones Day

(t) Hilda C. Galvan

(u) Michael Weinberg

(v) Reid Collins & Tsai, LLP

(w) Lisa Tsai

(x) Stanton, LLP

(y) James M. Stanton

(z) Hunton Andrews Kurth

(aa) Marc Katz

(bb) Greg Waller

(cc) any other law firm or attorney who may be so named at a later date by the Reorganized Debtor.

16. Claims Against Officers, Directors, Employees, Members, and Managers, of Highland, HCLOF, Highland HCF, Highland CLOM, CLO Holdco, Neutra, and Their Respective Affiliates. In addition to the foregoing, all Estate Claims as defined in paragraph 2 above are hereby reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor against all present and past officers, directors, employees, members and managers of Highland, HCLOF, Highland HCF, Highland CLOM, and their respective Affiliates, including all such Estate Causes of Action based on fraud, constructive fraud, breach of fiduciary duty, breach of duty of loyalty or due care, aiding and abetting breach of fiduciary duty, aiding and abetting breach of duty of loyalty or due care, self-dealing, ultra vires, conversion, usurpation of corporate opportunity, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs, tortious interference, including in relation to Universal-Investment-Luxembourg S.A. and BayVK R2 Lux S.A., SICAV-FIS, conflict of interest, negligence, gross negligence, all Avoidance Actions, breach of contract, breach of the Shared Services Agreement, breach of the Sub-Advisory Agreement, breach of the Debtors' limited partnership agreement or limited liability company agreement, conspiracy to commit any unlawful act, aiding and abetting any unlawful act, and assisting, encouraging, and/or participating in any unlawful act. Such present and past officers, directors, employees, members and managers of Highland, HCLOF, Highland HCF, Highland CLOM, and their respective Affiliates include, but are not limited to, the following Persons:

(a) William Scott;

(b) Heather Bestwick;

(c) Scott Ellington

(d) Isaac Leventon

(e) Jean Paul Sevilla

(f) Hunter Covitz

(g) The Dugaboy Investment Trust

(h) Nancy Dondero, Trustee of the Dugaboy Trust

(i) Grant Scott

(j) Any other Person who may be so named at a later date by the Reorganized Debtor.

17. Counterclaims. All Estate Claims as defined in paragraph 2 above are reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor both as a basis for an affirmative recovery against the Person against whom such Claims are asserted and as a counterclaim or offset against any Person who asserts a Claim against the Estate or Reorganized Debtor.

18. Piercing the Corporate Veil. With respect to all Estate Claims against any Person, all rights to pierce or ignore the corporate veil are hereby reserved, retained and preserved for the benefit of the Estate and the Reorganized Debtor. Without limiting the generality of the foregoing, this shall include: (a) any right to pierce the corporate veil, including reverse piercing, on any theory or basis, including alter ego or any theory of sham to perpetrate a fraud, and (b) any Claim or basis to pierce the corporate veil of any entity with respect to establishing personal liability against James D. Dondero or Mark K. Okada.

19. Avoidance Actions. All Avoidance Actions are hereby reserved, retained and preserved as to all Persons. The reservation, retention and preservation of such Avoidance Actions shall include the reservation, retention and preservation for the benefit of the Estate and Reorganized Debtor of all rights and remedies pursuant to section 550 of the Bankruptcy Code.

20. Estate Defenses. All Estate Defenses are hereby reserved, retained and preserved in favor of the Estate and Reorganized Debtor as against any Person asserting any Claim against the Estate. This includes asserting all Estate Claims as an offset to, or counterclaim or right of recoupment against, any Person asserting a Claim against the Estate. All defenses and affirmative defenses pursuant to applicable law are hereby reserved, retained and preserved for the benefit of the Estate and the Reorganized Debtor, including without limitation, accord and satisfaction, assumption of risk, contributory negligence, duress, estoppel, failure of consideration, fraud, illegality, laches, license, payment, release, *res judicata*, collateral estoppel, statute of frauds, statute of limitations or repose, discovery rule, adverse domination doctrine or similar doctrines, set off, recoupment, waiver, and all other defenses to Claims under the Bankruptcy Code, including under sections 502(b)(4) and 502(d).

21. Equitable Subordination. All rights or remedies for Equitable Subordination are hereby reserved, retained and preserved in favor of the Estate and Reorganized Debtor against any Person asserting any Claim against the Estate, including all such rights or remedies pursuant to section 510(c) of the Bankruptcy Code. Without limiting the generality of the foregoing, this shall include all rights and remedies to Equitable Subordination as to any Claim asserted by Highland, any Affiliates of Highland, or any officers, directors, employees or equity interest owners of the Debtors, Highland, or any Affiliates thereof.

22. Recharacterization. All rights or remedies to recharacterize any Claim as an equity interest in either of the Debtors are hereby reserved, retained and preserved in favor of the Estate and Reorganized Debtor against any Person asserting any Claim against the Estate. Without limiting the generality of the foregoing, this shall include all rights and remedies to recharacterize any Claim asserted by Highland, any Affiliates of Highland, or any officers, directors, employees or equity interest owners of the Debtors, Highland, or any Affiliates thereof.

Exhibit “2”

[Redline – Plan Exhibit “A”]

EXHIBIT "A"
to
Joint Plan for Acis Capital Management, LP and Acis Capital Management GP, LLC

1. Defined Terms. This Exhibit "A" constitutes an integral part of the Plan of which it is a part. Defined terms in the Plan are to be given the same meaning in this Exhibit "A". The rules of construction set forth in Article I.B. of the Plan shall likewise apply to this Exhibit "A".

2. Estate Claims Reserved, Retained and Preserved. All Estate Claims are hereby reserved, retained and preserved, and shall all be transferred to, and vested in, the Reorganized Debtor pursuant to this Plan, and shall include without limitation all of the Estate Claims described below. In reserving, retaining, and preserving Estate Claims against any named Person or category of Persons, it is the intent of this Plan to so reserve, retain, and preserve any and all Estate Claim against each such Person or category of Persons, including all such Estate Claims pursuant to any applicable common law, based on any contract or agreement or based upon any law, statute or regulation of any political entity, including the United States and any state or political subdivision thereof, as well as all applicable remedies, whether legal or equitable. Without limiting the generality of the foregoing, the reservation, retention, and preservation of Estate Claims against any Person, and the term "Estate Claims," shall encompass all Estate Claims against any such Person, including without limitation, all such Estate Claims for breach of contract, all rights to enforce any contract, any form of estoppel, fraud, constructive fraud, abuse of process, malicious prosecution, defamation, libel, slander, conversion, trespass, intentional infliction of emotional distress or other harm, negligence, gross negligence, negligent misrepresentation, fraudulent misrepresentation, vicarious liability, respondeat superior, breach of any duty owed under either applicable law or any contract, breach of any fiduciary duty or duty of loyalty or due care, aiding and/or abetting breach of fiduciary duty, aiding and/or abetting breach of duty of loyalty or due care, alter ego, veil piercing, self-dealing, usurpation of corporate opportunity, ultra vires, turnover of Estate Assets, unauthorized use of Estate Assets, including intellectual property rights or Assets owned by the Debtors or Chapter 11 Trustee, quantum merit, tortious interference, duress, unconscionability, undue influence, and unjust enrichment, as well as any cause of action for conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act, or claims arising from or relating to the filing of the involuntary bankruptcy petitions against the Debtors.

3. Highland Claims. All Estate Claims against Highland are reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims asserted by the Chapter 11 Trustee in Adversary Proceeding No. 18-03078-sgj (the "Highland Adversary") and Adversary Proceeding No. 18-03212-sgj (the "Trustee's Adversary"). The Estate Claims against Highland shall include all Estate Claims set forth in paragraph 2 above, including without limitation, the following:

(a) All such Claims asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Highland Adversary;

(b) All such Claims asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Trustee's Adversary;

(c) All such Claims and Defenses asserted by the Chapter 11 Trustee or Estate, or which could be asserted by the Chapter 11 Trustee or Estate, based on the facts or transactions alleged in any other adversary proceedings or Claim Objections filed by the

Chapter 11 Trustee or Estate;

(d) All Avoidance Actions against Highland, including any claims to avoid and recover amounts transferred by the Debtors to Highland under the Shared Services Agreement or Sub-Advisory Agreement;

(e) All Claims for breach of the Shared Services Agreement or Sub-Advisory Agreement;

(f) All Claims against Highland for amounts paid by the Debtors to Highland under the Shared Services Agreement and Sub-Advisory Agreement, including any Claim that Highland overcharged Acis LP for services under such agreements, charged excessive fees in violation of Acis LP's limited partnership agreement and/or Acis GP's limited liability company agreement, and/or that the Shared Services Agreement and Sub-Advisory Agreement or any related or predecessor agreements are void or voidable based on ultra vires or any other theories of avoidance and recovery, including turnover, conversion and Avoidance Actions under the Bankruptcy Code;

(g) All Claims for breach of the PMAs or the Indentures;

(h) All Claims for breach of fiduciary duty or duty of loyalty or due care owed to the Debtors or Chapter 11 Trustee;

(i) All Claims for aiding and/or abetting breach of fiduciary duty, breach of duty loyalty or due care, or any other unlawful act;

(j) All Clams for usurpation of a corporate opportunity belonging to either of the Debtors, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs;

(k) All claims for tortious interference, including in relation to Universal-Investment-Luxembourg S.A. and BayVK R2 Lux S.A., SICAV-FIS;

(l) All Claims against Highland for the turnover of Estate Assets, including Estate property that the Chapter 11 Trustee may use, sell or lease under section 363 of the Bankruptcy Code including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate, as well as the turnover of any books, documents, records and papers relating to the Debtors' property or financial affairs;

(m) All Claims against Highland for the unauthorized use of Estate Assets including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate;

(n) All Claims, rights or remedies for Equitable Subordination or Recharacterization of any Claim by Highland against the Debtors, Chapter 11 Trustee, or Estate;

(o) All Claims based on alter ego or rights to pierce the corporate veil of Acis LP as to any Person, including as against Highland or any Affiliates thereof, James D. Dondero, Mark K. Okada, or any other officers, directors, equity interest holders, or Persons otherwise in control of Acis LP;

(p) All Claims based on alter ego or rights to pierce the corporate veil of

Highland as to any Person, including as against any Affiliates of Highland, James D. Dondero, Mark K. Okada, or any other officers, directors, equity interest holders, or Persons otherwise in control of Highland, and,

(q) All Claims for conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act.

4. HCLOF Claims. All Estate Claims against HCLOF are reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims asserted by the Chapter 11 Trustee in the Highland Adversary and the Trustee's Adversary. The Estate Claims against HCLOF shall include all Estate Claims set forth in paragraph 2 above, including without limitation, the following:

(a) All such Claims against HCLOF asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Highland Adversary;

(b) All such Claims against HCLOF asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Trustee's Adversary;

(c) All such Claims and Defenses asserted by the Chapter 11 Trustee or Estate, or which could be asserted by the Chapter 11 Trustee or Estate, based on the facts or transactions alleged in any other adversary proceedings or Claim Objections filed by the Chapter 11 Trustee or Estate;

(d) All Avoidance Actions against HCLOF;

(e) All Claims for breach of the PMAs or the Indentures;

(f) All Claims for breach of fiduciary duty or duty of loyalty or due care owed to the Debtors or Chapter 11 Trustee;

(g) All Claims for aiding and/or abetting breach of fiduciary duty, breach of duty loyalty or due care, or any other unlawful act;

(h) All Clams for usurpation of a corporate opportunity belonging to either of the Debtors, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs;

(i) All Claims against HCLOF for the turnover of Estate Assets, including Estate property that the Chapter 11 Trustee may use, sell or lease under section 363 of the Bankruptcy Code including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate, as well as the turnover of any books, documents, records and papers relating to the Debtors' property or financial affairs;

(j) All Claims against HCLOF for the unauthorized use of Estate Assets including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate;

(k) All Claims, rights or remedies for Equitable Subordination or Recharacterization of any Claim by HCLOF against the Debtors, Chapter 11 Trustee, or Estate;

(l) All Claims based on alter ego or rights to pierce the corporate veil of HCLOF as to any Person, including as against any Affiliates of HCLOF or Highland, William Scott, Heather Bestwick, or any other officers, directors, equity interest holders, or Persons otherwise in control of HCLOF; and,

(m) All Claims for conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act.

5. Highland HCF Advisor, Ltd. Claims. All Estate Claims against Highland HCF Advisor, Ltd. ("Highland HCF") are reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims asserted by the Chapter 11 Trustee in the Highland Adversary. The Estate Claims against Highland HCF shall include all Estate Claims set forth in paragraph 2 above, including without limitation, the following:

(a) All such Claims against Highland HCF asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Highland Adversary;

(b) All such Claims against Highland HCF asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Trustee's Adversary;

(c) All such Claims and Defenses asserted by the Chapter 11 Trustee or Estate, or which could be asserted by the Chapter 11 Trustee or Estate, based on the facts or transactions alleged in any other adversary proceedings or Claim Objections filed by the Chapter 11 Trustee or Estate;

(d) All Avoidance Actions against Highland HCF;

(e) All Claims for breach of fiduciary duty or duty of loyalty or due care owed to the Debtors or Chapter 11 Trustee;

(f) All Claims for aiding and/or abetting breach of fiduciary duty, breach of duty loyalty or due care, or any other unlawful act;

(g) All Clams for usurpation of a corporate opportunity belonging to either of the Debtors, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs;

(h) All Claims against Highland HCF for the turnover of Estate Assets, including Estate property that the Chapter 11 Trustee may use, sell or lease under section 363 of the Bankruptcy Code including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate, as well as the turnover of any books, documents, records and papers relating to the Debtors' property or financial affairs;

(i) All Claims against Highland HCF for the unauthorized use of Estate Assets including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate;

(j) All Claims, rights or remedies for Equitable Subordination or Recharacterization of any Claim by Highland HCF against the Debtors, Chapter 11 Trustee, or

Estate;

(k) All Claims based on alter ego or rights to pierce the corporate veil of Highland HCF as to any Person, including as against any Affiliates of Highland HCF or Highland, or any other officers, directors, equity interest holders, or Persons otherwise in control of Highland HCF; and,

(l) All Claims for conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act.

6. Highland CLO Management, Ltd. Claims. All Estate Claims against Highland CLO Management, Ltd. ("Highland CLOM") are reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims asserted by the Chapter 11 Trustee in the Highland Adversary. The Estate Claims against Highland CLOM shall include all Estate Claims set forth in paragraph 2 above, including without limitation the following:

(a) All such Claims against Highland CLOM asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Highland Adversary;

(b) All such Claims against Highland CLOM asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Trustee's Adversary;

(c) All such Claims and Defenses asserted by the Chapter 11 Trustee or Estate, or which could be asserted by the Chapter 11 Trustee or Estate, based on the facts or transactions alleged in any other adversary proceedings or Claim Objections filed by the Chapter 11 Trustee or Estate;

(d) All Avoidance Actions against Highland CLOM;

(e) All Claims for breach of fiduciary duty or duty of loyalty or due care owed to the Debtors or Chapter 11 Trustee;

(f) All Claims for aiding and/or abetting breach of fiduciary duty, breach of duty loyalty or due care, or any other unlawful act;

(g) All Clams for usurpation of a corporate opportunity belonging to either of the Debtors, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs;

(h) All Claims against Highland CLOM for the turnover of Estate Assets, including Estate property that the Chapter 11 Trustee may use, sell or lease under section 363 of the Bankruptcy Code including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate, as well as the turnover of any books, documents, records and papers relating to the Debtors' property or financial affairs;

(i) All Claims against Highland CLOM for the unauthorized use of Estate Assets including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate;

(j) All Claims, rights or remedies for Equitable Subordination or Recharacterization of any Claim by Highland CLOM against the Debtors, Chapter 11 Trustee, or Estate;

(k) All Claims based on alter ego or rights to pierce the corporate veil of Highland CLOM as to any Person, including as against any Affiliates of Highland CLOM or Highland, or any other officers, directors, equity interest holders, or Persons otherwise in control of Highland CLOM; and,

(l) All Claims for conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act.

7. CLO Holdco, Ltd. Claims. All Estate Claims against CLO Holdco, Ltd. ("CLO Holdco") are reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims asserted by the Chapter 11 Trustee in the Trustee's Adversary. The Estate Claims against CLO Holdco shall include all Estate Claims set forth in paragraph 2 above, including without limitation, the following:

(a) All such Claims against CLO Holdco asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Highland Adversary;

(b) All such Claims against CLO Holdco asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Trustee's Adversary;

(c) All such Claims and Defenses asserted by the Chapter 11 Trustee or Estate, or which could be asserted by the Chapter 11 Trustee or Estate, based on the facts or transactions alleged in any other adversary proceedings or Claim Objections filed by the Chapter 11 Trustee or Estate;

(d) All Avoidance Actions against CLO Holdco;

(e) All Claims for breach of fiduciary duty or duty of loyalty or due care owed to the Debtors or Chapter 11 Trustee;

(f) All Claims for aiding and/or abetting breach of fiduciary duty, breach of duty loyalty or due care, or any other unlawful act;

(g) All Clams for usurpation of a corporate opportunity belonging to either of the Debtors, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs;

(h) All Claims against CLO Holdco for the turnover of Estate Assets, including Estate property that the Chapter 11 Trustee may use, sell or lease under section 363 of the Bankruptcy Code including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate, as well as the turnover of any books, documents, records and papers relating to the Debtors' property or financial affairs;

(i) All Claims against CLO Holdco for the unauthorized use of Estate Assets including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate;

(j) All Claims, rights or remedies for Equitable Subordination or Recharacterization of any Claim by Highland against the Debtors, Chapter 11 Trustee, or Estate;

(k) All Claims based on alter ego or rights to pierce the corporate veil of CLO Holdco as to any Person, including as against any Affiliates of CLO Holdco or Highland, or any other officers, directors, equity interest holders, or Persons otherwise in control of CLO Holdco; and,

(l) All Claims for conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act.

8. Neutra, Ltd. Claims. All Estate Claims against Neutra, Ltd. ("Neutra") are reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims asserted by the Chapter 11 Trustee in the Trustee's Adversary. The Estate Claims against Neutra shall include all Estate Claims set forth in paragraph 2 above, including without limitation the following:

(a) All such Claims against Neutra asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Highland Adversary;

(b) All such Claims against Neutra asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Trustee's Adversary;

(c) All such Claims and Defenses asserted by the Chapter 11 Trustee or Estate, or which could be asserted by the Chapter 11 Trustee or Estate, based on the facts or transactions alleged in any other adversary proceedings or Claim Objections filed by the Chapter 11 Trustee or Estate;

(d) All Avoidance Actions against Neutra;

(e) All Claims for breach of fiduciary or duty of loyalty or due care owed to the Debtors or Chapter 11 Trustee;

(f) All Claims for aiding and/or abetting breach of fiduciary duty, breach of duty loyalty or due care, or any other unlawful act;

(g) All Clams for usurpation of a corporate opportunity belonging to either of the Debtors, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs;

(h) All Claims against Neutra for the turnover of Estate Assets, including Estate property that the Chapter 11 Trustee may use, sell or lease under section 363 of the Bankruptcy Code including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate, as well as the turnover of any books, documents, records and papers relating to the Debtors' property or financial affairs;

(i) All Claims against Neutra for the unauthorized use of Estate Assets

including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate;

(j) All Claims, rights or remedies for Equitable Subordination or Recharacterization of any Claim by Neutra against the Debtors, Chapter 11 Trustee, or Estate;

(k) All Claims based on alter ego or rights to pierce the corporate veil of Acis LP as to any Person, including as against Neutra, Highland, or any Affiliates thereof, James D. Dondero, Mark K. Okada, or any other officers, directors, equity interest holders, or Persons otherwise in control of Acis LP;

(l) All Claims based on alter ego or rights to pierce the corporate veil of Neutra as to any Person, including as against any Affiliates of Neutra or Highland, or any other officers, directors, equity interest holders, or Persons otherwise in control of Neutra; and,

(m) All Claims for conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act.

9. Claims against Issuers, Co-Issuers and Indenture Trustee. All Estate Claims against CLO-3, CLO-4, CLO-5, and CLO-6 (collectively, the "Issuers"), Acis CLO 2014-3 LLC, Acis CLO 2014-4 LLC, Acis CLO 2014-5 LLC, and Acis CLO 2015-6 LLC (collectively, the "Co-Issuers"), and the Indenture Trustee are reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims asserted by the Chapter 11 Trustee in the Trustee's Adversary. The Estate Claims against the Issuers, Co-Issuers and/or Indenture Trustee shall include all Estate Claims set forth in paragraph 2 above, including without limitation the following:

(a) All such Claims against the Issuers, Co-Issuers, and/or Indenture Trustee asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Highland Adversary;

(b) All such Claims against the Issuers, Co-Issuers, and/or Indenture Trustee asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Trustee's Adversary;

(c) All such Claims and Defenses asserted by the Chapter 11 Trustee or Estate, or which could be asserted by the Chapter 11 Trustee or Estate, based on the facts or transactions alleged in any other adversary proceedings or Claim Objections filed by the Chapter 11 Trustee or Estate;

(d) All Avoidance Actions against the Issuers, Co-Issuers and/or Indenture Trustee;

(e) All Claims for breach of the Indentures, PMAs or any other agreements between Acis LP and the Issuers, Co-Issuers, and/or Indenture Trustee;

(f) All Claims for breach of fiduciary duty or duty of loyalty or due care owed to the Debtors or Chapter 11 Trustee;

(g) All Claims for aiding and/or abetting breach of fiduciary duty, breach of duty loyalty or due care, or any other unlawful act;

(h) All Clams for usurpation of a corporate opportunity belonging to either of the Debtors, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs;

(i) All Claims against the Issuers, Co-Issuers and/or Indenture Trustee for the turnover of Estate Assets, including Estate property that the Chapter 11 Trustee may use, sell or lease under section 363 of the Bankruptcy Code including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate, as well as the turnover of any books, documents, records and papers relating to the Debtors' property or financial affairs;

(j) All Claims against the Issuers, Co-Issuers and/or Indenture Trustee for the unauthorized use of Estate Assets including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate;

(k) All Claims, rights or remedies for Equitable Subordination or Recharacterization of any Claim by the Issuers or Co-Issuers against the Debtors, Chapter 11 Trustee, or Estate; and,

(l) All Claims for conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act.

10. ~~Highland Affiliate~~ Claims~~.~~ Against Any Affiliates of Highland, HCLOF, Highland HCF, Highland CLOM, CLO Holdco, Neutra, and Their Respective Affiliates. All Estate Claims against any Affiliates of Highland, HCLOF, Highland HCF, Highland CLOM, CLO Holdco, Neutra, and Their Respective Affiliates (collectively, the "Affiliates" and each, an "Affiliate") are reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims asserted by the Chapter 11 Trustee in the Highland Adversary and the Trustee's Adversary. The Estate Claims against ~~any~~such Affiliates ~~of Highland~~ shall include all Estate Claims set forth in paragraph 2 above, including without limitation the following:

(a) All such Claims against any ~~Highland~~ Affiliate asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Highland Adversary;

(b) All such Claims against any ~~Highland~~ Affiliate asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Trustee's Adversary;

(c) All such Claims and Defenses asserted by the Chapter 11 Trustee or Estate, or which could be asserted by the Chapter 11 Trustee or Estate, based on the facts or transactions alleged in any other adversary proceedings or Claim Objections filed by the Chapter 11 Trustee or Estate;

(d) All Avoidance Actions against any ~~Highland~~ Affiliate;

(e) All Claims for breach of fiduciary duty or duty of loyalty or due care owed to the Debtors or Chapter 11 Trustee;

(f) All Claims for aiding and/or abetting breach of fiduciary duty, breach of duty loyalty or due care, or any other unlawful act;

(g) All Clams for usurpation of a corporate opportunity belonging to either of the Debtors, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs;

(h) All Claims against any ~~Highland~~ Affiliate for the turnover of Estate Assets, including Estate property that the Chapter 11 Trustee may use, sell or lease under section 363 of the Bankruptcy Code including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate, as well as the turnover of any books, documents, records and papers relating to the Debtors' property or financial affairs;

(i) All Claims against any ~~Highland~~ Affiliate for the unauthorized use of Estate Assets including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate;

(j) All Claims, rights or remedies for Equitable Subordination or Recharacterization of any Claim by any ~~Highland~~ Affiliate against the Debtors, Chapter 11 Trustee, or Estate;

(k) All Claims based on alter ego or rights to pierce the corporate veil of Acis LP as to any Person, including as against Highland, HCLOF, Highland HCF, Highland CLOM, CLO Holdco, Neutra, ~~or any~~the Affiliates ~~thereof~~, James D. Dondero, Mark K. Okada, or any other officers, directors, equity interest holders, or Persons otherwise in control of Acis LP;

(l) All Claims based on alter ego or rights to pierce the corporate veil of any ~~Highland~~ Affiliate as to any Person, including as against ~~any other~~Highland, HCLOF, Highland HCF, Highland CLOM, CLO Holdco, Neutra, the Affiliates ~~of Highland~~ , James D. Dondero, Mark K. Okada, or any officers, directors, equity interest holders, or Persons otherwise in control of any ~~Highland~~ Affiliates; and,

(m) All Claims for conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act.

11. Dondero Claims. All Estate Claims as defined in paragraph 2 above against James D. Dondero, individually, are hereby reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims against James D. Dondero for fraud, constructive fraud, breach of fiduciary duty, breach of duty of loyalty or due care, aiding and abetting breach of fiduciary duty, aiding and abetting breach of duty of loyalty or due care, self-dealing, ultra vires, conversion, usurpation of corporate opportunity, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs, tortious interference, including in relation to Universal-Investment-Luxembourg S.A. and BayVK R2 Lux S.A., SICAV-FIS, conflict of interest, negligence, gross negligence, all Avoidance Actions, breach of contract, breach of the Shared Services Agreement, breach of the Sub-Advisory Agreement, breach of the Debtors' limited partnership agreement or limited liability company agreement, conspiracy to commit any unlawful act, aiding and abetting any unlawful act, and assisting, encouraging, and/or participating in any unlawful act, as well as any Claim to pierce the corporate veil of any entity to hold James D. Dondero individually liable.

12. Okada Claims. All Estate Claims as defined in paragraph 2 above against Mark K. Okada, individually, are hereby reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims against Mark K. Okada for fraud, constructive fraud, breach of fiduciary duty, breach of duty of loyalty or due

care, aiding and abetting breach of fiduciary duty, self-dealing, ultra vires, conversion, usurpation of corporate opportunity, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs, tortious interference, including in relation to Universal-Investment-Luxembourg S.A. and BayVK R2 Lux S.A., SICAV-FIS, conflict of interest, negligence, gross negligence, all Avoidance Actions, breach of contract, breach of the Shared Services Agreement, breach of the Sub-Advisory Agreement, breach of the Debtors' limited partnership agreement or limited liability company agreement, conspiracy to commit any unlawful act, aiding and abetting any unlawful act, and assisting, encouraging, and participating in any unlawful act, as well as any Claim to pierce the corporate veil of any entity to hold Mark K. Okada individually liable.

13. Preference Claims. All Avoidance Actions pursuant to section 547 of the Bankruptcy Code against any Person are hereby reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor for any payment made to any Person by either of the Debtors within ninety (90) days of the Petition Date (which was January 30, 2018), or made by either of the Debtors to any insider within one (1) year of the Petition Date. A non-exhaustive list of Persons who are believed to have received payments from either of the Debtors during the 90-day preference period, and the one-year preference period for Insiders, is attached to this **Exhibit "A"** as **Schedule "1"**. The Plan reserves, retains and preserves for the benefit of the Estate and Reorganized Debtor all potential Claims arising out of or relating to the transfers reflected in **Schedule "1"**, including all Avoidance Actions pursuant to section 547 of the Bankruptcy Code. All rights and remedies are also reserved. retained and preserved with respect to the transfers reflected in **Schedule "1"** pursuant to section 550 of the Bankruptcy Code.

Schedule "1" reflects transfers made by the Debtors during the 90 days prior to the Petition Date and transfers made by the Debtors to any insiders within one (1) year of the Petition Date. While the Plan reserves, retains and preserves all Avoidance Actions relating to the transfers reflected in **Schedule "1"**, the Chapter 11 Trustee recognizes that certain of these transfers may not constitute a preferential transfer pursuant to section 547(b) of the Bankruptcy Code as a transfer made in the ordinary course of business transactions or based upon new value subsequently given by the transferee. Consequently, the listing of a payment on **Schedule "1"** does not necessarily mean that a transferee will ever be sued to avoid and recover the payment, the transfer, or the value thereof, but only that the Plan reserves, retains and preserves all rights (including Avoidance Actions) as to that payment.

14. Claims Against Officers, Managers and Members. All Estate Claims as defined in paragraph 2 above are hereby reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor against all present and past officers, employees, members and managers of the Debtors, including all such Estate Causes of Action based on breach of fiduciary duty, aiding and abetting breach of fiduciary duty, breach of duty of loyalty or due care, aiding and abetting breach of duty of loyalty or due care, self-dealing, usurpation of corporate opportunity, gross negligence or conspiracy. Without limiting the generality of the foregoing, this shall include all D&O Claims as against any present or former officer, director, employee, member, manager, or partner.

15. Claims Against Former Attorneys and Law Firms. All Estate Claims as defined in paragraph 2, above, including Claims for breach of any fiduciary duty or duty of loyalty or due care, conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act, including knowingly aiding, abetting, or assisting with a fraudulent transfer to avoid paying a judgment, negligent or fraudulent misrepresentation, vicarious liability, and respondeat superior, as well as all Claims

for legal or professional malpractice, are hereby reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor against all law firms and attorneys who and which rendered legal services to the Debtors on a prepetition basis including, but not limited to, the following:

(a) Cole Schotz, P.C.

(b) Michael D. Warner

(c) Jacob Frumkin

(d) Warren A. Usatine

(e) McKool Smith

(f) Gary Cruciani

(g) Michael P. Fritz

(h) Carson D. Young

(i) Nicholas Matthews

~~(i)~~(j) Lackey Hershman, LLP

~~(j)~~(k) Stinson Leonard Street LLP

(l) Jamie R. Welton

~~(k)~~(m) Paul B. Lackey~~, Esq.~~

~~(l)~~(n) Michael Aigen~~, Esq.~~

(o) Roger L. Mandel

~~(m)~~(p) Abrams & Bayliss, LLP

~~(n)~~(q) Kevin G. Abrams

~~(o)~~(r) A. Thompson Bayliss

~~(p)~~(s) Jones Day

~~(q)~~(t) Hilda C. Galvan

~~(r)~~(u) Michael Weinberg

~~(s)~~(v) Reid Collins & Tsai, LLP

~~(t)~~(w) Lisa Tsai

~~(u)~~(x) Stanton, LLP

~~(v)~~(y) James M. Stanton

~~(w)~~(z) Hunton Andrews Kurth

~~(x)~~(aa) Marc Katz

~~(y)~~(bb) Greg Waller

~~(z)~~(cc) any other law firm or attorney who may be so named at a later date by the Reorganized Debtor.

~~16. Retention of Claims Against Specific Persons or Categories of Persons. In addition to the foregoing, all Estate Claims as defined in paragraph 2 above are hereby reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor against the following Persons:~~

16. Claims Against Officers, Directors, Employees, Members, and Managers, of Highland, HCLOF, Highland HCF, Highland CLOM, CLO Holdco, Neutra, and Their Respective Affiliates. In addition to the foregoing, all Estate Claims as defined in paragraph 2 above are hereby reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor against all present and past officers, directors, employees, members and managers of Highland, HCLOF, Highland HCF, Highland CLOM, and their respective Affiliates, including all such Estate Causes of Action based on fraud, constructive fraud, breach of fiduciary duty, breach of duty of loyalty or due care, aiding and abetting breach of fiduciary duty, aiding and abetting breach of duty of loyalty or due care, self-dealing, ultra vires, conversion, usurpation of corporate opportunity, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs, tortious interference, including in relation to Universal-Investment-Luxembourg S.A. and BayVK R2 Lux S.A., SICAV-FIS, conflict of interest, negligence, gross negligence, all Avoidance Actions, breach of contract, breach of the Shared Services Agreement, breach of the Sub-Advisory Agreement, breach of the Debtors' limited partnership agreement or limited liability company agreement, conspiracy to commit any unlawful act, aiding and abetting any unlawful act, and assisting, encouraging, and/or participating in any unlawful act. Such present and past officers, directors, employees, members and managers of Highland, HCLOF, Highland HCF, Highland CLOM, and their respective Affiliates include, but are not limited to, the following Persons:

(a) William Scott;

(b) Heather Bestwick;

(c) Scott Ellington

(d) Isaac Leventon

(e) Jean Paul Sevilla

(f) Hunter Covitz

(g) The Dugaboy Investment Trust

(h) Nancy Dondero, Trustee of the Dugaboy Trust

(i) Grant Scott

(j) Any other Person who may be so named at a later date by the Reorganized Debtor.

~~(c)~~

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17. Counterclaims. All Estate Claims as defined in paragraph 2 above are reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor both as a basis for an affirmative recovery against the Person against whom such Claims are asserted and as a counterclaim or offset against any Person who asserts a Claim against the Estate or Reorganized Debtor.

18. Piercing the Corporate Veil. With respect to all Estate Claims against any Person, all rights to pierce or ignore the corporate veil are hereby reserved, retained and preserved for the benefit of the Estate and the Reorganized Debtor. Without limiting the generality of the foregoing, this shall include: (a) any right to pierce the corporate veil, including reverse piercing, on any theory or basis, including alter ego or any theory of sham to perpetrate a fraud, and (b) any Claim or basis to pierce the corporate veil of any entity with respect to establishing personal liability against James D. Dondero or Mark K. Okada.

19. Avoidance Actions. All Avoidance Actions are hereby reserved, retained and preserved as to all Persons. The reservation, retention and preservation of such Avoidance Actions shall include the reservation, retention and preservation for the benefit of the Estate and Reorganized Debtor of all rights and remedies pursuant to section 550 of the Bankruptcy Code.

20. Estate Defenses. All Estate Defenses are hereby reserved, retained and preserved in favor of the Estate and Reorganized Debtor as against any Person asserting any Claim against the Estate. This includes asserting all Estate Claims as an offset to, or counterclaim or right of recoupment against, any Person asserting a Claim against the Estate. All defenses and affirmative defenses pursuant to applicable law are hereby reserved, retained and preserved for the benefit of the Estate and the Reorganized Debtor, including without limitation, accord and satisfaction, assumption of risk, contributory negligence, duress, estoppel, failure of consideration, fraud, illegality, laches, license, payment, release, *res judicata*, collateral estoppel, statute of frauds, statute of limitations or repose, discovery rule, adverse domination doctrine or similar doctrines, set off, recoupment, waiver, and all other defenses to Claims under the Bankruptcy Code, including under sections 502(b)(4) and 502(d).

21. Equitable Subordination. All rights or remedies for Equitable Subordination are hereby reserved, retained and preserved in favor of the Estate and Reorganized Debtor against any Person asserting any Claim against the Estate, including all such rights or remedies pursuant to section 510(c) of the Bankruptcy Code. Without limiting the generality of the foregoing, this shall include all rights and remedies to Equitable Subordination as to any Claim asserted by Highland, any Affiliates of Highland, or any officers, directors, employees or equity interest owners of the Debtors, Highland, or any Affiliates thereof.

22. Recharacterization. All rights or remedies to recharacterize any Claim as an equity interest in either of the Debtors are hereby reserved, retained and preserved in favor of the Estate and Reorganized Debtor against any Person asserting any Claim against the Estate. Without limiting the generality of the foregoing, this shall include all rights and remedies to recharacterize any Claim asserted by Highland, any Affiliates of Highland, or any officers, directors, employees or equity interest owners of the Debtors, Highland, or any Affiliates thereof.

Exhibit “3”

[Service Lists]

Notice Service List
Acis Capital Mgmt./Phelan
#5980

BNP Paribas Securities Services
Luxembourg Branch
60 Avenue John F. Kennedy
1855 Luxembourg

United States Trustee
Lisa Lambert
1100 Commerce St., Room 976
Dallas, TX 75242

Acis CLO 2013-1 Chemical Holdings, LLC
Acis CLO 2013-2 Chemical Holdings, LLC
Acis CLO 2014-3 Chemical Holdings, LLC
1209 Orange Street
Wilmington, DE 19801-1120

Dallas County
c/o Laurie Spindler
Linebarger, Goggan, Blair & Sampson LLP
2777 N Stemrnons Frwy, No 1000
Dallas, TX 75207-2328

Dallas County
c/o Sherrel K Knighton
Linebarger Goggan Blair & Sampson, LLP
2777 N. Stemrnons Frwy Ste 1000
Dallas, TX 75207-2328

Acis CLO 2014-4 Chemical Holdings, LLC
Acis CLO 2014-5 Chemical Holdings, LLC
Acis CLO 2015-6 Chemical Holdings, LLC
1209 Orange Street
Wilmington, DE 19801-1120

Acis CLO Management, LLC
Acis CLO Value GP, LLC
1209 Orange Street
Wilmington, DE 19801-1120

Acis CLO Value Fund II (Cayman), L.P.
Acis CLO Value Fund II GP, LLC
Acis CLO Value Master Fund II, L.P.
PO Box 309, Ugland House
Grand Cayman, Cayman Islands KY1-1104

Acis CLO Value Fund II, L.P.
Acis Loan Funding, Ltd.
Acis Capital Management GP, LLC
300 Crescent Court, Suite 700
Dallas, TX 75201-7849

Acis Funding GP, Ltd.
Acis Funding L.P.
c/o Maples Corporate Services Limited
P0 Box 309, Ugland House
Grand Cayman, Cayman Islands KY1 -1104

U. S. Bank National Association
Attn: Michael Zak
60 Livingston Ave., EP-MN-WS3D
Saint Paul, MN 55107-2292

State Street (Guernsey) Limited
First Floor Dorey Court
Admiral Park, St. Peter Port, Guernsey
Channel Islands GYI 6HJ

Mizuho Securities USA Inc.
320 Park Ave., 12th Floor
New York, NY 10022-6848

US Bank National Association
c/o Mark D. Kotwick, Arlene Alves
Seward & Kissell LLP
One Battery Park Plaza
New York, NY 10004-1405

Acis Capital Management, LP
c/o Michael D. Warner
Cole Schotz P.C.
1700 City Center Tower II
301 Commerce St.
Fort Worth, TX 76102-4140

US Bank National Association
c/o Daniel P. Novakov
Frost Brown Todd LLC
100 Crescent Court, Suite 350
Dallas, TX 75201-2348

Acis Capital Management, LP
c/o Warren A. Usatine
Cole Schotz P.C.
25 Main Street
Hackensack, NJ 07601-7189

The Bank of N.Y. Mellon Trust Co., N.A.
225 Liberty Street
New York, NY 10286-0001

Robin Phelan, Chapter 11 Trustee
Phelenlaw
4214 Woodfin Drive
Dallas, TX 75220-6416

Securities and Exchange Commission
801 Cherry Street, Suite 1900, Unit 18
Fort Worth, TX 76102

Acis Loan Funding, Ltd.
First Floor, Dorey Court
St. Peter Port, Guernsey

Texas Comptroller of Public Accounts
c/o John M. Stern, Asst. Attorney General
Bankruptcy & Collection Div. MC 008
PO Box 12548
Austin, TX 78711-2548

Office of the Attorney General
Main Justice Building, Room 5111
10th & Constitution Avenue, N.W.
Washington, D.C. 20530

Acis CLO 2013-1 LLC
Acis CLO 2013-2 LLC
850 Library Ave., Suite 204
Newark, DE 19711

Office of the United States Attorney
3rd Floor, 1100 Commerce Street
Dallas, Texas 75242-1699

Highland CLO Management, Ltd.
c/o Strand Advisors, Inc., Attn. James Dondero
300 Crescent Court, Suite 700
Dallas, TX 75201

Internal Revenue Service
Special Procedures – Insolvency
P.O. Box 7346
Philadelphia, PA 1901-7346

US Bank
PO Box 5229
Cincinnati, OH 45201-5229

Acis CLO 2014-5 Ltd.
Acis CLO 2015-6 Ltd.
c/o MaplesFS Limited
P.O. Box 1093, Boundary Hall, Cricket Sq
Grand Cayman, Cayman Islands KY1-1102

Highland HCF Advisor, Ltd.
c/o James Dondero, President
300 Crescent Court, Suite 700
Dallas, TX 75201

Diane G. Reed
Reed & Elmquist, PC
501 N. College St.
Waxahachie, TX 75165-3361

Hewett's Island CLO I-R, Ltd.
c/o Maples Finance Limited
PO Box 1093, Queensgate House
South Church St., George Town
Grand Cayman, Cayman Island KY1-1102

Highland CLO Management, Ltd.
c/o Strand Advisors, Inc.
Corporation Trust Center
1209 Orange Street
Wilmington, DE 19801

Diane G. Reed
c/o David W. Elmquist
Reed & Elmquist, PC
501 N. College St.
Waxahachie, TX 75165-3361

U.S. Bank National Association
Attention: Global Corporate Trust –
Acis CLO 2013-1 and 2013-2190 S. LaSalle Street, 8th Floor
Chicago, IL 60603

Acis CLO 2015-6 Ltd.
P.O. Box 1093, Boundary Hall, Cricket Sq
Grand Cayman, Cayman Islands KY1-1102,

Highland CLO Management, Ltd.
c/o Maples Corporate Services, Ltd.
P.O. Box 309, Ugland House,
South Church Street, George Town
Grand Cayman, Cayman Island KY1-1004

U.S. Bank National Association
Attention: Global Corporate Trust –
Acis CLO 2014-3 and 2014-4190 S. LaSalle Street, 8th Floor
Chicago, IL 60603

Acis CLO 2014-3 LLC
Acis CLO 2014-4
850 Library Ave., Suite 204
Newark, DE 19711

Acis CLO 2013-1 Ltd.
Acis CLO 2013-2
c/o Estera Trust (f/k/a Appleby Trust)
Clifton House 75 Port St., P.O. Box 1350
Grand Cayman, Cayman Islands KY 1-1108

U.S. Bank National Association
Attention: Global Corporate Trust –
Acis CLO 2014-5 and Acis CLO 2015-6190 S. LaSalle Street, 8th Floor
Chicago, IL 60603

Acis CLO 2014-5 LLC
Acis CLO 2015-6 LLC
850 Library Ave., Suite 204
Newark, DE 19711

Acis CLO 2014-3 Ltd.
Acis CLO 2014-4 Ltd.
c/o MaplesFS Limited
P.O. Box 1093, Boundary Hall, Cricket Sq
Grand Cayman, Cayman Islands KY1-1102

Deutsche Bank Trust Company Americas
Attn: CDO Business Unit – Hewett's Island CLO 1-R
1761 East St. Andrew Place
Santa Ana, CA 92705

Acis CLO 2017-7 Ltd.
c/o MapleFS Limited, Attn: Directors
PO Box 1093, Boundary Hall, Cricket Sq.
Grand Cayman, Cayman Islands KY1 -1102

Highlands Service List
ACIS #5980

Highland CLO Funding Ltd.
c/o Mark M. Maloney/W. Austin Jowers
King & Spalding LLP
1180 Peachtree Street NE
Atlanta, GA 30309

Highland CLO Funding, Ltd.
First Floor, Dorey Court
Admiral Park, St. Peter Port
Guernsey GY1 6HJ, Channel Islands

Highland CLO Management, Ltd.
P.O. Box 309 Ugland House
South Church Street
George Town, Grand Cayman KY1-1004

Highland HCF Advisor, Ltd.
c/o Maples Corporate Services, Ltd.
P.O. Box 309, Ugland House,
South Church Street, George Town
Grand Cayman, Cayman Island KY1-1004

Neutra, Ltd.
c/o Daniel Elms/Heather Jobe/Scott Larson
Bell Nunnally & Martin LLP
3232 McKinney Ave., Suite 1400
Dallas, TX 75204

CLO Holdco, Ltd.
c/o Intertrust Corp. Srvs. (Cayman) Ltd.
190 Elgin Ave., George Town
Grand Cayman, Cayman Islands KY1-9005

The Dugaboy Investment Trust
300 Crescent Court, Suite700
Dallas, TX 75201-1876

Highland CLO Funding, Ltd.
c/o Paul R. Bessette/Rebecca Matsumura
King & Spalding LLP
500 West 2nd St., Suite 1800
Austin, TX 78701-4684

Highland CLO Funding, Ltd.
c/o Michael K. Hurst/Ben A. Barnes
Lynn Pinker Cox & Hurst LLP
2100 Ross Ave., Suite 2700
Dallas, TX 75201

Highland CLO Management, Ltd.
c/o Strand Advisors, Inc.
Corporation Trust Center
1209 Orange Street
Wilmington, DE 19801

Highland CLO Management, Ltd.
c/o Summit Management Ltd.
P.O. Box 32311
Grand Cayman, KY1-1209
Cayman Islands

Highland HCF Advisor, Ltd.
c/o James Dondero, President
300 Crescent Court, Suite 700
Dallas, TX 75201

Neutra, Ltd.
c/o Michael K. Hurst/Ben A. Barnes
Lynn Pinker Cox & Hurst LLP
2100 Ross Ave., Suite 2700
Dallas, TX 75201

CLO Holdco, Ltd.
c/o Daniel Elms/Heather Jobe/Scott Larson
Bell Nunnally & Martin LLP
3232 McKinney Ave., Suite 1400
Dallas, TX 75204

Highland CLO Funding, Ltd.
c/o Daniel Elms/Heather Jobe/Scott Larson
Bell Nunnally & Martin LLP
3232 McKinney Ave., Suite 1400
Dallas, TX 75204

Highland CLO Funding, Ltd.
c/o H. O'Neil, J. Binford, S. Beck, M. Bales
Foley Gardere Foley & Lardner, LLP
2021 McKinney Ave., Suite 1600
Dallas, TX 75201

Highland CLO Management, Ltd.
c/o Maples Corporate Services, Ltd.
P.O. Box 309, Ugland House,
South Church Street, George Town
Grand Cayman, Cayman Island KY1-1004

Highland CLO Management, Ltd.
c/o Summit Management Ltd.
Suite #4-210 Governor's Square
23 Lime Tree Bay Avenue
Grand Cayman, Cayman Islands

Highland CLO Management, Ltd.
c/o Strand Advisors, Inc.
Attn. James Dondero
300 Crescent Court, Suite 700
Dallas, TX 75201

Neutra, Ltd.
c/o H. O'Neil, J. Binford, S. Beck, M. Bales
Foley Gardere Foley & Lardner, LLP
2021 McKinney Ave., Suite 1600
Dallas, TX 75201

CLO Holdco, Ltd.
c/o H. O'Neil, J. Binford, S. Beck, M. Bales
Foley Gardere Foley & Lardner, LLP
2021 McKinney Ave., Suite 1600
Dallas, TX 75201

Creditors Service List
Acis Capital Mgmt./Phelan
#5980

Class 2

Joshua N. Terry
25 Highland Park Village
Suite 100-848
Dallas, TX 75205-2726

Joshua N. Terry
c/o Brian P. Shaw/John M. Lynch
Rogge Dunn Group, PC
1201 Elm St., Suite 5200
Dallas, TX 75270

Joshua N. Terry
350 9 Princeton Ave.
Dallas, TX 75205-3246

Class 3

Andrews Kurth Kenyon LLP
600 Travis, Suite 4200
Houston, TX 77002-2929

CSI Global Deposition Services
4950 N. O'Connor Road, Suite 152
Irving, TX 75062 - 2778

CT Corporation
P0 Box 4349
Carol Stream, IL 60197-4349

Case Anywhere LLC
21860 Burbank Blvd., Suite 125
Woodland Hills, CA 91367-7447

David Langford
1321 Indian Creek
DeSoto, TX 75115-3652

David Simek
31 Woodacres Road
Brookville, NY 11545-2911

Drexel Limited
309 23rd Street, #340
Miami Beach, FL 33139-1700

Elite Document Technology
400 N. Saint Paul St., Suite 1300
Dallas, TX 75201-6881

Highfield Equities, Inc.
3131 McKinney Ave., Suite 215
Dallas, TX 75204-2421

JAMS, Inc.
18881 Von Karman Ave., Suite 350
Irvine, CA 92612-6589

Jones Day
2727 N. Harwood Street
Dallas, TX 75201-1568

Lackey Hershman LLP
3102 Oak Lawn Ave., Suite 777
Dallas, TX 75219-4259

KPMG LLP (USA)
Two Financial Center
60 South Street
Boston, MA 02111-2759

KPMG LLP
2323 Ross Ave., Suite 1400
Dallas, TX 75201-2721

KPMG LLP
Aon Center
200 E. Randolph St., Suite 5500
Chicago, IL 60601-6607

McKool Smith, P.C.
300 Crescent Court, Suite 1500
Dallas, TX 75201-6970

Reid Collins & Tsai, LLP
Building C, Suite 300
1301 S. Capital of Texas Highway
Austin, TX 78746-6550

Stanton Advisors LLC
300 Coles St., Apt. 802
Jersey City, NJ 07310-1047

Stanton Law Firm
9400 North Central Expwy., Suite 1304
Dallas, TX 75231-5047

The TASA Group, Inc.
1166 DeKalb Pike
Blue Bell, PA 19422- 1853

Acis CLO 2013-1, Ltd., et al.
c/o David Neier
Winston & Strawn LLP
200 Park Ave.
New York, NY 10166-4193

Acis CLO 2013-1 LLC
850 Library Ave., Suite 204
Newark, DE 19711

Acis CLO 2014-3 LLC
850 Library Ave., Suite 204
Newark, DE 19711

Acis CLO 2014-4 LLC
850 Library Ave., Suite 204
Newark, DE 19711

Acis CLO 2014-5 LLC
850 Library Ave., Suite 204
Newark, DE 19711

Acis CLO 2015-6 LLC
850 Library Ave., Suite 204
Newark, DE 19711

Directors - Acis CLO 2013-1 Ltd.
75 Fort St., Clifton House
PO Box 1350
George Town, Grand Cayman
Cayman Island, KY1-1108

Directors - Acis CLO 2014-3 Ltd.
PO Box 1093
KY1-1102, Cricket Square
Grand Cayman

Directors - Acis CLO 2014-4 Ltd.
PO Box 1093
KY1-1102, Cricket Square
Grand Cayman

Directors - Acis CLO 2014-5 Ltd.
PO Box 1093
KY1-1102, Cricket Square
Grand Cayman

Directors - Acis CLO 2015-6 Ltd.
PO Box 1093
KY1-1102, Cricket Square
Grand Cayman

Acis CLO 2013-1, Ltd.
c/o Appleby Trust, Attn: Directors
Clifton House 75 Fort St., P0 Box 13
Grand Cayman, Cayman Islands KY1-1108

Acis CLO 2013-2 Ltd.
c/o MaplesFS Limited, Attn: Directors
PO Box 1093, Boundary Hall, Cricket Sq.
Grand Cayman, Cayman Islands KY1-1102

Acis CLO 2014-3 Ltd.
c/o MaplesFS Limited, Attn: Directors
PO Box 1093, Boundary Hall, Cricket Sq.
Grand Cayman, Cayman Islands KY1-1102

Acis CLO 2014-4 Ltd.
c/o MapleFS Limited, Attn: Directors
PO Box 1093, Boundary Hall, Cricket Sq.
Grand Cayman, Cayman Islands KY1-1102

Acis CLO 2014-5 Ltd.
c/o MapleFS Limited, Attn: Directors
PO Box 1093, Boundary Hall, Cricket Sq.
Grand Cayman, Cayman Islands KY1-1102

Acis CLO 2015-6 Ltd.
c/o MapleFS Limited, Attn: Directors
PO Box 1093, Boundary Hall, Cricket Sq.
Grand Cayman, Cayman Islands KY1 -1102

Acis CLO 2017-7 Ltd.
c/o MapleFS Limited, Attn: Directors
PO Box 1093, Boundary Hall, Cricket Sq.
Grand Cayman, Cayman Islands KY1 -1102

Acis CLO 2013-1, Ltd., et al.
c/o Thomas Melsheimer/Lane Webster
Winston & Strawn LLP
2501 N. Harwood St., 17th Floor
Dallas, TX 75201

Jennifer G. Terry
25 Highland Park Village, Suite 100-848
Dallas, TX 75205

Hunton Andrews Kurth LLP
c/o M. Christine Klein, Dep. Gen. Counsel
Riverfront Plaza, East Tower
951 East Byrd St.
Richmond, VA 23219

Patrick H. Daugherty
3621 Cornell Ave.
Dallas, TX 75250

Stinson Leonard Street LLP
Attn: Paul Lackey
3102 Oak Lawn Ave., Suite 777
Dallas, TX 75219

Class 4

Highland Capital Management, LP
300 Crescent Court, Suite 700
Dallas, TX 75201-7849

Highland Capital Management, LP
1209 Orange Street
Wilmington, DE 19801-1120

Highland Capital Management, LP
c/o Michael K. Hurst/Ben A. Barnes
Lynn Pinker Cox & Hurst LLP
2100 Ross Ave., Suite 2700
Dallas, TX 75201

Highland Capital Management, LP, Highland
c/o H. O'Neil, J. Binford, S. Beck, M. Bales
Foley Gardere Foley & Lardner, LLP
2021 McKinney Ave., Suite 1600
Dallas, TX 75201

EXHIBIT “4”

[Supplement to Second Modification to the Third Amended Joint Plan for Acis Capital Management, L.P. and Acis Capital Management GP, LLC – Dkt. No. 769]

Rakhee V. Patel – State Bar No. 00797213
Phillip Lamberson – State Bar No. 00794134
Joe Wielebinski – State Bar No. 21432400
Annmarie Chiarello – State Bar No. 24097496
WINSTEAD PC
500 Winstead Building
2728 N. Harwood Street
Dallas, Texas 75201
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jwielebinski@winstead.com
achiarello@winstead.com

SPECIAL COUNSEL FOR
ROBIN PHELAN, CHAPTER 11 TRUSTEE

Jeff P. Prostok – State Bar No. 16352500
J. Robert Forshey – State Bar No. 07264200
Suzanne K. Rosen – State Bar No. 00798518
Matthew G. Maben – State Bar No. 24037008
FORSHEY & PROSTOK LLP
777 Main St., Suite 1290
Ft. Worth, TX 76102
Telephone: (817) 877-8855
Facsimile: (817) 877-4151
jprostok@forsheyprostok.com
bforshey@forsheyprostok.com
srosen@forsheyprostok.com
mmaben@forsheyprostok.com

COUNSEL FOR ROBIN PHELAN,
CHAPTER 11 TRUSTEE

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:	§	CHAPTER 11 CASES
ACIS CAPITAL MANAGEMENT, L.P.,	§	CASE NO. 18-30264-sgj11
ACIS CAPITAL MANAGEMENT GP, LLC,	§	(Jointly Administered)
Debtors.	§	

SUPPLEMENT TO SECOND MODIFICATION TO THE THIRD AMENDED JOINT PLAN FOR ACIS CAPITAL MANAGEMENT, LP AND ACIS CAPITAL MANAGEMENT GP, LLC

Robin Phelan ("Trustee"), the Chapter 11 Trustee for Acis Capital Management, LP and Acis Capital Management GP, LLC (the "Debtors"), files this Supplement to the Second Modification (the "Second Modification") to the *Third Amended Joint Chapter 11 Plan for Acis Capital Management, LP and Acis Capital Management GP, LLC* [Docket No. 660], as modified by the *First Modification to the Third Amended Joint Chapter 11 Plan for Acis Capital Management, LP and Acis Capital Management GP, LLC* [Docket No. 693] (together, the "Plan").

1. On November 16, 2018, the Trustee filed the Second Modification. The Second Modification modified the Plan to replace the Exhibit "A," reflecting Estate Claims, with a revised version of Exhibit A. The Schedule "1" to Exhibit A, which reflects the Estate's Preference Claims, was not changed from the version attached to the Plan but was inadvertently omitted from the Second Modification. For completeness and to avoid any confusion regarding the Preference Claims being reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, the Second Modification is hereby supplemented with the Schedule "1" to Exhibit "A" to the Plan.

2. A copy of the Schedule "1" is attached hereto as **Exhibit 1**.

3. A copy of the complete Exhibit "A" to the Plan, including Schedule "1," is attached hereto as **Exhibit "2."**

4. A redline is not necessary because the attached Schedule "1" is unchanged from the version attached to the Plan and included in the Trustee's solicitation materials.

Dated: December 10, 2018.

Respectfully submitted,

ACIS CAPITAL MANAGEMENT, L.P.

By: /s/ *Robin Phelan*
Robin Phelan
Chapter 11 Trustee

ACIS CAPITAL MANAGMENET GP, LLC

By: /s/ *Robin Phelan*
Robin Phelan
Chapter 11 Trustee

APPROVED:

/s/ *Jeff P. Prostok*
Jeff P. Prostok – State Bar No. 16352500
J. Robert Forshey – State Bar No. 07264200
Suzanne K. Rosen – State Bar No. 00798518
Matthew G. Maben – State Bar No. 24037008
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jprostok@forsheyprostok.com
bforshey@forsheyprostok.com
srosen@forsheyprostok.com
mmaben@forsheyprostok.com

COUNSEL FOR ROBIN PHELAN, CHAPTER 11 TRUSTEE

APPROVED:

/s/ *Rahkee V. Patel*
Rakhee V. Patel – State Bar No. 00797213
Phillip Lamberson – State Bar No. 00794134
Joe Wielebinski – State Bar No. 21432400
Annmarie Chiarello –State Bar No. 24097496
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rpatel@winstead.com
plamberson@winstead.com
jwielebinski@winstead.com
achiarello@winstead.com

SPECIAL COUNSEL FOR ROBIN PHELAN, CHAPTER 11 TRUSTEE

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document and the attached exhibits were served electronically via the Court's Electronic Court Filing (ECF) notification system on December 10, 2018.

/s/ Jeff P. Prostok
Jeff P. Prostok

\L:\JPROSTOK\ACIS Capital Management (Trustee Rep)\Plan and Disclosure Statement\Supplement to Second Modification to Third Amended Plan 12.10.18.docx

EXHIBIT “1”

Schedule “1” to Exhibit “A” to Third Amended Plan

Schedule 1 to Exhibit "A" to

Third Amended Joint Plan for Acis Capital Management, LP and Acis Capital Management GP, LLC

NAME	ADDRESS	DATE OF PAYMENT	PAYMENT AMOUNT	REASON FOR PAYMENT ON SCHEDULES
Payments within 90 Days of Petition Date				
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	11/2/2017	$234,013.63	Services
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	11/3/2017	$941,958.57	Services
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	12/8/2017	$89,655.14	Services
David Simek	31 Woodacres Road Brookville, NY 11545	11/15/2017	$2,068.13	Services
David Simek	31 Woodacres Road Brookville, NY 11545	11/30/2017	$24,266.71	Services
David Simek	31 Woodacres Road Brookville, NY 11545	12/12/2017	$1,718.79	Services
David Simek	31 Woodacres Road Brookville, NY 11545	12/29/2017	$25,000.00	Services
FINRA	1735 K Street, NW Washington, DC 20006	11/22/2017	$70.00	Suppliers or Vendors
Highland CLO Management, Ltd.	PO Box 309, Ugland House Grand Cayman, KY1-1104, Cayman Islands	12/19/2017	$2,830,459.22	Services
Payments to Insiders within One Year of Petition Date				
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	2/1/2017	$976,688.47	Contractual Payment
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	2/1/2017	$1,096,033.37	Services
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	2/2/2017	$3,574.80	Expense Reimbursement
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	2/14/2017	$67.44	Expense Reimbursement
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	4/17/2017	$315,574.30	Services
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	4/18/2017	$438,497.51	Services

Schedule 1 to Exhibit "A" to

Third Amended Joint Plan for Acis Capital Management, LP and Acis Capital Management GP, LLC

NAME	ADDRESS	DATE OF PAYMENT	PAYMENT AMOUNT	REASON FOR PAYMENT ON SCHEDULES
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	4/18/2017	$375,855.01	Contractual Payment
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	4/19/2017	$330,249.69	Services
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	5/1/2017	$974,426.41	Services
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	5/31/2017	$2,809,518.47	Unsecured loan repayments including interest
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	5/31/2017	$581,036.15	Services
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	7/18/2017	$373,167.08	Contractual Payment
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	8/1/2017	$971,603.02	Contractual Payment
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	8/7/2017	$1,339,422.12	Services
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	8/16/2017	$53.41	Expense Reimbursement
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	10/18/2017	$372,872.82	Contractual Payment
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	10/18/2017	$728,702.26	Services
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	10/24/2017	$501,979.18	Unsecured loan repayments including interest
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	10/25/2017	$46,648.82	Expense Reimbursement
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	10/25/2017	$67,966.85	Expense Reimbursement
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	11/1/2017	$967,223.91	Contractual Payment

EXHIBIT “2”

[Exhibit “A” to Third Amended Plan
as Supplemented]

EXHIBIT "A"
to
Joint Plan for Acis Capital Management, LP and Acis Capital Management GP, LLC

1. Defined Terms. This Exhibit "A" constitutes an integral part of the Plan of which it is a part. Defined terms in the Plan are to be given the same meaning in this Exhibit "A". The rules of construction set forth in Article I.B. of the Plan shall likewise apply to this Exhibit "A".

2. Estate Claims Reserved, Retained and Preserved. All Estate Claims are hereby reserved, retained and preserved, and shall all be transferred to, and vested in, the Reorganized Debtor pursuant to this Plan, and shall include without limitation all of the Estate Claims described below. In reserving, retaining, and preserving Estate Claims against any named Person or category of Persons, it is the intent of this Plan to so reserve, retain, and preserve any and all Estate Claim against each such Person or category of Persons, including all such Estate Claims pursuant to any applicable common law, based on any contract or agreement or based upon any law, statute or regulation of any political entity, including the United States and any state or political subdivision thereof, as well as all applicable remedies, whether legal or equitable. Without limiting the generality of the foregoing, the reservation, retention, and preservation of Estate Claims against any Person, and the term "Estate Claims," shall encompass all Estate Claims against any such Person, including without limitation, all such Estate Claims for breach of contract, all rights to enforce any contract, any form of estoppel, fraud, constructive fraud, abuse of process, malicious prosecution, defamation, libel, slander, conversion, trespass, intentional infliction of emotional distress or other harm, negligence, gross negligence, negligent misrepresentation, fraudulent misrepresentation, vicarious liability, respondeat superior, breach of any duty owed under either applicable law or any contract, breach of any fiduciary duty or duty of loyalty or due care, aiding and/or abetting breach of fiduciary duty, aiding and/or abetting breach of duty of loyalty or due care, alter ego, veil piercing, self-dealing, usurpation of corporate opportunity, ultra vires, turnover of Estate Assets, unauthorized use of Estate Assets, including intellectual property rights or Assets owned by the Debtors or Chapter 11 Trustee, quantum merit, tortious interference, duress, unconscionability, undue influence, and unjust enrichment, as well as any cause of action for conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act, or claims arising from or relating to the filing of the involuntary bankruptcy petitions against the Debtors.

3. Highland Claims. All Estate Claims against Highland are reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims asserted by the Chapter 11 Trustee in Adversary Proceeding No. 18-03078-sgj (the "Highland Adversary") and Adversary Proceeding No. 18-03212-sgj (the "Trustee's Adversary"). The Estate Claims against Highland shall include all Estate Claims set forth in paragraph 2 above, including without limitation, the following:

(a) All such Claims asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Highland Adversary;

(b) All such Claims asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Trustee's Adversary;

(c) All such Claims and Defenses asserted by the Chapter 11 Trustee or Estate, or which could be asserted by the Chapter 11 Trustee or Estate, based on the facts or transactions alleged in any other adversary proceedings or Claim Objections filed by the

Chapter 11 Trustee or Estate;

(d) All Avoidance Actions against Highland, including any claims to avoid and recover amounts transferred by the Debtors to Highland under the Shared Services Agreement or Sub-Advisory Agreement;

(e) All Claims for breach of the Shared Services Agreement or Sub-Advisory Agreement;

(f) All Claims against Highland for amounts paid by the Debtors to Highland under the Shared Services Agreement and Sub-Advisory Agreement, including any Claim that Highland overcharged Acis LP for services under such agreements, charged excessive fees in violation of Acis LP's limited partnership agreement and/or Acis GP's limited liability company agreement, and/or that the Shared Services Agreement and Sub-Advisory Agreement or any related or predecessor agreements are void or voidable based on ultra vires or any other theories of avoidance and recovery, including turnover, conversion and Avoidance Actions under the Bankruptcy Code;

(g) All Claims for breach of the PMAs or the Indentures;

(h) All Claims for breach of fiduciary duty or duty of loyalty or due care owed to the Debtors or Chapter 11 Trustee;

(i) All Claims for aiding and/or abetting breach of fiduciary duty, breach of duty loyalty or due care, or any other unlawful act;

(j) All Clams for usurpation of a corporate opportunity belonging to either of the Debtors, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs;

(k) All claims for tortious interference, including in relation to Universal-Investment-Luxembourg S.A. and BayVK R2 Lux S.A., SICAV-FIS;

(l) All Claims against Highland for the turnover of Estate Assets, including Estate property that the Chapter 11 Trustee may use, sell or lease under section 363 of the Bankruptcy Code including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate, as well as the turnover of any books, documents, records and papers relating to the Debtors' property or financial affairs;

(m) All Claims against Highland for the unauthorized use of Estate Assets including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate;

(n) All Claims, rights or remedies for Equitable Subordination or Recharacterization of any Claim by Highland against the Debtors, Chapter 11 Trustee, or Estate;

(o) All Claims based on alter ego or rights to pierce the corporate veil of Acis LP as to any Person, including as against Highland or any Affiliates thereof, James D. Dondero, Mark K. Okada, or any other officers, directors, equity interest holders, or Persons otherwise in control of Acis LP;

(p) All Claims based on alter ego or rights to pierce the corporate veil of

Highland as to any Person, including as against any Affiliates of Highland, James D. Dondero, Mark K. Okada, or any other officers, directors, equity interest holders, or Persons otherwise in control of Highland, and,

(q) All Claims for conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act.

4. HCLOF Claims. All Estate Claims against HCLOF are reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims asserted by the Chapter 11 Trustee in the Highland Adversary and the Trustee's Adversary. The Estate Claims against HCLOF shall include all Estate Claims set forth in paragraph 2 above, including without limitation, the following:

(a) All such Claims against HCLOF asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Highland Adversary;

(b) All such Claims against HCLOF asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Trustee's Adversary;

(c) All such Claims and Defenses asserted by the Chapter 11 Trustee or Estate, or which could be asserted by the Chapter 11 Trustee or Estate, based on the facts or transactions alleged in any other adversary proceedings or Claim Objections filed by the Chapter 11 Trustee or Estate;

(d) All Avoidance Actions against HCLOF;

(e) All Claims for breach of the PMAs or the Indentures;

(f) All Claims for breach of fiduciary duty or duty of loyalty or due care owed to the Debtors or Chapter 11 Trustee;

(g) All Claims for aiding and/or abetting breach of fiduciary duty, breach of duty loyalty or due care, or any other unlawful act;

(h) All Clams for usurpation of a corporate opportunity belonging to either of the Debtors, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs;

(i) All Claims against HCLOF for the turnover of Estate Assets, including Estate property that the Chapter 11 Trustee may use, sell or lease under section 363 of the Bankruptcy Code including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate, as well as the turnover of any books, documents, records and papers relating to the Debtors' property or financial affairs;

(j) All Claims against HCLOF for the unauthorized use of Estate Assets including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate;

(k) All Claims, rights or remedies for Equitable Subordination or Recharacterization of any Claim by HCLOF against the Debtors, Chapter 11 Trustee, or Estate;

(l) All Claims based on alter ego or rights to pierce the corporate veil of HCLOF as to any Person, including as against any Affiliates of HCLOF or Highland, William Scott, Heather Bestwick, or any other officers, directors, equity interest holders, or Persons otherwise in control of HCLOF; and,

(m) All Claims for conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act.

5. Highland HCF Advisor, Ltd. Claims. All Estate Claims against Highland HCF Advisor, Ltd. ("Highland HCF") are reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims asserted by the Chapter 11 Trustee in the Highland Adversary. The Estate Claims against Highland HCF shall include all Estate Claims set forth in paragraph 2 above, including without limitation, the following:

(a) All such Claims against Highland HCF asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Highland Adversary;

(b) All such Claims against Highland HCF asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Trustee's Adversary;

(c) All such Claims and Defenses asserted by the Chapter 11 Trustee or Estate, or which could be asserted by the Chapter 11 Trustee or Estate, based on the facts or transactions alleged in any other adversary proceedings or Claim Objections filed by the Chapter 11 Trustee or Estate;

(d) All Avoidance Actions against Highland HCF;

(e) All Claims for breach of fiduciary duty or duty of loyalty or due care owed to the Debtors or Chapter 11 Trustee;

(f) All Claims for aiding and/or abetting breach of fiduciary duty, breach of duty loyalty or due care, or any other unlawful act;

(g) All Clams for usurpation of a corporate opportunity belonging to either of the Debtors, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs;

(h) All Claims against Highland HCF for the turnover of Estate Assets, including Estate property that the Chapter 11 Trustee may use, sell or lease under section 363 of the Bankruptcy Code including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate, as well as the turnover of any books, documents, records and papers relating to the Debtors' property or financial affairs;

(i) All Claims against Highland HCF for the unauthorized use of Estate Assets including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate;

(j) All Claims, rights or remedies for Equitable Subordination or Recharacterization of any Claim by Highland HCF against the Debtors, Chapter 11 Trustee, or

Estate;

(k) All Claims based on alter ego or rights to pierce the corporate veil of Highland HCF as to any Person, including as against any Affiliates of Highland HCF or Highland, or any other officers, directors, equity interest holders, or Persons otherwise in control of Highland HCF; and,

(l) All Claims for conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act.

6. Highland CLO Management, Ltd. Claims. All Estate Claims against Highland CLO Management, Ltd. ("Highland CLOM") are reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims asserted by the Chapter 11 Trustee in the Highland Adversary. The Estate Claims against Highland CLOM shall include all Estate Claims set forth in paragraph 2 above, including without limitation the following:

(a) All such Claims against Highland CLOM asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Highland Adversary;

(b) All such Claims against Highland CLOM asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Trustee's Adversary;

(c) All such Claims and Defenses asserted by the Chapter 11 Trustee or Estate, or which could be asserted by the Chapter 11 Trustee or Estate, based on the facts or transactions alleged in any other adversary proceedings or Claim Objections filed by the Chapter 11 Trustee or Estate;

(d) All Avoidance Actions against Highland CLOM;

(e) All Claims for breach of fiduciary duty or duty of loyalty or due care owed to the Debtors or Chapter 11 Trustee;

(f) All Claims for aiding and/or abetting breach of fiduciary duty, breach of duty loyalty or due care, or any other unlawful act;

(g) All Clams for usurpation of a corporate opportunity belonging to either of the Debtors, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs;

(h) All Claims against Highland CLOM for the turnover of Estate Assets, including Estate property that the Chapter 11 Trustee may use, sell or lease under section 363 of the Bankruptcy Code including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate, as well as the turnover of any books, documents, records and papers relating to the Debtors' property or financial affairs;

(i) All Claims against Highland CLOM for the unauthorized use of Estate Assets including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate;

(j) All Claims, rights or remedies for Equitable Subordination or Recharacterization of any Claim by Highland CLOM against the Debtors, Chapter 11 Trustee, or Estate;

(k) All Claims based on alter ego or rights to pierce the corporate veil of Highland CLOM as to any Person, including as against any Affiliates of Highland CLOM or Highland, or any other officers, directors, equity interest holders, or Persons otherwise in control of Highland CLOM; and,

(l) All Claims for conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act.

7. CLO Holdco, Ltd. Claims. All Estate Claims against CLO Holdco, Ltd. ("CLO Holdco") are reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims asserted by the Chapter 11 Trustee in the Trustee's Adversary. The Estate Claims against CLO Holdco shall include all Estate Claims set forth in paragraph 2 above, including without limitation, the following:

(a) All such Claims against CLO Holdco asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Highland Adversary;

(b) All such Claims against CLO Holdco asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Trustee's Adversary;

(c) All such Claims and Defenses asserted by the Chapter 11 Trustee or Estate, or which could be asserted by the Chapter 11 Trustee or Estate, based on the facts or transactions alleged in any other adversary proceedings or Claim Objections filed by the Chapter 11 Trustee or Estate;

(d) All Avoidance Actions against CLO Holdco;

(e) All Claims for breach of fiduciary duty or duty of loyalty or due care owed to the Debtors or Chapter 11 Trustee;

(f) All Claims for aiding and/or abetting breach of fiduciary duty, breach of duty loyalty or due care, or any other unlawful act;

(g) All Clams for usurpation of a corporate opportunity belonging to either of the Debtors, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs;

(h) All Claims against CLO Holdco for the turnover of Estate Assets, including Estate property that the Chapter 11 Trustee may use, sell or lease under section 363 of the Bankruptcy Code including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate, as well as the turnover of any books, documents, records and papers relating to the Debtors' property or financial affairs;

(i) All Claims against CLO Holdco for the unauthorized use of Estate Assets including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate;

(j) All Claims, rights or remedies for Equitable Subordination or Recharacterization of any Claim by Highland against the Debtors, Chapter 11 Trustee, or Estate;

(k) All Claims based on alter ego or rights to pierce the corporate veil of CLO Holdco as to any Person, including as against any Affiliates of CLO Holdco or Highland, or any other officers, directors, equity interest holders, or Persons otherwise in control of CLO Holdco; and,

(l) All Claims for conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act.

8. Neutra, Ltd. Claims. All Estate Claims against Neutra, Ltd. ("Neutra") are reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims asserted by the Chapter 11 Trustee in the Trustee's Adversary. The Estate Claims against Neutra shall include all Estate Claims set forth in paragraph 2 above, including without limitation the following:

(a) All such Claims against Neutra asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Highland Adversary;

(b) All such Claims against Neutra asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Trustee's Adversary;

(c) All such Claims and Defenses asserted by the Chapter 11 Trustee or Estate, or which could be asserted by the Chapter 11 Trustee or Estate, based on the facts or transactions alleged in any other adversary proceedings or Claim Objections filed by the Chapter 11 Trustee or Estate;

(d) All Avoidance Actions against Neutra;

(e) All Claims for breach of fiduciary or duty of loyalty or due care owed to the Debtors or Chapter 11 Trustee;

(f) All Claims for aiding and/or abetting breach of fiduciary duty, breach of duty loyalty or due care, or any other unlawful act;

(g) All Clams for usurpation of a corporate opportunity belonging to either of the Debtors, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs;

(h) All Claims against Neutra for the turnover of Estate Assets, including Estate property that the Chapter 11 Trustee may use, sell or lease under section 363 of the Bankruptcy Code including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate, as well as the turnover of any books, documents, records and papers relating to the Debtors' property or financial affairs;

(i) All Claims against Neutra for the unauthorized use of Estate Assets

including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate;

(j) All Claims, rights or remedies for Equitable Subordination or Recharacterization of any Claim by Neutra against the Debtors, Chapter 11 Trustee, or Estate;

(k) All Claims based on alter ego or rights to pierce the corporate veil of Acis LP as to any Person, including as against Neutra, Highland, or any Affiliates thereof, James D. Dondero, Mark K. Okada, or any other officers, directors, equity interest holders, or Persons otherwise in control of Acis LP;

(l) All Claims based on alter ego or rights to pierce the corporate veil of Neutra as to any Person, including as against any Affiliates of Neutra or Highland, or any other officers, directors, equity interest holders, or Persons otherwise in control of Neutra; and,

(m) All Claims for conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act.

9. Claims against Issuers, Co-Issuers and Indenture Trustee. All Estate Claims against CLO-3, CLO-4, CLO-5, and CLO-6 (collectively, the "Issuers"), Acis CLO 2014-3 LLC, Acis CLO 2014-4 LLC, Acis CLO 2014-5 LLC, and Acis CLO 2015-6 LLC (collectively, the "Co-Issuers"), and the Indenture Trustee are reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims asserted by the Chapter 11 Trustee in the Trustee's Adversary. The Estate Claims against the Issuers, Co-Issuers and/or Indenture Trustee shall include all Estate Claims set forth in paragraph 2 above, including without limitation the following:

(a) All such Claims against the Issuers, Co-Issuers, and/or Indenture Trustee asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Highland Adversary;

(b) All such Claims against the Issuers, Co-Issuers, and/or Indenture Trustee asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Trustee's Adversary;

(c) All such Claims and Defenses asserted by the Chapter 11 Trustee or Estate, or which could be asserted by the Chapter 11 Trustee or Estate, based on the facts or transactions alleged in any other adversary proceedings or Claim Objections filed by the Chapter 11 Trustee or Estate;

(d) All Avoidance Actions against the Issuers, Co-Issuers and/or Indenture Trustee;

(e) All Claims for breach of the Indentures, PMAs or any other agreements between Acis LP and the Issuers, Co-Issuers, and/or Indenture Trustee;

(f) All Claims for breach of fiduciary duty or duty of loyalty or due care owed to the Debtors or Chapter 11 Trustee;

(g) All Claims for aiding and/or abetting breach of fiduciary duty, breach of duty loyalty or due care, or any other unlawful act;

(h) All Clams for usurpation of a corporate opportunity belonging to either of the Debtors, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs;

(i) All Claims against the Issuers, Co-Issuers and/or Indenture Trustee for the turnover of Estate Assets, including Estate property that the Chapter 11 Trustee may use, sell or lease under section 363 of the Bankruptcy Code including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate, as well as the turnover of any books, documents, records and papers relating to the Debtors' property or financial affairs;

(j) All Claims against the Issuers, Co-Issuers and/or Indenture Trustee for the unauthorized use of Estate Assets including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate;

(k) All Claims, rights or remedies for Equitable Subordination or Recharacterization of any Claim by the Issuers or Co-Issuers against the Debtors, Chapter 11 Trustee, or Estate; and,

(l) All Claims for conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act.

10. Claims Against Any Affiliates of Highland, HCLOF, Highland HCF, Highland CLOM, CLO Holdco, Neutra, and Their Respective Affiliates. All Estate Claims against any Affiliates of Highland, HCLOF, Highland HCF, Highland CLOM, CLO Holdco, Neutra, and Their Respective Affiliates (collectively, the "Affiliates" and each, an "Affiliate") are reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims asserted by the Chapter 11 Trustee in the Highland Adversary and the Trustee's Adversary. The Estate Claims against such Affiliates shall include all Estate Claims set forth in paragraph 2 above, including without limitation the following:

(a) All such Claims against any Affiliate asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Highland Adversary;

(b) All such Claims against any Affiliate asserted by the Chapter 11 Trustee or Estate in, or which could be asserted based on the facts or transactions alleged in, the Trustee's Adversary;

(c) All such Claims and Defenses asserted by the Chapter 11 Trustee or Estate, or which could be asserted by the Chapter 11 Trustee or Estate, based on the facts or transactions alleged in any other adversary proceedings or Claim Objections filed by the Chapter 11 Trustee or Estate;

(d) All Avoidance Actions against any Affiliate;

(e) All Claims for breach of fiduciary duty or duty of loyalty or due care owed to the Debtors or Chapter 11 Trustee;

(f) All Claims for aiding and/or abetting breach of fiduciary duty, breach of duty loyalty or due care, or any other unlawful act;

(g) All Clams for usurpation of a corporate opportunity belonging to either of

the Debtors, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs;

(h) All Claims against any Affiliate for the turnover of Estate Assets, including Estate property that the Chapter 11 Trustee may use, sell or lease under section 363 of the Bankruptcy Code including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate, as well as the turnover of any books, documents, records and papers relating to the Debtors' property or financial affairs;

(i) All Claims against any Affiliate for the unauthorized use of Estate Assets including, without limitation, any intellectual property rights or Assets owned by the Debtors or Estate;

(j) All Claims, rights or remedies for Equitable Subordination or Recharacterization of any Claim by any Affiliate against the Debtors, Chapter 11 Trustee, or Estate;

(k) All Claims based on alter ego or rights to pierce the corporate veil of Acis LP as to any Person, including as against Highland, HCLOF, Highland HCF, Highland CLOM, CLO Holdco, Neutra, the Affiliates, James D. Dondero, Mark K. Okada, or any other officers, directors, equity interest holders, or Persons otherwise in control of Acis LP;

(l) All Claims based on alter ego or rights to pierce the corporate veil of any Affiliate as to any Person, including as against Highland, HCLOF, Highland HCF, Highland CLOM, CLO Holdco, Neutra, the Affiliates, James D. Dondero, Mark K. Okada, or any officers, directors, equity interest holders, or Persons otherwise in control of any Affiliates; and,

(m) All Claims for conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act.

11. Dondero Claims. All Estate Claims as defined in paragraph 2 above against James D. Dondero, individually, are hereby reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims against James D. Dondero for fraud, constructive fraud, breach of fiduciary duty, breach of duty of loyalty or due care, aiding and abetting breach of fiduciary duty, aiding and abetting breach of duty of loyalty or due care, self-dealing, ultra vires, conversion, usurpation of corporate opportunity, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs, tortious interference, including in relation to Universal-Investment-Luxembourg S.A. and BayVK R2 Lux S.A., SICAV-FIS, conflict of interest, negligence, gross negligence, all Avoidance Actions, breach of contract, breach of the Shared Services Agreement, breach of the Sub-Advisory Agreement, breach of the Debtors' limited partnership agreement or limited liability company agreement, conspiracy to commit any unlawful act, aiding and abetting any unlawful act, and assisting, encouraging, and/or participating in any unlawful act, as well as any Claim to pierce the corporate veil of any entity to hold James D. Dondero individually liable.

12. Okada Claims. All Estate Claims as defined in paragraph 2 above against Mark K. Okada, individually, are hereby reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor, including without limitation all such Estate Claims against Mark K. Okada for fraud, constructive fraud, breach of fiduciary duty, breach of duty of loyalty or due care, aiding and abetting breach of fiduciary duty, self-dealing, ultra vires, conversion, usurpation of corporate opportunity, including in relation to Acis CLO 2017-7, Ltd and any other

Acis CLOs, tortious interference, including in relation to Universal-Investment-Luxembourg S.A. and BayVK R2 Lux S.A., SICAV-FIS, conflict of interest, negligence, gross negligence, all Avoidance Actions, breach of contract, breach of the Shared Services Agreement, breach of the Sub-Advisory Agreement, breach of the Debtors' limited partnership agreement or limited liability company agreement, conspiracy to commit any unlawful act, aiding and abetting any unlawful act, and assisting, encouraging, and participating in any unlawful act, as well as any Claim to pierce the corporate veil of any entity to hold Mark K. Okada individually liable.

13. Preference Claims. All Avoidance Actions pursuant to section 547 of the Bankruptcy Code against any Person are hereby reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor for any payment made to any Person by either of the Debtors within ninety (90) days of the Petition Date (which was January 30, 2018), or made by either of the Debtors to any insider within one (1) year of the Petition Date. A non-exhaustive list of Persons who are believed to have received payments from either of the Debtors during the 90-day preference period, and the one-year preference period for Insiders, is attached to this **Exhibit "A"** as **Schedule "1"**. The Plan reserves, retains and preserves for the benefit of the Estate and Reorganized Debtor all potential Claims arising out of or relating to the transfers reflected in **Schedule "1"**, including all Avoidance Actions pursuant to section 547 of the Bankruptcy Code. All rights and remedies are also reserved. retained and preserved with respect to the transfers reflected in **Schedule "1"** pursuant to section 550 of the Bankruptcy Code.

Schedule "1" reflects transfers made by the Debtors during the 90 days prior to the Petition Date and transfers made by the Debtors to any insiders within one (1) year of the Petition Date. While the Plan reserves, retains and preserves all Avoidance Actions relating to the transfers reflected in **Schedule "1"**, the Chapter 11 Trustee recognizes that certain of these transfers may not constitute a preferential transfer pursuant to section 547(b) of the Bankruptcy Code as a transfer made in the ordinary course of business transactions or based upon new value subsequently given by the transferee. Consequently, the listing of a payment on **Schedule "1"** does not necessarily mean that a transferee will ever be sued to avoid and recover the payment, the transfer, or the value thereof, but only that the Plan reserves, retains and preserves all rights (including Avoidance Actions) as to that payment.

14. Claims Against Officers, Managers and Members. All Estate Claims as defined in paragraph 2 above are hereby reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor against all present and past officers, employees, members and managers of the Debtors, including all such Estate Causes of Action based on breach of fiduciary duty, aiding and abetting breach of fiduciary duty, breach of duty of loyalty or due care, aiding and abetting breach of duty of loyalty or due care, self-dealing, usurpation of corporate opportunity, gross negligence or conspiracy. Without limiting the generality of the foregoing, this shall include all D&O Claims as against any present or former officer, director, employee, member, manager, or partner.

15. Claims Against Former Attorneys and Law Firms. All Estate Claims as defined in paragraph 2, above, including Claims for breach of any fiduciary duty or duty of loyalty or due care, conspiracy to commit any unlawful act, aiding and/or abetting any such unlawful act, or assisting, encouraging, and/or participating in any such unlawful act, including knowingly aiding, abetting, or assisting with a fraudulent transfer to avoid paying a judgment, negligent or fraudulent misrepresentation, vicarious liability, and respondeat superior, as well as all Claims for legal or professional malpractice, are hereby reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor against all law firms and attorneys who and which

rendered legal services to the Debtors on a prepetition basis including, but not limited to, the following:

(a) Cole Schotz, P.C.

(b) Michael D. Warner

(c) Jacob Frumkin

(d) Warren A. Usatine

(e) McKool Smith

(f) Gary Cruciani

(g) Michael P. Fritz

(h) Carson D. Young

(i) Nicholas Matthews

(j) Lackey Hershman, LLP

(k) Stinson Leonard Street LLP

(l) Jamie R. Welton

(m) Paul B. Lackey

(n) Michael Aigen

(o) Roger L. Mandel

(p) Abrams & Bayliss, LLP

(q) Kevin G. Abrams

(r) A. Thompson Bayliss

(s) Jones Day

(t) Hilda C. Galvan

(u) Michael Weinberg

(v) Reid Collins & Tsai, LLP

(w) Lisa Tsai

(x) Stanton, LLP

(y) James M. Stanton

(z) Hunton Andrews Kurth

(aa) Marc Katz

(bb) Greg Waller

(cc) any other law firm or attorney who may be so named at a later date by the Reorganized Debtor.

16. Claims Against Officers, Directors, Employees, Members, and Managers, of Highland, HCLOF, Highland HCF, Highland CLOM, CLO Holdco, Neutra, and Their Respective Affiliates. In addition to the foregoing, all Estate Claims as defined in paragraph 2 above are hereby reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor against all present and past officers, directors, employees, members and managers of Highland, HCLOF, Highland HCF, Highland CLOM, and their respective Affiliates, including all such Estate Causes of Action based on fraud, constructive fraud, breach of fiduciary duty, breach of duty of loyalty or due care, aiding and abetting breach of fiduciary duty, aiding and abetting breach of duty of loyalty or due care, self-dealing, ultra vires, conversion, usurpation of corporate opportunity, including in relation to Acis CLO 2017-7, Ltd and any other Acis CLOs, tortious interference, including in relation to Universal-Investment-Luxembourg S.A. and BayVK R2 Lux S.A., SICAV-FIS, conflict of interest, negligence, gross negligence, all Avoidance Actions, breach of contract, breach of the Shared Services Agreement, breach of the Sub-Advisory Agreement, breach of the Debtors' limited partnership agreement or limited liability company agreement, conspiracy to commit any unlawful act, aiding and abetting any unlawful act, and assisting, encouraging, and/or participating in any unlawful act. Such present and past officers, directors, employees, members and managers of Highland, HCLOF, Highland HCF, Highland CLOM, and their respective Affiliates include, but are not limited to, the following Persons:

(a) William Scott;

(b) Heather Bestwick;

(c) Scott Ellington

(d) Isaac Leventon

(e) Jean Paul Sevilla

(f) Hunter Covitz

(g) The Dugaboy Investment Trust

(h) Nancy Dondero, Trustee of the Dugaboy Trust

(i) Grant Scott

(j) Any other Person who may be so named at a later date by the Reorganized Debtor.

17. Counterclaims. All Estate Claims as defined in paragraph 2 above are reserved, retained and preserved for the benefit of the Estate and Reorganized Debtor both as a basis for an affirmative recovery against the Person against whom such Claims are asserted and as a counterclaim or offset against any Person who asserts a Claim against the Estate or Reorganized Debtor.

18. Piercing the Corporate Veil. With respect to all Estate Claims against any Person, all rights to pierce or ignore the corporate veil are hereby reserved, retained and preserved for the benefit of the Estate and the Reorganized Debtor. Without limiting the generality of the foregoing, this shall include: (a) any right to pierce the corporate veil, including reverse piercing, on any theory or basis, including alter ego or any theory of sham to perpetrate a fraud, and (b) any Claim or basis to pierce the corporate veil of any entity with respect to establishing personal liability against James D. Dondero or Mark K. Okada.

19. Avoidance Actions. All Avoidance Actions are hereby reserved, retained and preserved as to all Persons. The reservation, retention and preservation of such Avoidance Actions shall include the reservation, retention and preservation for the benefit of the Estate and Reorganized Debtor of all rights and remedies pursuant to section 550 of the Bankruptcy Code.

20. Estate Defenses. All Estate Defenses are hereby reserved, retained and preserved in favor of the Estate and Reorganized Debtor as against any Person asserting any Claim against the Estate. This includes asserting all Estate Claims as an offset to, or counterclaim or right of recoupment against, any Person asserting a Claim against the Estate. All defenses and affirmative defenses pursuant to applicable law are hereby reserved, retained and preserved for the benefit of the Estate and the Reorganized Debtor, including without limitation, accord and satisfaction, assumption of risk, contributory negligence, duress, estoppel, failure of consideration, fraud, illegality, laches, license, payment, release, *res judicata*, collateral estoppel, statute of frauds, statute of limitations or repose, discovery rule, adverse domination doctrine or similar doctrines, set off, recoupment, waiver, and all other defenses to Claims under the Bankruptcy Code, including under sections 502(b)(4) and 502(d).

21. Equitable Subordination. All rights or remedies for Equitable Subordination are hereby reserved, retained and preserved in favor of the Estate and Reorganized Debtor against any Person asserting any Claim against the Estate, including all such rights or remedies pursuant to section 510(c) of the Bankruptcy Code. Without limiting the generality of the foregoing, this shall include all rights and remedies to Equitable Subordination as to any Claim asserted by Highland, any Affiliates of Highland, or any officers, directors, employees or equity interest owners of the Debtors, Highland, or any Affiliates thereof.

22. Recharacterization. All rights or remedies to recharacterize any Claim as an equity interest in either of the Debtors are hereby reserved, retained and preserved in favor of the Estate and Reorganized Debtor against any Person asserting any Claim against the Estate. Without limiting the generality of the foregoing, this shall include all rights and remedies to recharacterize any Claim asserted by Highland, any Affiliates of Highland, or any officers, directors, employees or equity interest owners of the Debtors, Highland, or any Affiliates thereof.

Schedule 1 to Exhibit "A" to

Third Amended Joint Plan for Acis Capital Management, LP and Acis Capital Management GP, LLC

NAME	ADDRESS	DATE OF PAYMENT	PAYMENT AMOUNT	REASON FOR PAYMENT ON SCHEDULES
Payments within 90 Days of Petition Date				
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	11/2/2017	$234,013.63	Services
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	11/3/2017	$941,958.57	Services
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	12/8/2017	$89,655.14	Services
David Simek	31 Woodacres Road Brookville, NY 11545	11/15/2017	$2,068.13	Services
David Simek	31 Woodacres Road Brookville, NY 11545	11/30/2017	$24,266.71	Services
David Simek	31 Woodacres Road Brookville, NY 11545	12/12/2017	$1,718.79	Services
David Simek	31 Woodacres Road Brookville, NY 11545	12/29/2017	$25,000.00	Services
FINRA	1735 K Street, NW Washington, DC 20006	11/22/2017	$70.00	Suppliers or Vendors
Highland CLO Management, Ltd.	PO Box 309, Ugland House Grand Cayman, KY1-1104, Cayman Islands	12/19/2017	$2,830,459.22	Services
Payments to Insiders within One Year of Petition Date				
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	2/1/2017	$976,688.47	Contractual Payment
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	2/1/2017	$1,096,033.37	Services
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	2/2/2017	$3,574.80	Expense Reimbursement
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	2/14/2017	$67.44	Expense Reimbursement
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	4/17/2017	$315,574.30	Services
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	4/18/2017	$438,497.51	Services

Schedule 1 to Exhibit "A" to

Third Amended Joint Plan for Acis Capital Management, LP and Acis Capital Management GP, LLC

NAME	ADDRESS	DATE OF PAYMENT	PAYMENT AMOUNT	REASON FOR PAYMENT ON SCHEDULES
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	4/18/2017	$375,855.01	Contractual Payment
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	4/19/2017	$330,249.69	Services
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	5/1/2017	$974,426.41	Services
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	5/31/2017	$2,809,518.47	Unsecured loan repayments including interest
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	5/31/2017	$581,036.15	Services
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	7/18/2017	$373,167.08	Contractual Payment
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	8/1/2017	$971,603.02	Contractual Payment
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	8/7/2017	$1,339,422.12	Services
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	8/16/2017	$53.41	Expense Reimbursement
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	10/18/2017	$372,872.82	Contractual Payment
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	10/18/2017	$728,702.26	Services
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	10/24/2017	$501,979.18	Unsecured loan repayments including interest
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	10/25/2017	$46,648.82	Expense Reimbursement
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	10/25/2017	$67,966.85	Expense Reimbursement
Highland Capital Management, LP	300 Crescent Court, Ste. 700 Dallas, TX 75208	11/1/2017	$967,223.91	Contractual Payment

EXHIBIT “5”

[Executory Contracts and Unexpired Leases to be Assumed by the Trustee]

EXHIBIT "5"
Executory Contracts and Unexpired Leases
to Be Assumed by the Trustee

Party	Contract Description	Contract Date	Cure Amount
Acis CLO 2013-1 Ltd. c/o Estera Trust (f/k/a Appleby Trust) Clifton House 75 Fort St., P.O. Box 1350 Grand Cayman, Cayman Islands KY1-1108	Collateral Administration Agreement	March 18, 2013	$0
U.S. Bank National Association 190 S. LaSalle Street, 8th Floor Chicago, IL 60603 Attention: Global Corporate Trust – Acis CLO 2013-1	Collateral Administration Agreement	March 18, 2013	$0
Acis CLO 2013-1 Ltd. c/o Estera Trust (f/k/a Appleby Trust) Clifton House 75 Fort St., P.O. Box 1350 Grand Cayman, Cayman Islands KY1-1108	Portfolio Management Agreement	March 18, 2013	$0
Acis CLO 2013-2 Ltd. c/o Estera Trust (f/k/a Appleby Trust) Clifton House 75 Fort St., P.O. Box 1350 Grand Cayman, Cayman Islands KY1-1108	Collateral Administration Agreement	October 3, 2013	$0
The Bank of New York Mellon Trust Co., N.A. 601 Travis Street, 16th Floor Houston, Texas 77002 Attn: Global Corporate Trust – Acis CLO 2013-2	Collateral Administration Agreement	October 3, 2013	$0
Acis CLO 2013-2 Ltd. c/o Estera Trust (f/k/a Appleby Trust) Clifton House 75 Fort St., P.O. Box 1350 Grand Cayman, Cayman Islands KY1-1108	Portfolio Management Agreement	October 3, 2013	$0
Acis CLO 2014-3 Ltd. c/o MaplesFS Limited P.O. Box 1093, Boundary Hall, Cricket Sq Grand Cayman, Cayman Islands KY1-1102	Collateral Administration Agreement	February 25, 2014	$0

EXHIBIT "5"
Executory Contracts and Unexpired Leases
<u>to Be Assumed by the Trustee</u>

Party	Contract Description	Contract Date	Cure Amount
U.S. Bank National Association 190 S. LaSalle Street, 8th Floor Chicago, IL 60603 Attention: Global Corporate Trust – Acis CLO 2014-3	Collateral Administration Agreement	February 25, 2014	$0
Acis CLO 2014-3 Ltd. c/o MaplesFS Limited P.O. Box 1093, Boundary Hall, Cricket Sq Grand Cayman, Cayman Islands KY1-1102	Portfolio Management Agreement	February 25, 2014	$0
Acis CLO 2014-4 Ltd. c/o MaplesFS Limited P.O. Box 1093, Boundary Hall, Cricket Sq Grand Cayman, Cayman Islands KY1 -1102	Collateral Administration Agreement	June 5, 2014	$0
U.S. Bank National Association 190 S. LaSalle Street, 8th Floor Chicago, IL 60603 Attention: Global Corporate Trust – Acis CLO 2014-4	Collateral Administration Agreement	June 5, 2014	$0
Acis CLO 2014-4 Ltd. c/o MaplesFS Limited P.O. Box 1093, Boundary Hall, Cricket Sq Grand Cayman, Cayman Islands KY1-1102	Portfolio Management Agreement	June 5, 2014	$0
Acis CLO 2014-5 Ltd. c/o MaplesFS Limited P.O. Box 1093, Boundary Hall, Cricket Sq Grand Cayman, Cayman Islands KY1-1102	Collateral Administration Agreement	November 18, 2014	$0
U.S. Bank National Association 190 S. LaSalle Street, 8th Floor Chicago, IL 60603 Attention: Global Corporate Trust – Acis CLO 2014-5	Collateral Administration Agreement	November 18, 2014	$0

EXHIBIT "5"
Executory Contracts and Unexpired Leases
to Be Assumed by the Trustee

Party	Contract Description	Contract Date	Cure Amount
Acis CLO 2014-5 Ltd. c/o MaplesFS Limited P.O. Box 1093, Boundary Hall, Cricket Sq Grand Cayman, Cayman Islands KY1-1102	Portfolio Management Agreement	November 18, 2014	$0
Acis CLO 2015-6 Ltd. c/o MaplesFS Limited P.O. Box 1093, Boundary Hall, Cricket Sq Grand Cayman, Cayman Islands KY1-1102	Collateral Administration Agreement	April 16, 2015	$0
U.S. Bank National Association 190 S. LaSalle Street, 8th Floor Chicago, IL 60603 Attention: Global Corporate Trust – Acis CLO 2015-6	Collateral Administration Agreement	April 16, 2015	$0
Acis CLO 2015-6 Ltd. c/o MaplesFS Limited P.O. Box 1093, Boundary Hall, Cricket Sq Grand Cayman, Cayman Islands KY1-1102	Portfolio Management Agreement	April 16, 2015	$0
Acis CLO Value Fund II (Cayman), LP. P.O. Box 309, Ugland House Grand Cayman, Cayman Islands KY1-1104	Investment Management Agreement	May 1, 2016	$0
Acis CLO Value Fund II GP, LLC P.O. Box. 309, Ugland House Grand Cayman, Cayman Islands KY1-1104	Investment Management Agreement	May 1, 2016	$0
Acis CLO Value Fund II, LP. 300 Crescent Court Suite 700 Dallas, TX 75201	Investment Management Agreement	May 1, 2016	$0
Acis CLO Value GP, LLC 1209 Orange Street Wilmington, DE 19801	Limited Liability Company Agreement	July 19, 2010	$0

EXHIBIT "5"
Executory Contracts and Unexpired Leases
to Be Assumed by the Trustee

Party	Contract Description	Contract Date	Cure Amount
Acis CLO Value Master Fund II, LP. P.O. Box 309, Ugland House Grand Cayman, Cayman Islands KY1-1104	Investment Management Agreement	May 1, 2016	$0
Acis CLO Value Fund II (Cayman), L.P. P.O. Box 309, Ugland House Grand Cayman, Cayman Islands KY1-1104	Third Amended and Restated Exempted Limited Partnership Agreement	May 1, 2016	$0
Acis CLO Value Master Fund II, L.P. P.O. Box 309, Ugland House Grand Cayman, Cayman Islands KY1-1104	Third Amended and Restated Exempted Limited Partnership Agreement	May 1, 2016	$0
Acis Loan Funding, Ltd. 300 Crescent Court Suite 700 Dallas, TX 75201	FATCA and Non-FATCA Services Agreement	June 23, 2017	$0
BayVK R2 Lux S.A., SICAV FIS 15 rue de Flaxweiler L-6776 Grevenmacher	Power of Attorney	February 20, 2015	$0
BayVK R2 Lux S.A., SICAV-FIS 15 rue de Flaxweiler L-6776 Grevenmacher	Agreement for the Outsourcing of the Asset Management of BayVK R2 Lux S.A., SICAV-FIS	February 27, 2015	$0
BayVK R2 Lux S.A., SICAV-FIS 15 rue de Flaxweiler L-6776 Grevenmacher	Service Level Agreement	February 27, 2015	$0
BNP Paribas Securities Services Luxembourg Branch 60 Avenue John F. Kennedy 1855 Luxembourg	Power of Attorney 86578	February 20, 2015	$0
Hewett's Island CLO 1-R, Ltd. *clo* Maples Finance Limited P.O. Box 1093, Queensgate House Grand Cayman, Cayman Islands KY1-1102	Confidentiality Agreement	April 11, 2011	$0

EXHIBIT "5"
Executory Contracts and Unexpired Leases
to Be Assumed by the Trustee

Party	Contract Description	Contract Date	Cure Amount
Hewett's Island CLO 1-R, Ltd. *clo* Maples Finance Limited P.O. Box 1093, Queensgate House Grand Cayman, Cayman Islands KY1-1102	Governing Documents (Requested from HCM)	--	$0
Hewett's Island CLO 1-R, Ltd. *clo* Maples Finance Limited P.O. Box 1093, Queensgate House Grand Cayman, Cayman Islands KY1-1102	Management Agreement	July 18, 2011	$0
Hewett's Island CLO 1-R, Ltd. *clo* Maples Finance Limited P.O. Box 1093, Queensgate House Grand Cayman, Cayman Islands KY1-1102	Collateral Administration Agreement (Requested from HCM)	November 20, 2007	$0
State Street (Guerney Limited) First Floor, Dorey Court, Admiral Park, St. Peter Port, Guernsey	FATCA and Non-FATCA Services Agreement	June 23, 2017	$0
U.S. Bank National Association 190 S. LaSalle Street, 8th Floor Chicago, IL 60603 Attention: Global Corporate Trust – Acis CLO 2015-6	Confidentiality Agreement	March 5, 2014	$0
Universal-lnvestment-Luxembourg S.A. 15 rue de Flaxweiler L-6776 Grevenmacher	Agreement for the Outsourcing of the Asset Management of BayVK R2 Lux S.A., SICAV-FIS	February 27, 2015	$0
Universal-Investment-Luxembourg S.A. 15 rue de Flaxweiler L-6776 Grevenmacher	Power of Attorney	February 20, 2015	$0
Universal-Investment-Luxembourg S.A. 15 rue de Flaxweiler L-6776 Grevenmacher	Service Level Agreement	February 27, 2015	$0

EXHIBIT "5"
Executory Contracts and Unexpired Leases
<u>to Be Assumed by the Trustee</u>

Party	Contract Description	Contract Date	Cure Amount
Acis Loan Funding, Ltd. First Floor, Dorey Court St. Peter Port, Guernsey GYI 6HJ Channel Islands	Portfolio Management Agreement	December 22, 2016	$0
Acis Capital Management, LP c/o ***PHELANLAW*** 4214 Woodfin Drive Dallas, Texas 75220	Amended and Restated Agreement of Limited Partnership	January 21, 2011	$0
Acis Capital Management GP, LLC c/o ***PHELANLAW*** 4214 Woodfin Drive Dallas, Texas 75220	Amended and Restated Limited Liability Company Agreement	January 21, 2011	$0

For the avoidance of doubt, to the extent not otherwise included above, the Trustee intends to assume any additional executory contracts that relate to the funds set forth below as may be necessary or beneficial to the Reorganized Debtor under the Plan:

1. Acis CLO 2013-1, Ltd.
2. Acis CLO 2013-2, Ltd.
3. Acis CLO 2014-3, Ltd.
4. Acis CLO 2014-4, Ltd.
5. Acis CLO 2014-5, Ltd.
6. Acis CLO 2015-6, Ltd.
7. Acis CLO Value Fund II, L.P.
8. Acis CLO Value Fund II (Cayman), L.P.
9. Acis CLO Master Fund II, L.P.
10. BayVK R2 Lux S.A., SICAV FIS

EXHIBIT “5”
Executory Contracts and Unexpired Leases
to Be Assumed by the Trustee

11. Hewitt’s Island CLO 1-R, Ltd.

12. Acis Loan Funding, Ltd.

The Trustee reserves the right to amend or supplement this Exhibit 5.

Exhibit 12

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Phillip Lamberson – State Bar No. 00794134
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COUNSEL FOR REORGANIZED DEBTORS

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re: **ACIS CAPITAL MANAGEMENT, L.P., ACIS CAPITAL MANAGEMENT GP, LLC,** **Debtors.**	§ § § § § § § §	**Case No. 18-30264-SGJ-11** **Case No. 18-30265-SGJ-11** **(Jointly Administered Under Case No. 18-30264-SGJ-11)** **Chapter 11**
ACIS CAPITAL MANAGEMENT, L.P., ACIS CAPITAL MANAGEMENT GP, LLC, Reorganized Debtors, **Plaintiffs,** **vs.** **HIGHLAND CAPITAL MANAGEMENT, L.P., HIGHLAND CLO FUNDING, LTD. F/K/A ACIS LOAN FUNDING, LTD., HIGHLAND HCF ADVISOR, LTD., HIGHLAND CLO MANAGEMENT, LTD., and HIGHLAND CLO HOLDINGS, LTD,** **Defendants.**	§ § § § § § § § § § § § § § § §	**Adversary No. 18-03078** **(To be consolidated with Adversary Nos. 18-03212 & 19-03103)**

SECOND AMENDED COMPLAINT (INCLUDING CLAIM OBJECTIONS AND OBJECTIONS TO ADMINISTRATIVE EXPENSE CLAIM)

Acis Capital Management, L.P. ("Acis LP") and Acis Capital Management GP, LLC ("Acis GP" together with Acis LP, the "Reorganized Debtors" or "Acis")[1] the reorganized debtors in the above-styled and jointly administered bankruptcy cases (the "Bankruptcy Cases"), and Plaintiffs in the in the above-styled adversary proceeding (the "Adversary Proceeding"), file this *Second Amended Complaint (Including Claim Objections and Objections to Administrative Expense Claim)* (this "Second Amended Complaint"), objections to the proofs of claims filed by Highland Capital Management, L.P. ("Highland Capital"), and objections to the administrative expense claim filed by Highland Capital, and respectfully state as follows:[2]

ANSWER AND AFFIRMATIVE DEFENSES

1. Pursuant to Federal Rule of Civil Procedure 41(a), incorporated by Federal Rule of Bankruptcy Procedure 7041, all claims asserted in the *Original Complaint and Request for Preliminary Injunction of Highland CLO Funding, Ltd. and Highland Capital Management Against Chapter 11 Trustee of Acis Capital Management, L.P. and Acis Capital Management GP, LLC* [Docket No. 1] (the "Original Complaint") by Highland Capital and Highland CLO Funding, Ltd. ("Highland Funding") have been dismissed without prejudice. *See* Adv. No. 18-03078, Docket No. 79. Accordingly, such dismissal of Highland Capital's and Highland Funding's claims obviates the Trustee's, now Acis's, answer and affirmative defenses thereto;

[1] On February 15, 2019, the date upon which the Plan (defined below) became effective, Acis was substituted for Robin Phelan, the Chapter 11 Trustee, in the above-referenced consolidated adversary cases. *See* Case No. 18-30264, Docket Nos. 829, 830, & 863. Prior to the date upon which the Plan (defined below) became effective, Acis may be referred to as the "Debtors."

[2] As more fully described below in the Procedural Background, this Second Amended Complaint consolidates: (i) claims, counterclaims, third-party claims, and objections to Highland Capital's proofs of claim brought by the Chapter 11 Trustee, now Acis, in this Adversary No. 18-03078; (ii) claims brought by the Chapter 11 Trustee, now Acis, in Adversary No. 18-03212, which has been consolidated under this Adversary Proceeding; and (iii) objections of the Chapter 11 Trustee, now Acis, against Highland Capital's request for an administrative expense claim, which was converted to Adversary No. 19-03103 and was ordered consolidated under this Adversary Proceeding.

however, Acis reserves all rights with respect to answering or asserting affirmative defenses to any future-filed claims by any parties in this Adversary Proceeding.

2. Additionally, pursuant to Federal Rule of Civil Procedure 41(a)(2), such dismissal of Highland Capital's and Highland Funding's claims is without prejudice to any counterclaims asserted by the Trustee, now Acis, in the *Defendant's Answer, Affirmative Defenses, Counterclaims, and Third Party Claims* [Adv. No. 18-03078, Docket No. 23] (the "Original Answer"), as may be amended, and such counterclaims remain pending for independent adjudication.

CLAIMS AND COUNTERCLAIMS

3. Acis hereby asserts the following claims for affirmative recovery against Highland Capital, Highland Funding, Highland HCF Advisor, Ltd. ("Highland Advisor"), Highland CLO Management Ltd. ("Highland Management"), and Highland CLO Holdings, Ltd. ("Highland Holdings"). Additionally, Acis asserts the following claims and counterclaims against Highland Capital and such claims and counterclaims shall also constitute recoupment or offset to any claim Highland Capital has against Acis.

I. JURISDICTION, VENUE, AND STATUTORY PREDICATE

4. This Court has subject matter jurisdiction over the Bankruptcy Cases and this adversary proceeding pursuant to 28 U.S.C. §§ 157 and 1334. Venue of the Adversary Proceeding in this district is proper under 28 U.S.C. § 1409.

5. This matter arises under the laws of the United States of America and state common law. The statutory predicates for the relief sought herein are pursuant to sections 362, 502, 503, 541, 542, 544, 547, 548, 550, and 558 of 11 U.S.C. § 101 *et seq.* (the "Bankruptcy Code"), Texas Business & Commerce Code § 24.001 *et seq.* ("TUFTA"), and Federal Rules of Bankruptcy Procedure 3007(b) and 7001.

6. This Adversary Proceeding constitutes a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Acis hereby consents to the Court's entry of a final judgment resolving this Adversary Proceeding. This Adversary Proceeding includes an objection to Highland Capital's proofs of claim pursuant to Federal Rule of Bankruptcy Procedure 3007(b), and the claims and counterclaims asserted herein shall constitute recoupment and/or offset to such proofs of claim, to the extent such claims are otherwise allowed. This Adversary Proceeding also includes an objection to Highland Capital's administrative expense claim, and the claims and counterclaims asserted herein shall constitute recoupment and/or offset to such administrative expense claim, to the extent such claims are otherwise allowed.

II. PARTIES

7. Acis LP is limited partnership and Acis GP is a limited liability company, both of which were organized under the laws of the State of Delaware, and both of which may be served with pleadings and process in this Adversary Proceeding through the undersigned counsel.

8. Highland Capital is a limited partnership organized under the laws of the State of Delaware, with its principal place of business located at 300 Crescent Court, Suite 700, Dallas, Texas 75201.

9. Highland Funding is an exempted company organized with limited liability under the laws of Guernsey, with its registered office located at First Floor, Dorey Court, Admiral Park, St Peter Port, Guernsey GY1 6HJ, Channel Islands.

10. Highland Advisor is a company organized under the laws of the Cayman Islands, with its registered office located at Maples Corporate Services Limited, P.O. Box 309 Ugland House, South Church Street, George Town, Grand Cayman KY1-1004. Highland Advisor's principal place of business is 300 Crescent Court, Suite 700 Dallas, Texas 75201. *See* **Exhibit T** at 86. Highland Advisor may be served through its President, James Dondero, at 300 Crescent

Court, Suite 700 Dallas, Texas 75201. *See id.* at 89. Highland Advisor may be served through its Secretary, Scott Ellington, at 300 Crescent Court, Suite 700 Dallas, Texas 75201. *See id*. Highland Advisor may be served through its Chief Compliance Officer, Thomas Surgent at 300 Crescent Court, Suite 700 Dallas, Texas 75201. *See id.* Highland Advisor may be served through its Executive Vice President, Mark Okada at 300 Crescent Court, Suite 700 Dallas, Texas 75201. *See id*. Highland Advisor may be served through its Treasurer, Frank Waterhouse at 300 Crescent Court, Suite 700 Dallas, Texas 75201. *See id*. Highland Advisor may be served through its Assistant Secretary, Lee "Trey" Parker at 300 Crescent Court, Suite 700 Dallas, Texas 75201. *See id*. Highland Advisor may also be served through its director Summit Management, Limited c/o John Cullinane P.O. Box 32311, Suite #4-210 Governors Square 23 Lime Tree Bay Avenue Grand Cayman KY1-1209 Cayman Islands. Highland Advisor may also be served through its director John Cullinane at 24 Windjammer Quay, George Town Grand Cayman. Highland Advisor may also be served through its director at Suite #4-210 Governors Square 23 Lime Tree Bay Avenue Grand Cayman KY1-1209 Cayman Islands. Acis reserves the right to serve Highland Advisor by any method that is reasonably calculated to give notice including, but not limited to applicable treaties and conventions between the United States and the Cayman Islands, a British overseas territory.

11. Highland Management is a company organized under the laws of the Cayman Islands, with its registered office located at P.O. Box 309 Ugland House, South Church Street, George Town, Grand Cayman KY1-1004. Upon information and belief, Highland Management principal place of business is 300 Crescent Court, Suite 700 Dallas, Texas 75201. Highland Management may also be served through its director Summit Management, Limited c/o John Cullinane P.O. Box 32311, Suite #4-210 Governors Square 23 Lime Tree Bay Avenue Grand Cayman KY1-1209 Cayman Islands. Acis reserves the right to serve Highland Management by

any method that is reasonably calculated to give notice including, but not limited to applicable treaties and conventions between the United States and the Cayman Islands, a British overseas territory.

12. Highland Holdings is a company organized under the laws of the Cayman Islands, with its registered office located at P.O. Box 309 Ugland House, South Church Street, George Town, Grand Cayman KY1-1004. Highland Holding's principal place of business is 300 Crescent Court, Suite 700 Dallas, Texas 75201. *See id.* at 103. Highland Holding's general or managing agent is James Dondero. *See id*. Highland Advisor may be served through its general or managing agent, James Dondero, at 300 Crescent Court, Suite 700 Dallas, Texas 75201. *See id*. Acis reserves the right to serve Highland Holdings by any method that is reasonably calculated to give notice including, but not limited to applicable treaties and conventions between the United States and the Cayman Islands, a British overseas territory.

III. JURISDICTIONAL BACKGROUND[3]

A. Highland Advisor Jurisdictional Background

13. Upon information and belief, on October 26, 2017, Jean Paul Sevilla ("Sevilla"), a Highland employee and associate general counsel, requested Maples and Calder create Highland Advisor. On information and belief, on October 27, 2017, Mr. Sevilla requested that Highland Advisor be established such that Highland is the 100% owner of the "high" share class of Highland Advisor.

14. Highland Advisor's principal place of business is 300 Crescent Court, Suite 700, Dallas, Texas 75201, Highland Capital's office and headquarters. *See* **Exhibit T** at 88. Highland Advisor is ultimately, directly or indirectly, owned or controlled by James Dondero

[3] Any capitalized term not otherwise defined in this Jurisdictional Background shall have the meaning ascribed to it later in this Second Amended Complaint.

("Dondero") and Mark Okada ("Okada"), who ultimately, directly or indirectly, own or control Highland Capital. *See id.* at 89 and Opinion at 8.

15. Upon information and belief, the principals of Highland Capital, Dondero and Okada, serve as the president and executive vice president, respectively, of Highland Advisor. *See* Opinion at 8 and **Exhibit T** at 89. Other Highland Capital employees serve as officers of Highland Advisor including Scott Ellington, Lee "Trey" Parker, Thomas Surgent, and Frank Waterhouse. *See* **Exhibit T** at 89.

16. Dondero signed the November 15, 2017 Portfolio Management Agreement by and between Highland Advisor and Highland Funding (the "November 2017 PMA") on behalf of Highland Advisor. A true and correct copy of the November 2017 PMA is attached hereto as **Exhibit P**.

17. Attached hereto as **Exhibit Q** is the December 13, 2018 (A.M.) hearing transcript from *In re Acis Capital Management, L.P., et al*. At the December 13, 2018 hearing, Hunter Covitz, a Highland Capital employee, testified: "As I understand HCF Advisor is a relying advisor of Highland." *See* **Exhibit Q** at 78, ll. 15-16. Hunter Covitz further testified, "[b]ut HCF Advisor is Highland. . . . That's the distinction between Highland HCF Advisor could be well capitalized, the substance of Highland Capital, its office space, employees, balance sheet, back office, legal, what [have] you, would all be incorporated with HCF Advisor, where Acis with no employees is not looked at that way." *Id.* at 61, ll. 5 & 11-15. Finally, Hunter Covitz testified, "there's really no differentiation between HCF Advisor and Highland." *Id.* at 62, ll. 21-23.

18. Attached hereto as **Exhibit R** are meeting minutes of Acis Loan Funding, Ltd. and Highland Funding, which contain a Highland Funding Bates label and were produced in connection with the Bankruptcy Cases or related adversary case. These meeting minutes reflect that various Highland Capital employees, including Sevilla, Hunter Covtiz, Tim Cournoyer,

David Wilmore, Issace Leventon, and Thomas Surgent appeared at Highland Funding's board meeting on behalf of Highland Advisor. The parties that conduct the day-to-day operations of Highland Advisor are Highland Capital employees that office in Dallas, Texas.

19. Attached hereto as **Exhibit S** is Highland Capital's 2017 Form ADV, which states that Highland Advisor is another business name of Highland Capital.

20. Attached hereto as **Exhibit T** is Highland Capital's 2019 Form ADV, which states that Highland Advisor's principal place of business is 300 Crescent Court, Suite 700, Dallas, Texas 75201—Highland Capital's office and headquarters. Highland Capital's 2019 Form ADV also states that Highland Capital is a shareholder of Highland Advisor and that Highland Advisor is another business name of Highland Capital.

21. The Confirmation Opinion states that "Dondero, in addition to being the chief executive of Highland and the Debtor-Acis, also became the president of the newly formed Highland [Advisor]." Confirmation Opinion at 8. Additionally, the Confirmation Opinion states that "Highland [Advisor] (i.e., the Cayman Island entity that was recently formed to essentially replace the Debtor-Acis under the Equity/ALF PMA)." Confirmation Opinion at 19. Additionally, the Confirmation Opinion states that Highland Advisor is an affiliate of Highland Capital. Confirmation Opinion at 21.

B. Highland Management Jurisdictional Background

22. Upon information and belief, on or about October 27, 2017 (7 days after the Arbitration Award), Highland Management was created at the direction of Sevilla, a Highland lawyer and employee, using the same structure as Highland Advisor. Upon information and belief, Highland Management's mailing address is 300 Crescent Court, Suite 700, Dallas, Texas 75201, Highland's Dallas office and headquarters.

23. Upon information and belief, Highland Management is ultimately, directly or indirectly, owned or controlled by Dondero and Okada, who ultimately, directly or indirectly, own or control Highland Capital.

24. Additionally, in connection with the hearing on the involuntary petitions, Dondero testified at great length regarding the Note Transfer to Highland Management on behalf of Highland Management.[4] Dondero testified upon direct examination by Acis's (at the time, a putative debtor) counsel about the Note Transfer, stating:

> Q: Now, if there came a time with litigation costs and other expenses where Acis was unable to pay its expenses when they became due, what was your intent in signing this as to whether or not HCLOM [Highland Management] would honor this and make the payment?
>
> A: We would -- **we** would honor it and -- and pay as appropriate.

See **Exhibit U** (March 23, 2018 Hr'g Tr., *In re Acis Capital Management, L.P., et al*. 146:7-12) (emphasis added). When Dondero says "we," Acis contends that he is speaking on behalf of Highland Capital and Highland Management. Additionally, Dondero testified that the Note Transfer was an "economic wash" for him as "it doesn't matter which pocket it goes into." *Id.* at 152:20-24.

25. The Opinion states that, "Highland Management was registered in the Cayman Islands on October 27, 2017, roughly a week before the Note Transfer… **it appears Highland Management was an entity that was created specifically to hold the Note and eventually take possession of the CLO PMAs in an international forum that would be difficult for Mr. Terry to reach**." Opinion at 20-21, n. 37 (emphasis added).

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[4] Dondero testified at the trial on the involuntary petitions only after Mr. Terry sought to compel Dondero's deposition and after this Court ordered Dondero to appear at the trial on the involuntary petitions.

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26. Upon information and belief, Dondero is the managing or general agent of Highland Management.

27. The Confirmation Opinion states that Highland Management is "an entity registered in the Cayman Islands on October 27, 2017—seven days after Mr. Terry's Arbitration Award)." Confirmation Opinion at 19. The Confirmation Opinion further states that "it appears Highland Management was an entity that was created specifically to hold the Note and eventually take possession of the CLO PMAs in an international forum that would be difficult for Mr. Terry to reach." Opinion at 20-21, n.37. Finally, the Confirmation Opinion states that "Highland Management (the Highland-created entity that entered into a portfolio management agreement with a new Acis-CLO that was established in 2017)." Confirmation Opinion at 24.

C. Highland Holdings Jurisdictional Background

28. The Confirmation Opinion states that Highland Holdings is "(yet another entity incorporated in the Cayman Island on October 27, 2017)." Confirmation Opinion at 19.

29. Attached hereto as **Exhibit T** is Highland Capital's 2019 Form ADV, which states that Highland Holding's principal place of business is 300 Crescent Court, Suite 700, Dallas, Texas 75201, Highland Capital's office and headquarters. **Exhibit T** at 103. Highland Capital's 2019 Form ADV also states that Highland Holdings is another business name of Highland Capital. Highland Capital's 2019 Form ADV further states Highland Capital, Dondero, and other Highland affiliates are "control persons" of Highland Holdings.

IV. PROCEDURAL BACKGROUND

30. On January 30, 2018 (the "Petition Date"), Joshua N. Terry ("Terry"), as petitioning creditor, filed involuntary petitions under section 303 of the Bankruptcy Code against both Acis LP and Acis GP, thereby initiating the Bankruptcy Cases. *See* Case No. 18-30264, Docket No. 1 & Case No. 18-30265, Docket No. 1.

31. On April 13, 2018, this Court entered its *Findings of Fact and Conclusions of Law in Support of Orders for Relief Issued After Trial on Involuntary Bankruptcy Petition* [Case No. 18-30264, Docket No. 118 & Case No. 18-30265, Docket No. 113] (the "Opinion") and *Order for Relief in an Involuntary Case* in each of the Bankruptcy Cases [Case No. 18-30264, Docket No. 119 & Case No. 18-30265, Docket No. 114] (the "Orders for Relief"). The Opinion is hereby incorporated by reference as if fully set forth herein.

32. On May 14, 2018, Robin Phelan (the "Trustee") was appointed chapter 11 trustee of the Debtors' bankruptcy estates in the Bankruptcy Cases. *See* Case No. 18-30264, Docket No. 213.

33. On May 30, 2018, Highland Capital and Highland Funding filed their Original Complaint, initiating this Adversary Proceeding, in which Highland Capital and Highland Funding asserted various claims for breach of contract, declaratory relief, and injunctive relief against the Trustee. *See* Adv. No. 18-03078, Docket No. 1.

34. On June 21, 2018, the Trustee filed his *Verified Original Complaint and Application for Temporary Restraining Order and Preliminary Injunction* [Adv. No. 18-03212, Docket No. 1] ("Complaint and Application for TRO"), initiating Adversary No. 18-03212, in which the Trustee sought, *inter alia*, injunctive relief to prevent Highland Capital, Highland Funding, and their affiliates from taking any action to effectuate an optional redemption (which would result in liquidation of the Acis CLOs (defined below)), as well as relief pursuant to 11 U.S.C. § 362(k) for willful violations of the automatic stay for actions taken by Highland Capital and its affiliates, including Highland Funding, in attempting to effectuate an optional

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redemption.[5] Highland Capital and Highland Funding subsequently filed their answers to the Trustee's Complaint and Application for TRO. *See* Adv. No. 18-03212, Docket Nos. 32 & 33.

35. On July 2, 2018, the Trustee filed his Original Answer in this Adversary Proceeding, in which the Trustee asserted certain counterclaims and third-party claims against Highland Capital, Highland Funding, Highland Advisor, and Highland Management (collectively and along with Highland Holdings, the "Highlands") in connection with the Highlands' scheme, described more fully below, to fraudulently transfer Acis LP's assets to the Highlands and otherwise appropriate the business of Acis LP. *See* Adv. No. 18-03078, Docket No. 23.

36. On July 23, 2018, Highland Capital filed *Highland Capital Management, L.P.'s Motion to Dismiss Counterclaims or, Alternatively, for a More Definite Statement* [Adv. No. 18-03078, Docket No. 42] ("Highland's Motion to Dismiss"), in which Highland Capital sought, *inter alia*, to dismiss the Trustee's counterclaims pursuant to Federal Rule of Civil Procedure 12(b)(6).

37. Also on July 23, 2018, Highland Funding filed *Highland CLO Funding Ltd.'s Motion to Dismiss* [Adv. No. 18-03078, Docket No. 43] ("Highland Funding's Motion to Dismiss") and *Highland CLO Funding Ltd.'s Brief in Support of its Motion to Dismiss* [Adv. No. 18-03078, Docket No. 44], in which Highland Funding sought, *inter alia*, to dismiss the Trustee's counterclaims pursuant to Federal Rules of Civil Procedure 12(b)(2) and 12(b)(6).

38. On August 1, 2018, Highland Capital filed Proof of Claim No. 27 in the claims register for Case No. 18-30264 (the "Highland Acis LP Claim"), in the amount of $4,672,140.38, with the basis of the claim listed as "Sub-Advisory Services and Shared Services."

[5] Certain portions of the Complaint and Application for TRO were subsequently dismissed, ultimately leaving only: Count 1 for *Temporary Restraining Order and Preliminary Injunction* (which injunctive relief expired with confirmation of the Plan (defined below)); and Count 2 for *Willful Violation of the Automatic Stay* against Highland Capital and Highland Funding. *See* Adv. No. 18-03212, Docket Nos. 49 & 56.

39. Also on August 1, 2018, Highland Capital filed Proof of Claim No. 13 in the claims register for Case No. 18-30265 (the "Highland Acis GP Claim," together with the Highland Acis LP Claim, the "Highland Capital Claims"), in the amount of $4,672,140.38, with the basis of the claim listed as "Sub-Advisory Services and Shared Services." The Highland Acis GP Claim is identical to the Highland Acis LP Claim.

40. On August 10, 2018, Highland Capital and Highland Funding filed *Highland Capital Management, L.P. and Highland CLO Funding Ltd.'s Motion for Leave to Amend Adversary Complaint and Brief in Support* [Docket No. 51] (the "Motion to Amend"), in which Highland Capital and Highland Funding sought to amend their Original Complaint to remove all claims against the Trustee, except for one claim by Highland Funding for a declaratory judgment that the Trustee cannot "sell or transfer Highland Funding's property without Highland Funding's consent."

41. On October 9, 2018, the Court heard Highland Capital's Motion to Dismiss, Highland Funding's Motion to Dismiss, and the Motion to Amend. Considering that the Trustee expressed his intent to amend his Original Answer, the parties agreed that all arguments made by Highland Capital and Highland Funding to dismiss the Trustee's counterclaims pursuant to Rule 12(b)(6) were moot. With respect to Highland Funding's argument to dismiss for lack of personal jurisdiction under Rule 12(b)(2), the Court ruled that Highland Funding has minimum contacts with the United States, and that the Court, has personal jurisdiction over Highland Funding in this Adversary Proceeding, and exercising personal jurisdiction over Highland Funding would not violate any traditional notions of fair play and substantial justice. Further, the Court ruled that, even if sufficient minimum contacts did not exist, Highland Funding has waived personal jurisdiction in this Adversary Proceeding.

42. With respect to the Motion to Amend, due to the change in circumstances in the Bankruptcy Cases, Highland Capital and Highland Funding agreed to voluntarily dismiss all claims asserted in the Original Complaint, without prejudice.

43. On November 13, 2018, the Trustee filed his *Defendant's Amended Answer, Counterclaims (Including Claim Objections) and Third-Party Claims* [Adv. No. 18-03078, Docket No. 84] (the "Amended Counterclaims") in this Adversary Proceeding, in which the Trustee asserted numerous counterclaims and third-party claims against Highland Capital and various of its affiliates in connection with, *inter alia*, their scheme to fraudulently transfer Acis LP's assets to the Highlands and otherwise appropriate the business of Acis LP. Additionally, with the Amended Counterclaims, the Trustee included his objections to the Highland Claims pursuant to section 502(b)(1), (b)(4), and (d) of the Bankruptcy Code (the "Objections to Claim"), and further asserted that, to the extend allowed, the Highland Claims should be equitably subordinated pursuant to section 510(c) of the Bankruptcy Code.

44. On December 11, 2018, Highland Capital filed *Highland Capital Management, L.P.'s Application for Administrative Expense Claim Pursuant to 11 U.S.C. § 503(b)* [Case No. 18-30264, Docket No. 772] (the "Application") for approval of an administrative expense claim pursuant to section 503(b)(1) of the Bankruptcy Code, in the amount of $3,554,224.29 (the "Administrative Claim"), for purportedly providing postpetition services to the Debtors in connection with the Sub Agreements (defined below) and the Universal/BVK Agreement (defined below), which Highland Capital contends were actual, necessary costs and expenses of preserving the estate.

45. On January 10, 2019, the Trustee timely filed his *Objection to Highland Capital Management, L.P.'s Application for Administrative Expense Claim Pursuant to 11 U.S.C. § 503(b)* [Case No. 18-30264, Docket No. 772].

46. On January 31, 2019, this Court entered its *Findings of Fact, Conclusions of Law, and Order Granting Final Approval of Disclosure Statement and Confirming the Third Amended Joint Plan for Acis Capital Management, L.P. and Acis Capital Management GP, LLC, as Modified* (the "Confirmation Order") [Case No. 18-30264, Docket Nos. 829 & 830], which approves the *Third Amended Joint Plan for Acis Capital Management, L.P. and Acis Capital Management GP, LLC* (the "Plan") and is supplemented by the *Court's Bench Ruling and Memorandum of Law in Support of: (A) Final Approval of Disclosure Statement; and (B) Confirmation of Chapter 11 Trustee's Third Amended Joint* Plan (the "Confirmation Opinion") [Case No. 18-30264, Docket No. 827]. The Confirmation Opinion is hereby incorporated by reference as if fully set forth herein.

47. On February 15, 2019 (the "Effective Date"), the Trustee filed the *Notice of February 15, 2019 Effective Date for the Third Amended Joint Plan for Acis Capital Management, LP and Acis Capital Management GP, LLC* [Case No. 18-30264, Docket No. 863]. On the Effective Date, Acis (as the Reorganized Debtors) became substituted for the Trustee in the above-referenced consolidated adversary cases pursuant to the Plan, which provides:

> Upon the Effective Date, the Reorganized Debtor (a) shall automatically be substituted in place of the Chapter 11 Trustee as the party representing the Estate in respect of any pending lawsuit, motion or other pleading pending before the Bankruptcy Court or any other tribunal, and (b) is authorized to file a notice on the docket of each adversary proceeding or the Chapter 11 Cases regarding such substitution. The Reorganized Debtor shall have exclusive standing and authority to prosecute, settle or compromise Estate Claims for the benefit of the Estate in the manner set forth in this Plan.

Plan § 7.03.

48. On March 11, 2019, the Court entered its *Order Consolidating Adversary Case Nos. 18-03078 & 18-03212* [Adv. No. 18-03078, Docket No. 127; Adv. No. 18-03212, Docket No. 63], under which the Court ordered that Adversary Nos. 18-03078 and 18-03212 are

consolidated under Federal Rule of Civil Procedure 42(a), incorporated by Federal Rule of Bankruptcy Procedure 7042. The Court further directed the Clerk to caption the case *as Robin Phelan, Chapter 11 Trustee v. Highland Capital Management, L.P., et al.*, resulting in the designation of the Trustee, now Acis, as the Plaintiff(s) and Highland Capital and its affiliates as Defendants in this Adversary Proceeding.

49. On May 1, 2019, the Court entered its *Order Addressing DE #825 and Directing that: (A) Highland Capital Management, L.P.'s Administrative Expense Request [DE #722] Be Converted from a Contested Matter to Adversary Proceeding; and (B) Counts 27-31 Be Transferred in Adversary Proceeding No. 18-03078 into a New Adversary Proceeding* [Case No. 18-30264, Docket No. 919], whereby the Court converted Highland Capital's Application into a new adversary proceeding, and thereby initiating Adversary No. 19-03103.

50. On June 10, 2019, the Court held a status conference and directed: (i) that Adversary No. 19-03103 should be consolidated under this Adversary No. 18-03078; and (ii) that Acis will file an amended complaint, consolidating all claims, counterclaims, third-party claims against Highland Capital and its affiliates, as well as any objections to the Highland Capital Claims and Administrative Claim, by June 20, 2019.

V. FACTUAL BACKGROUND

A. The Debtors' Business

51. Dondero, Okada, and Terry formed Acis LP in 2011 as a registered investment advisor to raise money from third-party investors to invest in certain collateralized loan obligation funds (the "CLOs").[6] The CLOs are governed by certain indentures (the

[6] The Acis CLOs include: (i) Acis CLO 2013-1 Ltd. ("CLO-1"), (ii) Acis CLO 2014-3 Ltd. ("CLO-3"), (iii) Acis CLO 2014-4 Ltd. ("CLO-4"), (iv) Acis CLO 2014-5 Ltd. ("CLO-5"), and (v) Acis CLO 2015-6 Ltd. ("CLO-6").

"Indentures").[7] Acis LP is the portfolio manager for the CLOs and generates revenue primarily through the management of the CLOs via certain portfolio management agreements ("PMAs").[8] *See* Opinion ¶¶ 22-28. While Dondero made and approved the higher-level financial strategies and decisions of Acis, Terry was responsible for the day-to-day management of Acis.

52. Acis LP's business as portfolio manager for the CLOs has been incredibly successful. Between 2011 and 2017, Acis LP distributed profits of $11,037,445.00 to Dondero, $4,598,935.00 to Terry, and $2,759,361.00 to Okada, its partners. Further, on August 31, 2017, right before Highland Capital began its campaign to denude Acis LP and take over its business, Acis LP also boasted millions of dollars in investment assets and total shareholder equity of roughly $3.4 million. Without question, Acis LP's business as portfolio manager for the CLOs and others has been very valuable and lucrative.

53. As is common with the numerous Highland Capital affiliates, Acis LP contracted out certain of its administrative functions and portfolio management responsibilities to Highland Capital pursuant to that certain *Sub-Advisory Agreement*, originally dated January 1, 2011 (as amended, the "Sub-Advisory Agreement") and that certain *Shared Services Agreement*, originally dated January 1, 2011 (as amended, the "Shared Services Agreement," and together

[7] The Indentures include: (i) that certain Indenture, dated as of March 18, 2013, issued by CLO-1, as issuer, Acis CLO 2013-1 LLC, as co-issuer, and U.S. Bank, as trustee (the "CLO-1 Indenture"); (ii) that certain Indenture, dated as of February 25, 2014, issued by CLO-3, as issuer, Acis CLO 2014-3 LLC, as co-issuer, and U.S. Bank, as trustee (the "CLO-3 Indenture"); (iii) that certain Indenture, dated as of June 5, 2014, issued by CLO-4, as issuer, Acis CLO 2014-4 LLC, as co-issuer, and U.S. Bank, as trustee (the "CLO-4 Indenture"); (iv) that certain Indenture, dated as of November 18, 2014, issued by CLO-5, as issuer, Acis CLO 2014-5 LLC, as co-issuer, and U.S. Bank, as trustee (the "CLO-5 Indenture"); and (v) that certain Indenture, dated as of April 16, 2015, issued by CLO-6, as issuer, Acis CLO 2015-6 LLC, as co-issuer and U.S. Bank, as trustee (the "CLO-6 Indenture").

[8] The PMAs include: (i) that certain Portfolio Management Agreement by and between Acis LP and CLO-1, dated March 18, 2013 (the "CLO-1 PMA"); (ii) that certain Portfolio Management Agreement by and between Acis LP and CLO-3, dated February 25, 2014 (the "CLO-3 PMA"); (iii) that certain Portfolio Management Agreement by and between Acis LP and CLO-4, dated June 5, 2014 (the "CLO-4 PMA"); (iv) that certain Portfolio Management Agreement by and between Acis LP and CLO-5, dated November 18, 2014 (the "CLO-5 PMA"); and (v) that certain Portfolio Management Agreement by and between Acis LP and CLO-6, dated April 16, 2015 (the "CLO-6 PMA").

with the "Sub Agreements"). The Sub-Advisory Agreement and Shared Services Agreement have each been amended multiple times.

54. As the Court explained in its Opinion:

> Acis LP and Acis GP/LLC have never had any employees. Rather, all employees that work for any of the Highland family of companies (including Mr. Terry) have, almost without exception, been employees of Highland itself. Highland has approximately 150 employees in the United States. Highland provides employees to entities in the organizational structure, such as Acis LP and Acis GP/LLC, through both the mechanism of: (a) a Shared Services Agreement (herein so called), which provides "back office'" personnel—such as human resources, accounting, legal and information technology to the Highland family of companies; and (b) a Sub-Advisory Agreement (herein so called), which provides "front office" personnel to entities—such as the managers of investments like Mr. Terry. The evidence indicated that this is typical in the CLO industry to have such agreements.

Opinion at 14 (footnotes omitted).

55. Prior to entry of the Orders for Relief, Dondero directed, either himself or through Highland Capital employees, all actions taken by Acis. *See* Opinion ¶ 30.

> Mr. Dondero [the Chief Executive of Highland] testified that he has decision making authority for the Alleged Debtors but usually delegates that authority to Highland's in-house lawyers, Scott Ellington (General Counsel, Chief Legal Officer, and Partner of Highland) and Isaac Leventon (Assistant General Counsel of Highland) . . . . Mr. Leventon is designated to be the representative for the Alleged Debtors (and testified as a Rule 30(b)(6) witness during pre-trial discovery)—he explained that this representative-authority derives from the Shared Services Agreement. Mr. Leventon testified that he takes his instructions generally through his direct supervisor, Mr. Ellington.

Id.

56. Highland Funding, formerly known as Acis Loan Funding, Ltd. ("ALF"),[9] holds the subordinated notes issued by the CLOs and receives the "very last cash flow from the CLOs." Opinion at pp. 12-13. "It, in certain ways, controls the CLO vehicle . . . [and] was essentially the equity owner in the CLO special purpose entities." *Id.* Until the ALF PMA Transfer in the Fall of

[9] On October 30, 2017, Acis Loan Funding, Ltd. changed its name to Highland CLO Funding, Ltd. The defined term "ALF" used herein denotes Highland CLO Funding, Ltd. f/k/a Acis Loan Funding, Ltd. before October 30, 2017.

2017 (described below), Acis LP had complete control of Highland Funding and its valuable subordinated note rights to further enhance its successful portfolio management business.

B. Section 3.10(a) of the Limited Partnership Agreement

57. In order to form Acis LP, Acis GP, the general partner, and limited partners The Dugaboy Investment Trust[10] (the "Trust"), Okada, and Terry entered into that certain *Amended and Restated Agreement of Limited Partnership of Acis Capital Management, L.P.* (the "LPA"), dated to be effective as of January 21, 2011.[11] The LPA is attached hereto as **Exhibit A**. The LPA is governed by Delaware Law. LPA § 6.11. At all relevant times herein, the officers of Acis GP are Dondero, as President, and Frank Waterhouse ("Waterhouse")[12], as Treasurer. Further, at least between October 14, 2015, and December 19, 2017, Dondero was the sole member of Acis GP. *See* Case No. 18-30265, Docket No. 152.

58. Pursuant to the Sub Agreements, Highland Capital received compensation for providing services to Acis LP, but amounts of compensation were subject to certain terms of the LPA. Section 3.10 of the LPA directs compensation and reimbursement of the General Partner and contains subpart (a), which limits compensation and reimbursement of expenses payable to the General Partner and any Affiliate of the General Partner without proper consent:

> Compensation. The General Partner and any Affiliate of the General Partner shall receive no compensation from the Partnership for services rendered pursuant to this Agreement or any other agreements unless approved by a Majority Interest; provided, however, that the aggregate annual expenses of the Partnership, inclusive of such compensation, ***may not exceed 20% of Revenues without the consent of all of the members of the Founding Partner Group***.

LPA § 3.10(a) (emphasis added).

[10] Dondero was the trustee and owned 100% of the Trust, and he was President of Acis GP.

[11] The partnership interests of Acis LP were as follows: Acis GP owned .1%; the Trust owned 59.9%; Okada owned 15%; and Terry owned 25%.

[12] Waterhouse is a partner in Highland Capital and serves as Highland Capital's Chief Financial Officer.

59. An Affiliate under the LPA is defined as:

> [A]ny [entity] that directly or indirectly controls, is controlled by, or is under common control with the [entity] in question. As used in this definition, the term "*control*" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of [an entity], whether through ownership of voting Securities, by contract, or otherwise.

Id. § 2.01.

60. Highland Capital was at all times relevant to this Second Amended Complaint, an Affiliate of Acis GP and Acis LP. Further, Highland Capital was at all times relevant to this Second Amended Complaint, an insider of Acis GP and Acis LP.

C. State Court Litigation and Arbitration

61. In June 2016, Highland Capital advised Terry that he had been terminated.

62. In September 2016, Highland Capital sued Terry in the 162nd Judicial District Court of Dallas County, Texas (the "State Court") under a variety of legal theories and causes of action, including breach of fiduciary duty/self-dealing, disparagement, and breach of contract. Terry asserted his own claims against Highland Capital, as well as claims against the Debtors, Dondero, and others, and demanded arbitration. Opinion ¶ 8.

63. On September 28, 2016, the State Court stayed the litigation and ordered the parties to arbitrate. *Id.* The parties then participated in a ten-day arbitration proceeding before JAMS, styled as *Terry v. Highland*, JAMS Arbitration No. 1310022713.

D. The Arbitration Award

64. On October 20, 2017, Terry obtained an arbitration award (the "Arbitration Award") jointly and severally against the Debtors in the amount of $7,949,749.15, plus post-award interest at the legal rate. The Arbitration Award was based on theories of breach of contract and breach of fiduciary duties. The Arbitration Award is attached hereto as **Exhibit B**.

65. Under the Arbitration Award, the arbitration panel found that Terry's termination by Dondero/Highland Capital was without cause and that, among other things, Acis breached the LPA and breached fiduciary duties owed to Terry as Acis's limited partner. Importantly, the arbitration panel found that Highland Capital had been paid more than 20% of Revenues (as such term is understood under the LPA), without Terry's consent, in violation of Section 3.10(a) of the LPA:

> It is undisputed that ACIS habitually paid more than 20% of Revenues to Highland for providing ACIS with overhead and administration. Respondents' evidence and arguments that Terry waived or consented to ACIS's payment of excess expenses is not persuasive. At most, Terry accepted his ACIS distributions without regard to the expenses paid to Highland. This is not consent contemplated by the ACIS LPA.
>
> . . . .
>
> The evidence establishes that Terry did not consent to ACIS payments of expenses in excess of 20% of Revenue and Terry has not waived his right to claim damages directly resulting from ACIS's and ACIS GP's breach of contract and breach of fiduciary duty. Clearly, ACIS and ACIS GP ignored Terry's contractual rights and ACIS GP as a general partner has a fiduciary duty not to benefit itself or another at the expense of its limited partner, as they ignore and breach the terms of the partnership agreement and diminish Terry's distributions.

Arbitration Award at pp. 15-16.

66. Additionally, in the analysis of Terry's damages, the arbitration panel stated:

> The evidence establishes that ACIS and ACIS GP paid excess expenses to Highland during the years of 2013, 2014, 2015 and January through May 2016. These expenses paid exceeded the 20% of Revenues cap stated in Section 3.10(a) of the ACIS LPA. The payment of these excess expenses reduced Terry's ACIS partnership distributions during this period. Had excess expenses not been paid and only the contractually capped expenses had been paid, Terry would have received additional ACIS profits distributions of $1,755,481.00 for his 25% partnership interest in ACIS.

Arbitration Award at 20.

67. Finally, in its findings and conclusions, the arbitration panel stated: "ACIS [LP] and ACIS GP paid Highland Capital expenses in excess of the contractual limit imposed by Section 3.10(a) of the ACIS LPA." Arbitration Award at 22, ¶ 7.

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68. On December 18, 2017, the 44th Judicial District Court of Dallas County, Texas, entered a final judgment confirming the Arbitration Award. Opinion ¶ 10. The judgment was abstracted in the Official Public Records of Dallas County, Texas, as Instrument No. 201800008611, and writs of garnishment were issued and served pursuant to the judgment.

69. Pursuant to the Arbitration Award, Highland Capital wrongly received at least $7,021,924.00 (collectively, the "Expense Overpayments") in excess of the clear cap under Section 3.10(a) of the LPA.[13] On information and belief, Highland Capital wrongfully received other overpayments of expenses for many years in excess of the express limitations contained in the LPA. The Expense Overpayments for which the Plaintiffs seek relief herein include all overpayments by Acis LP to Highland Capital in violation of the expense cap pursuant to the LPA whether or not addressed in the Arbitration Award. The Plaintiffs seek a declaratory judgment that such Expense Overpayments to Highland Capital and any agreements supporting such overpayments were *ultra vires* and, thus, void or voidable. The Plaintiffs also seek to recover from Highland Capital all such Expense Overpayments, which rightfully belong to Acis LP, as set forth below.

E. Modifications to the Sub-Advisory Agreement and Shared Services Agreement

70. The Sub-Advisory Agreement has been amended from time to time. The first iteration the Sub-Advisory Agreement by and between Acis LP and Highland Capital dated January 1, 2011 (the "Original Sub-Advisory Agreement") provided that Acis LP was to pay Highland Capital certain amounts for assisting Acis LP with the advisory services required by the PMAs. Under the Original Sub-Advisory Agreement, Acis LP paid Highland Capital 5 bps

[13] If $1,755,481.00 represents 25% of the amount overpaid to Highland Capital, then the total amount paid to Highland Capital in excess of the 20% cap would be at least $7,021,924.00.

of the management fees received by Acis LP pursuant to the various PMAs for the sub-advisory services provided to Acis LP by Highland Capital.

71. On July 29, 2016, the Sub-Advisory Agreement was modified to increase the sub-advisory fee from 5 basis points to 20 basis points (the "Second Amended Sub-Advisory Agreement"). The effective date of the Second Amended Sub-Advisory Agreement was also back-dated to January 1, 2016. The fourfold increase in the sub-advisory fees via the Second Amended Sub-Advisory Agreement siphons off the funds of Acis LP and effectively gifts the additional amounts to Highland Capital. Highland Capital was already contractually obligated to provide the sub-advisory services for the lower 5 basis points fee and no legitimate justification for this fourfold increase was ever presented. Notably, Terry was unjustifiably terminated from Acis in June 2016, roughly one month before Acis and Highland Capital amended the Sub-Advisory Agreement to increase the fee paid fourfold. Further, Dondero consented to the increased sub-advisory fee on behalf of *both* Acis LP and Highland Capital. Dondero signed the Second Amended Sub-Advisory Agreement as president of Highland Capital's general partner, Strand Advisors, Inc., and as president of Acis GP, the general partner of Acis LP.[14]

72. The Shared Services Agreement has also been amended from time to time. The first iteration of the shared services agreement, the Shared Services Agreement by and between Acis LP and Highland Capital, dated January 1, 2011 (the "Original Shared Services Agreement"), provided that Acis LP was to pay Highland Capital certain amounts for providing Acis LP with the back-office services such as book keeping, compliance, human resources and marketing. Under the Original Shared Services Agreement, Acis LP reimbursed Highland Capital for amounts directly attributable to Acis LP for these services. The Shared Services

[14] Dondero also signed the Third Amended and Restated Sub-Advisory Agreement, entered into on March 17, 2017, on behalf of both parties (Acis LP and Highland Capital) to the agreement; this amendment retained the 20 bps fee put in place by the Second Amended Sub-Advisory Agreement.

Agreement was later amended to provide compensation to Highland Capital of 15 to 20 basis points, depending on the nature of the fund for which services were provided. Thus, shortly after Terry was terminated by Acis in June 2016, Acis was paying Highland Capital a total of 35 to 40 basis points for the sub-advisory and shared services it provided.

73. Due to the retroactive nature of the amendments to the Sub-Advisory Agreement and Shared Services Agreement, Highland, at all times relevant to this proceeding, held an antecedent debt related to Acis.

74. Finally, as the Court has already found and as described in more detail below, Highland Capital, Dondero, and various of their affiliates and insiders (including Highland Funding, Highland Advisor and Highland Holdings) entered into numerous other transactions through the Fall of 2017 in an attempt to take control of Acis's assets and effectively take over Acis's business. The combination of all of these actions evidence a clear pattern of behavior by Highland Capital, Dondero, and various of their affiliates and insiders (including Highland Funding, Highland Advisor, Highland Management, and Highland Holdings)[15] to hinder, delay or defraud Terry as a creditor and appropriate the going-concern business of Acis LP for the Highlands. Opinion, Section 1.C. (pp. 16-23).

F. Highland Capital's Mismanagement of the CLOs and the Trustee's Engagement of Brigade Capital Management, L.P.

75. During the pendency of these Bankruptcy Cases, while acting as sub-advisor, Highland Capital grossly mismanaged the CLOs. Following the Trustee's appointment in these Bankruptcy Cases, in disregard of its duties under the Sub-Advisory Agreement, Highland

[15] The Debtors were also under Highland Capital and Dondero's control at this time and were active participants in all of Highland Capital and Dondero's schemes to denude the Debtors and make them "judgment proof" as the Debtors' own counsel, Jamie Welton, later boasted. In fact, Highland Funding has admitted that the Debtors were "no more than shell entities" in pleadings recently filed with the Court. Highland Funding's *Motion to Dissolve Preliminary Injunction and Lift the Automatic Stay* at page 21, Docket # 639 in Case No. 18-30264.

Capital failed to purchase a single loan for the CLOs. Yet, at the same time, in an apparent tactical move to accumulate cash in the CLOs (prior to an attempted liquidation), Highland Capital ordered that the Trustee sell numerous loans. Indeed, during this time, Highland Capital's own analysis showed that 19.7% to 32.4% of available loans were eligible for consideration for purchase in the CLOs. Although the Trustee expressed his concerns to Highland Capital about the accumulation of cash in the CLOs and Highland Capital's failure to recommend purchases of eligible collateral in the CLOs, Highland Capital failed to make any change or correction in its sub-advisor role, in abrogation of its duties.

76. In July 2018, considering Highland Capital's mismanagement of the CLOs and the exorbitant amounts attempted to be charged to Acis for its services under the Sub Agreements, the Trustee solicited potential third parties to provide shared services and sub-advisory services to the Debtors. After contacting over 40 parties, the Trustee received bids from nine parties to perform the services provided by Highland Capital under the Sub Agreements. Through this process, the Trustee was able to locate Brigade Capital Management, LP ("Brigade") and Cortland Capital Markets Services LLC ("Cortland") to provide such services to the Debtors at a rate far less than that charged by Highland Capital. As set forth more fully in the *Emergency Motion to Approve Replacement Sub-Advisory and Shared Services Providers, Brigade Capital Management, LP and Cortland Capital Markets Services LLC* [Case No. 18-30264, Docket No. 448] (the "Brigade Motion"), Brigade agreed to sub-advise the CLOs for 15 basis points. As further described by the Brigade Motion, Cortland agreed to provide middle and back office CLO outsourcing (previously provided by Highland Capital under the

Shared Services Agreement) for $30,000 per month, $250-$350 per trade, and a one-time fee of $75,000. Cortland's fee equates to roughly 3 basis points per month.[16]

77. On August 1, 2018, the Court granted the Brigade Motion, and Brigade and Cortland began performing the services previously provided by Highland Capital under the Sub Agreements. *See* Case No. 18-30264, Docket No. 464. Notably, on the record at the hearing on July 6, 2018, Highland offered to provide the same services it was providing Acis for 17.5 basis points less than it previously charged, a tacit acknowledgement that Highland had grossly overcharged Acis. *See* Case No. 18-30264, Docket No. 369 at 243-44.

78. From approximately August 2, 2018 through December 11, 2018, Brigade directed the purchase of approximately $300 million in conforming loans for the CLOs. *See* Case No. 18-30264, Docket No.790 at 100-01 & 134.

G. The Highlands' Fraudulent Scheme to Take Over Acis's Business and Dismantle Acis's Assets.

79. After Terry received the Arbitration Award on October 20, 2017, the Highlands immediately began work to systematically transfer the assets of Acis LP to other Highlands. This was done to denude Acis LP of value and make the Debtors "judgment proof." This was also done to ensure that Acis LP's very valuable business as portfolio manager was taken over by other Highlands and remained under Highland Capital and Dondero's control.

80. Prior to the filing of the Bankruptcy Cases, the Highlands' scheme was accomplished through, *inter alia*, the ALF PMA Transfer, the ALF Share Transfer, the Note Transfer, and the transfer of the 2017-7 Equity and the 2017-7 Agreements (as each is defined

[16] Thus, the Trustee was paying roughly 18 basis points, instead of the 35 to 40 basis points charged by Highland Capital starting shortly after Terry was terminated by Acis in June 2016, for the work previously performed by Highland Capital under the Sub Agreements. The definitive agreement between the Reorganized Debtors and Brigade removes Cortland and the Reorganized Debtors pay roughly 15 basis points to Brigade for essentially the same services previously provided by Highland Capital.

below), which all occurred in the three months between October 23 and December 19, 2017. Each of these transfers followed the same pattern: Highland Capital caused Acis LP to fraudulently convey valuable economic rights away from Acis LP to offshore (often newly created) Highland Capital affiliates that were not subject to Terry's Arbitration Award and judgment, thus, safely remaining under the control of Highland Capital and Dondero. Further, the only alleged consideration for these transfers, to the extent there was any, was the satisfaction of purported debts owed to other Highlands or their representatives.

81. Reference to Acis LP's balance sheets right before and right after the Highlands began their campaign of fraud against Terry and Acis demonstrate just how effective their scheme was. On August 31, 2017—roughly 45 days before the Arbitration Award—Acis LP boasted $15,441,551 in total assets (including nearly $4 million in valuable portfolio management investments and the $9.5 million note) as well as $3,372,851 in total equity value.[17] After the Arbitration Award and the judgment enforcing it, Acis presented the affidavit of David Klos, Highland Capital's Controller, to the State Court in furtherance of Highland Capital's efforts to get a pathetically small bond for Terry's judgment. The Klos affidavit and attached balance sheet demonstrate that as of February 1, 2018 (the day after the Involuntary Petitions were filed) Acis LP had only $2,855,050 in total assets, no investment assets or notes, and a paltry $35,709 in total equity value.[18] Thus, the amount of value destruction and asset concealment caused by the Highlands' brazen fraud in just the few months immediately after the Arbitration Award is staggering.

82. Even the filing of the Bankruptcy Cases did not deter the Highlands from attempting to complete their goal of denuding Acis. During the Bankruptcy Cases, in disregard

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[17] The Balance Sheet as of August 31, 2017, is attached as **Exhibit C**.

[18] The Declaration of David Klos concerning Defendants' net worth, is attached as **Exhibit D**.

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of the automatic stay, on multiple occasions, the Highlands directed the Trustee to effectuate optional redemptions, which would result in the liquidation of the CLOs and render Acis incapable of reorganizing and paying its creditors.

1. *The ALF PMA Transfer and the ALF Share Transfer*

83. Prior to October 27, 2017, Acis LP—not ALF (or Highland Funding as it is currently named)—had authority to direct and effectuate an optional redemption and otherwise pervasively control ALF's assets. Acis LP had this authority pursuant to that certain Portfolio Services Agreement by and between Acis LP and ALF, dated August 10, 2015 (the "First ALF PMA") and that certain Portfolio Management Agreement by and between Acis LP and ALF, dated December 22, 2016 (the "Second ALF PMA"). A true and correct copy of the First ALF PMA is attached hereto as **Exhibit E.** A true and correct copy of the Second ALF PMA is attached hereto as **Exhibit F.**

84. The Second ALF PMA granted Acis LP, as the portfolio manager of ALF, extensive rights and discretion to control and manage ALF's assets, including its interests in the Acis CLOs. Section 5 of the Second ALF PMA set out Acis LP's authority, which included authority for and in the name of ALF to:

> (a) invest, directly or indirectly . . . in all types of securities and other financial instruments of United States and non-U.S. entities . . . including without limitation . . . notes representing tranches of debt ('CLO Notes') issued by a special purpose vehicle which issues notes backed by a pool of collateral consisting primarily of loans (which may be represented by a debt or equity security) (a 'CLO') . . . (each of such items, 'Financial Instruments'), (c) provide credit and market research and analysis in connection with the investments and ongoing management of [ALF] and direct the formulation of investment policies and strategies for [ALF] . . . ; (g) possess, transfer, mortgage, pledge or otherwise deal in, and exercise all rights, powers, privileges and other incidents of ownership or possession with respect to Financial Instruments and other property and funds held or owned by [ALF] …; (n) cause [ALF] to engage in . . . agency, agency cross, related party principal transactions with affiliates of [Acis LP] . . . ; and (q) vote Financial Instruments, participate in arrangements with creditors, the

> institution and settlement or compromise of suits and administrative proceedings and other like or similar matters.

Second ALF PMA § 5(a)-(q) (emphasis added).[19]

85. While ALF did not have authority to terminate the Second ALF PMA, Acis LP could terminate the Second ALF PMA without cause upon at least ninety (90) days' notice. *See* Second ALF PMA § 13(a)-(c). The Second ALF PMA provided that Acis LP could be removed as portfolio manager only "for cause." *See* ALF PMA § 14(a)-(e).

86. On October 27, 2017, just seven days after Terry's Arbitration Award, Acis LP ostensibly terminated its own portfolio management rights under the Second ALF PMA and transferred its authority and its valuable portfolio management rights—for no value—to Highland Advisor, an affiliate of Highland Capital.[20]

87. This transfer of Acis LP's portfolio management rights to Highland Advisor was accomplished by way of a new Portfolio Management Agreement entered into by ALF and Highland Advisor on October 27, 2017 (the "October 2017 PMA"), which empowered Highland Advisor with the same broad authority to direct the management of ALF as was previously held by Acis LP under the ALF PMA (the "ALF PMA Transfer"). *See* October 2017 PMA §§ 1 & 5(a)-(q). A true and correct copy of the October 2017 PMA is attached hereto as **Exhibit G.**

88. As the Court explained:

> On October 27, 2017 (seven days after the Arbitration Award), ALF—having purchased back the ownership interest that Acis LP had in it, just three days earlier—decided that it would no longer use Acis LP as its portfolio manager and

[19] The Highlands contend that the reference to "control" in Section 6 of the Second ALF PMA negates the broad language of Section 5 of the Second ALF PMA. The Plaintiffs disagree.

[20] Although purportedly a Cayman Islands entity, Highland Funding's 2017 Annual Report and Audited Financials lists Highland Advisor's address as Highland Capital's address in Dallas, Texas. This same document also discloses that Highland Capital is the sub-advisor for Highland Advisor, and thus is the party actually in control of Highland Funding's assets. Finally, this same document shows that all of Highland Funding's subordinated notes issued by the CLOs (the primary assets managed by Highland Advisor) are physically held at and are pledged to NexBank, a Dallas bank that is an affiliate of Highland Capital.

> entered into a new portfolio management agreement to supersede and replace the ALF Portfolio Management Agreement. Specifically, on October 27, 2017, ALF entered into a new Portfolio Management Agreement with a Cayman Island entity called Highland HCF Advisor, Ltd., replacing Acis LP in its role with ALF. This agreement appears to have been further solidified in a second portfolio management agreement dated November 15, 2017.

Opinion at 19 (footnotes omitted).

89. Under the prior ALF PMA, Acis LP's consent to the termination of the ALF PMA was required in order to effectuate the ALF PMA Transfer. So, Dondero, on behalf of Acis LP, simply signed the October 2017 PMA, consenting and agreeing to its removal and replacement, and transferring all authority and management rights as portfolio manager of ALF to Highland Advisor under the October 2017 PMA. Acis received no consideration for this transfer.

90. Without this ALF PMA Transfer, which transferred Acis LP's valuable rights under the ALF PMA to Highland Advisor, Highland Funding could not have attempted to liquidate the CLOs, by directing optional redemptions, and further deplete Acis's assets.[21]

91. On October 24, 2017, a mere four days after the Arbitration Award was entered, Waterhouse, on behalf of Acis LP, and Grant Scott, for CLO Holdco Ltd., entered into that certain special resolution whereby Highland Funding, then known as ALF, acquired back Acis's equity interest in ALF (the "ALF Share Transfer"). A true and correct copy of the special resolution is attached hereto as **Exhibit H.** Pursuant the ALF Share Transfer, ALF paid Acis LP $991,180.13 for all of its shares of ALF.

92. Thus, by virtue of the ALF PMA Transfer and the ALF Share Transfer, by October 31, 2017, Acis LP had given up all of its shares of ALF and all of its control of ALF.

[21] After the ALF PMA Transfer, Highland Funding and Highland Advisor have issued at least three different optional redemption notices, in an attempt to terminate the PMAs and cut off the Debtors' primary source of cash. All three notices have been withdrawn and/or enjoined by this Court.

93. On November 15, 2017 – only days after the ALF Share Transfer and ALF PMA Transfer were completed – Highland Funding,[22] Highland Advisor and CLO Holdco, Ltd. (another Highland Capital affiliate) entered into a subscription agreement whereby Highland Funding completed a private placement of its equity (including, upon information and belief, the equity acquired in the ALF Share Transfer) to third-party investors. The Plaintiffs believe both the ALF PMA Transfer and the ALF Share Transfer were concocted by Highland Capital and Highland Funding to complete this private placement, which was of great value to Highland Funding (then known as Acis Loan Funding, Ltd.) and Highland Capital, but after the transfers, of no value to Acis.[23] Without the ALF PMA Transfer and the ALF Share Transfer, control of Highland Funding's assets, and the Highland Funding stock held by Acis, would be vested in an entity (Acis LP) that was subject to a looming judgment based on Terry's recently acquired Arbitration Award. That would compromise the Highlands' control of Highland Funding.

2. ***The Note Transfer***

94. On November 3, 2017, Acis LP, Highland Capital, and Highland Management (a newly created, offshore Highland Capital affiliate) entered into that certain Agreement for Assignment and Transfer of Promissory Note (the "Note Assignment and Transfer Agreement"). A true and correct copy of the Note Assignment and Transfer Agreement is attached hereto as **Exhibit I.** The Note Assignment and Transfer Agreement, among other things, transferred the

[22] ALF had changed its name to Highland Funding at this point.

[23] Highland Funding's (then Acis Loan Funding Ltd.) board of director minutes from October 6, 2017, disclose that the private placement investment would bring $150 million in new investment in Highland Funding and that they were "confident that they could develop further interest and … bring the total capital to up to around $325 million." The Arbitration Award was issued against Acis LP exactly two weeks later, throwing a huge monkey wrench in Highland Funding's plans to raise hundreds of millions of dollars for Highland Capital and its cronies. Testimony in the bankruptcy case as well as the subscription agreement demonstrate that numerous Highland Capital executives, as well as Highland Capital itself, received Highland Funding stock in connection with this private placement. Thus, they were highly motivated to close this transaction and also deprive the Acis LP of any value in this transaction.

$9.5 million promissory note executed by Highland Capital and payable to Acis LP (the "Note") from Acis LP to Highland Management (the "Note Transfer"). As noted in the Opinion:

> The Assignment and Transfer Agreement memorializing this transaction is signed by Mr. Dondero for Acis LP and Mr. Dondero for Highland and some undecipherable name for Highland CLO Management Ltd.
>
> The document recites that (i) Highland is no longer willing to continue providing support services to Acis LP, (ii) Acis LP, therefore, can no longer fulfill its duties as a collateral manager, and (iii) Highland CLO Management Ltd. agrees to step into the collateral manager role if Acis LP will assign to it the Acis LP Note Receivable from Highland. One more thing: since Acis LP was expected to potentially incur future legal and accounting/administrative fees, and might not have the ability to pay them when due, Highland CLO Management Ltd. agreed to reimburse Acis LP (or pays its vendors directly) up to $2 million of future legal expenses and up to $1 million of future accounting/administrative expenses.

Opinion at 20.

95. Acis LP received no or insufficient consideration for the Note Transfer.

96. The Note Transfer was also of great benefit to Highland Capital because it transferred Highland Capital's liability under the Note away from Acis LP (and its legal woes with Terry) and allowed Highland Capital's liability under the Note, and any payments made thereunder, to stay well within the control of the Highlands. Just as importantly to Highland Capital and Dondero, and in furtherance to their ongoing feud with Terry, the Note Transfer took away the Note as an asset from which Terry could collect his judgment and allowed Highland Capital to argue (as repeatedly argued in the Bankruptcy Cases) that Terry got his judgment against the "wrong" entities and that Highland Capital has no liability related to Terry's claim.

97. Additionally, the Note Assignment and Transfer Agreement also purports to initiate the transfer of the PMAs between Acis and the CLOs to Highland Management.[24] Again,

[24] Highland Management was registered in the Cayman Islands on October 27, 2017, roughly a week before the Note Transfer (and on the exact day of the ALF PMA Transfer). Thus, Highland Management had no portfolio or collateral management experience whatsoever when it entered the Assignment and Transfer Agreement. To the contrary, it appears Highland Management was an entity that was created specifically to hold the Note and eventually take possession of the PMAs in an international forum that would be difficult for Terry to reach, similar

Acis LP was to receive no consideration for transferring its most significant assets, the PMAs. As the Court is aware, Acis LP did not in fact transfer the PMAs pursuant to the Note Assignment and Transfer Agreement, but it was clearly the plan as outlined in that agreement and further evidence of Highland Capital's intent to steal Acis LP's valuable going-concern business.

3. ***The Acis CLO 2017-7 Transfers***

98. On December 19, 2017, Acis LP and Highland Holdings (another newly created, offshore Highland Capital affiliate)[25] entered into that certain Agreement for Assignment and Transfer (the "2017-7 Assignment and Transfer Agreement"). A true and correct copy of the 2017-7 Assignment and Transfer Agreement is attached hereto as **Exhibit J.** The 2017-7 Assignment and Transfer Agreement focused on Acis CLO Management, LLC ("Acis CLO Management"), which is an entity that had been formed to enter into a portfolio management agreement with Acis CLO 2017-7, Ltd. ("CLO 2017-7"). CLO 2017-7 is the last CLO the Highlands formed. Acis CLO Management was indirectly owned by Acis LP, and Acis LP and Acis CLO Management had entered into a Master Sub-Advisory Agreement and a Staff and Services Agreement (the "2017-7 Agreements") that allowed Acis LP to manage the CLO 2017-7 portfolio and collect management fees for CLO 2017-7.

99. The 2017-7 Assignment and Transfer Agreement, among other things, transferred to Highland Holdings all of Acis LP's interest in the 2017-7 Agreements. The 2017-7 Assignment and Transfer Agreement also transferred to Highland Holdings all of Acis LP's

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to the transferees for the ALF PMA Transfer (Highland Advisor, a Cayman Island entity) the ALF Share Transfer (Highland Funding, a Guernsey entity) and the 2017-1 Assignment and Transfer Agreement (Highland Holdings, a Cayman Island entity). Thus, not only did Highland Capital and Dondero scheme to transfer Acis LP's assets away from it, but they also slyly chose entities in offshore jurisdictions that would be hard for a judgment creditor to reach.

[25] Like Highland Management, Highland Holdings was registered in the Cayman Islands on October 27, 2017.

equity interests in various entities that constituted Acis LP's indirect equity interests in Acis CLO Management (the "2017-7 Equity"). Thus, similar to the ALF PMA Transfer and the ALF Share Transfer that occurred roughly two months before, Acis LP was divested of both its ownership in Acis CLO Management and its control of Acis CLO Management (and related management fee stream) in one fell swoop on December 19, 2017, which is the day after Terry received his judgment based on the Arbitration Award. Also, importantly, the 2017-7 Assignment and Transfer Agreement rendered Acis non-compliant with relevant U.S. and European risk retention requirements.

100. Significantly, also on December 19, 2017, Highland Capital entered into an agreement with Highland Holdings that allowed Highland Capital to sub-advise and manage CLO 2017-7 and get paid the management fees that otherwise would have flowed to Acis LP. So, like the numerous transfers before it, Highland Capital effectuated the transfer of the 2017-7 Agreements and 2017-7 Equity to cut out Acis LP, while Highland Capital stayed in complete control of CLO 2017-7 and its stream of management fees.

101. As the Court noted in the Opinion:

> On December 19, 2017—just one day after the Arbitration Award was confirmed with the entry of the Final Judgment—the vehicle that can most easily be described as the Acis LP "risk retention structure" (necessitated by federal Dodd Frank law) was transferred away from Acis LP and into the ownership of Highland CLO Holdings, Ltd. (yet another Cayman Island entity, incorporated on October 27, 2017).
>
> In addition to transferring Acis LP's interest in the Acis LP risk retention structure on December 19, 2017, Acis LP also transferred its contractual right to receive management fees for Acis CLO 2017-7, Ltd. (which had just closed April 10, 2017), which Mr. Terry credibly testified had a combined value of $5 million, to Highland CLO Holdings, Ltd., another Cayman entity, purportedly in exchange for forgiveness of a $2.8 million receivable that was owed to Highland under the most recent iteration of the Shared Services Agreement and Sub-Advisory Agreement for CLO-7. In conjunction with this transfer, Highland CLO Holdings, Ltd. then entered into new Shared Services and Sub-Advisory Agreements with Highland.

Opinion at 20-21.

102. The purported consideration for the 2017-7 Equity transferred in the 2017-7 Assignment and Transfer Agreement was the forgiveness of a $2,804,870 payable allegedly owed by Acis LP to Highland Capital and transferred to Highland Funding sometime before the agreement was entered. According to Acis LP's financial statements, this payable to Highland Capital entirely comprises amounts due under the Sub-Advisory Agreement and Shared Services Agreement. Thus, the "consideration" provided in exchange for the 2017-7 Assignment and Transfer Agreement would suffer from the same defects as outlined throughout this Second Amended Complaint related to the Sub Agreements; i.e., Acis only "owed" Highland Capital these amounts because Highland Capital grossly overcharged Acis. Finally, like the Note Transfer, the 2017-7 Equity transfer allowed Highland Capital to effectively collect all of the $2.8 million owed by Acis LP (assuming it is even a valid debt) through the use of an offshore intermediary.

103. Further, the 2017-7 Assignment and Transfer Agreement itself discloses that no consideration was provided for the transfer of the 2017-7 Agreements. Rather, the justification for the transfer of the 2017-7 Agreements is Highland Capital's self-serving refusal to continue to do business with Acis LP after the Arbitration Award and related judgment.

4. *Thwarted Attempts to Transfer the Universal/BVK Agreement and Force an Optional Redemption*

104. Highland Capital and the other Highlands did not stop with the transfers in the Fall of 2017. Immediately after the Involuntary Petitions were filed on January 30, 2018, Highland Capital conspired with Acis LP's own bankruptcy counsel in an effort to appropriate Acis LP's valuable sub-advisor rights under the Agreement for the Outsourcing of Asset Management (the "Universal/BVK Agreement") between Acis LP and Universal–Investment-

Luxembourg S.A. ("Universal"), which provided sub-advisory services for a German fund called BayVK R2 Lux S.A., SICAV-FIS ("BVK").[26] Like the many transfers before it, Highland Capital's plan (as clearly outlined in an email from Isaac Leventon to Mike Warner) was "to transfer the BVK investment management agreement from Acis LP to another Highland-affiliated manager."[27] Immediately after Highland Capital sought (and presumably received) advice from Acis's own counsel, Highland Capital reached out to Universal and BVK to solicit their participation in Highland Capital's scheme. In fact, BVK acknowledged in its very first email with Highland Capital after Acis LP's bankruptcy filing that Highland Capital's plan was to replace Acis LP.

105. Over the several weeks leading up to this Court's ruling on the Orders for Relief, Highland Capital and Universal/BVK did, in fact, frequently discuss replacing Acis LP, conducted extensive due diligence in order to replace Acis LP and even negotiated and prepared a new asset management agreement between Highland Capital and Universal that was to take effect once Acis LP and its bankruptcy were out of the way. But even after the Orders for Relief were entered and the Debtors were under the control of a trustee, the communications did not stop. Among other things, Highland Capital volunteered to pay Universal and BVK's legal costs incurred in terminating Acis LP and making Highland Capital the new sub-advisor for Universal and BVK, Highland Capital repeatedly criticized the Trustee for his management of Acis, and Highland Capital repeatedly expressed its desire to negotiate with Universal and to "onboard" Highland Capital as Universal's new sub-advisor. And even after Highland Capital was fired by the Trustee as Acis LP's sub-advisor and replaced with Brigade and Cortland, the

[26] The Court held a lengthy hearing on the Universal/BVK Agreement and related lift stay issues on September 11, 2018.

[27] Email chain from early February 2018 between Mike Warner (Acis's counsel), Isaac Leventon (Highland Capital's in-house counsel), Timothy Cournoyer (Highland Capital's in-house counsel) and Thomas Surgent (Highland Capital's Chief Compliance Officer), attached as **Exhibit K**.

communications did not stop. Highland Capital's scheme to transfer the Universal/BVK Agreement to Highland Capital or its affiliate was apparently only prevented by this Court imposing 11 U.S.C. § 363, effectively taking away Acis LP's right to operate outside the ordinary course of business without Court authority under 11 U.S.C. § 303(f) and then later not immediately lifting the automatic stay as to the Universal/BVK Agreement.

106. Finally, Highland Advisor and its sub-manager Highland Capital, used its newly acquired management rights (by way of the ALF PMA Transfer) to attempt to destroy the Debtor, as further described below.

5. ***The First Optional Redemption Notices***

107. On April 30, 2018, without requesting relief from the automatic stay, Highland Funding sent five notices purportedly requesting optional redemption pursuant to Section 9.2 of each of the Indentures (the "First Optional Redemption Notices").[28] True and correct copies of the First Optional Redemption Notices are attached hereto as **Exhibit L.**

108. The First Optional Redemption Notices directed Acis LP to effectuate an Optional Redemption (as defined under each Indenture). Under Section 9.2 of each Indenture, upon the receipt of a notice of redemption, Acis, in its discretion, is to direct the sale of the Collateral Obligations (as defined by each Indenture) and other Assets. *See* CLO-1 Indenture, § 9.2; CLO-3 Indenture, § 9.2(b); CLO-4 Indenture, § 9.2; CLO-5 Indenture, § 9.2; & CLO-6 Indenture, § 9.2. In the Indentures, "Assets" is defined to include the PMAs. *See* CLO-1 Indenture, p. 8; CLO-3 Indenture, p. 10; CLO-4 Indenture, p. 10; CLO-5 Indenture, p. 10; & CLO-6 Indenture p. 10. Consequently, an Optional Redemption directs Acis LP to liquidate assets of the CLOs over which Acis has certain property rights, including, effectively, the PMAs.

[28] Nexpoint Strategic Opportunities Fund (f/k/a NexPoint Credit Strategies Fund) ("Nexpoint") and Drexel Limited ("Drexel") joined in one of the Optional Redemption Notices. Like HCLOF, Nexpoint is an affiliate of Highland.

109. The Trustee analyzed the First Optional Redemption Notices and determined there were various defects which rendered them ineffective. Therefore, on May 22, 2018, the Trustee sent his responses to the five First Optional Redemption Notices (the "Redemption Responses"). True and correct copies of the Redemption Responses are attached hereto as **Exhibit M**.

6. *The Temporary Restraining Order Against the Highlands*

110. On May 30, 2018, Highland Capital and Highland Funding initiated this Adversary Proceeding and alleged, among other things, that the Trustee breached the PMAs by failing to effectuate an Optional Redemption pursuant to the First Optional Redemption Notices.

111. The next day, on May 31, 2018, upon the request of the Trustee, the Court held a status conference in the Bankruptcy Cases, and the Trustee explained that, almost immediately after his appointment, he began exploring plan options regarding a potential transaction that would transfer rights under the PMAs, the Sub-Advisory Agreement, the Shared Services Agreement, and the subordinated notes, with respect to CLO-3, CLO-4, CLO-5, and CLO-6, with the goal of maximizing value for all parties. The Trustee informed the Court that he was in the process of negotiating a transaction with a party that would potentially provide enough value to pay all parties, including potentially all of Acis's creditors in full.

112. On May 31, 2018, at the conclusion of the status conference, the Court, *sua sponte*, issued a temporary restraining order, which prevented all parties from taking any action in furtherance of the Optional Redemption for fourteen (14) days.

113. On June 6, 2018 the Court entered its *Temporary Restraining Order* (the "TRO"), whereby the Restrained Parties (as defined in the TRO) were enjoined until 12:01 a.m. on June 15, 2018, from:

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a) proceeding with, effectuating, or otherwise taking any action in furtherance of the Optional Redemption, call, or other liquidation of the Acis CLOs; and

b) sending, mailing, or otherwise distributing any notice to the holders of the Acis CLOs in connection with the Optional Redemption, call, or other liquidation of the Acis CLOs.

114. On June 11, 2018, the Trustee filed his *Motion to Extend the Temporary Restraining Order* (the "Motion to Extend the TRO"), in which the Trustee sought to extend the TRO for an additional 14 days. *See* Docket No. 275.

115. Also on June 11, 2018, Highland Funding filed its *Memorandum of Law in Opposition to the Continuance of the Temporary Restraining Order* (the "Brief in Opposition to Extending the TRO"). *See* Case No. 18-3264, Docket. No. 271. This pleading did not mention that Highland Capital apparently violated the TRO by initiating approximately $23 million of sales of CLO assets pursuant to the Optional Redemption after the Court issued its *sua sponte* TRO on May 31.

7. *The Second Optional Redemption Notices*

116. On June 13, 2018, the day before the hearing on the Motion to Extend the TRO, Highland Funding advised the Trustee that Highland Funding would withdraw the First Optional Redemption Notices. Highland Funding's correspondence with the Trustee indicating its intent to withdraw the First Optional Redemption Notices is attached hereto as **Exhibit N** and incorporated herein for all purposes. Thereafter, the Trustee advised the Court that Highland Funding was withdrawing the First Optional Redemption Notices, and the Trustee therefore did not intend to go forward with the Motion to Extend the TRO on June 14.

117. On June 14, 2018, counsel for Highland Funding advised the Court that Highland Funding had withdrawn the First Optional Redemption Notices. Counsel for Highland Funding

further advised the Court that the First Optional Redemption Notices were withdrawn to bring "some sanity to this process":

> That was done obviously for multiple reasons. My client doesn't believe that this is the appropriate time to be effectuating such a redemption for its own economic reasons, setting aside the complications it's obviously caused for others in this room. But needless to say, that, too, is an effort to try to bring, as I believe the Court has requested, and others have, some sanity to this process.[29]

118. On June 15, 2018, at 12:01 a.m., the TRO expired.

119. Later on June 15, 2018, despite the fact that Highland Funding had just withdrawn the First Optional Redemption Notices, had advised the Court of the same, and the Trustee and the Court acted in reliance on same, (again, without requesting relief from the automatic stay) Highland Funding gave notice to the Trustee that it was again requesting an Optional Redemption pursuant to the Section 9.2 of each of the Indentures (the "Second Optional Redemption Notices," and together with the First Optional Redemption Notices, the "Optional Redemption Notices"). The Second Optional Redemption Notices are attached hereto as **Exhibit O** and are incorporated herein for all purposes.

120. By the Second Optional Redemption Notices, Highland Funding directed the Issuers:

> to effect an Optional Redemption of all Secured Notes and the Subordinated Notes in full on July 30, 2018 for the express purpose of placement of a portion of the portfolio of assets held by the Co-Issuers into a warehouse arrangement or a total return swap or other derivative arrangement with Highland Capital Management, L.P. acting as the Sub-Advisor pursuant to a Sub-Advisory Agreement.

121. On June 20, 2018, Highland Capital presented to the Trustee hundreds of millions of dollars of "proposed trades" pursuant to this second Optional Redemption. In its correspondence to the Trustee regarding such proposed trades, Highland Capital further stated:

[29] See Docket No. 298 at 7, ll. 16-22 (June 14, 2018 Hr'g Tr.).

<u>In order to effectuate the Transaction and obtain best execution, Highland requests your consent by no later than 2pm tomorrow, Thursday June 21, 2018 (the "Deadline")</u>. The Acis Accounts may incur losses as a result of your failure to respond by the Deadline.
Highland believes it has an independent fiduciary obligation to the CLOs. If you instruct Highland not to proceed to undertake the Optional Redemption, Highland reserves it rights to seek appropriate protection and redress at law or in equity.[30]

H. Preferential Transfers Made within One Year of the Petition Date

122. Acis's Statement of Financial Affairs [Case No. 18-30264, Docket No. 165] (the "<u>SOFA</u>")[31] and its general ledger disclose more than two dozen payments totaling $16,113,790.14 made to Highland Capital within one year of the Petition Date based on four categories (the "<u>Prepetition Payments</u>"):

(i) Contractual Payments: $5,011,836.72

(ii) Services: $7,672,145.25[32]

(iii) Unsecured Loan Repayments Including Interest: $3,311,497.65

(iv) Expense Reimbursement: $118,311.32

123. The Prepetition Payments were made for the benefit of Highland Capital for or on account of an antecedent debt owed by the Debtors before the Prepetition Payments were made. Acis was insolvent at all times when the Prepetition Payments were made. Based on Terry's pending—or already decided—claims, as well as Highland Capital's absolute operational and financial control of Acis, Highland Capital was aware that Acis was insolvent or reasonably should have been aware Acis was insolvent at all times when the Prepetition Payments were made. The Prepetition Payments were made within one year of the Petition Date. At the time the

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[30] Emphasis in original email correspondence.

[31] The SOFA is sworn under penalty of perjury and signed by Issac Leventon, a Highland employee and associate general counsel.

[32] The Statement of Financial Affairs, filed in the bankruptcy cases by Acis while under Highland Capital control, fails to list an additional $1,868,203.44 in transfers to Highland Capital for "Services" that were made shortly before the Petition Date.

Prepetition Payments were made Highland Capital was an insider of the Debtors. The Prepetition Payments enabled Highland Capital to receive more than Highland Capital would have received if the cases were a case under chapter 7 of the Bankruptcy Code and if the Prepetition Payments had not been made. Highland Capital received the Prepetition Payments. *See Williams v. Mckesson Corp. (In re Quality Infusion Care, Inc.),* Nos. 10-36675, 13-3056, 2013 Bankr. LEXIS 5044 (Bankr. S.D. Tex. Nov. 25, 2013) (citing *Palmer Clay Prods. Co. v. Brown*, 297 U.S. 227, 229 (1936) and stating the 547(b)(5) is to be analyzed as of the Petition Date).

124. Further, to the extent that the Acis LP payables that served as the consideration for the Note Transfer and the 2017-7 Equity transfer were valid, these transfers would also constitute preferential payments to Highland Capital, Highland Management and Highland Holdings. The SOFA discloses that Highland Management is an "affiliate" of the Debtors and the Note Transfer is included on the list of "payments, distributions, withdrawals credited, or given to insiders" within one year before filing the Bankruptcy Cases. *See* SOFA p. 12.

VI. CAUSES OF ACTION[33]

Count 1: Declaratory Judgment that Expense Overpayments to Highland Capital Were Ultra Vires in Violation of the LPA
[Against Highland Capital]

125. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

126. Under Delaware law, *ultra vires* corporate acts are either void or voidable. *See Klaassen v. Allegro Dev. Corp.*, C.A. No. 8626-VCL, 2013 Del. Ch. LEXIS 247, at *48-50 (Oct. 11, 2013); *see also Stephen A. Solomon v. Armstrong*, 747 A.2d 1098, 1114 n.45 (1999) (explaining the difference between void and voidable acts). Delaware courts apply the doctrine

[33] All causes of action asserted herein are also asserted as counterclaims to the Highland Capital Claims pursuant to section 16.069 of the Texas Civil Practice & Remedies Code and other applicable law.

of *ultra vires* to partnerships by analogy. *See, e.g.*, *In re Mesa Ltd. P'ship Preferred Unitholders Litig.*, Civil Action No. 12,243, 1991 Del. Ch. LEXIS 214, at *20 (Dec. 10, 1991).

127. Highland Capital invoiced Acis for, and received payments for, at least $7,021,924.00 in excess of 20% of Revenues, in violation of the LPA. Highland Capital, an Affiliate of Acis GP, accepted such funds in violation of Section 3.10(a) of the LPA.

128. Such Expense Overpayments, and any agreements supporting such Expense Overpayments, were economically irrational, not in the interest of Acis LP, and are therefore void; however, if not void, such actions are voidable because they were done without the consent or ratification of all members of the Founding Partner Group. The payments to Highland Capital of the Expense Overpayments in the amount of at least $7,021,924.00 and any agreements supporting such overpayments were unauthorized or *ultra vires* acts of the partnership in violation of the LPA, and are therefore void or voidable.

Count 2: Turnover of Property of the Estate under 11 U.S.C. § 542(a) for Unauthorized Overpayments [Against Highland Capital]

129. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

130. Under section 542(a) of the Bankruptcy Code, "an entity, other than a custodian, in possession, custody, or control, during the case, of property that the trustee may use, sell, or lease under section 363 . . . shall deliver to the trustee, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the estate." 11 U.S.C. § 542(a).

131. Under section 541(a) of the Bankruptcy Code, property of the estate includes "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a). Further, the "estate is comprised of [such] property, wherever located and by whomever held." *Id.*

132. Highland Capital wrongfully received Expense Overpayments of at least $7,021,924.00 in excess of 20% of Revenues in violation of the LPA.

133. The property, or value of such property, from the overpayment of funds wrongfully transferred to Highland Capital totaling at least $7,021,924.00, in Highland Capital's possession, custody, or control is property of the estate, and the value of such property is not of inconsequential value or benefit to the estate.

134. Pursuant to section 542(a) of the Bankruptcy Code, Highland Capital must deliver to the Trustee the property or value of such property, totaling at least $7,021,924.00, wrongfully transferred to Highland Capital.

135. Therefore, the Plaintiffs, now vested with all claims of the Trustee, seek turnover of the funds, totaling at least $7,021,924.00, transferred to Highland Capital, to the extent allowed pursuant to section 542 of the Bankruptcy Code.

Count 3: Money Had and Received for Overcharges and Unauthorized Overpayments [Against Highland Capital]

136. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

137. "An action for money had and received arises when the defendant obtains money which in equity and good conscience belongs to the plaintiff. This action . . . looks only to the justice of the case and inquires whether the defendant has received money which rightfully belongs to another." *Amoco Prod. Co. v. Smith*, 946 S.W.2d 162, 164 (Tex. App.—El Paso 1997, no pet.) (internal citations omitted).

138. Highland Capital invoiced Acis for, and received Expense Overpayments for, at least $7,021,924.00 in excess of 20% of Revenues in violation of the LPA. Highland Capital, an Affiliate of Acis GP, accepted such funds in violation of Section 3.10(a) of the LPA. Highland

Capital was therefore unjustly enriched in the amount of the Expense Overpayments of at least $7,021,924.00.

139. Highland Capital invoiced Acis and accepted such Expense Overpayments from Acis despite Highland Capital's knowledge of the LPA. This money rightfully belongs to Acis, and the overpayment creates a debt in favor of Acis. Therefore, the Plaintiffs are entitled to damages on behalf of Acis in the amount of at least $7,021,924.00. In addition, Highland Capital charged Acis more than a market rate under the Second Amended Sub-Advisory Agreement and the Third Amended Sub-Services Agreement and is liable to Acis in the amount of these overcharges.

Count 4: Conversion for Unauthorized Overpayments
[Against Highland Capital]

140. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

141. "Conversion is defined as the wrongful exercise of dominion and control over another's property in denial of or inconsistent with his rights." *Green Int'l v. Solis*, 951 S.W.2d 384, 391 (Tex. 1997).

142. Highland Capital wrongfully exercised dominion and control over at least $7,021,924.00 in excess of 20% of Revenues in violation of the LPA. Highland Capital, through the common control of Dondero, was aware that it was prohibited from receiving payment in excess of 20% of Revenues without the consent of all members of the Founding Partner Group. Highland Capital also had actual notice of the Arbitration Award through Dondero (who was represented at the arbitration proceeding) that Highland Capital was wrongfully in possession of such money. Despite Highland Capital's actual knowledge that the money does not rightfully belong to Highland Capital, Highland Capital continues to improperly retain the overpaid funds. Therefore, the Plaintiffs are entitled to damages in the amount of at least $7,021,924.00. In

addition, Highland Capital charged Acis more than a market rate under the Second Amended Sub-Advisory Agreement and the Third Amended Shared Services Agreement and is liable to Acis in the amount of these overcharges.

Count 5: Actual Fraudulent Transfer under 11 U.S.C. § 548(a)(1)(A) related to the Sub-Advisory Agreement
[Against Highland Capital]

143. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

144. Section 548(a)(1)(A) of the Bankruptcy Code provides that a trustee may avoid any transfer of an interest of the debtor in property, or any obligation incurred by the debtor, if the debtor made such transfer or incurred such obligation with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made or such obligation was incurred, indebted.

145. The Plaintiffs, now vested with all claims of the Trustee, seek to avoid the modifications to the Sub-Advisory Agreement made in the Second Amended Sub-Advisory Agreement and Third Amended Sub-Advisory Agreement, any obligations incurred by Acis in connection with these modifications to the Sub-Advisory Agreement, and any payments made (including increase in payments made) by Acis to Highland Capital in connection with these modifications to the Sub-Advisory Agreement because such modifications and payments were made with an actual intent to hinder, delay, or defraud Terry, a creditor of Acis, demonstrated by, among other things, that:

(i) The modifications to the Sub-Advisory Agreement were made shortly after Terry's termination and just prior to litigation with Terry;

(ii) The modifications to the Sub-Advisory Agreement—entered into by Dondero on behalf of Acis and Highland Capital—and payments

thereunder were made with the actual intent to divert assets to and for the benefit of Highland Capital, in fraud upon Acis's creditors, namely Terry.

(iii) Acis was or became insolvent as a result of the modifications to the Sub-Advisory Agreement and payments thereunder;

(iv) The modifications to the Sub-Advisory Agreement and payments thereunder occurred both before and after substantial debts were incurred by Acis;

(v) The consideration received by Acis for the modifications to the Sub-Advisory Agreement and payments thereunder were not reasonably equivalent in value; and

(vi) the transfer/obligation incurred was to an insider.

146. Therefore, such modifications to the Sub-Advisory Agreements and payments to Highland Capital pursuant to such modifications should be avoided to the extent avoidable under section 548(a)(1)(A) of the Bankruptcy Code.

Count 6: Actual Fraudulent Transfer under Tex. Bus. & Com. Code § 24.005(a)(1) related to the Sub-Advisory Agreement
[Against Highland Capital]

147. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

148. Section 544 of the Bankruptcy Code provides the Trustee with the ability to avoid transfers or obligations that would be avoidable by certain prepetition creditors of Acis. Texas Business and Commerce Code section 24.005(a)(1) provides that a current or future creditor may avoid a transfer if the debtor made the transfer or incurred the obligation with an actual intent to hinder, delay or defraud any creditor of the debtor. Pursuant to section 544 of the Bankruptcy Code, the Trustee may seek to avoid transfers made by Acis, or obligations incurred by Acis, pursuant to Texas Business and Commerce Code sections 24.005(a)(1).

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149. The Plaintiffs, now vested with all claims of the Trustee, seek to avoid the modifications to the Sub-Advisory Agreement made in the Second Amended Sub-Advisory Agreement and Third Amended Sub-Advisory Agreement, any obligations incurred by Acis in connection with these modifications to the Sub-Advisory Agreement, and any payments made (including increase in payments made) by Acis to Highland Capital in connection with these modifications to the Sub-Advisory Agreement because such modifications and payments were made with an actual intent to hinder, delay, or defraud Terry, a creditor of Acis, demonstrated by, among other things, that:

(i) The modifications to the Sub-Advisory Agreement were made shortly after Terry's termination and just prior to litigation with Terry;

(ii) The modifications to the Sub-Advisory Agreement—entered into by Dondero on behalf of Acis and Highland Capital—and payments thereunder were made with the actual intent to divert assets to and for the benefit of Highland Capital, in fraud upon Acis's creditors, namely Terry.

(iii) Acis was or became insolvent as a result of the modifications to the Sub-Advisory Agreement and payments thereunder;

(iv) The modifications to the Sub-Advisory Agreement and payments thereunder occurred both before and after substantial debts were incurred by Acis;

(v) The consideration received by Acis for the modifications to the Sub-Advisory Agreement and payments thereunder were not reasonably equivalent in value; and

(vi) The transfer/obligation incurred was to an insider.

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150. Therefore, Acis's creditors have the right to avoid the Sub-Advisory Agreement and payments thereunder under section 24.005(a)(1) of the Texas Business and Commerce Code, and the Plaintiffs, now vested with all claims of the Trustee, can seek to enforce that right under section 544 of the Bankruptcy Code.

Count 7: Constructive Fraudulent Transfer under 11 U.S.C. § 548(a)(1)(B) related to the Sub-Advisory Agreement [Against Highland Capital]

151. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

152. Section 548(a)(1)(B) of the Bankruptcy Code provides that a trustee may avoid any transfer of any interest of the debtor in property, or any obligation incurred by the debtor, if the debtor (i) received less than reasonably equivalent value in exchange for the transfer or obligation; and (ii) (A) was insolvent on the date the transfer was made or the obligation was incurred, or became insolvent as the result of the transfer or obligation; (B) was engaged in business or a transaction, or was about to engage in business or a transaction for which any remaining property was unreasonably small capital; or (C) intended to incur, or believed the debtor would incur, debts that would be beyond the debtors' ability to pay such debts.

153. As described above, among other things, Acis LP:

(i) received less than reasonably equivalent value in exchange for the modifications to the Sub-Advisory Agreement and payments made thereunder;

(ii) was or became insolvent as the result of the modifications to the Sub-Advisory Agreement and payments made thereunder; and

(iii) intended to incur, or believed Acis would incur, debts that would be beyond Acis's ability to pay such debts.

154. Therefore, the modifications to the Sub-Advisory Agreement made in the Second Amended Sub-Advisory Agreement and the Third Amended Sub-Advisory Agreement, any obligations incurred by Acis in connection with these modifications to the Sub-Advisory Agreement and any payments made (including increase in payments made) by Acis to Highland Capital in connection with these modifications to the Sub-Advisory Agreement are avoidable by the Plaintiffs, now vested with all claims of the Trustee, under section 548(a)(1)(B).

Count 8: Constructive Fraudulent Transfer under Tex. Bus. & Com. Code §§ 24.005(a)(2) and 24.006(a) related to the Sub-Advisory Agreement [Against Highland Capital]

155. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

156. Section 544 of the Bankruptcy Code provides the Trustee with the ability to avoid transfers or obligations that would be avoidable by certain prepetition creditors of Acis. Texas Business and Commerce Code section 24.005(a)(2) provides that a current or future creditor may avoid a transfer if the debtor made the transfer or incurred the obligation (i) without receiving reasonably equivalent value in exchange for the transfer or obligation; and (ii) (A) was engaged or about to engage in a business or transaction for which the remaining assets were unreasonably small in relation to the business or transaction, or (B) intended to incur, or believed or reasonably should have believed, that the debtor would incur debts beyond the debtor's ability to pay as they became due. Similarly, Texas Business and Commerce Code section 24.006(a) provides that a current creditor may avoid a transfer if the debtor made the transfer or incurred the obligation (i) without receiving reasonably equivalent value in exchange for the transfer or obligation; and (ii) the debtor was insolvent or rendered insolvent by the transfer or obligation sought to be avoided. Pursuant to section 544 of the Bankruptcy Code, the Plaintiffs, now vested with all claims of the Trustee, may seek to avoid transfers made by Acis, or obligations incurred by Acis, pursuant to Texas Business and Commerce Code sections 24.005(a)(2) and 24.006(a).

157. As described above, Acis LP did not receive reasonably equivalent value in exchange for the modifications to the Sub-Advisory Agreement and payments made thereunder to Highland Capital, and creditors at the time of such modifications and payments could have avoided such modifications and payments under section 24.005(a)(2) of the Texas Business and Commerce Code.

158. At the time of the modifications to the Sub-Advisory Agreement and payments made thereunder to Highland Capital, Acis intended to incur, or believed or reasonably should have believed that Acis would incur, debts beyond its ability to pay as they became due, and/or was engaged, or was about to engage in a business or transaction for which the remaining assets of Acis were unreasonably small in relation to such business or transaction.

159. Moreover, as described above, Acis was insolvent or became insolvent by the modifications to the Sub-Advisory Agreement and payments made thereunder.

160. Therefore, the modifications to the Sub-Advisory Agreement made in the Second Amended Sub-Advisory Agreement and the Third Amended Sub-Advisory Agreement, any obligations incurred by Acis in connection with these modifications to the Sub-Advisory Agreement and any payments made (including increase in payments made) by Acis to Highland Capital in connection with these modifications to the Sub-Advisory Agreement are avoidable under Texas Business and Commerce Code sections 24.005(a)(2) and 24.006(a).

Count 9: Actual Fraudulent Transfer under 11 U.S.C. § 548(a)(1)(A) for the ALF PMA Transfer
[Against Highland Capital, Highland Funding, and Highland Advisor]

161. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

162. Section 548(a)(1)(A) of the Bankruptcy Code provides that a trustee may avoid any transfer of an interest of the debtor in property, or any obligation incurred by the debtor, if the debtor made such transfer or incurred such obligation with actual intent to hinder, delay, or

defraud any entity to which the debtor was or became, on or after the date that such transfer was made or such obligation was incurred, indebted.

163. The Plaintiffs, now vested with all claims of the Trustee, seek to avoid the ALF PMA Transfer because such transfer was made with an actual intent to hinder, delay, or defraud Terry, a creditor of Acis, demonstrated by, among other things, that:

(i) The ALF PMA Transfer was made just seven days after Terry's Arbitration Award against Acis;

(ii) The ALF PMA Transfer was made with the actual intent to divert Acis LP's contractual rights under the ALF PMA to and for the benefit of Highland Advisor, in fraud upon Acis LP's creditors, namely Terry.

(iii) Acis LP was insolvent at the time of the ALF PMA Transfer or became insolvent as a result of the ALF PMA Transfer;

(iv) The ALF PMA Transfer occurred both before and after substantial debts were incurred by Acis LP;

(v) Acis LP received less than a reasonably equivalent value in exchange for the ALF PMA Transfer;

(vi) The transfer was made to an insider (Highland Advisor) and for the benefit of insiders (Highland Funding and Highland Capital); and

(vii) Highland Capital (as sub-advisor to Highland Advisor) retained effective possession and control of the property transferred after the transfer.

164. Therefore, the ALF PMA Transfer should be avoided to the extent avoidable under section 548(a)(1)(A) of the Bankruptcy Code.

Count 10: Actual Fraudulent Transfer under Tex. Bus. & Com. Code § 24.005(a)(1)
for the ALF PMA Transfer
[Against Highland Capital, Highland Funding, and Highland Advisor]

165. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

166. Section 544 of the Bankruptcy Code provides the Trustee with the ability to avoid transfers or obligations that would be avoidable by certain prepetition creditors of Acis. Texas Business and Commerce Code section 24.005(a)(1) provides that a current or future creditor may avoid a transfer if the debtor made the transfer or incurred the obligation with an actual intent to hinder, delay or defraud any creditor of the debtor. Pursuant to section 544 of the Bankruptcy Code, the Trustee may seek to avoid transfers made by Acis, or obligations incurred by Acis, pursuant to Texas Business and Commerce Code sections 24.005(a)(1).

167. The Plaintiffs, now vested with all claims of the Trustee, seek to avoid the ALF PMA Transfer because such transfer was made with an actual intent to hinder, delay, or defraud Terry, a creditor of Acis, demonstrated by, among other things, that:

(i) The ALF PMA Transfer was made just seven days after Terry's Arbitration Award against Acis;

(ii) The ALF PMA Transfer was made with the actual intent to divert Acis LP's contractual rights under the ALF PMA to and for the benefit of Highland Advisor, in fraud upon Acis LP's creditors, namely Terry.

(iii) Acis LP was insolvent at the time of the ALF PMA Transfer or became insolvent as a result of the ALF PMA Transfer;

(iv) The ALF PMA Transfer occurred both before and after substantial debts were incurred by Acis LP; and

(v) Acis LP received less than a reasonably equivalent value in exchange for the ALF PMA Transfer;

(vi) The transfer was made to an insider (Highland Advisor) and for the benefit of insiders (Highland Funding and Highland Capital); and

(vii) Highland Capital (as sub-advisor to Highland Advisor) retained effective possession and control of the property transferred after the transfer.

168. Therefore, Acis's creditors have the right to avoid the ALF PMA Transfer under section 24.005(a)(1) of the Texas Business and Commerce Code, and the Plaintiffs can seek to enforce that right under section 544 of the Bankruptcy Code.

Count 11: Constructive Fraudulent Transfers under 11 U.S.C. § 548(a)(1)(B) for the ALF PMA Transfer
[Against Highland Capital, Highland Funding, and Highland Advisor]

169. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

170. Section 548(a)(1)(B) of the Bankruptcy Code provides that a trustee may avoid any transfer of any interest of the debtor in property, or any obligation incurred by the debtor, if the debtor (i) received less than reasonably equivalent value in exchange for the transfer or obligation; and (ii) (A) was insolvent on the date the transfer was made or the obligation was incurred, or became insolvent as the result of the transfer or obligation: (B) was engaged in business or a transaction, or was about to engage in business or a transaction for which any remaining property was unreasonably small capital; or (C) intended to incur, or believed the debtor would incur, debts that would be beyond the debtors' ability to pay such debts.

171. As described above, among other things, Acis LP:

(i) received less than reasonably equivalent value in exchange for the ALF PMA Transfer;

(ii) was insolvent on the date the ALF PMA Transfer was made or became insolvent as the result of the ALF PMA Transfer;

(iii) was engaged in business or a transaction, or was about to engage in business or a transaction for which any remaining property was unreasonably small capital; and

(iii) intended to incur, or believed Acis would incur, debts that would be beyond Acis's ability to pay such debts.

172. Therefore, ALF PMA Transfer is avoidable under section 548(a)(1)(B) of the Bankruptcy Code.

Count 12: Constructive Fraudulent Transfer under Tex. Bus. & Com. Code §§ 24.005(a)(2) and 24.006(a) for the ALF PMA Transfer
[Against Highland Capital, Highland Funding, and Highland Advisor]

173. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

174. Section 544 of the Bankruptcy Code provides the Trustee with the ability to avoid transfers or obligations that would be avoidable by certain prepetition creditors of Acis. Texas Business and Commerce Code section 24.005(a)(2) provides that a current or future creditor may avoid a transfer if the debtor made the transfer or incurred the obligation (i) without receiving reasonably equivalent value in exchange for the transfer or obligation; and (ii) (A) was engaged or about to engage in a business or transaction for which the remaining assets were unreasonably small in relation to the business or transaction, or (B) intended to incur, or believed or reasonably should have believed, that the debtor would incur debts beyond the debtor's ability to pay as they became due. Similarly, Texas Business and Commerce Code section 24.006(a) provides that a current creditor may avoid a transfer if the debtor made the transfer or incurred the obligation (i) without receiving reasonably equivalent value in exchange for the transfer or obligation; and (ii) the debtor was insolvent or rendered insolvent by the transfer or obligation sought to be avoided. Pursuant to section 544 of the Bankruptcy Code, the Plaintiffs, now vested with all claims of the

Trustee, may seek to avoid transfers made by Acis, or obligations incurred by Acis, pursuant to Texas Business and Commerce Code sections 24.005(a)(2) and 24.006(a).

175. As described above, Acis LP did not receive reasonably equivalent value in exchange for the ALF PMA Transfer, and creditors at the time of the ALF PMA Transfer could have avoided such transfer under section 24.005(a)(2) of the Texas Business and Commerce Code.

176. At the time of the ALF PMA Transfer, Acis intended to incur, or believed or reasonably should have believed that Acis would incur, debts beyond its ability to pay as they became due, and/or was engaged, or was about to engage in a business or transaction for which the remaining assets of Acis were unreasonably small in relation to such business or transaction.

177. Moreover, as described above, Acis was insolvent or was rendered insolvent by the ALF PMA Transfer.

178. The ALF PMA Transfer is therefore avoidable under Texas Business and Commerce Code sections 24.005(a)(2) and 24.006(a).

Count 13: Actual Fraudulent Transfer under 11 U.S.C. § 548(a)(1)(A) for the ALF Share Transfer [Against Highland Capital and Highland Funding]

179. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

180. Section 548(a)(1)(A) of the Bankruptcy Code provides that a trustee may avoid any transfer of an interest of the debtor in property, or any obligation incurred by the debtor, if the debtor made such transfer or incurred such obligation with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made or such obligation was incurred, indebted.

181. The Plaintiffs, now vested with all claims of the Trustee, seek to avoid the ALF Share Transfer because such transfer was made with an actual intent to hinder, delay, or defraud Terry, a creditor of Acis, demonstrated by, among other things, that:

(i) The ALF Share Transfer was made just four days after Terry's Arbitration Award against Acis;

(ii) The ALF Share Transfer was made with the actual intent to divert Acis LP's interest and control in ALF to and for the benefit of Highland Funding, in fraud upon Acis LP's creditors, namely Terry.

(iii) Acis LP was insolvent at the time of the ALF Share Transfer or became insolvent as a result of the ALF Share Transfer;

(iv) The ALF Share Transfer occurred both before and after substantial debts were incurred by Acis LP; and

(v) Acis LP received less than a reasonably equivalent value in exchange for the ALF Share Transfer;

(vi) The transfer was made to an insider (Highland Funding) and for the benefit of an insider (Highland Capital); and

(vii) Highland Capital (as sub-advisor to Highland Advisor) retained effective possession and control of the property transferred after the transfer.

182. Therefore, the ALF Share Transfer should be avoided to the extent avoidable under section 548(a)(1)(A) of the Bankruptcy Code.

Count 14: Actual Fraudulent Transfer under Tex. Bus. & Com. Code § 24.005(a)(1) for the ALF Share Transfer
[Against Highland Capital and Highland Funding]

183. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

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184. Section 544 of the Bankruptcy Code provides the Trustee with the ability to avoid transfers or obligations that would be avoidable by certain prepetition creditors of Acis. Texas Business and Commerce Code section 24.005(a)(1) provides that a current or future creditor may avoid a transfer if the debtor made the transfer or incurred the obligation with an actual intent to hinder, delay or defraud any creditor of the debtor. Pursuant to section 544 of the Bankruptcy Code, the Trustee may seek to avoid transfers made by Acis, or obligations incurred by Acis, pursuant to Texas Business and Commerce Code sections 24.005(a)(1).

185. The Plaintiffs, now vested with all claims of the Trustee, seek to avoid the ALF Share Transfer because such transfer was made with an actual intent to hinder, delay, or defraud Terry, a creditor of Acis, demonstrated by, among other things, that:

(i) The ALF Share Transfer was made just four days after Terry's Arbitration Award against Acis;

(ii) The ALF Share Transfer was made with the actual intent to divert Acis LP's interest and control in ALF to and for the benefit of Highland Funding, in fraud upon Acis LP's creditors, namely Terry.

(iii) Acis LP was insolvent at the time of the ALF Share Transfer or became insolvent as a result of the ALF Share Transfer;

(iv) The ALF Share Transfer occurred both before and after substantial debts were incurred by Acis LP; and

(v) Acis LP received less than a reasonably equivalent value in exchange for the ALF Share Transfer;

(vi) The transfer was made to an insider (Highland Funding) and for the benefit of an insider (Highland Capital); and

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(vii) Highland Capital (as sub-advisor to Highland Advisor) retained effective possession and control of the property transferred after the transfer.

186. Therefore, Acis's creditors have the right to avoid the ALF Share Transfer under section 24.005(a)(1) of the Texas Business and Commerce Code, and the Plaintiffs can seek to enforce that right under section 544 of the Bankruptcy Code.

Count 15: Constructive Fraudulent Transfers under 11 U.S.C. § 548(a)(1)(B) for the ALF Share Transfer [Against Highland Capital and Highland Funding]

187. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

188. Section 548(a)(1)(B) of the Bankruptcy Code provides that a trustee may avoid any transfer of any interest of the debtor in property, or any obligation incurred by the debtor, if the debtor (i) received less than reasonably equivalent value in exchange for the transfer or obligation; and (ii) (A) was insolvent on the date the transfer was made or the obligation was incurred, or became insolvent as the result of the transfer or obligation: (B) was engaged in business or a transaction, or was about to engage in business or a transaction for which any remaining property was unreasonably small capital; or (C) intended to incur, or believed the debtor would incur, debts that would be beyond the debtors' ability to pay such debts.

189. As described above, among other things, Acis LP:

(i) received less than reasonably equivalent value in exchange for the ALF Share Transfer;

(ii) was insolvent on the date the ALF Share Transfer was made or became insolvent as the result of the ALF Share Transfer;

(iii) was engaged in business or a transaction, or was about to engage in business or a transaction for which any remaining property was unreasonably small capital; and

(iii) intended to incur, or believed Acis would incur, debts that would be beyond Acis's ability to pay such debts.

190. Therefore, ALF Share Transfer is avoidable by the Plaintiffs, now vested with all claims of the Trustee, under section 548(a)(1)(B) of the Bankruptcy Code.

Count 16: Constructive Fraudulent Transfer under Tex. Bus. & Com. Code §§ 24.005(a)(2) and 24.006(a) for the ALF Share Transfer
[Against Highland Capital and Highland Funding]

191. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

192. Section 544 of the Bankruptcy Code provides the Trustee with the ability to avoid transfers or obligations that would be avoidable by certain prepetition creditors of Acis. Texas Business and Commerce Code section 24.005(a)(2) provides that a current or future creditor may avoid a transfer if the debtor made the transfer or incurred the obligation (i) without receiving reasonably equivalent value in exchange for the transfer or obligation; and (ii) (A) was engaged or about to engage in a business or transaction for which the remaining assets were unreasonably small in relation to the business or transaction, or (B) intended to incur, or believed or reasonably should have believed, that the debtor would incur debts beyond the debtor's ability to pay as they became due. Similarly, Texas Business and Commerce Code section 24.006(a) provides that a current creditor may avoid a transfer if the debtor made the transfer or incurred the obligation (i) without receiving reasonably equivalent value in exchange for the transfer or obligation; and (ii) the debtor was insolvent or rendered insolvent by the transfer or obligation sought to be avoided. Pursuant to section 544 of the Bankruptcy Code, the Plaintiffs, now vested with all claims of the Trustee, may seek to avoid transfers made by Acis, or obligations incurred by Acis, pursuant to Texas Business and Commerce Code sections 24.005(a)(2) and 24.006(a).

193. As described above, Acis LP did not receive reasonably equivalent value in exchange for the ALF Share Transfer, and creditors at the time of the ALF Share Transfer could

have avoided such transfer under section 24.005(a)(2) of the Texas Business and Commerce Code.

194. At the time of the ALF Share Transfer, Acis intended to incur, or believed or reasonably should have believed that Acis would incur, debts beyond its ability to pay as they became due, and/or was engaged, or was about to engage in a business or transaction for which the remaining assets of Acis were unreasonably small in relation to such business or transaction.

195. Moreover, as described above, Acis was insolvent or rendered insolvent by the ALF Share Transfer.

196. The ALF Share Transfer is therefore avoidable under Texas Business and Commerce Code sections 24.005(a)(2) and 24.006(a).

Count 17: Actual Fraudulent Transfer under 11 U.S.C. § 548(a)(1)(A) for the Note Transfer [Against Highland Capital and Highland Management]

197. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

198. Section 548(a)(1)(A) of the Bankruptcy Code provides that a trustee may avoid any transfer of an interest of the debtor in property, or any obligation incurred by the debtor, if the debtor made such transfer or incurred such obligation with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made or such obligation was incurred, indebted.

199. The Plaintiffs, now vested with all claims of the Trustee, seek to avoid the Note Transfer because such transfer was made with an actual intent to hinder, delay, or defraud Terry, a creditor of Acis, demonstrated by, among other things, that:

(i) The Note Transfer was made shortly after Terry's Arbitration Award against Acis;

(ii) The Note Transfer was made with the actual intent to divert the $9.5 million promissory note by Highland Capital in favor of Acis LP to and for the benefit of Highland Management, in fraud upon Acis LP's creditors, namely Terry.

(iii) Acis LP was insolvent at the time of the Note Transfer or became insolvent as a result of the Note Transfer;

(iv) The Note Transfer occurred both before and after substantial debts were incurred by Acis LP; and

(v) Acis LP received less than a reasonably equivalent value in exchange for the Note Transfer;

(vi) The transfer was made to an insider (Highland Management) and for the benefit of an insider (Highland Capital); and

(vii) Highland Capital retained effective possession and control of the property transferred after the transfer.

200. Therefore, the Note Transfer should be avoided to the extent avoidable under section 548(a)(1)(A) of the Bankruptcy Code.

Count 18: Actual Fraudulent Transfer under Tex. Bus. & Com. Code § 24.005(a)(1) for the Note Transfer
[Against Highland Capital and Highland Management]

201. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

202. Section 544 of the Bankruptcy Code provides the Trustee with the ability to avoid transfers or obligations that would be avoidable by certain prepetition creditors of Acis. Texas Business and Commerce Code section 24.005(a)(1) provides that a current or future creditor may avoid a transfer if the debtor made the transfer or incurred the obligation with an actual intent to hinder, delay or defraud any creditor of the debtor. Pursuant to section 544 of the Bankruptcy

Code, the Trustee may seek to avoid transfers made by Acis, or obligations incurred by Acis, pursuant to Texas Business and Commerce Code sections 24.005(a)(1).

203. The Plaintiffs, now vested with all claims of the Trustee, seek to avoid the Note Transfer because such transfer was made with an actual intent to hinder, delay, or defraud Terry, a creditor of Acis, demonstrated by, among other things, that:

(i) The Note Transfer was made shortly after Terry's Arbitration Award against Acis;

(ii) The Note Transfer was made with the actual intent to divert the $9.5 million promissory note by Highland Capital in favor of Acis LP to and for the benefit of Highland Management, in fraud upon Acis LP's creditors, namely Terry.

(iii) Acis LP was insolvent at the time of the Note Transfer or became insolvent as a result of the Note Transfer;

(iv) The Note Transfer occurred both before and after substantial debts were incurred by Acis LP; and

(v) Acis LP received less than a reasonably equivalent value in exchange for the Note Transfer;

(vi) The transfer was made to an insider (Highland Management) and for the benefit of an insider (Highland Capital); and

(vii) Highland Capital retained effective possession and control of the property transferred after the transfer.

204. Therefore, Acis's creditors have the right to avoid the ALF Share Transfer under section 24.005(a)(1) of the Texas Business and Commerce Code, and the Plaintiffs can seek to enforce that right under section 544 of the Bankruptcy Code..

Count 19: Constructive Fraudulent Transfers under 11 U.S.C. § 548(a)(1)(B) for the Note Transfer
[Against Highland Capital and Highland Management]

205. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

206. Section 548(a)(1)(B) of the Bankruptcy Code provides that a trustee may avoid any transfer of any interest of the debtor in property, or any obligation incurred by the debtor, if the debtor (i) received less than reasonably equivalent value in exchange for the transfer or obligation; and (ii) (A) was insolvent on the date the transfer was made or the obligation was incurred, or became insolvent as the result of the transfer or obligation: (B) was engaged in business or a transaction, or was about to engage in business or a transaction for which any remaining property was unreasonably small capital; or (C) intended to incur, or believed the debtor would incur, debts that would be beyond the debtors' ability to pay such debts.

207. As described above, among other things, Acis LP:

(i) received less than reasonably equivalent value in exchange for the Note Transfer;

(ii) was insolvent on the date the Note Transfer was made or became insolvent as the result of the Note Transfer;

(iii) was engaged in business or a transaction, or was about to engage in business or a transaction for which any remaining property was unreasonably small capital; and

(iii) intended to incur, or believed Acis would incur, debts that would be beyond Acis's ability to pay such debts.

208. Therefore, Note Transfer is avoidable by the Plaintiffs, now vested with all claims of the Trustee, under section 548(a)(1)(B) of the Bankruptcy Code.

Count 20: Constructive Fraudulent Transfer under Tex. Bus. & Com. Code §§ 24.005(a)(2) and 24.006(a) for the Note Transfer [Against Highland Capital and Highland Management]

209. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

210. Section 544 of the Bankruptcy Code provides the Trustee with the ability to avoid transfers or obligations that would be avoidable by certain prepetition creditors of Acis. Texas Business and Commerce Code section 24.005(a)(2) provides that a current or future creditor may avoid a transfer if the debtor made the transfer or incurred the obligation (i) without receiving reasonably equivalent value in exchange for the transfer or obligation; and (ii) (A) was engaged or about to engage in a business or transaction for which the remaining assets were unreasonably small in relation to the business or transaction, or (B) intended to incur, or believed or reasonably should have believed, that the debtor would incur debts beyond the debtor's ability to pay as they became due. Similarly, Texas Business and Commerce Code section 24.006(a) provides that a current creditor may avoid a transfer if the debtor made the transfer or incurred the obligation (i) without receiving reasonably equivalent value in exchange for the transfer or obligation; and (ii) the debtor was insolvent or rendered insolvent by the transfer or obligation sought to be avoided. Pursuant to section 544 of the Bankruptcy Code, the Plaintiffs, now vested with all claims of the Trustee, may seek to avoid transfers made by Acis, or obligations incurred by Acis, pursuant to Texas Business and Commerce Code sections 24.005(a)(2) and 24.006(a).

211. As described above, Acis LP did not receive reasonably equivalent value in exchange for the Note Transfer, and creditors at the time of the Note Transfer could have avoided such transfer under section 24.005(a)(2) of the Texas Business and Commerce Code.

212. At the time of the Note Transfer, Acis intended to incur, or believed or reasonably should have believed that Acis would incur, debts beyond its ability to pay as they

became due, and/or was engaged, or was about to engage in a business or transaction for which the remaining assets of Acis were unreasonably small in relation to such business or transaction.

213. Moreover, as described above, Acis was insolvent or rendered insolvent by the Note Transfer.

214. The Note Transfer is therefore avoidable under Texas Business and Commerce Code sections 24.005(a)(2) and 24.006(a).

Count 21: Actual Fraudulent Transfer under 11 U.S.C. § 548(a)(1)(A) for the 2017-7 Equity and 2017-7 Agreement Transfers [Against Highland Capital and Highland Holdings]

215. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

216. Section 548(a)(1)(A) of the Bankruptcy Code provides that a trustee may avoid any transfer of an interest of the debtor in property, or any obligation incurred by the debtor, if the debtor made such transfer or incurred such obligation with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made or such obligation was incurred, indebted.

217. The Plaintiffs, now vested with all claims of the Trustee, seek to avoid the transfers of the 2017-7 Agreements and the 2017-7 Equity because such transfers were made with an actual intent to hinder, delay, or defraud Terry, a creditor of Acis, demonstrated by, among other things, that:

(i) The transfers of the 2017-7 Agreements and the 2017-7 Equity were made shortly after Terry's Arbitration Award against Acis and immediately after Terry's judgment against Acis;

(ii) The transfers of the 2017-7 Agreements and the 2017-7 Equity were made with the actual intent to divert the 2017-7 Agreements and the 2017-7

Equity from Acis LP to Highland Holdings, in fraud upon Acis LP's creditors, namely Terry;

(iii) Acis LP was insolvent at the time of the transfers of the 2017-7 Agreements and the 2017-7 Equity or became insolvent as a result of the transfers;

(iv) The transfers of the 2017-7 Agreements and the 2017-7 Equity occurred shortly after substantial debts were incurred by Acis LP; and

(v) Acis LP received less than a reasonably equivalent value in exchange for the transfers of the 2017-7 Agreements and the 2017-7 Equity;

(vi) The transfers were made to an insider (Highland Holdings) and for the benefit of an insider (Highland Capital); and

(vii) Highland Capital retained effective possession and control of the property transferred after the transfer.

218. Therefore, the transfers of the 2017-7 Agreements and the 2017-7 Equity should be avoided under section 548(a)(1)(A) of the Bankruptcy Code.

Count 22: Actual Fraudulent Transfer under Tex. Bus. & Com. Code § 24.005(a)(1) for the 2017-7 Equity and 2017-7 Agreement Transfers [Against Highland Capital and Highland Holdings]

219. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

220. Section 544 of the Bankruptcy Code provides the Trustee with the ability to avoid transfers or obligations that would be avoidable by certain prepetition creditors of Acis. Texas Business and Commerce Code section 24.005(a)(1) provides that a current or future creditor may avoid a transfer if the debtor made the transfer or incurred the obligation with an actual intent to hinder, delay or defraud any creditor of the debtor. Pursuant to section 544 of the Bankruptcy

Code, the Trustee may seek to avoid transfers made by Acis, or obligations incurred by Acis, pursuant to Texas Business and Commerce Code sections 24.005(a)(1).

221. The Plaintiffs, now vested with all claims of the Trustee, seek to avoid the transfers of the 2017-7 Agreements and the 2017-7 Equity because such transfers were made with an actual intent to hinder, delay, or defraud Terry, a creditor of Acis, demonstrated by, among other things, that:

(i) The transfers of the 2017-7 Agreements and the 2017-7 Equity were made shortly after Terry's Arbitration Award against Acis and immediately after Terry's judgment against Acis;

(ii) The transfers of the 2017-7 Agreements and the 2017-7 Equity were made with the actual intent to divert the 2017-7 Agreements and the 2017-7 Equity from Acis LP to Highland Holdings, in fraud upon Acis LP's creditors, namely Terry;

(iii) Acis LP was insolvent at the time of the transfers of the 2017-7 Agreements and the 2017-7 Equity or became insolvent as a result of the transfers;

(iv) The transfers of the 2017-7 Agreements and the 2017-7 Equity occurred shortly after substantial debts were incurred by Acis LP; and

(v) Acis LP received less than a reasonably equivalent value in exchange for the transfers of the 2017-7 Agreements and the 2017-7 Equity;

(vi) The transfers were made to an insider (Highland Management) and for the benefit of an insider (Highland Capital); and

(vii) Highland Capital retained effective possession and control of the property transferred after the transfers.

222. Therefore, Acis's creditors have the right to avoid the transfers of the 2017-7 Agreements and the 2017-7 Equity under section 24.005(a)(1) of the Texas Business and Commerce Code, and the Plaintiffs can seek to enforce that right under section 544 of the Bankruptcy Code.

Count 23: Constructive Fraudulent Transfers under 11 U.S.C. § 548(a)(1)(B) for the 2017-7 Equity and 2017-7 Agreement Transfers [Against Highland Capital and Highland Holdings]

223. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

224. Section 548(a)(1)(B) of the Bankruptcy Code provides that a trustee may avoid any transfer of any interest of the debtor in property, or any obligation incurred by the debtor, if the debtor (i) received less than reasonably equivalent value in exchange for the transfer or obligation; and (ii) (A) was insolvent on the date the transfer was made or the obligation was incurred, or became insolvent as the result of the transfer or obligation: (B) was engaged in business or a transaction, or was about to engage in business or a transaction for which any remaining property was unreasonably small capital; or (C) intended to incur, or believed the debtor would incur, debts that would be beyond the debtors' ability to pay such debts.

225. As described above, among other things, Acis LP:

(i) received less than reasonably equivalent value in exchange for the transfers of the 2017-7 Agreements and the 2017-7 Equity;

(ii) was insolvent on the date the transfers of the 2017-7 Agreements and the 2017-7 Equity were made or became insolvent as the result of the transfers;

(iii) was engaged in business or a transaction, or was about to engage in business or a transaction for which any remaining property was unreasonably small capital; and

(iii) intended to incur, or believed Acis would incur, debts that would be beyond Acis's ability to pay such debts.

226. Therefore, the transfers of the 2017-7 Agreements and the 2017-7 Equity are avoidable by the Plaintiffs, now vested with all claims of the Trustee, under section 548(a)(1)(B) of the Bankruptcy Code.

Count 24: Constructive Fraudulent Transfer under Tex. Bus. & Com. Code §§ 24.005(a)(2) and 24.006(a) for the 2017-7 Equity and 2017-7 Agreement Transfers [Against Highland Capital and Highland Holdings]

227. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

228. Section 544 of the Bankruptcy Code provides the Trustee with the ability to avoid transfers or obligations that would be avoidable by certain prepetition creditors of Acis. Texas Business and Commerce Code section 24.005(a)(2) provides that a current or future creditor may avoid a transfer if the debtor made the transfer or incurred the obligation (i) without receiving reasonably equivalent value in exchange for the transfer or obligation; and (ii) (A) was engaged or about to engage in a business or transaction for which the remaining assets were unreasonably small in relation to the business or transaction, or (B) intended to incur, or believed or reasonably should have believed, that the debtor would incur debts beyond the debtor's ability to pay as they became due. Similarly, Texas Business and Commerce Code section 24.006(a) provides that a current creditor may avoid a transfer if the debtor made the transfer or incurred the obligation (i) without receiving reasonably equivalent value in exchange for the transfer or obligation; and (ii) the debtor was insolvent or rendered insolvent by the transfer or obligation sought to be avoided. Pursuant to section 544 of the Bankruptcy Code, the Plaintiffs, now vested with all claims of the Trustee, may seek to avoid transfers made by Acis, or obligations incurred by Acis, pursuant to Texas Business and Commerce Code sections 24.005(a)(2) and 24.006(a).

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229. As described above, Acis LP did not receive reasonably equivalent value in exchange for the transfers of the 2017-7 Agreements and the 2017-7 Equity, and creditors at the time of the transfers of the 2017-7 Agreements and the 2017-7 Equity could have avoided such transfer under section 24.005(a)(2) of the Texas Business and Commerce Code.

230. At the time of the transfers of the 2017-7 Agreements and the 2017-7 Equity, Acis intended to incur, or believed or reasonably should have believed that Acis would incur, debts beyond its ability to pay as they became due, and/or was engaged, or was about to engage in a business or transaction for which the remaining assets of Acis were unreasonably small in relation to such business or transaction.

231. Moreover, as described above, Acis was insolvent or rendered insolvent by the transfers of the 2017-7 Agreements and the 2017-7 Equity.

232. The transfers of the 2017-7 Agreements and the 2017-7 Equity are therefore avoidable under Texas Business and Commerce Code sections 24.005(a)(2) and 24.006(a).

Count 25: Preferential Transfers to Highland Capital, Highland Holdings and Highland Management under 11 U.S.C. § 547(b) and Texas Business and Commerce Code § 24.006(b) [Against Highland Capital, Highland Holdings, and Highland Management]

233. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

234. Section 547(b) of the Bankruptcy Code provides that a trustee may avoid any transfer of any interest of the debtor in property (i) to or for the benefit of a creditor; (ii) for or on account of an antecedent debt; (iii) made while the debtor was insolvent; (iv) made within one year to an insider; and (v) that enables such creditor to receive more than such creditor would receive in a hypothetical chapter 7 liquidation.

235. Likewise, section 544 of the Bankruptcy Code provides the Trustee with the ability to avoid transfers that would be avoidable by certain prepetition creditors of Acis. Texas Business and Commerce Code section 24.006(b) provides that a current creditor may avoid a

transfer if the debtor made the transfer to an insider for an antecedent debt, the debtor was insolvent, and the insider had reasonable cause to believe that the debtor was insolvent. Pursuant to section 544 of the Bankruptcy Code, the Plaintiffs, now vested with all claims of the Trustee, may seek to avoid transfers made by Acis pursuant to Texas Business and Commerce Code section 24.006(b).

236. Within one year of the Petition Date, Highland Capital received the Prepetition Payments in the amount $16,113,790.14 from Acis on account of purported debt claims owed by Acis. To the extent that the Prepetition Payments satisfied legitimate debt claims not avoided by any of the causes of action asserted herein, these transfers are avoidable under section 547(b) of the Bankruptcy Code and Texas Business and Commerce Code sections 24.006(b).

237. Similarly, the 2017-7 Equity transfer and the Note Transfer are purportedly in satisfaction of payables owed by Acis LP to Highland Capital (later conveyed to Highland Holdings and Highland Management). To the extent that these transfers satisfied legitimate debt claims not avoided by any of the causes of action asserted herein, these transfers are avoidable under section 547(b) of the Bankruptcy Code and Texas Business and Commerce Code sections 24.006(b).

Count 26: Liability for Avoided Transfers under 11 U.S.C. § 550
[Against All Defendants]

238. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

239. Section 550 of the Bankruptcy Code provides that, if a transfer is avoided under section 544, 547 or 548, the trustee may recover the property transferred or the value of the property transferred from (i) the initial transferee of such transfer or (ii) the entity for whose benefit such transfer was made.

240. Highland Capital is an initial transferee of all transfers sought to be avoided in Counts 5 – 8 and 25 above. The Plaintiffs, now vested with all claims of the Trustee, may recover all avoided transfers from Highland Capital pursuant to section 550, specifically including any transfers made in connection with any obligations avoided through Counts 5 – 8 above.

241. Highland Advisor is an initial transferee of all transfers sought to be avoided in Counts 9 – 12 above, and Highland Capital are entities for whose benefit such transfers were made. The Plaintiffs, now vested with all claims of the Trustee, may recover all avoided transfers from Highland Advisor, Highland Funding, and Highland Capital pursuant to section 550.

242. Highland Funding is an initial transferee of all transfers sought to be avoided in Counts 13 – 16 above, and Highland Capital is an entity for whose benefit such transfers were made. The Plaintiffs, now vested with all claims of the Trustee, may recover all avoided transfers from Highland Funding and Highland Capital pursuant to section 550.

243. Highland Management is an initial transferee of all transfers sought to be avoided in Counts 17 – 20 and 25 above, and Highland Capital is an entity for whose benefit such transfers were made. The Plaintiffs, now vested with all claims of the Trustee, may recover all avoided transfers from Highland Management and Highland Capital pursuant to section 550.

244. Highland Holdings is an initial transferee of all transfers sought to be avoided in Counts 21 – 25 above, and Highland Capital is an entity for whose benefit such transfers were made. The Plaintiffs, now vested with all claims of the Trustee, may recover all avoided transfers from Highland Holdings and Highland Capital pursuant to section 550.

Count 27: Civil Conspiracy to Commit Fraud, Including Fraudulent Transfers [Against Highland Capital, Highland Advisor, Highland Management, and Highland Holdings]

245. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

246. Highland Capital, Highland Advisor, Highland Management, Highland Holdings, Dondero, and Waterhouse (collectively, the "Highland Enterprise")[34] sought to engage in a series of fraudulent transfers and other fraudulent schemes, including the ALF PMA Transfer, the ALF Share Transfer, the Note Transfer, the 2017-7 Equity transfer, the 2017-7 Agreements transfer and the thwarted Universal/BVK Agreement transfer in order to denude Acis's assets and take over Acis LP's valuable business.

247. The Highland Enterprise, which is comprised of two or more business entities and individuals, had a meeting of the minds on the object or course of action related to the foregoing fraudulent transfers and schemes, including the ALF PMA Transfer, the ALF Share Transfer, the Note Transfer the 2017-7 Equity transfer, the 2017-7 Agreements transfer and the thwarted Universal/BVK Agreement transfer.

248. The fraudulent transfers and schemes, including the ALF PMA Transfer, the ALF Share Transfer, the Note Transfer, the 2017-7 Equity transfer, the 2017-7 Agreements transfer and the thwarted Universal/BVK Agreement transfer, constitute one or more unlawful, overt acts.

249. The Debtors and the Debtors' estates suffered damages as a proximate result of the fraudulent transfers and schemes, including the ALF PMA Transfer, the ALF Share Transfer, the Note Transfer, the 2017-7 Equity transfer, the 2017-7 Agreements transfer and the thwarted Universal/BVK Agreement transfer.

250. The Plaintiffs, now vested with all claims of the Trustee, seek actual and exemplary damages for the Highland Enterprise's conspiracy.

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[34] This is without limitation to other entities or individuals that may ultimately be shown to be part of Highland Enterprise.

Count 28: Tortious Interference with the Universal/BVK Agreement
[Against Highland Capital]

251. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

252. Under Texas law, a claim for tortious interference with contract requires: "(1) an existing contract subject to interference, (2) a willful and intentional act of interference with the contract, (3) that proximately caused the plaintiff's injury, and (4) caused actual damages or loss." *Official Brands, Inc. v. Roc Nation Sports, LLC*, 2015 U.S. Dist. LEXIS 167320 ***7** (N.D. Tex.) (J. Boyle) (quoting *Prudential Ins. Co. of Am. v. Fin. Review Servs., Inc.*, 29 S.W.3d 74, 77 (Tex. 2000)). The fact that a contract is an at-will agreement is no defense to a tortious interference claim. *Id*.

253. The Universal/BVK Agreement is an existing contract to which Acis LP is a party. The Universal/BVK Agreement is an existing contract that is subject to interference.

254. From nearly day one of these Bankruptcy Cases, Highland Capital has sought to terminate Acis LP as the manager under the Universal/BVK Agreement, and replace Acis LP with Highland Capital or one of its affiliates. Highland Capital's actions involve communications over many months with Universal and BVK, including numerous communications after Highland Capital was terminated as sub-advisor on August 1, 2018 and no longer had any legitimate reason to communicate with Universal or BVK. Highland Capital even prepared and sent to Universal and BVK a new outsourcing agreement, which would be entered once Acis LP and its bankruptcy were out of the way.

255. Acis LP and its estate have suffered and will suffer actual damages as a proximate result of the interference of Highland Capital.

256. The Plaintiffs, now vested with all claims of the Trustee, seek actual and exemplary damages for Highland Capital's tortious interference with the Universal/BVK Agreement.

Count 29: Breach of Contract by Highland Capital under the Sub-Advisory Agreement and Shared Services Agreement
[Against Highland Capital]

257. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

258. Under Texas law, to prevail on a breach of contract claim, a party must show: "(1) the existence of a valid contract; (2) the plaintiff performed or tendered performance as the contract required; (3) the defendant breached the contract by failing to perform or tender performance as the contract required; and (4) the plaintiff sustained damages as a result of the breach." *USAA Tex. Lloyds Co. v. Menchaca*, 545 S.W.3d 479, 501 n.21 (Tex. 2018).

259. The Sub-Advisory Agreement is a valid contract between Acis LP and Highland Capital, under which Highland Capital was obligated to, *inter alia:*[35]

> (i) make recommendations to Acis LP for the purchase, retention, or sale of specific loans or assets in the CLOs;
>
> (ii) place orders with respect to the purchase or sale of specific loans or assets for the CLOs, upon instruction from Acis LP;
>
> (iii) identify, evaluate, recommend to Acis LP, and, if applicable, negotiate the structure or terms of investment opportunities for the CLOs;
>
> (iv) assist Acis LP in performing its due diligence on prospective investments for the CLOs; and

[35] Although the Plaintiffs plead herein that certain provisions of the Sub-Advisory Agreement, which are in violation of the LPA, are unauthorized and *ultra vires*, section 15 of the Sub-Advisory Agreement provides that any such invalid provision does not affect or render "invalid or unenforceable by virtue of the fact that for any reason any other or others of them may be invalid or unenforceable in whole or in part."

(v) provide information to Acis LP regarding any investments in the CLOs, and, if requested by Acis LP, provide information to assist in monitoring and servicing investments by the CLOs.

See Sub-Advisory Agreement § 1(b). Further, "[n]otwithstanding the foregoing, all investment decisions will ultimately be the responsibility of, and will be made by and at the sole discretion of, [Acis LP]." *Id.*

260. Section 4(a) of the Sub-Advisory Agreement specifically provides:

> [T]he Sub-Advisor will perform its obligations [under the Sub-Advisory Agreement] in good faith with reasonable care using a degree of skill and attention no less than that which the Sub-Advisor uses with respect to comparable assets that it manages for others and, without limiting the foregoing, in a manner which the Sub-Advisor reasonably believes to be consistent with the practices and procedures followed by institutional managers of national standing relating to assets of the nature and character of the Portfolios[.]

261. Since at least the time the Trustee was appointed in these Bankruptcy Cases, while acting as sub-advisor, Highland Capital failed to purchase a single loan for the CLOs, and only provided for the sale of loans, in an attempt to complete a stealth liquidation of the CLOs for the Highlands' benefit, and to the detriment of Acis LP. Such practice is inconsistent with the practices and procedures followed by institutional managers of national standing, such as Brigade, relating to assets of the nature and character of the CLOs. Highland Capital's activities are, however, completely consistent with the Highlands' ultimate goal to take away Acis LP's valuable assets and take over Acis LP's valuable business as portfolio manager of the CLOs.

262. Highland Capital grossly mismanaged the CLOs, in abrogation of its duties and disregard of the standard of care under the Sub-Advisory Agreement. Accordingly, Highland Capital has breached its obligations under the Sub-Advisory Agreement, and such breach caused economic damages to Acis LP. Acis LP is therefore entitled to recover, to the fullest extent under applicable law, the amount of such damages from Highland Capital.

263. Further, to the extent any of the above-mentioned acts constitute services Highland Capital asserts it provided pursuant to the Shared Services Agreement, such services failed to meet the "Standard of Care" set forth in the Shared Services Agreement and were committed in bad faith or were the result of gross negligence, fraud, and/or willful misconduct. Highland Capital's breach of the Shared Services Agreement caused economic damages to Acis LP. Acis LP is therefore entitled to recover, to the fullest extent under applicable law, the amount of such damages from Highland Capital.

Count 30: Breach of Fiduciary Duties by Highland Capital
[Against Highland Capital]

264. The Plaintiffs incorporate the preceding paragraphs as if fully set forth herein.

265. Pursuant to the Sub-Advisory Agreement, a principal-agent relationship existed between Acis LP and Highland Capital. As its investment adviser, Highland Capital owed Acis LP fiduciary duties. *See Sec. & Exch. Comm'n v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 191, (1963); Commission Interpretation Regarding Standard of Conduct for Investment Advisers, Release No. IA-5248. 17, C.F.R. Part 276 (June 5, 2019). Further, based on Highland Capital's role as sub-advisor and investment adviser to Acis LP, a special relationship of trust and confidence existed between Acis LP and Highland Capital. *See W. Reserve Life Assur. Co. of Ohio v. Graben*, 233 S.W.3d 360, 373-74 (Tex. App.—Fort Worth 2007, no pet.). Accordingly, in its capacity of sub-advisor to Acis LP, Highland Capital owed fiduciary duties to Acis LP.

266. Highland Capital, while acting as sub-advisor for Acis LP, purposefully engaged in conduct that was detrimental to Acis LP in order to enrich itself. As outlined in detail above, Highland Capital increased the amount due to Highland Capital under the Sub-Advisory Agreement, including charging amounts far in excess of appropriate market rates and amounts in

excess of the compensation limits of the LPA. Highland Capital was also the ringleader, and ultimate beneficiary, for the series of fraudulent schemes executed in the Fall of 2017 that terminated or transferred away Acis LP's valuable rights in the ALF PMA, the ALF Shares, the Note, the 2017-7 Equity and the 2017-7 Agreements. This was done with the very specific intent to make Acis "judgment proof," as Acis's own counsel later boasted, and in order to ensure that Terry would never receive payment on his judgment, as Dondero has threatened. These transfers, while very damaging to Acis LP, also furthered Highland Capital's plan to take over Acis LP's very lucrative portfolio management business and keep it under the control of Highland Capital and Dondero. Finally, Highland Capital sought to transfer the Universal/BVK Agreement away from Acis LP and to itself or an affiliate, including while Highland Capital was serving as sub-advisor (and as a fiduciary) for such agreement.

267. By its actions, Highland Capital specifically intended to cause harm to Acis LP by denuding it of its assets and enriching Highland Capital. In doing so, Highland Capital breached its fiduciary duties to Acis LP.

268. As a consequence, the Plaintiffs, now vested with all claims of the Trustee, are entitled to an award of punitive damages against Highland Capital in an amount to be determined by the Court.

Count 31: Punitive Damages
[Against All Defendants]

269. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

270. The Highlands, led by Highland Capital and Dondero, engaged in fraud against Acis and its creditors, acted with malice toward Acis and its creditors, and were, at best, grossly negligent in their dealings with Acis.

271. Further, Plaintiffs are entitled to punitive damages in connection with Highland Capital's: (i) breach of fiduciary duties to Acis due to its fraudulent conduct, (ii) tortious interference, and (iii) violations of TUFTA. *See Bombardier Aerospace Corp. v. SPEP Aircraft Holdings, LLC*, 572 S.W. 3d 213, 232 (Tex. 2019) (fiduciary duties); T*exas Beef Cattle Co. v. Green*, 921 S.W.2d 203, 210 (Tex. 1996) (tortious interference); *Mullins v. Testamerica, Inc.*, CIV.A. 3:02-CV-0106-, 2006 WL 2167401, at *10 (N.D. Tex. Aug. 2, 2006) (TUFTA).

272. Thus, the Plaintiffs, now vested with all claims of the Trustee, are entitled to punitive damages, and the Plaintiffs plead for such damages in connection with each Count pleaded herein that will support a claim for punitive damages.

Count 32: Disregarding the Corporate Form/Alter Ego/Collapsing Doctrine/Unjust Enrichment
[Against All Defendants]

273. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

274. Under Texas law, ignoring the separateness of business entities and holding affiliated entities liable for all debts of the fraudulent enterprise is appropriate "when the corporate form has been used as part of a basically unfair device to achieve and inequitable result. Examples are when the corporate structure has been abused to perpetrate a fraud, evade an existing obligation . . . or justify a wrong." *SSP Partners v. Gladstrong Inv. (USA) Corp.*, 275 S.W.3d 444, 451 (Tex. 2008); *see also Flores v. Bodden*, 488 Fed. App'x 770, 775-76 (5th Cir. 2012) (listing "six situations in which a court may disregard the corporate form"); *Bridas S.A.P.I.C. v. Gov't of Turkmenistan*, 447 F.3d 411, 416 (5th Cir. 2006) (finding alter ego present).[36]

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[36] To the extent Delaware law applies to any of the alter ego claims, Delaware also recognizes alter ego on similar grounds. "Delaware does, however, recognize the traditional alter ego doctrine as grounds to pierce the corporate veil in cases involving the members of a corporate group. To state an alter ego claim under Delaware law, the [plaintiff] must plead (1) that [the] defendants 'operated as a single economic entity' and (2) that an 'overall element

275. Highland Capital, Highland Funding, Highland Adviser, Highland Management, and Highland Holdings (the "Alter Egos") are all controlled by the CEO and ultimate majority owner of Highland Capital, Dondero. Each of the Alter Egos should be held liable for any damages awarded under any Count in this Second Amended Complaint, as each is the alter ego of the others. Further, each of the Alter Egos should be held liable for any debts of the Debtors, as they are also the alter ego of the Debtors.

276. In this case, the Alter Egos unquestionably used the corporate form as a means of perpetuating the fraudulent scheme set forth above. For example, creating shell corporations in the Cayman Islands days after the Arbitration Award in order to avoid payment of Acis's creditors is precisely the type fraud or injustice that warrants disregarding the corporate form. Such actions satisfy, at a minimum, the first three situations in which a court may disregard the corporate form.

277. Further, "multistep transactions can be collapsed when the steps of the transaction are `part of one integrated transaction.'" *In re Yazoo Pipeline Co., L.P.*, 448 B.R. 163, 187 (Bankr. S.D. Tex. 2011) (J. Isgur) (internal citations omitted). The Supreme Court likewise has held that a bankruptcy court, as a court of equity, may look through form to substance when determining the true nature of a transaction as it relates to the rights of parties against a bankrupt's estate. *Pepper v. Litton*, 308 U.S. 295, 304-05 (1939).

278. The ALF PMA Transfer, the ALF Share Transfer, the Note Transfer, and the transfer of the 2017-7 Equity and the 2017-7 Agreements should be collapsed and recognized for what they are: Highland Capital using offshore entities to take over Acis LP's assets and business while Highland Capital maintains absolute control over such assets and business, and even using

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of injustice or unfairness' is present. "*Precht v. Global Tower LLC*, No. 2:14-CV-00743, 2016 U.S. Dist. LEXIS 177910, at *9 (W.D. La. Dec. 22, 2016) (internal citations omitted).

alleged debt owed to Highland Capital as the purported consideration for these transactions in order to mask Highland Capital's otherwise clear liability for avoidable transfers.

279. Finally, unjust enrichment is an equitable theory of recovery holding that one who receives benefits unjustly should make restitution for those benefits. *Bransom v. Standard Hardware, Inc.*, 874 S.W.2d 919, 927 (Tex. App.--Fort Worth 1994). A party is unjustly enriched when it obtains a "benefit from another by fraud, duress, or the taking of an undue advantage." *Heldenfels Bros., Inc. v. City of Corpus Christi*, 832 S.W.2d 39, 41 (Tex. 1992).

280. Each of the Highlands, and in particular Highland Capital and Highland Funding, benefitted from the ALF PMA Transfer, the ALF Share Transfer, the Note Transfer, and the transfer of the 2017-7 Equity and the 2017-7 Agreements even if they were not the direct transferee. Each of the Highlands should be held liable for benefits unjustly received and make restitution to the Debtors and their estates for those benefits.

Count 33: Willful Violation of the Automatic Stay
[Against Highland Capital and Highland Funding]

281. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

282. A willful violation of the automatic stay does not require a specific intent.

> Rather, the statute provides for damages upon a finding that the defendant knew of the automatic stay and the defendant's actions which violated the stay were intentional. Whether the party believes in good faith that it had a right to the property is not relevant to whether the act was 'willful' or whether compensation must be awarded.

Campbell v. Countrywide Home Loan, Inc., 545 F.3d 348, 355 (5th Cir. 2008) (quoting *In re Chestnut*, 422 F.3d.298, 302 (5th Cir. 2005).

283. "It is not up to a party exercising a self-help remedy to determine, to the preclusion of this court, what is or is not property of the estate." *Chesnut v. Brown (In re Chesnut)*, 300 B.R. 880, 887 (Bankr. N.D. Tex. 2003).

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284. Section 362(k)(1) of the Bankruptcy Code provides that "an individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages." The Fifth Circuit has indicated that remedies under 362(k)(1) are available to trustees. *St Paul Fire & Marine Ins. Co. v. Labuzan*, 579 F.3d 533, 539-540 (5th Cir. 2009). The term "individual" is not defined by the Bankruptcy Code, but it is used throughout the Code to refer to debtors and non-debtors. *See Homer Nat'l Bank v. Namie*, 96 B.R. 652, 654 (W.D. La. 1989) (citing, *inter alia*, 11 U.S.C. §§ 522(b) (individual as debtor), 321(a)(1) (individual as trustee)).

285. Further, pursuant to section 105(a) of the Bankruptcy Code, "[t]he Court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). The purpose of section 105(a) is "to assure the bankruptcy courts power to take whatever action is appropriate or necessary in aid of the exercise of their jurisdiction." 2 COLLIER ON BANKRUPTCY ¶ 105.01 (collecting cases). This is consistent with the broad equitable authority of the bankruptcy courts. *See United States v. Energy Resources Co., Inc.*, 495 U.S. 545, 549 (1990).

286. Highland Capital knew the automatic stay was in effect when it intentionally acted, without Court approval, to force the Trustee to effectuate the optional redemptions, including when it demanded on June 20, 2018, that the Trustee take actions to effectuate the optional redemption by June 21, 2018.

287. Highland Funding knew the automatic stay was in effect when it intentionally acted, without Court approval, to force the Trustee to effectuate the optional redemptions, including each occasion described herein when it sent the Trustee the Optional Redemption Notices.

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288. Pursuant to section 362(k)(1), the Plaintiffs seek recovery of damages commensurate with its injury, due to Highland Capital's and Highland Funding's violations of the automatic stay. Further, given Highland Capital's and Highland Funding's blatant and willful violation of the automatic stay (as well as the TRO), the Plaintiffs seek attorneys' fees, punitive damages, and sanctions, as the Court finds appropriate, pursuant to section 105(a) of the Bankruptcy Code.

Count 34: Attorneys' Fees and Costs,
Including all Allowed Professionals' Fees and Expenses in the Bankruptcy Cases
[Against All Defendants]

289. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

290. Pursuant to Texas Business and Commerce Code section 24.013, Civil Practice and Remedies Code section 38.001, TUFTA, and any other applicable law, the Plaintiffs may recovery attorneys' fees and costs incurred in bringing this Adversary Proceeding.

291. Plaintiffs further seek recovery from Highland Capital of all allowed professionals' fees and expenses in the Bankruptcy Cases, which were losses to Acis resulting from Highland Capital's breach of fiduciary duties to Acis. *See Meyers v. Moody*, 693 F.2d 1196, 1214 (5th Cir. 1982).

VII. REQUEST FOR DISGORGEMENT

292. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

293. "Under the equitable remedy of disgorgement or fee forfeiture, a person who renders service to another in a relationship of trust may be denied compensation for his service if he breaches that trust." *McCullough v. Scarbrough, Medlin & Assocs.*, 435 S.W.3d 871, 904-05 (Tex. App.—Dallas 2014) (citing *Burrow v. Arce*, 997 S.W.2d 229, 237 (Tex. 1999)). "The remedy essentially returns to the principal the value of what it paid for because it did not receive the trust or loyalty." *McCullough*, 435 S.W.3d at 905 (citing *Burrow*, 997 S.W.2d at 237-38).

"The amount of disgorgement is within the trial court's discretion; the court may 'deny him all compensation or allow him a reduced compensation or allow him full compensation.'" *McCullough*, 435 S.W.3d at 905 (citing *Burrow*, 997 S.W.2d at 237 (quoting RESTATEMENT (SECOND) OF TORTS § 243 (1959))).

294. "Equitable disgorgement is distinct from an award of actual damages in that the disgorgement award 'serves a separate function of protecting fiduciary relationships.'" *McCullough*, 435 S.W.3d at 905 (quoting *Saden v. Smith*, 415 S.W.3d 450, 469 (Tex. App.—Houston [1st] Dist. 2013, pet. denied)); *see also Burrow*, 997 S.W.2d at 238 ("[T]he central purpose of the equitable remedy of [disgorgement] is to protect relationships of trust by discouraging agent's disloyalty.").

295. The basis for the disgorgement award against Highland Capital stems from its liability in connection with its breach of fiduciary duty, as pleaded herein, and should be "phrased in terms of the salary, profits or other income [Highland Capital] received during the time [it] committed the tortious conduct." *McCullough*, 435 S.W.3d at 905 (internal quotation marks omitted).

296. Accordingly, Plaintiffs request disgorgement of all funds received by Highland Capital, who breached its fiduciary duties to Acis.

VIII. REQUEST FOR IMPOSITION OF CONSTRUCTIVE TRUST

297. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

298. "A constructive trust is not a cause of action under Texas law." *In re Moore,* 608 F.3d 253, 263 (5th Cir. 2010). Rather, "[a] constructive trust is an equitable remedy used to prevent unjust enrichment." *Baxter v. PNC Bank Nat'l Ass'n*, 541 Fed. App'x 395, 398 (5th Cir. 2013) (citing *Everett v. TK–Taito, LLC*, 178 S.W.3d 844, 859 (Tex. App— Fort Worth 2005, no pet.)); *see also Messier v. Messier*, 458 S.W.3d 155, 164 (Tex. App.—Houston [14th Dist.] 2015,

no pet.) ("A constructive trust is imposed when one party holds property that legally belongs to the other."). "In order to establish a constructive trust, the proponent must prove: (1) breach of a special trust, fiduciary relationship, or actual fraud; (2) unjust enrichment of the wrongdoer; and, (3) tracing to an identifiable res." *Baxter*, 541 Fed. App'x at 398; *accord Clapper v. Am. Realty Inv'rs, Inc.*, 3:14-CV-2970-D, 2015 U.S. Dist. LEXIS 71543, at *26 (N.D. Tex. June 3, 2015).

299. As described herein, Highland Capital breached its fiduciary duties to Acis, and the Highlands acted in concert to perpetrate the series of fraudulent transfers in order to strip Acis of its assets for the benefit of Highlands.

300. The Highlands were unjustly enriched because they benefitted from the "fraud [and] the taking of an undue advantage" against Acis. *See Heldenfels Bros.*, 832 S.W.2d at 41. Each of the Highlands, and in particular Highland Capital and Highland Funding, benefitted from the property transferred, which is traceable and identified herein, as a result of the ALF PMA Transfer, the ALF Share Transfer, the Note Transfer, and the transfer of the 2017-7 Equity and the 2017-7 Agreements even if they were not the direct transferee.

301. Further, Highland Capital, who breached its fiduciary duties to Acis, was unjustly enriched in connection with the Expense Overpayments as well as by the payments received as a result of the modifications to the Sub Agreements, and such benefits may be traced and identified by the payments from Acis LP to Highland Capital under the modified Sub Agreements.

302. Accordingly, the Plaintiffs requests that a constructive trust is established for those benefits unjustly received by the Highlands.

IX. OBJECTIONS TO HIGHLAND CAPITAL PROOFS OF CLAIM

303. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

304. The Highland Capital Claims are allegedly based on claims arising from the Sub-Advisory Agreement and the Shared Services Agreement. The Highland Capital Claims[37] are summarized as follows:

Alleged Pre-Petition Claim[38]	**Alleged Claim Amount**
Sub-Advisory Agreement	$1,605,362.41
Shared Services Agreement	$1,017,213.62
Total alleged Pre-Petition Claim	$2,622.576.03
Alleged 502(f) Claim[39]	**Alleged 502(f) Claim Amount**
Sub-Advisory Agreement	$1,170,147.06
Shared Services Agreement	$ 879,417.29
Total alleged 502(f) Claim	$2,049,564.35
Total Claim Amount	**$4,672,140.38**

[37] Highland Capital filed identical claims against both Acis LP and Acis GP. Acis GP is not a party to the Sub-Advisory Agreement or the Shared Services Agreement. Presumably, Highland Capital is relying on Delaware partnership law to argue that Acis GP is also liable under the Sub-Advisory Agreement and Shared Services Agreement. *See* 6 Del. C. § 17-403(b) ("Except as provided in this chapter, a general partner of a limited partnership has the liabilities of a partner in a partnership that is governed by the Delaware Uniform Partnership Law in effect on July 11, 1999 (6 Del. C. § 1501 et seq.) to persons other than the partnership and the other partners. Except as provided in this chapter or in the partnership agreement, a general partner of a limited partnership has the liabilities of a partner in a partnership that is governed by the Delaware Uniform Partnership Law in effect on July 11, 1999 (6 Del. C. § 1501 et seq.) to the partnership and to the other partners."); *see also* 6 Del. C. § 15-306(a) ("(a) Except as otherwise provided in subsections (b) and (c) of this section, all partners are liable jointly and severally for all obligations of the partnership unless otherwise agreed by the claimant or provided by law"). If this is the case, Acis does not dispute this basic tenet of partnership law; however, Acis disputes the Highland Capital Claims for the reasons set forth herein. Accordingly, all arguments set forth herein are applicable to both Highland Capital Claims.

[38] The Alleged Pre-Petition Claim relates to Highland Capital's alleged claim arising prior to the Petition Date.

[39] The Alleged 502(f) Claim relates to Highland Capital's alleged claim arising after the Petition Date and prior to April 13, 2018, the date the Court entered the Orders for Relief.

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The Highland Capital Claims also include contingent indemnity claims arising under the Sub Agreements.

305. The Highland Capital Claims should be disallowed under (i) section 502(b)(1) of the Bankruptcy Code; (ii) section 502(b)(4) of the Bankruptcy Code; (iii) and section 502(d) of the Bankruptcy Code. The Highland Capital Claims are unenforceable against the Debtors under the LPA and applicable law. The Highland Capital Claims are for services of an insider of the Debtors and exceed the reasonable value of the services. As set forth above, Plaintiffs have asserted avoidance actions against Highland Capital such that the Highland Capital Claims should be disallowed. Finally, to the extent allowed at all, the Highland Capital Claims should be equitably subordinated under section 510(c) of the Bankruptcy Code.

306. Pursuant to section 502(b) and (d) of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 3007, the Plaintiffs seek entry of an order disallowing and expunging the Highland Capital Claims from the Debtors' claims registers.

A. The Highland Capital Claims Should be Disallowed under 11 U.S.C. § 502(b)(1).

307. "Section 502(b)(1) provides that a claim is allowed except to the extent it is unenforceable under applicable law." *In re White*, No. 06-50247-RLJ-13, 2008 Bankr. LEXIS 167, at *17-18 (Bankr. N.D. Tex. Jan. 28, 2008). "[T]he the validity of a creditor's claims against the debtor at the time the bankruptcy petition is filed 'is to be determined by reference to state law.'" *Carrieri v. Jobs.com, Inc.*, 393 F.3d 508, 529 (5th Cir. 2004) (quoting *Kellogg v. United States (In re W. Tex. Mktg. Co.)*, 54 F.3d 1194, 1196 (5th Cir. 1995)).

308. As set forth more fully above, the Highland Capital Claims are based entirely on amounts alleged to be due pursuant to the Sub Agreements. As outlined in the causes of action above, there are significant amounts due to Acis LP by Highland Capital under or in connection with the Sub Agreements, which constitute a right of recoupment and/or offset to the entirety of

the Highland Capital Claims. Further, any portion of the Highland Capital Claims that are based on *ultra vires* acts, as alleged in Count 1 above, are void or voidable. Accordingly, the Highland Capital Claims are not enforceable under applicable law, and the Highland Capital Claims should therefore be disallowed.

B. The Highland Capital Claims Should be Disallowed under 11 U.S.C. § 502(b)(4).

309. The Highland Capital Claims are claims for services by an insider, Highland Capital, and the Highland Capital Claims exceed the reasonable value of the services provided by Highland Capital. Section 502(b)(4) of the Bankruptcy Code provides, in relevant part, that a claim for services of an insider or attorney of a debtor shall not be allowed to the extent that "such claim exceeds the reasonable value of such services."

310. The purpose of section 502(b)(4) is: "(1) to prevent insiders of a debtor from extracting inflated compensation from the debtor at the expense of the debtor's creditors; and (2) to prevent over-generosity of a debtor prior to a bankruptcy filing." *Faulkner v. Canada (In re Heritage Org., L.L.C.)*, Case No. 04-35574-BJH-11, Adv. No. 04-3338, 2006 Bankr. LEXIS 4662, at *22-23 (Bankr. N.D. Tex. Jan. 5, 2006); *see also In re Allegheny Int'l*, 158 B.R. 332, 339 (Bankr. W.D. Pa. 1992) ("The purpose underlying 11 U.S.C. § 502(b)(4) is to prevent officers and directors (insiders) of a debtor from extracting inflated amounts for their services at the expense of the creditors.").

1. Highland Capital is an Insider of the Debtors.

311. Under section 101(31) of the Bankruptcy Code, an insider includes certain enumerated parties, such as an officer of the debtor, affiliate, etc. Further, the list of enumerated "insiders" is not exclusive or exhaustive. *See In re Missionary Baptist Foundation of Am., Inc.*, 712 F.2d 206, 210 (5th Cir. 1983). Recently, the United States Supreme Court stated: "Courts have additionally recognized as insiders some persons not on that [101(31)] list—commonly

known as 'nonstatutory insiders.' The conferral of that status often turns on whether the person's transactions with the debtor (or another of its insiders) were at arm's length." *U.S. Bank N.A. v. Vill. at Lakeridge, LLC*, 138 S. Ct. 960, 963 (2018).

312. The Fifth Circuit has noted that "cases which have considered whether insider status exists generally have focused on two factors in making that determination: (1) the closeness of the relationship between the parties and (2) whether the transaction . . . [was] conducted at arm's length." *In re Holloway*, 955 F.2d 1008, 1011 (5th Cir. 1992).

313. Highland Capital is a statutory insider, a non-statutory insider, an admitted insider, and an adjudicated insider. The statutory definition of "insider" includes an "affiliate" of the debtor. 11 U.S.C § 101(31)(E). Prior to the entry of the Orders for Relief, Highland Capital met the statutory definition of "affiliate" because Highland Capital "operate[d] the business or substantially all of the property of the [D]ebtor under a[n] . . . operating agreement." *See* 11 U.S.C § 101(2)(D). Under the Sub Agreements, Acis LP effectively ceded control over its operations to Highland Capital.[40]

314. Highland Capital is a non-statutory insider because Dondero controlled both Acis and Highland Capital prior to the date the Court entered the Orders for Relief. The closeness of the Highland Capital-Acis relationship is demonstrated by the fact that both companies are under Dondero's common control, Acis had no employees and Acis was operated exclusively by Highland Capital employees. Transactions were not conducted at arm's length. Indeed, Dondero

[40] For purposes of section 502(b)(4), courts examine whether a party is an "insider" on the date the operative document was executed. Here, it is indisputable that Highland Capital was an insider when the Sub-Advisory Agreement and the Shared Services Agreement were executed, and Highland Capital was an insider on the Petition Date. *See Faulkner*, 2006 Bankr. LEXIS 4662, at *17 ("The determination of insider status is made as of the time the claimant provided services to the debtor."); *In re Allegheny Int'l*, 158 B.R. 332, 339 (Bankr. W.D. Pa. 1992) ("[T]he relevant time for determining one's status as an insider, under 11 U.S.C. § 502(b)(4), is the time services were rendered and when the compensation contracts for such services were formed[.]").

signed both the Sub-Advisory Agreement and the Shared Services Agreement for Highland Capital and Acis.

315. Highland Capital is an admitted insider and an adjudicated insider. During the trial on the involuntary petitions, the Debtors, controlled by Highland Capital, admitted that Highland Capital is an insider of the Debtors.[41] Acis LP's SOFA lists payments to Highland Capital in the section titled "Payments or transfers of property made within 1 year before the filing of this case that benefited any insider." The SOFA is signed by Isaac Leventon, an employee of Highland Capital (who, on information and belief, had no official title or position with the Debtors). Additionally, this Court has found that Highland Capital is an insider of the Debtors, stating: "the court believes it necessary to remove certain *insider* creditor claims, which are required not to be counted pursuant to section 303(b)(2) of the Bankruptcy Code. *This would clearly include Highland Capital* (the Alleged Debtors do not dispute this)." Opinion ¶ 38 (footnotes omitted) (emphasis added).

2. The Highland Capital Claims Exceed the Reasonable Value of the Services Provided.

316. "In analyzing the reasonableness of a claim for services under § 502(b)(4), a court should consider the totality of the circumstances involved at the time that the services were rendered." *Faulkner*, 2006 Bankr. LEXIS 4662, at *23 (citing *In re Gutierrez*, 309 B.R. 488, 493 (Bankr. W.D. Tex. 2004)). "Reasonable value" under Section 502(b)(4) is "synonymous with 'market value.'" *In re Delta Air Lines, Inc*., No. 05-17923 (cgm), 2010 Bankr. LEXIS 233, at *22 (Bankr. S.D.N.Y. Feb. 3, 2010). "The burden of proof on reasonableness under

[41] Transcript of Hearing on Emergency Motion to Abrogate or Modify 11 U.S.C Section 303(f), Prohibit Transfer of Assets, and Impose, Inter Alia, 11 U.S.C Section 363 Filed by Petitioning Creditor Joshua Terry (3); Emergency Motion to Set Hearing (related to Document (8) Motion to Dismiss Case Filed by Alleged Debtor Acis Capital Management, LP (9) (Case Nos. 18-30264-SGJ7 &18-30264-SGJ7) (the "2-7-18 Transcript"), at 246: 8-9 ("[T]here are no insiders other than Highland on the list of eighteen[.]").

§ 502(b)(4) ultimately lies with the insider." *Id*. at 24. Thus, Highland Capital has the burden to establish the reasonableness of its claims. Further, when the validity of an insider's contract with a corporation is at issue, the burden is on the insider "'not only to prove the good faith of the transaction but also to show its inherent fairness from the viewpoint of the corporation and those interested therein.'" *In re Marquam Inv. Corp*., 942 F.2d 1462, 1465 (9th Cir. 1991) (quoting *Pepper v. Litton*, 308 U.S. 295, 306 (1939)).

317. Together, the Sub Agreements (as amended) charge Acis LP fees far exceeding the market value of the services provided under such agreements. First, the Trustee's professionals engaged in a marketing process in connection with the Brigade Motion. After conducting a diligent search of the market, the Trustee located a replacement for Highland Capital that provided the services Highland Capital previously provided the Debtor for roughly half the cost Highland Capital charged Acis LP. The Sub Agreements also significantly contributed to rendering Acis insolvent. In fact, the General Counsel of Highland Capital, Scott Ellington, admitted that as of February 7, 2018—one week after the Petition Date—Acis was insolvent or close to insolvent.[42]

318. Highland Capital cannot show that the exorbitant fees charged under the Sub Agreements are reasonable or that entry into such agreements was in good faith and demonstrates inherent fairness. Therefore, pursuant to section 502(b)(4), the Highland Capital Claims should be disallowed in their entirety.

C. Highland Capital Received Voidable Transfers and Holds Property of the Estate, and the Trustee is Entitled to Setoff under Section 502(d) of the Bankruptcy Code.

319. As set out more fully in the causes of action above, the Plaintiffs seek: (i) avoidance of actual and constructively fraudulent transfers and obligations pursuant to sections

[42] 2-7-18 Transcript at 219: 22-25 (THE COURT: Do you think Acis is in the zone of insolvency? THE WITNESS: I don't know the answer to that, but I would -- I would assume that it was -- that it's close.")

544 and 548 of the Bankruptcy Code, (ii) avoidance of preferential transfers pursuant to section 547 of the Bankruptcy Code; (iii) turnover of property the estate pursuant to section 542 of the Bankruptcy Code; and (iv) liability for the foregoing under section 550 of the Bankruptcy Code.

320. "Under section 502(d), 'the court shall **disallow** any claim of any entity . . . that is a transferee of a transfer avoidable under section . . . 544 [or 548] of this title, unless such . . . transferee has paid the amount, or turned over any such property.'" *In re Consol. Capital Equities Corp.*, 143 B.R. 80, 84 (Bankr. N.D. Tex. 1992) (quoting 11 U.S.C. § 502(d)) (emphasis in original).[43] Application of section 502(d) is not restricted to cases where a fraudulent transfer has already been avoided, but rather applies to pending fraudulent transfer claims as well. In other words, the statute does not require that the transfer actually be avoided, only that it be "avoidable." *Id.* As a result, once a fraudulent transfer claim has been asserted, the mandatory language of section 502(d) requires bankruptcy courts to consider the fraudulent transfer issue as a component of the claims allowance process. *U.S. Bank N.A. v. Verizon Communs., Inc.*, 761 F.3d 409, 419 (5th Cir. 2014) (finding mandatory language of section 502(d) precluded the court from resolving claims where the trustee alleged the claimant was the transferee of a fraudulent transfer). Moreover, the Court may disallow the Highland Capital Claims before adjudicating the causes of action set forth herein. *See In re Heritage Org., L.L.*C., 375 B.R. 230, 288-289 (Bankr. N.D. Tex. 2007) (finding a court order avoiding a transfer is not a prerequisite to disallowance of a claim).

321. Thus, pursuant to section 502(d) of the Bankruptcy Code, the Court should disallow the Highland Capital Claims.

[43] "Notwithstanding subsections (a) and (b) of this section, the court shall disallow any claim of any entity from which property is recoverable under section 542, 543, 550, or 553 of this title [11 USCS § 542, 543, 550, or 553] or that is a transferee of a transfer avoidable under section 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of this title, unless such entity or transferee has paid the amount, or turned over any such property, for which such entity or transferee is liable under section 522(i), 542, 543, 550, or 553 of this title." 11 U.S.C.§ 502(d)

D. The Highland Capital Claims Should be Equitably Subordinated.

322. Section 510(c) of the Bankruptcy Code expressly authorizes subordination of the allowed claim of one creditor to the allowed claims of other creditors "under principles of equitable subordination."

323. In *In re Mobile Steel Co.*, 563 F.2d 692 (5th Cir. 1977), the Fifth Circuit articulated what has become the most commonly accepted standard for equitable subordination of a claim. Under the *Mobile Steel* standard, a claim can be subordinated if the claimant engaged in some type of inequitable conduct that resulted in injury to creditors (or conferred an unfair advantage on the claimant) and if equitable subordination of the claim is consistent with the provisions of the Bankruptcy Code.

324. During the time it completely dominated control of Acis, Highland Capital clearly engaged in abundant inequitable conduct related to Acis, as well as conferring numerous unfair advantages to itself, which resulted in injury to Acis's creditors. As outlined in detail above, Highland Capital increased the amount due to Highland Capital under the Sub-Advisory Agreement, including charging amounts far in excess of appropriate market rates. This has resulted in a grossly inflated claim for Highland Capital as well as significant overpayments to Highland Capital for whatever services and value it did provide to Acis under these agreements.

325. Highland Capital was also the ringleader, and ultimate beneficiary, for the series of fraudulent schemes executed in the fall of 2017 that terminated or transferred away Acis LP's valuable rights in the ALF PMA, the ALF Shares, the Note, the 2017-7 Equity and the 2017-7 Agreements. This was done with the very specific intent to make Acis "judgment proof," as

Acis's own counsel later boasted,[44] and in order to ensure that Terry and other creditors would never receive payment on his judgment, as Dondero has threatened.[45] These transfers, while very damaging to Acis LP and its creditors, also furthered Highland Capital's plan to take over Acis LP's very lucrative portfolio management business and keep it under the control of Highland Capital and Dondero. Finally, even during the Bankruptcy Cases, Highland Capital has attempted to transfer and take over Acis LP's very lucrative Universal/BVK Agreement.

326. To the extent the Highland Capital Claims are allowed in any amount, they are subject to equitable subordination and should be subordinated below all other allowed unsecured claims in the bankruptcy case.

X. OBJECTIONS TO HIGHLAND CAPITAL'S ADMINISTRATIVE CLAIM

A. Highland Capital's Administrative Claim is Subject to Disallowance for the Same Reasons the Highland Capital Claims Should be Disallowed.

1. Prevailing on the Causes of Action Set Forth Herein Mandates the Disallowance of Highland Capital's Administrative Claim.

327. In its Application, without specifically citing the causes of actions or making any reference whatsoever to the objections to the Highland Capital Claims contained herein (as they were previously asserted in the Amended Counterclaims), Highland Capital asserts that the Trustee "apparently has furthered a theory that Highland overcharged the Debtors," but must "provide evidence, not simply allegations, to rebut the prima facie case that Highland is entitled to an administrative claim." Application ¶ 33. Highland Capital then rashly contends that the Trustee "has provided no such evidence" and that "the Contracts speak for themselves and are the best evidence of the validity of the claim asserted by Highland." *Id*. A simple review of the

[44] *See Plaintiff's Motion for Expedited Discovery*, Ex. 1 (Declaration of Rogge Dunn) ¶ 4, *Terry v. Acis Capital Mgmt., L.P.*, Cause No. DC-17-15244, 44th District Court of Dallas County, Texas ("On October 31, 2017, counsel for Acis, Jamie Welton, called me on the telephone. In that call, Mr. Welton stated that Acis is 'judgment proof.'").

[45] *See* June 28, 2017 Dondero Dep. Tr. 262:2-8 (Ex. 101 from the involuntary trial) ("Nobody's going to let a dime go out of the firm that we don't have to pay ever to – to Josh, period. I mean, it's . . . I think it's personal[.]").

causes of action herein (as well as evidence presented in connection with the involuntary hearings, confirmation hearings, and other hearings during these Bankruptcy Cases) belies its position and demonstrates otherwise.

328. As is discussed below, Highland Capital must demonstrate that the services provided conferred a direct and substantial benefit on the Debtors' estates. And before Highland Capital can ask the Court to assess whether its services provided the required direct and substantial benefit, it must first demonstrate that it had the right to even charge the Debtors the amount set forth in the agreements. The causes of action asserted against Highland Capital herein, which dispute the amounts charged by Highland Capital, directly implicate the validity of, and support the disallowance of, the Administrative Claim (just as they refute Highland Capital's purported prepetition claims). The Plaintiffs therefore expressly incorporate Counts 1, 5 – 8, and 27 – 30 herein and specifically raises such Counts as objections to the Administrative Claim asserted by Highland Capital in its Application.

329. If the Plaintiffs prevail on the causes of action against Highland Capital as set forth herein, the basis for allowance of the Administrative Claim would also be invalidated. Moreover, as discussed below, based on such causes of action, the Plaintiffs are entitled to recover millions of dollars in damages, all of which may be offset against the Administrative Claim.

2. Highland Capital's Administrative Claim is Also Subject to Disallowance under Section 502(d).

330. Because Highland Capital is alleged to have received fraudulent transfers, its Administrative Claim is also subject to disallowance under section 502(d) until the property or its value has been returned to the Debtors.

331. Although Highland Capital's Application involves an administrative claim, nothing in section 502(d) limits its application to prepetition claims. *MicroAge, Inc. v. Viewsonic Corp. (In re MicroAge, Inc.)*, 291 B.R. 503, 508 (B.A.P. 9th Cir. 2002). Section 502(d) by its terms applies to "any claim" and the definition of a "claim" in section 101(5) is sufficiently broad to include requests for payment of expenses of administration. *Id.* Because the objective of section 502(d) is to encourage transferees to return avoidable transfers to the estate, a number of courts have held that section 502(d) applies to administrative claims. *See, e.g., id.* at 508-12; *In re Georgia Steel*, 38 B.R. 829, 839-40 (Bankr. M.D. Ga. 1984) (applying section 502(d) and stating, "[t]he fact that [the] claim is for an administrative expense has no bearing").

332. The Plaintiffs acknowledge that courts are split on the issue of whether section 502(d) applies to administrative expenses. *Compare MicroAge, Inc.*, 291 B.R. at 508-512 (considering split of authority and finding that "the better analysis is that § 502(d) may be raised in response to the allowance of an administrative claim"), *and Georgia Steel*, 38 B.R. at 839-40 (finding the fact that the claim "is for an administrative expense has no bearing" for purposes of section 502(d)), *with In re Plastech Engineered Prods.*, 394 B.R. 147, 164 (Bankr. E.D. Mich. 2008) (concluding that "§ 502(d) does not apply to the allowance and payment of administrative expenses under § 503(b)"). Although not binding on this Court, the Plaintiffs also note that one bankruptcy court in this district has found that section 502(d) does not apply to administrative claims. *Rand Energy Co. v. Del Mar Drilling Co. (In re Rand Energy Co.)*, 256 B.R. 712, 719 (Bankr. N.D. Tex. 2000) (Felsenthal, J.).

333. As described above, Highland Capital is the recipient of certain preferential payments and/or fraudulent transfers. Thus, while acknowledging the split of authority on the issue, the Plaintiffs assert that the plain language of section 502(d), as well as the policy

underlying section 502(d), requires that Highland Capital's Administrative Claim be disallowed in its entirety.

3. The Indemnity Provisions Relied on by Highland Capital Are Invalid and, in Any Event, Do Not Apply to Highland Capital's Intentional Torts.

334. In the Application, Highland Capital also asserts defenses against the causes of action brought herein pursuant to its purported indemnity rights against the Debtors under section 6.03 of the Shared Services Agreement and section 4(c) of the Sub-Advisory Agreement. Application ¶ 34. Any contention by Highland Capital that it is immune from liability arising from the causes of action brought against it herein due to the indemnity provisions of the Sub Agreements lacks merit. First, the indemnity provisions cited by Highland Capital were included only in the last iteration of the Sub Agreements, in March 2017. Thus, even if valid and applicable (which they are not), such provisions do not cover actions of Highland Capital prior to March 2017. Second, to the extent that the indemnity provisions in the Sub Agreements were included in an attempt to shield Highland Capital from liability in connection with its fraudulent scheme to denude Acis (and were added for no consideration), such provisions were themselves fraudulently incurred and should be avoided pursuant to section 548 of the Bankruptcy Code and sections 24.005 and 24.006 of TUFTA.[46] Further, the protection Highland Capital seeks is outside the scope of the indemnity provisions, which indemnify Highland Capital in connection with its actions taken as sub-advisor under the Sub Agreements—not in connection with torts and other wrongful conduct intentionally committed against Acis as part of Highland Capital's calculated scheme to denude the estate. Finally, it is against public policy for indemnity provisions in contract to shield a party from intentional tortious conduct. *See, e.g., Hamblin v.*

[46] Notably, all versions prior to the last iteration of the Sub-Advisory Agreement (before March 2017) contained no indemnity provision; also, it is telling that the indemnity provisions were added to the Sub-Advisory Agreement and significantly amended in the Shared Services Agreement only after arbitration had been ordered in state court.

Lamont, 433 S.W.3d 51, 55 (Tex. App.—San Antonio 2013, pet. denied); *In re Oil Spill by the Oil Rig*, 841 F. Supp. 2d 988, 1001-02 (E.D. La. 2012). Accordingly, such provisions are inapplicable as a defense to the causes of action asserted herein against Highland Capital.

B. Highland Capital Cannot Satisfy Its Burden of Proving Its Services Directly and Substantially Benefitted the Debtors' Estates.

1. Administrative Priority Status is Narrowly Construed and Only Awarded Upon a Showing of a Direct and Substantial Benefit to the Estate.

335. Under section 503(b)(1) of the Bankruptcy Code, an administrative expense claim shall be allowed for "the actual, necessary costs and expenses of preserving the estate." 11 U.S.C. § 503(b)(1)(A). The ultimate burden of proof is on Highland Capital to establish it is entitled to an administrative priority claim pursuant to 11 U.S.C. § 503(b). *See In re Transamerican Natural Gas Corp.*, 978 F.2d 1409, 1416 (5th Cir. 1992). Further, because section 503 administrative claims are priority claims, which are entitled to special treatment, section 503 must be narrowly construed. *See In re Templeton*, 154 B.R. 930, 934 (Bankr. W.D. Tex. 2009); *see also In re Federated Dep't Stores, Inc.*, 270 F.3d 994, 1000 (6th Cir. 2001) ("Claims for administrative expenses under § 503(b) are strictly construed because priority claims reduce the funds available for creditors and other claimants.").

336. At a minimum, Highland Capital must establish that "(1) the claim arises from a transaction with the [debtor]; and (2) the goods or services supplied enhanced the ability of the [debtor's] business to function." *See Total Minatome Corp. v. Jack/Wade Drilling, Inc. (In re Jack/Wade Drilling, Inc.)*, 258 F.3d 385, 387 (5th Cir. 2001) (citing *Transamerican*, 978 F.2d at 1416); *see also ASARCO, Inc. v. Elliott Mgmt. (In re ASARCO, LLC)*, 650 F.3d 593, 601 (5th Cir. 2011) ("Claim under this section 'generally stem from voluntary transactions with third parties who lend goods or services necessary to the successful reorganization of the debtor's estate.'") (quoting *Jack/Wade Drilling*, 258 F.3d at 387).

337. Moreover, the benefit is measured from the point of view of the bankruptcy estate, not that of the applicant. *In re Premium Well Drilling, Inc.*, 2012 Bankr. LEXIS 1554, at *9 (Bankr. W.D. Tex. Apr. 10, 2012). "The focus on allowance of administrative claims which enjoy priority over other creditors is to prevent unjust enrichment of the estate. It is *not* to compensate the creditor . . . for his or her loss." *In re Am. Plumbing & Mech., Inc.*, 323 B.R. 442, 462 (Bankr. W.D. Tex. 2005) (emphasis in original).

2. Highland Capital Cannot Demonstrate It Conferred a Direct and Substantial Benefit on the Debtors' Estates.

338. As set forth herein, as it had done prior to these Bankruptcy Cases, following entry of the Orders for Relief, Highland Capital continued perpetrating its scheme to steal, and otherwise attempted to damage, Acis's business—in order to *minimize* value for creditors and ensure that Acis could not successfully reorganize—and to line its own pockets. Aside from Highland Capital's actions in sending notices of optional redemption to liquidate the CLOs (without Court approval and in violation of the automatic stay), following entry of the Orders for Relief, Highland Capital also actively mismanaged the Acis CLOs to undermine the business of the Debtors, as evidenced by, *inter alia*, the vast disparity between the trades made in CLOs 3, 4 5, and 6, as opposed to CLO 7, in 2018, as testified to by Terry at the second confirmation hearing. *See* Dec. 12, 2018 Hr'g Tr. (AM) at pp. 19-35.

339. Additionally, while mismanaging CLOs 3, 4 5, and 6, Highland Capital sought to carry out its plan "to transfer the BVK investment management agreement from Acis LP to another Highland-affiliated manager."[47] As explained herein, Highland Capital's attempt to steal BVK's business from Acis began from nearly day one of these Bankruptcy Cases and continued

[47] *See* **Exhibit K** (email chain from early February 2018 between Mike Warner (Acis's counsel), Isaac Leventon (Highland Capital's in-house counsel), Timothy Cournoyer (Highland Capital's in-house counsel) and Thomas Surgent (Highland Capital's Chief Compliance Officer)).

even after Highland Capital was terminated as sub-advisor on August 1, 2018—when Highland Capital no longer had any legitimate reason to communicate with Universal or BVK.

340. Highland Capital's actions during the pendency of these Bankruptcy Cases demonstrate that Highland Capital did not service the Acis CLOs in a way that "enhanced the ability of the [debtor's] business to function." *Transamerican*, 978 F.2d at 1416. Indeed, Highland Capital acted to destroy the Debtors' business—therefore, Highland Capital's request for allowance of its Administrative Claim must be denied.

341. In its Application, Highland Capital essentially asserts that it provided services to the Debtors on a postpetition basis pursuant to various prepetition agreements and, therefore, the expenses are entitled to administrative priority. In order to qualify as an administrative expense, however, Highland Capital must show that its claim arose postpetition "as a result of actions by the trustee that benefitted the estate." *Id.* Further, although the terms of the Debtors' prepetition contracts may be probative of the reasonable value of postpetition services, they are not dispositive. *In re Am. Plumbing & Mech., Inc.*, 323 B.R. at 462. Indeed, "all that the estate is required to pay is the *reasonable value* of those services which were rendered." *Id.* (emphasis in original) (citing *NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 531, 104 S. Ct. 1188, 79 L. Ed. 2d 482 (1984). Consequently, the provisions of the prepetition contracts do not automatically and dispositively translate into an allowed administrative claim. Highland Capital must still demonstrate a quantifiable benefit to the estate.

342. Highland Capital's assertion that its costs were incurred postpetition fails to satisfy its burden of proving entitlement to administrative priority. Specifically, aside from merely referencing the Sub-Agreements and the Universal/BVK Agreement, and contending that monies owed to it under such agreements are an administrative expense, Highland Capital fails to show that (i) such costs were necessary for the preservation of the Debtors' estate, and (ii) the

Debtors received any benefit, let alone a direct and substantial benefit, as a result of such services and expenses.

3. The Amount Charged by Highland Capital Was Inflated and Unnecessary.

343. Further, even if Highland Capital could show that, rather than undermining Acis's business, it provided postpetition services that enhanced the ability of Acis to function, to the extent the rates Highland Capital charged Acis were inflated or above market, the amounts charged to Acis under the Sub Agreements did not benefit the estates or its creditors, and such inflated amounts were therefore not necessary. *See NL Indus., Inc. v. GHR Energy Corp.*, 940 F.2d 957, 966 (5th Cir. 1991) ("Courts have construed the words 'actual' and 'necessary' narrowly: the debt must benefit the estate and its creditors."). Indeed, at the July 6, 2018 hearing, regarding approval of the break-up fee and replacement of Highland Capital as sub-servicer with Oaktree, J.P. Sevilla, assistant general counsel for Highland Capital, testified that Highland Capital would reduce its rates charged to Acis LP for sub-servicing from 35 basis points to 17.5 basis points, in order to match competing offers:

> Q Okay. Would Highland be willing to reduce its fee during the pendency of the bankruptcy, maybe without its rights to assert the validity of the contract, but would Highland otherwise be willing to assert -- to reduce its fees during the pendency of the bankruptcy?
>
> A I think at the very least Highland would match Saratoga or whatever the 17.5 bps offer is. Again, reserving all rights, but in order to stay in the deal and to establish Highland's commitment to this deal, we would do it for 17-1/2 basis points, no question.

July 6, 2018 Hr'g Tr. at pp. 243-44. Moreover, the effective rate for such services charged by Brigade and Cortland also approached 17.5 basis points.[48] Accordingly, notwithstanding the objections otherwise raised herein, and assuming the services provided to Acis LP enhanced,

[48] Pursuant to the Third Amended Joint Plan, Brigade agreed to provide sub-advisory and shared services to the Acis CLOs for 15 basis points (and decreasing after one year). *See* Docket No. 661 at pp. 28, 136; *see also* Dec. 11, 2018 (PM) Hr'g Tr. at 89 & Dec. 12, 2018 (AM) Hr'g Tr. at 62.

rather than undermined, the ability of Acis's business to function, such amounts should be reduced to reflect a rate of at most 17.5 basis points.

4. The Plaintiffs Dispute Highland Capital's Calculation of its Administrative Claim.

344. The Plaintiffs further object to Highland Capital's calculation of the amount of the Administrative Claim. Subject to the objections raised herein, in the *Amended Disclosure Statement Pursuant to Section 1125 of the United States Bankruptcy Code with Respect to the Second Amended Joint Plan for Acis Capital Management, L.P. and Acis Capital Management GP, LLC* [Case No. 18-30264, Docket No. 621] (the "Disclosure Statement"), the Trustee estimated that under the terms of the Sub Agreements, Highland Capital's alleged Administrative Claim would be approximately $2,612,574.00, rather than $3,007.678.41. Highland Capital fails to explain or substantiate this discrepancy. The Administrative Claim also includes $543,545.88 for expenses. Highland Capital fails to show that these alleged expenses were incurred or payable under the Sub Agreements. *See In re Packard Props., Ltd.*, 118 B.R. 61, 63 (Bankr. N.D. Tex. 1990) ("Since this claim is a request for payment of administrative expenses, the [creditor] carries the burden of proof throughout the entire proceeding."). Therefore, in addition to the objections herein, the Plaintiffs also object to Highland Capital's calculation of its purported Administrative Claim.

C. Highland Capital Is Not Entitled to Payment of Any Allowed Administrative Claim Because Acis's Right of Offset and Recoupment May Reduce or Eliminate Its Administrative Claim.

345. Even if the Court were to determine that Highland Capital is entitled to an allowed Administrative Claim, it should not be entitled to payment because Acis has rights of offset and recoupment that may be applied under section 558 of the Bankruptcy Code to reduce

or eliminate any allowed Administrative Claim.[49] As set forth above, Highland Capital charged Acis excessive and unreasonable fees for its services, and Acis has asserted a number of causes of action against Highland Capital for such overcharges, including for recovery of overcharges resulting from *ultra vires* actions, turnover of unauthorized payments, money had and received, conversion, fraudulent transfer, civil conspiracy, breach of contract, and breach of fiduciary duty. As a result of these overcharges, the Debtors' estates suffered many millions of dollars in damages which should be offset against any valid administrative claim awarded to Highland Capital. Indeed, the causes of action against Highland Capital may offset, or eliminate altogether, any right of recovery Highland Capital may have against the Debtors' estates on account of any Administrative Claim.

D. To the Extent Allowed, Highland Capital's Administrative Claim Should Also Be Equitably Subordinated.

346. In addition to applying equitable subordination to prepetition claims, courts have equitably subordinated administrative claims when the claimant acted in ways to harm the estate. *See, e.g., Principal Mut. Life Ins. Co. v. Langhorne (In re 848 Brickell Ltd.),* 243 B.R.142, 149 (S.D. Fla. 1998) (holding that while "pursuit of one's legal rights may not be grounds for equitable subordination, the lower court's findings that [the claimant's] protracted and abusive litigation tactics harmed the estate by causing it to incur about $400,000 in fees" justified equitable subordination of its administrative claim).

347. For the same reasons described above with respect to Highland Capital's prepetition claims, Highland Capital's Administrative Claim should also be equitably subordinated to the extent allowed. Further, during these Bankruptcy Cases, the Debtors' estates

[49] The Plan provided for the payment of allowed administrative claims on (i) the later of the effective date or the tenth business day after the administrative expense is allowed, or (ii) as otherwise agreed in writing between the Reorganized Debtor, or as otherwise ordered by the Bankruptcy Court. *See* Case No. 18-30264, Docket No. 660 at 11, § 3.01(b).

and the Reorganized Debtors have incurred substantial administrative fees in responding to the protracted and abusive litigation tactics of Highland Capital, including arguing for (and against) injunctive relief to prevent the liquidation of the CLOs and litigating the numerous appeals initiated by Highland Capital against the Trustee. Such litigation tactics by Highland Capital were attempts to thwart the reorganization of the Debtors, damage the estate, and harm its creditors. Accordingly, the Court should equitably subordinate Highland Capital's Administrative Claim. *See Principal Mut. Life Ins. Co.*, 243 B.R. at 149.

348. Thus, to the extent the Highland Capital's Administrative Claim is allowed in any amount, it should be subordinated below all other allowed claims in these Bankruptcy Cases.

VI. PRAYER

Plaintiffs respectfully request that the Court:

(i) enter judgment declaring that Expense Overpayments made to Highland Capital in excess of 20% of Revenue and any agreements supporting such overpayments were *ultra vires* and, thus, void or voidable;

(ii) enter judgment against Highland Capital for the recovery of any *ultra vires* payments made to Highland Capital;

(iii) enter judgment against Highland Capital, Highland Funding, Highland Advisor, Highland Holdings, and Highland Management for the avoidance and recovery of transfers fraudulently made and obligations fraudulently incurred and for civil conspiracy in connection with such fraudulent transfers and schemes;

(iv) enter judgment against Highland Capital, Highland Holdings, and Highland Management for avoidance and recovery of preferential transfers received;

(v) enter judgment against Highland Capital for tortious interference with contract;

(vi) enter judgment against Highland Capital for breach of contract;

(vii) enter judgment against Highland Capital for breach of its fiduciary duties and order disgorgement of all funds received by Highland Capital as a result of such breach;

(viii) enter judgment against Highland Capital and Highland Funding for willful violation of the automatic stay, pursuant to section 362(k) of the Bankruptcy Code;

(ix) enter judgment against Highland Capital, Highland Funding, Highland Advisor, Highland Management, and Highland Holdings for punitive damages;

(x) enter judgment against Highland Capital, Highland Funding, Highland Advisor, Highland Management, and Highland Holdings for pre- and post-judgment interest at the greatest amount permitted by law;

(xi) enter judgment against Highland Capital, Highland Funding, Highland Advisor, Highland Management, and Highland Holdings for all attorneys' fees and costs incurred in connection with the prosecution of this Adversary Proceeding and for all allowed professionals' fees and expenses incurred by the estates in the Bankruptcy Cases;

(xii) establish a constructive trust for all benefits unjustly received by that Highland Capital, Highland Funding, Highland Advisor, Highland Management and Highland Holdings;

(xiii) declare that Highland Capital, Highland Funding, Highland Advisor, Highland Management and Highland Holdings are alter egos of each other, or that the corporate for should otherwise be disregarded, and each is fully liable for any judgment entered for the Plaintiffs in this Adversary Proceeding;

(xiv) disallow, expunge and/or subordinate the Highland Capital Claims;

(xv) deny, disallow, and/or subordinate Highland Capital's Administrative Claim; and

(xvi) grant any other such relief that the Plaintiffs may show themselves to be justly entitled in law or in equity.

Dated: June 20, 2019.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 20, 2019, notice of this document will be electronically mailed to the parties that are registered or otherwise entitled to receive electronic notices in this adversary proceeding pursuant to the Electronic Filing Procedures in this District. Service will also be made as required and allowed by Federal Rule of Bankruptcy Procedure 7004.

/s/ Annmarie Chiarello
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Exhibit 13

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COUNSEL FOR HIGHLAND CAPITAL MANAGEMENT, L.P.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE: ACIS CAPITAL MANAGEMENT, L.P. AND ACIS CAPITAL MANAGEMENT GP, LLC, DEBTORS.	§ § § § § § §	Case No. 18-30264-SGJ-11 Case No. 18-30265-SGJ-11 (Jointly Administered Under Case No. 18-30264-SGJ-11) Chapter 11
ACIS CAPITAL MANAGEMENT, L.P., ACIS CAPITAL MANAGEMENT GP, LLC, PLAINTIFFS, VS. HIGHLAND CAPITAL MANAGEMENT, L.P., HIGHLAND CLO FUNDING, LTD. F/K/A ACIS LOAN FUNDING, LTD., HIGHLAND HCF ADVISOR, LTD., HIGHLAND CLO MANAGEMENT, LTD., HIGHLAND CLO HOLDINGS, LTD., CLO HOLDCO, LTD., NEUTRA, LTD., ACIS CLO 2014-3 LTD., ACIS CLO 2014-4 LTD., ACIS CLO 2014-5 LTD., ACIS CLO 2015-6 LTD., ACIS CLO 2014-3 LLC, ACIS CLO 2014-4 LLC, ACIS CLO 2014-5 LLC, AND ACIS CLO 2015-6 LLC, DEFENDANTS.	§ §	Adversary No. 18-03078 (Consolidated with Adversary Nos. 18-03212 & 19-03103)

HIGHLAND CAPITAL'S PARTIAL MOTION TO DISMISS THE SECOND AMENDED COMPLAINT AND BRIEF IN SUPPORT

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Highland Capital's Partial Motion to
<u>Dismiss the Second Amended Complaint and Brief in Support</u>

The plaintiffs in this action—Acis Capital Management, L.P. ("Acis LP") and Acis Capital Management GP, LLC ("Acis GP") (collectively, "Plaintiffs," "Acis," or "Reorganized Debtors")—have filed a Second Amended Complaint ("SAC"). Defendant Highland Capital Management, L.P. ("Highland Capital") moves to dismiss most counts of that pleading[1] and respectfully shows as follows:

I. Introduction

1. The Court recently consolidated three adversary cases into this proceeding. Pursuant to that order, the Plaintiffs combined their claims in those cases into the Second Amended Complaint. The resulting pleading is long on boilerplate and short on substance. Most of the purported claims against Highland Capital should be dismissed because Plaintiffs have failed to properly allege basic elements of those claims.

II. Applicable pleading standards

2. "[A] plaintiff's obligation to provide the grounds of his entitlement to relief … requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). A claim is "plausible on its face," and satisfies the requirements of Rule 12(b)(6), only when a "plaintiff pleads factual content that allows the court to draw the reasonable inference

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[1] Highland Capital files this motion subject in all ways to the Motions to Withdraw the Reference filed in this proceeding.

that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). "'Conclusory allegations, unwarranted deductions, or legal conclusions' are not 'well-pleaded facts' for purposes of evaluating a complaint." *Alaska Electrical Pension Fund v. Flotek Indus., Inc.*, 915 F.3d 975, 981 (5th Cir. 2019).

3. Many of Plaintiffs' claims are also subject to the requirements of Fed. R. Civ. P. 9(b). For allegations of fraud, that rule requires factual allegations of the "'time, place, and contents of the false representations, as well as the identity of the person making the misrepresentation and what [that person] obtained thereby.' … In other words, to properly allege fraud under Rule 9(b), the plaintiff must plead the who, what, when, where, and why as to the fraudulent conduct." *Life Partners Creditors' Trust v. Cowley*, 926 F.3d 103, 117 (5th Cir. 2019) (quoting *Tuchman v. DSC Comm'ns Corp.*, 14 F.3d 1061, 1068 (5th Cir. 1994)).

4. In particular, Highland contends that Rule 9(b) applies to Plaintiffs' claims for actual and constructive fraudulent transfers. As to actual fraudulent transfer, while the Fifth Circuit has deferred ruling on the point, the three Circuits that have addressed it have all applied Rule 9(b) to such claims. *See Life Partners*, 926 F.3d at 117.[2] The reason is straightforward; the rule applies not only to claims of fraud but also to those that "sound[] in fraud," which includes claims "premised upon a course of fraudulent

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[2] (citing *In re: Lawson*, 791 F.3d 214, 217 & n.5 (1st Cir. 2015); *In re: Sharp Int'l Corp.*, 403 F.3d 43, 56 (2d Cir. 2005); and *Stoebner v. Opportunity Fin., LLC*, 909 F.3d 219, 225, 226 & n.6 (8th Cir. 2018))

conduct" such as a claim of actual fraudulent transfer. *See, e.g.*, *Desmond v. Taxi Affiliation Servcs., LLC*, 344 F. Supp.3d 915, 923 (N.D. Ill. 2018).

5. The Fifth Circuit has also deferred ruling about Rule 9(b)'s application to constructive fraudulent transfer claims; here again, the two Circuits that have addressed the point "have held that constructive fraudulent transfer claims are subject to Rule 9(b)." *See Life Partners*, 926 F.3d at 120.[3] Those opinions are well-taken and this Court should follow the majority approach of the circuits as to the pleading standards for these claims.[4] In the briefing that follows, Highland Capital will identify the claims that implicate Rule 9(b) in addition to the baseline requirements of Rule 12(b)(6).

III. Argument and Authorities

A. Plaintiffs fail to plead viable claims for alleged overcharges. (Counts 1-4)

6. Plaintiffs' first four causes of action involve alleged overcharges of Acis LP by Highland Capital. (SAC at 42-46, Counts 1-4.) Each of these claims rests on the factual allegations that "Highland Capital invoiced Acis for, and received payments for, at least $7,021,924 in excess of Revenues, in violation of the [Acis LP] LPA" (SAC ¶¶ 127, 132, 138, 142), and that "Highland Capital, an Affiliate of Acis GP, accepted such funds in

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[3] (citing *Gen. Elec. Capital Corp. v. Lease Resolution Corp.*, 128 F.3d 1074, 1078-79 (7th Cir. 1997) and *Stoebner*, 909 F.3d at 225, 226 & n.6).

[4] *Life Partners* notes that district courts in the Fifth Circuit have taken different positions on both of these issues and describes their holdings. *See* 926 F.3d at 118, 120.

violation of Section 3.10 of the LPA" (SAC ¶¶ 126, 138.) Plaintiffs do not properly plead a claim based on these allegations.[5]

7. ***"Ultra vires."*** Plaintiffs' first claim is that these allegedly unauthorized payments are *ultra vires* because they exceeded the limitations set by Acis LP's partnership agreement, making them "either void or voidable" under Delaware law. (SAC at 42-43 ¶ 126.) Plaintiffs fail to allege, however, why ***they*** have the right to seek such relief. For corporations, Delaware law clearly limits the right to assert an *ultra vires* claim to a handful of situations, none of which involve the entity itself seeking to recover damages for allegedly *ultra vires* transactions. *See* Del. Gen'l Corp. Code § 124; *Carsanaro v. Bloodhound Techs. Inc. Inc.*, 65 A.3d 618, 648 (Del. Ch. 2013). Plaintiffs cite nothing suggesting that the *ultra vires* doctrine applies to a limited partnership at all, much less without the limitations imposed on that doctrine by other Delaware corporate law. The absence of any allegation on this threshold point is fatal to Plaintiffs' pleading of this claim, and Count 1 should be dismissed.

8. This claim also fails on the merits. Section 1.3 of the Limited Partnership Agreement for Acis LP says that the partnership may engage in "any business or activity that may be lawfully be conducted by a limited partnership . . . ," which necessarily includes the power and capacity to enter contract and make payments under such contracts. (SAC Ex. A.) And section 4.01(c) of the LPA makes clear that HCM was entitled

[5] These claims do not implicate the heightened-pleading requirements of Rule 9(b).

to rely on representations made to it by Acis about the power and authority of Acis to enter contracts. Plaintiff's complaint about contract prices is simply not a claim about an *ultra vires* act, and should be dismissed for that reason as well.

9. ***"Turnover."*** Plaintiffs' second claim seeks recovery of the alleged overcharges to section 542(a) of the Bankruptcy Code. (SAC at 43-44, Count 2.) Turnover actions, however, involve property that is indisputably property of the estate. *See, e.g.*, *In re: Andrew Velez Constr., Inc.*, 373 B.R. 262, 273 (Bankr. S.D.N.Y. 2007). When the defendant disputes liability, as Highland Capital does here, "the estate's property is the claim for damages itself, which is not subject to turnover." *See, e.g.*, *In re: Heller Ehrman LLP*, 461 B.R. 606, 608 (Bankr. N.D. Cal. 2011). This claim, on its face, is a nonstarter as a matter of law and Count 2 should be dismissed.

10. ***"Money Had and Received" and "Conversion."*** Plaintiffs' third and fourth counts plead themselves out of court. Their third claim purports to be for "money had and received." (SAC at 44-45.) The factual basis for this claim is the alleged violation of the LPA for Acis LP described above, as well as alleged interest overcharges under two sub-servicing agreements. (SAC ¶¶ 139, 142.) Because these factual allegations are about express contracts, they defeat the legal basis for this claim, which assumes the lack of such a contract. *See, e.g.*, *MGA Ins. Co. v. Chesnutt*, 358 S.W.3d 808, 815 (Tex. App.—Dallas 2012, no pet.) ("Generally, when a valid, express contract covers the subject matter of the parties' dispute, there can be no recovery under a quasi-contract theory. The quasi-

contractual action for money had and received is a cause of action for a debt not evidenced by a written contract between the parties." (citations omitted)). Count 3 should be dismissed.

11. Plaintiffs' fourth count is for conversion. (SAC at 45-46.) It has the same problem. Plaintiffs allege that Highland Capital improperly has "money," "overpaid funds" and "overcharges" in its possession. (SAC at 45-46 ¶ 142.) These allegations cannot support a conversion claim under Texas law, under which: "[A]n action for conversion of money arises only where the money can be identified as a specific chattel, meaning it is (1) defined for safe keeping; (2) intended to be kept segregated; (3) substantially in the form in which it is received or an intact fund; and (4) not the subject of a title claim by the keeper." *Lawyers Title Co. v. J.G. Cooper Dev., Inc.*, 424 S.W.3d 713, 718 (Tex. App. – Dallas 2014, pet. denied) (citations omitted). *See also Rente Co. v. Truckers Express, Inc.*, 116 S.W.3d 326, 332 (Tex. App.—Houston [14th Dist.] 2003, no pet.) ("[T]hese sums of money are not identifiable, specific chattels capable of being converted; rather, they are alleged indebtedness that may be discharged by the payment of money generally. Therefore, [Plaintiff's] claim for conversion as to amounts of money allegedly owed by [Defendants] fails as a matter of law." (citations omitted)). Count 4 should be dismissed.

12. Counts 3 and 4 should also be dismissed because they fall outside of the statute of limitations under applicable state law. Those claims are subject to a two-year

statute of limitations under Texas law. *Merry Homes, Inc. v. Luc Dao*, 359 S.W.3d 881, 882 (Tex. App.—Houston [14th Dist.] 2012, no pet.) (*citing* Tex. Civ. Prac. & Rem. Code Ann. § 16.003(a)). Plaintiffs allege that Highland Capital wrongly received at least $7,021,924.00 in violation of Section 3.10(a) of the LPA (SAC at 22 ¶ 69). The claim for money had and received accrued when Highland accepted the payments, which occurred "during the years of 2013, 2014, 2015, and from January until May 2016."[6] Section 108(a) provides:

> If applicable nonbankruptcy law, an order entered in a nonbankruptcy proceeding, or an agreement fixes a period within which the debtor may commence an action, and such period has not expired before the date of the filing of the petition, the trustee may commence such action only before the later of—(1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or (2) two years after the order for relief.

11 U.S.C. § 108(a).

13. The Court entered orders for relief on April 13, 2018. *See* Bankruptcy Case Doc. Nos. 118 and 119. Under the applicable statute of limitations as tolled by Bankruptcy Code section 108(a), on April 13, 2018, Plaintiffs, at most, may seek to recover purported Payments made two years before entry of the orders for relief, *i.e.* April 13, 2016. Therefore, any claims related to Payments preceding April 13, 2016, are barred by the two-year limitations period.

14. Counts 1-4 are also barred by the voluntary payment rule. "The voluntary payment rule precludes a party from 'pay[ing] out his money, leading the other party to

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[6] *See* Brief in Support of Trustee's Amended Motion for Partial Summary Judgment ["Trustee's Brief"] (Docket 88) at ¶ 1 (Nov. 30, 2018).

act as though the matter were closed, and then be in the position to change his mind and invoke the aid of the courts to get it back.'" *Miga v. Jensen*, 299 S.W.3d 98, 103 (Tex. 2009). The Trustee – Plaintiffs' predecessor-in-interest – has admitted that "[Acis LP] contracted out certain of its administrative functions and portfolio management responsibilities to [Highland] pursuant to that certain Sub-Advisory Agreement, originally dated to be effective as of January 1, 2011 . . . and that certain Shared Services Agreement, originally dated to be effective as of January 1, 2011."[7] He stated that Highland invoiced Acis LP, and Acis LP paid money to Highland. *Id.* The Plaintiffs do not contend that Acis LP or Acis GP was unaware of the terms of the LPA.

B. Plaintiffs fail to plead viable fraudulent transfer claims. (Counts 5-24)[8]

1. Sub-Advisory Agreement claims. (Counts 5-8).

15. In Counts 5-8, Plaintiffs allege actual and constructive fraudulent transfers about modifications to the Sub-Advisory Agreement. These claims fail for two reasons. First, while Plaintiffs make threadbare claims that Acis was insolvent when these contract modifications were made, the SAC cites no facts on that topic. And the SAC concedes that these contract modifications were made shortly after Terry was terminated in 2016 but before any litigation had begun. Simply reciting a key element of a fraudulent transfer claim—here, insolvency—does not satisfy Rule 9(b).

[7] Trustee's Brief, *supra*, at ¶ 11.

[8] All of these fraudulent transfer claims implicate Rule 9(b). *See supra* at 6-7.

16. Second, Plaintiffs fail to plead that the modifications amounted to a transfer. Bankruptcy Code section 101(54)(C) defines a transfer to include "each mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing with or parting with [property or an interest in property]." Plaintiffs make no effort to establish how a property right or interest in property was "disposed or parted with" in relation to the Sub-Advisory Agreement modifications. At most, the SAC alleges that fees became more expensive over time. The mere fact that expenses rise over time, and a debtor thus pays more for services, does not establish that anything of value was "transferred" from the debtor—"disposed of" in the terminology of the statute. Counts 5-8 do not comport with the statute and should be dismissed.

2. "ALF PMA Transfer" (Counts 9-12)

17. Plaintiffs allege actual and constructive fraudulent transfer claims about the "ALF PMA Transfer." (SAC at 51-56, Counts 9-12.) Plaintiffs identify a Portfolio Management Agreement ("PMA") between Acis LP and ALF, under which Acis LP had certain rights to manage ALF assets. (SAC ¶¶ 83-84.) Plaintiffs allege that in October 2017, Acis LP terminated that agreement and entered a new management agreement with Highland Advisor. (SAC ¶¶ 86-89.)

18. To hold Highland Capital liable for a fraudulent transfer under section section 550(a) of Bankruptcy Code, Plaintiffs must show either that Highland Capital was an "initial transferee," or an "immediate or mediate transferee of such initial transferee"

as to estate property. TUFTA has a similar requirement. *See* Tex. Bus. & Com. Code § 24.009(b) ("[J]udgment may be entered against … the first transferee of the asset … [or] any subsequent transferee"). Plaintiffs do not allege that Highland Capital received anything, immediately or subsequently, as part of the ALF PMA Transfer. They thus fail to plead viable fraudulent transfer claims against Highland Capital about that transaction and Counts 9-12 should be dismissed.

3. "ALF Share Transfer" (Counts 13-16)

19. Plaintiffs also allege actual and constructive fraudulent transfers about the "ALF Share Transfer." (SAC at 57-61, Counts 13-16.) They describe this transaction as ALF's repurchase of its own stock from Acis LP, for $991,180.13, in October 2017. (SAC at 30 ¶ 91.) They do not allege that Highland Capital received anything, immediately or subsequently, as part of this transaction. They thus fail to plead viable fraudulent transfer claims against Highland Capital about that transaction and Counts 13-16 should be dismissed.

4. "Note Transfer" (Counts 17-20)

20. Plaintiffs define the "Note" as a $9.5 million promissory note, executed by Highland Capital as obligor, and payable to Acis LP. (SAC at 31-32 ¶ 94.) They allege that in November 2017, Acis LP transferred the Note to Highland Management for inadequate consideration (SAC at 31-32 ¶¶ 94-95), and from there, allege actual and fraudulent transfer claims about that transfer. (SAC at 61-66, Counts 17-20.)

21. Plaintiffs allege that Highland Capital was a party to the agreement by which the Note was transferred. (SAC at 31 ¶ 94.) But they do not allege that Highland Capital received anything as a result of the transfer. To the contrary, they admit that Highland Capital continued to be the obligor of the Note. (*See id*.) Because Plaintiffs do not allege that Highland Capital received anything, immediately or subsequently, as part of this transaction, they fail to plead viable fraudulent transfer claims about that transaction and Counts 17-20 should be dismissed.

22. Plaintiffs speculate about the benefit to Highland Capital of having its liability "transferred … away from Acis LP (and its legal woes with Terry)," as well as other potential tactical benefits in the ongoing litigation. (SAC at 32 ¶ 96.) Those speculations, however, have nothing to do with fraudulent transfer liability. There is no way for a court to order the avoidance of a "legal woe" or litigation tactic. These spurious allegations do not cure the fundamental problem with Plaintiffs' pleading of this claim.

5. "CLO 2017-7 Equity and 2017-7 Agreement Transfers" (Counts 21-24)

23. Plaintiffs allege that in December 2017, Acis LP transferred its equity interests related to a CLO entity called "2017-7," along with certain contracts involving that entity, to Highland Management. (SAC at 33-34 ¶ 99.) Plaintiffs then challenge this transaction as an actual and constructive fraudulent transfer, as well as avoidable preferences. (SAC at 66-71, Counts 21-24.)

24. Plaintiffs again fail to allege that Highland Capital received anything, immediately or subsequently, as part of this transaction. In fact, they plead the opposite,

alleging that part of the consideration for the transaction was forgiveness of a note owed by Acis LP to Highland Capital. (SAC at 35 ¶ 102.) These claims are not properly pleaded and Counts 21-24 should be dismissed.

C. Plaintiffs fail to plead a viable claim for civil conspiracy for fraud, including fraudulent transfers. (Count 27)

25. Because the Bankruptcy Code does not address civil conspiracy, this Court looks to state law about that claim. Under Texas law, "An action for civil conspiracy has five elements: (1) a combination of two or more persons; (2) the persons seek to accomplish an object or course of action; (3) the persons reach a meeting of the minds on the object or course of action; (4) one or more unlawful, overt acts are taken in pursuance of the object or course of action; and (5) damages occur as a proximate result." *See First United Pentecostal Church of Beaumont v. Parker*, 514 S.W.3d 214, 222 (Tex. 2017). "This inherently requires a meeting of the minds on the object or course of action." *Juhl v. Airington*, 936 S.W.2d 640, 644 (Tex. 1996). Therefore, to satisfy Rule 12(b)(6), a civil conspiracy claim must include factual allegations as to when the parties agreed to pursue the conspiracy, including the "specific time, place, or person involved." *Berry v. Bryan Cave LLP*, No. 3:08-CV-2035-B, 2010 U.S. Dist. LEXIS 46572, at *23 (N.D. Tex. 2010) (quoting *Twombly*, 550 U.S. 544, 565 n.10 (2007)).

26. The bankruptcy court in the Western District of Texas recently addressed the pleading of a civil conspiracy claim under Delaware law[9] in *Xtreme Power Plan Trust v. Schindler, et al. (In re Xtreme Power Inc.),* 563 B.R. 614 (Bank. W.D. Tex. 2016). The plaintiff alleged that the defendants "engaged in a confederation or combination of two or more persons; performed at least one unlawful act in furtherance of the conspiracy; acted pursuant to a common scheme; and caused actual damage to [the plaintiff.]" *Id.* at 648. The court granted the defendants' motion to dismiss, noting that the complaint lacked "any facts actually pled in support" of the conspiracy claim, and that "the [plaintiff] merely recited the elements of the claim and asked the court to infer from said elements an actionable conspiracy." *Id.*

27. Plaintiffs' civil conspiracy claim (SAC 73-74, Count 27) is functionally identical to the pleading in *Xtreme Power*. The allegations supporting the claim are nothing more than a rote recitation of the elements. Plaintiffs assert that the "Highland Enterprise . . . had a meeting of the minds on the object or course of action" (SAC at 74 ¶ 247), that its actions "constitute one or more unlawful, overt acts," and that Acis suffered damages as a result. The pleading lacks "any facts actually pled" to support the Trustee's conspiracy claim. Nor does it establish when the alleged co-conspirators formed the conspiracy, what the object of the conspiracy was, or how Highland participated in it.

[9] As noted in *Xtreme Power*, Delaware law has fewer elements than Texas law. *See id*. at 646 (noting that Delaware law defines civil conspiracy as (1) a confederation of two or more persons; (2) who engage in an unlawful act done in furtherance of a conspiracy; (3) that causes actual damages to a plaintiff).

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28. Plaintiffs will certainly answer that they have "incorporate[d] the preceding paragraphs" by reference, about "the foregoing fraudulent transfers and schemes." (SAC at 73 ¶ 245, 247 ¶ 247.) But that response defeats itself, because a common-law civil conspiracy claim has no place in the detailed system established by the federal and state fraudulent transfer statutes. As this Court has recognized:

> [I]t is perfectly true that 'the general rule under [the Bankruptcy Code or the old Act] is that one who did not actually receive any of the property fraudulently transferred (or any part of a "preference") will not be liable for its value, even though he may have participated or conspired in the making of the fraudulent transfer (or preference) ….'

In re TOCFHBI, Inc., 413 B.R. 523, 535 (Bankr. N.D. Tex. 2009) (quoting *Mack v. Newton*, 737 F.2d 1343, 1357 (5th Cir. 1984)).

29. The referenced *Mack* case explains the reasoning for this rule, first developed under the Bankruptcy Act:

> The purpose of those sections of the Bankruptcy Act is clearly to preserve the assets of the bankrupt***; they are not intended to render civilly liable all persons who may have contributed in some way to the dissipation of those assets***. The Act carefully speaks of conveyances of property as being 'null and void,' and authorizes suit by the trustee to 'reclaim and recover such property or collect its value.' The actions legislated against are not 'prohibited'; those persons whose actions are rendered 'null and void' are not made 'liable'; and terms such as 'damages' are not used. The legislative history is cancellation, not the creation of liability for the consequences of a wrongful act.

737 F.2d at 1358 (emphasis added); *see also Ingalls v. Beutel*, 2007 WL 9718103, at *4 (W.D. Tex. Nov. 28, 2007) (observing that while Bankruptcy Code section 544(a)(1) gives a trustee the status of a judgment creditor, the Fifth Circuit knew of that statute and still,

in such circumstances, "denied trustees a cause of action for civil conspiracy"); *Sherman v. FSC Realty LLC (In re Brentwood Lexford Partners, LLC)*, 292 B.R. 255, 275 (Bankr. N.D. Tex. 2003) ("[T]he court does not consider the fraudulent transfer under the civil conspiracy claim. To do so could lead to a result that expands remedies beyond [Bankruptcy Code] § 550.").

30. "[C]ivil conspiracy is a theory of vicarious liability and not an independent tort." *Agar Corp. v. Electro Circuits, Int'l, LLC*, ___ S.W.3d ___, No. 17-0630, 2019 WL 1495211 at *4 (Tex. April 5, 2019). A fraudulent transfer claim cannot serve as that underlying tort. Yet alleged fraudulent transfers are the only alleged wrongs identified in Plaintiffs' civil conspiracy claim. (See SAC at 74 ¶¶ 246-49.) Count 27 thus fails as a matter of law and should be dismissed for failure to state a claim.

D. Plaintiffs fail to allege a viable claim for tortious interference. (Count 28)

31. Count 28 alleges that Highland has interfered with an outsourcing contract between Acis LP and "Universal/BVK." (SAC at 75.) The alleged interference is "communications over many months"; Plaintiffs particularly complain that "Highland Capital even prepared and sent to Universal and BVK a new outsourcing agreement, which would be entered once Acis LP and its bankruptcy were out of the way." (SAC at 75 ¶ 254; *see also* SAC at 35-37 ¶¶ 104-105.) Acknowledging the undisputed point that the

contract is at-will,[10] Plaintiffs further plead that "[t]he fact that a contract is an at-will agreement is no defense to a tortious interference claim." (SAC at 75 § 252.)

32. Tortious interference with contract is a tort recognized in Texas and evaluated by state and federal courts under Texas state law. *See In re Dexterity Surgical, Inc.*, 365 B.R. 690, 700 (Bankr. S.D. Tex. 2007). To present a valid claim of tortious interference in Texas, the Trustee must prove the tort's four elements: (1) an existing contract subject to interference; and (2) a willful and intentional act of interference with the contract; (3) that proximately caused the Trustee's injury; and (4) caused actual damages or loss. *See Jacked Up, LLC*, 854 F.3d 797, 813 (5th Cir. 2017) (citing *Prudential Ins. Co. of Am. V. Fin. Review Servs., Inc.*, 29 S.W.3d 74, 77 (Tex. 2000)). The Plaintiff has not pled the elements under Texas law because they do not exist. The Trustee willingly entered into a post-bankruptcy agreement with Universal/BVK to terminate the automatic stay of 11 U.S.C. § 362 for the express purpose of allowing Universal/BVK to terminate the outsourcing contract, and the bankruptcy court entered into an agreed order lifting the stay (Case No. 18-30264, Doc. No. 726). The Plaintiff is thus judicially estopped from claiming tortious interference. *See, e.g., U.S. ex. rel. Long v. GSDM Idea City, L.L.C.*, 798 F.3d 265, 271-72 (5th Cir. 2015) (applying judicial estoppel when "(1) the party against whom judicial estoppel is sought has asserted a legal position which is plainly

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[10] *See* Hr'g Tr (Dec. 11, 2018) (PM) 46:8-11 ("Q: And was the BVK contract an at-will contract? A: That's my understanding.").

inconsistent with a prior position; (2) a court accepted the prior position; and (3) the party did not act inadvertently" (citations omitted)).

33. To be sure, at-will status is not an automatic bar to a tortious interference claim. But it is highly relevant to the controlling principle of Texas law—that a claim for tortious interference cannot lie where the actor, furthering its own legitimate interests, merely induces a third party to cease its contractual relations when the third party has the right to do so. *See C.E. Servs., Inc. v. Control Data Corp.*, 759 F.2d 1241, 1248 (5th Cir. 1985) (discussing the "competitors rule" set forth in section 786 of the Restatement (Second) of Torts); *see also Spectrum Creations, L.P. v. Carolyn Kinder Int'l, L.L.C.*, 514 F. Supp. 934, 944 (W.D. Tex. 2007) (summarizing cases since C*.E. Servs*.). Plaintiffs do not identify a single word in the alleged "communications" that was inconsistent with this principle, and their pleading of this claim fails as a result.

34. This pleading has two other fatal problems. First, it is not in dispute that the parties' contractual relationships waived conflicts, thus letting Highland compete against Acis LP. *See infra* Part E. A tortious interference claim cannot lie where the counterparty affirmatively acknowledged and contracted away any claim of conflict. Second, Plaintiffs make no attempt to plead damages, aside of a one-line throwaway in paragraph 75. That is because those facts do not exist, as explained above. Count 28 fails as a matter of law and should be dismissed.

E. Plaintiffs fail to allege a viable claim for breach of fiduciary duty. (Count 30)

35. Count 30 purports to allege a claim for breach of fiduciary duty, arising from two sources: the Sub-Advisory Agreement between HCM and Acis LP, and the general obligations of an investment adviser. (SAC at 78 ¶ 265.) Neither alleged source creates such a duty and this claim should be dismissed.[11]

36. As the parties' contracts, it is well-settled that contracts executed at the same time in the course of the same transaction should be construed together. *See, e.g.*, *In re: Houston Progressive Radiology Assocs., PLLC*, 474 S.W.3d 435, 443-44 (Tex. App.—Houston [1st Dist.] 2015, orig. proceeding) (citing *Jones v. Kelley*, 614 S.W.2d 95, 98 (Tex. 1981) and *Harris v. Rowe*, 593, S.W.2d 303, 306 (Tex. 1979)). And here, the parties' Shared Service Agreement speaks directly to the parties' duties to one another—independent contractor rather than agency (§ 8.11), to act with reasonable care (*id.* § 6.01), and without other "duties or obligation" unless expressly agreed upon. (*Id.* § 2.06). (Ex. "A" hereto.)[12] The parties' contractual relationship does not create the claimed fiduciary duty.

37. Neither does the law of investment advisers. Any duty owed by an investment adviser runs only to the subject of—investments. S*ee generally Greenberg Traurig v. Nat'l Am. Ins. Co.*, 448 S.W.3d 115, 120 (Tex. App.—Houston [14th Dist.] 2014, no pet.) ("Although the relationship between the parties may be fiduciary in character,

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[11] This claim is subject to Rule 9(b) because it is based on allegedly fraudulent conduct. *See Life Partners*, 926 F.3d at 124 (citing *Brown v. Bilek*, 401 F. App'x 889, 893 (5th Cir. 2010)).

[12] The parties Shared Service Agreements – this one and predecessors – are cited several times in the SAC, making it appropriate for consolidation in this Motion.

their fiduciary duties extend only to dealings within the scope of the underlying relationship of the parties." (citing, *inter alia*, *Rankin v. Naftalis*, 557 S.W.2d 940, 944 (Tex. 1977)). Nothing about the "series of fraudulent schemes" summarized in Plaintiffs' pleading (SAC at 79 § 266) is tied to that subject, and thus that alleged duty. The pleading is thus fatally deficient.

38. Plaintiffs also allege a relationship of "trust and confidence" from the combined effect of the parties' contracts and investment-adviser law. (SAC at 78 § 265.) Since those alleged sources of obligation do not create the claimed duties, this argument necessarily fails. Additionally, "[t]o impose an informal fiduciary duty in a business transaction, the special relationship of trust and confidence must exist prior to, and apart from, the agreement made the basis of the suit." *Meyer v. Cathey*, 167 S.W.3d 327, 331 (Tex. 2005). Plaintiffs cannot claim a relationship of "trust and confidence" from the very contract that they purport to sue on, and this part of Count 30 should be dismissed as well.

F. Plaintiffs fail to allege a viable claim for "disregarding the corporate form/alter ego/collapsing doctrine/unjust enrichment." (Count 32)

39. In Count 32, Plaintiffs allege that each defendant "should be held liable for any damages awarded under any Count in this Second Amended Complaint, as each is the alter ego of the others," as well as pre-bankruptcy Acis LP. (SAC at 81 ¶ 275.) As

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signaled by the unusual, slash-separated heading for this Count, this pleading does not coherently describe any recognized legal basis for such a result.[13]

40. The Count has seven substantive paragraphs. The first (SAC at 80 ¶ 274) cites to *SSP Partners v. Gladstrong Inv. (USA) Corp.*, in which the Texas Supreme Court mentions the possibility of using a corporate structure to perpetrate a fraud. 275 S.W.3d 444, 454 (Tex. 2008) (discussing *Castleberry v. Branscum*, 721 S.W.2d 270 (Tex. 1986)).[14] But *SSP Partners* rejects a "single enterprise" theory of liability, such as Plaintiffs appear to be trying to plead here. *See Burchinal v. PJ Trailers-Seminole Mgmt. Co.*, 372 S.W.3d 200, 200-01 (Tex. App.—Texarkana 2012, no pet.). The next two paragraphs claim that the defendants "are all controlled by the CEO and ultimate majority owner of Highland Capital, Dondero," and that new offshore entities were created after the award issued in the Terry arbitration (SAC at 81 ¶¶ 275, 276) – allegations that bear only on that rejected theory. And substantively, "mere affiliation . . . is insufficient to pierce to veil." *Licea v. Curacao Drydock Co.*, 627 F. App'x 343, 349 (5th Cir. 2015). Inadequate allegations about an invalid theory do not satisfy Plaintiffs' pleading requirement. *See Emke v. Compana, LLC*, No. 3:06-CV-1416-L, 2007 WL 2781661, at *7 (N.D. Tex. Sept 25, 2007) (dismissing alter ego complaint unsupported by factual allegations).

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[13] Rule 9(b) applies. *See Goodman v. H.I.G. Capital, LLC*, 491 B.R. 747, 761 (Bankr. W.D. La. 2013) ("Rule 9(b) applies not only to fraud claims, but also to 'non-fraud' claims that are based upon allegations of fraud.").

[14] *Castleberry* was subsequently superseded by statute on other grounds. *See Fidelity & Deposit of Md. Commercial Cas. Consultants, Inc.*, 976 F.2d 272, 275 (5th Cir. 1992).

41. The fourth and fifth paragraphs observe that "multistep transactions can be collapsed when the steps of the transaction are part of one integrated transaction," citing two cases, one of which is from 1939. (SAC at 81-82 ¶¶ 277-78.) The "step transaction" doctrine has nothing to do with ***parties***, and neither of the cited cases applies that doctrine to create vicarious liability. The doctrine focuses entirely on ***transactions***, asking whether a particular step of a business deal was "included for no other purpose than to avoid U.S. taxes," for example. *See Del Commercial Props., Inc. v. Commissioner*, 251 F.3d 210, 213 (D.C. Cir. 2001). It has nothing to do with the relief that Plaintiffs purport to seek in this part of their amended pleading.

42. Plaintiffs' last two paragraphs cite the general principle that restitution is a potential remedy for unjust enrichment. (SAC at 81-82 ¶¶ 279-80.) That principle has a role to play when a party has established a liability claim and is considering what remedy to elect. But it has nothing to do with vicarious liability among parties, and no case Plaintiff cites suggests that it does.

43. In sum, Plaintiffs cite two doctrines—step transaction and unjust enrichment— that have nothing to do with Highland Capital's responsibility for damages awarded against any other defendant. And while *SSP* relates to that general topic, Plaintiffs do not plead a coherent statement about what that case holds or what facts are relevant to the application of that holding. *Twombly* and *Iqbal* are intended to remove precisely such vacuous claims from the courts. Count 32 should be dismissed.

G. Plaintiffs lack standing to assert claims for damages for alleged stay violations.

44. Section 362(k) provides that "an *individual* injured by any willful violation of a stay provided by [section 362] shall recover actual damages, including costs and attorney's fees, and, in appropriate circumstances, may recover punitive damages." 11 U.S.C. § 362(k)(1) (emphasis added). "[I]t is well settled that a corporation is not entitled to recover damages for violation of the automatic stay." *E.g.*, *In re MD Promenade, Inc.*, 2009 WL 80203, at *12 (Bankr. N.D. Tex. Jan. 8, 2009) (Jernigan, J.).

45. In *MD Promenade*, the Chapter 7 trustee pursued damages under section 362(k). 2009 WL 80203, at *12. The court held that "[t]he court may not award [the trustee] damages pursuant to section 362(k) because, although he is an individual, a natural person, he is acting as the representative of the estate of a debtor *corporation* and therefore cannot be considered an individual for purposes of section 362(k) ." *Id.* (citing *In re Amberjack Interests, Inc.*, 326 B.R. 379, 386 n.1 (Bankr. S.D. Tex. 2005) (finding that a trustee suing on behalf of a debtor corporation "cannot be considered an individual for purposes of obtaining standing under section 362(h) [now 362(k)]")). Other courts have agreed. *See, e.g.*, *Garner v. Knoll*, 2014 WL 172276 (Bankr. N.D. Tex. 2014) (holding that "in order to recover under section 362(k), the Trustee must be an 'individual' within the meaning of the statute," and applying *St. Paul Fire & Marine Insurance Company v. Labuzan*, 579 F.3d 533, 545 (5th Cir. 2009)).

46. Further, limited partnerships, like corporations, are not entitled to relief under section 362(k) because they are not individuals. *See, e.g.*, *In re Rafter Seven Ranches L.P.*, 414 B.R. 722, 732-33 (10th Cir. BAP 2009) (finding that "in defining 'person,' Congress used the word 'individual' to distinguish natural persons from corporations and partnerships" to hold that the limited partnership debtor is not entitled to an award of damages under section 362(k)); *Jove Engineering, Inc. v. I.R.S.*, 92 F.3d 1539, 1551 (11th Cir. 1996) (analyzing that partnerships are not entitled to relief under section 362(k) of the Bankruptcy Code because "Congress used the word 'individual' to distinguish natural persons from corporations and partnerships." These holdings are consistent with this Court's precedent that "relief under section [362(k)] is limited to individuals." *In re: Freemyer Industrial Pressure, Inc.*, 281 N.R. 262, 268 (Bankr. N.D. Tex. 2002). Plaintiffs are not entitled to relief under section 362(k) of the Bankruptcy Code, and Count 33 should be dismissed.

H. Plaintiffs fail to allege viable claims for equitable relief.

47. The Second Amended Complaint concludes with a "Request for Disgorgement" and a "Request for Imposition of a Constructive Trust." (SAC at 84 § VII, 85 § VIII.) Both are pleaded as remedies for Plaintiffs' claim for breach of fiduciary duty (SAC at 85 § 295, 86 § 301). If that claim is dismissed, then these requests must necessarily be dismissed as well.

48. Plaintiffs' request for a constructive trust also purports to seek that remedy because of "the series of fraudulent transfers" described previously (*see* SAC at 86 §§ 299-300)—"and in particular Highland Capital and Highland Funding … even if they were not the direct transferee." (SAC at 86 § 300) For the same reasons that civil conspiracy is not available in a fraudulent transfer case, *see supra* Part C, a constructive trust is not available as a remedy against parties who are "not the direct transferee." The relevant statutes carefully define who is, and who is not, liable for a fraudulent transfer, and a free-floating "indirect" equitable remedy has no place in that detailed statutory system.[15]

49. As set forth above, the majority of Plaintiffs' claims, including, without limitation, Counts 1-4, 5-24, 27-28, 30 and 32 must be dismissed. Once these claims are dismissed from this lawsuit, no recovery is possible under Section 550 of the Bankruptcy Code. As such, Count 26 of the SAC, which seeks liability for avoided transfers, should also be dismissed as to Highland Capital.

IV. Conclusion

For the foregoing reasons, the specified portions of the Second Amended Complaint should be dismissed with prejudice, along with all other relief to which Highland Capital may be justly entitled that is consistent with that disposition.

---

[15] Similarly, Counts 26, 31, and 34, which seek certain remedies, but do not contain separate claims for relief, should be dismissed to the extent the underlying claims are dismissed.

DATED: July 22, 2019

Respectfully submitted,

/s/ Michael K. Hurst

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ATTORNEYS FOR HIGHLAND CAPITAL MANAGEMENT, L.P.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served via ECF on July 22, 2019 on all parties of record.

/s/Michael K. Hurst
Michael K. Hurst

Exhibit 14

Fill in this information to identify the case:

Debtor 1 Highland Capital Management, L.P.

Debtor 2 (Spouse, if filing)

United States Bankruptcy Court for the: Northern District of Texas, Dallas Division

Case number 19-34054

Official Form 410

Proof of Claim

12/15

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents**; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**
   Acis Capital Management L.P. and Acis Capital Management GP, LLC
   Name of the current creditor (the person or entity to be paid for this claim)
   Other names the creditor used with the debtor _____

2. **Has this claim been acquired from someone else?**
   ☒ No
   ☐ Yes. From whom? _____

3. **Where should notices and payments to the creditor be sent?**
   Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

   Where should notices to the creditor be sent?
   Acis Capital Management, L.P. and Acis Capital Management GP, LLC
   c/o Winstead PC Attn: Annmarie Chiarello
   Name
   500 Winstead Building, 2728 N. Harwood Street
   Number Street
   Dallas TX 75201
   City State ZIP Code
   Contact phone (214) 745-5410
   Contact email achiarello@winstead.com

   Where should payments to the creditor be sent? (if different)
   Acis Capital Management, L.P. and Acis Capital Management GP, LLC
   Name
   3110 Webb Ave., Suite 203
   Number Street
   Dallas TX 75205
   City State ZIP Code
   Contact phone (214) 556-3405
   Contact email josh@shorewoodmgmt.com

   Uniform claim identifier for electronic payments in chapter 13 (if you use one):
   _

4. **Does this claim amend one already filed?**
   ☒ No
   ☐ Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**
   ☒ No
   ☐ Yes. Who made the earlier filing? _____

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**
☒ No
☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ___ ___ ___ ___

7. **How much is the claim?** At least $75,000,000.00 (see attached addendum)
Does this amount include interest or other charges?
☐ No
☒ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**
Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
Limit disclosing information that is entitled to privacy, such as health care information.
Various litigation claims (See attached addendum)

9. **Is all or part of the claim secured?**
☐ No
☒ Yes. The claim is secured by a lien on property.

Nature of property:
☐ Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
☐ Motor vehicle
☒ Other. Describe: See attached addendum

Basis for perfection: See attached addendum
Attach redacted copies of document, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

Value of Property: See attached addendum

Amount of the claim that is secured: See attached addendum

Amount of the claim that is unsecured: See attached addendum

Amount necessary to cure any default as of the date of the petition: See attached addendum

Annual Interest Rate (when case was filed) See attached addendum
☐ Fixed
☐ Variable

10. **Is this claim based on a lease?**
☒ No
☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. **Is this claim subject to a right of setoff?**
☐ No
☒ Yes. Identify the property: See attached addendum

12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☒ No

☐ Yes. *Check all that apply:*

	Amount entitled to priority
☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$_____
☐ Up to $2,775* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$_____
☐ Wages, salaries, or commissions (up to $12,475*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$_____
☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$_____
☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$_____
☐ Other. Specify subsection of 11 U.S.C. § 507(a)(2) that applies.	$_____

* Amounts are subject to adjustment on 4/01/19 and every 3 years after that for cases begun on or after the date of adjustment.

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☐ I am the creditor.
☒ I am the creditor's attorney or authorized agent.
☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 12/31/2019
MM / DD / YYYY

Signature

Print the name of the person who is completing and signing this claim:

Name	Joshua	N.	Terry
	First name	Middle name	Last name
Title	President of Acis Capital Management GP, LLC, General Partner of Acis Capital Management L.P.		
Company	Acis Capital Management GP, LLC, General Partner of Acis Capital Management L.P. Identify the corporate servicer as the company if the authorized agent is a servicer.		
Address	3110 Webb Ave., Suite 203		
	Dallas	TX	75205
	City	State	ZIP Code
Contact phone	(214) 556-3405	Email	josh@shorewoodmgmt.com

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:	§	
	§	**CASE NO. 19-34054**
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
DEBTOR.	§	**Chapter 11**

ADDENDUM TO PROOF OF CLAIM FILED BY ACIS CAPITAL MANAGEMNT, L.P. AND ACIS CAPITAL MANAGEMENT GP, LLC

Claimant:

Acis Capital Management, L.P ("Acis LP") and Acis Capital Management GP, LLC ("Acis GP," together with Acis LP, "Acis") file this addendum in support of their proof of claim against Highland Capital Management, L.P (the "Debtor").

Basis, Description of Claim, and Amount of Claim:

On October 16, 2019 (the "Petition Date"), the Debtor commenced the above-styled and numbered bankruptcy case under Chapter 11 of 11 U.S.C §§ 101 *et seq.* (the "Bankruptcy Code")

Acis's claim against the Debtor, as of the Petition Date, consists of at least **$75,000,000.00** as further described by the Complaint (as hereinafter defined) (the "Claim"). Post-petition interest, attorneys' fees, costs, and other expenses continue to accrue on the Claim against the Debtor to the extent allowable under applicable law. The Claim includes pre-judgment interest on certain claims asserted in the Complaint, interest on certain claims asserted in the Complaint, attorneys' fees, and punitive damages, as further described by the Complaint.

The Claim is based on the claims and causes of action asserted in the *Second Amended Complaint (Including Claim Objections and Objections to Administrative Expense Claims)* filed by Acis in Adversary No. 18-03078 pending in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (including all attachments referenced therein, the "Complaint"). A true and correct copy of the Complaint is attached hereto as **Exhibit "A."**[1]

Other Rights:

[1] **Exhibit "A"** does not include the attachments to the Complaint as the attachments are voluminous. The attachments to the Complaint are incorporated by reference and can be found at Docket Nos. 157-159 in Adversary No. 18-03078 pending in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division or by contacting the undersigned counsel.

Acis reserves all rights with respect to recoupment and setoff, including, but not limited to, Acis's rights under Section 553 of the Bankruptcy Code. Acis's claim against the Debtor is accordingly secured to the extent permitted under Sections 506 and 553 of the Bankruptcy Code.

In addition to the foregoing claims, Acis reserves the right in the future to amend, if necessary, and assert any and all claims that Acis may have against the Debtor under both federal and state law, including, without limitation, any legal or equitable remedies to which Acis may be entitled. Acis additionally claims the benefit of (a) all renewals, extensions, ratifications, supplements, amendments, corrections, and other prior or subsequent documentation evidencing or relating to the claims of Acis; (b) all applicable rights under the Bankruptcy Code; and (c) any other filed or recorded documents. The filing of this Proof of Claim is not to be construed as an election of remedies.

Notices: All notices to Acis in connection with this Proof of Claim shall be sent to:

Annmarie Chiarello
WINSTEAD PC
500 Winstead Building
2728 N. Harwood Street
Dallas, Texas 75201
(214) 745-5400 (Telephone)
achiarello@winstead.com

Payments: Please submit any payments and distributions to Acis with respect to this Proof of Claim to:

Acis Capital Management, L.P. and Acis Capital Management GP, LLC
Attention: Joshua N. Terry
3110 Webb Avenue, Suite 203
Dallas, Texas 75205

Amendments: Acis reserves the right to amend and/or supplement this Proof of Claim, the Addendum to the Proof of Claim, and any other attachments to its Proof of Claim.

DATED: December 31, 2019.

Counsel:
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COUNSEL FOR REORGANIZED DEBTORS

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re: **ACIS CAPITAL MANAGEMENT, L.P., ACIS CAPITAL MANAGEMENT GP, LLC,** **Debtors.**	§ § § § § § § §	**Case No. 18-30264-SGJ-11** **Case No. 18-30265-SGJ-11** **(Jointly Administered Under Case No. 18-30264-SGJ-11)** **Chapter 11**
ACIS CAPITAL MANAGEMENT, L.P., ACIS CAPITAL MANAGEMENT GP, LLC, Reorganized Debtors, **Plaintiffs,** **vs.** **HIGHLAND CAPITAL MANAGEMENT, L.P., HIGHLAND CLO FUNDING, LTD. F/K/A ACIS LOAN FUNDING, LTD., HIGHLAND HCF ADVISOR, LTD., HIGHLAND CLO MANAGEMENT, LTD., and HIGHLAND CLO HOLDINGS, LTD,** **Defendants.**	§ § § § § § § § § § § § § § § §	**Adversary No. 18-03078** **(To be consolidated with Adversary Nos. 18-03212 & 19-03103)**

SECOND AMENDED COMPLAINT (INCLUDING CLAIM OBJECTIONS AND OBJECTIONS TO ADMINISTRATIVE EXPENSE CLAIM)

Acis Capital Management, L.P. ("Acis LP") and Acis Capital Management GP, LLC ("Acis GP" together with Acis LP, the "Reorganized Debtors" or "Acis")[1] the reorganized debtors in the above-styled and jointly administered bankruptcy cases (the "Bankruptcy Cases"), and Plaintiffs in the in the above-styled adversary proceeding (the "Adversary Proceeding"), file this *Second Amended Complaint (Including Claim Objections and Objections to Administrative Expense Claim)* (this "Second Amended Complaint"), objections to the proofs of claims filed by Highland Capital Management, L.P. ("Highland Capital"), and objections to the administrative expense claim filed by Highland Capital, and respectfully state as follows:[2]

ANSWER AND AFFIRMATIVE DEFENSES

1. Pursuant to Federal Rule of Civil Procedure 41(a), incorporated by Federal Rule of Bankruptcy Procedure 7041, all claims asserted in the *Original Complaint and Request for Preliminary Injunction of Highland CLO Funding, Ltd. and Highland Capital Management Against Chapter 11 Trustee of Acis Capital Management, L.P. and Acis Capital Management GP, LLC* [Docket No. 1] (the "Original Complaint") by Highland Capital and Highland CLO Funding, Ltd. ("Highland Funding") have been dismissed without prejudice. *See* Adv. No. 18-03078, Docket No. 79. Accordingly, such dismissal of Highland Capital's and Highland Funding's claims obviates the Trustee's, now Acis's, answer and affirmative defenses thereto;

[1] On February 15, 2019, the date upon which the Plan (defined below) became effective, Acis was substituted for Robin Phelan, the Chapter 11 Trustee, in the above-referenced consolidated adversary cases. *See* Case No. 18-30264, Docket Nos. 829, 830, & 863. Prior to the date upon which the Plan (defined below) became effective, Acis may be referred to as the "Debtors."

[2] As more fully described below in the Procedural Background, this Second Amended Complaint consolidates: (i) claims, counterclaims, third-party claims, and objections to Highland Capital's proofs of claim brought by the Chapter 11 Trustee, now Acis, in this Adversary No. 18-03078; (ii) claims brought by the Chapter 11 Trustee, now Acis, in Adversary No. 18-03212, which has been consolidated under this Adversary Proceeding; and (iii) objections of the Chapter 11 Trustee, now Acis, against Highland Capital's request for an administrative expense claim, which was converted to Adversary No. 19-03103 and was ordered consolidated under this Adversary Proceeding.

however, Acis reserves all rights with respect to answering or asserting affirmative defenses to any future-filed claims by any parties in this Adversary Proceeding.

2. Additionally, pursuant to Federal Rule of Civil Procedure 41(a)(2), such dismissal of Highland Capital's and Highland Funding's claims is without prejudice to any counterclaims asserted by the Trustee, now Acis, in the *Defendant's Answer, Affirmative Defenses, Counterclaims, and Third Party Claims* [Adv. No. 18-03078, Docket No. 23] (the "Original Answer"), as may be amended, and such counterclaims remain pending for independent adjudication.

CLAIMS AND COUNTERCLAIMS

3. Acis hereby asserts the following claims for affirmative recovery against Highland Capital, Highland Funding, Highland HCF Advisor, Ltd. ("Highland Advisor"), Highland CLO Management Ltd. ("Highland Management"), and Highland CLO Holdings, Ltd. ("Highland Holdings"). Additionally, Acis asserts the following claims and counterclaims against Highland Capital and such claims and counterclaims shall also constitute recoupment or offset to any claim Highland Capital has against Acis.

I. JURISDICTION, VENUE, AND STATUTORY PREDICATE

4. This Court has subject matter jurisdiction over the Bankruptcy Cases and this adversary proceeding pursuant to 28 U.S.C. §§ 157 and 1334. Venue of the Adversary Proceeding in this district is proper under 28 U.S.C. § 1409.

5. This matter arises under the laws of the United States of America and state common law. The statutory predicates for the relief sought herein are pursuant to sections 362, 502, 503, 541, 542, 544, 547, 548, 550, and 558 of 11 U.S.C. § 101 *et seq.* (the "Bankruptcy Code"), Texas Business & Commerce Code § 24.001 *et seq.* ("TUFTA"), and Federal Rules of Bankruptcy Procedure 3007(b) and 7001.

6. This Adversary Proceeding constitutes a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Acis hereby consents to the Court's entry of a final judgment resolving this Adversary Proceeding. This Adversary Proceeding includes an objection to Highland Capital's proofs of claim pursuant to Federal Rule of Bankruptcy Procedure 3007(b), and the claims and counterclaims asserted herein shall constitute recoupment and/or offset to such proofs of claim, to the extent such claims are otherwise allowed. This Adversary Proceeding also includes an objection to Highland Capital's administrative expense claim, and the claims and counterclaims asserted herein shall constitute recoupment and/or offset to such administrative expense claim, to the extent such claims are otherwise allowed.

II. PARTIES

7. Acis LP is limited partnership and Acis GP is a limited liability company, both of which were organized under the laws of the State of Delaware, and both of which may be served with pleadings and process in this Adversary Proceeding through the undersigned counsel.

8. Highland Capital is a limited partnership organized under the laws of the State of Delaware, with its principal place of business located at 300 Crescent Court, Suite 700, Dallas, Texas 75201.

9. Highland Funding is an exempted company organized with limited liability under the laws of Guernsey, with its registered office located at First Floor, Dorey Court, Admiral Park, St Peter Port, Guernsey GY1 6HJ, Channel Islands.

10. Highland Advisor is a company organized under the laws of the Cayman Islands, with its registered office located at Maples Corporate Services Limited, P.O. Box 309 Ugland House, South Church Street, George Town, Grand Cayman KY1-1004. Highland Advisor's principal place of business is 300 Crescent Court, Suite 700 Dallas, Texas 75201. *See* **Exhibit T** at 86. Highland Advisor may be served through its President, James Dondero, at 300 Crescent

Court, Suite 700 Dallas, Texas 75201. *See id.* at 89. Highland Advisor may be served through its Secretary, Scott Ellington, at 300 Crescent Court, Suite 700 Dallas, Texas 75201. *See id*. Highland Advisor may be served through its Chief Compliance Officer, Thomas Surgent at 300 Crescent Court, Suite 700 Dallas, Texas 75201. *See id.* Highland Advisor may be served through its Executive Vice President, Mark Okada at 300 Crescent Court, Suite 700 Dallas, Texas 75201. *See id*. Highland Advisor may be served through its Treasurer, Frank Waterhouse at 300 Crescent Court, Suite 700 Dallas, Texas 75201. *See id*. Highland Advisor may be served through its Assistant Secretary, Lee "Trey" Parker at 300 Crescent Court, Suite 700 Dallas, Texas 75201. *See id*. Highland Advisor may also be served through its director Summit Management, Limited c/o John Cullinane P.O. Box 32311, Suite #4-210 Governors Square 23 Lime Tree Bay Avenue Grand Cayman KY1-1209 Cayman Islands. Highland Advisor may also be served through its director John Cullinane at 24 Windjammer Quay, George Town Grand Cayman. Highland Advisor may also be served through its director at Suite #4-210 Governors Square 23 Lime Tree Bay Avenue Grand Cayman KY1-1209 Cayman Islands. Acis reserves the right to serve Highland Advisor by any method that is reasonably calculated to give notice including, but not limited to applicable treaties and conventions between the United States and the Cayman Islands, a British overseas territory.

11. Highland Management is a company organized under the laws of the Cayman Islands, with its registered office located at P.O. Box 309 Ugland House, South Church Street, George Town, Grand Cayman KY1-1004. Upon information and belief, Highland Management principal place of business is 300 Crescent Court, Suite 700 Dallas, Texas 75201. Highland Management may also be served through its director Summit Management, Limited c/o John Cullinane P.O. Box 32311, Suite #4-210 Governors Square 23 Lime Tree Bay Avenue Grand Cayman KY1-1209 Cayman Islands. Acis reserves the right to serve Highland Management by

any method that is reasonably calculated to give notice including, but not limited to applicable treaties and conventions between the United States and the Cayman Islands, a British overseas territory.

12. Highland Holdings is a company organized under the laws of the Cayman Islands, with its registered office located at P.O. Box 309 Ugland House, South Church Street, George Town, Grand Cayman KY1-1004. Highland Holding's principal place of business is 300 Crescent Court, Suite 700 Dallas, Texas 75201. *See id.* at 103. Highland Holding's general or managing agent is James Dondero. *See id*. Highland Advisor may be served through its general or managing agent, James Dondero, at 300 Crescent Court, Suite 700 Dallas, Texas 75201. *See id*. Acis reserves the right to serve Highland Holdings by any method that is reasonably calculated to give notice including, but not limited to applicable treaties and conventions between the United States and the Cayman Islands, a British overseas territory.

III. JURISDICTIONAL BACKGROUND[3]

A. Highland Advisor Jurisdictional Background

13. Upon information and belief, on October 26, 2017, Jean Paul Sevilla ("Sevilla"), a Highland employee and associate general counsel, requested Maples and Calder create Highland Advisor. On information and belief, on October 27, 2017, Mr. Sevilla requested that Highland Advisor be established such that Highland is the 100% owner of the "high" share class of Highland Advisor.

14. Highland Advisor's principal place of business is 300 Crescent Court, Suite 700, Dallas, Texas 75201, Highland Capital's office and headquarters. *See* **Exhibit T** at 88. Highland Advisor is ultimately, directly or indirectly, owned or controlled by James Dondero

[3] Any capitalized term not otherwise defined in this Jurisdictional Background shall have the meaning ascribed to it later in this Second Amended Complaint.

("Dondero") and Mark Okada ("Okada"), who ultimately, directly or indirectly, own or control Highland Capital. *See id.* at 89 and Opinion at 8.

15. Upon information and belief, the principals of Highland Capital, Dondero and Okada, serve as the president and executive vice president, respectively, of Highland Advisor. *See* Opinion at 8 and **Exhibit T** at 89. Other Highland Capital employees serve as officers of Highland Advisor including Scott Ellington, Lee "Trey" Parker, Thomas Surgent, and Frank Waterhouse. *See* **Exhibit T** at 89.

16. Dondero signed the November 15, 2017 Portfolio Management Agreement by and between Highland Advisor and Highland Funding (the "November 2017 PMA") on behalf of Highland Advisor. A true and correct copy of the November 2017 PMA is attached hereto as **Exhibit P**.

17. Attached hereto as **Exhibit Q** is the December 13, 2018 (A.M.) hearing transcript from *In re Acis Capital Management, L.P., et al*. At the December 13, 2018 hearing, Hunter Covitz, a Highland Capital employee, testified: "As I understand HCF Advisor is a relying advisor of Highland." *See* **Exhibit Q** at 78, ll. 15-16. Hunter Covitz further testified, "[b]ut HCF Advisor is Highland. . . . That's the distinction between Highland HCF Advisor could be well capitalized, the substance of Highland Capital, its office space, employees, balance sheet, back office, legal, what [have] you, would all be incorporated with HCF Advisor, where Acis with no employees is not looked at that way." *Id.* at 61, ll. 5 & 11-15. Finally, Hunter Covitz testified, "there's really no differentiation between HCF Advisor and Highland." *Id.* at 62, ll. 21-23.

18. Attached hereto as **Exhibit R** are meeting minutes of Acis Loan Funding, Ltd. and Highland Funding, which contain a Highland Funding Bates label and were produced in connection with the Bankruptcy Cases or related adversary case. These meeting minutes reflect that various Highland Capital employees, including Sevilla, Hunter Covtiz, Tim Cournoyer,

David Wilmore, Issace Leventon, and Thomas Surgent appeared at Highland Funding's board meeting on behalf of Highland Advisor. The parties that conduct the day-to-day operations of Highland Advisor are Highland Capital employees that office in Dallas, Texas.

19. Attached hereto as **Exhibit S** is Highland Capital's 2017 Form ADV, which states that Highland Advisor is another business name of Highland Capital.

20. Attached hereto as **Exhibit T** is Highland Capital's 2019 Form ADV, which states that Highland Advisor's principal place of business is 300 Crescent Court, Suite 700, Dallas, Texas 75201—Highland Capital's office and headquarters. Highland Capital's 2019 Form ADV also states that Highland Capital is a shareholder of Highland Advisor and that Highland Advisor is another business name of Highland Capital.

21. The Confirmation Opinion states that "Dondero, in addition to being the chief executive of Highland and the Debtor-Acis, also became the president of the newly formed Highland [Advisor]." Confirmation Opinion at 8. Additionally, the Confirmation Opinion states that "Highland [Advisor] (i.e., the Cayman Island entity that was recently formed to essentially replace the Debtor-Acis under the Equity/ALF PMA)." Confirmation Opinion at 19. Additionally, the Confirmation Opinion states that Highland Advisor is an affiliate of Highland Capital. Confirmation Opinion at 21.

B. Highland Management Jurisdictional Background

22. Upon information and belief, on or about October 27, 2017 (7 days after the Arbitration Award), Highland Management was created at the direction of Sevilla, a Highland lawyer and employee, using the same structure as Highland Advisor. Upon information and belief, Highland Management's mailing address is 300 Crescent Court, Suite 700, Dallas, Texas 75201, Highland's Dallas office and headquarters.

23. Upon information and belief, Highland Management is ultimately, directly or indirectly, owned or controlled by Dondero and Okada, who ultimately, directly or indirectly, own or control Highland Capital.

24. Additionally, in connection with the hearing on the involuntary petitions, Dondero testified at great length regarding the Note Transfer to Highland Management on behalf of Highland Management.[4] Dondero testified upon direct examination by Acis's (at the time, a putative debtor) counsel about the Note Transfer, stating:

> Q: Now, if there came a time with litigation costs and other expenses where Acis was unable to pay its expenses when they became due, what was your intent in signing this as to whether or not HCLOM [Highland Management] would honor this and make the payment?
>
> A: We would -- **we** would honor it and -- and pay as appropriate.

See **Exhibit U** (March 23, 2018 Hr'g Tr., *In re Acis Capital Management, L.P., et al*. 146:7-12) (emphasis added). When Dondero says "we," Acis contends that he is speaking on behalf of Highland Capital and Highland Management. Additionally, Dondero testified that the Note Transfer was an "economic wash" for him as "it doesn't matter which pocket it goes into." *Id.* at 152:20-24.

25. The Opinion states that, "Highland Management was registered in the Cayman Islands on October 27, 2017, roughly a week before the Note Transfer… **it appears Highland Management was an entity that was created specifically to hold the Note and eventually take possession of the CLO PMAs in an international forum that would be difficult for Mr. Terry to reach**." Opinion at 20-21, n. 37 (emphasis added).

[4] Dondero testified at the trial on the involuntary petitions only after Mr. Terry sought to compel Dondero's deposition and after this Court ordered Dondero to appear at the trial on the involuntary petitions.

26. Upon information and belief, Dondero is the managing or general agent of Highland Management.

27. The Confirmation Opinion states that Highland Management is "an entity registered in the Cayman Islands on October 27, 2017—seven days after Mr. Terry's Arbitration Award)." Confirmation Opinion at 19. The Confirmation Opinion further states that "it appears Highland Management was an entity that was created specifically to hold the Note and eventually take possession of the CLO PMAs in an international forum that would be difficult for Mr. Terry to reach." Opinion at 20-21, n.37. Finally, the Confirmation Opinion states that "Highland Management (the Highland-created entity that entered into a portfolio management agreement with a new Acis-CLO that was established in 2017)." Confirmation Opinion at 24.

C. Highland Holdings Jurisdictional Background

28. The Confirmation Opinion states that Highland Holdings is "(yet another entity incorporated in the Cayman Island on October 27, 2017)." Confirmation Opinion at 19.

29. Attached hereto as **Exhibit T** is Highland Capital's 2019 Form ADV, which states that Highland Holding's principal place of business is 300 Crescent Court, Suite 700, Dallas, Texas 75201, Highland Capital's office and headquarters. **Exhibit T** at 103. Highland Capital's 2019 Form ADV also states that Highland Holdings is another business name of Highland Capital. Highland Capital's 2019 Form ADV further states Highland Capital, Dondero, and other Highland affiliates are "control persons" of Highland Holdings.

IV. PROCEDURAL BACKGROUND

30. On January 30, 2018 (the "Petition Date"), Joshua N. Terry ("Terry"), as petitioning creditor, filed involuntary petitions under section 303 of the Bankruptcy Code against both Acis LP and Acis GP, thereby initiating the Bankruptcy Cases. *See* Case No. 18-30264, Docket No. 1 & Case No. 18-30265, Docket No. 1.

31. On April 13, 2018, this Court entered its *Findings of Fact and Conclusions of Law in Support of Orders for Relief Issued After Trial on Involuntary Bankruptcy Petition* [Case No. 18-30264, Docket No. 118 & Case No. 18-30265, Docket No. 113] (the "Opinion") and *Order for Relief in an Involuntary Case* in each of the Bankruptcy Cases [Case No. 18-30264, Docket No. 119 & Case No. 18-30265, Docket No. 114] (the "Orders for Relief"). The Opinion is hereby incorporated by reference as if fully set forth herein.

32. On May 14, 2018, Robin Phelan (the "Trustee") was appointed chapter 11 trustee of the Debtors' bankruptcy estates in the Bankruptcy Cases. *See* Case No. 18-30264, Docket No. 213.

33. On May 30, 2018, Highland Capital and Highland Funding filed their Original Complaint, initiating this Adversary Proceeding, in which Highland Capital and Highland Funding asserted various claims for breach of contract, declaratory relief, and injunctive relief against the Trustee. *See* Adv. No. 18-03078, Docket No. 1.

34. On June 21, 2018, the Trustee filed his *Verified Original Complaint and Application for Temporary Restraining Order and Preliminary Injunction* [Adv. No. 18-03212, Docket No. 1] ("Complaint and Application for TRO"), initiating Adversary No. 18-03212, in which the Trustee sought, *inter alia*, injunctive relief to prevent Highland Capital, Highland Funding, and their affiliates from taking any action to effectuate an optional redemption (which would result in liquidation of the Acis CLOs (defined below)), as well as relief pursuant to 11 U.S.C. § 362(k) for willful violations of the automatic stay for actions taken by Highland Capital and its affiliates, including Highland Funding, in attempting to effectuate an optional

redemption.[5] Highland Capital and Highland Funding subsequently filed their answers to the Trustee's Complaint and Application for TRO. *See* Adv. No. 18-03212, Docket Nos. 32 & 33.

35. On July 2, 2018, the Trustee filed his Original Answer in this Adversary Proceeding, in which the Trustee asserted certain counterclaims and third-party claims against Highland Capital, Highland Funding, Highland Advisor, and Highland Management (collectively and along with Highland Holdings, the "Highlands") in connection with the Highlands' scheme, described more fully below, to fraudulently transfer Acis LP's assets to the Highlands and otherwise appropriate the business of Acis LP. *See* Adv. No. 18-03078, Docket No. 23.

36. On July 23, 2018, Highland Capital filed *Highland Capital Management, L.P.'s Motion to Dismiss Counterclaims or, Alternatively, for a More Definite Statement* [Adv. No. 18-03078, Docket No. 42] ("Highland's Motion to Dismiss"), in which Highland Capital sought, *inter alia*, to dismiss the Trustee's counterclaims pursuant to Federal Rule of Civil Procedure 12(b)(6).

37. Also on July 23, 2018, Highland Funding filed *Highland CLO Funding Ltd.'s Motion to Dismiss* [Adv. No. 18-03078, Docket No. 43] ("Highland Funding's Motion to Dismiss") and *Highland CLO Funding Ltd.'s Brief in Support of its Motion to Dismiss* [Adv. No. 18-03078, Docket No. 44], in which Highland Funding sought, *inter alia*, to dismiss the Trustee's counterclaims pursuant to Federal Rules of Civil Procedure 12(b)(2) and 12(b)(6).

38. On August 1, 2018, Highland Capital filed Proof of Claim No. 27 in the claims register for Case No. 18-30264 (the "Highland Acis LP Claim"), in the amount of $4,672,140.38, with the basis of the claim listed as "Sub-Advisory Services and Shared Services."

[5] Certain portions of the Complaint and Application for TRO were subsequently dismissed, ultimately leaving only: Count 1 for *Temporary Restraining Order and Preliminary Injunction* (which injunctive relief expired with confirmation of the Plan (defined below)); and Count 2 for *Willful Violation of the Automatic Stay* against Highland Capital and Highland Funding. *See* Adv. No. 18-03212, Docket Nos. 49 & 56.

39. Also on August 1, 2018, Highland Capital filed Proof of Claim No. 13 in the claims register for Case No. 18-30265 (the "Highland Acis GP Claim," together with the Highland Acis LP Claim, the "Highland Capital Claims"), in the amount of $4,672,140.38, with the basis of the claim listed as "Sub-Advisory Services and Shared Services." The Highland Acis GP Claim is identical to the Highland Acis LP Claim.

40. On August 10, 2018, Highland Capital and Highland Funding filed *Highland Capital Management, L.P. and Highland CLO Funding Ltd.'s Motion for Leave to Amend Adversary Complaint and Brief in Support* [Docket No. 51] (the "Motion to Amend"), in which Highland Capital and Highland Funding sought to amend their Original Complaint to remove all claims against the Trustee, except for one claim by Highland Funding for a declaratory judgment that the Trustee cannot "sell or transfer Highland Funding's property without Highland Funding's consent."

41. On October 9, 2018, the Court heard Highland Capital's Motion to Dismiss, Highland Funding's Motion to Dismiss, and the Motion to Amend. Considering that the Trustee expressed his intent to amend his Original Answer, the parties agreed that all arguments made by Highland Capital and Highland Funding to dismiss the Trustee's counterclaims pursuant to Rule 12(b)(6) were moot. With respect to Highland Funding's argument to dismiss for lack of personal jurisdiction under Rule 12(b)(2), the Court ruled that Highland Funding has minimum contacts with the United States, and that the Court, has personal jurisdiction over Highland Funding in this Adversary Proceeding, and exercising personal jurisdiction over Highland Funding would not violate any traditional notions of fair play and substantial justice. Further, the Court ruled that, even if sufficient minimum contacts did not exist, Highland Funding has waived personal jurisdiction in this Adversary Proceeding.

42. With respect to the Motion to Amend, due to the change in circumstances in the Bankruptcy Cases, Highland Capital and Highland Funding agreed to voluntarily dismiss all claims asserted in the Original Complaint, without prejudice.

43. On November 13, 2018, the Trustee filed his *Defendant's Amended Answer, Counterclaims (Including Claim Objections) and Third-Party Claims* [Adv. No. 18-03078, Docket No. 84] (the "Amended Counterclaims") in this Adversary Proceeding, in which the Trustee asserted numerous counterclaims and third-party claims against Highland Capital and various of its affiliates in connection with, *inter alia*, their scheme to fraudulently transfer Acis LP's assets to the Highlands and otherwise appropriate the business of Acis LP. Additionally, with the Amended Counterclaims, the Trustee included his objections to the Highland Claims pursuant to section 502(b)(1), (b)(4), and (d) of the Bankruptcy Code (the "Objections to Claim"), and further asserted that, to the extend allowed, the Highland Claims should be equitably subordinated pursuant to section 510(c) of the Bankruptcy Code.

44. On December 11, 2018, Highland Capital filed *Highland Capital Management, L.P.'s Application for Administrative Expense Claim Pursuant to 11 U.S.C. § 503(b)* [Case No. 18-30264, Docket No. 772] (the "Application") for approval of an administrative expense claim pursuant to section 503(b)(1) of the Bankruptcy Code, in the amount of $3,554,224.29 (the "Administrative Claim"), for purportedly providing postpetition services to the Debtors in connection with the Sub Agreements (defined below) and the Universal/BVK Agreement (defined below), which Highland Capital contends were actual, necessary costs and expenses of preserving the estate.

45. On January 10, 2019, the Trustee timely filed his *Objection to Highland Capital Management, L.P.'s Application for Administrative Expense Claim Pursuant to 11 U.S.C. § 503(b)* [Case No. 18-30264, Docket No. 772].

46. On January 31, 2019, this Court entered its *Findings of Fact, Conclusions of Law, and Order Granting Final Approval of Disclosure Statement and Confirming the Third Amended Joint Plan for Acis Capital Management, L.P. and Acis Capital Management GP, LLC, as Modified* (the "Confirmation Order") [Case No. 18-30264, Docket Nos. 829 & 830], which approves the *Third Amended Joint Plan for Acis Capital Management, L.P. and Acis Capital Management GP, LLC* (the "Plan") and is supplemented by the *Court's Bench Ruling and Memorandum of Law in Support of: (A) Final Approval of Disclosure Statement; and (B) Confirmation of Chapter 11 Trustee's Third Amended Joint* Plan (the "Confirmation Opinion") [Case No. 18-30264, Docket No. 827]. The Confirmation Opinion is hereby incorporated by reference as if fully set forth herein.

47. On February 15, 2019 (the "Effective Date"), the Trustee filed the *Notice of February 15, 2019 Effective Date for the Third Amended Joint Plan for Acis Capital Management, LP and Acis Capital Management GP, LLC* [Case No. 18-30264, Docket No. 863]. On the Effective Date, Acis (as the Reorganized Debtors) became substituted for the Trustee in the above-referenced consolidated adversary cases pursuant to the Plan, which provides:

> Upon the Effective Date, the Reorganized Debtor (a) shall automatically be substituted in place of the Chapter 11 Trustee as the party representing the Estate in respect of any pending lawsuit, motion or other pleading pending before the Bankruptcy Court or any other tribunal, and (b) is authorized to file a notice on the docket of each adversary proceeding or the Chapter 11 Cases regarding such substitution. The Reorganized Debtor shall have exclusive standing and authority to prosecute, settle or compromise Estate Claims for the benefit of the Estate in the manner set forth in this Plan.

Plan § 7.03.

48. On March 11, 2019, the Court entered its *Order Consolidating Adversary Case Nos. 18-03078 & 18-03212* [Adv. No. 18-03078, Docket No. 127; Adv. No. 18-03212, Docket No. 63], under which the Court ordered that Adversary Nos. 18-03078 and 18-03212 are

consolidated under Federal Rule of Civil Procedure 42(a), incorporated by Federal Rule of Bankruptcy Procedure 7042. The Court further directed the Clerk to caption the case *as Robin Phelan, Chapter 11 Trustee v. Highland Capital Management, L.P., et al.,* resulting in the designation of the Trustee, now Acis, as the Plaintiff(s) and Highland Capital and its affiliates as Defendants in this Adversary Proceeding.

49. On May 1, 2019, the Court entered its *Order Addressing DE #825 and Directing that: (A) Highland Capital Management, L.P.'s Administrative Expense Request [DE #722] Be Converted from a Contested Matter to Adversary Proceeding; and (B) Counts 27-31 Be Transferred in Adversary Proceeding No. 18-03078 into a New Adversary Proceeding* [Case No. 18-30264, Docket No. 919], whereby the Court converted Highland Capital's Application into a new adversary proceeding, and thereby initiating Adversary No. 19-03103.

50. On June 10, 2019, the Court held a status conference and directed: (i) that Adversary No. 19-03103 should be consolidated under this Adversary No. 18-03078; and (ii) that Acis will file an amended complaint, consolidating all claims, counterclaims, third-party claims against Highland Capital and its affiliates, as well as any objections to the Highland Capital Claims and Administrative Claim, by June 20, 2019.

V. FACTUAL BACKGROUND

A. The Debtors' Business

51. Dondero, Okada, and Terry formed Acis LP in 2011 as a registered investment advisor to raise money from third-party investors to invest in certain collateralized loan obligation funds (the "CLOs").[6] The CLOs are governed by certain indentures (the

[6] The Acis CLOs include: (i) Acis CLO 2013-1 Ltd. ("CLO-1"), (ii) Acis CLO 2014-3 Ltd. ("CLO-3"), (iii) Acis CLO 2014-4 Ltd. ("CLO-4"), (iv) Acis CLO 2014-5 Ltd. ("CLO-5"), and (v) Acis CLO 2015-6 Ltd. ("CLO-6").

"Indentures").[7] Acis LP is the portfolio manager for the CLOs and generates revenue primarily through the management of the CLOs via certain portfolio management agreements ("PMAs").[8] *See* Opinion ¶¶ 22-28. While Dondero made and approved the higher-level financial strategies and decisions of Acis, Terry was responsible for the day-to-day management of Acis.

52. Acis LP's business as portfolio manager for the CLOs has been incredibly successful. Between 2011 and 2017, Acis LP distributed profits of $11,037,445.00 to Dondero, $4,598,935.00 to Terry, and $2,759,361.00 to Okada, its partners. Further, on August 31, 2017, right before Highland Capital began its campaign to denude Acis LP and take over its business, Acis LP also boasted millions of dollars in investment assets and total shareholder equity of roughly $3.4 million. Without question, Acis LP's business as portfolio manager for the CLOs and others has been very valuable and lucrative.

53. As is common with the numerous Highland Capital affiliates, Acis LP contracted out certain of its administrative functions and portfolio management responsibilities to Highland Capital pursuant to that certain *Sub-Advisory Agreement*, originally dated January 1, 2011 (as amended, the "Sub-Advisory Agreement") and that certain *Shared Services Agreement*, originally dated January 1, 2011 (as amended, the "Shared Services Agreement," and together

[7] The Indentures include: (i) that certain Indenture, dated as of March 18, 2013, issued by CLO-1, as issuer, Acis CLO 2013-1 LLC, as co-issuer, and U.S. Bank, as trustee (the "CLO-1 Indenture"); (ii) that certain Indenture, dated as of February 25, 2014, issued by CLO-3, as issuer, Acis CLO 2014-3 LLC, as co-issuer, and U.S. Bank, as trustee (the "CLO-3 Indenture"); (iii) that certain Indenture, dated as of June 5, 2014, issued by CLO-4, as issuer, Acis CLO 2014-4 LLC, as co-issuer, and U.S. Bank, as trustee (the "CLO-4 Indenture"); (iv) that certain Indenture, dated as of November 18, 2014, issued by CLO-5, as issuer, Acis CLO 2014-5 LLC, as co-issuer, and U.S. Bank, as trustee (the "CLO-5 Indenture"); and (v) that certain Indenture, dated as of April 16, 2015, issued by CLO-6, as issuer, Acis CLO 2015-6 LLC, as co-issuer and U.S. Bank, as trustee (the "CLO-6 Indenture").

[8] The PMAs include: (i) that certain Portfolio Management Agreement by and between Acis LP and CLO-1, dated March 18, 2013 (the "CLO-1 PMA"); (ii) that certain Portfolio Management Agreement by and between Acis LP and CLO-3, dated February 25, 2014 (the "CLO-3 PMA"); (iii) that certain Portfolio Management Agreement by and between Acis LP and CLO-4, dated June 5, 2014 (the "CLO-4 PMA"); (iv) that certain Portfolio Management Agreement by and between Acis LP and CLO-5, dated November 18, 2014 (the "CLO-5 PMA"); and (v) that certain Portfolio Management Agreement by and between Acis LP and CLO-6, dated April 16, 2015 (the "CLO-6 PMA").

with the "Sub Agreements"). The Sub-Advisory Agreement and Shared Services Agreement have each been amended multiple times.

54. As the Court explained in its Opinion:

> Acis LP and Acis GP/LLC have never had any employees. Rather, all employees that work for any of the Highland family of companies (including Mr. Terry) have, almost without exception, been employees of Highland itself. Highland has approximately 150 employees in the United States. Highland provides employees to entities in the organizational structure, such as Acis LP and Acis GP/LLC, through both the mechanism of: (a) a Shared Services Agreement (herein so called), which provides "back office"' personnel—such as human resources, accounting, legal and information technology to the Highland family of companies; and (b) a Sub-Advisory Agreement (herein so called), which provides "front office" personnel to entities—such as the managers of investments like Mr. Terry. The evidence indicated that this is typical in the CLO industry to have such agreements.

Opinion at 14 (footnotes omitted).

55. Prior to entry of the Orders for Relief, Dondero directed, either himself or through Highland Capital employees, all actions taken by Acis. *See* Opinion ¶ 30.

> Mr. Dondero [the Chief Executive of Highland] testified that he has decision making authority for the Alleged Debtors but usually delegates that authority to Highland's in-house lawyers, Scott Ellington (General Counsel, Chief Legal Officer, and Partner of Highland) and Isaac Leventon (Assistant General Counsel of Highland) . . . . Mr. Leventon is designated to be the representative for the Alleged Debtors (and testified as a Rule 30(b)(6) witness during pre-trial discovery)—he explained that this representative-authority derives from the Shared Services Agreement. Mr. Leventon testified that he takes his instructions generally through his direct supervisor, Mr. Ellington.

Id.

56. Highland Funding, formerly known as Acis Loan Funding, Ltd. ("ALF"),[9] holds the subordinated notes issued by the CLOs and receives the "very last cash flow from the CLOs." Opinion at pp. 12-13. "It, in certain ways, controls the CLO vehicle . . . [and] was essentially the equity owner in the CLO special purpose entities." *Id.* Until the ALF PMA Transfer in the Fall of

[9] On October 30, 2017, Acis Loan Funding, Ltd. changed its name to Highland CLO Funding, Ltd. The defined term "ALF" used herein denotes Highland CLO Funding, Ltd. f/k/a Acis Loan Funding, Ltd. before October 30, 2017.

2017 (described below), Acis LP had complete control of Highland Funding and its valuable subordinated note rights to further enhance its successful portfolio management business.

B. Section 3.10(a) of the Limited Partnership Agreement

57. In order to form Acis LP, Acis GP, the general partner, and limited partners The Dugaboy Investment Trust[10] (the "Trust"), Okada, and Terry entered into that certain *Amended and Restated Agreement of Limited Partnership of Acis Capital Management, L.P.* (the "LPA"), dated to be effective as of January 21, 2011.[11] The LPA is attached hereto as **Exhibit A**. The LPA is governed by Delaware Law. LPA § 6.11. At all relevant times herein, the officers of Acis GP are Dondero, as President, and Frank Waterhouse ("Waterhouse")[12], as Treasurer. Further, at least between October 14, 2015, and December 19, 2017, Dondero was the sole member of Acis GP. *See* Case No. 18-30265, Docket No. 152.

58. Pursuant to the Sub Agreements, Highland Capital received compensation for providing services to Acis LP, but amounts of compensation were subject to certain terms of the LPA. Section 3.10 of the LPA directs compensation and reimbursement of the General Partner and contains subpart (a), which limits compensation and reimbursement of expenses payable to the General Partner and any Affiliate of the General Partner without proper consent:

> Compensation. The General Partner and any Affiliate of the General Partner shall receive no compensation from the Partnership for services rendered pursuant to this Agreement or any other agreements unless approved by a Majority Interest; provided, however, that the aggregate annual expenses of the Partnership, inclusive of such compensation, ***may not exceed 20% of Revenues without the consent of all of the members of the Founding Partner Group***.

LPA § 3.10(a) (emphasis added).

[10] Dondero was the trustee and owned 100% of the Trust, and he was President of Acis GP.

[11] The partnership interests of Acis LP were as follows: Acis GP owned .1%; the Trust owned 59.9%; Okada owned 15%; and Terry owned 25%.

[12] Waterhouse is a partner in Highland Capital and serves as Highland Capital's Chief Financial Officer.

59. An Affiliate under the LPA is defined as:

> [A]ny [entity] that directly or indirectly controls, is controlled by, or is under common control with the [entity] in question. As used in this definition, the term "*control*" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of [an entity], whether through ownership of voting Securities, by contract, or otherwise.

Id. § 2.01.

60. Highland Capital was at all times relevant to this Second Amended Complaint, an Affiliate of Acis GP and Acis LP. Further, Highland Capital was at all times relevant to this Second Amended Complaint, an insider of Acis GP and Acis LP.

C. State Court Litigation and Arbitration

61. In June 2016, Highland Capital advised Terry that he had been terminated.

62. In September 2016, Highland Capital sued Terry in the 162nd Judicial District Court of Dallas County, Texas (the "State Court") under a variety of legal theories and causes of action, including breach of fiduciary duty/self-dealing, disparagement, and breach of contract. Terry asserted his own claims against Highland Capital, as well as claims against the Debtors, Dondero, and others, and demanded arbitration. Opinion ¶ 8.

63. On September 28, 2016, the State Court stayed the litigation and ordered the parties to arbitrate. *Id.* The parties then participated in a ten-day arbitration proceeding before JAMS, styled as *Terry v. Highland*, JAMS Arbitration No. 1310022713.

D. The Arbitration Award

64. On October 20, 2017, Terry obtained an arbitration award (the "Arbitration Award") jointly and severally against the Debtors in the amount of $7,949,749.15, plus post-award interest at the legal rate. The Arbitration Award was based on theories of breach of contract and breach of fiduciary duties. The Arbitration Award is attached hereto as **Exhibit B**.

65. Under the Arbitration Award, the arbitration panel found that Terry's termination by Dondero/Highland Capital was without cause and that, among other things, Acis breached the LPA and breached fiduciary duties owed to Terry as Acis's limited partner. Importantly, the arbitration panel found that Highland Capital had been paid more than 20% of Revenues (as such term is understood under the LPA), without Terry's consent, in violation of Section 3.10(a) of the LPA:

> It is undisputed that ACIS habitually paid more than 20% of Revenues to Highland for providing ACIS with overhead and administration. Respondents' evidence and arguments that Terry waived or consented to ACIS's payment of excess expenses is not persuasive. At most, Terry accepted his ACIS distributions without regard to the expenses paid to Highland. This is not consent contemplated by the ACIS LPA.
>
> . . . .
>
> The evidence establishes that Terry did not consent to ACIS payments of expenses in excess of 20% of Revenue and Terry has not waived his right to claim damages directly resulting from ACIS's and ACIS GP's breach of contract and breach of fiduciary duty. Clearly, ACIS and ACIS GP ignored Terry's contractual rights and ACIS GP as a general partner has a fiduciary duty not to benefit itself or another at the expense of its limited partner, as they ignore and breach the terms of the partnership agreement and diminish Terry's distributions.

Arbitration Award at pp. 15-16.

66. Additionally, in the analysis of Terry's damages, the arbitration panel stated:

> The evidence establishes that ACIS and ACIS GP paid excess expenses to Highland during the years of 2013, 2014, 2015 and January through May 2016. These expenses paid exceeded the 20% of Revenues cap stated in Section 3.10(a) of the ACIS LPA. The payment of these excess expenses reduced Terry's ACIS partnership distributions during this period. Had excess expenses not been paid and only the contractually capped expenses had been paid, Terry would have received additional ACIS profits distributions of $1,755,481.00 for his 25% partnership interest in ACIS.

Arbitration Award at 20.

67. Finally, in its findings and conclusions, the arbitration panel stated: "ACIS [LP] and ACIS GP paid Highland Capital expenses in excess of the contractual limit imposed by Section 3.10(a) of the ACIS LPA." Arbitration Award at 22, ¶ 7.

68. On December 18, 2017, the 44th Judicial District Court of Dallas County, Texas, entered a final judgment confirming the Arbitration Award. Opinion ¶ 10. The judgment was abstracted in the Official Public Records of Dallas County, Texas, as Instrument No. 201800008611, and writs of garnishment were issued and served pursuant to the judgment.

69. Pursuant to the Arbitration Award, Highland Capital wrongly received at least $7,021,924.00 (collectively, the "Expense Overpayments") in excess of the clear cap under Section 3.10(a) of the LPA.[13] On information and belief, Highland Capital wrongfully received other overpayments of expenses for many years in excess of the express limitations contained in the LPA. The Expense Overpayments for which the Plaintiffs seek relief herein include all overpayments by Acis LP to Highland Capital in violation of the expense cap pursuant to the LPA whether or not addressed in the Arbitration Award. The Plaintiffs seek a declaratory judgment that such Expense Overpayments to Highland Capital and any agreements supporting such overpayments were *ultra vires* and, thus, void or voidable. The Plaintiffs also seek to recover from Highland Capital all such Expense Overpayments, which rightfully belong to Acis LP, as set forth below.

E. Modifications to the Sub-Advisory Agreement and Shared Services Agreement

70. The Sub-Advisory Agreement has been amended from time to time. The first iteration the Sub-Advisory Agreement by and between Acis LP and Highland Capital dated January 1, 2011 (the "Original Sub-Advisory Agreement") provided that Acis LP was to pay Highland Capital certain amounts for assisting Acis LP with the advisory services required by the PMAs. Under the Original Sub-Advisory Agreement, Acis LP paid Highland Capital 5 bps

[13] If $1,755,481.00 represents 25% of the amount overpaid to Highland Capital, then the total amount paid to Highland Capital in excess of the 20% cap would be at least $7,021,924.00.

of the management fees received by Acis LP pursuant to the various PMAs for the sub-advisory services provided to Acis LP by Highland Capital.

71. On July 29, 2016, the Sub-Advisory Agreement was modified to increase the sub-advisory fee from 5 basis points to 20 basis points (the "Second Amended Sub-Advisory Agreement"). The effective date of the Second Amended Sub-Advisory Agreement was also back-dated to January 1, 2016. The fourfold increase in the sub-advisory fees via the Second Amended Sub-Advisory Agreement siphons off the funds of Acis LP and effectively gifts the additional amounts to Highland Capital. Highland Capital was already contractually obligated to provide the sub-advisory services for the lower 5 basis points fee and no legitimate justification for this fourfold increase was ever presented. Notably, Terry was unjustifiably terminated from Acis in June 2016, roughly one month before Acis and Highland Capital amended the Sub-Advisory Agreement to increase the fee paid fourfold. Further, Dondero consented to the increased sub-advisory fee on behalf of *both* Acis LP and Highland Capital. Dondero signed the Second Amended Sub-Advisory Agreement as president of Highland Capital's general partner, Strand Advisors, Inc., and as president of Acis GP, the general partner of Acis LP.[14]

72. The Shared Services Agreement has also been amended from time to time. The first iteration of the shared services agreement, the Shared Services Agreement by and between Acis LP and Highland Capital, dated January 1, 2011 (the "Original Shared Services Agreement"), provided that Acis LP was to pay Highland Capital certain amounts for providing Acis LP with the back-office services such as book keeping, compliance, human resources and marketing. Under the Original Shared Services Agreement, Acis LP reimbursed Highland Capital for amounts directly attributable to Acis LP for these services. The Shared Services

[14] Dondero also signed the Third Amended and Restated Sub-Advisory Agreement, entered into on March 17, 2017, on behalf of both parties (Acis LP and Highland Capital) to the agreement; this amendment retained the 20 bps fee put in place by the Second Amended Sub-Advisory Agreement.

Agreement was later amended to provide compensation to Highland Capital of 15 to 20 basis points, depending on the nature of the fund for which services were provided. Thus, shortly after Terry was terminated by Acis in June 2016, Acis was paying Highland Capital a total of 35 to 40 basis points for the sub-advisory and shared services it provided.

73. Due to the retroactive nature of the amendments to the Sub-Advisory Agreement and Shared Services Agreement, Highland, at all times relevant to this proceeding, held an antecedent debt related to Acis.

74. Finally, as the Court has already found and as described in more detail below, Highland Capital, Dondero, and various of their affiliates and insiders (including Highland Funding, Highland Advisor and Highland Holdings) entered into numerous other transactions through the Fall of 2017 in an attempt to take control of Acis's assets and effectively take over Acis's business. The combination of all of these actions evidence a clear pattern of behavior by Highland Capital, Dondero, and various of their affiliates and insiders (including Highland Funding, Highland Advisor, Highland Management, and Highland Holdings)[15] to hinder, delay or defraud Terry as a creditor and appropriate the going-concern business of Acis LP for the Highlands. Opinion, Section 1.C. (pp. 16-23).

F. Highland Capital's Mismanagement of the CLOs and the Trustee's Engagement of Brigade Capital Management, L.P.

75. During the pendency of these Bankruptcy Cases, while acting as sub-advisor, Highland Capital grossly mismanaged the CLOs. Following the Trustee's appointment in these Bankruptcy Cases, in disregard of its duties under the Sub-Advisory Agreement, Highland

[15] The Debtors were also under Highland Capital and Dondero's control at this time and were active participants in all of Highland Capital and Dondero's schemes to denude the Debtors and make them "judgment proof" as the Debtors' own counsel, Jamie Welton, later boasted. In fact, Highland Funding has admitted that the Debtors were "no more than shell entities" in pleadings recently filed with the Court. Highland Funding's *Motion to Dissolve Preliminary Injunction and Lift the Automatic Stay* at page 21, Docket # 639 in Case No. 18-30264.

Capital failed to purchase a single loan for the CLOs. Yet, at the same time, in an apparent tactical move to accumulate cash in the CLOs (prior to an attempted liquidation), Highland Capital ordered that the Trustee sell numerous loans. Indeed, during this time, Highland Capital's own analysis showed that 19.7% to 32.4% of available loans were eligible for consideration for purchase in the CLOs. Although the Trustee expressed his concerns to Highland Capital about the accumulation of cash in the CLOs and Highland Capital's failure to recommend purchases of eligible collateral in the CLOs, Highland Capital failed to make any change or correction in its sub-advisor role, in abrogation of its duties.

76. In July 2018, considering Highland Capital's mismanagement of the CLOs and the exorbitant amounts attempted to be charged to Acis for its services under the Sub Agreements, the Trustee solicited potential third parties to provide shared services and sub-advisory services to the Debtors. After contacting over 40 parties, the Trustee received bids from nine parties to perform the services provided by Highland Capital under the Sub Agreements. Through this process, the Trustee was able to locate Brigade Capital Management, LP ("Brigade") and Cortland Capital Markets Services LLC ("Cortland") to provide such services to the Debtors at a rate far less than that charged by Highland Capital. As set forth more fully in the *Emergency Motion to Approve Replacement Sub-Advisory and Shared Services Providers, Brigade Capital Management, LP and Cortland Capital Markets Services LLC* [Case No. 18-30264, Docket No. 448] (the "Brigade Motion"), Brigade agreed to sub-advise the CLOs for 15 basis points. As further described by the Brigade Motion, Cortland agreed to provide middle and back office CLO outsourcing (previously provided by Highland Capital under the

Shared Services Agreement) for $30,000 per month, $250-$350 per trade, and a one-time fee of $75,000. Cortland's fee equates to roughly 3 basis points per month.[16]

77. On August 1, 2018, the Court granted the Brigade Motion, and Brigade and Cortland began performing the services previously provided by Highland Capital under the Sub Agreements. *See* Case No. 18-30264, Docket No. 464. Notably, on the record at the hearing on July 6, 2018, Highland offered to provide the same services it was providing Acis for 17.5 basis points less than it previously charged, a tacit acknowledgement that Highland had grossly overcharged Acis. *See* Case No. 18-30264, Docket No. 369 at 243-44.

78. From approximately August 2, 2018 through December 11, 2018, Brigade directed the purchase of approximately $300 million in conforming loans for the CLOs. *See* Case No. 18-30264, Docket No.790 at 100-01 & 134.

G. The Highlands' Fraudulent Scheme to Take Over Acis's Business and Dismantle Acis's Assets.

79. After Terry received the Arbitration Award on October 20, 2017, the Highlands immediately began work to systematically transfer the assets of Acis LP to other Highlands. This was done to denude Acis LP of value and make the Debtors "judgment proof." This was also done to ensure that Acis LP's very valuable business as portfolio manager was taken over by other Highlands and remained under Highland Capital and Dondero's control.

80. Prior to the filing of the Bankruptcy Cases, the Highlands' scheme was accomplished through, *inter alia*, the ALF PMA Transfer, the ALF Share Transfer, the Note Transfer, and the transfer of the 2017-7 Equity and the 2017-7 Agreements (as each is defined

[16] Thus, the Trustee was paying roughly 18 basis points, instead of the 35 to 40 basis points charged by Highland Capital starting shortly after Terry was terminated by Acis in June 2016, for the work previously performed by Highland Capital under the Sub Agreements. The definitive agreement between the Reorganized Debtors and Brigade removes Cortland and the Reorganized Debtors pay roughly 15 basis points to Brigade for essentially the same services previously provided by Highland Capital.

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below), which all occurred in the three months between October 23 and December 19, 2017. Each of these transfers followed the same pattern: Highland Capital caused Acis LP to fraudulently convey valuable economic rights away from Acis LP to offshore (often newly created) Highland Capital affiliates that were not subject to Terry's Arbitration Award and judgment, thus, safely remaining under the control of Highland Capital and Dondero. Further, the only alleged consideration for these transfers, to the extent there was any, was the satisfaction of purported debts owed to other Highlands or their representatives.

81. Reference to Acis LP's balance sheets right before and right after the Highlands began their campaign of fraud against Terry and Acis demonstrate just how effective their scheme was. On August 31, 2017—roughly 45 days before the Arbitration Award—Acis LP boasted $15,441,551 in total assets (including nearly $4 million in valuable portfolio management investments and the $9.5 million note) as well as $3,372,851 in total equity value.[17] After the Arbitration Award and the judgment enforcing it, Acis presented the affidavit of David Klos, Highland Capital's Controller, to the State Court in furtherance of Highland Capital's efforts to get a pathetically small bond for Terry's judgment. The Klos affidavit and attached balance sheet demonstrate that as of February 1, 2018 (the day after the Involuntary Petitions were filed) Acis LP had only $2,855,050 in total assets, no investment assets or notes, and a paltry $35,709 in total equity value.[18] Thus, the amount of value destruction and asset concealment caused by the Highlands' brazen fraud in just the few months immediately after the Arbitration Award is staggering.

82. Even the filing of the Bankruptcy Cases did not deter the Highlands from attempting to complete their goal of denuding Acis. During the Bankruptcy Cases, in disregard

[17] The Balance Sheet as of August 31, 2017, is attached as **Exhibit C**.

[18] The Declaration of David Klos concerning Defendants' net worth, is attached as **Exhibit D**.

of the automatic stay, on multiple occasions, the Highlands directed the Trustee to effectuate optional redemptions, which would result in the liquidation of the CLOs and render Acis incapable of reorganizing and paying its creditors.

1. ***The ALF PMA Transfer and the ALF Share Transfer***

83. Prior to October 27, 2017, Acis LP—not ALF (or Highland Funding as it is currently named)—had authority to direct and effectuate an optional redemption and otherwise pervasively control ALF's assets. Acis LP had this authority pursuant to that certain Portfolio Services Agreement by and between Acis LP and ALF, dated August 10, 2015 (the "First ALF PMA") and that certain Portfolio Management Agreement by and between Acis LP and ALF, dated December 22, 2016 (the "Second ALF PMA"). A true and correct copy of the First ALF PMA is attached hereto as **Exhibit E.** A true and correct copy of the Second ALF PMA is attached hereto as **Exhibit F.**

84. The Second ALF PMA granted Acis LP, as the portfolio manager of ALF, extensive rights and discretion to control and manage ALF's assets, including its interests in the Acis CLOs. Section 5 of the Second ALF PMA set out Acis LP's authority, which included authority for and in the name of ALF to:

> (a) invest, directly or indirectly . . . in all types of securities and other financial instruments of United States and non-U.S. entities . . . including without limitation . . . notes representing tranches of debt ('CLO Notes') issued by a special purpose vehicle which issues notes backed by a pool of collateral consisting primarily of loans (which may be represented by a debt or equity security) (a 'CLO') . . . (each of such items, 'Financial Instruments'), (c) provide credit and market research and analysis in connection with the investments and ongoing management of [ALF] and direct the formulation of investment policies and strategies for [ALF] . . . ; (g) possess, transfer, mortgage, pledge or otherwise deal in, and exercise all rights, powers, privileges and other incidents of ownership or possession with respect to Financial Instruments and other property and funds held or owned by [ALF] …; (n) cause [ALF] to engage in . . . agency, agency cross, related party principal transactions with affiliates of [Acis LP] . . . ; and (q) vote Financial Instruments, participate in arrangements with creditors, the

> institution and settlement or compromise of suits and administrative proceedings and other like or similar matters.

Second ALF PMA § 5(a)-(q) (emphasis added).[19]

85. While ALF did not have authority to terminate the Second ALF PMA, Acis LP could terminate the Second ALF PMA without cause upon at least ninety (90) days' notice. *See* Second ALF PMA § 13(a)-(c). The Second ALF PMA provided that Acis LP could be removed as portfolio manager only "for cause." *See* ALF PMA § 14(a)-(e).

86. On October 27, 2017, just seven days after Terry's Arbitration Award, Acis LP ostensibly terminated its own portfolio management rights under the Second ALF PMA and transferred its authority and its valuable portfolio management rights—for no value—to Highland Advisor, an affiliate of Highland Capital.[20]

87. This transfer of Acis LP's portfolio management rights to Highland Advisor was accomplished by way of a new Portfolio Management Agreement entered into by ALF and Highland Advisor on October 27, 2017 (the "October 2017 PMA"), which empowered Highland Advisor with the same broad authority to direct the management of ALF as was previously held by Acis LP under the ALF PMA (the "ALF PMA Transfer"). *See* October 2017 PMA §§ 1 & 5(a)-(q). A true and correct copy of the October 2017 PMA is attached hereto as **Exhibit G**.

88. As the Court explained:

> On October 27, 2017 (seven days after the Arbitration Award), ALF—having purchased back the ownership interest that Acis LP had in it, just three days earlier—decided that it would no longer use Acis LP as its portfolio manager and

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[19] The Highlands contend that the reference to "control" in Section 6 of the Second ALF PMA negates the broad language of Section 5 of the Second ALF PMA. The Plaintiffs disagree.

[20] Although purportedly a Cayman Islands entity, Highland Funding's 2017 Annual Report and Audited Financials lists Highland Advisor's address as Highland Capital's address in Dallas, Texas. This same document also discloses that Highland Capital is the sub-advisor for Highland Advisor, and thus is the party actually in control of Highland Funding's assets. Finally, this same document shows that all of Highland Funding's subordinated notes issued by the CLOs (the primary assets managed by Highland Advisor) are physically held at and are pledged to NexBank, a Dallas bank that is an affiliate of Highland Capital.

> entered into a new portfolio management agreement to supersede and replace the ALF Portfolio Management Agreement. Specifically, on October 27, 2017, ALF entered into a new Portfolio Management Agreement with a Cayman Island entity called Highland HCF Advisor, Ltd., replacing Acis LP in its role with ALF. This agreement appears to have been further solidified in a second portfolio management agreement dated November 15, 2017.

Opinion at 19 (footnotes omitted).

89. Under the prior ALF PMA, Acis LP's consent to the termination of the ALF PMA was required in order to effectuate the ALF PMA Transfer. So, Dondero, on behalf of Acis LP, simply signed the October 2017 PMA, consenting and agreeing to its removal and replacement, and transferring all authority and management rights as portfolio manager of ALF to Highland Advisor under the October 2017 PMA. Acis received no consideration for this transfer.

90. Without this ALF PMA Transfer, which transferred Acis LP's valuable rights under the ALF PMA to Highland Advisor, Highland Funding could not have attempted to liquidate the CLOs, by directing optional redemptions, and further deplete Acis's assets.[21]

91. On October 24, 2017, a mere four days after the Arbitration Award was entered, Waterhouse, on behalf of Acis LP, and Grant Scott, for CLO Holdco Ltd., entered into that certain special resolution whereby Highland Funding, then known as ALF, acquired back Acis's equity interest in ALF (the "ALF Share Transfer"). A true and correct copy of the special resolution is attached hereto as **Exhibit H.** Pursuant the ALF Share Transfer, ALF paid Acis LP $991,180.13 for all of its shares of ALF.

92. Thus, by virtue of the ALF PMA Transfer and the ALF Share Transfer, by October 31, 2017, Acis LP had given up all of its shares of ALF and all of its control of ALF.

[21] After the ALF PMA Transfer, Highland Funding and Highland Advisor have issued at least three different optional redemption notices, in an attempt to terminate the PMAs and cut off the Debtors' primary source of cash. All three notices have been withdrawn and/or enjoined by this Court.

93. On November 15, 2017 – only days after the ALF Share Transfer and ALF PMA Transfer were completed – Highland Funding,[22] Highland Advisor and CLO Holdco, Ltd. (another Highland Capital affiliate) entered into a subscription agreement whereby Highland Funding completed a private placement of its equity (including, upon information and belief, the equity acquired in the ALF Share Transfer) to third-party investors. The Plaintiffs believe both the ALF PMA Transfer and the ALF Share Transfer were concocted by Highland Capital and Highland Funding to complete this private placement, which was of great value to Highland Funding (then known as Acis Loan Funding, Ltd.) and Highland Capital, but after the transfers, of no value to Acis.[23] Without the ALF PMA Transfer and the ALF Share Transfer, control of Highland Funding's assets, and the Highland Funding stock held by Acis, would be vested in an entity (Acis LP) that was subject to a looming judgment based on Terry's recently acquired Arbitration Award. That would compromise the Highlands' control of Highland Funding.

2. ***The Note Transfer***

94. On November 3, 2017, Acis LP, Highland Capital, and Highland Management (a newly created, offshore Highland Capital affiliate) entered into that certain Agreement for Assignment and Transfer of Promissory Note (the "Note Assignment and Transfer Agreement"). A true and correct copy of the Note Assignment and Transfer Agreement is attached hereto as **Exhibit I.** The Note Assignment and Transfer Agreement, among other things, transferred the

[22] ALF had changed its name to Highland Funding at this point.

[23] Highland Funding's (then Acis Loan Funding Ltd.) board of director minutes from October 6, 2017, disclose that the private placement investment would bring $150 million in new investment in Highland Funding and that they were "confident that they could develop further interest and … bring the total capital to up to around $325 million." The Arbitration Award was issued against Acis LP exactly two weeks later, throwing a huge monkey wrench in Highland Funding's plans to raise hundreds of millions of dollars for Highland Capital and its cronies. Testimony in the bankruptcy case as well as the subscription agreement demonstrate that numerous Highland Capital executives, as well as Highland Capital itself, received Highland Funding stock in connection with this private placement. Thus, they were highly motivated to close this transaction and also deprive the Acis LP of any value in this transaction.

$9.5 million promissory note executed by Highland Capital and payable to Acis LP (the "Note") from Acis LP to Highland Management (the "Note Transfer"). As noted in the Opinion:

> The Assignment and Transfer Agreement memorializing this transaction is signed by Mr. Dondero for Acis LP and Mr. Dondero for Highland and some undecipherable name for Highland CLO Management Ltd.
>
> The document recites that (i) Highland is no longer willing to continue providing support services to Acis LP, (ii) Acis LP, therefore, can no longer fulfill its duties as a collateral manager, and (iii) Highland CLO Management Ltd. agrees to step into the collateral manager role if Acis LP will assign to it the Acis LP Note Receivable from Highland. One more thing: since Acis LP was expected to potentially incur future legal and accounting/administrative fees, and might not have the ability to pay them when due, Highland CLO Management Ltd. agreed to reimburse Acis LP (or pays its vendors directly) up to $2 million of future legal expenses and up to $1 million of future accounting/administrative expenses.

Opinion at 20.

95. Acis LP received no or insufficient consideration for the Note Transfer.

96. The Note Transfer was also of great benefit to Highland Capital because it transferred Highland Capital's liability under the Note away from Acis LP (and its legal woes with Terry) and allowed Highland Capital's liability under the Note, and any payments made thereunder, to stay well within the control of the Highlands. Just as importantly to Highland Capital and Dondero, and in furtherance to their ongoing feud with Terry, the Note Transfer took away the Note as an asset from which Terry could collect his judgment and allowed Highland Capital to argue (as repeatedly argued in the Bankruptcy Cases) that Terry got his judgment against the "wrong" entities and that Highland Capital has no liability related to Terry's claim.

97. Additionally, the Note Assignment and Transfer Agreement also purports to initiate the transfer of the PMAs between Acis and the CLOs to Highland Management.[24] Again,

[24] Highland Management was registered in the Cayman Islands on October 27, 2017, roughly a week before the Note Transfer (and on the exact day of the ALF PMA Transfer). Thus, Highland Management had no portfolio or collateral management experience whatsoever when it entered the Assignment and Transfer Agreement. To the contrary, it appears Highland Management was an entity that was created specifically to hold the Note and eventually take possession of the PMAs in an international forum that would be difficult for Terry to reach, similar

Acis LP was to receive no consideration for transferring its most significant assets, the PMAs. As the Court is aware, Acis LP did not in fact transfer the PMAs pursuant to the Note Assignment and Transfer Agreement, but it was clearly the plan as outlined in that agreement and further evidence of Highland Capital's intent to steal Acis LP's valuable going-concern business.

3. *The Acis CLO 2017-7 Transfers*

98. On December 19, 2017, Acis LP and Highland Holdings (another newly created, offshore Highland Capital affiliate)[25] entered into that certain Agreement for Assignment and Transfer (the "2017-7 Assignment and Transfer Agreement"). A true and correct copy of the 2017-7 Assignment and Transfer Agreement is attached hereto as **Exhibit J.** The 2017-7 Assignment and Transfer Agreement focused on Acis CLO Management, LLC ("Acis CLO Management"), which is an entity that had been formed to enter into a portfolio management agreement with Acis CLO 2017-7, Ltd. ("CLO 2017-7"). CLO 2017-7 is the last CLO the Highlands formed. Acis CLO Management was indirectly owned by Acis LP, and Acis LP and Acis CLO Management had entered into a Master Sub-Advisory Agreement and a Staff and Services Agreement (the "2017-7 Agreements") that allowed Acis LP to manage the CLO 2017-7 portfolio and collect management fees for CLO 2017-7.

99. The 2017-7 Assignment and Transfer Agreement, among other things, transferred to Highland Holdings all of Acis LP's interest in the 2017-7 Agreements. The 2017-7 Assignment and Transfer Agreement also transferred to Highland Holdings all of Acis LP's

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to the transferees for the ALF PMA Transfer (Highland Advisor, a Cayman Island entity) the ALF Share Transfer (Highland Funding, a Guernsey entity) and the 2017-1 Assignment and Transfer Agreement (Highland Holdings, a Cayman Island entity). Thus, not only did Highland Capital and Dondero scheme to transfer Acis LP's assets away from it, but they also slyly chose entities in offshore jurisdictions that would be hard for a judgment creditor to reach.

[25] Like Highland Management, Highland Holdings was registered in the Cayman Islands on October 27, 2017.

equity interests in various entities that constituted Acis LP's indirect equity interests in Acis CLO Management (the "2017-7 Equity"). Thus, similar to the ALF PMA Transfer and the ALF Share Transfer that occurred roughly two months before, Acis LP was divested of both its ownership in Acis CLO Management and its control of Acis CLO Management (and related management fee stream) in one fell swoop on December 19, 2017, which is the day after Terry received his judgment based on the Arbitration Award. Also, importantly, the 2017-7 Assignment and Transfer Agreement rendered Acis non-compliant with relevant U.S. and European risk retention requirements.

100. Significantly, also on December 19, 2017, Highland Capital entered into an agreement with Highland Holdings that allowed Highland Capital to sub-advise and manage CLO 2017-7 and get paid the management fees that otherwise would have flowed to Acis LP. So, like the numerous transfers before it, Highland Capital effectuated the transfer of the 2017-7 Agreements and 2017-7 Equity to cut out Acis LP, while Highland Capital stayed in complete control of CLO 2017-7 and its stream of management fees.

101. As the Court noted in the Opinion:

> On December 19, 2017—just one day after the Arbitration Award was confirmed with the entry of the Final Judgment—the vehicle that can most easily be described as the Acis LP "risk retention structure" (necessitated by federal Dodd Frank law) was transferred away from Acis LP and into the ownership of Highland CLO Holdings, Ltd. (yet another Cayman Island entity, incorporated on October 27, 2017).
>
> In addition to transferring Acis LP's interest in the Acis LP risk retention structure on December 19, 2017, Acis LP also transferred its contractual right to receive management fees for Acis CLO 2017-7, Ltd. (which had just closed April 10, 2017), which Mr. Terry credibly testified had a combined value of $5 million, to Highland CLO Holdings, Ltd., another Cayman entity, purportedly in exchange for forgiveness of a $2.8 million receivable that was owed to Highland under the most recent iteration of the Shared Services Agreement and Sub-Advisory Agreement for CLO-7. In conjunction with this transfer, Highland CLO Holdings, Ltd. then entered into new Shared Services and Sub-Advisory Agreements with Highland.

Opinion at 20-21.

102. The purported consideration for the 2017-7 Equity transferred in the 2017-7 Assignment and Transfer Agreement was the forgiveness of a $2,804,870 payable allegedly owed by Acis LP to Highland Capital and transferred to Highland Funding sometime before the agreement was entered. According to Acis LP's financial statements, this payable to Highland Capital entirely comprises amounts due under the Sub-Advisory Agreement and Shared Services Agreement. Thus, the "consideration" provided in exchange for the 2017-7 Assignment and Transfer Agreement would suffer from the same defects as outlined throughout this Second Amended Complaint related to the Sub Agreements; i.e., Acis only "owed" Highland Capital these amounts because Highland Capital grossly overcharged Acis. Finally, like the Note Transfer, the 2017-7 Equity transfer allowed Highland Capital to effectively collect all of the $2.8 million owed by Acis LP (assuming it is even a valid debt) through the use of an offshore intermediary.

103. Further, the 2017-7 Assignment and Transfer Agreement itself discloses that no consideration was provided for the transfer of the 2017-7 Agreements. Rather, the justification for the transfer of the 2017-7 Agreements is Highland Capital's self-serving refusal to continue to do business with Acis LP after the Arbitration Award and related judgment.

4. *Thwarted Attempts to Transfer the Universal/BVK Agreement and Force an Optional Redemption*

104. Highland Capital and the other Highlands did not stop with the transfers in the Fall of 2017. Immediately after the Involuntary Petitions were filed on January 30, 2018, Highland Capital conspired with Acis LP's own bankruptcy counsel in an effort to appropriate Acis LP's valuable sub-advisor rights under the Agreement for the Outsourcing of Asset Management (the "Universal/BVK Agreement") between Acis LP and Universal–Investment-

Luxembourg S.A. ("Universal"), which provided sub-advisory services for a German fund called BayVK R2 Lux S.A., SICAV-FIS ("BVK").[26] Like the many transfers before it, Highland Capital's plan (as clearly outlined in an email from Isaac Leventon to Mike Warner) was "to transfer the BVK investment management agreement from Acis LP to another Highland-affiliated manager."[27] Immediately after Highland Capital sought (and presumably received) advice from Acis's own counsel, Highland Capital reached out to Universal and BVK to solicit their participation in Highland Capital's scheme. In fact, BVK acknowledged in its very first email with Highland Capital after Acis LP's bankruptcy filing that Highland Capital's plan was to replace Acis LP.

105. Over the several weeks leading up to this Court's ruling on the Orders for Relief, Highland Capital and Universal/BVK did, in fact, frequently discuss replacing Acis LP, conducted extensive due diligence in order to replace Acis LP and even negotiated and prepared a new asset management agreement between Highland Capital and Universal that was to take effect once Acis LP and its bankruptcy were out of the way. But even after the Orders for Relief were entered and the Debtors were under the control of a trustee, the communications did not stop. Among other things, Highland Capital volunteered to pay Universal and BVK's legal costs incurred in terminating Acis LP and making Highland Capital the new sub-advisor for Universal and BVK, Highland Capital repeatedly criticized the Trustee for his management of Acis, and Highland Capital repeatedly expressed its desire to negotiate with Universal and to "onboard" Highland Capital as Universal's new sub-advisor. And even after Highland Capital was fired by the Trustee as Acis LP's sub-advisor and replaced with Brigade and Cortland, the

[26] The Court held a lengthy hearing on the Universal/BVK Agreement and related lift stay issues on September 11, 2018.

[27] Email chain from early February 2018 between Mike Warner (Acis's counsel), Isaac Leventon (Highland Capital's in-house counsel), Timothy Cournoyer (Highland Capital's in-house counsel) and Thomas Surgent (Highland Capital's Chief Compliance Officer), attached as **Exhibit K**.

communications did not stop. Highland Capital's scheme to transfer the Universal/BVK Agreement to Highland Capital or its affiliate was apparently only prevented by this Court imposing 11 U.S.C. § 363, effectively taking away Acis LP's right to operate outside the ordinary course of business without Court authority under 11 U.S.C. § 303(f) and then later not immediately lifting the automatic stay as to the Universal/BVK Agreement.

106. Finally, Highland Advisor and its sub-manager Highland Capital, used its newly acquired management rights (by way of the ALF PMA Transfer) to attempt to destroy the Debtor, as further described below.

5. ***The First Optional Redemption Notices***

107. On April 30, 2018, without requesting relief from the automatic stay, Highland Funding sent five notices purportedly requesting optional redemption pursuant to Section 9.2 of each of the Indentures (the "First Optional Redemption Notices").[28] True and correct copies of the First Optional Redemption Notices are attached hereto as **Exhibit L.**

108. The First Optional Redemption Notices directed Acis LP to effectuate an Optional Redemption (as defined under each Indenture). Under Section 9.2 of each Indenture, upon the receipt of a notice of redemption, Acis, in its discretion, is to direct the sale of the Collateral Obligations (as defined by each Indenture) and other Assets. *See* CLO-1 Indenture, § 9.2; CLO-3 Indenture, § 9.2(b); CLO-4 Indenture, § 9.2; CLO-5 Indenture, § 9.2; & CLO-6 Indenture, § 9.2. In the Indentures, "Assets" is defined to include the PMAs. *See* CLO-1 Indenture, p. 8; CLO-3 Indenture, p. 10; CLO-4 Indenture, p. 10; CLO-5 Indenture, p. 10; & CLO-6 Indenture p. 10. Consequently, an Optional Redemption directs Acis LP to liquidate assets of the CLOs over which Acis has certain property rights, including, effectively, the PMAs.

[28] Nexpoint Strategic Opportunities Fund (f/k/a NexPoint Credit Strategies Fund) ("Nexpoint") and Drexel Limited ("Drexel") joined in one of the Optional Redemption Notices. Like HCLOF, Nexpoint is an affiliate of Highland.

109. The Trustee analyzed the First Optional Redemption Notices and determined there were various defects which rendered them ineffective. Therefore, on May 22, 2018, the Trustee sent his responses to the five First Optional Redemption Notices (the "Redemption Responses"). True and correct copies of the Redemption Responses are attached hereto as **Exhibit M**.

6. *The Temporary Restraining Order Against the Highlands*

110. On May 30, 2018, Highland Capital and Highland Funding initiated this Adversary Proceeding and alleged, among other things, that the Trustee breached the PMAs by failing to effectuate an Optional Redemption pursuant to the First Optional Redemption Notices.

111. The next day, on May 31, 2018, upon the request of the Trustee, the Court held a status conference in the Bankruptcy Cases, and the Trustee explained that, almost immediately after his appointment, he began exploring plan options regarding a potential transaction that would transfer rights under the PMAs, the Sub-Advisory Agreement, the Shared Services Agreement, and the subordinated notes, with respect to CLO-3, CLO-4, CLO-5, and CLO-6, with the goal of maximizing value for all parties. The Trustee informed the Court that he was in the process of negotiating a transaction with a party that would potentially provide enough value to pay all parties, including potentially all of Acis's creditors in full.

112. On May 31, 2018, at the conclusion of the status conference, the Court, *sua sponte*, issued a temporary restraining order, which prevented all parties from taking any action in furtherance of the Optional Redemption for fourteen (14) days.

113. On June 6, 2018 the Court entered its *Temporary Restraining Order* (the "TRO"), whereby the Restrained Parties (as defined in the TRO) were enjoined until 12:01 a.m. on June 15, 2018, from:

a) proceeding with, effectuating, or otherwise taking any action in furtherance of the Optional Redemption, call, or other liquidation of the Acis CLOs; and

b) sending, mailing, or otherwise distributing any notice to the holders of the Acis CLOs in connection with the Optional Redemption, call, or other liquidation of the Acis CLOs.

114. On June 11, 2018, the Trustee filed his *Motion to Extend the Temporary Restraining Order* (the "Motion to Extend the TRO"), in which the Trustee sought to extend the TRO for an additional 14 days. *See* Docket No. 275.

115. Also on June 11, 2018, Highland Funding filed its *Memorandum of Law in Opposition to the Continuance of the Temporary Restraining Order* (the "Brief in Opposition to Extending the TRO"). *See* Case No. 18-3264, Docket. No. 271. This pleading did not mention that Highland Capital apparently violated the TRO by initiating approximately $23 million of sales of CLO assets pursuant to the Optional Redemption after the Court issued its *sua sponte* TRO on May 31.

7. *The Second Optional Redemption Notices*

116. On June 13, 2018, the day before the hearing on the Motion to Extend the TRO, Highland Funding advised the Trustee that Highland Funding would withdraw the First Optional Redemption Notices. Highland Funding's correspondence with the Trustee indicating its intent to withdraw the First Optional Redemption Notices is attached hereto as **Exhibit N** and incorporated herein for all purposes. Thereafter, the Trustee advised the Court that Highland Funding was withdrawing the First Optional Redemption Notices, and the Trustee therefore did not intend to go forward with the Motion to Extend the TRO on June 14.

117. On June 14, 2018, counsel for Highland Funding advised the Court that Highland Funding had withdrawn the First Optional Redemption Notices. Counsel for Highland Funding

further advised the Court that the First Optional Redemption Notices were withdrawn to bring "some sanity to this process":

> That was done obviously for multiple reasons. My client doesn't believe that this is the appropriate time to be effectuating such a redemption for its own economic reasons, setting aside the complications it's obviously caused for others in this room. But needless to say, that, too, is an effort to try to bring, as I believe the Court has requested, and others have, some sanity to this process.[29]

118. On June 15, 2018, at 12:01 a.m., the TRO expired.

119. Later on June 15, 2018, despite the fact that Highland Funding had just withdrawn the First Optional Redemption Notices, had advised the Court of the same, and the Trustee and the Court acted in reliance on same, (again, without requesting relief from the automatic stay) Highland Funding gave notice to the Trustee that it was again requesting an Optional Redemption pursuant to the Section 9.2 of each of the Indentures (the "Second Optional Redemption Notices," and together with the First Optional Redemption Notices, the "Optional Redemption Notices"). The Second Optional Redemption Notices are attached hereto as **Exhibit O** and are incorporated herein for all purposes.

120. By the Second Optional Redemption Notices, Highland Funding directed the Issuers:

> to effect an Optional Redemption of all Secured Notes and the Subordinated Notes in full on July 30, 2018 for the express purpose of placement of a portion of the portfolio of assets held by the Co-Issuers into a warehouse arrangement or a total return swap or other derivative arrangement with Highland Capital Management, L.P. acting as the Sub-Advisor pursuant to a Sub-Advisory Agreement.

121. On June 20, 2018, Highland Capital presented to the Trustee hundreds of millions of dollars of "proposed trades" pursuant to this second Optional Redemption. In its correspondence to the Trustee regarding such proposed trades, Highland Capital further stated:

[29] See Docket No. 298 at 7, ll. 16-22 (June 14, 2018 Hr'g Tr.).

In order to effectuate the Transaction and obtain best execution, Highland requests your consent by no later than 2pm tomorrow, Thursday June 21, 2018 (the "Deadline"). The Acis Accounts may incur losses as a result of your failure to respond by the Deadline.

Highland believes it has an independent fiduciary obligation to the CLOs. If you instruct Highland not to proceed to undertake the Optional Redemption, Highland reserves it rights to seek appropriate protection and redress at law or in equity.[30]

H. Preferential Transfers Made within One Year of the Petition Date

122. Acis's Statement of Financial Affairs [Case No. 18-30264, Docket No. 165] (the "SOFA")[31] and its general ledger disclose more than two dozen payments totaling $16,113,790.14 made to Highland Capital within one year of the Petition Date based on four categories (the "Prepetition Payments"):

(i) Contractual Payments: $5,011,836.72

(ii) Services: $7,672,145.25[32]

(iii) Unsecured Loan Repayments Including Interest: $3,311,497.65

(iv) Expense Reimbursement: $118,311.32

123. The Prepetition Payments were made for the benefit of Highland Capital for or on account of an antecedent debt owed by the Debtors before the Prepetition Payments were made. Acis was insolvent at all times when the Prepetition Payments were made. Based on Terry's pending—or already decided—claims, as well as Highland Capital's absolute operational and financial control of Acis, Highland Capital was aware that Acis was insolvent or reasonably should have been aware Acis was insolvent at all times when the Prepetition Payments were made. The Prepetition Payments were made within one year of the Petition Date. At the time the

[30] Emphasis in original email correspondence.

[31] The SOFA is sworn under penalty of perjury and signed by Issac Leventon, a Highland employee and associate general counsel.

[32] The Statement of Financial Affairs, filed in the bankruptcy cases by Acis while under Highland Capital control, fails to list an additional $1,868,203.44 in transfers to Highland Capital for "Services" that were made shortly before the Petition Date.

Prepetition Payments were made Highland Capital was an insider of the Debtors. The Prepetition Payments enabled Highland Capital to receive more than Highland Capital would have received if the cases were a case under chapter 7 of the Bankruptcy Code and if the Prepetition Payments had not been made. Highland Capital received the Prepetition Payments. *See Williams v. Mckesson Corp. (In re Quality Infusion Care, Inc.),* Nos. 10-36675, 13-3056, 2013 Bankr. LEXIS 5044 (Bankr. S.D. Tex. Nov. 25, 2013) (citing *Palmer Clay Prods. Co. v. Brown*, 297 U.S. 227, 229 (1936) and stating the 547(b)(5) is to be analyzed as of the Petition Date).

124. Further, to the extent that the Acis LP payables that served as the consideration for the Note Transfer and the 2017-7 Equity transfer were valid, these transfers would also constitute preferential payments to Highland Capital, Highland Management and Highland Holdings. The SOFA discloses that Highland Management is an "affiliate" of the Debtors and the Note Transfer is included on the list of "payments, distributions, withdrawals credited, or given to insiders" within one year before filing the Bankruptcy Cases. *See* SOFA p. 12.

VI. CAUSES OF ACTION[33]

Count 1: Declaratory Judgment that Expense Overpayments to Highland Capital Were Ultra Vires in Violation of the LPA
[Against Highland Capital]

125. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

126. Under Delaware law, *ultra vires* corporate acts are either void or voidable. *See Klaassen v. Allegro Dev. Corp.*, C.A. No. 8626-VCL, 2013 Del. Ch. LEXIS 247, at *48-50 (Oct. 11, 2013); *see also Stephen A. Solomon v. Armstrong*, 747 A.2d 1098, 1114 n.45 (1999) (explaining the difference between void and voidable acts). Delaware courts apply the doctrine

[33] All causes of action asserted herein are also asserted as counterclaims to the Highland Capital Claims pursuant to section 16.069 of the Texas Civil Practice & Remedies Code and other applicable law.

of *ultra vires* to partnerships by analogy. *See, e.g., In re Mesa Ltd. P'ship Preferred Unitholders Litig.*, Civil Action No. 12,243, 1991 Del. Ch. LEXIS 214, at *20 (Dec. 10, 1991).

127. Highland Capital invoiced Acis for, and received payments for, at least $7,021,924.00 in excess of 20% of Revenues, in violation of the LPA. Highland Capital, an Affiliate of Acis GP, accepted such funds in violation of Section 3.10(a) of the LPA.

128. Such Expense Overpayments, and any agreements supporting such Expense Overpayments, were economically irrational, not in the interest of Acis LP, and are therefore void; however, if not void, such actions are voidable because they were done without the consent or ratification of all members of the Founding Partner Group. The payments to Highland Capital of the Expense Overpayments in the amount of at least $7,021,924.00 and any agreements supporting such overpayments were unauthorized or *ultra vires* acts of the partnership in violation of the LPA, and are therefore void or voidable.

Count 2: Turnover of Property of the Estate under 11 U.S.C. § 542(a)
for Unauthorized Overpayments
[Against Highland Capital]

129. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

130. Under section 542(a) of the Bankruptcy Code, "an entity, other than a custodian, in possession, custody, or control, during the case, of property that the trustee may use, sell, or lease under section 363 . . . shall deliver to the trustee, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the estate." 11 U.S.C. § 542(a).

131. Under section 541(a) of the Bankruptcy Code, property of the estate includes "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a). Further, the "estate is comprised of [such] property, wherever located and by whomever held." *Id.*

132. Highland Capital wrongfully received Expense Overpayments of at least $7,021,924.00 in excess of 20% of Revenues in violation of the LPA.

133. The property, or value of such property, from the overpayment of funds wrongfully transferred to Highland Capital totaling at least $7,021,924.00, in Highland Capital's possession, custody, or control is property of the estate, and the value of such property is not of inconsequential value or benefit to the estate.

134. Pursuant to section 542(a) of the Bankruptcy Code, Highland Capital must deliver to the Trustee the property or value of such property, totaling at least $7,021,924.00, wrongfully transferred to Highland Capital.

135. Therefore, the Plaintiffs, now vested with all claims of the Trustee, seek turnover of the funds, totaling at least $7,021,924.00, transferred to Highland Capital, to the extent allowed pursuant to section 542 of the Bankruptcy Code.

Count 3: Money Had and Received for Overcharges and Unauthorized Overpayments [Against Highland Capital]

136. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

137. "An action for money had and received arises when the defendant obtains money which in equity and good conscience belongs to the plaintiff. This action . . . looks only to the justice of the case and inquires whether the defendant has received money which rightfully belongs to another." *Amoco Prod. Co. v. Smith*, 946 S.W.2d 162, 164 (Tex. App.—El Paso 1997, no pet.) (internal citations omitted).

138. Highland Capital invoiced Acis for, and received Expense Overpayments for, at least $7,021,924.00 in excess of 20% of Revenues in violation of the LPA. Highland Capital, an Affiliate of Acis GP, accepted such funds in violation of Section 3.10(a) of the LPA. Highland

Capital was therefore unjustly enriched in the amount of the Expense Overpayments of at least $7,021,924.00.

139. Highland Capital invoiced Acis and accepted such Expense Overpayments from Acis despite Highland Capital's knowledge of the LPA. This money rightfully belongs to Acis, and the overpayment creates a debt in favor of Acis. Therefore, the Plaintiffs are entitled to damages on behalf of Acis in the amount of at least $7,021,924.00. In addition, Highland Capital charged Acis more than a market rate under the Second Amended Sub-Advisory Agreement and the Third Amended Sub-Services Agreement and is liable to Acis in the amount of these overcharges.

Count 4: Conversion for Unauthorized Overpayments
[Against Highland Capital]

140. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

141. "Conversion is defined as the wrongful exercise of dominion and control over another's property in denial of or inconsistent with his rights." *Green Int'l v. Solis,* 951 S.W.2d 384, 391 (Tex. 1997).

142. Highland Capital wrongfully exercised dominion and control over at least $7,021,924.00 in excess of 20% of Revenues in violation of the LPA. Highland Capital, through the common control of Dondero, was aware that it was prohibited from receiving payment in excess of 20% of Revenues without the consent of all members of the Founding Partner Group. Highland Capital also had actual notice of the Arbitration Award through Dondero (who was represented at the arbitration proceeding) that Highland Capital was wrongfully in possession of such money. Despite Highland Capital's actual knowledge that the money does not rightfully belong to Highland Capital, Highland Capital continues to improperly retain the overpaid funds. Therefore, the Plaintiffs are entitled to damages in the amount of at least $7,021,924.00. In

addition, Highland Capital charged Acis more than a market rate under the Second Amended Sub-Advisory Agreement and the Third Amended Shared Services Agreement and is liable to Acis in the amount of these overcharges.

Count 5: Actual Fraudulent Transfer under 11 U.S.C. § 548(a)(1)(A) related to the Sub-Advisory Agreement [Against Highland Capital]

143. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

144. Section 548(a)(1)(A) of the Bankruptcy Code provides that a trustee may avoid any transfer of an interest of the debtor in property, or any obligation incurred by the debtor, if the debtor made such transfer or incurred such obligation with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made or such obligation was incurred, indebted.

145. The Plaintiffs, now vested with all claims of the Trustee, seek to avoid the modifications to the Sub-Advisory Agreement made in the Second Amended Sub-Advisory Agreement and Third Amended Sub-Advisory Agreement, any obligations incurred by Acis in connection with these modifications to the Sub-Advisory Agreement, and any payments made (including increase in payments made) by Acis to Highland Capital in connection with these modifications to the Sub-Advisory Agreement because such modifications and payments were made with an actual intent to hinder, delay, or defraud Terry, a creditor of Acis, demonstrated by, among other things, that:

(i) The modifications to the Sub-Advisory Agreement were made shortly after Terry's termination and just prior to litigation with Terry;

(ii) The modifications to the Sub-Advisory Agreement—entered into by Dondero on behalf of Acis and Highland Capital—and payments

thereunder were made with the actual intent to divert assets to and for the benefit of Highland Capital, in fraud upon Acis's creditors, namely Terry.

(iii) Acis was or became insolvent as a result of the modifications to the Sub-Advisory Agreement and payments thereunder;

(iv) The modifications to the Sub-Advisory Agreement and payments thereunder occurred both before and after substantial debts were incurred by Acis;

(v) The consideration received by Acis for the modifications to the Sub-Advisory Agreement and payments thereunder were not reasonably equivalent in value; and

(vi) the transfer/obligation incurred was to an insider.

146. Therefore, such modifications to the Sub-Advisory Agreements and payments to Highland Capital pursuant to such modifications should be avoided to the extent avoidable under section 548(a)(1)(A) of the Bankruptcy Code.

Count 6: Actual Fraudulent Transfer under Tex. Bus. & Com. Code § 24.005(a)(1) related to the Sub-Advisory Agreement
[Against Highland Capital]

147. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

148. Section 544 of the Bankruptcy Code provides the Trustee with the ability to avoid transfers or obligations that would be avoidable by certain prepetition creditors of Acis. Texas Business and Commerce Code section 24.005(a)(1) provides that a current or future creditor may avoid a transfer if the debtor made the transfer or incurred the obligation with an actual intent to hinder, delay or defraud any creditor of the debtor. Pursuant to section 544 of the Bankruptcy Code, the Trustee may seek to avoid transfers made by Acis, or obligations incurred by Acis, pursuant to Texas Business and Commerce Code sections 24.005(a)(1).

149. The Plaintiffs, now vested with all claims of the Trustee, seek to avoid the modifications to the Sub-Advisory Agreement made in the Second Amended Sub-Advisory Agreement and Third Amended Sub-Advisory Agreement, any obligations incurred by Acis in connection with these modifications to the Sub-Advisory Agreement, and any payments made (including increase in payments made) by Acis to Highland Capital in connection with these modifications to the Sub-Advisory Agreement because such modifications and payments were made with an actual intent to hinder, delay, or defraud Terry, a creditor of Acis, demonstrated by, among other things, that:

(i) The modifications to the Sub-Advisory Agreement were made shortly after Terry's termination and just prior to litigation with Terry;

(ii) The modifications to the Sub-Advisory Agreement—entered into by Dondero on behalf of Acis and Highland Capital—and payments thereunder were made with the actual intent to divert assets to and for the benefit of Highland Capital, in fraud upon Acis's creditors, namely Terry.

(iii) Acis was or became insolvent as a result of the modifications to the Sub-Advisory Agreement and payments thereunder;

(iv) The modifications to the Sub-Advisory Agreement and payments thereunder occurred both before and after substantial debts were incurred by Acis;

(v) The consideration received by Acis for the modifications to the Sub-Advisory Agreement and payments thereunder were not reasonably equivalent in value; and

(vi) The transfer/obligation incurred was to an insider.

150. Therefore, Acis's creditors have the right to avoid the Sub-Advisory Agreement and payments thereunder under section 24.005(a)(1) of the Texas Business and Commerce Code, and the Plaintiffs, now vested with all claims of the Trustee, can seek to enforce that right under section 544 of the Bankruptcy Code.

Count 7: Constructive Fraudulent Transfer under 11 U.S.C. § 548(a)(1)(B) related to the Sub-Advisory Agreement
[Against Highland Capital]

151. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

152. Section 548(a)(1)(B) of the Bankruptcy Code provides that a trustee may avoid any transfer of any interest of the debtor in property, or any obligation incurred by the debtor, if the debtor (i) received less than reasonably equivalent value in exchange for the transfer or obligation; and (ii) (A) was insolvent on the date the transfer was made or the obligation was incurred, or became insolvent as the result of the transfer or obligation; (B) was engaged in business or a transaction, or was about to engage in business or a transaction for which any remaining property was unreasonably small capital; or (C) intended to incur, or believed the debtor would incur, debts that would be beyond the debtors' ability to pay such debts.

153. As described above, among other things, Acis LP:

(i) received less than reasonably equivalent value in exchange for the modifications to the Sub-Advisory Agreement and payments made thereunder;

(ii) was or became insolvent as the result of the modifications to the Sub-Advisory Agreement and payments made thereunder; and

(iii) intended to incur, or believed Acis would incur, debts that would be beyond Acis's ability to pay such debts.

154. Therefore, the modifications to the Sub-Advisory Agreement made in the Second Amended Sub-Advisory Agreement and the Third Amended Sub-Advisory Agreement, any obligations incurred by Acis in connection with these modifications to the Sub-Advisory Agreement and any payments made (including increase in payments made) by Acis to Highland Capital in connection with these modifications to the Sub-Advisory Agreement are avoidable by the Plaintiffs, now vested with all claims of the Trustee, under section 548(a)(1)(B).

Count 8: Constructive Fraudulent Transfer under Tex. Bus. & Com. Code §§ 24.005(a)(2) and 24.006(a) related to the Sub-Advisory Agreement [Against Highland Capital]

155. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

156. Section 544 of the Bankruptcy Code provides the Trustee with the ability to avoid transfers or obligations that would be avoidable by certain prepetition creditors of Acis. Texas Business and Commerce Code section 24.005(a)(2) provides that a current or future creditor may avoid a transfer if the debtor made the transfer or incurred the obligation (i) without receiving reasonably equivalent value in exchange for the transfer or obligation; and (ii) (A) was engaged or about to engage in a business or transaction for which the remaining assets were unreasonably small in relation to the business or transaction, or (B) intended to incur, or believed or reasonably should have believed, that the debtor would incur debts beyond the debtor's ability to pay as they became due. Similarly, Texas Business and Commerce Code section 24.006(a) provides that a current creditor may avoid a transfer if the debtor made the transfer or incurred the obligation (i) without receiving reasonably equivalent value in exchange for the transfer or obligation; and (ii) the debtor was insolvent or rendered insolvent by the transfer or obligation sought to be avoided. Pursuant to section 544 of the Bankruptcy Code, the Plaintiffs, now vested with all claims of the Trustee, may seek to avoid transfers made by Acis, or obligations incurred by Acis, pursuant to Texas Business and Commerce Code sections 24.005(a)(2) and 24.006(a).

157. As described above, Acis LP did not receive reasonably equivalent value in exchange for the modifications to the Sub-Advisory Agreement and payments made thereunder to Highland Capital, and creditors at the time of such modifications and payments could have avoided such modifications and payments under section 24.005(a)(2) of the Texas Business and Commerce Code.

158. At the time of the modifications to the Sub-Advisory Agreement and payments made thereunder to Highland Capital, Acis intended to incur, or believed or reasonably should have believed that Acis would incur, debts beyond its ability to pay as they became due, and/or was engaged, or was about to engage in a business or transaction for which the remaining assets of Acis were unreasonably small in relation to such business or transaction.

159. Moreover, as described above, Acis was insolvent or became insolvent by the modifications to the Sub-Advisory Agreement and payments made thereunder.

160. Therefore, the modifications to the Sub-Advisory Agreement made in the Second Amended Sub-Advisory Agreement and the Third Amended Sub-Advisory Agreement, any obligations incurred by Acis in connection with these modifications to the Sub-Advisory Agreement and any payments made (including increase in payments made) by Acis to Highland Capital in connection with these modifications to the Sub-Advisory Agreement are avoidable under Texas Business and Commerce Code sections 24.005(a)(2) and 24.006(a).

Count 9: Actual Fraudulent Transfer under 11 U.S.C. § 548(a)(1)(A)
for the ALF PMA Transfer
[Against Highland Capital, Highland Funding, and Highland Advisor]

161. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

162. Section 548(a)(1)(A) of the Bankruptcy Code provides that a trustee may avoid any transfer of an interest of the debtor in property, or any obligation incurred by the debtor, if the debtor made such transfer or incurred such obligation with actual intent to hinder, delay, or

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defraud any entity to which the debtor was or became, on or after the date that such transfer was made or such obligation was incurred, indebted.

163. The Plaintiffs, now vested with all claims of the Trustee, seek to avoid the ALF PMA Transfer because such transfer was made with an actual intent to hinder, delay, or defraud Terry, a creditor of Acis, demonstrated by, among other things, that:

(i) The ALF PMA Transfer was made just seven days after Terry's Arbitration Award against Acis;

(ii) The ALF PMA Transfer was made with the actual intent to divert Acis LP's contractual rights under the ALF PMA to and for the benefit of Highland Advisor, in fraud upon Acis LP's creditors, namely Terry.

(iii) Acis LP was insolvent at the time of the ALF PMA Transfer or became insolvent as a result of the ALF PMA Transfer;

(iv) The ALF PMA Transfer occurred both before and after substantial debts were incurred by Acis LP;

(v) Acis LP received less than a reasonably equivalent value in exchange for the ALF PMA Transfer;

(vi) The transfer was made to an insider (Highland Advisor) and for the benefit of insiders (Highland Funding and Highland Capital); and

(vii) Highland Capital (as sub-advisor to Highland Advisor) retained effective possession and control of the property transferred after the transfer.

164. Therefore, the ALF PMA Transfer should be avoided to the extent avoidable under section 548(a)(1)(A) of the Bankruptcy Code.

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Count 10: Actual Fraudulent Transfer under Tex. Bus. & Com. Code § 24.005(a)(1) for the ALF PMA Transfer [Against Highland Capital, Highland Funding, and Highland Advisor]

165. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

166. Section 544 of the Bankruptcy Code provides the Trustee with the ability to avoid transfers or obligations that would be avoidable by certain prepetition creditors of Acis. Texas Business and Commerce Code section 24.005(a)(1) provides that a current or future creditor may avoid a transfer if the debtor made the transfer or incurred the obligation with an actual intent to hinder, delay or defraud any creditor of the debtor. Pursuant to section 544 of the Bankruptcy Code, the Trustee may seek to avoid transfers made by Acis, or obligations incurred by Acis, pursuant to Texas Business and Commerce Code sections 24.005(a)(1).

167. The Plaintiffs, now vested with all claims of the Trustee, seek to avoid the ALF PMA Transfer because such transfer was made with an actual intent to hinder, delay, or defraud Terry, a creditor of Acis, demonstrated by, among other things, that:

(i) The ALF PMA Transfer was made just seven days after Terry's Arbitration Award against Acis;

(ii) The ALF PMA Transfer was made with the actual intent to divert Acis LP's contractual rights under the ALF PMA to and for the benefit of Highland Advisor, in fraud upon Acis LP's creditors, namely Terry.

(iii) Acis LP was insolvent at the time of the ALF PMA Transfer or became insolvent as a result of the ALF PMA Transfer;

(iv) The ALF PMA Transfer occurred both before and after substantial debts were incurred by Acis LP; and

(v) Acis LP received less than a reasonably equivalent value in exchange for the ALF PMA Transfer;

(vi) The transfer was made to an insider (Highland Advisor) and for the benefit of insiders (Highland Funding and Highland Capital); and

(vii) Highland Capital (as sub-advisor to Highland Advisor) retained effective possession and control of the property transferred after the transfer.

168. Therefore, Acis's creditors have the right to avoid the ALF PMA Transfer under section 24.005(a)(1) of the Texas Business and Commerce Code, and the Plaintiffs can seek to enforce that right under section 544 of the Bankruptcy Code.

Count 11: Constructive Fraudulent Transfers under 11 U.S.C. § 548(a)(1)(B) for the ALF PMA Transfer [Against Highland Capital, Highland Funding, and Highland Advisor]

169. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

170. Section 548(a)(1)(B) of the Bankruptcy Code provides that a trustee may avoid any transfer of any interest of the debtor in property, or any obligation incurred by the debtor, if the debtor (i) received less than reasonably equivalent value in exchange for the transfer or obligation; and (ii) (A) was insolvent on the date the transfer was made or the obligation was incurred, or became insolvent as the result of the transfer or obligation: (B) was engaged in business or a transaction, or was about to engage in business or a transaction for which any remaining property was unreasonably small capital; or (C) intended to incur, or believed the debtor would incur, debts that would be beyond the debtors' ability to pay such debts.

171. As described above, among other things, Acis LP:

(i) received less than reasonably equivalent value in exchange for the ALF PMA Transfer;

(ii) was insolvent on the date the ALF PMA Transfer was made or became insolvent as the result of the ALF PMA Transfer;

(iii) was engaged in business or a transaction, or was about to engage in business or a transaction for which any remaining property was unreasonably small capital; and

(iii) intended to incur, or believed Acis would incur, debts that would be beyond Acis's ability to pay such debts.

172. Therefore, ALF PMA Transfer is avoidable under section 548(a)(1)(B) of the Bankruptcy Code.

Count 12: Constructive Fraudulent Transfer under Tex. Bus. & Com. Code §§ 24.005(a)(2) and 24.006(a) for the ALF PMA Transfer
[Against Highland Capital, Highland Funding, and Highland Advisor]

173. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

174. Section 544 of the Bankruptcy Code provides the Trustee with the ability to avoid transfers or obligations that would be avoidable by certain prepetition creditors of Acis. Texas Business and Commerce Code section 24.005(a)(2) provides that a current or future creditor may avoid a transfer if the debtor made the transfer or incurred the obligation (i) without receiving reasonably equivalent value in exchange for the transfer or obligation; and (ii) (A) was engaged or about to engage in a business or transaction for which the remaining assets were unreasonably small in relation to the business or transaction, or (B) intended to incur, or believed or reasonably should have believed, that the debtor would incur debts beyond the debtor's ability to pay as they became due. Similarly, Texas Business and Commerce Code section 24.006(a) provides that a current creditor may avoid a transfer if the debtor made the transfer or incurred the obligation (i) without receiving reasonably equivalent value in exchange for the transfer or obligation; and (ii) the debtor was insolvent or rendered insolvent by the transfer or obligation sought to be avoided. Pursuant to section 544 of the Bankruptcy Code, the Plaintiffs, now vested with all claims of the

Trustee, may seek to avoid transfers made by Acis, or obligations incurred by Acis, pursuant to Texas Business and Commerce Code sections 24.005(a)(2) and 24.006(a).

175. As described above, Acis LP did not receive reasonably equivalent value in exchange for the ALF PMA Transfer, and creditors at the time of the ALF PMA Transfer could have avoided such transfer under section 24.005(a)(2) of the Texas Business and Commerce Code.

176. At the time of the ALF PMA Transfer, Acis intended to incur, or believed or reasonably should have believed that Acis would incur, debts beyond its ability to pay as they became due, and/or was engaged, or was about to engage in a business or transaction for which the remaining assets of Acis were unreasonably small in relation to such business or transaction.

177. Moreover, as described above, Acis was insolvent or was rendered insolvent by the ALF PMA Transfer.

178. The ALF PMA Transfer is therefore avoidable under Texas Business and Commerce Code sections 24.005(a)(2) and 24.006(a).

Count 13: Actual Fraudulent Transfer under 11 U.S.C. § 548(a)(1)(A)
for the ALF Share Transfer
[Against Highland Capital and Highland Funding]

179. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

180. Section 548(a)(1)(A) of the Bankruptcy Code provides that a trustee may avoid any transfer of an interest of the debtor in property, or any obligation incurred by the debtor, if the debtor made such transfer or incurred such obligation with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made or such obligation was incurred, indebted.

181. The Plaintiffs, now vested with all claims of the Trustee, seek to avoid the ALF Share Transfer because such transfer was made with an actual intent to hinder, delay, or defraud Terry, a creditor of Acis, demonstrated by, among other things, that:

(i) The ALF Share Transfer was made just four days after Terry's Arbitration Award against Acis;

(ii) The ALF Share Transfer was made with the actual intent to divert Acis LP's interest and control in ALF to and for the benefit of Highland Funding, in fraud upon Acis LP's creditors, namely Terry.

(iii) Acis LP was insolvent at the time of the ALF Share Transfer or became insolvent as a result of the ALF Share Transfer;

(iv) The ALF Share Transfer occurred both before and after substantial debts were incurred by Acis LP; and

(v) Acis LP received less than a reasonably equivalent value in exchange for the ALF Share Transfer;

(vi) The transfer was made to an insider (Highland Funding) and for the benefit of an insider (Highland Capital); and

(vii) Highland Capital (as sub-advisor to Highland Advisor) retained effective possession and control of the property transferred after the transfer.

182. Therefore, the ALF Share Transfer should be avoided to the extent avoidable under section 548(a)(1)(A) of the Bankruptcy Code.

Count 14: Actual Fraudulent Transfer under Tex. Bus. & Com. Code § 24.005(a)(1) for the ALF Share Transfer [Against Highland Capital and Highland Funding]

183. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

184. Section 544 of the Bankruptcy Code provides the Trustee with the ability to avoid transfers or obligations that would be avoidable by certain prepetition creditors of Acis. Texas Business and Commerce Code section 24.005(a)(1) provides that a current or future creditor may avoid a transfer if the debtor made the transfer or incurred the obligation with an actual intent to hinder, delay or defraud any creditor of the debtor. Pursuant to section 544 of the Bankruptcy Code, the Trustee may seek to avoid transfers made by Acis, or obligations incurred by Acis, pursuant to Texas Business and Commerce Code sections 24.005(a)(1).

185. The Plaintiffs, now vested with all claims of the Trustee, seek to avoid the ALF Share Transfer because such transfer was made with an actual intent to hinder, delay, or defraud Terry, a creditor of Acis, demonstrated by, among other things, that:

(i) The ALF Share Transfer was made just four days after Terry's Arbitration Award against Acis;

(ii) The ALF Share Transfer was made with the actual intent to divert Acis LP's interest and control in ALF to and for the benefit of Highland Funding, in fraud upon Acis LP's creditors, namely Terry.

(iii) Acis LP was insolvent at the time of the ALF Share Transfer or became insolvent as a result of the ALF Share Transfer;

(iv) The ALF Share Transfer occurred both before and after substantial debts were incurred by Acis LP; and

(v) Acis LP received less than a reasonably equivalent value in exchange for the ALF Share Transfer;

(vi) The transfer was made to an insider (Highland Funding) and for the benefit of an insider (Highland Capital); and

(vii) Highland Capital (as sub-advisor to Highland Advisor) retained effective possession and control of the property transferred after the transfer.

186. Therefore, Acis's creditors have the right to avoid the ALF Share Transfer under section 24.005(a)(1) of the Texas Business and Commerce Code, and the Plaintiffs can seek to enforce that right under section 544 of the Bankruptcy Code.

Count 15: Constructive Fraudulent Transfers under 11 U.S.C. § 548(a)(1)(B) for the ALF Share Transfer [Against Highland Capital and Highland Funding]

187. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

188. Section 548(a)(1)(B) of the Bankruptcy Code provides that a trustee may avoid any transfer of any interest of the debtor in property, or any obligation incurred by the debtor, if the debtor (i) received less than reasonably equivalent value in exchange for the transfer or obligation; and (ii) (A) was insolvent on the date the transfer was made or the obligation was incurred, or became insolvent as the result of the transfer or obligation: (B) was engaged in business or a transaction, or was about to engage in business or a transaction for which any remaining property was unreasonably small capital; or (C) intended to incur, or believed the debtor would incur, debts that would be beyond the debtors' ability to pay such debts.

189. As described above, among other things, Acis LP:

(i) received less than reasonably equivalent value in exchange for the ALF Share Transfer;

(ii) was insolvent on the date the ALF Share Transfer was made or became insolvent as the result of the ALF Share Transfer;

(iii) was engaged in business or a transaction, or was about to engage in business or a transaction for which any remaining property was unreasonably small capital; and

(iii) intended to incur, or believed Acis would incur, debts that would be beyond Acis's ability to pay such debts.

190. Therefore, ALF Share Transfer is avoidable by the Plaintiffs, now vested with all claims of the Trustee, under section 548(a)(1)(B) of the Bankruptcy Code.

Count 16: Constructive Fraudulent Transfer under Tex. Bus. & Com. Code §§ 24.005(a)(2) and 24.006(a) for the ALF Share Transfer
[Against Highland Capital and Highland Funding]

191. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

192. Section 544 of the Bankruptcy Code provides the Trustee with the ability to avoid transfers or obligations that would be avoidable by certain prepetition creditors of Acis. Texas Business and Commerce Code section 24.005(a)(2) provides that a current or future creditor may avoid a transfer if the debtor made the transfer or incurred the obligation (i) without receiving reasonably equivalent value in exchange for the transfer or obligation; and (ii) (A) was engaged or about to engage in a business or transaction for which the remaining assets were unreasonably small in relation to the business or transaction, or (B) intended to incur, or believed or reasonably should have believed, that the debtor would incur debts beyond the debtor's ability to pay as they became due. Similarly, Texas Business and Commerce Code section 24.006(a) provides that a current creditor may avoid a transfer if the debtor made the transfer or incurred the obligation (i) without receiving reasonably equivalent value in exchange for the transfer or obligation; and (ii) the debtor was insolvent or rendered insolvent by the transfer or obligation sought to be avoided. Pursuant to section 544 of the Bankruptcy Code, the Plaintiffs, now vested with all claims of the Trustee, may seek to avoid transfers made by Acis, or obligations incurred by Acis, pursuant to Texas Business and Commerce Code sections 24.005(a)(2) and 24.006(a).

193. As described above, Acis LP did not receive reasonably equivalent value in exchange for the ALF Share Transfer, and creditors at the time of the ALF Share Transfer could

have avoided such transfer under section 24.005(a)(2) of the Texas Business and Commerce Code.

194. At the time of the ALF Share Transfer, Acis intended to incur, or believed or reasonably should have believed that Acis would incur, debts beyond its ability to pay as they became due, and/or was engaged, or was about to engage in a business or transaction for which the remaining assets of Acis were unreasonably small in relation to such business or transaction.

195. Moreover, as described above, Acis was insolvent or rendered insolvent by the ALF Share Transfer.

196. The ALF Share Transfer is therefore avoidable under Texas Business and Commerce Code sections 24.005(a)(2) and 24.006(a).

Count 17: Actual Fraudulent Transfer under 11 U.S.C. § 548(a)(1)(A)
for the Note Transfer
[Against Highland Capital and Highland Management]

197. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

198. Section 548(a)(1)(A) of the Bankruptcy Code provides that a trustee may avoid any transfer of an interest of the debtor in property, or any obligation incurred by the debtor, if the debtor made such transfer or incurred such obligation with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made or such obligation was incurred, indebted.

199. The Plaintiffs, now vested with all claims of the Trustee, seek to avoid the Note Transfer because such transfer was made with an actual intent to hinder, delay, or defraud Terry, a creditor of Acis, demonstrated by, among other things, that:

(i) The Note Transfer was made shortly after Terry's Arbitration Award against Acis;

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(ii) The Note Transfer was made with the actual intent to divert the $9.5 million promissory note by Highland Capital in favor of Acis LP to and for the benefit of Highland Management, in fraud upon Acis LP's creditors, namely Terry.

(iii) Acis LP was insolvent at the time of the Note Transfer or became insolvent as a result of the Note Transfer;

(iv) The Note Transfer occurred both before and after substantial debts were incurred by Acis LP; and

(v) Acis LP received less than a reasonably equivalent value in exchange for the Note Transfer;

(vi) The transfer was made to an insider (Highland Management) and for the benefit of an insider (Highland Capital); and

(vii) Highland Capital retained effective possession and control of the property transferred after the transfer.

200. Therefore, the Note Transfer should be avoided to the extent avoidable under section 548(a)(1)(A) of the Bankruptcy Code.

Count 18: Actual Fraudulent Transfer under Tex. Bus. & Com. Code § 24.005(a)(1) for the Note Transfer [Against Highland Capital and Highland Management]

201. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

202. Section 544 of the Bankruptcy Code provides the Trustee with the ability to avoid transfers or obligations that would be avoidable by certain prepetition creditors of Acis. Texas Business and Commerce Code section 24.005(a)(1) provides that a current or future creditor may avoid a transfer if the debtor made the transfer or incurred the obligation with an actual intent to hinder, delay or defraud any creditor of the debtor. Pursuant to section 544 of the Bankruptcy Code

Code, the Trustee may seek to avoid transfers made by Acis, or obligations incurred by Acis, pursuant to Texas Business and Commerce Code sections 24.005(a)(1).

203. The Plaintiffs, now vested with all claims of the Trustee, seek to avoid the Note Transfer because such transfer was made with an actual intent to hinder, delay, or defraud Terry, a creditor of Acis, demonstrated by, among other things, that:

(i) The Note Transfer was made shortly after Terry's Arbitration Award against Acis;

(ii) The Note Transfer was made with the actual intent to divert the $9.5 million promissory note by Highland Capital in favor of Acis LP to and for the benefit of Highland Management, in fraud upon Acis LP's creditors, namely Terry.

(iii) Acis LP was insolvent at the time of the Note Transfer or became insolvent as a result of the Note Transfer;

(iv) The Note Transfer occurred both before and after substantial debts were incurred by Acis LP; and

(v) Acis LP received less than a reasonably equivalent value in exchange for the Note Transfer;

(vi) The transfer was made to an insider (Highland Management) and for the benefit of an insider (Highland Capital); and

(vii) Highland Capital retained effective possession and control of the property transferred after the transfer.

204. Therefore, Acis's creditors have the right to avoid the ALF Share Transfer under section 24.005(a)(1) of the Texas Business and Commerce Code, and the Plaintiffs can seek to enforce that right under section 544 of the Bankruptcy Code..

Count 19: Constructive Fraudulent Transfers under 11 U.S.C. § 548(a)(1)(B)
for the Note Transfer
[Against Highland Capital and Highland Management]

205. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

206. Section 548(a)(1)(B) of the Bankruptcy Code provides that a trustee may avoid any transfer of any interest of the debtor in property, or any obligation incurred by the debtor, if the debtor (i) received less than reasonably equivalent value in exchange for the transfer or obligation; and (ii) (A) was insolvent on the date the transfer was made or the obligation was incurred, or became insolvent as the result of the transfer or obligation: (B) was engaged in business or a transaction, or was about to engage in business or a transaction for which any remaining property was unreasonably small capital; or (C) intended to incur, or believed the debtor would incur, debts that would be beyond the debtors' ability to pay such debts.

207. As described above, among other things, Acis LP:

(i) received less than reasonably equivalent value in exchange for the Note Transfer;

(ii) was insolvent on the date the Note Transfer was made or became insolvent as the result of the Note Transfer;

(iii) was engaged in business or a transaction, or was about to engage in business or a transaction for which any remaining property was unreasonably small capital; and

(iii) intended to incur, or believed Acis would incur, debts that would be beyond Acis's ability to pay such debts.

208. Therefore, Note Transfer is avoidable by the Plaintiffs, now vested with all claims of the Trustee, under section 548(a)(1)(B) of the Bankruptcy Code.

Count 20: Constructive Fraudulent Transfer under Tex. Bus. & Com. Code §§ 24.005(a)(2) and 24.006(a) for the Note Transfer
[Against Highland Capital and Highland Management]

209. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

210. Section 544 of the Bankruptcy Code provides the Trustee with the ability to avoid transfers or obligations that would be avoidable by certain prepetition creditors of Acis. Texas Business and Commerce Code section 24.005(a)(2) provides that a current or future creditor may avoid a transfer if the debtor made the transfer or incurred the obligation (i) without receiving reasonably equivalent value in exchange for the transfer or obligation; and (ii) (A) was engaged or about to engage in a business or transaction for which the remaining assets were unreasonably small in relation to the business or transaction, or (B) intended to incur, or believed or reasonably should have believed, that the debtor would incur debts beyond the debtor's ability to pay as they became due. Similarly, Texas Business and Commerce Code section 24.006(a) provides that a current creditor may avoid a transfer if the debtor made the transfer or incurred the obligation (i) without receiving reasonably equivalent value in exchange for the transfer or obligation; and (ii) the debtor was insolvent or rendered insolvent by the transfer or obligation sought to be avoided. Pursuant to section 544 of the Bankruptcy Code, the Plaintiffs, now vested with all claims of the Trustee, may seek to avoid transfers made by Acis, or obligations incurred by Acis, pursuant to Texas Business and Commerce Code sections 24.005(a)(2) and 24.006(a).

211. As described above, Acis LP did not receive reasonably equivalent value in exchange for the Note Transfer, and creditors at the time of the Note Transfer could have avoided such transfer under section 24.005(a)(2) of the Texas Business and Commerce Code.

212. At the time of the Note Transfer, Acis intended to incur, or believed or reasonably should have believed that Acis would incur, debts beyond its ability to pay as they

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became due, and/or was engaged, or was about to engage in a business or transaction for which the remaining assets of Acis were unreasonably small in relation to such business or transaction.

213. Moreover, as described above, Acis was insolvent or rendered insolvent by the Note Transfer.

214. The Note Transfer is therefore avoidable under Texas Business and Commerce Code sections 24.005(a)(2) and 24.006(a).

Count 21: Actual Fraudulent Transfer under 11 U.S.C. § 548(a)(1)(A) for the 2017-7 Equity and 2017-7 Agreement Transfers [Against Highland Capital and Highland Holdings]

215. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

216. Section 548(a)(1)(A) of the Bankruptcy Code provides that a trustee may avoid any transfer of an interest of the debtor in property, or any obligation incurred by the debtor, if the debtor made such transfer or incurred such obligation with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made or such obligation was incurred, indebted.

217. The Plaintiffs, now vested with all claims of the Trustee, seek to avoid the transfers of the 2017-7 Agreements and the 2017-7 Equity because such transfers were made with an actual intent to hinder, delay, or defraud Terry, a creditor of Acis, demonstrated by, among other things, that:

(i) The transfers of the 2017-7 Agreements and the 2017-7 Equity were made shortly after Terry's Arbitration Award against Acis and immediately after Terry's judgment against Acis;

(ii) The transfers of the 2017-7 Agreements and the 2017-7 Equity were made with the actual intent to divert the 2017-7 Agreements and the 2017-7

Equity from Acis LP to Highland Holdings, in fraud upon Acis LP's creditors, namely Terry;

(iii) Acis LP was insolvent at the time of the transfers of the 2017-7 Agreements and the 2017-7 Equity or became insolvent as a result of the transfers;

(iv) The transfers of the 2017-7 Agreements and the 2017-7 Equity occurred shortly after substantial debts were incurred by Acis LP; and

(v) Acis LP received less than a reasonably equivalent value in exchange for the transfers of the 2017-7 Agreements and the 2017-7 Equity;

(vi) The transfers were made to an insider (Highland Holdings) and for the benefit of an insider (Highland Capital); and

(vii) Highland Capital retained effective possession and control of the property transferred after the transfer.

218. Therefore, the transfers of the 2017-7 Agreements and the 2017-7 Equity should be avoided under section 548(a)(1)(A) of the Bankruptcy Code.

Count 22: Actual Fraudulent Transfer under Tex. Bus. & Com. Code § 24.005(a)(1) for the 2017-7 Equity and 2017-7 Agreement Transfers [Against Highland Capital and Highland Holdings]

219. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

220. Section 544 of the Bankruptcy Code provides the Trustee with the ability to avoid transfers or obligations that would be avoidable by certain prepetition creditors of Acis. Texas Business and Commerce Code section 24.005(a)(1) provides that a current or future creditor may avoid a transfer if the debtor made the transfer or incurred the obligation with an actual intent to hinder, delay or defraud any creditor of the debtor. Pursuant to section 544 of the Bankruptcy

Code, the Trustee may seek to avoid transfers made by Acis, or obligations incurred by Acis, pursuant to Texas Business and Commerce Code sections 24.005(a)(1).

221. The Plaintiffs, now vested with all claims of the Trustee, seek to avoid the transfers of the 2017-7 Agreements and the 2017-7 Equity because such transfers were made with an actual intent to hinder, delay, or defraud Terry, a creditor of Acis, demonstrated by, among other things, that:

(i) The transfers of the 2017-7 Agreements and the 2017-7 Equity were made shortly after Terry's Arbitration Award against Acis and immediately after Terry's judgment against Acis;

(ii) The transfers of the 2017-7 Agreements and the 2017-7 Equity were made with the actual intent to divert the 2017-7 Agreements and the 2017-7 Equity from Acis LP to Highland Holdings, in fraud upon Acis LP's creditors, namely Terry;

(iii) Acis LP was insolvent at the time of the transfers of the 2017-7 Agreements and the 2017-7 Equity or became insolvent as a result of the transfers;

(iv) The transfers of the 2017-7 Agreements and the 2017-7 Equity occurred shortly after substantial debts were incurred by Acis LP; and

(v) Acis LP received less than a reasonably equivalent value in exchange for the transfers of the 2017-7 Agreements and the 2017-7 Equity;

(vi) The transfers were made to an insider (Highland Management) and for the benefit of an insider (Highland Capital); and

(vii) Highland Capital retained effective possession and control of the property transferred after the transfers.

222. Therefore, Acis's creditors have the right to avoid the transfers of the 2017-7 Agreements and the 2017-7 Equity under section 24.005(a)(1) of the Texas Business and Commerce Code, and the Plaintiffs can seek to enforce that right under section 544 of the Bankruptcy Code.

Count 23: Constructive Fraudulent Transfers under 11 U.S.C. § 548(a)(1)(B) for the 2017-7 Equity and 2017-7 Agreement Transfers [Against Highland Capital and Highland Holdings]

223. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

224. Section 548(a)(1)(B) of the Bankruptcy Code provides that a trustee may avoid any transfer of any interest of the debtor in property, or any obligation incurred by the debtor, if the debtor (i) received less than reasonably equivalent value in exchange for the transfer or obligation; and (ii) (A) was insolvent on the date the transfer was made or the obligation was incurred, or became insolvent as the result of the transfer or obligation: (B) was engaged in business or a transaction, or was about to engage in business or a transaction for which any remaining property was unreasonably small capital; or (C) intended to incur, or believed the debtor would incur, debts that would be beyond the debtors' ability to pay such debts.

225. As described above, among other things, Acis LP:

(i) received less than reasonably equivalent value in exchange for the transfers of the 2017-7 Agreements and the 2017-7 Equity;

(ii) was insolvent on the date the transfers of the 2017-7 Agreements and the 2017-7 Equity were made or became insolvent as the result of the transfers;

(iii) was engaged in business or a transaction, or was about to engage in business or a transaction for which any remaining property was unreasonably small capital; and

(iii) intended to incur, or believed Acis would incur, debts that would be beyond Acis's ability to pay such debts.

226. Therefore, the transfers of the 2017-7 Agreements and the 2017-7 Equity are avoidable by the Plaintiffs, now vested with all claims of the Trustee, under section 548(a)(1)(B) of the Bankruptcy Code.

Count 24: Constructive Fraudulent Transfer under Tex. Bus. & Com. Code §§ 24.005(a)(2) and 24.006(a) for the 2017-7 Equity and 2017-7 Agreement Transfers [Against Highland Capital and Highland Holdings]

227. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

228. Section 544 of the Bankruptcy Code provides the Trustee with the ability to avoid transfers or obligations that would be avoidable by certain prepetition creditors of Acis. Texas Business and Commerce Code section 24.005(a)(2) provides that a current or future creditor may avoid a transfer if the debtor made the transfer or incurred the obligation (i) without receiving reasonably equivalent value in exchange for the transfer or obligation; and (ii) (A) was engaged or about to engage in a business or transaction for which the remaining assets were unreasonably small in relation to the business or transaction, or (B) intended to incur, or believed or reasonably should have believed, that the debtor would incur debts beyond the debtor's ability to pay as they became due. Similarly, Texas Business and Commerce Code section 24.006(a) provides that a current creditor may avoid a transfer if the debtor made the transfer or incurred the obligation (i) without receiving reasonably equivalent value in exchange for the transfer or obligation; and (ii) the debtor was insolvent or rendered insolvent by the transfer or obligation sought to be avoided. Pursuant to section 544 of the Bankruptcy Code, the Plaintiffs, now vested with all claims of the Trustee, may seek to avoid transfers made by Acis, or obligations incurred by Acis, pursuant to Texas Business and Commerce Code sections 24.005(a)(2) and 24.006(a).

229. As described above, Acis LP did not receive reasonably equivalent value in exchange for the transfers of the 2017-7 Agreements and the 2017-7 Equity, and creditors at the time of the transfers of the 2017-7 Agreements and the 2017-7 Equity could have avoided such transfer under section 24.005(a)(2) of the Texas Business and Commerce Code.

230. At the time of the transfers of the 2017-7 Agreements and the 2017-7 Equity, Acis intended to incur, or believed or reasonably should have believed that Acis would incur, debts beyond its ability to pay as they became due, and/or was engaged, or was about to engage in a business or transaction for which the remaining assets of Acis were unreasonably small in relation to such business or transaction.

231. Moreover, as described above, Acis was insolvent or rendered insolvent by the transfers of the 2017-7 Agreements and the 2017-7 Equity.

232. The transfers of the 2017-7 Agreements and the 2017-7 Equity are therefore avoidable under Texas Business and Commerce Code sections 24.005(a)(2) and 24.006(a).

Count 25: Preferential Transfers to Highland Capital, Highland Holdings and Highland Management under 11 U.S.C. § 547(b) and Texas Business and Commerce Code § 24.006(b) [Against Highland Capital, Highland Holdings, and Highland Management]

233. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

234. Section 547(b) of the Bankruptcy Code provides that a trustee may avoid any transfer of any interest of the debtor in property (i) to or for the benefit of a creditor; (ii) for or on account of an antecedent debt; (iii) made while the debtor was insolvent; (iv) made within one year to an insider; and (v) that enables such creditor to receive more than such creditor would receive in a hypothetical chapter 7 liquidation.

235. Likewise, section 544 of the Bankruptcy Code provides the Trustee with the ability to avoid transfers that would be avoidable by certain prepetition creditors of Acis. Texas Business and Commerce Code section 24.006(b) provides that a current creditor may avoid a

transfer if the debtor made the transfer to an insider for an antecedent debt, the debtor was insolvent, and the insider had reasonable cause to believe that the debtor was insolvent. Pursuant to section 544 of the Bankruptcy Code, the Plaintiffs, now vested with all claims of the Trustee, may seek to avoid transfers made by Acis pursuant to Texas Business and Commerce Code section 24.006(b).

236. Within one year of the Petition Date, Highland Capital received the Prepetition Payments in the amount $16,113,790.14 from Acis on account of purported debt claims owed by Acis. To the extent that the Prepetition Payments satisfied legitimate debt claims not avoided by any of the causes of action asserted herein, these transfers are avoidable under section 547(b) of the Bankruptcy Code and Texas Business and Commerce Code sections 24.006(b).

237. Similarly, the 2017-7 Equity transfer and the Note Transfer are purportedly in satisfaction of payables owed by Acis LP to Highland Capital (later conveyed to Highland Holdings and Highland Management). To the extent that these transfers satisfied legitimate debt claims not avoided by any of the causes of action asserted herein, these transfers are avoidable under section 547(b) of the Bankruptcy Code and Texas Business and Commerce Code sections 24.006(b).

Count 26: Liability for Avoided Transfers under 11 U.S.C. § 550
[Against All Defendants]

238. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

239. Section 550 of the Bankruptcy Code provides that, if a transfer is avoided under section 544, 547 or 548, the trustee may recover the property transferred or the value of the property transferred from (i) the initial transferee of such transfer or (ii) the entity for whose benefit such transfer was made.

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240. Highland Capital is an initial transferee of all transfers sought to be avoided in Counts 5 – 8 and 25 above. The Plaintiffs, now vested with all claims of the Trustee, may recover all avoided transfers from Highland Capital pursuant to section 550, specifically including any transfers made in connection with any obligations avoided through Counts 5 – 8 above.

241. Highland Advisor is an initial transferee of all transfers sought to be avoided in Counts 9 – 12 above, and Highland Capital are entities for whose benefit such transfers were made. The Plaintiffs, now vested with all claims of the Trustee, may recover all avoided transfers from Highland Advisor, Highland Funding, and Highland Capital pursuant to section 550.

242. Highland Funding is an initial transferee of all transfers sought to be avoided in Counts 13 – 16 above, and Highland Capital is an entity for whose benefit such transfers were made. The Plaintiffs, now vested with all claims of the Trustee, may recover all avoided transfers from Highland Funding and Highland Capital pursuant to section 550.

243. Highland Management is an initial transferee of all transfers sought to be avoided in Counts 17 – 20 and 25 above, and Highland Capital is an entity for whose benefit such transfers were made. The Plaintiffs, now vested with all claims of the Trustee, may recover all avoided transfers from Highland Management and Highland Capital pursuant to section 550.

244. Highland Holdings is an initial transferee of all transfers sought to be avoided in Counts 21 – 25 above, and Highland Capital is an entity for whose benefit such transfers were made. The Plaintiffs, now vested with all claims of the Trustee, may recover all avoided transfers from Highland Holdings and Highland Capital pursuant to section 550.

Count 27: Civil Conspiracy to Commit Fraud, Including Fraudulent Transfers [Against Highland Capital, Highland Advisor, Highland Management, and Highland Holdings]

245. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

246. Highland Capital, Highland Advisor, Highland Management, Highland Holdings, Dondero, and Waterhouse (collectively, the "Highland Enterprise")[34] sought to engage in a series of fraudulent transfers and other fraudulent schemes, including the ALF PMA Transfer, the ALF Share Transfer, the Note Transfer, the 2017-7 Equity transfer, the 2017-7 Agreements transfer and the thwarted Universal/BVK Agreement transfer in order to denude Acis's assets and take over Acis LP's valuable business.

247. The Highland Enterprise, which is comprised of two or more business entities and individuals, had a meeting of the minds on the object or course of action related to the foregoing fraudulent transfers and schemes, including the ALF PMA Transfer, the ALF Share Transfer, the Note Transfer the 2017-7 Equity transfer, the 2017-7 Agreements transfer and the thwarted Universal/BVK Agreement transfer.

248. The fraudulent transfers and schemes, including the ALF PMA Transfer, the ALF Share Transfer, the Note Transfer, the 2017-7 Equity transfer, the 2017-7 Agreements transfer and the thwarted Universal/BVK Agreement transfer, constitute one or more unlawful, overt acts.

249. The Debtors and the Debtors' estates suffered damages as a proximate result of the fraudulent transfers and schemes, including the ALF PMA Transfer, the ALF Share Transfer, the Note Transfer, the 2017-7 Equity transfer, the 2017-7 Agreements transfer and the thwarted Universal/BVK Agreement transfer.

250. The Plaintiffs, now vested with all claims of the Trustee, seek actual and exemplary damages for the Highland Enterprise's conspiracy.

[34] This is without limitation to other entities or individuals that may ultimately be shown to be part of Highland Enterprise.

Count 28: Tortious Interference with the Universal/BVK Agreement
[Against Highland Capital]

251. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

252. Under Texas law, a claim for tortious interference with contract requires: "(1) an existing contract subject to interference, (2) a willful and intentional act of interference with the contract, (3) that proximately caused the plaintiff's injury, and (4) caused actual damages or loss." *Official Brands, Inc. v. Roc Nation Sports, LLC*, 2015 U.S. Dist. LEXIS 167320 ***7** (N.D. Tex.) (J. Boyle) (quoting *Prudential Ins. Co. of Am. v. Fin. Review Servs., Inc.*, 29 S.W.3d 74, 77 (Tex. 2000)). The fact that a contract is an at-will agreement is no defense to a tortious interference claim. *Id*.

253. The Universal/BVK Agreement is an existing contract to which Acis LP is a party. The Universal/BVK Agreement is an existing contract that is subject to interference.

254. From nearly day one of these Bankruptcy Cases, Highland Capital has sought to terminate Acis LP as the manager under the Universal/BVK Agreement, and replace Acis LP with Highland Capital or one of its affiliates. Highland Capital's actions involve communications over many months with Universal and BVK, including numerous communications after Highland Capital was terminated as sub-advisor on August 1, 2018 and no longer had any legitimate reason to communicate with Universal or BVK. Highland Capital even prepared and sent to Universal and BVK a new outsourcing agreement, which would be entered once Acis LP and its bankruptcy were out of the way.

255. Acis LP and its estate have suffered and will suffer actual damages as a proximate result of the interference of Highland Capital.

256. The Plaintiffs, now vested with all claims of the Trustee, seek actual and exemplary damages for Highland Capital's tortious interference with the Universal/BVK Agreement.

Count 29: Breach of Contract by Highland Capital under the Sub-Advisory Agreement and Shared Services Agreement
[Against Highland Capital]

257. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

258. Under Texas law, to prevail on a breach of contract claim, a party must show: "(1) the existence of a valid contract; (2) the plaintiff performed or tendered performance as the contract required; (3) the defendant breached the contract by failing to perform or tender performance as the contract required; and (4) the plaintiff sustained damages as a result of the breach." *USAA Tex. Lloyds Co. v. Menchaca*, 545 S.W.3d 479, 501 n.21 (Tex. 2018).

259. The Sub-Advisory Agreement is a valid contract between Acis LP and Highland Capital, under which Highland Capital was obligated to, *inter alia*:[35]

(i) make recommendations to Acis LP for the purchase, retention, or sale of specific loans or assets in the CLOs;

(ii) place orders with respect to the purchase or sale of specific loans or assets for the CLOs, upon instruction from Acis LP;

(iii) identify, evaluate, recommend to Acis LP, and, if applicable, negotiate the structure or terms of investment opportunities for the CLOs;

(iv) assist Acis LP in performing its due diligence on prospective investments for the CLOs; and

[35] Although the Plaintiffs plead herein that certain provisions of the Sub-Advisory Agreement, which are in violation of the LPA, are unauthorized and *ultra vires*, section 15 of the Sub-Advisory Agreement provides that any such invalid provision does not affect or render "invalid or unenforceable by virtue of the fact that for any reason any other or others of them may be invalid or unenforceable in whole or in part."

(v) provide information to Acis LP regarding any investments in the CLOs, and, if requested by Acis LP, provide information to assist in monitoring and servicing investments by the CLOs.

See Sub-Advisory Agreement § 1(b). Further, "[n]otwithstanding the foregoing, all investment decisions will ultimately be the responsibility of, and will be made by and at the sole discretion of, [Acis LP]." *Id.*

260. Section 4(a) of the Sub-Advisory Agreement specifically provides:

> [T]he Sub-Advisor will perform its obligations [under the Sub-Advisory Agreement] in good faith with reasonable care using a degree of skill and attention no less than that which the Sub-Advisor uses with respect to comparable assets that it manages for others and, without limiting the foregoing, in a manner which the Sub-Advisor reasonably believes to be consistent with the practices and procedures followed by institutional managers of national standing relating to assets of the nature and character of the Portfolios[.]

261. Since at least the time the Trustee was appointed in these Bankruptcy Cases, while acting as sub-advisor, Highland Capital failed to purchase a single loan for the CLOs, and only provided for the sale of loans, in an attempt to complete a stealth liquidation of the CLOs for the Highlands' benefit, and to the detriment of Acis LP. Such practice is inconsistent with the practices and procedures followed by institutional managers of national standing, such as Brigade, relating to assets of the nature and character of the CLOs. Highland Capital's activities are, however, completely consistent with the Highlands' ultimate goal to take away Acis LP's valuable assets and take over Acis LP's valuable business as portfolio manager of the CLOs.

262. Highland Capital grossly mismanaged the CLOs, in abrogation of its duties and disregard of the standard of care under the Sub-Advisory Agreement. Accordingly, Highland Capital has breached its obligations under the Sub-Advisory Agreement, and such breach caused economic damages to Acis LP. Acis LP is therefore entitled to recover, to the fullest extent under applicable law, the amount of such damages from Highland Capital.

263. Further, to the extent any of the above-mentioned acts constitute services Highland Capital asserts it provided pursuant to the Shared Services Agreement, such services failed to meet the "Standard of Care" set forth in the Shared Services Agreement and were committed in bad faith or were the result of gross negligence, fraud, and/or willful misconduct. Highland Capital's breach of the Shared Services Agreement caused economic damages to Acis LP. Acis LP is therefore entitled to recover, to the fullest extent under applicable law, the amount of such damages from Highland Capital.

Count 30: Breach of Fiduciary Duties by Highland Capital
[Against Highland Capital]

264. The Plaintiffs incorporate the preceding paragraphs as if fully set forth herein.

265. Pursuant to the Sub-Advisory Agreement, a principal-agent relationship existed between Acis LP and Highland Capital. As its investment adviser, Highland Capital owed Acis LP fiduciary duties. *See Sec. & Exch. Comm'n v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 191, (1963); Commission Interpretation Regarding Standard of Conduct for Investment Advisers, Release No. IA-5248. 17, C.F.R. Part 276 (June 5, 2019). Further, based on Highland Capital's role as sub-advisor and investment adviser to Acis LP, a special relationship of trust and confidence existed between Acis LP and Highland Capital. *See W. Reserve Life Assur. Co. of Ohio v. Graben*, 233 S.W.3d 360, 373-74 (Tex. App.—Fort Worth 2007, no pet.). Accordingly, in its capacity of sub-advisor to Acis LP, Highland Capital owed fiduciary duties to Acis LP.

266. Highland Capital, while acting as sub-advisor for Acis LP, purposefully engaged in conduct that was detrimental to Acis LP in order to enrich itself. As outlined in detail above, Highland Capital increased the amount due to Highland Capital under the Sub-Advisory Agreement, including charging amounts far in excess of appropriate market rates and amounts in

excess of the compensation limits of the LPA. Highland Capital was also the ringleader, and ultimate beneficiary, for the series of fraudulent schemes executed in the Fall of 2017 that terminated or transferred away Acis LP's valuable rights in the ALF PMA, the ALF Shares, the Note, the 2017-7 Equity and the 2017-7 Agreements. This was done with the very specific intent to make Acis "judgment proof," as Acis's own counsel later boasted, and in order to ensure that Terry would never receive payment on his judgment, as Dondero has threatened. These transfers, while very damaging to Acis LP, also furthered Highland Capital's plan to take over Acis LP's very lucrative portfolio management business and keep it under the control of Highland Capital and Dondero. Finally, Highland Capital sought to transfer the Universal/BVK Agreement away from Acis LP and to itself or an affiliate, including while Highland Capital was serving as sub-advisor (and as a fiduciary) for such agreement.

267. By its actions, Highland Capital specifically intended to cause harm to Acis LP by denuding it of its assets and enriching Highland Capital. In doing so, Highland Capital breached its fiduciary duties to Acis LP.

268. As a consequence, the Plaintiffs, now vested with all claims of the Trustee, are entitled to an award of punitive damages against Highland Capital in an amount to be determined by the Court.

Count 31: Punitive Damages
[Against All Defendants]

269. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

270. The Highlands, led by Highland Capital and Dondero, engaged in fraud against Acis and its creditors, acted with malice toward Acis and its creditors, and were, at best, grossly negligent in their dealings with Acis.

271. Further, Plaintiffs are entitled to punitive damages in connection with Highland Capital's: (i) breach of fiduciary duties to Acis due to its fraudulent conduct, (ii) tortious interference, and (iii) violations of TUFTA. *See Bombardier Aerospace Corp. v. SPEP Aircraft Holdings, LLC*, 572 S.W. 3d 213, 232 (Tex. 2019) (fiduciary duties); T*exas Beef Cattle Co. v. Green*, 921 S.W.2d 203, 210 (Tex. 1996) (tortious interference); *Mullins v. Testamerica, Inc.*, CIV.A. 3:02-CV-0106-, 2006 WL 2167401, at *10 (N.D. Tex. Aug. 2, 2006) (TUFTA).

272. Thus, the Plaintiffs, now vested with all claims of the Trustee, are entitled to punitive damages, and the Plaintiffs plead for such damages in connection with each Count pleaded herein that will support a claim for punitive damages.

Count 32: Disregarding the Corporate Form/Alter Ego/Collapsing Doctrine/Unjust Enrichment
[Against All Defendants]

273. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

274. Under Texas law, ignoring the separateness of business entities and holding affiliated entities liable for all debts of the fraudulent enterprise is appropriate "when the corporate form has been used as part of a basically unfair device to achieve and inequitable result. Examples are when the corporate structure has been abused to perpetrate a fraud, evade an existing obligation . . . or justify a wrong." *SSP Partners v. Gladstrong Inv. (USA) Corp*., 275 S.W.3d 444, 451 (Tex. 2008); *see also Flores v. Bodden*, 488 Fed. App'x 770, 775-76 (5th Cir. 2012) (listing "six situations in which a court may disregard the corporate form"); *Bridas S.A.P.I.C. v. Gov't of Turkmenistan*, 447 F.3d 411, 416 (5th Cir. 2006) (finding alter ego present).[36]

[36] To the extent Delaware law applies to any of the alter ego claims, Delaware also recognizes alter ego on similar grounds. "Delaware does, however, recognize the traditional alter ego doctrine as grounds to pierce the corporate veil in cases involving the members of a corporate group. To state an alter ego claim under Delaware law, the [plaintiff] must plead (1) that [the] defendants 'operated as a single economic entity' and (2) that an 'overall element

275. Highland Capital, Highland Funding, Highland Adviser, Highland Management, and Highland Holdings (the "Alter Egos") are all controlled by the CEO and ultimate majority owner of Highland Capital, Dondero. Each of the Alter Egos should be held liable for any damages awarded under any Count in this Second Amended Complaint, as each is the alter ego of the others. Further, each of the Alter Egos should be held liable for any debts of the Debtors, as they are also the alter ego of the Debtors.

276. In this case, the Alter Egos unquestionably used the corporate form as a means of perpetuating the fraudulent scheme set forth above. For example, creating shell corporations in the Cayman Islands days after the Arbitration Award in order to avoid payment of Acis's creditors is precisely the type fraud or injustice that warrants disregarding the corporate form. Such actions satisfy, at a minimum, the first three situations in which a court may disregard the corporate form.

277. Further, "multistep transactions can be collapsed when the steps of the transaction are `part of one integrated transaction.'" *In re Yazoo Pipeline Co., L.P.*, 448 B.R. 163, 187 (Bankr. S.D. Tex. 2011) (J. Isgur) (internal citations omitted). The Supreme Court likewise has held that a bankruptcy court, as a court of equity, may look through form to substance when determining the true nature of a transaction as it relates to the rights of parties against a bankrupt's estate. *Pepper v. Litton*, 308 U.S. 295, 304-05 (1939).

278. The ALF PMA Transfer, the ALF Share Transfer, the Note Transfer, and the transfer of the 2017-7 Equity and the 2017-7 Agreements should be collapsed and recognized for what they are: Highland Capital using offshore entities to take over Acis LP's assets and business while Highland Capital maintains absolute control over such assets and business, and even using

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of injustice or unfairness' is present. "*Precht v. Global Tower LLC*, No. 2:14-CV-00743, 2016 U.S. Dist. LEXIS 177910, at *9 (W.D. La. Dec. 22, 2016) (internal citations omitted).

alleged debt owed to Highland Capital as the purported consideration for these transactions in order to mask Highland Capital's otherwise clear liability for avoidable transfers.

279. Finally, unjust enrichment is an equitable theory of recovery holding that one who receives benefits unjustly should make restitution for those benefits. *Bransom v. Standard Hardware, Inc.*, 874 S.W.2d 919, 927 (Tex. App.--Fort Worth 1994). A party is unjustly enriched when it obtains a "benefit from another by fraud, duress, or the taking of an undue advantage." *Heldenfels Bros., Inc. v. City of Corpus Christi*, 832 S.W.2d 39, 41 (Tex. 1992).

280. Each of the Highlands, and in particular Highland Capital and Highland Funding, benefitted from the ALF PMA Transfer, the ALF Share Transfer, the Note Transfer, and the transfer of the 2017-7 Equity and the 2017-7 Agreements even if they were not the direct transferee. Each of the Highlands should be held liable for benefits unjustly received and make restitution to the Debtors and their estates for those benefits.

Count 33: Willful Violation of the Automatic Stay
[Against Highland Capital and Highland Funding]

281. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

282. A willful violation of the automatic stay does not require a specific intent.

> Rather, the statute provides for damages upon a finding that the defendant knew of the automatic stay and the defendant's actions which violated the stay were intentional. Whether the party believes in good faith that it had a right to the property is not relevant to whether the act was 'willful' or whether compensation must be awarded.

Campbell v. Countrywide Home Loan, Inc., 545 F.3d 348, 355 (5th Cir. 2008) (quoting *In re Chestnut*, 422 F.3d.298, 302 (5th Cir. 2005).

283. "It is not up to a party exercising a self-help remedy to determine, to the preclusion of this court, what is or is not property of the estate." *Chesnut v. Brown (In re Chesnut)*, 300 B.R. 880, 887 (Bankr. N.D. Tex. 2003).

284. Section 362(k)(1) of the Bankruptcy Code provides that "an individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages." The Fifth Circuit has indicated that remedies under 362(k)(1) are available to trustees. *St Paul Fire & Marine Ins. Co. v. Labuzan*, 579 F.3d 533, 539-540 (5th Cir. 2009). The term "individual" is not defined by the Bankruptcy Code, but it is used throughout the Code to refer to debtors and non-debtors. *See Homer Nat'l Bank v. Namie*, 96 B.R. 652, 654 (W.D. La. 1989) (citing, *inter alia*, 11 U.S.C. §§ 522(b) (individual as debtor), 321(a)(1) (individual as trustee)).

285. Further, pursuant to section 105(a) of the Bankruptcy Code, "[t]he Court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). The purpose of section 105(a) is "to assure the bankruptcy courts power to take whatever action is appropriate or necessary in aid of the exercise of their jurisdiction." 2 COLLIER ON BANKRUPTCY ¶ 105.01 (collecting cases). This is consistent with the broad equitable authority of the bankruptcy courts. *See United States v. Energy Resources Co., Inc*., 495 U.S. 545, 549 (1990).

286. Highland Capital knew the automatic stay was in effect when it intentionally acted, without Court approval, to force the Trustee to effectuate the optional redemptions, including when it demanded on June 20, 2018, that the Trustee take actions to effectuate the optional redemption by June 21, 2018.

287. Highland Funding knew the automatic stay was in effect when it intentionally acted, without Court approval, to force the Trustee to effectuate the optional redemptions, including each occasion described herein when it sent the Trustee the Optional Redemption Notices.

288. Pursuant to section 362(k)(1), the Plaintiffs seek recovery of damages commensurate with its injury, due to Highland Capital's and Highland Funding's violations of the automatic stay. Further, given Highland Capital's and Highland Funding's blatant and willful violation of the automatic stay (as well as the TRO), the Plaintiffs seek attorneys' fees, punitive damages, and sanctions, as the Court finds appropriate, pursuant to section 105(a) of the Bankruptcy Code.

Count 34: Attorneys' Fees and Costs,
Including all Allowed Professionals' Fees and Expenses in the Bankruptcy Cases
[Against All Defendants]

289. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

290. Pursuant to Texas Business and Commerce Code section 24.013, Civil Practice and Remedies Code section 38.001, TUFTA, and any other applicable law, the Plaintiffs may recovery attorneys' fees and costs incurred in bringing this Adversary Proceeding.

291. Plaintiffs further seek recovery from Highland Capital of all allowed professionals' fees and expenses in the Bankruptcy Cases, which were losses to Acis resulting from Highland Capital's breach of fiduciary duties to Acis. *See Meyers v. Moody*, 693 F.2d 1196, 1214 (5th Cir. 1982).

VII. REQUEST FOR DISGORGEMENT

292. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

293. "Under the equitable remedy of disgorgement or fee forfeiture, a person who renders service to another in a relationship of trust may be denied compensation for his service if he breaches that trust." *McCullough v. Scarbrough, Medlin & Assocs.*, 435 S.W.3d 871, 904-05 (Tex. App.—Dallas 2014) (citing *Burrow v. Arce*, 997 S.W.2d 229, 237 (Tex. 1999)). "The remedy essentially returns to the principal the value of what it paid for because it did not receive the trust or loyalty." *McCullough*, 435 S.W.3d at 905 (citing *Burrow*, 997 S.W.2d at 237-38).

"The amount of disgorgement is within the trial court's discretion; the court may 'deny him all compensation or allow him a reduced compensation or allow him full compensation.'" *McCullough*, 435 S.W.3d at 905 (citing *Burrow*, 997 S.W.2d at 237 (quoting RESTATEMENT (SECOND) OF TORTS § 243 (1959))).

294. "Equitable disgorgement is distinct from an award of actual damages in that the disgorgement award 'serves a separate function of protecting fiduciary relationships.'" *McCullough*, 435 S.W.3d at 905 (quoting *Saden v. Smith*, 415 S.W.3d 450, 469 (Tex. App.—Houston [1st] Dist. 2013, pet. denied)); *see also Burrow*, 997 S.W.2d at 238 ("[T]he central purpose of the equitable remedy of [disgorgement] is to protect relationships of trust by discouraging agent's disloyalty.").

295. The basis for the disgorgement award against Highland Capital stems from its liability in connection with its breach of fiduciary duty, as pleaded herein, and should be "phrased in terms of the salary, profits or other income [Highland Capital] received during the time [it] committed the tortious conduct." *McCullough*, 435 S.W.3d at 905 (internal quotation marks omitted).

296. Accordingly, Plaintiffs request disgorgement of all funds received by Highland Capital, who breached its fiduciary duties to Acis.

VIII. REQUEST FOR IMPOSITION OF CONSTRUCTIVE TRUST

297. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

298. "A constructive trust is not a cause of action under Texas law." *In re Moore*, 608 F.3d 253, 263 (5th Cir. 2010). Rather, "[a] constructive trust is an equitable remedy used to prevent unjust enrichment." *Baxter v. PNC Bank Nat'l Ass'n*, 541 Fed. App'x 395, 398 (5th Cir. 2013) (citing *Everett v. TK–Taito, LLC*, 178 S.W.3d 844, 859 (Tex. App— Fort Worth 2005, no pet.)); *see also Messier v. Messier*, 458 S.W.3d 155, 164 (Tex. App.—Houston [14th Dist.] 2015,

no pet.) ("A constructive trust is imposed when one party holds property that legally belongs to the other."). "In order to establish a constructive trust, the proponent must prove: (1) breach of a special trust, fiduciary relationship, or actual fraud; (2) unjust enrichment of the wrongdoer; and, (3) tracing to an identifiable res." *Baxter*, 541 Fed. App'x at 398; *accord Clapper v. Am. Realty Inv'rs, Inc.*, 3:14-CV-2970-D, 2015 U.S. Dist. LEXIS 71543, at *26 (N.D. Tex. June 3, 2015).

299. As described herein, Highland Capital breached its fiduciary duties to Acis, and the Highlands acted in concert to perpetrate the series of fraudulent transfers in order to strip Acis of its assets for the benefit of Highlands.

300. The Highlands were unjustly enriched because they benefitted from the "fraud [and] the taking of an undue advantage" against Acis. *See Heldenfels Bros.*, 832 S.W.2d at 41. Each of the Highlands, and in particular Highland Capital and Highland Funding, benefitted from the property transferred, which is traceable and identified herein, as a result of the ALF PMA Transfer, the ALF Share Transfer, the Note Transfer, and the transfer of the 2017-7 Equity and the 2017-7 Agreements even if they were not the direct transferee.

301. Further, Highland Capital, who breached its fiduciary duties to Acis, was unjustly enriched in connection with the Expense Overpayments as well as by the payments received as a result of the modifications to the Sub Agreements, and such benefits may be traced and identified by the payments from Acis LP to Highland Capital under the modified Sub Agreements.

302. Accordingly, the Plaintiffs requests that a constructive trust is established for those benefits unjustly received by the Highlands.

IX. OBJECTIONS TO HIGHLAND CAPITAL PROOFS OF CLAIM

303. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

304. The Highland Capital Claims are allegedly based on claims arising from the Sub-Advisory Agreement and the Shared Services Agreement. The Highland Capital Claims[37] are summarized as follows:

Alleged Pre-Petition Claim[38]	**Alleged Claim Amount**
Sub-Advisory Agreement	$1,605,362.41
Shared Services Agreement	$1,017,213.62
Total alleged Pre-Petition Claim	$2,622.576.03
Alleged 502(f) Claim[39]	**Alleged 502(f) Claim Amount**
Sub-Advisory Agreement	$1,170,147.06
Shared Services Agreement	$ 879,417.29
Total alleged 502(f) Claim	$2,049,564.35
Total Claim Amount	**$4,672,140.38**

[37] Highland Capital filed identical claims against both Acis LP and Acis GP. Acis GP is not a party to the Sub-Advisory Agreement or the Shared Services Agreement. Presumably, Highland Capital is relying on Delaware partnership law to argue that Acis GP is also liable under the Sub-Advisory Agreement and Shared Services Agreement. *See* 6 Del. C. § 17-403(b) ("Except as provided in this chapter, a general partner of a limited partnership has the liabilities of a partner in a partnership that is governed by the Delaware Uniform Partnership Law in effect on July 11, 1999 (6 Del. C. § 1501 et seq.) to persons other than the partnership and the other partners. Except as provided in this chapter or in the partnership agreement, a general partner of a limited partnership has the liabilities of a partner in a partnership that is governed by the Delaware Uniform Partnership Law in effect on July 11, 1999 (6 Del. C. § 1501 et seq.) to the partnership and to the other partners."); *see also* 6 Del. C. § 15-306(a) ("(a) Except as otherwise provided in subsections (b) and (c) of this section, all partners are liable jointly and severally for all obligations of the partnership unless otherwise agreed by the claimant or provided by law"). If this is the case, Acis does not dispute this basic tenet of partnership law; however, Acis disputes the Highland Capital Claims for the reasons set forth herein. Accordingly, all arguments set forth herein are applicable to both Highland Capital Claims.

[38] The Alleged Pre-Petition Claim relates to Highland Capital's alleged claim arising prior to the Petition Date.

[39] The Alleged 502(f) Claim relates to Highland Capital's alleged claim arising after the Petition Date and prior to April 13, 2018, the date the Court entered the Orders for Relief.

The Highland Capital Claims also include contingent indemnity claims arising under the Sub Agreements.

305. The Highland Capital Claims should be disallowed under (i) section 502(b)(1) of the Bankruptcy Code; (ii) section 502(b)(4) of the Bankruptcy Code; (iii) and section 502(d) of the Bankruptcy Code. The Highland Capital Claims are unenforceable against the Debtors under the LPA and applicable law. The Highland Capital Claims are for services of an insider of the Debtors and exceed the reasonable value of the services. As set forth above, Plaintiffs have asserted avoidance actions against Highland Capital such that the Highland Capital Claims should be disallowed. Finally, to the extent allowed at all, the Highland Capital Claims should be equitably subordinated under section 510(c) of the Bankruptcy Code.

306. Pursuant to section 502(b) and (d) of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 3007, the Plaintiffs seek entry of an order disallowing and expunging the Highland Capital Claims from the Debtors' claims registers.

A. The Highland Capital Claims Should be Disallowed under 11 U.S.C. § 502(b)(1).

307. "Section 502(b)(1) provides that a claim is allowed except to the extent it is unenforceable under applicable law." *In re White*, No. 06-50247-RLJ-13, 2008 Bankr. LEXIS 167, at *17-18 (Bankr. N.D. Tex. Jan. 28, 2008). "[T]he the validity of a creditor's claims against the debtor at the time the bankruptcy petition is filed 'is to be determined by reference to state law.'" *Carrieri v. Jobs.com, Inc*., 393 F.3d 508, 529 (5th Cir. 2004) (quoting *Kellogg v. United States (In re W. Tex. Mktg. Co.),* 54 F.3d 1194, 1196 (5th Cir. 1995)).

308. As set forth more fully above, the Highland Capital Claims are based entirely on amounts alleged to be due pursuant to the Sub Agreements. As outlined in the causes of action above, there are significant amounts due to Acis LP by Highland Capital under or in connection with the Sub Agreements, which constitute a right of recoupment and/or offset to the entirety of

the Highland Capital Claims. Further, any portion of the Highland Capital Claims that are based on *ultra vires* acts, as alleged in Count 1 above, are void or voidable. Accordingly, the Highland Capital Claims are not enforceable under applicable law, and the Highland Capital Claims should therefore be disallowed.

B. The Highland Capital Claims Should be Disallowed under 11 U.S.C. § 502(b)(4).

309. The Highland Capital Claims are claims for services by an insider, Highland Capital, and the Highland Capital Claims exceed the reasonable value of the services provided by Highland Capital. Section 502(b)(4) of the Bankruptcy Code provides, in relevant part, that a claim for services of an insider or attorney of a debtor shall not be allowed to the extent that "such claim exceeds the reasonable value of such services."

310. The purpose of section 502(b)(4) is: "(1) to prevent insiders of a debtor from extracting inflated compensation from the debtor at the expense of the debtor's creditors; and (2) to prevent over-generosity of a debtor prior to a bankruptcy filing." *Faulkner v. Canada (In re Heritage Org., L.L.C.),* Case No. 04-35574-BJH-11, Adv. No. 04-3338, 2006 Bankr. LEXIS 4662, at *22-23 (Bankr. N.D. Tex. Jan. 5, 2006); *see also In re Allegheny Int'l,* 158 B.R. 332, 339 (Bankr. W.D. Pa. 1992) ("The purpose underlying 11 U.S.C. § 502(b)(4) is to prevent officers and directors (insiders) of a debtor from extracting inflated amounts for their services at the expense of the creditors.").

1. Highland Capital is an Insider of the Debtors.

311. Under section 101(31) of the Bankruptcy Code, an insider includes certain enumerated parties, such as an officer of the debtor, affiliate, etc. Further, the list of enumerated "insiders" is not exclusive or exhaustive. *See In re Missionary Baptist Foundation of Am., Inc.,* 712 F.2d 206, 210 (5th Cir. 1983). Recently, the United States Supreme Court stated: "Courts have additionally recognized as insiders some persons not on that [101(31)] list—commonly

known as 'nonstatutory insiders.' The conferral of that status often turns on whether the person's transactions with the debtor (or another of its insiders) were at arm's length." *U.S. Bank N.A. v. Vill. at Lakeridge, LLC*, 138 S. Ct. 960, 963 (2018).

312. The Fifth Circuit has noted that "cases which have considered whether insider status exists generally have focused on two factors in making that determination: (1) the closeness of the relationship between the parties and (2) whether the transaction . . . [was] conducted at arm's length." *In re Holloway*, 955 F.2d 1008, 1011 (5th Cir. 1992).

313. Highland Capital is a statutory insider, a non-statutory insider, an admitted insider, and an adjudicated insider. The statutory definition of "insider" includes an "affiliate" of the debtor. 11 U.S.C § 101(31)(E). Prior to the entry of the Orders for Relief, Highland Capital met the statutory definition of "affiliate" because Highland Capital "operate[d] the business or substantially all of the property of the [D]ebtor under a[n] . . . operating agreement." *See* 11 U.S.C § 101(2)(D). Under the Sub Agreements, Acis LP effectively ceded control over its operations to Highland Capital.[40]

314. Highland Capital is a non-statutory insider because Dondero controlled both Acis and Highland Capital prior to the date the Court entered the Orders for Relief. The closeness of the Highland Capital-Acis relationship is demonstrated by the fact that both companies are under Dondero's common control, Acis had no employees and Acis was operated exclusively by Highland Capital employees. Transactions were not conducted at arm's length. Indeed, Dondero

[40] For purposes of section 502(b)(4), courts examine whether a party is an "insider" on the date the operative document was executed. Here, it is indisputable that Highland Capital was an insider when the Sub-Advisory Agreement and the Shared Services Agreement were executed, and Highland Capital was an insider on the Petition Date. *See Faulkner*, 2006 Bankr. LEXIS 4662, at *17 ("The determination of insider status is made as of the time the claimant provided services to the debtor."); *In re Allegheny Int'l*, 158 B.R. 332, 339 (Bankr. W.D. Pa. 1992) ("[T]he relevant time for determining one's status as an insider, under 11 U.S.C. § 502(b)(4), is the time services were rendered and when the compensation contracts for such services were formed[.]").

signed both the Sub-Advisory Agreement and the Shared Services Agreement for Highland Capital and Acis.

315. Highland Capital is an admitted insider and an adjudicated insider. During the trial on the involuntary petitions, the Debtors, controlled by Highland Capital, admitted that Highland Capital is an insider of the Debtors.[41] Acis LP's SOFA lists payments to Highland Capital in the section titled "Payments or transfers of property made within 1 year before the filing of this case that benefited any insider." The SOFA is signed by Isaac Leventon, an employee of Highland Capital (who, on information and belief, had no official title or position with the Debtors). Additionally, this Court has found that Highland Capital is an insider of the Debtors, stating: "the court believes it necessary to remove certain *insider* creditor claims, which are required not to be counted pursuant to section 303(b)(2) of the Bankruptcy Code. *This would clearly include Highland Capital* (the Alleged Debtors do not dispute this)." Opinion ¶ 38 (footnotes omitted) (emphasis added).

2. The Highland Capital Claims Exceed the Reasonable Value of the Services Provided.

316. "In analyzing the reasonableness of a claim for services under § 502(b)(4), a court should consider the totality of the circumstances involved at the time that the services were rendered." *Faulkner*, 2006 Bankr. LEXIS 4662, at *23 (citing *In re Gutierrez*, 309 B.R. 488, 493 (Bankr. W.D. Tex. 2004)). "Reasonable value" under Section 502(b)(4) is "synonymous with 'market value.'" *In re Delta Air Lines, Inc.*, No. 05-17923 (cgm), 2010 Bankr. LEXIS 233, at *22 (Bankr. S.D.N.Y. Feb. 3, 2010). "The burden of proof on reasonableness under

[41] Transcript of Hearing on Emergency Motion to Abrogate or Modify 11 U.S.C Section 303(f), Prohibit Transfer of Assets, and Impose, Inter Alia, 11 U.S.C Section 363 Filed by Petitioning Creditor Joshua Terry (3); Emergency Motion to Set Hearing (related to Document (8) Motion to Dismiss Case Filed by Alleged Debtor Acis Capital Management, LP (9) (Case Nos. 18-30264-SGJ7 &18-30264-SGJ7) (the "2-7-18 Transcript"), at 246: 8-9 ("[T]here are no insiders other than Highland on the list of eighteen[.]").

§ 502(b)(4) ultimately lies with the insider." *Id*. at 24. Thus, Highland Capital has the burden to establish the reasonableness of its claims. Further, when the validity of an insider's contract with a corporation is at issue, the burden is on the insider "'not only to prove the good faith of the transaction but also to show its inherent fairness from the viewpoint of the corporation and those interested therein.'" *In re Marquam Inv. Corp*., 942 F.2d 1462, 1465 (9th Cir. 1991) (quoting *Pepper v. Litton*, 308 U.S. 295, 306 (1939)).

317. Together, the Sub Agreements (as amended) charge Acis LP fees far exceeding the market value of the services provided under such agreements. First, the Trustee's professionals engaged in a marketing process in connection with the Brigade Motion. After conducting a diligent search of the market, the Trustee located a replacement for Highland Capital that provided the services Highland Capital previously provided the Debtor for roughly half the cost Highland Capital charged Acis LP. The Sub Agreements also significantly contributed to rendering Acis insolvent. In fact, the General Counsel of Highland Capital, Scott Ellington, admitted that as of February 7, 2018—one week after the Petition Date—Acis was insolvent or close to insolvent.[42]

318. Highland Capital cannot show that the exorbitant fees charged under the Sub Agreements are reasonable or that entry into such agreements was in good faith and demonstrates inherent fairness. Therefore, pursuant to section 502(b)(4), the Highland Capital Claims should be disallowed in their entirety.

C. Highland Capital Received Voidable Transfers and Holds Property of the Estate, and the Trustee is Entitled to Setoff under Section 502(d) of the Bankruptcy Code.

319. As set out more fully in the causes of action above, the Plaintiffs seek: (i) avoidance of actual and constructively fraudulent transfers and obligations pursuant to sections

[42] 2-7-18 Transcript at 219: 22-25 (THE COURT: Do you think Acis is in the zone of insolvency? THE WITNESS: I don't know the answer to that, but I would -- I would assume that it was -- that it's close.")

544 and 548 of the Bankruptcy Code, (ii) avoidance of preferential transfers pursuant to section 547 of the Bankruptcy Code; (iii) turnover of property the estate pursuant to section 542 of the Bankruptcy Code; and (iv) liability for the foregoing under section 550 of the Bankruptcy Code.

320. "Under section 502(d), 'the court shall **disallow** any claim of any entity . . . that is a transferee of a transfer avoidable under section . . . 544 [or 548] of this title, unless such . . . transferee has paid the amount, or turned over any such property.'" *In re Consol. Capital Equities Corp.*, 143 B.R. 80, 84 (Bankr. N.D. Tex. 1992) (quoting 11 U.S.C. § 502(d)) (emphasis in original).[43] Application of section 502(d) is not restricted to cases where a fraudulent transfer has already been avoided, but rather applies to pending fraudulent transfer claims as well. In other words, the statute does not require that the transfer actually be avoided, only that it be "avoidable." *Id.* As a result, once a fraudulent transfer claim has been asserted, the mandatory language of section 502(d) requires bankruptcy courts to consider the fraudulent transfer issue as a component of the claims allowance process. *U.S. Bank N.A. v. Verizon Communs., Inc.*, 761 F.3d 409, 419 (5th Cir. 2014) (finding mandatory language of section 502(d) precluded the court from resolving claims where the trustee alleged the claimant was the transferee of a fraudulent transfer). Moreover, the Court may disallow the Highland Capital Claims before adjudicating the causes of action set forth herein. *See In re Heritage Org., L.L.*C., 375 B.R. 230, 288-289 (Bankr. N.D. Tex. 2007) (finding a court order avoiding a transfer is not a prerequisite to disallowance of a claim).

321. Thus, pursuant to section 502(d) of the Bankruptcy Code, the Court should disallow the Highland Capital Claims.

[43] "Notwithstanding subsections (a) and (b) of this section, the court shall disallow any claim of any entity from which property is recoverable under section 542, 543, 550, or 553 of this title [11 USCS § 542, 543, 550, or 553] or that is a transferee of a transfer avoidable under section 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of this title, unless such entity or transferee has paid the amount, or turned over any such property, for which such entity or transferee is liable under section 522(i), 542, 543, 550, or 553 of this title." 11 U.S.C.§ 502(d)

D. The Highland Capital Claims Should be Equitably Subordinated.

322. Section 510(c) of the Bankruptcy Code expressly authorizes subordination of the allowed claim of one creditor to the allowed claims of other creditors "under principles of equitable subordination."

323. In *In re Mobile Steel Co.*, 563 F.2d 692 (5th Cir. 1977), the Fifth Circuit articulated what has become the most commonly accepted standard for equitable subordination of a claim. Under the *Mobile Steel* standard, a claim can be subordinated if the claimant engaged in some type of inequitable conduct that resulted in injury to creditors (or conferred an unfair advantage on the claimant) and if equitable subordination of the claim is consistent with the provisions of the Bankruptcy Code.

324. During the time it completely dominated control of Acis, Highland Capital clearly engaged in abundant inequitable conduct related to Acis, as well as conferring numerous unfair advantages to itself, which resulted in injury to Acis's creditors. As outlined in detail above, Highland Capital increased the amount due to Highland Capital under the Sub-Advisory Agreement, including charging amounts far in excess of appropriate market rates. This has resulted in a grossly inflated claim for Highland Capital as well as significant overpayments to Highland Capital for whatever services and value it did provide to Acis under these agreements.

325. Highland Capital was also the ringleader, and ultimate beneficiary, for the series of fraudulent schemes executed in the fall of 2017 that terminated or transferred away Acis LP's valuable rights in the ALF PMA, the ALF Shares, the Note, the 2017-7 Equity and the 2017-7 Agreements. This was done with the very specific intent to make Acis "judgment proof," as

Acis's own counsel later boasted,[44] and in order to ensure that Terry and other creditors would never receive payment on his judgment, as Dondero has threatened.[45] These transfers, while very damaging to Acis LP and its creditors, also furthered Highland Capital's plan to take over Acis LP's very lucrative portfolio management business and keep it under the control of Highland Capital and Dondero. Finally, even during the Bankruptcy Cases, Highland Capital has attempted to transfer and take over Acis LP's very lucrative Universal/BVK Agreement.

326. To the extent the Highland Capital Claims are allowed in any amount, they are subject to equitable subordination and should be subordinated below all other allowed unsecured claims in the bankruptcy case.

X. OBJECTIONS TO HIGHLAND CAPITAL'S ADMINISTRATIVE CLAIM

A. Highland Capital's Administrative Claim is Subject to Disallowance for the Same Reasons the Highland Capital Claims Should be Disallowed.

1. Prevailing on the Causes of Action Set Forth Herein Mandates the Disallowance of Highland Capital's Administrative Claim.

327. In its Application, without specifically citing the causes of actions or making any reference whatsoever to the objections to the Highland Capital Claims contained herein (as they were previously asserted in the Amended Counterclaims), Highland Capital asserts that the Trustee "apparently has furthered a theory that Highland overcharged the Debtors," but must "provide evidence, not simply allegations, to rebut the prima facie case that Highland is entitled to an administrative claim." Application ¶ 33. Highland Capital then rashly contends that the Trustee "has provided no such evidence" and that "the Contracts speak for themselves and are the best evidence of the validity of the claim asserted by Highland." *Id.* A simple review of the

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[44] *See Plaintiff's Motion for Expedited Discovery*, Ex. 1 (Declaration of Rogge Dunn) ¶ 4, *Terry v. Acis Capital Mgmt., L.P.*, Cause No. DC-17-15244, 44th District Court of Dallas County, Texas ("On October 31, 2017, counsel for Acis, Jamie Welton, called me on the telephone. In that call, Mr. Welton stated that Acis is 'judgment proof.'").

[45] *See* June 28, 2017 Dondero Dep. Tr. 262:2-8 (Ex. 101 from the involuntary trial) ("Nobody's going to let a dime go out of the firm that we don't have to pay ever to – to Josh, period. I mean, it's . . . I think it's personal[.]").

causes of action herein (as well as evidence presented in connection with the involuntary hearings, confirmation hearings, and other hearings during these Bankruptcy Cases) belies its position and demonstrates otherwise.

328. As is discussed below, Highland Capital must demonstrate that the services provided conferred a direct and substantial benefit on the Debtors' estates. And before Highland Capital can ask the Court to assess whether its services provided the required direct and substantial benefit, it must first demonstrate that it had the right to even charge the Debtors the amount set forth in the agreements. The causes of action asserted against Highland Capital herein, which dispute the amounts charged by Highland Capital, directly implicate the validity of, and support the disallowance of, the Administrative Claim (just as they refute Highland Capital's purported prepetition claims). The Plaintiffs therefore expressly incorporate Counts 1, 5 – 8, and 27 – 30 herein and specifically raises such Counts as objections to the Administrative Claim asserted by Highland Capital in its Application.

329. If the Plaintiffs prevail on the causes of action against Highland Capital as set forth herein, the basis for allowance of the Administrative Claim would also be invalidated. Moreover, as discussed below, based on such causes of action, the Plaintiffs are entitled to recover millions of dollars in damages, all of which may be offset against the Administrative Claim.

2. Highland Capital's Administrative Claim is Also Subject to Disallowance under Section 502(d).

330. Because Highland Capital is alleged to have received fraudulent transfers, its Administrative Claim is also subject to disallowance under section 502(d) until the property or its value has been returned to the Debtors.

331. Although Highland Capital's Application involves an administrative claim, nothing in section 502(d) limits its application to prepetition claims. *MicroAge, Inc. v. Viewsonic Corp. (In re MicroAge, Inc.)*, 291 B.R. 503, 508 (B.A.P. 9th Cir. 2002). Section 502(d) by its terms applies to "any claim" and the definition of a "claim" in section 101(5) is sufficiently broad to include requests for payment of expenses of administration. *Id.* Because the objective of section 502(d) is to encourage transferees to return avoidable transfers to the estate, a number of courts have held that section 502(d) applies to administrative claims. *See, e.g., id.* at 508-12; *In re Georgia Steel*, 38 B.R. 829, 839-40 (Bankr. M.D. Ga. 1984) (applying section 502(d) and stating, "[t]he fact that [the] claim is for an administrative expense has no bearing").

332. The Plaintiffs acknowledge that courts are split on the issue of whether section 502(d) applies to administrative expenses. *Compare MicroAge, Inc.*, 291 B.R. at 508-512 (considering split of authority and finding that "the better analysis is that § 502(d) may be raised in response to the allowance of an administrative claim"), *and Georgia Steel*, 38 B.R. at 839-40 (finding the fact that the claim "is for an administrative expense has no bearing" for purposes of section 502(d)), *with In re Plastech Engineered Prods.*, 394 B.R. 147, 164 (Bankr. E.D. Mich. 2008) (concluding that "§ 502(d) does not apply to the allowance and payment of administrative expenses under § 503(b)"). Although not binding on this Court, the Plaintiffs also note that one bankruptcy court in this district has found that section 502(d) does not apply to administrative claims. *Rand Energy Co. v. Del Mar Drilling Co. (In re Rand Energy Co.)*, 256 B.R. 712, 719 (Bankr. N.D. Tex. 2000) (Felsenthal, J.).

333. As described above, Highland Capital is the recipient of certain preferential payments and/or fraudulent transfers. Thus, while acknowledging the split of authority on the issue, the Plaintiffs assert that the plain language of section 502(d), as well as the policy

underlying section 502(d), requires that Highland Capital's Administrative Claim be disallowed in its entirety.

3. The Indemnity Provisions Relied on by Highland Capital Are Invalid and, in Any Event, Do Not Apply to Highland Capital's Intentional Torts.

334. In the Application, Highland Capital also asserts defenses against the causes of action brought herein pursuant to its purported indemnity rights against the Debtors under section 6.03 of the Shared Services Agreement and section 4(c) of the Sub-Advisory Agreement. Application ¶ 34. Any contention by Highland Capital that it is immune from liability arising from the causes of action brought against it herein due to the indemnity provisions of the Sub Agreements lacks merit. First, the indemnity provisions cited by Highland Capital were included only in the last iteration of the Sub Agreements, in March 2017. Thus, even if valid and applicable (which they are not), such provisions do not cover actions of Highland Capital prior to March 2017. Second, to the extent that the indemnity provisions in the Sub Agreements were included in an attempt to shield Highland Capital from liability in connection with its fraudulent scheme to denude Acis (and were added for no consideration), such provisions were themselves fraudulently incurred and should be avoided pursuant to section 548 of the Bankruptcy Code and sections 24.005 and 24.006 of TUFTA.[46] Further, the protection Highland Capital seeks is outside the scope of the indemnity provisions, which indemnify Highland Capital in connection with its actions taken as sub-advisor under the Sub Agreements—not in connection with torts and other wrongful conduct intentionally committed against Acis as part of Highland Capital's calculated scheme to denude the estate. Finally, it is against public policy for indemnity provisions in contract to shield a party from intentional tortious conduct. *See, e.g., Hamblin v.*

[46] Notably, all versions prior to the last iteration of the Sub-Advisory Agreement (before March 2017) contained no indemnity provision; also, it is telling that the indemnity provisions were added to the Sub-Advisory Agreement and significantly amended in the Shared Services Agreement only after arbitration had been ordered in state court.

Lamont, 433 S.W.3d 51, 55 (Tex. App.—San Antonio 2013, pet. denied); *In re Oil Spill by the Oil Rig*, 841 F. Supp. 2d 988, 1001-02 (E.D. La. 2012). Accordingly, such provisions are inapplicable as a defense to the causes of action asserted herein against Highland Capital.

B. Highland Capital Cannot Satisfy Its Burden of Proving Its Services Directly and Substantially Benefitted the Debtors' Estates.

1. Administrative Priority Status is Narrowly Construed and Only Awarded Upon a Showing of a Direct and Substantial Benefit to the Estate.

335. Under section 503(b)(1) of the Bankruptcy Code, an administrative expense claim shall be allowed for "the actual, necessary costs and expenses of preserving the estate." 11 U.S.C. § 503(b)(1)(A). The ultimate burden of proof is on Highland Capital to establish it is entitled to an administrative priority claim pursuant to 11 U.S.C. § 503(b). *See In re Transamerican Natural Gas Corp.*, 978 F.2d 1409, 1416 (5th Cir. 1992). Further, because section 503 administrative claims are priority claims, which are entitled to special treatment, section 503 must be narrowly construed. *See In re Templeton*, 154 B.R. 930, 934 (Bankr. W.D. Tex. 2009); *see also In re Federated Dep't Stores, Inc.*, 270 F.3d 994, 1000 (6th Cir. 2001) ("Claims for administrative expenses under § 503(b) are strictly construed because priority claims reduce the funds available for creditors and other claimants.").

336. At a minimum, Highland Capital must establish that "(1) the claim arises from a transaction with the [debtor]; and (2) the goods or services supplied enhanced the ability of the [debtor's] business to function." *See Total Minatome Corp. v. Jack/Wade Drilling, Inc. (In re Jack/Wade Drilling, Inc.*), 258 F.3d 385, 387 (5th Cir. 2001) (citing *Transamerican*, 978 F.2d at 1416); *see also ASARCO, Inc. v. Elliott Mgmt. (In re ASARCO, LLC)*, 650 F.3d 593, 601 (5th Cir. 2011) ("Claim under this section 'generally stem from voluntary transactions with third parties who lend goods or services necessary to the successful reorganization of the debtor's estate.'") (quoting *Jack/Wade Drilling*, 258 F.3d at 387).

337. Moreover, the benefit is measured from the point of view of the bankruptcy estate, not that of the applicant. *In re Premium Well Drilling, Inc.*, 2012 Bankr. LEXIS 1554, at *9 (Bankr. W.D. Tex. Apr. 10, 2012). "The focus on allowance of administrative claims which enjoy priority over other creditors is to prevent unjust enrichment of the estate. It is *not* to compensate the creditor . . . for his or her loss." *In re Am. Plumbing & Mech., Inc.*, 323 B.R. 442, 462 (Bankr. W.D. Tex. 2005) (emphasis in original).

2. Highland Capital Cannot Demonstrate It Conferred a Direct and Substantial Benefit on the Debtors' Estates.

338. As set forth herein, as it had done prior to these Bankruptcy Cases, following entry of the Orders for Relief, Highland Capital continued perpetrating its scheme to steal, and otherwise attempted to damage, Acis's business—in order to *minimize* value for creditors and ensure that Acis could not successfully reorganize—and to line its own pockets. Aside from Highland Capital's actions in sending notices of optional redemption to liquidate the CLOs (without Court approval and in violation of the automatic stay), following entry of the Orders for Relief, Highland Capital also actively mismanaged the Acis CLOs to undermine the business of the Debtors, as evidenced by, *inter alia*, the vast disparity between the trades made in CLOs 3, 4 5, and 6, as opposed to CLO 7, in 2018, as testified to by Terry at the second confirmation hearing. *See* Dec. 12, 2018 Hr'g Tr. (AM) at pp. 19-35.

339. Additionally, while mismanaging CLOs 3, 4 5, and 6, Highland Capital sought to carry out its plan "to transfer the BVK investment management agreement from Acis LP to another Highland-affiliated manager."[47] As explained herein, Highland Capital's attempt to steal BVK's business from Acis began from nearly day one of these Bankruptcy Cases and continued

[47] *See* **Exhibit K** (email chain from early February 2018 between Mike Warner (Acis's counsel), Isaac Leventon (Highland Capital's in-house counsel), Timothy Cournoyer (Highland Capital's in-house counsel) and Thomas Surgent (Highland Capital's Chief Compliance Officer)).

even after Highland Capital was terminated as sub-advisor on August 1, 2018—when Highland Capital no longer had any legitimate reason to communicate with Universal or BVK.

340. Highland Capital's actions during the pendency of these Bankruptcy Cases demonstrate that Highland Capital did not service the Acis CLOs in a way that "enhanced the ability of the [debtor's] business to function." *Transamerican*, 978 F.2d at 1416. Indeed, Highland Capital acted to destroy the Debtors' business—therefore, Highland Capital's request for allowance of its Administrative Claim must be denied.

341. In its Application, Highland Capital essentially asserts that it provided services to the Debtors on a postpetition basis pursuant to various prepetition agreements and, therefore, the expenses are entitled to administrative priority. In order to qualify as an administrative expense, however, Highland Capital must show that its claim arose postpetition "as a result of actions by the trustee that benefitted the estate." *Id.* Further, although the terms of the Debtors' prepetition contracts may be probative of the reasonable value of postpetition services, they are not dispositive. *In re Am. Plumbing & Mech., Inc.*, 323 B.R. at 462. Indeed, "all that the estate is required to pay is the *reasonable value* of those services which were rendered." *Id.* (emphasis in original) (citing *NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 531, 104 S. Ct. 1188, 79 L. Ed. 2d 482 (1984). Consequently, the provisions of the prepetition contracts do not automatically and dispositively translate into an allowed administrative claim. Highland Capital must still demonstrate a quantifiable benefit to the estate.

342. Highland Capital's assertion that its costs were incurred postpetition fails to satisfy its burden of proving entitlement to administrative priority. Specifically, aside from merely referencing the Sub-Agreements and the Universal/BVK Agreement, and contending that monies owed to it under such agreements are an administrative expense, Highland Capital fails to show that (i) such costs were necessary for the preservation of the Debtors' estate, and (ii) the

Debtors received any benefit, let alone a direct and substantial benefit, as a result of such services and expenses.

3. The Amount Charged by Highland Capital Was Inflated and Unnecessary.

343. Further, even if Highland Capital could show that, rather than undermining Acis's business, it provided postpetition services that enhanced the ability of Acis to function, to the extent the rates Highland Capital charged Acis were inflated or above market, the amounts charged to Acis under the Sub Agreements did not benefit the estates or its creditors, and such inflated amounts were therefore not necessary. *See NL Indus., Inc. v. GHR Energy Corp.*, 940 F.2d 957, 966 (5th Cir. 1991) ("Courts have construed the words 'actual' and 'necessary' narrowly: the debt must benefit the estate and its creditors."). Indeed, at the July 6, 2018 hearing, regarding approval of the break-up fee and replacement of Highland Capital as sub-servicer with Oaktree, J.P. Sevilla, assistant general counsel for Highland Capital, testified that Highland Capital would reduce its rates charged to Acis LP for sub-servicing from 35 basis points to 17.5 basis points, in order to match competing offers:

> Q Okay. Would Highland be willing to reduce its fee during the pendency of the bankruptcy, maybe without its rights to assert the validity of the contract, but would Highland otherwise be willing to assert -- to reduce its fees during the pendency of the bankruptcy?
>
> A I think at the very least Highland would match Saratoga or whatever the 17.5 bps offer is. Again, reserving all rights, but in order to stay in the deal and to establish Highland's commitment to this deal, we would do it for 17-1/2 basis points, no question.

July 6, 2018 Hr'g Tr. at pp. 243-44. Moreover, the effective rate for such services charged by Brigade and Cortland also approached 17.5 basis points.[48] Accordingly, notwithstanding the objections otherwise raised herein, and assuming the services provided to Acis LP enhanced,

[48] Pursuant to the Third Amended Joint Plan, Brigade agreed to provide sub-advisory and shared services to the Acis CLOs for 15 basis points (and decreasing after one year). *See* Docket No. 661 at pp. 28, 136; *see also* Dec. 11, 2018 (PM) Hr'g Tr. at 89 & Dec. 12, 2018 (AM) Hr'g Tr. at 62.

rather than undermined, the ability of Acis's business to function, such amounts should be reduced to reflect a rate of at most 17.5 basis points.

4. The Plaintiffs Dispute Highland Capital's Calculation of its Administrative Claim.

344. The Plaintiffs further object to Highland Capital's calculation of the amount of the Administrative Claim. Subject to the objections raised herein, in the *Amended Disclosure Statement Pursuant to Section 1125 of the United States Bankruptcy Code with Respect to the Second Amended Joint Plan for Acis Capital Management, L.P. and Acis Capital Management GP, LLC* [Case No. 18-30264, Docket No. 621] (the "Disclosure Statement"), the Trustee estimated that under the terms of the Sub Agreements, Highland Capital's alleged Administrative Claim would be approximately $2,612,574.00, rather than $3,007.678.41. Highland Capital fails to explain or substantiate this discrepancy. The Administrative Claim also includes $543,545.88 for expenses. Highland Capital fails to show that these alleged expenses were incurred or payable under the Sub Agreements. *See In re Packard Props., Ltd.*, 118 B.R. 61, 63 (Bankr. N.D. Tex. 1990) ("Since this claim is a request for payment of administrative expenses, the [creditor] carries the burden of proof throughout the entire proceeding."). Therefore, in addition to the objections herein, the Plaintiffs also object to Highland Capital's calculation of its purported Administrative Claim.

C. Highland Capital Is Not Entitled to Payment of Any Allowed Administrative Claim Because Acis's Right of Offset and Recoupment May Reduce or Eliminate Its Administrative Claim.

345. Even if the Court were to determine that Highland Capital is entitled to an allowed Administrative Claim, it should not be entitled to payment because Acis has rights of offset and recoupment that may be applied under section 558 of the Bankruptcy Code to reduce

or eliminate any allowed Administrative Claim.[49] As set forth above, Highland Capital charged Acis excessive and unreasonable fees for its services, and Acis has asserted a number of causes of action against Highland Capital for such overcharges, including for recovery of overcharges resulting from *ultra vires* actions, turnover of unauthorized payments, money had and received, conversion, fraudulent transfer, civil conspiracy, breach of contract, and breach of fiduciary duty. As a result of these overcharges, the Debtors' estates suffered many millions of dollars in damages which should be offset against any valid administrative claim awarded to Highland Capital. Indeed, the causes of action against Highland Capital may offset, or eliminate altogether, any right of recovery Highland Capital may have against the Debtors' estates on account of any Administrative Claim.

D. To the Extent Allowed, Highland Capital's Administrative Claim Should Also Be Equitably Subordinated.

346. In addition to applying equitable subordination to prepetition claims, courts have equitably subordinated administrative claims when the claimant acted in ways to harm the estate. *See, e.g., Principal Mut. Life Ins. Co. v. Langhorne (In re 848 Brickell Ltd.)*, 243 B.R.142, 149 (S.D. Fla. 1998) (holding that while "pursuit of one's legal rights may not be grounds for equitable subordination, the lower court's findings that [the claimant's] protracted and abusive litigation tactics harmed the estate by causing it to incur about $400,000 in fees" justified equitable subordination of its administrative claim).

347. For the same reasons described above with respect to Highland Capital's prepetition claims, Highland Capital's Administrative Claim should also be equitably subordinated to the extent allowed. Further, during these Bankruptcy Cases, the Debtors' estates

[49] The Plan provided for the payment of allowed administrative claims on (i) the later of the effective date or the tenth business day after the administrative expense is allowed, or (ii) as otherwise agreed in writing between the Reorganized Debtor, or as otherwise ordered by the Bankruptcy Court. *See* Case No. 18-30264, Docket No. 660 at 11, § 3.01(b).

and the Reorganized Debtors have incurred substantial administrative fees in responding to the protracted and abusive litigation tactics of Highland Capital, including arguing for (and against) injunctive relief to prevent the liquidation of the CLOs and litigating the numerous appeals initiated by Highland Capital against the Trustee. Such litigation tactics by Highland Capital were attempts to thwart the reorganization of the Debtors, damage the estate, and harm its creditors. Accordingly, the Court should equitably subordinate Highland Capital's Administrative Claim. *See Principal Mut. Life Ins. Co.*, 243 B.R. at 149.

348. Thus, to the extent the Highland Capital's Administrative Claim is allowed in any amount, it should be subordinated below all other allowed claims in these Bankruptcy Cases.

VI. PRAYER

Plaintiffs respectfully request that the Court:

(i) enter judgment declaring that Expense Overpayments made to Highland Capital in excess of 20% of Revenue and any agreements supporting such overpayments were *ultra vires* and, thus, void or voidable;

(ii) enter judgment against Highland Capital for the recovery of any *ultra vires* payments made to Highland Capital;

(iii) enter judgment against Highland Capital, Highland Funding, Highland Advisor, Highland Holdings, and Highland Management for the avoidance and recovery of transfers fraudulently made and obligations fraudulently incurred and for civil conspiracy in connection with such fraudulent transfers and schemes;

(iv) enter judgment against Highland Capital, Highland Holdings, and Highland Management for avoidance and recovery of preferential transfers received;

(v) enter judgment against Highland Capital for tortious interference with contract;

(vi) enter judgment against Highland Capital for breach of contract;

(vii) enter judgment against Highland Capital for breach of its fiduciary duties and order disgorgement of all funds received by Highland Capital as a result of such breach;

(viii) enter judgment against Highland Capital and Highland Funding for willful violation of the automatic stay, pursuant to section 362(k) of the Bankruptcy Code;

(ix) enter judgment against Highland Capital, Highland Funding, Highland Advisor, Highland Management, and Highland Holdings for punitive damages;

(x) enter judgment against Highland Capital, Highland Funding, Highland Advisor, Highland Management, and Highland Holdings for pre- and post-judgment interest at the greatest amount permitted by law;

(xi) enter judgment against Highland Capital, Highland Funding, Highland Advisor, Highland Management, and Highland Holdings for all attorneys' fees and costs incurred in connection with the prosecution of this Adversary Proceeding and for all allowed professionals' fees and expenses incurred by the estates in the Bankruptcy Cases;

(xii) establish a constructive trust for all benefits unjustly received by that Highland Capital, Highland Funding, Highland Advisor, Highland Management and Highland Holdings;

(xiii) declare that Highland Capital, Highland Funding, Highland Advisor, Highland Management and Highland Holdings are alter egos of each other, or that the corporate for should otherwise be disregarded, and each is fully liable for any judgment entered for the Plaintiffs in this Adversary Proceeding;

(xiv) disallow, expunge and/or subordinate the Highland Capital Claims;

(xv) deny, disallow, and/or subordinate Highland Capital's Administrative Claim; and

(xvi) grant any other such relief that the Plaintiffs may show themselves to be justly entitled in law or in equity.

Dated: June 20, 2019.

Respectfully submitted,

By: */s/Rakhee V. Patel*

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CERTIFICATE OF SERVICE

I hereby certify that on June 20, 2019, notice of this document will be electronically mailed to the parties that are registered or otherwise entitled to receive electronic notices in this adversary proceeding pursuant to the Electronic Filing Procedures in this District. Service will also be made as required and allowed by Federal Rule of Bankruptcy Procedure 7004.

/s/ Annmarie Chiarello
One of Counsel

Exhibit 15

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	Chapter 11
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	§	Case No. 19-34054-sgj11
	§	
Debtor.	§	

Response Deadline: July 23, 2020 at 4:00 p.m. (ET)
Hearing Date: August 6, 2020 at 9:30 a.m.

OBJECTION TO PROOF OF CLAIM OF ACIS CAPITAL MANAGEMENT L.P. AND ACIS CAPITAL MANAGEMENT GP, LLC

Pursuant to sections 502(b)-(d) and 558 of Title 11 of the United States Code (the "Bankruptcy Code") and Rule 3007 of the Federal Rules of Bankruptcy Procedure (the

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

"Bankruptcy Rules"), debtor and debtor in possession Highland Capital Management, L.P. (the "Debtor") hereby objects to Proof of Claim No. 3 (the "Acis Claim") filed by claimants Acis Capital Management L.P. and Acis Capital Management GP, LLC (together, "Acis").

The Debtor respectfully submits that there are numerous bases for the summary disposition of all claims for relief asserted in the Acis Claim, and represents as follows:

Preliminary Statement

1. The Acis Claim incorporates the complaint from litigation commenced by the trustee of the former estate in the Acis bankruptcy case (the "Acis Case") at a time when Acis had unpaid creditors (the "Acis Complaint").[2] The trustee sought to avoid and recover certain transfers by Acis that were allegedly intended to prevent its largest creditor, Josh Terry, from collecting his $8.168 million arbitration award (the "Arbitration Award"). The transfers, allegedly orchestrated by James Dondero using his common control and ownership interests in Acis, the Debtor and the other Highland entities, were purportedly intended to "denude" Acis by transferring certain of its management contracts and interests in the managed assets to its affiliates, including the Debtor. Finding a likelihood of success that certain transfers were avoidable, the Court issued a preliminary injunction, which was carried over into a "Temporary Plan Injunction" that allowed Acis to manage those assets to pay creditors. Consistent with that substantive basis, the injunction expires once those creditors are paid in full. That is the operating principle of the Acis Plan: creditors are paid using assets temporarily diverted from the putative transferees that are named as defendants in the Acis Complaint.

[2] Specifically, the Acis Claim incorporates the *Second Amended Complaint (Including Claim Objections and Objections to Administrative Expense Claims)* filed in Adversary No. 18-03078 in the Acis Case.

2. The Acis Plan has worked as intended. The income diverted by the temporary injunction will soon have paid Mr. Terry and Acis's other creditors 102% of their claims, *plus* all of the administrative expenses incurred to achieve that result. There will no longer be an estate or estate claims to administer. Having served its purpose, the injunction dissolves and the creditor remedies asserted in the Acis Complaint become moot. But Acis is doing the opposite. It filed the Acis Claim in the amount of "at least $75 million" and has initiated new lawsuits in federal and state court against employees, advisors and professionals for allegedly breaching duties owed not to creditors but ***purportedly owed to Acis***. The sole beneficiary of these far-flung litigations would be Mr. Terry, whose claim is paid in full under the Acis Plan, except for $1 million with which he chose to purchase Acis's equity.[3] Now Mr. Terry seeks a $75 million windfall, which would come not at Dondero's expense but from the pockets of the Debtor's innocent creditors (including unsecured trade creditors, the Redeemer Committee of the Highland Crusader Fund ("Redeemer"), with an arbitration award of $190,824,557, and UBS Securities LLC ("UBS").

3. Attempted windfalls usually have a fallacious premise, and this one is a $75 million whopper. The fallacy is that Reorganized Acis has greater rights than "old Acis," which at the time of the transfers was a member of the Highland related entities that Acis itself alleges were controlled and primarily owned by Dondero. Acis alleges that each was an alter ego of the others, which means that *Acis is just as culpable, and just as much an alter ego, as*

[3] Inasmuch as claims against Acis are worth 102%, Terry's $1 million reduction of his claim was the substantive equivalent of paying $1 million, not a typical debt for equity exchange.

any of the others. Coupled with the fact that Acis's creditors are being paid in full, several things follow that are instantly fatal to the Acis Claim. None are subject to any factual dispute.

a. First, it is undisputed that at the time of the transfers, James Dondero and Mark Okada were Acis's sole owners, and it is hornbook law that sole owners do not owe fiduciary duties ***to their company***. Subject of course to the rights of creditors to claw back transfers that leave a company unable to pay its debts, Dondero and Okada as Acis's sole owners were free to transfer its assets to other entities, and third parties had no duty or right to stop them. "Delaware law is clear that a company's sole owner cannot breach fiduciary duties 'owed to the companies he wholly owned.' … [Plaintiff] has not cited legal support for the proposition that a nonowner can be liable for conspiring with the sole owner of a partnership for breaching duties that the owner owes himself." *Tow v. Amegy Bank N.A.*, 976 F. Supp. 2d 889, 906-07 (S.D. Tex. 2013) (internal citation omitted). Whatever their motive, if Acis's owners wanted to shut it down, they were free to do so, subject to the rights of creditors, who are being paid in full without any further recovery.[4] Nor can Acis base its claims on the rights of Acis's former creditors. For one thing, they've been paid, and for another, Delaware law does not permit creditors of a limited partnership to sue third parties for breach of fiduciary duty, *nor does*

[4] Acis relies heavily on the Arbitration Award, but the panel found no violation of any duty ***to the partnership***. The only duty that the panel found was breached was between partners: it was the duty of the majority partners not to exceed the ratio of expenses to revenue while Terry was a 25% limited partner. Even that duty expired with Terry's partnership interest when his employment was terminated. About that there is no dispute: the cash-out of his partnership interest was the primary component of the Arbitration Award. The panel found that Terry was not wrongfully terminated because his employment was "at-will," but that he was entitled to payment for his partnership interest because the termination was not for cause. Most of the rest of his award was his pro rata partnership share of the alleged Overpayments (which he now seeks to recover *twice* by claiming them through Acis).

it permit a trustee to sue on their behalf.[5] These claims are not and cannot as a matter of law be brought for the benefit of Acis's former creditors.

b. Second, even if fiduciary duties had been owed, Acis's duty-based claims against the Debtor and other third parties are barred by the *in pari delicto* defense. It is a paradigmatic application of the doctrine: Acis cannot sue others for participating in a scheme in which it, as one of the entities it alleges was commonly owned and controlled, was equally culpable. This fundamental defect is obscured by the subsequent appointment of a trustee and change of ownership. But while the Fifth Circuit has not decided the issue, it has affirmed that Bankruptcy Code § 541 subjects trustees and successors to whatever defenses existed against the debtor, and most courts of appeal hold that, as a result, the appointment of a trustee does not "cleanse" the *in pari delicto* defense (much less, as here, where the claims purportedly revested in the reorganized debtor). Even if the equities are applied, as this Court once held they may, there is no equity in permitting a new owner to sue persons for conspiring with the old owner, in order to parlay a $1 million investment into $75 million, *at the expense of this Debtor's creditors*. These facts are not in dispute, and the issue can and should be decided on the record before the Court.

c. Third, the fraudulent transfer claims fail, and may be summarily resolved, because the Debtor did not receive the benefit of the alleged fraudulent transfers since (with one exception) it was not the transferee of the transferred rights. Bankruptcy Code §

[5] *Beskrone v. OpenGate Capital Grp. (In re Pennysaver USA Publ'g, LLC)*, 587 B.R. 445, 467 (Bankr. D. Del. 2018); *Gavin/Solmonese LLC v. Citadel Energy Partners, LLC (In re Citadel Watford City Disposal Partners, L.P.),* 603 B.R. 897, 905 (Bankr. D. Del. 2019).

550(a) is not satisfied as to those transfers for which the Debtor was not the initial transferee: it is insufficient as a matter of law simply to allege an amorphous benefit from being part of the same corporate group. This is all that the Acis Claim alleges – the Debtor benefited solely because it was a Highland related entity. Furthermore, if the Debtor did not receive the benefit from a transfer, there are no damages in the first place. That is shown *conclusively* by the fact that the earnings derived by Acis from the enjoined transfer of the ALF PMA have already paid Acis's creditors and administrative expenses. That is presumably why the Acis Claim lacks any damage allegations – there are none.

d. Fourth, the fraudulent transfer claims also fail, along with preference claims as well, for another reason that may also be summarily resolved: a debtor cannot recover avoidance claims for its own benefit under section 550(a) of the Bankruptcy Code. There must be a benefit to the debtor's estate. Here, there is nothing left of the former Acis estate: creditors were paid, old equity was canceled, and the new equity is held by a purchaser who paid $1 million, no different than if he had done so in an auction. There is no estate to benefit. Authority before and after *Mirant* holds that avoidance recoveries should be limited based on equitable considerations, which in this case are conclusively in favor of limiting any recovery to the amount required to satisfy creditors' claims. Unlike *Mirant* and this Court's *Texas Rangers* decision, this is not a case in which a recovery will enable a debtor to satisfy outstanding plan obligations, or one in which creditors were forced to take equity instead of cash

and are depending on its value for a recovery on their claims.[6] There is no estate and no equities to support Mr. Terry's windfall.

e. Fifth, Acis may not assert for its own benefit any claims against prior equity holders or third parties that were not pending when Mr. Terry purchased the company. The *Bangor Punta* doctrine holds that a purchaser of controlling equity in a company may not then use the control over the corporate machinery to turn around and assert claims against the prior owners if the claims arose prior to the date when the purchaser took control.[7] The reasons are self-evident and squarely applicable here: the purchaser paid what it considered fair value and has suffered no damage, and to permit such claims would promote the kind of litigation free-for-all in which Mr. Terry is presently engaged. This bars standing as to all claims except those the trustee had already asserted prior to Mr. Terry's purchase (relating to the ALF share transfer, ALF PMA transfer and the note transfer described herein), all of which claims fail for multiple other independent reasons.

f. Sixth, Acis's four claims seeking $7 million in so-called "Overpayments" have no legal basis and should be summarily disallowed. These are payments for services that exceeded, in gross, the expense ratio that was permitted under Acis's limited partnership agreement (the "Acis LPA") without partner consent. The only alleged substantive basis for recovery is the claim that the Overpayments were *ultra vires* acts, which would be flatly wrong even if it applied in concept (which it does not): (i) Acis was indisputably *authorized* to

[6] Significantly, any recovery on preference or constructive fraudulent transfer claims would be offset by the Debtor's resulting claims under Bankruptcy Code § 502(h), which would be entitled to full payment under the Acis Plan.

[7] *Bangor Punta Operations, Inc. v. Bangor & A. R. Co*., 417 U.S. 703, 710, 94 S. Ct. 2578 (1974); *Midland Food Servs., LLC v. Castle Hill Holdings V, LLC*, 792 A.2d 920, 929 (Del. Ch. 1999).

pay for services, which is all that matters legally; any excess was not *ultra vires* but an inter-partner issue already addressed by the Arbitration Award (through which Mr. Terry already recovered his share); (ii) turnover under Bankruptcy Code § 542(a) does not apply to disputed debts as a matter of law; and (iii) and the "money had and received" and conversion claims are equally inapplicable as a matter of law. In any event, most of the time period during which the alleged Overpayments were made is beyond the two year statute of limitations under Texas law.

g. Seventh, Acis's civil conspiracy claim also fails as a matter of law because the claim is not recognized: section 550 provides the statutory remedies for any fraudulent transfer liabilities, and it may not be circumvented by a conspiracy claim.

h. Eighth, Acis's tortious interference claim fails as a matter of law because it does not apply to at-will contracts, and the Debtor had the right to compete for the business.

i. Ninth, Acis's breach of contract claim, like its claim for breach of fiduciary duty, rests on the fallacy that Acis had legal interests that were distinct from those of its sole owners, duties that parties contracting with Acis had a duty to identify and protect even though Acis's sole owners instructed otherwise. That is not the law.

j. Tenth, alter ego liability is inadequately pled; it is a remedy and not a claim and, moreover, is unavailable on the alleged grounds. What Acis alleges is "single enterprise" liability based on common control by Mr. Dondero, a theory never adopted under Delaware law (which controls) and also rejected by the Texas Supreme Court.

k. Numerous other of the Debtor's defenses are meritorious but cannot be decided summarily, including defenses such as solvency (Acis was manifestly solvent without recovering *all* of the alleged fraudulent or preferential transfers), preference defenses and punitive damages (to the extent any tort claim is not dismissed; notably, such damages would be subordinated at best).

4. The rights of creditors to be paid were the legal basis of the Acis Plan injunction, which is why the injunction terminates once those creditors are paid in full. Mr. Terry elected to acquire new equity for $1 million; he is not entitled to receive another $75 million by claiming that *Acis* was damaged by those transfers, much less from the pockets of the Debtor's unpaid creditors. To impose on the former partners and third parties such as the Debtor a duty to "restore" $75 million to the former business, not to pay its creditors but for the sole benefit of a successor owner who bought the diminished entity for $1 million, would be a legally groundbreaking windfall, to say the least. The Acis Claim can and should summarily be disallowed in its entirety on the record before the Court.

Jurisdiction

5. The Court has jurisdiction over this matter under the Bankruptcy Code and pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. §§ 157(b)(2)(A), (B) and (L). Venue is proper in this District under 28 U.S.C. §§ 1408 and 1409.

6. The statutory predicates for the relief requested herein are 11 U.S.C. § 502(b)-(d), 11 U.S.C. § 558 and Fed. R. Bankr. P. 3007.

Factual Background

7. On October 16, 2019 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the Bankruptcy Court for the District of Delaware, Case No. 19-12239 (CSS) (the "Delaware Court").

8. On October 29, 2019, the Official Committee of Unsecured Creditors (the "Committee") was appointed by the U.S. Trustee in the Delaware Court.

9. On December 4, 2019, the Delaware Court entered an order transferring venue of the Debtor's Bankruptcy Case to this Court [Docket No. 186].[8]

10. On December 27, 2019, the Debtor filed that certain *Motion of the Debtor for Approval of Settlement with the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course* [Docket No. 281] (the "Settlement Motion"). This Court approved the Settlement Motion on January 9, 2020 [Docket No. 339] (the "Settlement Order").

11. The Settlement Order approved, among other things, certain operating and reporting protocols [Docket Nos. 354, 466].

12. In connection with the Settlement Order, an independent board of directors was appointed on January 9, 2020, at the Debtor's general partner, Strand Advisors, Inc. (the "Independent Board")

13. The Debtor has continued in the possession of its property and has continued to operate and manage its business as a debtor-in-possession pursuant to sections

[8] All docket numbers refer to the docket maintained by this Court.

1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in this chapter 11 case.

Objection

A. Legal Standard

14. The Bankruptcy Code establishes a burden-shifting framework for proving the amount and validity of a claim. "A claim . . . , proof of which is filed under section 501 [of the Bankruptcy Code], is deemed allowed, unless a party in interest . . . objects." 11 U.S.C. § 502(a). "A proof of claim executed and filed in accordance with the [Bankruptcy Rules] shall constitute *prima facie* evidence of the validity and amount of the claim." Fed. R. Bankr. P. 3001(f); *see also In re Armstrong*, 347 B.R. 581, 583 (Bankr. N.D. Tex. 2006). However, the ultimate burden of proof for a claim always lies with the claimant. *Armstrong*, 347 B.R. at 583 (citing *Raleigh v. Ill. Dep't of Rev.*, 530 U.S. 15 (2000)).

15. The Acis Claim incorporates and is expressly based upon the claims and causes of action asserted in the Acis Complaint filed in the Acis Case. It purports to assert thirty-four claims for relief, which are described and addressed *seriatim* below.

B. Claims 1-4 to Recover the Alleged Overpayments Must be Disallowed

16. The first four claims are based on service and expense payments by Acis to the Debtor that allegedly exceeded 20% of revenues, without Mr. Terry's consent, in violation of section 3.10(a) of the Acis LPA, which provides that "the aggregate annual expenses of the Partnership … may not exceed 20% of Revenues without the consent of all of the members of

the Founding Partner Group." The arbitration panel found that Mr. Terry (still a partner at that time) had not consented to these so-called "<u>Overpayments</u>," which totaled $7,021,924.

17. Acis asserts four claims: (1) the alleged Overpayments were void or voidable *ultra vires* acts because all of the partners had not consented; (2) the Overpayments are Acis's estate property subject to turnover under Bankruptcy Code § 542(a); (3) the Debtor is liable to return the Overpayments as "money had and received"; and (4) the Debtor is liable for conversion of the alleged Overpayments.[9]

18. Each of the four claims is frivolous, and all should be summarily disallowed: (1) the Alleged Overpayments were not *ultra vires*; (2) the turnover statute does not apply when the right to the property is disputed; (3) "money had and received" does not apply as a matter of law; and (4) neither does conversion. (As discussed below, even if these claims were not frivolous, because they are brought for the benefit of Acis's equity acquirer and not for the benefit of creditors, they are also barred by the *Bangor Punta* doctrine.)

1. The Alleged Overpayments Were Not Void or Voidable as Ultra Vires

19. Acis obviously had the *power* to make payments for services. That is all that would matter even if Delaware had not essentially abolished the *ultra vires* doctrine.[10] If Acis paid more for services than the Acis LPA permitted without the partners' consent, that is a

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[9] Acis appears to base its claims solely on allegations that the alleged Overpayment are void, not on the alleged excessive contract rates. As set forth herein, the Debtor believes all four claims may be summarily disallowed as a matter of law on undisputed facts. Nonetheless, the Debtor reserves the right to bring defenses with respect to whether the rates were reasonable or any other applicable defenses.

[10] *See* discussion *infra*; *Carsanaro v. Bloodhound Techs., Inc*., 65 A.3d 618, 648 (Del. Ch. 2013) (*ultra vires* applied under former law when "the corporation acted outside the scope of . . . its authorized powers.").

matter *between partners*, not an *ultra vires* act. That is how the arbitration panel treated it for purposes of valuing Mr. Terry's partnership interest: it calculated how much Mr. Terry would have received as a 25% partner had expenses not exceeded the limit, and included it in the Arbitration Award. By necessary extension, the rest of any recovered money should be distributed to the *other* partners; instead, Mr. Terry seeks to recover it a second time.

20. Regardless, *ultra vires* is inapplicable. It formerly applied under Delaware law only when "the corporation acted outside the scope of … its authorized powers" (which was not the case here) but the superseding statute essentially eliminated any utility the *ultra vires* doctrine had. *See* Delaware General Corporation Law, § 124 ("No act of a corporation and no conveyance of real or personal property to or by a corporation shall be invalid by reason of the fact that the corporation was without capacity or power to do such act or to make or receive such conveyance or transfer. . . "); *see also Carsanaro v. Bloodhound Techs., Inc.*, 65 A.3d 618, 648 (Del. Ch. 2013).

21. Furthermore, contrary to Acis's suggestion, even if Delaware had not statutorily eliminated *ultra vires* as a valid concept in corporate law, the concept of *ultra vires* acts never applied to partnerships. The Acis Claim blatantly misstates the law and the cited decision in stating that corporate law on *ultra vires* applies by analogy. *In re Mesa Ltd. P'ship Preferred Unitholders Litig*., Civil Action No. 12,243, 1991 Del. Ch. LEXIS 214, at *20 (Dec. 10, 1991) did not apply *ultra vires* to a partnership, by analogy or otherwise. In fact, it had nothing whatsoever to do with *ultra vires*. It was an unpublished decision involving a ratification issue in a breach of fiduciary duty case. *Ultra vires* was mentioned as one of several

things that can be cured by ratification, after which the court began the next paragraph with: “Case rulings construing statutory corporation law are not necessarily binding precedents as to issues arising under contractual partnership agreements but they may often be helpful by analogy.” The Eleventh Circuit Court of Appeal has suggested that *ultra vires* does not apply to partnerships even in concept.[11]

22. Acis does not claim that the alleged Overpayments are void or voidable on any substantive basis other than *ultra vires*, and thus has no colorable claim under state law to recover its own payments. Accordingly, claims 1-4 must be disallowed under Bankruptcy Code § 502(b)(1). A claimant may not simply venture forth recovering payments a debtor has made without some substantive basis; whether Mr. Terry was deemed to consent to them under the Acis LPA is completely irrelevant.

2. Turnover Under Bankruptcy Code § 542(a) is Inapplicable

23. It is axiomatic that turnover under Bankruptcy Code § 542(a) applies only to obtain possession of property that is indisputably property of the estate. *See, e.g., United States v. Inslaw, Inc.*, 932 F.2d 1467, 1472 (D.C. Cir. 1991) (“It is settled law that the debtor cannot use the turnover provisions to liquidate contract disputes or otherwise demand assets whose title is in dispute.”); *In re Amcast Indus. Corp.*, 365 B.R. 91, 122 (Bankr. S.D. Ohio 2007) (“Recovery under 11 U.S.C. § 542 is limited to assets that are undisputedly property of the

[11] *In re Sec. Grp.*, 926 F.2d 1051, 1054 n.5 (11th Cir. 1991) (“The appellants consistently cast their argument as one alleging the guaranties were ultra vires with respect to the partnerships. Ultra vires is a uniquely corporate concept, arising out of an historical fear and distrust of the corporate form. [citation omitted] Indeed, almost all of the cases cited by the appellants involve corporations, not partnerships. We do not believe that this uniquely corporate concept controls this case.”).

estate.") (citation omitted). Here, Acis's purported right to the property at issue is clearly in dispute, and section 542(a) is therefore inapplicable.

3. "Money Had and Received" is Also Inapplicable

24. "The quasi-contractual action for money had and received is a cause of action for a debt not evidenced by a written contract between the parties" (*MGA Ins. Co. v. Chesnutt*, 358 S.W.3d 808, 815 (Tex. App. 2012)). Here, the alleged Overpayments were made pursuant to valid contracts. Once again, therefore, Acis's theory of relief is conceptually inapplicable.

25. Even if there were a claim for "money had and received," a substantial portion of such a claim would be time-barred. The Arbitration Award found that the alleged Overpayments were made from 2014 to May 2016. Texas applies a two-year statute of limitations to claims for money had and received. *Merry Homes. Inc. v. Luc Dao*, 359 S.W.3d 881, 884 (Tex. App. 2012) (citing "clear precedent"). Accordingly, Acis cannot recover any alleged Overpayments that were made prior to January 31, 2016 (two years prior to the Acis petition date).

4. Conversion is Also Inapplicable

26. Conversion is another inapplicable claim. The Debtor has no identifiable, segregated money subject to recovery through a conversion cause of action, and Acis has not even attempted to identify any such money or property. *See, e.g., Lawyers Title Co. v. J.G.*

Cooper Dev., Inc., 424 S.W.3d 713, 718 (Tex. App. 2014) ("an action for conversion of money arises only where the money can be identified as a specific chattel, meaning it is (1) defined for safe keeping; (2) intended to be kept segregated; (3) substantially in the form in which it is received or an intact fund; and (4) not the subject of a title claim by the keeper"). As noted above, conversion and similar claims are subject to a two-year statute of limitations (Tex. Civ. Prac. & Rem. Code 16.003(a)). Acis cannot meet its burden of proving these requirements.

C. Claims 5-25: All Avoidance Claims Should be Disallowed Because They Seek Recovery Under Section 550(a) of Amounts in Excess of Acis's Plan Obligations

27. Reorganized Acis will no doubt contend that it may prosecute avoidance claims and recover damages without regard to whether creditors are paid in full, because the company itself was damaged by the transfers. The argument is invalid and is based on a gross oversimplification of the law. Reorganized Acis stands in the shoes of old Acis, and debtors cannot recover transfers for their own benefit, except to the extent the recovery is effectively in payment of a claim. Acis has paid its creditors; in fact, it did so with money effectively recovered from the Debtor on one of the very claims it asserts here, by virtue of the Temporary Plan Injunction! Bankruptcy Code § 550 does not permit a debtor or anyone standing in the shoes of the debtor to recover another $75 million for the benefit of the debtor. ***This is a summary basis for disallowance of all avoidance claims alleged in Claims 5-25***.

28. "Courts have consistently held that an avoidance action can only be pursued if there is some benefit to creditors and may not be pursued if it would only benefit the debtor." *Balaber-Strauss v. Harrison (In re Murphy)*, 331 B.R. 107, 122 (Bankr. S.D.N.Y.

2005) (citing *Wellman v. Wellman*, 933 F.2d 215, 218 (4th Cir. 1991) (denying recovery "when the result is to benefit only the debtor rather than the estate")). Consistent with that principle, the Acis Plan provides that "the Reorganized Debtor shall have exclusive standing . . . to prosecute . . . Estate Claims *for the benefit of the Estate* . . . ." Acis Plan, § 7.03 (emphasis added). But a recovery of "at least $75 million" in damages demanded by Reorganized Acis will benefit only one person or entity, namely Mr. Terry, who bought the equity interests in the new Acis. Acis's creditors will have been paid in full; none are depending for their recovery on anything more than has already been recovered by means of the Temporary Plan Injunction. Mr. Terry is among those Acis creditors who will have been paid in full. He may claim that he acquired his equity interest in the new Acis in a debt for equity exchange, *i.e.*, by shaving $1 million off his $8.168 million claim, but that is not a recovery on behalf of his claim, but on behalf of the new equity that he bought. There is no substantive difference between discounting a hundred cent claim and a cash purchase. Even if there was, it would not justify such a windfall, much less at the expense of *the Debtor's creditors*. These include unsecured trade creditors, Redeemer, which has filed a proof of claim in respect of its arbitration award of $190,824,557 in damages as of the petition date, and UBS.

29. Restoring the pre-transfer equity value of the old Acis, after its creditors have been paid in full, and the equity to be "restored" is newly issued and purchased equity, is not the kind of "benefit to the estate" contemplated by *MC Asset Recovery LLC v. Commerzbank A.G. (In re Mirant Corp.)*, 675 F.3d 530, 534 (5th Cir. 2012), as discussed below. There is no post-confirmation "estate" to benefit within the meaning of section 550(a). Unlike any decision

in which a recovery was found to at least indirectly benefit an estate, where, e.g., plan obligations were unfulfilled, or even simply to boost equity value where creditors had received new equity interests on account of their claims (as opposed to purchasing the new equity, as Mr. Terry effectively did), there is no benefit to the estate here. Creditors were paid and Acis's equityholders' interests were canceled under the Acis Plan, and with it their partnership, a relationship that dissolved by operation of law upon the bankruptcy of their general partner, Acis LLC.[12] There is only a new owner, Mr. Terry, who purchased the new equity under the Acis Plan exactly as if it were sold at auction. There is no legal basis for Mr. Terry's attempt to stand in the shoes of the preconfirmation partnership in order to recover more assets than necessary to satisfy its liabilities.

30. In fact, there is a triple irony to Reorganized Acis's demand: (i) first, Mr. Terry is already the only person who was paid for his former equity interest in Acis (the value of which was the main component of the Arbitration Award, for which he has been paid in full in cash); (ii) second, the petition-date Acis equity holders (the persons who might have benefited from Acis recovering its prepetition transfers if their interests had not been canceled) will not

[12] As a Delaware entity, Acis LP was governed by the Delaware Revised Uniform Limited Partnership Act ("DRULPA"). DRULPA specifies six different events that trigger the dissolution of a Delaware limited partnership. Pertinent here, these include a withdrawal of the general partner "upon the happening of events specified in a partnership agreement…." Article 5 of the Acis LP Agreement,, captioned "Dissolution and Winding Up," provides that Acis LP "shall be dissolved" upon any of four events, which include the bankruptcy of the general partner (Sec. 5.01(a)). Here, the general partner was co-debtor Acis LLC. State law dissolution may be prevented by an election by the partners to continue the partnership, made within 90 days of the general partner's bankruptcy filing, but that did not occur. "Because these dissolution provisions have been adopted into the partnership law of almost every state, federal bankruptcy courts have generally enforced the UPA and RULPA dissolution provisions as incorporated in state law, and have held partnerships to be dissolved upon the filing of a bankruptcy petition by a general partner." Lawrence J. La Sala, *Partner Bankruptcy and Partnership Dissolution: Protecting the Terms of the Contract and Ensuring Predictability*, 59 Fordham L. Rev. 619, 621(1991) (citing cases) (available at: https://ir.lawnet.fordham.edu/flr/vol59/iss4/5).

only see none of any recovery, they or their affiliates are actually the ones being asked to pay it; *and* (iii) third, the only recipient of the $75 million would be Mr. Terry himself! Presumably, Mr. Terry purchased Reorganized Acis in anticipation of earning money managing assets while it paid Acis creditors; if he anticipated a $75 million return on his $1 million investment at the expense of the Debtor's creditors, it was a gross miscalculation, inconsistent with the law.

31. *Mirant* is entirely consistent with the Debtor's position, and is not in derogation of the substantial body of authority holding that section 550 is subject to equitable limitations. In *Mirant*, the debtor had sued its lenders to avoid a guaranty and recover payments thereunder. Its plan of reorganization provided for the creation of a special litigation entity ("MCAR"). Unsecured creditors received Reorganized Mirant stock and an interest in MCAR's recoveries. The lender moved for summary judgment in part on the basis that creditors would be paid in full and so MCAR lacked standing. The district court found that MCAR had standing (while granting summary judgment on other grounds), ruling in part:

> Finally, and ***most importantly, the fact that the creditors were paid in New Mirant stock confers standing on MCAR to pursue the avoidance action based on the indirect benefit to the creditors from a more financially sound estate***…. [S]ee also Acequia, 34 F.3d at 811-12 (discussing broad interpretations of 'benefit the estate' in context of avoidance actions and fact that equity stake to creditors results in benefit to estate)… ***In the instant case, the creditors were paid in stock; thus, the prospect of a more financially sound estate would provide MCAR with standing***.

Mirant, 441 B.R. 791, 803 (N.D. Tex. 2010) (emphases added).

32. The Fifth Circuit agreed with the district court's ruling on standing (while vacating on other grounds):

> A bankruptcy trustee may still have standing to avoid a fraudulent transfer after the unsecured creditors are satisfied in full. The fraudulent transfer injured the estate and § 550 ensures that the injury is redressed because a trustee may only avoid a transfer to the extent it benefits the estate. ***Therefore, to the extent that MCAR's successful avoidance of fraudulent transfers will benefit the bankruptcy estate, MCAR has Article III standing to avoid transfers that injured the estate***.

Mirant, 675 F.3d at 534 (emphasis added).

33. This Court followed *Mirant* in the *Texas Rangers* case. The former debtor, Texas Rangers Baseball Partners ("TRBP") had sued its former ultimate parent, HSG Sports Group ("HSG"), to avoid obligations under an aircraft sharing contract signed on the eve of bankruptcy. TRBP had paid its creditors in full under a confirmed plan. HSG argued that TRBP therefore lacked standing as there would be no benefit to the estate from avoiding the contract. This Court observed *Mirant's* broad interpretation of "benefit to the estate," while noting two facts critical here: (1) the case at hand was for avoidance only, and not for recovery under section 550(a), and (2) TRBP still had obligations to lenders that had *not* been paid their entire prepetition indebtedness under the plan. On these facts, the Court found that TRBP had Constitutional standing to assert the fraudulent transfer claim because it would produce a plausible "benefit to the estate."

> *Mirant* makes clear that "benefit to the estate" does not hinge on whether a Chapter 5 action will result in a pool of assets being garnered for the benefit of unsecured creditors. Here, it is a matter of public record that the equity holders of TRBP have obligations to certain lenders that TRBP was also liable to. . . .
>
> Thus, to the extent the equities matter here, it would seem that such equities weigh in favor of finding there to be a plausible "benefit to

> the estate" argument articulated by TRBP. Accordingly, the court finds that here, TRBP does have Constitutional standing to assert a fraudulent transfer claim under section 548(a)(1)(A) of the Bankruptcy Code, even though unsecured creditors were paid in full under the Plan, and that the Avoidance Complaint should not be dismissed.

Paradigm Air Carriers, Inc. v. Tex. Rangers Baseball Partners (In re Tex. Rangers Baseball Partners), 498 B.R. 679, 709 (Bankr. N.D. Tex. 2013).

34. The great weight of authority, both pre- and post-*Mirant*, holds that recovery under section 550(a) is subject to a case-by-case analysis of the facts of the case and the equities. Section 550(a) provides that "the trustee may recover, ***for the benefit of the estate***, the property transferred, or, if the court so orders, the value of such property[.]" 11 U.S.C. § 550(a) (emphasis added).

> Under §550, courts have limited the recovery of pre-petition transfers on equitable principles in a manner consistent with the purposes of the Bankruptcy Code and §550, in particular. *See, e.g.*, *In re Sawran*, 359 B.R. 348, 353 (Bankr. S.D. Fla. 2007) (citing cases). For a concise discussion of the rationales for limiting recovery under 11 U.S.C. §550 based on equitable principles, see Robert B. Bruner and Gerard G. Pecht, The Unexplored Limits of Moore v. Bay: Statutory and Equitable Basis for Limiting Money Damage Awards on Fraudulent Transfer Claims, 26 J. Bankr. L. & Prac. NL Art. 2 (June 2017).

Holber v. Nikparvar (In re Incare, LLC), Nos. 13-14926 ELF, 14-0248, 2018 Bankr. LEXIS 1339, at *35-36 (Bankr. E.D. Pa. May 7, 2018) (citing, among others, *Crescent Res. Litig. Tr. ex rel. Bensimon v. Duke Energy Corp*., 500 B.R. 464, 481-82 (W.D. Tex. 2013)).

35. *Duke Energy* is an instructive, post-*Mirant* decision from the district court in the Western District of Texas, noting that the power to avoid a transfer is not the same as the

power to recover under section 550(a) and holding that while the full amount of the fraudulent transfer was legally avoidable, as per *Mirant*, the court could nonetheless consider "the equitable impact of the Trust's potential recovery" and limit the recovery under section 550. *Id*. at 481-83.

36. In *Duke Energy*, the Crescent Resources post-confirmation Trust sued to avoid a 2006 spinoff transaction that allegedly rendered Crescent Resources insolvent while Duke received $1.6 billion. The plan gave the original lenders all of the equity and allowed unsecured claims for the $961 million difference between those claims and the value of their new equity interests. The Plan also formed the Trust and authorized it to pursue claims against third parties. The Trust had two classes of beneficiaries: Class A comprised creditors with $279 million in unrelated claims and Class B included the lenders with their $961 million in allowed claims.

37. Duke Energy defended in part on the basis that the original lenders entered into the 2006 transaction knowing how the loan proceeds would be distributed, and should not benefit from its avoidance. *Id*. at 478. The district court agreed, referring to *Mirant* and offering the following section 550(a) analysis:

> There is precious little guidance from the Fifth Circuit on the scope of Section 550(a)'s "for the benefit of the estate" language. Other courts generally interpret the language broadly. *See In re Acequia, Inc.*, 34 F.3d 800, 811 (9th Cir. 1994); *In re Tronox Inc.*, 464 B.R. 606, 617 (Bankr. S.D.N.Y. 2012) (citing *Acequia*, 34 F.3d at 811). Still, there are numerous examples of cases where courts have denied or limited recovery based on the equitable principles underlying the Bankruptcy Code and Section 550(a) in particular. *See, e.g., Wellman v. Wellman*, 933 F.2d 215, 218 (4th Cir. 1991) (affirming district court's order holding debtor's avoidance action was not "for the benefit of" the estate); *In re Yellowstone Mountain Club, LLC*, 436 B.R. 598, 678 (Bankr. D. Mont. 2010) (refusing to

> award any recovery to the original lender who was complicit in the fraudulent transfer, as well as syndicate lenders "who have speculated on a monumental award against" the plaintiff); *In re Jackson*, 318 B.R. 5, 27-28 (Bankr. D.N.H. 2004), *aff'd*, 459 F.3d 117 (1st Cir. 2006) (because "equity guards against windfalls in general," amount of recovery through Section 550(a) on a Section 544(b) claim may be equitably adjusted); *but see Tronox*, 464 B.R. at 614 (collecting cases interpreting Section 550(a) as setting "a minimum floor for recovery in an avoidance action," but not "any ceiling on the maximum benefits that can be obtained once that floor has been met").
>
> The one consistent vein traveling through all of these cases is the fact-specific nature of the inquiry. *See, e.g., Wellman*, 933 F.2d at 218 ("benefit of the estate" question requires "a case-by-case, fact-specific analysis"); *In re Murphy*, 331 B.R. 107, 121 (Bankr. S.D.N.Y. 2005) (limiting recovery under Section 550 based on the "extremely unusual" facts of the case). It is therefore instructive to consider the factual circumstances of this case, and the equitable impact of the Trust's potential recovery.
>
> * * *
>
> If the Trust is allowed to recover the $961 million of the term loan proceed transfer destined for the Class B creditors—a group of creditors who all derive their interest in the estate from the original lenders—the banks' high risk investment will pay off in the form of a massive windfall.

Duke Energy, 500 B.R. at 481-82. The district court concluded that there was "no equitable basis" for allowing a recovery to Class B creditors, and granted summary judgment in favor of Duke Energy.

38. Where this Court found the facts and equities in *Texas Rangers* to favor finding a "benefit to the estate," the facts and equities here point decisively to the opposite conclusion. By comparison, here: (1) Reorganized Acis is seeking not just to avoid obligations but to recover $75 million under section 550(a), (2) Acis's creditors will already have been paid in full at 102% (once Mr. Terry actually elects to pay creditors with the cash at Acis), (3) there

are ***no*** creditors relying on Reorganized Acis's equity or financial condition to recover on their claims, (4) any recovery would come at the expense of the Debtor's unsecured creditors, and (5) the person to receive the asserted $75 million windfall (*i.e.*, Mr. Terry) paid only $1 million to purchase Acis's interests to take a flyer on this and related litigation. As the court stated in *Blixseth v. Kirschner (In re Yellowstone Mt. Club, LLC)*, *supra*, 436 B.R. at 678 "the Court will not at this time enter an order that would in any way benefit Credit Suisse, the Prepetition Lenders or other parties who have speculated on a monumental award against Blixseth." *See also Wellman, supra,* 933 F.2d at 219 (Fourth Circuit denied recovery where the plaintiff/debtor "executed the non-recourse promissory notes to the creditors in an attempt to create a claim in the estate so that he could obtain a "massive surplus recovery" for himself in addition to the surplus distributed to him.").

39. The facts here are firmly aligned with cases dealing with recoveries under section 550(a) such as *Adelphia Recovery Trust v. Bank of America, N.A.,* 390 B.R. 80, 97 (S.D.N.Y. 2008), where the court found no benefit to the estate where all creditors were "paid in full with interest under the Plans and no creditors have been issued shares" in the Adelphia Recovery Trust. As noted, Mr. Terry did not receive the ownership interests in Acis in payment of his claim against the Acis estate (for which claim he received or will receive 102% of his claim amount); he purchased the debtor – Acis – for $1 million, and it is only Mr. Terry who would benefit, not Acis's creditors, employees (there are none) or prior equity holders. "Courts have consistently held that an avoidance action can only be pursued if there is some benefit to creditors and may not be pursued if it would only benefit the debtor." *Balaber-Strauss v.*

Harrison (In re Murphy), 331 B.R. at 122 (citing *Wellman*, *supra*, 933 F.2d at 218 (no recovery "when the result is to benefit only the debtor rather than the estate")).

40. Thus, under sections 548 and 550, "only net amounts diverted from, that is damages consequently suffered by the creditor body of, a debtor may be recovered via a fraudulent conveyance action." *In re Foxmeyer Corp*., 296 B.R. 327, 342 (Bankr. D. Del. 2003). To do otherwise is solely to benefit the debtor (or, as here, the debtor's purchaser). That is inappropriate under either federal or state fraudulent transfer laws, as discussed at length in *Murphy*, 331 B.R. at 124-25. As a Minnesota bankruptcy court explained:

> Whether there is a benefit to the estate depends on a case-by-case, fact-specific analysis. [ ] This is not the usual case in which an increase in dollars to the estate results in a patent benefit to the estate. In this case, the increase in dollars to the estate which would result from the requested relief would not provide a benefit to the estate. In this case, the trustee has advised that the amount on hand for distribution from the estate already exceeds the total amount of estimated administrative expenses and all claims. Thus, in this case, the only party to benefit from avoiding and recovering the Transfer would be the debtor.
>
> Such a benefit to the debtor would be inappropriate. The provisions of MUFTA "protect creditors rather than transferors of debt." *See Bartholomew v. Avalon Capital Group, Inc*., 828 F.Supp.2d 1019, 1025 (D. Minn. 2009). "Only creditors are entitled to remedies under the UFTA." *Id*., *citing* Minn. Stat. §§ 513.47, 513.48(b).

Running v. Dolan (In re Goodspeed), 535 B.R. 302, 315-16 (Bankr. D. Minn. 2015). Noting that trustees are the exception since they sue on behalf of creditors, the court observed that nonetheless there must be a benefit to creditors, citing and extensively quoting *Murphy* and *Wellman*, *supra*.

41. To permit any recovery under section 550(a) beyond the amount needed to pay creditors would create a new duty under state law. Acis's former equity holders, as its sole owners, had no duty under applicable state law *to Acis*, or anyone else other than creditors, to refrain from making the transfers at issue, nor did the Debtor or any of the other related entities or professionals who are now litigation targets have any right or obligation to stop them. Thus in a trustee's lawsuit against former partners of a debtor partnership, in which the trustee alleged in part that the partners had conspired to "set into motion a series of transactions that crippled [the debtor partnership]," the district court for the Southern District of Texas explained and held in part:

> Delaware law is clear that a company's sole owner cannot breach fiduciary duties "owed to the companies he wholly owned." *See Midland Food Services, LLC v. Castle Hill Holdings V, LLC*, 792 A.2d 920, n. 14 (Del. Ch. 1999) (citing *Goodman v. Futrovsky*, 42 Del. Ch. 468, 213 A.2d 899, 902 (1965) (the defendants could not defraud company since they "were the sole owners . . . and could do with it as they wished"), cert denied, 383 U.S. 946, 86 S. Ct. 1197, 16 L. Ed. 2d 209 (1966). ***Tow has not cited legal support for the proposition that a nonowner can be liable for conspiring with the sole owner of a partnership for breaching duties that the owner owes himself***.

Tow v. Amegy Bank N.A., 976 F. Supp. 2d 889, 906-07 (S.D. Tex. 2013) (emphasis added). *See also Newman v. Toy*, 926 S.W.2d 629, 631 (Tex. App.-Austin 1996, writ denied) ("A sole shareholder or all shareholders acting in agreement, being all the beneficial owners of corporate property, may themselves deal with such property so long as the rights of creditors are not prejudiced ...").

42. Accordingly, any recoveries of the transfers sought to be avoided in the Acis Claim should be limited to any amount needed to satisfy obligations under the Acis Plan, that is to say, to pay creditors and administrative claimants in full. No creditors have a stake in restoring Acis to the financial condition it occupied prior to any of the transfers that are the subject matter of the Acis Claim, at least not on account of any unpaid claims. Upon payment of creditors in full under the Acis Plan, therefore, all avoidance claims should be dismissed as moot, and the only thing stopping the avoidance claims from actually being moot is Mr. Terry's unwillingness to pay Acis's creditors with the cash at Acis.

D. Acis is Barred Under the *Bangor Punta* Doctrine From Asserting For Its Own Benefit All Claims Not Asserted Pre-Acquisition – Claims 1-8 and 21-34 – Excepting Only Claims Related to the ALF PMA Transfer (Claims 9-12), the ALF Share Transfer (Claims 13-16), and the Note Transfer (Claims 17-20)

43. In *Bangor Punta Operations, Inc. v. Bangor & A. R. Co*., 417 U.S. 703, 94 S. Ct. 2578, 2584-85 (1974); the Supreme Court held that a stockholder who has purchased all or substantially all of the shares of a corporation from a vendor at a fair price may not seek to have the acquired corporation recover against the vendor for prior corporate mismanagement and waste of corporate assets that may have occurred during the prior vendor's ownership. *Bangor Punta*, 417 U.S. at 710. "What the *Bangor Punta* Doctrine does prohibit is purchasers . . . from accepting their end of the bargain - - ownership and control of the corporation - - and attempting to sweeten their end of the deal by suing the seller to recover damages to the corporation allegedly caused by the seller before the sale. The *Bangor Punta* Doctrine properly prohibits as

inequitable such attempts at re-trading commercial transactions through litigation. *Midland Food Servs., LLC v. Castle Hill Holdings V, L.L.C.*, 792 A.2d 920, 933-34 (Del. Ch. 1999). The nature of the claim does not matter. *Id*. at 930.

44. The doctrine does not apply to claims brought for the benefit of creditors. *Bangor Punta*, 417 U.S. at 715 (rejecting argument that plaintiff-corporation should be entitled to recovery since any recovery would benefit the public where the plaintiff-corporation "would be entitled to distribute the recovery in any lawful manner it may choose"); *Wieboldt Stores, Inc. v. Schottenstein*, 94 B.R. 488, 508 (N.D. Ill. 1988) (permitting debtor in possession to assert breach of fiduciary claim but only to extent of creditor injury – "The creditors cannot receive a "windfall" recovery, but may recover only to the extent of their claims."). *Cf. Meyers v. Moody*, 693 F.2d 1196, 1207 (5th Cir. 1982) (*Bangor Punta* doctrine inapplicable to suit brought by receiver for benefit of creditors); *Think3 Litig. Tr. v. Zuccarello (In re Think3, Inc.)*, 529 B.R. 147, 185 (Bankr. W.D. Tex. 2015) (doctrine inapplicable where "Plaintiff Trust was created by a confirmed plan of reorganization in the Think3 bankruptcy case for the purpose of bringing suits for the benefit of creditors of insolvent Think3.").

45. The doctrine also does not apply to claims that were pending when the acquisition occurred. *Meyers v. Moody*, 693 F.2d at 1208 ("Moody is thus urging us to extinguish a cause of action that both existed and was pursued long before the transfer of Empire's assets took place. Neither law nor equity permits us to do so."); *TNS Media Research, LLC v. TiVo Research & Analytics, Inc.*, 193 F. Supp. 3d 307, 312 (S.D.N.Y. 2016) ("Once

brought, a claim is not released merely and necessarily based on a change in corporate ownership.”).

46. Mr. Terry agreed to purchase Acis’s equity on July 5, 2018 and the Acis Plan was confirmed on January 1, 2019. The only claims pending at either time were those asserted by the Acis trustee in his counterclaim filed on July 2, 2018 (Acis Adversary No. 18-03078, at Docket No. 23). That counterclaim asserted only fraudulent transfer claims for (1) the ALF Share Transfer, (2) the ALF PMA Transfer, and (3) the Note Transfer (all as described below). Acis’s amended complaint, asserting for the first time *all other claims* asserted in the Acis Claim, all of which relate to other transactions, was filed on ***June 20, 2019***. The *Bangor Punta* doctrine, therefore, bars all claims other than Claims 9-20.

E. Claims 5-8: Fraudulent Transfer Claims - Sub-Advisory Agreement Modifications

47. Claims 5 through 8 are claims to avoid as fraudulent transfers and recover unspecified damages based on modifications to the Sub-Advisory Agreement by and between Acis LP and the Debtor dated January 1, 2011. The modifications were made on July 29, 2016, and raised the Debtor’s rates from 5 to 20 basis points. Those claims are: (5) for actual fraudulent transfer under section 548; (6) for actual fraudulent transfer under section 544(b) and Texas law; (7) for constructive fraudulent transfer under section 548; and (8) for constructive fraudulent transfer under section 544(b) and Texas law.

48. There are numerous bases on which Claims 5-8 can and should be disallowed entirely, some on a summary basis and others for which further factual development would be required, as follows:

a. As set forth above, Acis is not entitled to any recovery beyond that required to satisfy obligations under the Acis Plan. The Debtor believes this issue can be summarily adjudicated at this time.

b. The claims are barred by the *Bangor Punta* doctrine, which can be summarily adjudicated at this time.

c. In addition, the Debtor objects to these claims on the following grounds, which are not subject to summary adjudication at this time:

(1) Acis cannot meet its burden of proving insolvency at the time of the modifications. In fact, Acis clearly was solvent at that time. Expert testimony will be required on this issue.

(2) Acis received reasonably equivalent value for the modifications, in that the rates had been maintained at artificially low levels during Mr. Terry's tenure, and as modified represented reasonably equivalent value for the services rendered thereunder. In fact, the revised rates are similar to what Brigade is currently charging Acis.

(3) The modifications, which were made prior to the commencement of litigation and which had a legitimate purpose and justification, were not undertaken to hinder or defraud creditors.

(4) Acis has not alleged damages. The modifications gave rise to, at most, an avoidable *obligation*, not a *transfer*, and the obligation potentially subject to avoidance was rejected by

the Acis trustee and approved by an order of the Court. To the extent that Acis alleges that payments made at the modified rates were fraudulent transfers, the Debtor maintains, as alleged above, that the rates as modified constituted reasonably equivalent value for the services rendered.

(5) The Debtor will have a claim in the Acis Case under Bankruptcy Code § 502(h) with respect to any property recovered on account of this claim.

F. <u>Claims 9-24: Acis Has Not Alleged Facts Sufficient to Show That the Debtor is the Entity for Whose Benefit the Transfers Were Made</u>

49. Acis claims that with respect to each alleged avoidable transfer, the Debtor was either the initial transferee or the entity for whose benefit it was made, from which the property transferred or its value may be recovered under federal or state law.[13]

50. Acis concedes, as it must, that ***the Debtor was not the initial transferee of the transfers alleged in Claims 9 through 24***. As to those claims, Acis has failed to allege facts sufficient to establish, if proven, that the Debtor was "the entity for whose benefit such transfer was made." This defense can be summarily adjudicated at this time.

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[13] Section 550(a) provides that with respect to a transfer that is avoided under sections 544, 545, 547, 548, 549, 553(b), or 724(a), "the trustee may recover, for the benefit of the estate, the property transferred, or, if the court so orders, the value of such property, from—(1) ***the initial transferee of such transfer or the entity for whose benefit such transfer was made***[.]" 11 U.S.C. § 550(a)(1). Texas law is similar. *See Citizens Nat'l Bank of Tex. v. NXS Constr., Inc.*, 387 S.W.2d 74, 79-80 (Tex. App. 2012) ("the creditor may obtain a monetary judgment against the transferee of the asset, the person for whose benefit the transfer was made, or subsequent transferees." (citing Tex. Bus. & Com. Code § 24.009(b)). Other than with respect to the sub-advisory agreement modifications, the Debtor is not alleged to have been either an immediate or subsequent transferee of any of the allegedly improper transfers, for purposes of Bankruptcy Code § 550(a) and Tex. Bus. & Com. Code § 24.009(b) (referencing the "first transferee" and "any subsequent transferee").

51. Specifically, Acis has not identified any specific, direct benefit to the Debtor from the fraudulent transfers alleged in Claims 9-24. It only alleges an indirect benefit to the Debtor from being part of the Highland corporate group. But any transaction by a corporate group member commonly has indirect benefits for other group members, which is why as a matter of law it is insufficient simply to allege an amorphous benefit for the Debtor to be deemed a beneficiary of the putative fraudulent transfers under § 550. *See, e.g., Faulkner v. Kornman (In re Heritage Org., LLC)*, 413 B.R. 438, 495-96 (Bankr. N.D. Tex. 2009) (Judge Houser) ("an unquantifiable advantage" is not a "benefit" for purposes of § 550(a); liability will not be imposed upon a party that allegedly benefitted from the fraudulent transfer just because defendant had controlled debtor-transferor and directed the transfer; "There is simply no showing that Kornman [who allegedly benefitted] received any benefit at all from the initial transfers."); *Peterson v. Hofmann (In re Delta Phones, Inc.)*, 2005 Bankr. LEXIS 2550, *16-*17 (Bankr. N.D. Ill. Dec. 23, 2005) ("That a shareholder holds some ownership interest in a corporation does not somehow mean that all transfers made to the corporation or by it are automatically made for the 'benefit' of the shareholder under § 550(a)(1). The 'entity' under § 550(a)(1) must benefit from the transfer 'directly,' not indirectly…. Taken to its logical conclusion, Peterson's position would put average investors on the hook for all kinds of corporate transactions any time a public company sought bankruptcy protection."); *see also In re Peregrine Fin. Group, Inc.*, 589 B.R. 360 (Bankr. N.D. Ill. 2018) ("the [defendant] cannot be the transfer beneficiary if it will get the benefit of the funds sometime later"; "[T]he [defendant] received no direct benefit at the

time the transfer was made. It had only the right to benefit from the funds in the future after [certain fees were deducted, other requirements were met, and funds were still available].").

52. Accordingly, Reorganized Acis has not alleged facts sufficient to establish, even if proven, that the Debtor was "the entity for whose benefit such transfer was made" with respect to the transfers alleged in Claims 9-24.

G. Claims 9-12: Fraudulent Transfer Claims - ALF PMA Transfer

53. Acis alleges that its rights to direct and effectuate an optional redemption and otherwise control the assets of Acis Loan Funding Ltd. ("ALF"), pursuant to a Portfolio Services Agreement dated August 10, 2015, and a Portfolio Management Agreement dated December 22, 2016, by and between Acis and ALF (together, the "ALF PMA"), had value and were transferred for no value to Highland HCF Advisor in October 2017. The corresponding claims for relief are: (9) actual fraudulent transfer under section 548; (10) actual fraudulent transfer under section 544(b) and Texas law; (11) constructive fraudulent transfer under section 548; and (12) constructive fraudulent transfer under section 544(b) and Texas law. Acis seeks to avoid the transfer and recover unspecified damages.

54. ***Acis fails to address the fact that it has been exercising the rights that it alleges were transferred and has been deriving earnings under the ALF PMA since the preliminary and plan injunctions were issued in the Acis Case, in an amount sufficient to satisfy all claims against it***. That is, the alleged transfers had no economic effect as Acis retained all rights under the contracts. Accordingly, the Debtor objects on the following bases to Claims 9-12:

a. As set forth above, Acis is not entitled to any recovery beyond that required to satisfy obligations under the Acis Plan. The Debtor believes this issue can be summarily adjudicated at this time.

b. As set forth above, the Debtor was not the transferee of the ALF PMA Transfer and an insufficient factual basis is alleged to conclude that it was the entity for whose benefit the transfer was made. The Debtor believes this issue can be summarily adjudicated at this time.

c. In addition, the Debtor objects to these claims on the following grounds, which are not subject to summary adjudication at this time:

(1) Acis cannot meet its burden of proving insolvency at the time of the transfer. Expert testimony will be required on this issue.

(2) Acis received reasonably equivalent value for the transfer.

(3) The transfer had a legitimate purpose and justification, and was not undertaken to hinder or defraud creditors.

(4) Acis has not alleged damages. In fact, Acis has continued to exercise rights and derive earnings under the ALF PMA pursuant to injunctive relief granted in the Acis Case.

(5) The Debtor will have a claim in the Acis Case under Bankruptcy Code § 502(h) with respect to any property recovered on account of this claim.

H. Claims 13-16: Fraudulent Transfer Claims - ALF Share Transfer

55. Acis alleges that on October 24, 2017, Acis and CLO Holdco Ltd. entered into a resolution whereby Acis sold its equity interest in ALF (the "ALF Share Transfer") to Highland Funding for $991,000. The 13th through 16th claims for relief are: (13) actual fraudulent transfer under section 548; (14) actual fraudulent transfer under section 544(b) and Texas law; (15) constructive fraudulent transfer under section 548; and (16) constructive fraudulent transfer under section 544(b) and Texas law. Acis seeks to avoid the ALF Share Transfer and recover unspecified damages.

56. The Debtor submits that there are numerous bases for disallowance of Claims 13-16 in the entirety:

a. As set forth above, Acis is not entitled to any recovery beyond that required to satisfy obligations under the Acis Plan. The Debtor believes this issue can be summarily adjudicated at this time.

b. As set forth above, the Debtor was not the transferee and an insufficient factual basis is alleged to conclude that it was the entity for whose benefit the transfer was made. The Debtor believes this issue can be summarily adjudicated at this time.

c. In addition, the Debtor objects to these claims on the following grounds, which are not subject to summary adjudication at this time:

(1) Acis cannot meet its burden of proving insolvency at the time of the transfer. Expert testimony will be required on this issue.

(2) Acis received reasonably equivalent value for the transfer, as the repurchase price was at their net asset value.

(3) The transfer had a legitimate purpose and justification, and was not undertaken to hinder or defraud creditors.

(4) Acis has not alleged damages. In fact, Acis has continued to control and derive earnings from these assets by means of the ALF PMA pursuant to injunctive relief granted in the Acis Case.

(5) The Debtor will have a claim in the Acis Case under Bankruptcy Code § 502(h) with respect to any property recovered on account of this claim.

I. Claims 17-20: Fraudulent Transfer Claims – Note Transfer

57. Acis alleges that on November 3, 2017, Acis LP, the Debtor, and Highland Management (a Debtor affiliate) entered into an *Agreement for Assignment and Transfer of Promissory Note* (the "Note Transfer Agreement"), by which Acis transferred a $9.5 million promissory note owed by the Debtor to Acis (the "Note") to Highland CLO Management for no material value. Based thereon it pleads the 17th through 20th claims for relief: (17) actual fraudulent transfer under section 548; (18) actual fraudulent transfer under section 544(b) and Texas law; (19) constructive fraudulent transfer under section 548; and (20) constructive fraudulent transfer under section 544(b) and Texas law. Acis seeks to avoid the transfer and recover unspecified damages.

58. Not only did the Debtor not receive the Note, it remains liable! For this and other reasons, the Debtor objects to Claims 17-20 on the following bases:

a. Since the Debtor did not receive the Note, and indeed remains liable on the Note, it is certainly not the entity for whose benefit it was made. This issue can be summarily adjudicated at this time.

b. As set forth above, Acis is not entitled to any recovery beyond that required to satisfy obligations under the Acis Plan. This issue can be summarily adjudicated at this time.

c. In addition, the Debtor objects to these claims on the following grounds, which are not subject to summary adjudication at this time:

(1) Acis cannot meet its burden of proving insolvency at the time of the transfer. Expert testimony will be required on this issue.

(2) Acis received reasonably equivalent value for the transfer.

(3) The transfer had a legitimate purpose and justification, and was not undertaken to hinder or defraud creditors.

(4) Acis has not alleged damages.

(5) The Debtor will have a claim in the Acis Case under Bankruptcy Code § 502(h) with respect to any property recovered on account of this claim.

J. Claims 21-24: Fraudulent Transfer Claims – Acis CLO 2017-7 Agreement

59. Acis alleges that on December 19, 2017, it entered into an *Agreement for Assignment and Transfer* (the "CLO 2017-7 Agreement") by which it transferred its interests in sub-advisory and services agreements relating to Acis CLO 2017-7, by which it derived fees, to

Highland CLO Holdings (a Debtor affiliate) for no consideration, and also its indirect equity interests in the underlying CLO (the "2017-7 Equity") in exchange for the forgiveness of $2.8 million payable owed by Acis to the Debtor. Based thereon Acis pleads the 21st through 24th claims for relief: (21) actual fraudulent transfer under section 548; (22) actual fraudulent transfer under section 544(b) and Texas law; (23) constructive fraudulent transfer under section 548; and (24) constructive fraudulent transfer under section 544(b) and Texas law. Acis seeks to avoid the transfer and recover unspecified damages.

60. The Debtor submits that Claims 21-24 can and should be disallowed on the following bases:

a. As set forth above, Acis is not entitled to any recovery beyond that required to satisfy obligations under the Acis Plan. This issue can be summarily adjudicated at this time.

b. As set forth above, the Debtor was not the transferee and an insufficient factual basis is alleged for a conclusion that it was the entity for whose benefit the transfer was made. This issue can be summarily adjudicated at this time.

c. The claims are barred by the *Bangor Punta* doctrine, which can be summarily adjudicated at this time.

d. In addition, the Debtor objects to these claims on the following grounds, which are not subject to summary adjudication at this time:

(1) Acis cannot meet its burden of proving insolvency at the time of the transfer. Expert testimony will be required on this issue.

(2) The Debtor did not receive any benefit from the transfer and so is not the entity for whose benefit the transfer was made.

(3) Acis received reasonably equivalent value for the transfer.

(4) The transfer had a legitimate purpose and justification, and was not undertaken to hinder or defraud creditors.

(5) Acis has not alleged damages.

(6) The Debtor will have a claim in the Acis Case under Bankruptcy Code § 502(h) with respect to any property recovered on account of this claim.

K. Claim 25: Preferences

61. Acis alleges that within one year of the Petition Date, the Debtor received payments of totaling $16,113,790.14 from Acis on account of purported debt claims owed by Acis, comprised of approximately $7.3 million pursuant to the Shared Services Agreement and Sub-Advisory Agreement (the "Service Payments"), over $5 million pursuant to an October 2016 Participation Purchase Agreement (the "Participation Payments"), approximately $3.3 million in promissory note repayments (the "Note Payments"), and approximately $118,000 for miscellaneous expense reimbursements ("Expenses").

62. Acis's 25th claim for relief alleges that if such transfers are not otherwise recoverable, they may be avoided and recovered as preferences under Bankruptcy Code § 547 and Texas Business and Commerce Code §§ 24.006(b) and recovered under Bankruptcy Code § 550. Acis also alleges that the 2017-7 Equity Transfer and the Note Transfer, to the extent they satisfied legitimate obligations, are avoidable as preferences.

63. Setting aside the many statutory defenses to these claims set forth below, the fact that Acis creditors are being paid in full is fatal to the preference claim. Acis tries to sidestep one consequence by asserting that whether a creditor would receive more in liquidation is measured as of the petition date. But there are at least two other consequences. One, as discussed, is that Acis cannot recover damages for its own benefit, once creditors are paid. The other is that the Debtor would receive on account of any preference recovery a general unsecured claim under the Acis Plan under Bankruptcy Code § 502(h), which would offset any liability ***in full***. The Debtor objects to Claim 25 on those bases and others, as follows:

a. As set forth above, Acis is not entitled to any recovery under section 550(a) on the alleged preferences beyond that required to satisfy obligations under the Acis Plan. This issue can be summarily adjudicated at this time.

b. The claims are barred by the *Bangor Punta* doctrine, which can be summarily adjudicated at this time.

c. Acis has not alleged a factual basis for its allegation that it was insolvent at the time of the transfers. This is a pleading requirement.

d. Acis has not alleged the existence of antecedent debts, also a pleading requirement.

e. In addition, the Debtor objects to this claim on the following grounds, which are not subject to summary adjudication at this time:

(1) Acis cannot meet its burden of proving insolvency at the time of the transfers. Expert testimony will be required on this issue.

(2) Acis cannot meet its burden of proving that each transfer enabled the Debtor to receive more than it would have received in a hypothetical chapter 7 liquidation.

(3) The Debtor will have a claim in the Acis Case under Bankruptcy Code § 502(h) with respect to any property recovered on account of this claim.

(4) Within the meaning of section 547(c)(1), each alleged transfer was intended by the debtor and the creditor to or for whose benefit such transfer was made to be a contemporaneous exchange for new value given to the debtor; and was in fact a substantially contemporaneous exchange, including without limitation all Service Payments and Expenses.

(5) Within the meaning of section 547(c)(2), each alleged transfer was made in the ordinary course of business or financial affairs of the debtor and the transferee; or made according to ordinary business terms, including without

limitation all Service Payments, all payments under Participation Payments, all Note Payments, and all Expenses.

(6) Within the meaning of section 547(c)(4), each alleged transfer was made to or for the benefit of a creditor, to the extent that, after each such transfer, such creditor gave new value to or for the benefit of the debtor—(A) not secured by an otherwise unavoidable security interest; and (B) on account of which new value the debtor did not make an otherwise unavoidable transfer to or for the benefit of such creditor, including without limitation all Service Payments, Participation Payments, and Expenses.

(7) Participation Payments were received as a mere conduit.

(8) Any recovery on account of the alleged preferences would be offset by a corresponding general unsecured claim under the Acis Plan under Bankruptcy Code § 502(h).

L. Claim 26: Liability Under Section 550(a)

64. Acis alleges that the Debtor is the initial transferee within the meaning of Bankruptcy Code § 550(a) of all transfers sought to be avoided in Counts 5 – 8 and 25, and that it is the entity for whose benefit the transfers were made with respect to the transfers sought to be avoided in Counts 9-24.

a. Claim 26 can and should be disallowed in its entirety, on a summary basis. First, by operation of the statute, there is no liability under section 550 if no

transfers are avoided. Second, as discussed in Section E above, Acis concedes the Debtor was not the initial transferee of the transfers alleged in Claims 9 through 24, and it has not alleged facts sufficient to establish, if proven, that the Debtor was "the entity for whose benefit such transfer was made." Specifically, it has not identified any specific, direct benefit to the Debtor from the fraudulent transfers alleged in Claims 9-24. It only posits an indirect benefit from being part of the Highland corporate group, which is inadequate to establish that an entity is the entity for whose benefit a transfer was made. Finally, all claims other than Claims 9-20 are barred by the *Bangor Punta* doctrine.

M. <u>Claim 27: Civil Conspiracy to Commit Fraud, Including Fraudulent Transfers</u>

65. Acis alleges that the Debtor, Highland Advisor, Highland Management, and Highland Holdings formed a conspiracy to "engage in a series of fraudulent transfers and other fraudulent schemes, including the ALF PMA Transfer, the ALF Share Transfer, the Note Transfer, the 2017-7 Equity transfer, the 2017-7 Agreements transfer and the thwarted Universal/BVK Agreement transfer in order to denude Acis's assets and take over Acis LP's valuable business." Acis Claim, ¶ 246.

66. This claim fails as a matter of law, and can be adjudicated at this time. It is an impermissible end-around section 550's remedial provisions, and the inconvenient fact that the Debtor did not receive a cognizable benefit thereunder with respect to most of the fraudulent transfer claims. Section 550 provides the exclusive remedy for fraudulent transfers. Partly for that reason, there is simply no substantive legal basis for the sinister allegations of "unlawful, overt acts" to "take over Acis LP's valuable business" upon which the "conspiracy" is

predicated. As discussed above, the law is crystal clear that Acis's equity holders had no duty to Acis ***not*** to 'take over its valuable business' and nobody had a duty to stop them from doing so, as the Southern District of Texas court discussed thoroughly in *Tow v. Amegy Bank N.A.*, *supra*, 976 F. Supp. 2d at 906-07. They owned all of it! The only thing they could not do is transfer assets without adequate consideration if Acis were insolvent. For that, there are statutory remedies prescribed by sections 548 and 550.

67. That is why no claim for conspiracy to commit an actual or constructive fraudulent transfer (or for "aiding and abetting") exists under Texas or federal law. *Tow v. Bulmahn*, No. 15-3141, 2016 U.S. Dist. LEXIS 57396, at *91 (E.D. La. Apr. 29, 2016). *See Mack v. Newton*, 737 F.2d 1343, 1357 (5th Cir. 1984) ("[T]he general rule under the Bankruptcy Act is that one who did not actually receive any of the property fraudulently transferred (or any part of a 'preference') will not be liable for its value, even though he may have participated or conspired in the making of the fraudulent transfer (or preference)."); *Schlossberg v. Abell (In re Abell)*, 549 B.R. 631, 667 (Bankr. D. Md. 2016). A party may not be liable for more than it actually received. *D.A.N. Joint Venture III, L.P. v. Touris*, No. 18-cv-349, 2020 U.S. Dist. LEXIS 51407, at *25-26 (N.D. Ill. Mar. 25, 2020) ("Numerous courts have held that the bankruptcy court cannot invoke state law remedies to circumvent or undermine the remedy legislated by Congress for the avoidance of a fraudulent transfer . . . . [T]he trustee's remedy for an avoided transfer [is] provided for in § 550, and that provision only allows a trustee to recover up to the amount of the transfer.") (citations omitted). Allowing a trustee to recover more than the amount of the transfer would "lead to a result that expands the remedies [for a fraudulent

transfer] beyond §550." *Sherman v. FSC Realty LLC (In re Brentwood-Lexford Partners, LLC*), 292 B.R. 255, 275 (Bankr. N.D. Tex. 2003).

68. This Court recognized but distinguished *Mack* in *Milbank v. Holmes (In re TOCFHBI, Inc.)*, 413 B.R. 523, 535 (Bankr. N.D. Tex. 2009):

> [W]hile it is perfectly true that "the general rule under [the Bankruptcy Code or the old Act] is that one who did not actually receive any of the property fraudulently transferred (or any part of a 'preference') will not be liable for its value, even though he may have participated or conspired in the making of the fraudulent transfer (or preference)," (*Mack v. Newton,* 737 F.2d at 1357), the Chapter 7 Trustee, in this case, is not moving under the fraudulent transfer statute and arguing something amazingly similar such as "conversion" and "conspiracy" regarding the same acts--and, in the process, joining Defendants who would not normally have liability under the relevant fraudulent transfer statutes.

Id. at 535-36. "). The Court recognized that "liability [under most states' uniform fraudulent transfer acts] cannot be imposed on non-transferees under aiding and abetting or conspiracy theories[.]" *Id*. (citation omitted). Accordingly, the claim should be disallowed.

69. Further, this claim is barred by the *in pari delicto* defense, as discussed below in the discussion of the Thirtieth Claim for Breach of Fiduciary Duty. Acis was by its own allegations an instrumentality of Dondero, who allegedly used it to perpetrate the "scheme" characterized in the Acis Complaint. The trustee was, and Reorganized Acis is, subject to all defenses that existed against Acis. Any claim by Acis against its alleged co-conspirators would be barred by *in pari delicto*, as Acis was at least equally culpable in all of the conduct it alleges.

70. Finally, the claim is barred by the *Bangor Punta* doctrine, as the claim is being brought for the benefit of Mr. Terry, the acts occurred prior to Mr. Terry's acquisition of

the company, and this claim was not asserted in the Acis trustee's counterclaim that was pending when Mr. Terry acquired the company.

N. <u>Claim 28: Tortious Interference with the Universal/BVK Agreement</u>

71. Acis alleges that the Debtor tortiously interfered with its rights by seeking to replace it as manager under the Agreement for the Outsourcing of Asset Management between Acis LP and Universal-Investment-Luxembourg S.A. by which Acis provided sub-advisory services for a German fund (the "<u>Universal/BVK agreement</u>"), before and after the Debtor's sub-advisory services were terminated on August 1, 2018.

72. Claim 28 can and should be summarily disallowed, as there is no factual dispute on several critical issues: (1) this was an at-will contract; (2) the Debtor had no duty not to compete; and (3) no damages were sustained, as the contract was not terminated and all attorneys' fees have been paid, in fact, with money diverted from the Debtor.

73. Under Texas law, a claim for tortious interference with contract has four elements: (1) a contract subject to the alleged interference exists; (2) the alleged act of interference was willful and intentional; (3) the willful and intentional act proximately caused damage; and (4) actual damage or loss occurred. *Victoria Bank & Trust Co. v. Brady*, 811 S.W.2d 931, 939 (Tex.1991). Those requirements are not met on the undisputed facts.

74. The Universal/BVK agreement was an at-will contract. "Ordinarily, merely inducing a contract obligor to do what it has a right to do is not actionable interference." *ACS Investors, Inc. v. McLaughlin*, 943 S.W.2d 426, 430 (Tex. 1997). A defendant cannot tortiously interfere with a contract that permits the non-plaintiff contracting party to terminate

the agreement, where the defendant's actions constitute justifiable competition. *See, e.g., C.E. Servs. Inc. v. Control Data Corp*., 759 F.2d 1241, 1248 (5th Cir. 1985); *West Tex. Gas v. 297 Gas Co*., 864 S.W.2d 681, 686 (Tex. App. 1993) (competitor had legal right to persuade company to exercise its right to terminate at-will natural gas sale/purchase agreement with plaintiff). "[A] legal justification or excuse, which is treated as a type of privilege, is an affirmative defense to a claim of tortious interference…. Interference with a contractual relationship is privileged where it results from the bona fide exercise of a party's own rights."; "North Texas had the legal right to persuade or attempt to persuade 297 to exercise its right to terminate the 1988 agreement and to contract with it." *Id*.

75. Once again, until displaced, Acis's owners had every right to do as they wished with the Universal/BVK Agreement, subject to creditor rights but not subject to any duty *to Acis* to refrain from doing so, and the Debtor had no duty to say otherwise. After the Debtor was terminated, it had a right as a competitor to attempt to win back its business. The contention that it should have stopped after the Acis bankruptcy petition is the subject of a different claim. Further, "[t]he alleged interference generally must have induced a breach of the contract to be actionable." *Official Brands, Inc. v. Roc Nation Sports, LLC*, 2015 U.S. Dist. LEXIS 167320, at *7 (N.D. Tex. Dec. 15, 2015). Here, that is not even alleged to have occurred.

76. Further, no damages were sustained. The contract was not terminated, and to the extent the alleged damages are administrative expenses incurred in the Acis case, not only have they been paid, they have been paid by the Debtor by virtue of the earnings derived from the enjoined putative transfer of the ALF PMA.

77. Finally, the claim is barred by the *Bangor Punta* doctrine, as the claim is being brought for the benefit of Mr. Terry and all acts occurred prior to Mr. Terry's acquisition of the company.

78. Accordingly, no claim for tortious interference has been stated, and the claim is barred in any event, and so it should be disallowed.

O. <u>Claim 29: Breach of the Sub-Advisory Agreement and Shared Services Agreement</u>

79. Acis claims that the Debtor breached these agreements by failing to purchase and attempting only to sell loans for the CLOs, in order to liquidate Acis for the benefit of the Debtor and the detriment of Acis. This claim should be dismissed.

80. The Debtor met its standard of care but, moreover, there is a more fundamental fallacy that is instantly fatal to this claim. As discussed, here and throughout the Acis Claim, Acis sets up a fictional jurisprudential world in which it, by virtue of its existence as a legal entity, had interests that contracting parties or managers or professionals were required to identify and protect, rather than acting as instructed by Acis's owners. It did not and they did not. The Debtor was entitled to take directions from Acis's owners. Put differently, there is no allegation whatsoever that Acis did not want the Debtor to do exactly what it did. *Ipso facto*, the Debtor did not breach the contract. The claim must be dismissed.

81. Finally, the claim is barred by the *Bangor Punta* doctrine, as the claim is being brought for the benefit of Mr. Terry and all acts occurred prior to Mr. Terry's acquisition of the company.

P. <u>Claim 30: Breach of Fiduciary Duty</u>

82. Acis claims that the Debtor owed it a fiduciary duty pursuant to the Sub-Advisory Agreement as its investment adviser, and that it breached that fiduciary duty by acting in a manner detrimental to Acis by increasing its fees under the Sub-Advisory Agreement, charging over-market rates in excess of the compensation limits of the Acis LPA, and being the "ringleader" and ultimate beneficiary of schemes to render Acis judgment-proof by transferring the ALF PMA, the ALF Shares, the Note, the 2017-7 Equity and the 2017-7 Agreements. Acis makes no damage allegations but seeks punitive damages.

83. This claim can and should be summarily disallowed. ***First, the duty to Acis was contractual, not fiduciary***. The Debtor as portfolio manager had fiduciary duties ***to investors*** in the CLOs, but its duties to Acis were governed by the Shared Services Agreement which, construed with the Sub-Advisory Agreement, provides that the Debtor was an independent contractor with only a contractual obligation to act with reasonable care and no other obligations or duties.

84. ***Second, regardless***, even if the Debtor had a fiduciary duty to Acis, it could not and did not violate that fiduciary duty by following directions from Acis's sole owners. As discussed in the authorities and analysis above, such a claim is a legal impossibility. At all relevant times, Acis was by its allegations controlled and principally owned by Dondero and Okada, along with all of the other Highland related entities. It is hornbook law that sole owners do not have a fiduciary duty to their company; they could transfer away its assets without violating any duty to their company. How, then, would advisors and employees and

professionals go about protecting the interests of an entity such as Acis against the “ravages” of an owner such as Dondero, who had no such duty? The owners had a right, subject to fraudulent transfer laws, to direct Acis and transfer assets as desired. Acis did not, simply by virtue of its existence alone, have interests distinct from its owners’ interests that its fiduciaries were obligated to somehow identify and protect against the designs of its sole owners. No duty *to Acis* could be or was breached by following its owners’ directions.

85. ***Third, any fiduciary duty claim is barred by the in pari delicto defense***:

> The equitable defense of *in pari delicto*, which means 'in equal fault,' is based on the common law notion that a plaintiff's recovery may be barred by his own wrongful conduct." *Howard v. Fidelity and Deposit Co. of Maryland, (In re Royale Airlines, Inc.)*, 98 F.3d 852, 855 (5th Cir. 1996). "Two fundamental premises underlie this defense: (1) that courts should not lend their good offices to mediating disputes among wrongdoers; and (2) that denying judicial relief to an admitted wrongdoer is an effective means of deterring illegality." *Murray v. Royal Alliance Assocs*., 375 B.R. 208, 213 (M.D. La. 2007).

Milbank v. Holmes (In re TOCFHBI, Inc.), 413 B.R. 523, 536-37 (Bankr. N.D. Tex. 2009). While this Court denied summary judgment on the defense in *Milbank* (*id.* at 537), the defense can be applied on the face of the pleadings when it is apparent that it applies. *Brickley v. ScanTech Identification Beams Sys., LLC*, 566 B.R. 815, 842-43 (W.D. Tex. 2017) (“In sum, because applicability of the *in pari delicto* defense to parts of the trustee's breach of fiduciary duty claim is apparent on the face of the Complaint, the Court will dismiss … the claims that the Stolzar defendants breached their fiduciary duties by assisting Barra and Vitale in their efforts to fraudulently obtain shareholder capital and debt financing, by counseling and providing legal

services assisting Barra, Vitale, and Shaw in the usurpation of corporate assets and corporate opportunities, and by aiding in the execution of the fraudulent loan agreement.").

86. Here, it is apparent from the face of the Acis Claim that to the extent that the "scheme" of which Acis complains was orchestrated by Dondero in violation of fiduciary duties, Acis had every bit as much culpability as the Debtor or any of the other commonly controlled entities; after all, according to Acis, the same person was making the decisions for all of them. Acis is simply assuming the Court will not hold the *delicto* of "old Acis" against Reorganized Acis.

87. While the assertion of *in pari delicto* against a trustee or reorganized debtor is not a settled issue in the Fifth Circuit, it is in most others. In *Milbank*, in 2009, this Court stated: "Some courts have found that the defense may be asserted against a bankruptcy trustee, as he stands in the shoes of a debtor who may have, through its officers and directors, perpetrated bad acts. The Fifth Circuit has not addressed this issue." The Court determined that it should "consider how the facts and equities of the individual case interact with the policy in pari delicto was designed to serve," which it found presented factual issues that could not be resolved on summary judgment. *Milbank*, 413 B.R. at 537 (internal citations omitted).

88. Subsequently, however, in 2012, in refusing to apply *in pari delicto* to a receiver, the Fifth Circuit specified that cases under the Bankruptcy Code were distinguishable because of federal law (Bankruptcy Code § 541) subjecting a trustee to whatever defenses existed against the debtor as of the petition date.

> These cases, however, are plainly distinguishable because they rely upon Section 541(a) of the Bankruptcy Code, which limits the debtor estate to interests of the debtor "as of the commencement of the case." 11 U.S.C. § 541(a)(1); *see, e.g., Official Comm. of Unsecured Creditors of PSA, Inc. v. Edwards*, 437 F.3d 1145, 1150 (11th Cir. 2006) ("If a claim of [debtor] would have been subject to the defense of in pari delicto at the commencement of the bankruptcy, then the same claim, when asserted by the trustee, is subject to the same affirmative defense.") (internal quotation marks and citations omitted); *Official Comm. of Unsecured Creditors of R.F. Lafferty & Co., v. R.F. Lafferty & Co., Inc*., 267 F.3d 340, 356 (3d Cir. 2001) ("[T]he application of the in pari delicto doctrine is affected by the rules governing bankruptcies. . . . [T]he explicit language of section 541 directs courts to evaluate defenses as they existed at the commencement of the bankruptcy."); *Matter of Pernie Bailey Drilling Co., Inc*., 993 F.2d 67, 70 (5th Cir. 1993) (noting that bankruptcy trustee stood in pari delicto); *see also In re Hedged-Invs. Assocs., Inc*., 84 F.3d 1281, 1285 (10th Cir. 1996) ("Though the Seventh Circuit's reasoning in Scholes enjoys a certain appeal, both from doctrinal and public policy perspectives, we cannot adopt it in this case. Put most simply, Mr. Sender is a bankruptcy trustee acting under 11 U.S.C. § 541, and bankruptcy law, apparently unlike the law of receivership, expressly prohibits [application of Scholes]."). We therefore are not persuaded by Wells Fargo's analogy to bankruptcy trustees.

Jones v. Wells Fargo Bank, N.A., 666 F.3d 955, 967-68 (5th Cir. 2012).

89. So although the Fifth Circuit has not addressed the issue directly, courts have predicted it will follow the majority rule, and ruled accordingly, as in this 2019 Western District of Texas decision:

> It is an open question in the Fifth Circuit whether *in pari delicto* can be asserted as a defense to claims made by a trustee in a bankruptcy case. *In re Today's Destiny, Inc*., 888 B.R. 737, 747 (Bankr. S.D. Tex. 2008). The majority of sister Circuits do apply the *in pari delicto defense* to claims made by trustees, however, and this Court has no reason to believe that the Fifth Circuit would depart from that majority. *See, e.g., Official Comm. of Unsecured Creditors of PSA, Inc. v. Edwards*, 437 F.3d 1145, 1151 (11th Cir. 2006) ("If a claim . . . would have been subject to the defense of in pari delicto at the commencement of the bankruptcy, then the same

> claim, when asserted by the trustee, is subject to the same affirmative defense.") (*citing Grassmueck v. Am. Shorthorn Ass'n*., 402 F.3d 833, 837 (8th Cir. 2005); *Official Comm. of Unsecured Creditors v. R.F. Lafferty & Co*., 267 F.3d 340, 356-57 (3rd Cir. 2001); *Terlecky v. Hurd (In re Dublin Sec. Inc.*), 133 F.3d 377, 381 (6th Cir. 1997); *Sender v. Buchanan (In re Hedged— [*17] Inv. Assocs*.), 84 F.3d 1281, 1285 (10th Cir. 1996); *Official Comm. of Unsecured Creditors of Color Tile v. Coopers & Lybrand, LLP*, 322 F.3d 147, 158-66 (2nd Cir. 2003)). Accordingly, the Court will consider the in pari delicto defense raised by Broadway.

Osherow v. York, No. 5:17-CV-483-DAE, 2019 U.S. Dist. LEXIS 200382, at *16-17 (W.D. Tex. Aug. 5, 2019).

90. Even if, as in *Milbank*, the Court were to consider the particular facts and equities of this case, as in *Milbank*, *supra*, there should be only one possible conclusion on the facts of this case, and there are no additional facts that could change it: the equities favor the Debtor's creditors over a windfall to Mr. Terry, who paid $1 million presumably on the basis of expected earnings and not tens of millions of dollars of litigation recoveries (or even if the latter, Acis (Mr. Terry) is still not entitled to a speculator's ransom at the expense of innocent creditors). No amount of factual development can or will change that conclusion.

91. Finally, no duty can be bootstrapped from the rights of Acis's (former) creditors, who will not only be paid in full but who had no such right: ***under Delaware law, creditors of a limited partnership cannot sue third parties for breach of fiduciary duty, even derivatively, nor can a trustee sue for them***. "The claim for breach of fiduciary duties owed to the creditors fails because the Trustee does not allege that the creditors are assignees or members of the Debtors' LLCs. The creditors of the Debtors' LLC thus lack standing to sue the LLC or its members and directors for breaches of fiduciary duties. ***The Trustee does not have standing to***

sue on behalf of the creditors who themselves have no standing." *Beskrone v. OpenGate Capital Grp. (In re Pennysaver USA Publ'g, LLC)*, 587 B.R. 445, 467 (Bankr. D. Del. 2018) (emphasis added). The analysis and result is the same for limited partnerships. *Gavin/Solmonese LLC v. Citadel Energy Partners, LLC (In re Citadel Watford City Disposal Partners, L.P.),* 603 B.R. 897, 905 (Bankr. D. Del. 2019) ("Given the similarity of the relevant statutory language of the Delaware Limited Liability Company Act to that of the Delaware LP Act, the result here should be no different for limited partnerships.").

92. Finally, the claim is barred by the *Bangor Punta* doctrine, as the claim is being brought for the benefit of Mr. Terry and all acts occurred prior to Mr. Terry's acquisition of the company.

Q. Claim 31: Punitive Damages

93. Acis seeks punitive damages to the extent permitted by law. But, to start, there is no right to recover punitive damages under either federal or state fraudulent transfer laws:

> Section 550 does not provide for the recovery of exemplary damages. The trustee has recovered under Texas fraudulent conveyance laws. Under Texas law, exemplary damages are available if the plaintiff has in fact sustained actual loss or injury. *Mack v. Newton,* 737 F.2d 1343, 1367 (5th Cir. 1984). However, as concluded above, the court cannot invoke state law remedies to circumvent or undermine the specific remedy legislated by Congress for the avoidance of a fraudulent transfer.

Sherman v. FSC Realty LLC (In re Brentwood-Lexford Partners, LLC), 292 B.R. 255, 275 (Bankr. N.D. Tex. 2003). *See also Schlossberg v. Abell (In re Abell)*, 549 B.R. 631, 667 (Bankr.

D. Md. 2016); *Hyundai Translead, Inc. v. Jackson Truck & Trailer Repair Inc.*, 419 B.R. 749, 760 (M.D. Tenn. 2009); *In re Lexington Oil and Gas Ltd., Co.*, 423 B.R. 353, 376 (Bankr. E.D. Okla. 2010); *Tronox Inc. v. Anadarko Petroleum Corp. (In re Tronox Inc.)*, 429 B.R. 73, 111 (Bankr. S.D.N.Y. 2010) ("Persuasive authority holds that § 550 bars punitive damages notwithstanding their possible availability under state law.").

94. As set forth herein, Acis's state law claims can and should be summarily disallowed, which ends any issue concerning punitive damages.

95. Texas law permits punitive damages only if the plaintiff has in fact sustained actual loss on its substantive counts. *See, e.g., Sherman*, 292 B.R. at 255 (plaintiff could not recover exemplary damages since he did not recover any judgment for breach of fiduciary duty or other applicable cause of action).[14] The claimant must prove by clear and convincing evidence that the harm with respect to which the claimant seeks recovery of exemplary damages results from: (1) fraud[15]; (2) malice[16]; or (3) gross negligence.[17] Tex. Civ. Prac. & Rem. Code § 41.003(a). Acis cannot sustain this burden, nor would such an award be supported under the relevant factors.[18]

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[14] Texas law caps punitive damages at the greater of (1) two times economic damages plus an amount equal to noncompensatory damages found by a jury not in excess of $750,000, or (2) $200,000. Tex. Civ. Prac. & Rem. Code § 41.008(b).
[15] Constructive fraud does not count. Tex. Civ. Prac. & Rem. Code § 41.001(6).
[16] "Malice" means "a specific intent by the defendant to cause substantial injury or harm to the claimant." Tex. Civ. Prac. & Rem. Code § 41.001(7).
[17] "Gross negligence" means "an act or omission: (A) which when viewed objectively from the standpoint of the actor at the time of its occurrence involves an extreme degree of risk, considering the probability and magnitude of the potential harm to others; and (B) of which the actor has actual, subjective awareness of the risk involved, but nevertheless proceeds with conscious indifference to the rights, safety, or welfare of others." Tex. Civ. Prac. & Rem. Code § 41.001(11).
[18] "The Court weighs the following six factors in determining the reasonableness of an award: (1) the nature of the wrong; (2) the character of the conduct involved; (3) the degree of culpability of the wrongdoer; (4) the situation and sensibilities of the parties concerned; (5) the extent to which such conduct offends a public sense of justice and propriety; and (6) the net worth of the defendant." *In re Galaz,* 2015 Bankr. LEXIS 229, at *30 (Bankr. W.D. Tex. Jan. 23, 2015) (citing Tex. Civ. Prac. & Rem. Code § 41.011(a)).

96. Finally, any claim for punitive damages is barred by the *Bangor Punta* doctrine, as the claim is being brought for the benefit of Mr. Terry and was not asserted prior to Mr. Terry's acquisition of the company.

R. <u>Claim 32: Alter Ego Liability</u>

97. Acis does not adequately allege a claim for alter ego, even if it was a "claim," which it is not; it is only a means of imposing liability for an underlying cause of action. *NMRO Holdings, LLC v. Williams*, 2017 Tex. App. LEXIS 9939, *6 (Tex. App. Oct. 24, 2017). Its allegations of common control by Mr. Dondero are insufficient as a matter of pleading and substantively.

98. Acis alleges that the Debtor, Highland Funding, Highland Adviser, Highland Management, and Highland Holdings (the "Alter Egos") are all controlled by Mr. Dondero, and "[e]ach of the Alter Egos should be held liable for any damages awarded under any Count in this Second Amended Complaint, as each is the alter ego of the others." It also requests that the ALF PMA Transfer, the ALF Share Transfer, the Note Transfer, and the transfer of the 2017-7 Equity and the 2017-7 Agreements be "collapsed" and treated as a scheme by which the Debtor would take over Acis's business. Although it is unclear, Acis appears to also assert under this rubric a claim for unjust enrichment, and requests that "[e]ach of the Highlands, and in particular Highland Capital and Highland Funding, benefitted from the ALF PMA Transfer, the ALF Share Transfer, the Note Transfer, and the transfer of the 2017-7 Equity and the 2017-7 Agreements even if they were not the direct transferee. Each of the Highlands should

be held liable for benefits unjustly received and make restitution to the Debtors and their estates for those benefits." Acis Claim ¶ 280.

99. Texas law applies the alter ego rules of the state of incorporation or formation. *See, e.g., In re The Heritage Org., LLC*, 413 B.R. 438, 510 (Bankr. N.D. Tex. 2009); *The Richards Group, Inc. v. Brock*, 2008 U.S. Dist. LEXIS 55139 (N.D. Tex. July 18, 2008). The analyses are often similar. *See, e.g., Sell v. Universal Surveillance Sys., LLC*, 2017 U.S. Dist. LEXIS 219898, at *5 (W.D. Tex. July 6, 2017) (observing that the analyses undertaken by Texas courts, federal courts, and Delaware courts are similar and focus on whether the defendant abused the corporate form).

100. What Acis is essentially alleging is "single enterprise" liability based on common control by Mr. Dondero. Delaware has never recognized the "single business enterprise" theory of alter ego liability, and it was rejected under Texas law by the Texas Supreme Court in *SSP Partners v. Gladstone Invs. Corp.*, 275 S.W.3d 444, 452-54 (Tex. 2008).

101. *SSP Partners* is instructive in rejecting allegations of common control as sufficient to support alter ego liability without the use or abuse of the corporate form to perpetrate a wrong.

> We disregard the corporate fiction, even though corporate formalities have been observed and corporate and individual property have been kept separately, when the corporate form has been used as part of a basically unfair device to achieve an inequitable result. Specifically, we disregard the corporate fiction:
>
> > (1) when the fiction is used as a means of perpetrating fraud;

> (2) where a corporation is organized and operated as a mere tool or business conduit of another corporation;
>
> (3) where the corporate fiction is resorted to as a means of evading an existing legal obligation;
>
> (4) where the corporate fiction is employed to achieve or perpetrate monopoly;
>
> (5) where the corporate fiction is used to circumvent a statute; and
>
> (6) where the corporate fiction is relied upon as a protection of crime or to justify wrong.
>
> Each example involved an element of abuse of the corporate structure. . .
>
> Creation of affiliated corporations to limit liability while pursuing common goals lies firmly within the law and is commonplace. We have never held corporations liable for each other's obligations merely because of centralized control, mutual purposes, and shared finances. There must also be evidence of abuse.

Id. That is not what Acis does or can allege, *i.e.*, even if, *arguendo*, it could establish that assets were wrongfully transferred, the "wrong" did not involve any abuse of the *form* of the entities involved. They are simply a family of commonly controlled entities. As the Fifth Circuit explained in *Pan Eastern Exploration Co. v. Hufo Oils*, 855 F.2d 1106 (5th Cir. 1988):

> "The focus of alter ego proper is on the legal adequacy of the corporation's existence, and the relationship between the corporation and its controlling corporation or individual. Many wholly-owned subsidiary and closely-held corporations are not factually distinct from their owners; many are in fact controlled and operated in close concert with the interests of the owners, and do not have a distinct factual existence-- separate employees, separate offices, separate properties, etc. That is perfectly natural and proper. *See, e.g., Edwards Co. v. Monogram Industries*, 730 F.2d 977 (5th Cir. 1984) (en banc) ('shell' subsidiary was formally distinct and creditor was not misled; corporate disregard under Texas law was therefore improper). The problem arises when such

> a corporation is not treated as *legally* distinct, when, in other words, the owners neglect to maintain the *formal* existence of the corporation as required by law."

Id. at 1131.

102. Indeed, the absence of a wrong by this Debtor involving the corporate form led the Southern District of New York district court to reject alter ego liability in *Highland CDO Opportunity Master Fund, L.P. v. Citibank, N.A.*, 270 F. Supp. 3d 716 (S.D.N.Y. 2017). Citibank had identified three acts that it asserted constituted fraudulent or wrongful conduct, for which it contended the Debtor had alter ego liability: (i) the Debtor stripped cash and assets from Highland CDO Opportunity Master Fund, L.P. ("CDO Fund") that would have otherwise been available to satisfy the obligations to Citibank; (ii) the Debtor diverted cash distributions on certain notes (the "HFP Notes") that would otherwise have been available to CDO Fund to meet its obligations to Citibank; and (iii) the Debtor fraudulently misrepresented the value of the HFP Notes that CDO Fund pledged to Citibank as collateral. *Id*. at 729-33. The district court held that the first prong of New York's alter ego test – the Debtor's control and domination of its affiliates – was satisfied, but that Citibank failed to demonstrate the second prong – a "wrong or fraud" for veil piercing purposes – and so dismissed the alter ego claims seeking to hold the Debtor liable for CDO Fund's obligations. *Id*. at 729-33.

103. Here, the allegations are insufficient even as a matter of pleading. *See Capmark Fin. Grp. Inc. v. Goldman Sachs Credit L.P.*, 491 B.R. 335, 349 (S.D.N.Y. 2013). The pleading here is particularly inadequate because, absent "single enterprise" liability (which is unavailable), Acis would actually need to pierce the veil of each entity between the Debtor and

any entity found to bear liability. *Id*. ("[Plaintiff] fails to present facts to adequately allege the "double-pierce" required to lump together two "sister" subsidiaries, the Goldman Lenders and the PIA Funds, even under the liberal notice pleading standard."). *See Outokumpu Eng'g Enters., Inc v. Kvaerner Enviropower, Inc*., 685 A.2d 724, 729 (Del. Super. 1996) (stating that in order to disregard corporate formalities separating "sister" subsidiaries, a plaintiff must first pierce the veil separating one subsidiary from its corporate parent, and then surmount "another barrier" by piercing the veil separating the corporate parent from the second subsidiary).

104. Any claim for punitive damages is also barred by the *Bangor Punta* doctrine, as the claim is being brought for the benefit of Mr. Terry and was not asserted prior to Mr. Terry's acquisition of the company.

105. Finally, to the extent that Acis is alleging in this action that Dondero is liable as an alter ego for any liability of the Debtor herein (as it does explicitly in its other newly commenced lawsuits), Acis is violating the automatic stay in this case, as any such rights is property of the bankruptcy estate.

S. Claim 33: Willful Violation of the Automatic Stay

106. Acis alleges that the Debtor and Highland Funding violated the Acis automatic stay by sending the Acis trustee Optional Redemption Notices requesting that the trustee effectuate optional redemptions, and by "demanding" that the trustee take actions to effectuate the optional redemption by the next day. Acis seeks damages, attorneys' fees and costs, and punitive damages.

107. The claim should be disallowed. The Acis trustee declined to effectuate the redemptions. HCLOF, the equity holder of the CLO entities, took the position that the automatic stay was inapplicable, and the Debtor did not believe that it applied. In addition, the claim is untimely and/or has been waived.

108. The claim is also barred by the *Bangor Punta* doctrine, as the claim is being brought for the benefit of Mr. Terry and the acts occurred prior to Mr. Terry's acquisition of the company.

T. Claim 34: Payment of Attorneys' Fees and Costs, Including all Allowed Professionals' Fees and Expenses in the Bankruptcy Cases

109. Acis requests that the Court award attorneys' fees in the adversary proceeding under Texas Business and Commerce Code § 24.013, Civil Practice and Remedies Code § 38.001, TUFTA, and all fees in the entire Acis Case from the Debtor based on the Debtor's alleged breach of fiduciary duty. There is no basis in fact or law for such an award, and the Debtor reserves all defenses thereto.

110. Furthermore, the Debtor and/or affiliates *already* bore the fees of which "reimbursement" is sought: as they were paid by income derived from transferred assets that as a result of the injunction were utilized for the benefit of Acis rather than by the transferees.

111. Finally, the claim is also barred by the *Bangor Punta* doctrine, as the claim is being brought for the benefit of Mr. Terry and the acts occurred prior to Mr. Terry's acquisition of the company.

U. Reservation of Rights

112. The Debtor reserves its right to supplement or modify this Objection and to assert such further objections, defenses or arguments as may later become available or apparent.

WHEREFORE, the Debtor respectfully requests that the Acis Claim be disallowed in its entirety, and such other and further relief as this Court may deem just and proper.

Dated: June 23, 2020

PACHULSKI STANG ZIEHL & JONES LLP

/s/ Jeffrey N. Pomerantz

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Attorneys for the Debtor and
Debtor in Possession

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion has been served electronically via the Court' s CM/ECF system upon all parties appearing on the attached service list.

/s/ Jeffrey N. Pomerantz
Jeffrey N. Pomerantz

In re Highland Capital Management, L.P.
Case No. 19-34054-sgj11

ECF Recipients:

- Zachery Z. Annable zannable@haywardfirm.com
- Michael I. Baird baird.michael@pbgc.gov, efile@pbgc.gov
- Sean M. Beach bankfilings@ycst.com, sbeach@ycst.com
- Matthew A. Clemente mclemente@sidley.com, matthew-clemente-8764@ecf.pacerpro.com;efilingnotice@sidley.com
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- Michael Scott Held mheld@jw.com, lcrumble@jw.com
- Juliana Hoffman jhoffman@sidley.com, txefilingnotice@sidley.com;julianna-hoffman-8287@ecf.pacerpro.com
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- Jeffrey Kurtzman kurtzman@kurtzmansteady.com
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- Paige Holden Montgomery pmontgomery@sidley.com
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- United States Trustee ustpregion06.da.ecf@usdoj.gov
- Jaclyn C. Weissgerber bankfilings@ycst.com, jweissgerber@ycst.com
- Elizabeth Weller dallas.bankruptcy@publicans.com, dora.casiano-perez@lgbs.com;Melissa.palo@lgbs.com

Exhibit 16

CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed October 27, 2020

United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	Chapter 11
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	§	Case No. 19-34054-sgj11
	§	
Debtor.	§	Related to Docket Nos. 1087 & 1088

ORDER APPROVING DEBTOR'S SETTLEMENT WITH (A) ACIS CAPITAL MANAGEMENT, L.P. AND ACIS CAPITAL MANAGEMENT GP LLC (CLAIM NO. 23), (B) JOSHUA N. TERRY AND JENNIFER G. TERRY (CLAIM NO. 156), AND (C) ACIS CAPITAL MANAGEMENT, L.P. (CLAIM NO. 159) AND AUTHORIZING ACTIONS CONSISTENT THEREWITH

Having considered the *Debtor's Motion for Entry of an Order Approving Settlement with (a) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (b) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (c) Acis Capital Management, L.P. (Claim No. 159) and Authorizing Actions Consistent Therewith* [Docket No. 1087] (the

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

"Motion"),[2] the Settlement Agreement attached as **Exhibit "1"** (the "Settlement Agreement") to *Declaration of Gregory V. Demo in Support of the Debtor's Motion for Entry of an Order Approving Settlement with (A) Acis Capital Management, L.P. and Acis Capital Management GP, LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and Acis Capital Management, L.P. (Claim No. 159), and Authorizing Actions Consistent Therewith* [Docket No. 1088] (the "Demo Declaration"), and the General Release attached as **Exhibit "2"** (the "Release") to the Demo Declaration filed by the above-captioned debtor and debtor-in-possession (the "Debtor"); and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtor's estate, its creditors, and other parties-in-interest; and this Court having found the Settlement Agreement and the Release are fair and equitable; and this Court having, analyzed, for the reasons stated on the record, (1) the probability of success in litigating the claims subject to Settlement Agreement and Release, with due consideration for the uncertainty in fact and law; (2) the complexity and likely duration of litigation and any attendant expense, inconvenience, and delay; and (3) all other factors bearing on the wisdom of the compromise, including: (i) the best interests of the creditors, with proper deference to their reasonable views; and (ii) the extent to which the settlement is truly the product of arms-length bargaining, and not of fraud or collusion; and this Court having found that the Debtor's notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and that no other notice need be provided; and

[2] Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

this Court having reviewed the Motion, any and all other documents filed in support of the Motion, including the Debtor's Omnibus Reply filed by the Debtor at Docket No. 1211, and all objections thereto, including the objection filed by James Dondero at Docket No. 1121 (the "Dondero 9019 Objection");[3] and this Court having determined that the legal and factual bases set forth in the Motion establish good cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is **HEREBY ORDERED THAT**:

1. The Motion is **GRANTED** as set forth herein.

2. The Settlement and the Release, attached hereto as **Exhibit 1** and **Exhibit 2** are approved in all respects pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure.

3. The Dondero 9019 Objection and all other objections to the Motion are overruled in their entirety.

4. All objections to the proofs of claim subject to the Motion[4] are overruled as moot in light of the Court's approval of the Settlement Agreement and Release.

5. The Debtor, the Debtor's agents, the Acis Parties (as defined by the Release), and all other parties are authorized to take any and all actions necessary or desirable to implement the Settlement Agreement and the Release without need of further Court approval or notice.

---

[3] The objection to the Motion filed by Patrick Hagaman Daugherty at Docket No. 1201 was withdrawn on the record during the hearing on the Motion. The reservations of rights filed by Highland CLO Funding, Ltd., CLO Holdco, Ltd., HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P. and HarbourVest Partners L.P. filed at Docket Nos. 1177, 1191, and 1195 (collectively, the "Reservations") are resolved based on the Debtor's representations on the record, made without objection, that (a) the conditions precedent in Section 1(c) of the Settlement Agreement will not occur and therefore, the Debtor will not, pursuant to the Settlement Agreement, transfer all of its direct and indirect right, title and interest in Highland HCF Advisor, Ltd. to Acis or its nominee, and that (b) none of the parties asserting any of the Reservations are bound by the Release.

[4] The objections include (a) the Debtor's *Objection to Proof of Claim of Acis Capital Management, L.P. and Acis Capital Management GP, LLC* [Docket No. 771]; (b) *James Dondero's Objection to Proof of Claim of Acis Capital Management, L.P. and Acis Capital Management GP, LLC; and (II) Joinder in Support of Highland Capital Management, L.P.'s Objection to Proof of Claim of Acis Capital Management L.P. and Acis Capital Management GP, LLC* [Docket No. 827]; and (c) *UBS (I) Objection to Proof of Claim of Acis Capital Management, L.P. and Acis Capital Management GP, LLC and (II) Joinder in the Debtor's Objection* [Docket No. 891].

6. The Court shall retain exclusive jurisdiction with respect to all matters arising from or relating to the implementation, interpretation, and enforcement of this Order.

END OF ORDER

EXHIBIT 1

SETTLEMENT AGREEMENT

This Settlement Agreement, including all attachments, (the "Agreement") is entered into as of September 9, 2020, by and among (i) Highland Capital Management, L.P. ("HCMLP"); (ii) Acis Capital Management, L.P. ("Acis LP"); (iii) Acis Capital Management GP LLC ("Acis GP" and together with Acis LP, "Acis"); (iv) Joshua N. Terry, individually and for the benefit of his individual retirement accounts, and (v) Jennifer G. Terry, individually and for the benefit of her individual retirement accounts and as trustee of the Terry Family 401-K Plan

Each of the foregoing are sometimes referred to herein collectively as the "Parties" and individually as a "Party."

R E C I T A L S

WHEREAS, on August 3, 2020, the United States Bankruptcy Court for the Northern District of Texas (the "Bankruptcy Court") entered an *Order Directing Mediation* [Docket No. 912] pursuant to which HCMLP, Acis Capital Management L.P., and Acis Capital Management GP, LLC (together, the "Mediation Parties"), among others, were directed to mediate their disputes before Retired Judge Allan Gropper and Sylvia Mayer (together, the "Mediators"); and

WHEREAS, during the mediation, the Mediators made an economic proposal to resolve the Claims (the "Mediators' Economic Proposal"), and each of the Mediation Parties accepted the Mediators' Economic Proposal; and

WHEREAS, the Parties have negotiated and executed that certain General Release, dated as of even date herewith (the "Release"),[1] which, among other things, releases the Acis Released Claims and the HCMLP Released Claims; and

WHEREAS, the Parties desire to enter into this Agreement which incorporates, formalizes, and finalizes the Mediators' Economic Proposal and which, when combined with the Release, will fully and finally resolve the Claims; and

WHEREAS, this Agreement and the Release attached hereto will be presented to the Bankruptcy Court for approval pursuant to Federal Rule of Bankruptcy Procedure 9019 ("Rule 9019");

NOW THEREFORE, in consideration of the above recitals, the covenants, conditions, and promises made herein, and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

1. **Settlement of Claims.** In full and complete satisfaction of the Claims:

(a) The proof of claim filed by Acis in the HCMLP Bankruptcy Case on December 31, 2019 [Claim No. 23] will be allowed in the amount of $23,000,000 as a general unsecured claim;

[1] All capitalized terms used but not defined herein have the meanings given to them in the Release.

(b) On the effective date of a plan of reorganization and confirmed by the Bankruptcy Court, HCMLP will pay in cash to:

(i) Joshua N. Terry and Jennifer G. Terry $425,000, plus 10% simple interest (calculated on the basis of a 360-day year from and including June 30, 2016), in full and complete satisfaction of the proof of claim filed in the HCMLP Bankruptcy Case by Joshua N. Terry and Jennifer G. Terry on April 8, 2020 [Claim No. 156];

(ii) Acis LP $97,000, which amount represents the legal fees incurred by Acis LP with respect to *NWCC, LLC v. Highland CLO Management, LLC, et al.*, Index No. 654195-2018 (N.Y. Sup. Ct. 2018), in full and complete satisfaction of the proof of claim filed by Acis LP in the HCMLP Bankruptcy Case on April 8, 2020 [Claim No. 159];

(iii) Joshua N. Terry $355,000 in full and complete satisfaction of the legal fees assessed against Highland CLO Funding, Ltd., in *Highland CLO Funding v. Joshua Terry*, [No Case Number], pending in the Royal Court of the Island of Guernsey;

(c) On the effective date of a plan of reorganization proposed by HCMLP and confirmed by the Bankruptcy Court, if HMCLP receives written advice of nationally recognized external counsel that it is legally permissible consistent with HCMLP's contractual and legal duties to transfer all of its direct and indirect right, title and interest in Highland HCF Advisor, Ltd. to Acis or its nominee and that doing so would not reasonably subject HCMLP to liability, HCMLP shall transfer all of its right, title and interest in Highland HCF Advisor, Ltd., whether its ownership is direct or indirect, to Acis or its nominee, subject at all times to Acis's right to unilaterally reject the transfer in its sole and absolute discretion;

(d) Within five (5) days of the Agreement Effective Date, HCMLP shall:

(i) Move to withdraw, with prejudice, its proof of claim [Claim No. 27] filed in *In re Acis Capital Management, L.P.*, Case No. 18-30264-sgj11 (Bankr. N.D. Tex. 2018), and its proof of claim [Claim No. 13] filed in *In re Acis Capital Management GP, LLC*, Case No. 18-30265-sgj11 (Bankr. N.D. Tex. 2018);

(ii) Move to withdraw, with prejudice, Highland Capital Management, L.P.'s Application for Administrative Expense Claim Pursuant to 11 U.S.C. § 503(b) filed in the Acis Bankruptcy Case [Docket No. 772];

(e) At all times after the execution of this Agreement:

(i) Only to the extent reasonably necessary to maintain the status quo in the Acis Appeals, the Parties shall cooperate in seeking to abate or otherwise stay the Acis Appeals vis-à-vis the Parties pending the occurrence of the Agreement Effective Date; and

(ii) HCMLP shall cooperate in good faith to promptly return to Acis all property of Acis that is in HCMLP's possession, custody, or control, including but not limited to e-mail communications.

2. **Releases.** The Release is (a) attached to this Agreement as **Appendix A**; (b) an integral component of the Mediator's Economic Proposal and (c) incorporated by reference into this Agreement as if fully set forth herein.

3. **Agreement Subject to Bankruptcy Court Approval.**

(a) The effectiveness of this Agreement and the Parties' obligations hereunder are conditioned in all respects on the approval of this Agreement and the Release by the Bankruptcy Court. The Parties agree to use reasonable efforts to have this Agreement and the Release expeditiously approved by the Bankruptcy Court by cooperating in the preparation and prosecution of a mutually agreeable motion and proposed order. The "Agreement Effective Date" will be the date of an order entered by the Bankruptcy Court approving this Agreement pursuant to a motion filed under Rule 9019.

(b) The Parties acknowledge and agree that the terms and conditions of this Agreement are conditioned, in all respects, on the execution of the Release by the Parties and the approval of the Release and this Agreement by the Bankruptcy Court. If either the Release or this Settlement Agreement are not approved by the Bankruptcy Court for any reason, this Agreement and the Release will be immediately null and void and of no further force and effect.

4. **Representations and Warranties**. Subject in all respects to Section 3, each Party represents and warrants to the other Party that such Party is fully authorized to enter into and perform the terms of this Agreement and that, as of the Agreement Effective Date, this Agreement and the Release will be fully binding upon each Party in accordance with their terms.

5. **No Admission of Liability**. The Parties acknowledge that there is a bona fide dispute with respect to the Claims. Nothing in this Agreement will imply, an admission of liability, fault or wrongdoing by HCMLP, the Acis Parties, or any other person, and the execution of this Agreement does not constitute an admission of liability, fault, or wrongdoing on the part of HCMLP, the Acis Parties, or any other person.

6. **Successors-in-Interest.** This Agreement shall be binding upon and shall inure to the benefit of each of the Parties and their representatives, successors, and assigns, including but not limited to any Chapter 7 trustee appointed for HCMLP.

7. **Notice**. Each notice and other communication hereunder will be in writing and will be sent by email and delivered or mailed by registered mail, receipt requested, and will be deemed to have been given on the date of its delivery, if delivered, and on the fifth full business day following the date of the mailing, if mailed to each of the Parties thereto at the following respective addresses or such other address as may be specified in any notice delivered or mailed as set forth below:

Acis

Acis Capital Management, LP
4514 Cole Avenue
Suite 600
Dallas, Texas 75205

Attention: Joshua N. Terry
Email: josh@aciscm.com

with a copy (which shall not constitute notice) to:

ROGGE DUNN GROUP, P.C.
500 N. Akard Street, Suite 1900
Dallas, Texas 75201
Attention: Brian P. Shaw
Telephone No.: 214.239.2707
E-mail: shaw@roggedunngroup.com

Joshua N. Terry and Jennifer G. Terry

25 Highland Park Village, Suite 100-848
Dallas TX 75205
Attention: Joshua N. Terry
Email: joshuanterry@gmail.com

with a copy (which shall not constitute notice) to:

ROGGE DUNN GROUP, P.C.
500 N. Akard Street, Suite 1900
Dallas, Texas 75201
Attention: Brian P. Shaw
Telephone No.: 214.239.2707
E-mail: shaw@roggedunngroup.com

HCMLP

Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: Legal Department
Telephone No.: 972-628-4100
Facsimile No.: 972-628-4147
E-mail: notices@HighlandCapital.com

with a copy (which shall not constitute notice) to:

Pachulski Stang Ziehl & Jones LLP
Attention: Jeffrey Pomerantz, Esq.
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone No.: 310-277-6910

Facsimile No.: 310-201-0760
E-mail: jpomerantz@pszjlaw.com

8. **Advice of Counsel**. Each of the Parties represents that such Party has: (a) been adequately represented by independent legal counsel of its own choice, throughout all of the negotiations that preceded the execution of this Agreement; (b) executed this Agreement upon the advice of such counsel; (c) read this Agreement, and understands and assents to all the terms and conditions contained herein without any reservations; and (d) had the opportunity to have this Agreement and all the terms and conditions contained herein explained by independent counsel, who has answered any and all questions asked of such counsel, or which could have been asked of such counsel, including, but not limited to, with regard to the meaning and effect of any of the provisions of this Agreement.

9. **Entire Agreement**. This Agreement contains the entire agreement and understanding concerning the subject matter of this Agreement, and supersedes and replaces all prior negotiations and agreements, written or oral and executed or unexecuted, concerning such subject matter. Each of the Parties acknowledges that no other Party, nor any agent of or attorney for any such Party, has made any promise, representation or warranty, express or implied, written or oral, not otherwise contained in this Agreement to induce any Party to execute this Agreement. The Parties further acknowledge that they are not executing this Agreement in reliance on any promise, representation or warranty not contained in this Agreement, and that any such reliance would be unreasonable. This Agreement will not be waived or modified except by an agreement in writing signed by each Party or duly authorized representative of each Party.

10. **No Party Deemed Drafter**. The Parties acknowledge that the terms of this Agreement are contractual and are the result of arms'-length negotiations between the Parties and their chosen counsel. Each Party and its counsel cooperated in the drafting and preparation of this Agreement. In any construction to be made of this Agreement, the Agreement will not be construed against any Party.

11. **Future Cooperation**. The Parties agree to cooperate and execute such further documentation as is reasonably necessary to effectuate the intent of this Agreement.

12. **Counterparts**. This Agreement may be executed in counterparts with the same force and effect as if executed in one complete document. Each Party's signature hereto will signify acceptance of, and agreement to, the terms and provisions contained in this Agreement. Photographic, electronic, and facsimile copies of signed counterparts may be used in lieu of the originals of this Agreement for any purpose.

13. **Governing Law; Venue; Attorneys' Fees and Costs**. The Parties agree that this Agreement will be governed by and will be construed according to the laws of the State of Texas without regard to conflict-of-law principles. Each of the Parties hereby submits to the exclusive jurisdiction of the Bankruptcy Court during the pendency of the HCMLP Bankruptcy Case and thereafter to the exclusive jurisdiction of the state and federal courts located in the Northern District of Texas, Dallas Division, with respect to any disputes arising from or out of this

Agreement. In any action to enforce this Agreement, the prevailing party shall be entitled to recover its reasonable and necessary attorneys' fees and costs (including experts).

[Remainder of Page Intentionally Blank]

IT IS HEREBY AGREED.

ACIS CAPITAL MANAGEMENT, L.P.

By: _____
Name: Joshua N. Terry
Its: President

ACIS CAPITAL MANAGEMENT GP LLC

By: _____
Name: Joshua N. Terry
Its: President

JOSHUA N. TERRY

By: _____
Name: Joshua N. Terry
Its: Self

JENNIFER G. TERRY

By: _____
Name: Jennifer G. Terry
Its: Self

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: _____
Name: _____
Its: _____

IT IS HEREBY AGREED.

ACIS CAPITAL MANAGEMENT, L.P.

By: _____
Name: _____
Its: _____

ACIS CAPITAL MANAGEMENT GP LLC

By: _____
Name: _____
Its: _____

JOSHUA N. TERRY

By: _____
Name: _____
Its: _____

JENNIFER G. TERRY

By: _____
Name: _____
Its: _____

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: _____
Name: James P. Seery, Jr.
Its: CEO/CRO

EXHIBIT 2

GENERAL RELEASE

This GENERAL RELEASE (this "Release"), effective on the Effective Date (as defined below), is entered into by and among (i) Highland Capital Management, L.P. ("HCMLP"), (ii) Joshua N. Terry, individually and for the benefit of his individual retirement accounts, Jennifer G. Terry, individually and for the benefit of her individual retirement accounts and as trustee of the Terry Family 401-K Plan (collectively, the "Terry Parties"), (iii) Acis Capital Management L.P., and Acis Capital Management GP, LLC (collectively, "Acis") (the Terry Parties and Acis, collectively, the "Acis Parties"), and (iii) those HCMLP Specified Parties (as defined below) who execute this Release (together, the "Parties").

RECITALS

WHEREAS, the Parties have asserted or may assert claims that are defined in Section 1 below as the "Acis Released Claims" and the "HCMLP Released Claims" (collectively, the "Claims"); and

WHEREAS, on August 3, 2020, the United States Bankruptcy Court for the Northern District of Texas (the "Court") entered an *Order Directing Mediation* [Docket No. 912] pursuant to which HCMLP, Acis Capital Management L.P., and Acis Capital Management GP, LLC (together, the "Mediation Parties"), among others, were directed to mediate their disputes before Retired Judge Allan Gropper and Sylvia Mayer (together, the "Mediators"); and

WHEREAS, during the mediation, the Mediators made an economic proposal to resolve the Claims (the "Mediators' Economic Proposal"), and each of the Mediation Parties accepted the Mediators' Economic Proposal; and

WHEREAS, the Parties desire to enter into a general release of all Claims which, when combined with the Mediators' Economic Proposal, will fully and finally resolve the Claims; and

WHEREAS, except in Section 1.c below, this is a general release, meaning the Parties intend hereby to release any and all Claims which the Parties can release, and the Parties are unaware of any Claims between them which are not being released herein; and

WHEREAS, this Release will be appended or otherwise incorporated into a written settlement agreement (the "Settlement Agreement") that will include the terms of the Mediators' Economic Proposal and will be presented to the Court for approval pursuant to Federal Rule of Bankruptcy Procedure 9019 ("Rule 9019"), and is only effective upon the Effective Date.

NOW, THEREFORE, after good-faith, arms-length negotiations, and in consideration of the promises made herein and in the Mediators' Economic Proposal, the Parties agree to release each other pursuant to and in accordance with the terms and conditions set forth below.

AGREEMENT

1. Releases.

a. Upon the Effective Date, and to the maximum extent permitted by law, and except as set forth in Section 1d below, each of the Acis Parties on behalf of himself, herself, or itself and each of their respective current or former advisors, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, affiliates, successors, designees, and assigns hereby forever, finally, fully, unconditionally, and completely releases, relieves, acquits, remises, and exonerates, and covenants never to sue, (A)(i) HCMLP; (ii) Strand; (iii) any entity of which greater than fifty percent of the voting ownership is held directly or indirectly by HCMLP and any entity otherwise controlled by HCMLP; and (iv) any entity managed by either HCMLP or a direct or indirect subsidiary of HCMLP (the foregoing (A)(i) through (A)(iv) the "HCMLP Entities") and (B) with respect to each such HCMLP Entity, such HCMLP Entity's respective current advisors, trustees, directors, officers, managers, members, partners, current or former employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, affiliates, successors, designees, and assigns, except as expressly set forth below (the "HCMLP Parties," and together with the HCMLP Entities, the "HCMLP Released Parties"), for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorney's fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, statutory or otherwise, including, without limitation, any claims, defenses, and affirmative defenses, whether known or unknown, including, without limitation, those which were or could have been asserted in, in connection with, or with respect to the Filed Cases, including the proofs of claim [Claim No. 23; 156; 159] filed by the Acis Parties in the HCMLP Bankruptcy Case and any objections or potential objections to the Plan or the confirmation thereof (collectively, the "Acis Released Claims"). This release is intended to be general. Notwithstanding anything contained herein to the contrary, the term HCMLP Released Parties **shall not** include NexPoint Advisors (and any of its subsidiaries), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd.), Highland CLO Funding, Ltd. (and any of its subsidiaries), NexBank, SSB (and any of its subsidiaries), James Dondero, Hunter Mountain Investment Trust (or any trustee acting for the trust), Dugaboy Investment Trust (or any trustee acting for the trust), Grant Scott, David Simek, William Scott, Heather Bestwick, Mark Okada and his family trusts (and the trustees for such trusts in their representative capacities), McKool Smith, PC, Gary Cruciani, Lackey Hershman, LLP, Jamie Welton, or Paul Lackey.

b. Upon the Effective Date, and to the maximum extent permitted by law, each HCMLP Released Party hereby forever, finally, fully, unconditionally, and completely releases, relieves, acquits, remises, and exonerates, and covenants never to sue the (A) Acis Parties, (B) Acis CLO 2013-1Ltd., Acis CLO 2014-3 Ltd., Acis CLO 2014-4 Ltd., Acis CLO 2014-5 Ltd., Acis CLO 2015-6 Ltd. (collectively, the "Acis CLOs"), and (C) with respect to each such Acis Party and Acis CLO, to the extent applicable, such Acis Party and Acis CLO, their respective current advisors, trustees, directors, officers, managers, members, partners, current or former employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents,

affiliates, successors, designees, and assigns (the foregoing (A), (B), and (C), the "Acis Released Parties"), for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorney's fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, statutory or otherwise, including, without limitation, any claims, defenses, and affirmative defenses, whether known or unknown, which were or could have been asserted in, in connection with, or with respect to the Filed Cases (collectively, the "HCMLP Released Claims"). This release is intended to be general. Notwithstanding anything contained herein to the contrary, this Section 1.b will not affect any right to payment under any notes, debt, equity, or other security issued by any Acis CLO and held by any HCMLP Released Party.

c. The HCMLP Released Parties shall also hereby forever, finally, fully, unconditionally, and completely release, relieve, acquit, remise, and exonerate, and covenant never to sue (A) U.S. Bank National Association, Moody's Investor Services, Inc., and Brigade Capital Management, Inc. and (B) with respect to each such DAF Suit Defendant, to the extent applicable, such DAF Suit Defendant, their respective current advisors, trustees, directors, officers, managers, members, partners, current or former employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, affiliates, successors, designees, and assigns (the foregoing (A) and (B), the "DAF Suit Defendants"), for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorney's fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, statutory or otherwise, which were or could have been asserted in, in connection with, or with respect to the DAF Lawsuits. This release is not intended to be general.

d. Notwithstanding anything herein to the contrary, if (A) any HCMLP Specified Party has not executed this Release on or before the Effective Date or (B) any HCMLP Released Party, including any HCMLP Specified Party, (i) sues, attempts to sue, or threatens or works with or assists any entity or person to sue, attempt to sue, or threaten any Acis Released Party on or in connection with any HCMLP Released Claim or any other claim or cause of action arising prior to the date of this Release, (ii) takes any action that, in HCMLP's reasonable judgment, impairs or harms the value of HCMLP, its estate, and its assets; or (iii) in HCMLP's reasonable judgment fails to use commercially reasonable efforts to support confirmation of the Plan and/or the monetization of HCMLP's assets at their maximum value, then (a) such HCMLP Released Party (and only such HCMLP Released Party) will be deemed to have waived (x) the release and all other protections set forth in Section 1a hereof and will have no further rights, duties, or protections under this Release and (y) any releases set forth in the Plan, (b) the Acis Released Parties, as applicable, may, in their discretion, assert any and all Acis Released Claims against such HCMLP Released Party (and only such HCMLP Released Party), and (c) any statutes of limitation or other similar defenses are tolled against such HCMLP Released Party (and only such HCMLP Released Party) from the execution of this Release until ninety (90) days after the Acis Released Parties receive actual written notice of any violation of this Section 1d. For the avoidance of doubt, by signing this Release each of the HCMLP Specified Parties is

acknowledging and agreeing, without limitation, to the terms of this Section 1.d and the tolling agreement set forth herein.

2. Withdrawal/Dismissal of Filed Cases. Within five days of the Effective Date, each Acis Released Party and HCMLP Released Party, to the extent applicable, will coordinate to cause the Filed Cases, including any appeals of any Filed Cases, to be dismissed with prejudice as to any Acis Released Party or HCMLP Released Party; *provided, however,* that there is no obligation to dismiss or withdraw the HCMLP Bankruptcy Case. For the avoidance of doubt, and consistent with this Section, (a) if HMCLP receives written advice of nationally recognized external counsel that it is legally permissible consistent with HCMLP's contractual and legal duties to direct Neutra, Ltd. to move to dismiss all of their appeals arising from the Acis Bankruptcy and that doing so would not reasonably subject HCMLP to liability, HCMLP shall direct Neutra, Ltd. to move to dismiss all of their appeals arising from the Acis Bankruptcy and (b) Acis shall move to dismiss with prejudice its claims against HCMLP asserted in any adversary proceeding in the Acis Bankruptcy Case. To the extent reasonably necessary to maintain the status quo in the Filed Cases, including any appeals thereof, prior to the Effective Date, each Acis Released Party and HCMLP Released Party shall reasonably cooperate in seeking to abate or otherwise stay the Filed Cases vis-à-vis the Parties.

3. Representations and Warranties.

a. Each of the Acis Parties represents and warrants to each of the HCMLP Released Parties and each of the HCMLP Specified Parties who have signed this Release that (a) he, she or it has full authority to release the Acis Released Claims and has not sold, transferred, or assigned any Acis Released Claim to any other person or entity, and that (b) to the best of his, her or its current knowledge, no person or entity other than the Acis Parties has been, is, or will be authorized to bring, pursue, or enforce any Acis Released Claim on behalf of, for the benefit of, or in the name of (whether directly or derivatively) any of the Acis Parties.

b. Each of HCMLP and each HCMLP Specified Party who has signed this Release represents and warrants to each of the Acis Parties that he, she or it has not sold, transferred, pledged, assigned or hypothecated any HCMLP Released Claim to any other person or entity.

c. Each HCMLP Specified Party and each of HCMLP and Strand represents and warrants to each of the Acis Parties that he, she, or it has full authority to release any HCMLP Released Claims that such HCMLP Specified Party, HCMLP, or Strand personally has against any Acis Party.

d. HCMLP represents and warrants that it is releasing the HCMLP Released Claims on behalf of the HCMLP Entities to the maximum extent permitted by any contractual or other legal rights HCMLP possesses. To the extent any of the HCMLP Entities dispute HCMLP's right to release the HCMLP Released Claims on behalf of any of the HCMLP Entities, HCMLP shall use commercially reasonable efforts to support the Acis Parties' position, if any, that such claims were released herein. For the avoidance of doubt, HCMLP will have no obligations to assist the Acis Parties under this Section if HCMLP has been advised by external counsel that such assistance could subject HCMLP to liability to any third party or if such

assistance would require HCMLP to expend material amounts of time or money. HCMLP shall not argue in any forum that the non-signatory status of any of the HCMLP Entities to this Release shall in any way affect the enforceability of this Release vis-à-vis any of the HCMLP Entities. The Parties agree that all of the HCMLP Entities are intended third-party beneficiaries of this Release.

Notwithstanding anything herein to the contrary, the Acis Parties acknowledge and agree that their sole and exclusive remedy for the breach of the foregoing Sections 3b, 3c, and 3d will be that set forth in Section 1.d hereof.

4. Additional Definitions.

a. "Acis Bankruptcy Case" means, collectively, *In re Acis Capital Management, L.P.*, Case No. 18-30264-sgj11 (Bankr. N.D. Tex. 2018) and *In re Acis Capital Management GP, LLC*, Case No. 18-30265-sgj11 (Bankr. N.D. Tex. 2018)

b. "DAF Lawsuits" means (a) Case No. 1:19-cv-09857-NRB; *The Charitable Donor Advised Fund, L.P. v. U.S. Bank National Association, et al*, formerly pending in the United States District Court for the Southern District of New York; and (b) Case No. 1:20-cv-01036-LGS; *The Charitable Donor Advised Fund, L.P. and CLO Holdco, Ltd. v. U.S. Bank National Association, et al*, formerly pending in the United States District Court for the Southern District of New York.

c. "Effective Date" means the date of an order of the Court approving the Settlement Agreement pursuant to a motion filed under Rule 9019.

d. "Filed Cases" means (a) the HCMLP Bankruptcy Case, (b) *Acis Capital Management, L.P., et al. v. Highland Capital Management, L.P., et al*, Case No. 18-03078 (Bankr. N.D. Tex. 2018); (c) *Motion for Relief from the Automatic Stay to Allow Pursuit of Motion for Order to Show Cause for Violations of the Acis Plan Injunction*, Case No. 19-34054-sgj-11 [Docket No. 593] (Bankr. N.D. Tex. 2020); (d) *Joshua and Jennifer Terry v. Highland Capital Management, L.P., James Dondero and Thomas Surgent*, Case No. DC-16-11396, pending in the 162nd District Court of Dallas County Texas; (e) *Acis Capital Management, L.P., et al v. James Dondero, et al.*, Case No. 20-0360 (Bankruptcy N.D. Tex. 2020); (f) *Acis Capital Management, L.P., et al v. Gary Cruciani, et al.*, Case No. DC-20-05534, pending in the 162nd District Court of Dallas County Texas; (g) *Highland CLO Funding v. Joshua Terry*, [No Case Number], pending in the Royal Court of the Island of Guernsey; and (h) the Acis Bankruptcy Case.

e. "HCMLP Bankruptcy Case" means *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj11 (Bankr. N.D. Tex. 2019).

f. "HCMLP Specified Party" means Scott Ellington, Isaac Leventon, Thomas Surgent, Frank Waterhouse, Jean Paul Sevilla, David Klos, Kristin Hendrix, Timothy Cournoyer, Stephanie Vitiello, Katie Irving, Jon Poglitsch, or Hunter Covitz. For the avoidance of doubt, each HCMLP Specified Party is a HCMLP Released Party.

g. "Plan" means the *Plan of Reorganization of Highland Capital Management, L.P.*, filed in the HCMLP Bankruptcy Case [Docket No. 956] as may be amended or restated.

h. "Strand" means Strand Advisors, Inc.

5. Miscellaneous.

a. For the avoidance of doubt, all rights, duties, and obligations of any HCMLP Released Party or Acis Released Party created by this Release or the Settlement Agreement shall survive its execution.

b. This Release, together with the Settlement Agreement and any exhibits thereto, contains the entire agreement between the Parties as to its subject matter and supersedes and replaces any and all prior agreements and undertakings between the Parties relating thereto.

c. This Release may not be modified other than by a signed writing executed by the Parties.

d. The effectiveness of this Release is subject in all respects to entry of an order of the Court approving this Release and the Settlement Agreement and authorizing HCMLP's execution thereof.

e. This Release may be executed in counterparts (including facsimile and electronic transmission counterparts), each of which will be deemed an original but all of which together constitute one and the same instrument, and shall be effective against a Party upon the Effective Date.

f. This Release will be exclusively governed by and construed and enforced in accordance with the laws of the State of Texas, without regard to its conflicts of law principles, and all claims relating to or arising out of this Release, or the breach thereof, whether sounding in contract, tort, or otherwise, will likewise be governed by the laws of the State of Texas, excluding Texas's conflicts of law principles. The Court will retain exclusive jurisdiction over all disputes relating to this Release. In any action to enforce this Release, the prevailing party shall be entitled to recover its reasonable and necessary attorneys' fees and costs (including experts).

[SIGNATURE PAGE FOLLOWS]

IT IS HEREBY AGREED.

ACIS CAPITAL MANAGEMENT, L.P.

By: [signature]
Name: Joshua N. Terry
Its: President

ACIS CAPITAL MANAGEMENT GP LLC

By: [signature]
Name: Joshua N. Terry
Its: President

JOSHUA N. TERRY

By: [signature]
Name: Joshua N. Terry
Its: Self

JENNIFER G. TERRY

By: [signature]
Name: Jennifer G. Terry
Its: Self

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: ________________
Name: ________________
Its: ________________

IT IS HEREBY AGREED.

ACIS CAPITAL MANAGEMENT, L.P.

By: _____
Name: _____
Its: _____

ACIS CAPITAL MANAGEMENT GP LLC

By: _____
Name: _____
Its: _____

JOSHUA N. TERRY

By: _____
Name: _____
Its: _____

JENNIFER G. TERRY

By: _____
Name: _____
Its: _____

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: _____
Name: James P. Seery, Jr.
Its: CEO/CRO

HCMLP SPECIFIED PARTIES

SCOTT ELLINGTON

_____

ISAAC LEVENTON

_____

THOMAS SURGENT

_____

FRANK WATERHOUSE

_____

JEAN PAUL SEVILLA

_____

DAVID KLOS

_____

KRISTIN HENDRIX

_____

TIMOTHY COURNOYER

_____

STEPHANIE VITIELLO

_____

KATIE IRVING

_____

JON POGLITSCH

_____

HUNTER COVITZ

Exhibit 17

Rakhee V. Patel – State Bar No. 00797213
Phillip Lamberson – State Bar No. 00794134
Jason A. Enright – State Bar No. 24087475
Annmarie Chiarello – State Bar No. 24097496
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Brian P. Shaw – State Bar No. 24053473
ROGGE DUNN GROUP, PC
500 N. Akard St., Suite 1900
Dallas, Texas 75201
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shaw@roggedunngroup.com

COUNSEL FOR REORGANIZED DEBTORS

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re: **ACIS CAPITAL MANAGEMENT, L.P., ACIS CAPITAL MANAGEMENT GP, LLC,** **Debtors.**	§ § § § § § § §	**Case No. 18-30264-SGJ-11** **Case No. 18-30265-SGJ-11** **(Jointly Administered Under Case No. 18-30264-SGJ-11)** **Chapter 11**
ACIS CAPITAL MANAGEMENT, L.P., ACIS CAPITAL MANAGEMENT GP, LLC, Reorganized Debtors, **Plaintiffs,** **vs.** **HIGHLAND CAPITAL MANAGEMENT, L.P., HIGHLAND CLO FUNDING, LTD. F/K/A ACIS LOAN FUNDING, LTD., HIGHLAND HCF ADVISOR, LTD., HIGHLAND CLO MANAGEMENT, LTD., and HIGHLAND CLO HOLDINGS, LTD** **Defendants.**	§ § § § § § § § § § § § § § § § §	**Adversary No. 18-03078** **(Consolidated with Adversary Nos. 18-03212 & 19-03103)**

PLAINTIFFS' UNOPPOSED MOTION TO DISMISS LESS THAN ALL DEFENDANTS

Acis Capital Management, L.P. ("Acis LP") and Acis Capital Management GP, LLC ("Acis GP" together with Acis LP, the "Reorganized Debtors" or "Acis") the reorganized debtors in the above-styled and jointly administered bankruptcy cases, and Plaintiffs in the in the above-styled adversary proceeding, file this *Unopposed Motion to Dismiss Less than All Defendants*, and respectfully state as follows:

1. Pursuant to Federal Rule of Bankruptcy Procedure 7041, Acis hereby requests the Court enter an order dismissing with prejudice all of the claims that were brought, or could have been brought, by and between Acis and Defendants Highland Capital Management, L.P., Highland HCF Advisor, Ltd, Highland CLO Management, Ltd., and Highland CLO Holdings, Ltd. (collectively the "Highland Released Parties"). The Highland Released Parties, for their part, request dismissal of any and all claims asserted, or that could have been asserted, against Acis, including but not limited to the pre-petition, gap and administrative claims asserted by Highland Capital Management, L.P. against Acis, the adjudication of which had been consolidated in this adversary proceeding. The parties have agreed to respectively bear their own attorneys' fees and costs of court.

2. This requested dismissal shall have no effect on the claims of any Defendant other than the Highland Released Parties.

DATED: November 3, 2020

[remainder of page intentionally left blank]

Respectfully submitted,

By: *Brian P. Shaw*
Rakhee V. Patel
State Bar No. 00797213
Phillip Lamberson
State Bar No. 00794134
Jason A. Enright
State Bar No. 24087475
Annmarie Chiarello
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Facsimile: (214) 745-5390
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plamberson@winstead.com
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achiarello@winstead.com

-and-

Brian P. Shaw
State Bar No. 24053473
ROGGE DUNN GROUP, PC
500 N. Akard Street, Suite 1900
Dallas, Texas 75201
Telephone: (214) 888-5000
Facsimile: (214) 220-3833
shaw@roggedunngroup.com

COUNSEL FOR REORGANIZED DEBTORS

CERTIFICATE OF CONFERENCE

I hereby certify that I conferred with counsel for the Highland Released Parties, who stated that they are unopposed to the relief sought in and approve of the form of this Motion.

Brian P. Shaw
BRIAN P. SHAW

CERTIFICATE OF SERVICE

I hereby certify that on November 3, 2020, notice of this document will be electronically mailed to the parties that are registered or otherwise entitled to receive electronic notices in this adversary proceeding pursuant to the Electronic Filing Procedures in this District.

Brian P. Shaw
BRIAN P. SHAW

Exhibit 18

CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed November 6, 2020

United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re: **ACIS CAPITAL MANAGEMENT, L.P., ACIS CAPITAL MANAGEMENT GP, LLC,** **Debtors.**	§ § § § § § § §	**Case No. 18-30264-SGJ-11** **Case No. 18-30265-SGJ-11** **(Jointly Administered Under Case No. 18-30264-SGJ-11)** **Chapter 11**
ACIS CAPITAL MANAGEMENT, L.P., ACIS CAPITAL MANAGEMENT GP, LLC, Reorganized Debtors, **Plaintiffs,** **vs.** **HIGHLAND CAPITAL MANAGEMENT, L.P., HIGHLAND CLO FUNDING, LTD. F/K/A ACIS LOAN FUNDING, LTD., HIGHLAND HCF ADVISOR, LTD., HIGHLAND CLO MANAGEMENT, LTD., and HIGHLAND CLO HOLDINGS, LTD** **Defendants.**	§ § § § § § § § § § § § § § § § §	**Adversary No. 18-03078** **(Consolidated with Adversary Nos. 18-03212 & 19-03103)**

ORDER DISMISSING LESS THAN ALL DEFENDANTS

Upon the *Motion to Dismiss Less Than All Defendants* [Docket No. 215] (the "Motion")[1] filed by the above-captioned Plaintiffs; this Court having reviewed the Motion, any and all other documents filed in support of or in opposition to the Motion; and after due deliberation and sufficient cause appearing therefor, it is **HEREBY ORDERED THAT**:

1. The Motion is **GRANTED**.

2. All of claims that were brought, or could have been brought, by and between Acis and Defendants Highland Capital Management, L.P., Highland HCF Advisor, Ltd, Highland CLO Management, Ltd., and Highland CLO Holdings, Ltd. (collectively the "Highland Released Parties") are dismissed with prejudice to the re-filing of same. Acis and the Highland Released Parties shall respectively bear their own attorneys' fees and costs of court.

3. The Court shall retain jurisdiction with respect to all matters arising from or relating to the implementation, interpretation, and enforcement of this Order.

END OF ORDER

[1] Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

Exhibit 19

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	)	Case No. 19-12239 (CSS)
Debtor.	)	

DECLARATION OF FRANK WATERHOUSE
<u>IN SUPPORT OF FIRST DAY MOTIONS</u>

I, Frank Waterhouse, hereby declare that the following is true and correct to the best of my knowledge, information, and belief:

1. I hold the job title of Chief Financial Officer of the above-captioned debtor and debtor in possession (the "<u>Debtor</u>"). I am also a Partner of the Debtor and Treasurer of the Debtor's general partner, Strand Advisors, Inc.

2. I initially joined the Debtor as a corporate accountant in October 2006. Since then, I have held various accounting and finance positions with the Debtor and assumed the job title of Chief Financial Officer in December 2011. Prior to joining the Debtor, I was employed with PricewaterhouseCoopers in its Technology Assurance practice. I have had a diverse career spanning cancer research with M.D. Anderson Cancer Center to financial consulting with Salomon Smith Barney. I received an M.P.A. from the University of Texas at Austin, an M.B.A. from the University of Houston and a B.S. in Microbiology and a B.S. in

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

Molecular Biology from the University of Texas at Austin. I am a licensed Certified Public Accountant

3. I submit this declaration (the "Declaration") in support of the Debtor's petition and "first day" motions, as described further below (collectively, the "First Day Motions"). Except as otherwise indicated, all statements in this Declaration are based upon my personal knowledge, my review of the Debtor's books and records, relevant documents, and other information prepared or collected by the Debtor's representatives, or my opinion based on my experience with the Debtor's operations and financial condition. In making my statements based on my review of the foregoing, I have relied upon the Debtor's representatives accurately recording, preparing, or collecting such documentation and other information. I am authorized to submit this Declaration on behalf of the Debtor.

4. Part I of this Declaration describes the Debtor's business and the developments that led to the filing for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). Part II discloses certain ordinary course transactions that the Debtor intends to continue postpetition. Part III sets forth the relevant facts in support of the First Day Motions filed by the Debtor concurrently herewith in support of its chapter 11 case. Capitalized terms not defined herein shall have the same meanings as set forth in each relevant First Day Motion.

PART I

BACKGROUND

A. Description and History of the Debtor's Business

5. Highland Capital Management, L.P. (together with its affiliates, "Highland") is a multibillion-dollar global alternative investment manager founded in 1993 by James Dondero and Mark Okada. A pioneer in the leveraged loan market, the firm has evolved over 25 years, building on its credit expertise and value-based approach to expand into other asset classes.

6. Today, Highland operates a diverse investment platform, serving both institutional and retail investors worldwide. In addition to high-yield credit, Highland's investment capabilities include public equities, real estate, private equity and special situations, structured credit, and sector- and region-specific verticals built around specialized teams. Additionally, Highland provides shared services to its affiliated registered investment advisors.

7. Highland is headquartered in Dallas, Texas and maintains offices in Buenos Aires, Rio de Janeiro, Singapore, and Seoul.

8. The Debtor itself is a Delaware limited partnership and one of the principal operating arms of the Highland business. The Debtor employs approximately 76 people, including executive-level management employees, finance and legal staff, investment professionals, and back-office accounting and administrative personnel. The Debtor also leases office space, contracts with third party vendors, and maintains banking and brokerage relationships. Pursuant to various contractual arrangements, the Debtor provides money management and advisory services for approximately $2.5 billion of assets under management. Separately, the Debtor provides shared services for approximately $7.5 billion of assets managed by a variety of affiliated and unaffiliated entities, including other affiliated registered investment advisors. None of these affiliates are filing for Chapter 11 protection.

9. The Debtor primarily generates revenue from fees collected for the management and advisory services provided to funds that it manages, plus fees generated for services provided to its affiliates. For additional liquidity as and when needed, the Debtor intends to sell liquid securities in the ordinary course held through its prime brokerage account at Jefferies, LLC ("Jefferies"), as described in additional detail below. The Debtor may also supplement its liquidity by selling assets at non-Debtor subsidiaries and distributing those proceeds to the Debtor in the ordinary course of business. During calendar year 2018, the Debtor's stand-alone annual revenue totaled approximately $50 million. Through August 31, 2019, the Debtor's stand-alone revenue for the year to date totaled approximately $24 million.

10. The Debtor's organizational chart is attached hereto as **Exhibit A**. The organizational chart is not all inclusive and certain entities have been excluded for the sake of brevity. As noted above, the Debtor is a Delaware limited partnership.

B. The Debtor's Prepetition Capital Structure

i. Jefferies Margin Borrowings (Secured)

11. The Debtor is party to that certain *Prime Brokerage Customer Agreement* with Jefferies dated May 24, 2013 (the "Brokerage Agreement"). Pursuant to the terms of the Brokerage Agreement and related documents, the Debtor maintains a prime brokerage account with Jefferies (the "Prime Account").

12. A prime brokerage account is a unique type of brokerage account that allows sophisticated investors to, among other things, borrow both money on margin to purchase securities and common stock to facilitate short positions. A prime brokerage account also serves as a custodial account and holds client securities in the prime broker's street name.

As of October 11, 2019, the Debtor held approximately $87 million in liquid and illiquid equity and debt securities (the "Securities") in the Prime Account and had borrowed approximately $30 million on margin from Jefferies secured by the Securities. Pursuant to the Brokerage Agreement, the Debtor granted a lien in favor of Jefferies in the Securities and all of the proceeds thereof. As of October 11, 2019, the Debtor had approximately $9.6 million of excess margin in the Prime Account. The Debtor does not intend to borrow any additional amounts on margin, absent the approval of this Court. As reflected in the Budget, the Debtor intends to liquidate certain of the Securities for cash and to use such cash in the Debtor's operations and to satisfy ongoing chapter 11 administrative expenses. The Debtor may also supplement its liquidity by selling assets at non-Debtor subsidiaries and distributing those proceeds to the Debtor in the ordinary course of business.

ii. The Frontier Bank Loan (Secured)

13. The Debtor and Frontier State Bank ("Frontier Bank") are parties to that certain *Loan Agreement* dated as of August 17, 2015 (the "Original Frontier Loan Agreement"), pursuant to which Frontier Bank loaned to the Debtor the aggregate principal amount of $9.5 million. On March 29, 2018, the Debtor and Frontier Bank entered into that certain *First Amended and Restated Loan Agreement* (the "Amended Frontier Loan Agreement"), amending and superseding the Original Frontier Loan Agreement. Pursuant to the Amended Frontier Loan Agreement, Frontier Bank made an additional $1 million loan to the Debtor (together with the borrowings under the Original Frontier Loan Agreement, the "Frontier Loan"). The Frontier Loan matures on August 17, 2021.

14. Pursuant to that certain *Security and Pledge Agreement* dated August 17, 2015, between Frontier Bank and the Debtor, as amended by the Amended Frontier Loan Agreement, the Debtor's obligations under the Frontier Loan are secured by 171,724 shares of voting common stock of MGM Holdings, Inc. (collectively, the "Frontier Prepetition Collateral"). For the avoidance of doubt, the Debtor does not seek authority to liquidate any portion of the Frontier Prepetition Collateral and is not requesting the use of the Frontier Prepetition Collateral.

15. As of the Petition Date, the aggregate principal balance of the Frontier Loan was approximately $5.2 million.

iii. The CLO Purchase Agreement (Unsecured)

16. On October 7, 2016, the Debtor and Acis Capital Management L.P. ("Acis") entered into that certain *Agreement for Purchase and Sale of CLO Participation Interests* (the "CLO Purchase Agreement" and the promissory note therein, the "CLO Note"). Previously, Acis managed certain collateralized loan obligations ("CLOs") identified in the CLO Purchase Agreement and was entitled to fee compensation in connection therewith (the "Servicer Fees").[2] The Debtor's obligations under the CLO Purchase Agreement and CLO Note are unsecured.

17. Pursuant to the CLO Purchase Agreement, Acis sold a portion of its future Servicer Fees to the Debtor in exchange for cash flows from the Debtor, as evidenced in the CLO Note (such Servicer Fees to be paid to the Debtor, the "Debtor Stabilization Fees" and such cash flows from the Debtor, the "Stabilization Payment").

[2] Acis was subsequently the subject of an involuntary bankruptcy filing in 2018.

18. Pursuant to that certain *Agreement for Assignment and Transfer of Promissory Note* dated as of November 3, 2017 (the "CLO Assignment Agreement"), Acis assigned all of its right, title, and interests in the CLO Note, including the right to any and all Stabilization Payments not yet paid to Acis, to Highland CLO Management, Ltd. ("HCLOM"). The Debtor does not have any beneficial ownership interest in HCLOM.

19. Pursuant to that certain *Amended and Restated Forbearance Agreement* dated as of May 31, 2019, by and between the Debtor and HCLOM, HCLOM agreed not to demand payment of the Stabilization Payments under the CLO Note for a period of one year (*i.e.*, until June 1, 2020).

20. As of the Petition Date, the aggregate principal balance of the CLO Note was approximately $9.5 million.

iv. Other Unsecured Obligations

21. The Debtor has various substantial litigation claims asserted against it, including a recent arbitration award in the purported amount of approximately $189 million.

22. In addition, the Debtor has ordinary course trade debt totaling less than $10 million, accrued and unaccrued employee bonus obligations totaling approximately $30 million, and contractual commitments to various affiliated and unaffiliated non-Debtor entities for capital calls, contributions, and other potential reimbursement or funding obligations that could total in the tens of millions of dollars.

C. Events Leading to the Debtor's Bankruptcy Filing and Commencement of the Chapter 11 Case

26. The Debtor's filing was precipitated by an arbitration award (the "Award") initially issued against the Debtor in March 2019, as subsequently modified and finalized, by a panel of the American Arbitration Association, in favor of a Committee of Redeemers in the Highland Crusader Fund (the "Redeemer Committee").

27. The Debtor was formerly the investment manager for the Highland Crusader Fund (the "Crusader Fund") that was formed between 2000 and 2002. In September and October 2008, as the financial markets in the United States began to fail, the Debtor was flooded with redemption requests from Crusader Fund investors, as the Crusader Fund's assets lost significant value.

28. On October 15, 2008, the Debtor placed the Crusader Fund in wind-down, thereby compulsorily redeeming the Crusader Fund's limited partnership interests. The Debtor also declared that it would liquidate the Crusader Fund's remaining assets and distribute the proceeds to investors.

29. However, disputes concerning the distribution of the assets arose among certain investors. After several years of negotiations, a *Joint Plan of Distribution of the Crusader Fund* (the "Crusader Plan"), and the *Scheme of Arrangement* between Highland Crusader Fund and its Scheme Creditors (the "Crusader Scheme"), were adopted in Bermuda and became effective in August 2011. As part of the Crusader Plan and the Crusader Scheme, the Redeemer Committee was elected from among the Crusader Fund's investors to oversee the Debtor's management of the Crusader Fund.

30. Between October 2011 and January 2013, in accordance with the Crusader Plan and the Crusader Scheme, the Debtor distributed in excess of $1.2 billion to the Crusader Fund investors. The Debtor distributed a further $315.3 million through June 2016.

31. However, disputes subsequently arose between the Redeemer Committee and the Debtor. On July 5, 2016, the Redeemer Committee (a) terminated and replaced the Debtor as investment manager of the Crusader Fund, (b) commenced an arbitration against the Debtor (the "Arbitration"), and (c) commenced litigation in Delaware Chancery Court, *inter alia*, to obtain a status quo order in aid of the arbitration, which order was subsequently entered.

32. In September 2018, the Debtor and the Redeemer Committee participated in a multi-day evidentiary hearing. In March 2019, following post-trial briefing, the arbitration panel issued its Award, as subsequently modified and finalized, finding in favor of the Redeemer Committee on a variety of claims and requiring the Debtor to pay a gross amount of $189 million, which later would be partially netted against certain assets and deferred cash to be sent back to Debtor. The Redeemer Committee set a hearing in the Delaware Chancery Court for October 8, 2019, in order to obtain entry of a judgment with respect to the Award. The hearing was subsequently continued to October 16, 2019. The Debtor has sought to vacate certain aspects of the Award.

33. The Debtor believes that it has substantial liquid and illiquid assets, which include interests in a large number of subsidiaries and contractual rights to receive management fees and other forms of compensation from affiliated and unaffiliated entities. Although the Debtor believes that the aggregate value of its assets exceeds the amount of its liabilities, the Debtor filed this chapter 11 case because it does not have sufficient liquidity to immediately

satisfy the Award or post a supersedeas bond necessary to pursue an appeal. The Debtor intends to utilize the breathing spell provided by the automatic stay to consider all of its restructuring options with the goal of ultimately proposing a chapter 11 plan that will maximize the value of the estate's assets for the benefit of all constituents. To assist and coordinate the restructuring process, the Debtor retained Bradley D. Sharp as Chief Restructuring Officer of the Debtor (the "CRO") on October 7, 2019.

PART II

ORDINARY COURSE ACTIVITIES

34. During the pendency of the chapter 11 case, the Debtor intends to continue operating its business in the ordinary course. Part of that business includes the purchase and sale of securities held through the Prime Account. In order to raise cash for its ordinary course operations and other projected chapter 11 administrative expenses, the Debtor intends to liquidate certain securities held in the Prime Account on a postpetition basis in the ordinary course. Additionally, Debtor is the majority owner and investment manager of a non-Debtor affiliate called Highland Select Equity Fund, L.P. (the "Select Fund").[3] Ordinary course operations of Select Fund include the purchase and sale of securities. With respect to any trades in either the Prime Account or the Select Equity Fund, the Debtor will follow the following protocol: (i) all trades will be with unaffiliated third parties; (ii) all securities will be traded through either a public or over-the-counter exchange; and (iii) all trades will be fully disclosed to

[3] The Select Fund is a Delaware limited partnership whose limited partnership interests are majority-owned by the Debtor. The balance of such interests are held directly or indirectly by affiliates of the Debtor, including James Dondero. The Select Fund is managed by its general partner, Highland Select Equity Fund GP, L.P., a Delaware limited partnership (the "Select Fund GP"). The Select Fund GP is directly and indirectly wholly-owned by the Debtor. The Debtor, through the Select Fund GP, can cause the Select Fund to buy and sell assets under its Investment Management Agreement.

the CRO.

35. Further, in the ordinary course of business, the Debtor may be the named counterparty with various broker dealers through which the Debtor trades securities on behalf of its clients. Any transactions that the Debtor executes on behalf of its clients are settled through non-Debtor client accounts pursuant to a standardized internal allocation system. As such, the Debtor has no property interest in any such assets, nor is the Debtor likely to have any liability if any trade fails.[4] The Debtor simply as a matter of convenience interacts in its own name with the various broker dealers on behalf of its clients. Certain dealers have suggested that the Debtor should no longer be the named counterparty now that the Debtor is in bankruptcy and, instead, that a non-Debtor entity act as the "street name" on the trades. The Debtor is considering this request and intends to comply to the extent necessary.

36. Although the Debtor believes that it has the authority to conduct its business going forward in the ordinary course, the Debtor will file a precautionary motion with the Court, out of an abundance of caution, as soon as practicable after the Petition Date seeking approval to continue conducting its business in the ordinary course pursuant to section 363(c)(1) and, to the extent necessary, section 363(b) of the Bankruptcy Code (the "Ordinary Course Motion").

37. In addition, and as will be set forth more fully in the Ordinary Course Motion, the Debtor also intends to seek authority to continue the operation of its three primary business lines: (i) proprietary trading; (ii) investment management; and (iii) the provision of

[4] Under the Debtor's internal policies and procedures, liability for payment on unsettled trades rests solely with the managed funds on whose behalf the trade was executed.

certain middle and back office services to other registered investment advisors (collectively, the "Ordinary Course Services"). Generally speaking, the Ordinary Course Services are as follows:

a. **Proprietary Trading.** The Debtor buys and sells securities for its own account through the Prime Account and the Select Fund and has invested, in its own name, as a limited partner in two unaffiliated private equity style funds (the "PE Entities"). The Debtor has certain obligations to fund capital calls made by the PE Entities, which it intends to continue following the Petition Date.

b. **Investment Management.** The Debtor provides investment management and advisory services to its clients, which include hedge funds, private equity style funds, separately managed accounts, and collateralized loan obligations. As part of these services, the Debtor, in most cases, has the authority to cause its clients to buy or sell assets if the Debtor believes such purchases or sales would be advantageous. With certain exceptions, the clients pay the Debtor a fee for providing these services, which generally consists of a management fee based on the total amount of assets managed and, for certain funds, an incentive fee based on the returns generated for the client.

c. **Shared Services.** The Debtor provides certain middle and back office support to other registered investment advisors pursuant to shared services agreements. The Debtor receives a fee for providing these shared services.

38. The fees and investment returns generated from the foregoing three business lines are the Debtor's primary source of income and are necessary for the Debtor's successful reorganization. Although the Debtor believes that it has the authority to continue operating its business in the ordinary course without Court approval, the Debtor intends to file

the Ordinary Course Motion out of an abundance of caution in order to provide clarity to its customers – as well as its creditors – that the Debtor can continue operating as a going concern and generating positive returns. If the Debtor is not able to continue providing such services or is required to seek prior approval from this Court to buy or sell assets in every instance, the Debtor's ability to generate positive returns for its clients and creditors in this fast moving marketplace will be severely compromised.

PART III

FIRST DAY MOTIONS

39. In order to enable the Debtor to minimize the adverse effects of the commencement of the chapter 11 case, the Debtor has requested various types of relief in the First Day Motions filed simultaneously with this Declaration. A summary of the relief sought in each First Day Motion is set forth below.

40. I have reviewed each of these First Day Motions (including the exhibits and schedules thereto). The facts stated therein are true and correct to the best of my knowledge, information, and belief. I believe that the type of relief sought in each of the First Day Motions: (a) is necessary to enable the Debtor to operate in chapter 11 with minimal disruption; and (b) is essential to maximizing the value of the Debtor's assets for the benefit of its estate and creditors.

A. Motion of Debtors for Entry of Interim and Final Orders (A) Authorizing the Use of Cash Collateral, (B) Providing Adequate Protection, (C) Authorizing the Liquidation of Securities, (D) Modifying the Automatic Stay, and (E) Scheduling a Final Hearing (the "Cash Collateral Motion")

41. Through the Cash Collateral Motion, the Debtor seeks the entry of interim and final orders: (a) authorizing the Debtor to use cash collateral, (b) providing adequate

protection to the Debtor's prepetition broker and margin creditor, Jefferies LLC ("Jefferies"), (c) authorizing the liquidation of securities by the Debtor, and to cause its non-Debtor affiliates to do the same, in the ordinary course of business, and (d) modifying the automatic stay.

42. The Debtor has a prime brokerage account with Jefferies (*i.e.*, the Prime Account) that contains approximately $87 million of the Debtor's liquid and illiquid securities. Through the Prime Account, the Debtor has borrowed approximately $30 million on margin from Jefferies. Such margin balance is secured by the Debtor's securities in the Prime Account and any proceeds thereof. The Debtor submits that the collateral pledged to secure the margin debt to Jefferies far exceeds the amount due. Nonetheless, the Debtor anticipates that Jefferies may assert an interest in any cash in the Prime Account. Although the Cash Collateral Motion is filed on a non-consensual basis, the Debtor will endeavor to negotiate the terms of a consensual cash collateral order with Jefferies in advance of the interim hearing on the Cash Collateral Motion.

43. The Debtor has an urgent and immediate need for the use of cash, including the Cash Collateral. The Debtor has not obtained postpetition financing and, without the use of Cash Collateral, the Debtor will not be able to operate as a going concern or preserve its assets for the benefit of its creditors.

44. The Debtor itself is the operating arm of the Highland business. The Debtor employs approximately 76 people, including executive-level management employees, finance and legal staff, investment professionals, and back-office accounting and administrative personnel. Pursuant to various contractual arrangements, the Debtor provides money

management and advisory services to a variety of affiliated and unaffiliated entities with respect to a wide range of asset classes. The Debtor also leases office space, contracts with third party vendors, and maintains banking and brokerage relationships.

45. As set forth in the Budget, the Debtor anticipates funding this Chapter 11 Case with cash on hand, postpetition receipts on account of management services and sales of liquid assets, including the Securities in the Prime Account, and projected distributions from subsidiaries. Proceeds of the Securities in the Prime Account comprise collateral of Jefferies and, pursuant to the Cash Collateral Motion, the Debtor seeks authority to use such Cash Collateral in the ordinary course of business to preserve its operations and thereby maximize the value of the Debtor's assets for the benefit of its creditors.

46. Notably, Jefferies will be adequately protected by a substantial equity cushion in the Prime Account and the Replacement Lien, the Adequate Protection Lien, and the Adequate Protection Claim.

47. Without immediate access to Cash Collateral, the repercussions to the Debtor's restructuring efforts will be catastrophic and likely irreparable, ending its ability to maximize value for the benefit of all constituents. The Debtor needs to fund, among other things, payroll obligations, payments to vendors for ongoing goods, services, and rent, and other administrative obligations.

48. If the Motion is not approved, the Debtor's only alternative would be a piecemeal liquidation that would substantially handicap recoveries by creditors and eliminate the Debtor's going concern value. Hence, the relief sought in the Cash Collateral Motion should be granted as soon as possible, at least on an interim basis.

B. Motion of Debtor for Interim and Final Orders Authorizing (A) Continuance of Existing Cash Management System and Brokerage Relationships, (B) Continued Use of the Prime Account, (C) Limited Waiver of Section 345(b) Deposit and Investment Requirements, and (D) Granting Related Relief (the "Cash Management Motion")

49. Pursuant to the Cash Management Motion, the Debtor seeks the entry of an order authorizing: (a) the Debtor to continue using its existing cash management system and brokerage relationships in the ordinary course of business; (b) the Debtor to make intercompany transactions; and (c) a limited waiver of section 345(b) deposit and investment requirements.

50. The Debtor's cash management system (the "Cash Management System") facilitates the timely and efficient collection, management, and disbursement of funds used in the Debtor's business. The Cash Management System currently consists of six accounts (collectively, the "Bank Accounts") held in the name of the Debtor at BBVA USA ("BBVA") and NexBank, SSB ("NexBank"). BBVA and NexBank are together referenced herein as the "Banks."

51. BBVA is a bank regulated by the Federal Reserve, and its deposits are insured by the Federal Deposit Insurance Corporation (the "FDIC"). NexBank is Texas-based savings bank that is regulated by the FDIC, and its deposits are FDIC-insured. NexBank is indirectly owned by James Dondero and Mark Okada. Mr. Dondero is an insider of the Debtor and the owner of 100% of the equity in the Debtor's general partner, Strand Advisors, Inc. Mr. Dondero also has an indirect interest in the Debtor's Class A limited partnership interests. Mr. Okada is an insider of the Debtor and has an interest in the Debtor's Class A limited partnership interests.

52. The following chart sets forth the Bank Accounts and their balances as of the close of business on October 15, 2019:

Bank	Account Type	Account No.	Balance
NexBank	Checking Account	XXXX735	$1,435.40
NexBank	Checking Account	XXXX668	$0.00
NexBank	Checking Account	XXXX513	$291,309.27
NexBank	Certificate of Deposit	XXXXX891	$135,205.21
NexBank	Money Market Deposit Account	XXXX130	$190.82
BBVA	Checking Account	XXXXXXX342	$2,125,975.28

53. Master Operations Account. The Debtor's main operating account is its account at BBVA (Account No. 342) (the "Master Account"). Except for payment of certain intercompany expenses discussed below, all proceeds from the Debtor's operations flow into the Master Account and, on average, the Debtor receives approximately $8 million in deposits into the Master Account every month though deposits can vary significantly on a month-to-month basis. Virtually all of the Debtor's expenses, including payroll expenses, are paid from the Master Account either through the issuance of paper checks or via wire or other electronic transfers. As described below, the Debtor also uses the Master Account to fund certain Intercompany Transactions (as defined below).

54. Money Market Account. The Debtor maintains a money market deposit account at NexBank (Account No. 130) (the "Money Market Account"). Although the Debtor does not have a specific policy governing the Money Market Account, the Debtor generally sweeps excess cash from the Master Account into the Money Market Account in order to earn

additional interest.[5] Conversely, if the Debtor needs additional funds to pay expenses, it will transfer money from the Money Market Account to the Master Account. The Debtor also receives payments into the Money Market Account from certain of its non-Debtor affiliates in consideration for providing certain services, such as back office support, pursuant to the terms of various contracts. The Debtor generally does not pay expenses from the Money Market Account, except for employee bonuses with respect to newly-granted awards paid each February.

55. Insurance Account. The Debtor maintains a self-funded health insurance plan for its employees and the employees of certain of its affiliates. To facilitate this plan, the Debtor maintains an account with NexBank (Account No. 513) (the "Insurance Account"). The Debtor transfers the monthly insurance premiums for its employees from the Master Account to the Insurance Account, and certain of the Debtor's affiliates that participate in the health insurance plan also fund money into the Insurance Account. The amounts held in the Insurance Account are then used to pay health insurance claims made by the Debtor's or its affiliates' employees. If a claim is made against the Insurance Account by an employee of a Debtor affiliate, the Debtor affiliate is billed for the amount of the claim. Besides health insurance claims, the only payments made from the Insurance Account are those made to Blue Cross Blue Shield, which administers the health insurance plan.

56. Certificate of Deposit. The Debtor has a certificate of deposit (Account No. 891) at NexBank (the "Certificate of Deposit"). The Certificate of Deposit was originally

[5] The Money Market Account is a money market deposit account, not a money market fund. As such, amounts deposited in the Money Market Account are not invested in any other securities, like certificates of deposits. Rather, the Money Market Account is a demand deposit account with a higher interest rate than a regular checking or savings account.

opened in June 2008 with a principal balance of $1,400,000. The current balance is $135,205.21. The Certificate of Deposit is renewed every June and currently accrues interest at a rate of 2.67% per annum.

57. The Debtor's remaining two accounts at NexBank – Account No. 735 and Account No. 668 – are legacy accounts that have not been utilized in many years. Account No. 735 holds a *de minimis* amount of cash and is accruing interest. Account No. 668 has a balance of zero dollars.

i. Prime Brokerage Account

58. As described in Part I above, the Debtor maintains the Prime Account with Jefferies. As of October 11, 2019, the Debtor held approximately $87 million in Securities in the Prime Account and had borrowed approximately $30 million on margin from Jefferies against the Securities.

ii. Intercompany Transactions.

59. As noted above, the Debtor occasionally engages in intercompany cash transactions with certain of its affiliates. These transfers include (a) the movement of cash to and from the Insurance Account to fund the payment of health insurance claims and (b) the receipt of cash in the Master Account in connection with the provision of services to certain non-Debtor affiliates. In addition to the foregoing, the Debtor also funds the following using the Master Account:

a. **Highland Multi Strategy Credit Fund, L.P.** The Debtor serves as the investment manager for Highland Multi Strategy Credit Fund, L.P. ("MSCF") and is also a limited partner in MCSF. MCSF invests in and holds life settlement policies that require regular

payment of premiums (generally monthly) to keep the policies from lapsing. If the policies were to lapse, MCSF would be unable to collect when the proceeds of such policies become realizable and, consequently, its ability to make distributions to the Debtor as a limited partner or pay amounts owed to the Debtor as the investment manager would be impaired. Because MSCF has limited liquidity, the Debtor provides MSCF the funding required to pay the premiums on its life settlement policies, among other expenses, in the amount of approximately $1 million per month. In return, MSCF issues on demand, zero interest notes to the Debtor, which will be repaid once MSCF's investments become liquid.

b. **Highland Capital Management Korea Limited.** Highland Capital Management Korea Limited ("HCM Korea") is a wholly-owned subsidiary of the Debtor and an affiliated investment advisor domiciled in South Korea. HCM Korea is the advisor for, and minority limited partner in, an investment fund (the "HCM Korea Fund"). Each limited partner in the HCM Korea Fund, including HCM Korea, is required to provide capital when called by the HCM Korea Fund, and the failure to fund capital calls could lead to a default under the HCM Korea Fund's partnership agreement. Because of HCM Korea's limited liquidity, the Debtor has provided HCM Korea with a revolving note pursuant to which the Debtor has extended up to $20 million in credit for HCM Korea to use to fund its commitments to the HCM Korea Fund. The note is at zero percent interest, and there is currently approximately $3.06 million outstanding on the note. The Debtor anticipates that HCM Korea will draw an additional $3 million on the note over the next one to two years and will repay the note as the HCM Korea Fund realizes gains on its portfolio and distributes those gains to its investors.

c. **Highland Capital Management Latin America, L.P.** Highland Capital Management Latin America, L.P. ("HCM Latin America") is a wholly owned subsidiary of the Debtor and an affiliated investment advisor domiciled in the Cayman Islands. HCM Latin America is the advisor for an investment fund investing primarily in Argentina (the "SA Fund"). HCM Latin America employs several consultants to assist in advising and marketing the SA Fund. However, because of the recent instability in the Argentinian market, the value of the SA Fund dropped precipitously and consequently, the SA Fund does not currently generate sufficient fees to cover the cost of these consultants. In addition to its original equity contribution, the Debtor has been contributing equity to HCM Latin America to help cover its costs during the downturn. To date, the Debtor has provided approximately $0.7 million in additional equity to cover such operating costs. The Debtor anticipates that HCM Latin America will require additional equity contributions of between $1 million to $1.5 million per year until the Argentinian market recovers. However, because of HCM Latin America's fee structure, there are opportunities for HCM Latin America to make outsized returns depending on the SA Fund's performance, and, in the event of an Argentinian recovery and a concomitant uptick in the SA Fund, HCM Latin America's fee revenue and profitability will also increase. Consequently, the Debtor believes that contributing equity now will lead to increased returns on its investment in HCM Latin America going forward.

d. **Highland Capital Management (Singapore) Pte Ltd.** Highland Capital Management (Singapore) Pte Ltd. is a wholly owned subsidiary of the Debtor based in Singapore ("HCM Singapore"). Historically, HCM Singapore has been a marketing office that has solicited investments in the Debtor's managed funds from Asian-based institutional

investors. To facilitate HCM Singapore's marketing efforts, the Debtor agreed to cover HCM Singapore's costs. The Debtor agreed to this arrangement as any capital raised by HCM Singapore would directly increase the management fees – and potentially long-term incentive fees – earned by the Debtor. The Debtor believes such increased revenue, should it materialize, would more than offset the costs paid by the Debtor.

e. **Expense Allocations.** As is customary among investment advisors, the Debtor tasks its employees with researching and evaluating potential investments and opportunities for the Debtor's clients. The Debtor also provides certain back office support for its clients from time to time. In order to provide such services, the Debtor has directly contracted with various service providers and is required to pay for such services. However, pursuant to the Debtor's expense allocation policy, such expenses are then allocated amongst the Debtor and its various clients either pro rata based on the assets owned by a client or otherwise in a manner consistent with the policy. Consequently, although the Debtor fronts these costs, the Debtor is reimbursed for a portion of such costs by its clients. On a monthly basis, the Debtor generally expects to pay approximately $450,000 for such services and is reimbursed for a substantial majority of such costs by its clients or affiliates.

60. The transactions described in the foregoing paragraphs are referred to collectively as the "Intercompany Transactions."

61. By Cash Management Motion, and out of an abundance of caution, the Debtor seeks authority to make the Intercompany Transactions and to satisfy postpetition obligations associated with the Intercompany Transactions. Moreover, the Debtor seeks

authority, to the extent required, to transfer funds between the Bank Accounts as described above.

62. The Debtor seeks a waiver of the United States Trustee's requirement for the closure of the Bank Accounts (and potentially the Prime Account) and opening of new postpetition bank accounts at depositories authorized by the United States Trustee. If strictly enforced in this chapter 11 case, the requirement to close and open new bank accounts could cause a severe disruption in the Debtor's activities and could impair the Debtor's ability to operate under chapter 11 of the Bankruptcy Code. Maintenance of the Bank Accounts, the Prime Account, and the Cash Management System generally will greatly facilitate the Debtor's operations for the duration of this chapter 11 case.

63. If the Bank Accounts were closed, the Debtor would need to undertake the laborious effort of opening new bank accounts and, with respect to the Prime Account, establishing a new brokerage account to hold and maintain the Securities, which would require the satisfaction of any outstanding margin balances. Any disruption to the Debtor's operations would severely impact its ability to operate at this critical juncture. If the Debtor were required to close the Bank Accounts and the Prime Account, and open new debtor in possession accounts, the Debtor would be forced to reconstruct its cash management system in its entirety. Moreover, as noted above, the closure of the Prime Account would trigger the repayment of the approximately $30 million that has been borrowed against the Securities.

64. In the ordinary course of the operation and maintenance of the Cash Management System, the Debtor incurs routine charges and fees relating to the administration of the Cash Management System. While it is difficult to readily determine the aggregate amount of

unpaid prepetition account fees and charges as of the Petition Date, on average, the Debtor pays BBVA approximately $4,500 in quarterly fees and charges. The Debtor does not pay fees to NexBank. The Debtor seeks authority, in its sole discretion, to pay any such routine and ordinary course prepetition fees and charges, and to continue the postpetition payment of such fees and charges in the ordinary course of business.

65. As addressed above, the Debtor may utilize the Cash Management System for the Intercompany Transactions. Other than as described herein, no other Intercompany Transactions occur. The Debtor believes that the Intercompany Transactions described herein are beneficial to its estate and creditors and other parties in interest and, therefore, should be authorized by the Court.

66. In sum, the Debtor submits that the relief requested in the Cash Management Motion is necessary to avoid immediate and irreparable harm and should be granted by this Court.

C. Motion of Debtor for Entry of Order (I) Authorizing the Debtor to (A) Pay and Honor Prepetition Compensation, Reimbursable Business Expenses, and Employee Benefit Obligations, and (B) Maintain and Continue Certain Compensation and Benefit Programs Postpetition; and (II) Granting Related Relief (the "Wage Motion")

67. Pursuant to the Wage Motion, the Debtor seeks the entry of an order authorizing: (a) authorizing the Debtor to (i) to pay all prepetition Workforce Compensation and all costs related to the prepetition Benefit Programs, as set forth in the Wage Motion; and (ii) maintain and continue to honor the Benefit Programs as they were in effect as of the Petition Date and as such may be modified, amended, or supplemented from time to time in the ordinary course of business; and (b) authorizing the Banks to honor and process checks and electronic

transfer requests for payment of prepetition obligations with respect to the Workforce Compensation and Benefit Programs. The Debtor does not seek authority to pay any Employees on account of Wages in excess of the statutory cap of $13,650.

i. The Debtor's Workforce

68. The Debtor employs approximately 76 employees (the "Employees"), all but one of whom are full-time Employees. Approximately 55 Employees are salaried workers, while approximately 21 are hourly Employees. Except as otherwise noted, the Debtor provides the Benefit Programs (discussed below) to all of its Employees.

69. In addition to the Employees, the Debtor also periodically retains specialized individuals as independent contractors and temporary workers (the "Independent Contractors") to complete certain projects or tasks. As of the Petition Date, the Debtor retained approximately six (6) Independent Contractors. The Independent Contractors are a critical supplement to the efforts of the Employees and integral to the Debtor's operations and business.

70. Typically, the Employees, as well as the Independent Contractors, rely on their compensation and benefits (as applicable) to pay their daily living expenses and to support their families. If the Debtor is not permitted to continue to pay wages and salaries, provide employee benefits, and maintain benefit programs in the ordinary course of business, many of the Employees may be exposed to significant financial constraints. Consequently, the Debtor respectfully submits that the relief requested herein is necessary and appropriate under the facts and circumstances of this chapter 11 case.

71. As explained in more detail below, the Debtor seeks authority to pay, in its discretion, any prepetition amounts owed for the programs and benefits described in the Wage

Motion up to the cap amounts set forth in the chart below. The Debtor also seeks authority to continue to pay amounts related to the programs described in the Wage Motion in the ordinary course of business.

BENEFIT/PROGRAM	CAP AMOUNT[6]
Wages	$50,000
Independent Contractor Compensation	$40,000
Payroll Processor	$2,500
Medical Plan/FSA	$200,000
Dental Plan	$15,000
Life and Disability Plans	$15,000
Workers Compensation Plan	$5,000
COBRA	$2,500
401(k) Plan	$25,000
Other Employee Benefits	$20,000
Reimbursable Expenses	$110,000
Independent Contractor Compensation	$40,000s

ii. Employee and Contractor Compensation

72. Employee compensation is comprised primarily of wages and salaries ("Wages").[7] The current average payroll of the Debtor is approximately $240,000 per calendar week on account of Wages.

[6] Unless otherwise noted, the dollar caps included in the table above and in the proposed order include reasonable cushions in the event that the Debtor's estimates herein are understated.

[7] In addition to Wages, most Employees are eligible to receive bonuses under certain ordinary course programs. No commissions are paid to Employees. The Debtor will file a separate motion relating to ordinary course Employee

73. Employees are paid Wages on a semi-monthly payroll schedule (*i.e.*, on the 15th day of each month, or the business day immediately preceding the 15th day if that day falls on a weekend or holiday, and the last business day of the month). Per the Debtor's direction, payrolls are processed by a third party service provider, Paylocity (the "Payroll Processor"), and are generally funded with money in the Debtor's operating account one (1) business day prior to the applicable payroll date. Although the Payroll Processor typically withdraws funds from the Debtor's operating account using ACH, in some cases where the aggregate amount exceeds $1,000,000 or the employee needs to be paid off-cycle as in the case of severance payments, the Debtor wires the money to the Payroll Processor or applicable employee recipient. The Payroll Processor then makes the applicable payroll distributions to Employees on the applicable payday.

74. The Debtor's last payroll was paid to Employees on October 11, 2019 (four days early in light of the Debtor's anticipated bankruptcy filing), on account of Wages earned from October 1, 2019, through October 15, 2019. The next payroll date is October 31, 2019, with employees to be paid concurrently. Although the last payroll was paid a few days early, it is nonetheless possible that certain Employees did not receive payment of their prepetition Wages. Accordingly, the Debtor requests authority to pay up to $50,000 to Employees in the aggregate on account of Wages for prepetition services (excluding any vacation or other paid-time-off, reimbursable expenses, or other compensation).[8]

bonuses. The Debtor further reserves the right to seek approval of an additional bankruptcy-related key employee incentive plan and key employee retention plan.

[8] As noted, unless stated otherwise, the dollar caps set forth herein include reasonable cushions in the event that the Debtor's estimates are understated.

iii. Payroll Administration Fees

75. As noted above, the Debtor uses the Payroll Processor to administer its payroll. The Debtor estimates that it owes no more than $2,500 to the Payroll Processor on account of prepetition costs and fees for administrative services as of the Petition Date. The Debtor seeks authority to pay any and all prepetition amounts owing to the Payroll Processor up to the cap requested herein and to continue to make payments on account of such fees and charges in the ordinary course of business postpetition.

iv. Employee Benefits & Insurance Plans

76. The Debtor provides eligible Employees with several Benefit Programs, including (a) medical, dental, life, disability, and other insurance plans, (b) a 401(k) plan, and (c) other benefit programs.

(i) Medical Plan

77. The Debtor offers eligible Employees and their dependents 100% employer-paid PPO health insurance coverage (the "Medical Plan") through BlueCross BlueShield of Texas ("BCBS"). The Medical Plan is self-insured, but the Debtor maintains a stop-loss insurance policy with BCBS to cover catastrophic medical claims (the "Stop-Loss Insurance"). The total premiums cost of the Medical Plan, including the Stop-Loss Insurance, is approximately $102,000 per month, paid by the Debtor each month in advance into a bank account used to pay medical/dental plan administrative fees and claims. From the total premiums of approximately $102,000 per month, the Debtor pays approximately $85,000 per month on average on medical claims asserted under the self-insured Medical Plan. Without the

Medical Plan, the Employees and their dependents would be forced to either forego health insurance coverage entirely or obtain themselves potentially expensive out-of-pocket insurance coverage, which would likely adversely affect the Employees' morale.

78. Relatedly, the Debtor provides Employees who participate in the Medical Plan with access to flexible spending accounts (the "FSA"), administered by Discovery Benefits, which can be used to cover incidental medical costs and dependent childcare. The Debtor pays Discovery Benefits, on average, $300 per month for the administration of the FSAs. The Debtor does not make any contributions to any Employee's FSA.

79. The Debtor believes that, as of the Petition Date, no more than $200,000 will be owed on account of obligations associated with the Medical Plan and the FSA. By the Wage Motion, the Debtor seeks authorization to pay any prepetition amounts due on account of or related to the Medical Plan and FSAs (including any medical claims that may have accrued prepetition) up to the cap requested herein and to continue the Medical Plan and the FSA in the ordinary course of business postpetition.

(ii) Dental Plan

80. The Debtor offers eligible Employees a PPO dental insurance plan (the "Dental Plan") administered by BlueCross BlueShield of Texas. The Dental Plan premiums for eligible Employees and their dependents are paid by the Debtor. The average cost to the Debtor of maintaining the Dental Plan, including administrative costs and premiums, is approximately $6,600 per month. As of the Petition Date, the Debtor estimates that no more than $15,000 will be owed on account of obligations associated with the Dental Plan. By the Wage Motion, the Debtor seeks authorization to pay any prepetition amounts due on account of the Dental Plan up

to the cap requested herein and to continue the Dental Plan in the ordinary course of business postpetition.

(iii) Life and Disability Plans

81. The Debtor provides all of its full-time Employees with basic life insurance, accidental death and dismemberment insurance, and short-term and long-term disability insurance (collectively, the "Standard Life and Disability Plans"), which are provided by Lincoln Financial; *provided, however*, the Debtor's short-term disability insurance coverage is self-insured by the Debtor and administered by Lincoln Financial. Additionally, the Debtor offers its eligible senior personnel with additional life insurance and long-term disability insurance coverage (collectively, the "Executive Life and Disability Plans" and together with the Standard Life and Disability Plans, the "Life and Disability Plans") provided by Brighthouse/MetLife and The Standard, respectively.

82. The Life and Disability Plans are fully paid for by the Debtor (except with respect to any supplemental coverage that is paid by the Employees through paycheck withholding deductions). In the aggregate, the Debtor's average annual cost of maintaining the Life and Disability Plans, including administrative costs and premiums, is approximately $140,000.[9] As of the Petition Date, the Debtor estimates that no more than $15,000 in prepetition obligations associated with the Life and Disability Plans will be owed. By the Wage Motion, the Debtor seeks authorization to pay any and all prepetition amounts due on account of the Life and Disability Plans (including, without limitation, any Employee claims payable under

[9] This aggregate amount excludes any claim amounts that may be paid by the Debtor to recipients under the self-insured short-term disability insurance coverage.

the self-insured short-term disability insurance plan) up to the cap requested herein, and to continue the Life and Disability Plans in the ordinary course of business postpetition.

(iv) Paid Time Off and Sick Time

83. The Debtor grants paid time off to all Employees, which includes vacation and sick time ("PTO"), ranging from 15 to 24 days based on certain factors, in addition to holiday pay. Employees are able to carry forward up to 10 days of PTO for each year of service into a subsequent year (*e.g.*, after two years of service, an Employee can potentially roll over 20 days of PTO). In accordance with applicable state law, the Debtor pays all accrued PTO to Employees upon termination. As of the Petition Date, the accrued liabilities of the Debtor with respect to PTO are estimated to total approximately $940,000. The Debtor seeks authority to allow Employees to use accrued prepetition PTO time after the Petition Date in the ordinary course. The Debtor further seeks authority to pay out any PTO owed to Employees who become separated from the Debtor postpetition to the extent required under the Debtor's policies and applicable state law.

(v) Workers' Compensation Plan

84. The Debtor provides all eligible Employees with workers' compensation insurance (the "Workers' Compensation Plan") as required by federal and state law. The Workers' Compensation Plan is a policy-based, fully insured plan provided by Chubb. The average annual cost of maintaining the Workers' Compensation Plan, including administrative costs and premiums, is approximately $11,000 in the aggregate. The Debtor makes payments to Chubb monthly in arrears. As of the Petition Date, the Debtor believes that no more than $5,000 will be owed on account of prepetition obligations under the Workers' Compensation Plan. By

the Wage Motion, the Debtor seeks authorization to satisfy all obligations related to the Workers' Compensation Plan, including, without limitation, premiums and any related fees, costs, and expenses up to the cap requested herein, and to continue its Workers' Compensation Plan in the ordinary course.

85. The Debtor submits that the continuance of the Workers' Compensation Plan is appropriate in the ordinary course of business, but out of abundance of caution, seeks authority to maintain the Workers' Compensation Plan in accordance with applicable law postpetition. The Debtor also seeks authority for relief from the automatic stay solely to allow holders of workers' compensation claims to proceed with their claims in accordance with the Workers' Compensation Plan and to allow the Workers Compensation Plan insurer to administer, handle, defend, settle and/or pay a claim covered by the Workers' Compensation Plan and the cost related hereto in accordance with such plan.

(vi) COBRA

86. Pursuant to the requirements of the Consolidated Omnibus Budget Reconciliation Act of 1986 ("COBRA"), the Debtor provides temporary continuation of healthcare benefits at group rates to former Employees after their termination, retirement, or disability leave. The former Employee or the Debtor bears the costs associated with COBRA, depending on the terms of the separation agreement between the former Employee and the Debtor. As of the Petition Date, the Debtor was responsible for COBRA related costs of approximately $2,300 per month. The Debtor requests that former Employees and eligible dependents retain the right to coverage under the Medical Plan in accordance with the

requirements of the terms of COBRA and requests authorization to pay obligations arising under such plans, regardless of when such obligations accrued, up to $2,500.

(vii) 401(k) Plan

87. The Debtor allows eligible Employees to participate in a 401(k) plan (the "401(k) Plan") administered by an independent third party, BOK Financial (the "401(k) Administrator"). The 401(k) Plan is funded by participating Employees through payroll withholding deductions, and the Debtor makes matching contributions up to 4% of the applicable Employee's compensation (subject to certain annual caps of $5,000 for highly compensated employees and $11,000 for other employees). The Debtor estimates that it will fund approximately $400,000 in total matching contributions in 2019; more than $300,000 has been funded by the Debtor for this year to date. The Debtor intends to continue to make ordinary course matching contributions to the 401(k) Plan on a going forward basis.

88. The Debtor also has a discretionary profit sharing plan (the "Profit Sharing Plan") administered by the 401(k) Administrator. For a given calendar year, Employees who are enrolled in the 401(k) Plan and employed by the Debtor as of December 31 of that year are eligible to participate in the Profit Sharing Plan. If profit sharing is approved for a given year, each eligible Employee would receive a percentage of his or her cash compensation based on various factors, and capped at a certain amount. The profit sharing contribution typically ranges from 4% to 7.5% of eligible compensation (for 2019, the maximum eligible compensation is $280,000). The award is then paid into the 401(k) Plan for the Employee's benefit as a Debtor contribution; this award vests upon three (3) years of service (with a year defined as 1,000 hours in a calendar year), but once the initial three (3) years of service has been met, all future awards

vest immediately. The approved profit sharing contributions for 2018 (approximately $854,000) were previously funded by the Debtor prepetition. No profit sharing for year 2019 has been calculated or approved by the Debtor as yet, but would typically be approved in the ordinary course in February 2020 and would be payable no later than September 15, 2020. The Debtor will be filing a separate motion to seek authority to continue the Profit Sharing Plan on a postpetition basis in the ordinary course.

89. In the aggregate, with respect to 401(k) Plan, the Debtor annually pays approximately $82,000 in administrative costs to the 401(k) Administrator (typically funded in part out of 401(k) Plan forfeitures), actuarial and legal costs of approximately $50,000, and audit costs of approximately $7,000 (audit cost is for 2018 audit which is nearly complete; 2019 audit has not yet been commenced).

90. The Debtor believes that, as of the Petition Date, all of Q3 2019 administrative costs and only a relatively *de minimis* amount of prepetition Q4 2019 administrative costs is owed relating to the 401(k) Plan. The Debtor seeks authorization to continue to pay any prepetition amounts due on account of the 401(k) Plan, including any administrative, audit or advisory fees, up to a cap of $25,000 and to continue to pay postpetition costs of the 401(k) Plan in the ordinary course of business.

(viii) Other Employee Benefits

91. The Debtor provides eligible Employees with a number of other miscellaneous benefits (the "Other Employee Benefits"), which include, without limitation, (i) flexible spending accounts; (ii) daily catered lunches (the Debtor pays $16 maximum per workday through GrubHub, *etc*.); (iii) cell phone service reimbursement (the Debtor provides

each eligible Employee $100 per month in reimbursement); (iv) gym memberships (the Debtor pays gym dues of approximately $25 per month for each eligible Employee); (v) paid office parking; and (vi) access to stocked office kitchens.

92. As the foregoing descriptions suggest, the aggregate cost of maintaining the Other Employee Benefits is relatively *de minimis*. The Debtor seeks authorization to pay any prepetition amounts that may be due on account of the Other Employee Benefits up to $20,000, and to continue the Other Employee Benefits in the ordinary course of business postpetition.

v. Reimbursable Expenses

93. Prior to the Petition Date, the Debtor reimbursed Employees for Reimbursable Expenses incurred on behalf of the Debtor in the scope of their duties. The Reimbursable Expenses are incurred in the ordinary course of the Debtor's business operations and include, without limitation, reasonable expenses for business meals, travel, relocation, car rentals, and other business-related expenses. As of the Petition Date, the Debtor estimates that it owes no more than $110,000 in Reimbursable Expenses. Although the Debtor has requested that Employees submit reimbursement requests promptly, Employees may nonetheless submit reimbursement requests for prepetition Reimbursable Expenses after the Petition Date. Absent authority to pay the Reimbursable Expenses incurred prepetition, the Employees could be obligated to pay such amounts out of their personal funds. The Debtor therefore seeks authority to pay all outstanding prepetition Reimbursable Expenses, and to continue its expense reimbursement policies in the ordinary course of business.

vi. Withholding Obligations

94. The Debtor routinely deducts amounts from Employees' compensation with respect to certain Withholding Obligations, including, but not limited to, various federal, state, and local income taxes, wage garnishments, flexible spending account contributions, dependent daycare account contributions, and 401(k) contributions (the "Employee Withholdings").

95. The Debtor is also responsible for remitting to third parties, for their own account, various taxes and fees associated with payroll pursuant to the Federal Insurance Contributions Act and federal and state laws regarding unemployment and disability taxes (the "Payroll Taxes"). On average, the Debtor pays approximately $15,000 in the aggregate for employer-obligated Payroll Taxes each pay period.

96. The Debtor does not believe that any prepetition Withholding Obligations remain to be remitted to the appropriate parties. However, out of caution, the Debtor seeks authority to deduct and remit any outstanding prepetition Employee Withholdings and Payroll Taxes, and to continue to deduct and remit all owed Employee Withholdings and all owed Payroll Taxes to the appropriate third party recipients in the ordinary course of business.

vii. Independent Contractors

97. As noted above, the Debtor also uses and depends on various Independent Contractors. The Debtor makes payments to Independent Contractors ("Independent Contractor Compensation" and together with Wages, "Workforce Compensation") for the performance of certain specialized services important to the Debtor's business and operations, including, among other things, investment management, tax/legal, real estate advisory, executive recruiting, life settlements valuation / actuary, and other miscellaneous consulting services. On average, the

Debtor pays approximately $80,000 per month in Independent Contractor Compensation. As of the Petition Date, the Debtor estimates that it may owe up to $40,000 on account of accrued, unpaid Independent Contractor Compensation.

98. Importantly, the Debtor relies on the continuous support of Independent Contractors to handle and/or assist with projects and matters in furtherance of the Debtor's business. The Debtor believes the authority to continue paying the Independent Contractor Compensation, including any prepetition amounts, is critical to minimize disruption of the Debtor's operations. Accordingly, the Debtor seeks authority to satisfy any prepetition accrued but unpaid Independent Contractor Compensation up to $40,000 and continue to pay the Independent Contractor Compensation on a postpetition basis in the ordinary course of business and consistent with past practices.

viii. Direction to Banks and Financial Institutions

99. The Debtor also seeks an order authorizing its banks and other financial institutions (collectively, the "Banks") to receive, process, honor, and pay all of the Debtor's prepetition checks and fund transfers on account of any prepetition amounts owed on account of or relating to Workforce Compensation or the Benefit Programs, including all checks issued with regard to any Workforce Compensation and Benefit Programs, and prohibiting the Banks from placing any holds on, or attempting to reverse, any automatic transfers to any account of an Employee or other party for prepetition Workforce Compensation and Benefit Programs obligations. The Debtor also seeks an order authorizing the issuance of new postpetition checks or new postpetition funds transfers on account of prepetition Workforce Compensation and Benefit Program obligations to replace any prepetition checks or funds transfer requests that may

be dishonored or rejected, and to reimburse Employees or other applicable party for any fees or expenses incurred in connection with any rejected checks as a result of the Debtor's bankruptcy filing.

D. Motion of Debtor for Entry of Interim and Final Orders (A) Authorizing Debtors to Pay Prepetition Claims of Critical Vendors and (B) Granting Related Relief (the "Critical Vendor Motion")

100. Through the Critical Vendor Motion, the Debtor seeks the entry of interim and final orders (a) authorizing, but not directing, the Debtor to pay certain prepetition claims (each a "Critical Vendor Claim" and, collectively, the "Critical Vendor Claims") of certain essential vendors and service providers (each, a "Critical Vendor" and, collectively, the "Critical Vendors") on an interim basis not to exceed $250,000 (the "Interim Critical Vendor Cap"), representing the critical expenditures the Debtor will need to make to Critical Vendors during the first four weeks of this case, and, on a final basis, not to exceed $1,000,000 (the "Critical Vendor Cap") and (b) granting related relief.

101. The Debtor's business relies on continuing access to and relationships with various vendors and service providers. Any disruption in the Debtor's access to the provision of critical goods and services to the Debtor would have a far-reaching and adverse economic and operational impact on its business.

102. The bulk of the remaining goods and services that the Debtor depends on are provided by a critical network of vendors and service providers that, for the most part, conduct business with the Debtor on an invoice by invoice or purchase order by purchase order basis, and not pursuant to long-term contracts. These vendors typically supply their customers with services and products on trade terms based on their experience with and perceived risk of

conducting business with such customers. The Debtor believes that it would be extremely difficult, if not impossible, to replace the Critical Vendors within a reasonable time without severe disruption to the Debtor's business. Such harm would likely far outweigh the cost of payment of the Critical Vendor Claims.

103. Hence, it is essential to the success of the Debtor's restructuring effort that it be able to maintain the flow of goods, and services to its business.

104. Further, as discussed in the Cash Management, the Debtor will be reimbursed for a substantial amount of the payments made to Critical Vendors from the Critical Vendor Cap.

105. The Debtor undertook a process to identify the Critical Vendors using the following criteria: (i) whether certain specifications prevent the Debtor from obtaining a vendor's goods or services from alternative sources within a reasonable timeframe; and (ii) if a vendor is not a sole-source or primary provider of services or products, whether the Debtor can continue to operate in the ordinary course while a replacement vendor is secured. As a result of their critical review and evaluation, the Debtor has identified a narrow subset of vendors as Critical Vendors.

106. The Debtor's Critical Vendors generally fall into the following categories:

a. Back Office Support Services. The Debtor contracts with certain services to assist in maintaining their back office and supporting the Debtor's investment team. These services consist of, for example, data providers that provide and manage intranet portals necessary to streamline information flow and data accuracy and other service providers that supply telephone services or warehouse necessary files or data.

b. Research Services. The Debtor's business consists of advising its clients on potential investments. To do that, the Debtor subscribes to various services that provide access to real-time data and analytics. These services enable the Debtor to provide accurate analysis of the investments they manage and to satisfy their fiduciary and other obligations to their clients as a registered investment advisor.

107. As of the Petition Date, the Debtor will owe amounts to certain Critical Vendors (a) that have been billed and invoiced and/or (b) that have accrued immediately prior to the Petition Date for which they have not yet been invoiced or payment is not yet due. The Debtor anticipates the total amount of Critical Vendor Claims will not exceed $1,000,000 of which $250,000 is being requested on an interim basis. As discussed above, a portion of that amount will also be reimbursed to the Debtor through the ordinary course of the Debtor's business.

108. Given the importance of the goods, and services provided by the Critical Vendors, it is imperative that the Debtor be granted, on an emergency basis, the flexibility and authority to satisfy the prepetition claims of the Critical Vendors up to the Interim Critical Vendor Cap and, if approved on a final basis, the Critical Vendor Cap.

E. Debtor's Motion for Entry of an Order (I) Extending Time to File Schedules of Assets and Liabilities, Schedules of Executory Contracts and Unexpired Leases, and Statements of Financial Affairs, and (II) Granting Related Relief (the "Schedules Extension Motion")

109. Through the Schedules Extension Motion, the Debtor seeks the entry of an order extending the deadline by which it must file its schedules of assets and liabilities, schedules of executory contracts and unexpired leases, and statement of financial affairs (collectively, the

"Schedules and Statements") by an additional thirty (30) days, for a total of fifty-eight (58) days from the Petition Date.

110. To prepare the Schedules and Statements, the Debtor must compile information from books, records, and documents relating to creditor claims, as well as the Debtor's various assets and contracts.

111. Given the amount of work entailed in completing the Schedules and Statements, the Debtor requires more time to complete the Schedules and Statements within the required time period. Accordingly, the Debtor requests that the Court grant the Schedules Extension Motion.

F. Motion of Debtor for Entry of Interim and Final Orders Authorizing Debtor to File Under Seal Portions of Its Creditor Matrix Containing Employee Address Information (the "Motion to Redact Employee Addresses")

112. Through the Motion to Redact Employee Addresses, the Debtor seeks the entry of an interim order and a final order: (a) authorizing the Debtor to file a redacted version of its creditor matrix without publicly disclosing employee address information, (b) authorizing the Debtor to file under seal an unredacted version of its creditor matrix, and (c) granting such other relief as the Court deems just and proper.

113. In the present case, the Debtor respectfully submits that cause exists to authorize the Debtor to redact the address information of individual employees from the creditor matrix because such information: (a) is private and confidential, (b) could be used to perpetrate identity theft – which has occurred in the past with certain of the Debtor's employees, (c) would potentially allow competitors to poach the Debtor's employees at the expense of this estate; and (d) could pose other risks to employees.

114. The benefit of including such information on the publicly filed matrix is far outweighed by the potential risks for the Debtor's individual employees.

115. If the relief requested in the Motion to Redact Employee Addresses is granted, the unredacted matrix will be filed and remain under seal until further order of the Court. The Debtor will share the unredacted matrix with the Office of the United States Trustee upon request and the Debtor proposes that any party-in-interest who seeks to review the unredacted matrix may submit a request in writing to the Debtor. If the Debtor and the party seeking access to the unredacted matrix are unable to reach agreement on the terms of reviewing the unredacted matrix, the party may seek the assistance of this Court by filing a motion and make an appropriate showing for the Court to evaluate whether or not the unredacted matrix should be made available and under what terms. Upon any such motion seeking access to the unredacted matrix, the Debtor could continue to try and resolve the matter or present its opposition to the Court for consideration at a hearing on appropriate notice.

116. Accordingly, the Debtor requests that the Court grant the Motion to Redact Employee Addresses.

[*Remainder of page intentionally left blank*]

I declare under penalty of perjury under the United States of America that the foregoing is true and correct.

Executed this 16 day of October, 2019 at Dallas, Texas.

Frank Waterhouse

DOCS_SF:101977.5 36027/001

EXHIBIT A

Organizational Chart

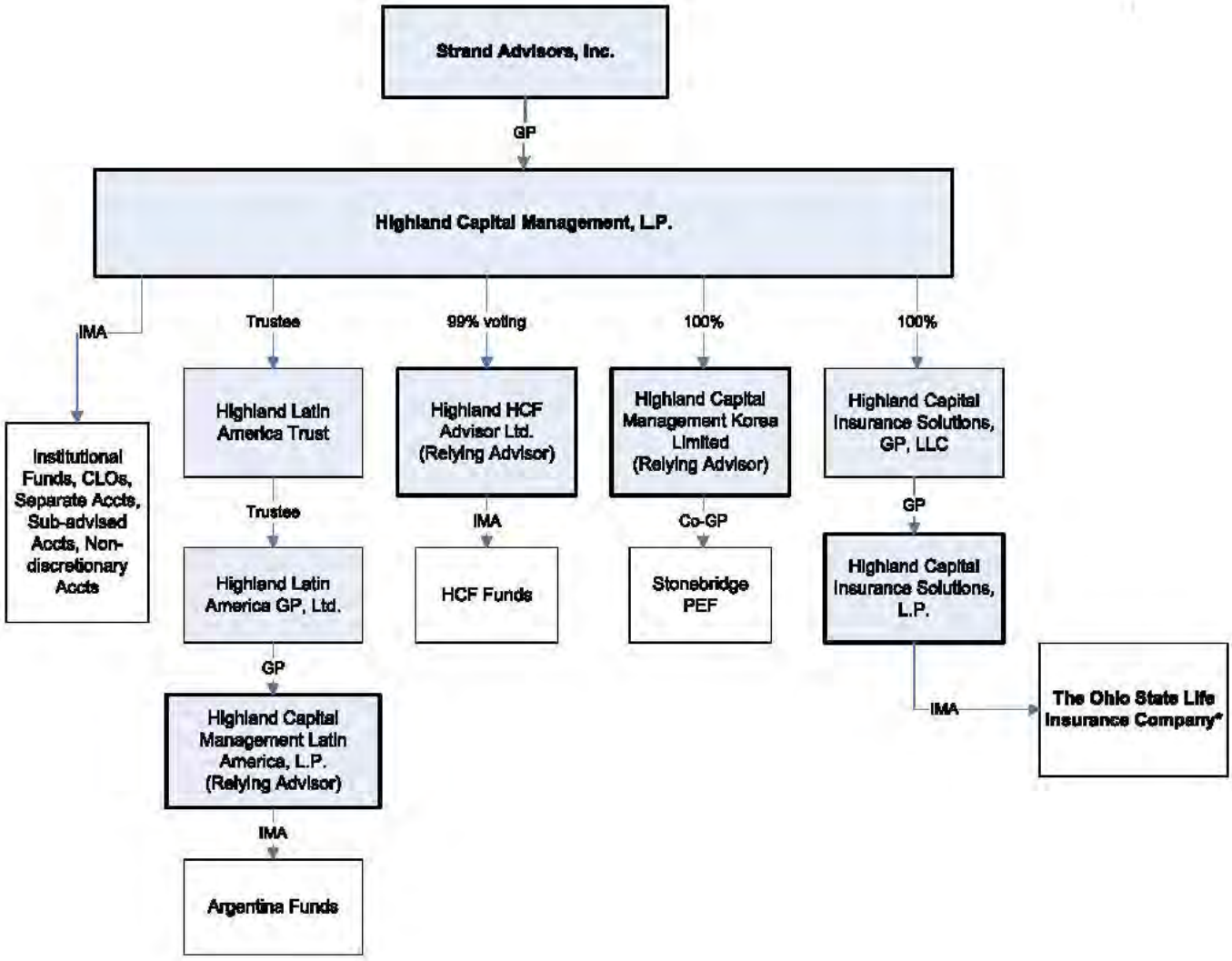

Exhibit 20

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Counsel for Highland CLO Management, Ltd.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.	Case No. 19-34054 (sgj)
Reorganized Debtor.	

HIGHLAND CLO MANAGEMENT, LTD.'S AMENDED NOTICE OF REMOTE DEPOSITION OF JAMES P. SEERY, JR., INDIVIDUALLY AND AS CORPORATE REPRESENTATIVE OF HIGHLAND CAPITAL MANAGEMENT, L.P.

TO: Highland Capital Management, L.P., through its counsel of record, Zachery Z. Annable, Hayward PLLC, 10501 N. Central Expy., Ste. 106, Dallas, Texas 75231.

PLEASE TAKE NOTICE that, pursuant to Federal Rule of Bankruptcy Procedure 7030(b)(6), Highland CLO Management, Ltd. ("HCLOM") will remotely take the oral deposition of James P. Seery, Jr., in his individual capacity, and as the corporate representative of Debtor Highland Capital Management, L.P. ("Debtor" or "Highland Capital") in connection with the Reorganized Debtor's Objection to Scheduled Claims 3.65 and 3.66 of HCLOM on **November**

13, 2024, at 8:30 a.m. CST, or as has otherwise been agreed to by the parties upon reasonable notice, via online platform provided by the court reporting company assigned to the deposition. Parties who wish to participate in the deposition should contact Patricia Tomasky at patricia.tomasky@stinson.com no fewer than 48 hours prior to the start of the deposition to confirm a remote seat at the deposition and to receive their electronic invites.

Debtor is required to designate one or more individuals to testify on its behalf on each of the topics set forth in the attached Exhibit A.

Dated: November 8, 2024

Respectfully submitted,
STINSON LLP

/s/ Deborah Deitsch-Perez
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Counsel for Highland CLO Management, Ltd.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on November 8, 2024, a true and correct copy of this document was served by email on all counsel of record for Reorganized Debtor Highland Capital Management, L.P.

/s/ Deborah Deitsch-Perez
Deborah Deitsch-Perez

EXHIBIT A

DEFINITIONS

1. "**Acis**" shall mean Acis Capital Management, L.P.

2. "**Acis Adversary Proceeding**" shall mean Acis Capital Management, L.P. and Acis Capital Management GP, LLC v. Highland Capital Management, L.P., et al., Adversary Proceeding No. 18-03078.

3. "**Acis Bankruptcy Case**" shall mean In re Acis Capital Management, L.P., Debtor, Case No. 18-30265-sgj11 in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division.

4. "**Acis Bankruptcy Court**" shall mean the court in the Acis Bankruptcy Case.

5. "**Affiliate**" shall mean as defined in section 101(2) of the Bankruptcy Code and also includes any other entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such affiliate.

6. "**Amended Schedules**" shall mean Debtor's amended schedules in the Bankruptcy Case filed on September 22, 2020 at Dkt. 1082-1.

7. "**Bankruptcy Case**" shall mean and refer to the above-captioned chapter 11 case of Highland Capital Management, L.P.

8. "**Communication(s)**" shall mean the transmittal of information (in the form of facts, ideas, inquiries, or otherwise) by any means, including but not limited to any meeting, conversation, discussion, conference, correspondence, message, or other written or oral transmission, exchange, or transfer of information in any form between two or more persons, including in person or by telephone, facsimile, telegraph, telex, electronic mail or other medium.

The term also includes any Document transmitted or exchanged during such transmittal of information.

9. "**Debtor**" shall mean Highland Capital Management, L.P., and any of its respective agents and representative or any person acting or purporting to act on their behalf.

10. "**Document(s)**" refers to:

a. all handwritten, typed, or printed matter of any kind, including the originals and all non-identical copies, whether different from the original by reason of any notation made on such copies or otherwise, including, without limitation, agreements, correspondence, forecasts, memoranda, e-mails, notes, jottings, speeches, press releases, diaries, examinations, statistics, letters, telegrams, minutes, time records, payroll records, expense records, contracts, reports, studies, training manuals, canceled checks, statements, receipts, delivery tickets, returns, summaries, work orders, pamphlets, books, prospectuses, statement of operations, inter-office and intra-office communications, internal and external audit reports, internal and external accounting reports, offers, notations of any sort of conversations, telephone calls, meetings, or other communications, bulletins, printed matter, computer print-outs, teletypes, invoices, worksheets, and all drafts, alterations, modifications, changes and amendments of any of the foregoing;

b. graphic or aural records of representations of any kind, including, without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings, motion pictures; and

c. electronic, mechanical or electronic records or representations of any kind, including, without limitation, emails, tapes, cassettes, digital images, digital videos, videotapes, audiotapes, laser disks, disks (including CD-ROM disks), plans or other representations of anything concerning, describing, referring or relating, directly or indirectly, in whole or in part, to the subject matter of the discovery request at issue.

11. "**ESI**" shall have the meaning ascribed to it in the Federal Rules of Civil Procedure 16, 26, and 34(a). For the avoidance of doubt, the definitions of "Document(s)" and "Communication(s)" include all ESI.

12. "**HCLOM**" shall mean Highland CLO Management, Ltd.

13. "**HCMLP Objection to Acis Claim 23**" shall mean Debtor's Objection to Acis' Claim No. 23 in the Highland Capital Management, L.P. Bankruptcy Case.

14. "**HCMLP Objection to HCLOM Claims**" shall mean Debtor's Objection to the HCLOM Scheduled Claims at Dkt. No. 3657.

15. "**HCLOM Scheduled Claims**" shall mean HCLOM's Claims scheduled at Bankruptcy Case Dkt. No. 1082-1, Part 2, entry Nos. 3.65 and 3.66.

16. "**HCLOM Supplanted Scheduled Claims**" shall mean the claims scheduled in Bankruptcy Case Dkt. 247 at Part 2, entry Nos. 3.64 and 3.65.

17. "**Note**" shall mean and refer to the promissory note that forms the basis of the HCLOM Scheduled Claims.

18. "**October 2022 Correspondence**" shall mean the letter dated October 12, 2022 from Debtor to the Dugaboy Investment Trust and Mark Okada regarding "Highland CLO Management, Ltd."

19. "**Person**" shall mean and refer to any individual, partnership, corporation, trust, estate, cooperative, association, government, governmental subdivision, or agency, or entity.

20. "**Petition Date**" shall mean October 16, 2019, the date that Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code, 11 U.S.C. §§ 101 – 1531 in the United States Bankruptcy Court for the District of Delaware.

21. "**Purchase Agreement**" shall mean and refer to the Agreement for Purchase and Sale of CLO Participation Interests between Debtor and Acis, referenced in the HCMLP Objection to HCLOM Claims.

22. "**Servicer Fees**" shall have the meaning as set forth in the Purchase Agreement.

23. "**Transfer Agreement**" shall mean and refer to the Assignment and Transfer Agreement between Acis, Debtor, and HCLOM referenced in the HCMLP Objection to HCLOM Claims.

24. "**You**" and "**Your**" shall mean and refer to Highland Capital Management, L.P., and any of its respective agents and representatives or any person acting or purporting to act on its behalf.

EXAMINATION TOPICS

1. The basis for Debtor's filing of the HCMLP Objection to HCLOM Claims, including (a) when You discovered such facts; (b) the names of the individual person(s) who discovered such facts; (c) how such person(s) discovered such facts; (d) the timing of such knowledge.

2. The Note or Purchases Agreement, including the terms of the Note or Purchase Agreement, and negotiations or communications related to the execution and/or the terms of the Note and Purchase Agreement.

3. The identity of all individuals involved in negotiations or communications related to the execution and/or the terms of the Note and Purchase Agreement.

4. All oral agreements related to the Note and Purchase Agreement.

5. Any subsequent agreements or modifications related to the Note or Purchase Agreement, including the Transfer Agreement.

6. All negotiations or communications related to the execution and/or the terms of the Transfer Agreement.

7. The identity of all individuals involved in negotiations or communications related to the execution and/or the terms of the Transfer Agreement.

8. All oral agreements related to the Transfer Agreement.

9. Any subsequent agreements or modifications related to the Transfer Agreement.

10. HCLOM's alleged default under the Note, Transfer Agreement, or Purchase Agreement.

11. The drafting of the HCLOM Scheduled Claim, including (a) the information that formed the basis for the HCLOM Scheduled Claim, (b) when, how and by whom such information was obtained or discovered, (c) the individual(s) involve in gathering and analyzing such information, and (d) the decision and decision maker(s) regarding the final form of the HCLOM Scheduled Claim as it was filed with the Court.

12. Debtor’s filing of (a) the HCLOM Supplanted Scheduled Claims and (b) the HCMLP Scheduled Claims.

13. The basis and specific amount of Debtor’s claimed rights of offset and recoupment, including any documentation reflecting such basis.

14. Any payments paid by Debtor under the Note, including the date and amount of payment, and the remaining balance of the Note, including all interest calculations.

15. Any demands or communications made by Debtor or any other Person or entity to Acis or HCLOM with regard to payment or transfer of Servicer Fees under the Purchase Agreement, the Note, or the Transfer Agreement.

16. Debtor's knowledge of its interest in HCLOM or the ownership structure of HCLOM at the time of the filing of the Amended Schedules and at the time of the HCMLP Objection to Acis Proof of Claim No. 23 and identify all Persons affiliated with Debtor who had such understanding.

17. HCLOM's current or prior management and ownership structure, including but not limited to, (a) HCLOM's corporate management and ownership structure upon formation, (b) any changes to HCLOM's corporate management or ownership structure, (c) Debtor's decision to send the October 2022 Correspondence and propose the changes to HCLOM's corporate management and ownership set forth in such correspondence

18. Each transfer of Servicer Fees by Acis to Debtor, including the date and amount of the payment, and identify each alleged missed transfer of Servicer Fees by Acis or HCLOM, including the amount and date of each alleged missed transfer, and identify any documents reflecting each transfer or alleged missed transfer.

19. Financial documents concerning, reflecting, related to, referencing, or incorporating the Note, including but not limited to, (a) Debtor's audited financial statements, (b) the working papers for such financial statements related to the Note, (c) any schedules of assets or liabilities reflecting or relating to the Note, (d) any document reflecting any payments made, or owed but unpaid, under the Note, (e) communications with any external auditor or accountant regarding the Note, and (f) unaudited financial statements related to the Note.

20. Tax treatment of the Note or the Purchase Agreement by either Debtor or Acis, including, but not limited, (a) tax returns, (b) tax return work papers, (c) communications with any external auditors, accountants, or tax professionals, (d) internal communications to, from, or between any Debtor employees or contractors, and (e) communications with any government agency or office.

21. Debtor's or its representatives' representations regarding Debtor's liability under the Note since the Petition Date until the present.

22. Any communications or instructions that may have been given to employees of Debtor with respect to processing, making, facilitating, coordinating, or doing (or not doing) anything else with respect to the Note, including: (i) whether there were any communications or instructions to do anything regarding the same differently from how it had been done in past years; and (ii) any communications or instructions to not process, make, facilitate, or coordinate such payment.

23. The basis for Debtor's filing of HCMLP Objection to Acis Claim 23 including (a) when You discovered such facts; (b) the names of the individual person(s) who discovered such facts; (c) how such person(s) discovered such facts; (d) the timing of such knowledge.

24. The Acis Adversary Proceeding or the Acis Bankruptcy Case, including the factual background, correspondence between Debtor and Acis, and any of Debtor's representations to any Court relating to either (1) Debtor's liability under the Note or (2) Acis' liability to Debtor for payments under the Purchase Agreement.

25. Settlement agreements between Debtor and Acis, including any correspondence relating to any settlement agreement, communications to any Court relating to any settlement agreement, and draft agreements exchanged between Debtor and Acis.

26. The creation of Highland CLO Management, LLC, including its purpose, ownership and any connection to Highland CLO Management, Ltd.

Exhibit 21

PROMISSORY NOTE

$12,666,446 October 7, 2016

FOR VALUE RECEIVED, the undersigned, Highland Capital Management, L.P., a Delaware limited partnership ("Maker"), hereby promises to pay to the order of Acis Capital Management, L.P., a Delaware limited partnership ("Payee"), at its office at 300 Crescent Court, Suite 700, Dallas, Texas 75201 in lawful money of the United States of America, the principal sum of TWELVE MILLION SIX HUNDRED SIXTY-SIX THOUSAND FOUR HUNDRED FORTY-SIX DOLLARS ($12,666,446), together with interest on the outstanding principal balance thereof from day to day remaining at the rate of three percent (3%) per annum, as provided herein.

Payments

THE UNPAID PRINCIPAL HEREOF, TOGETHER WITH ALL ACCRUED AND UNPAID INTEREST THEREON, SHALL AUTOMATICALLY BE DUE AND PAYABLE IN FULL, WITHOUT NECESSITY OF DEMAND OR NOTICE, ACCORDING TO THE AMORTIZATION TABLE ATTACHED HERETO AS EXHIBIT A.

All past due principal and interest shall bear interest from and after the date when due at a rate equal to the rate equal to the lesser of (a) eighteen percent (18.0%) per annum or (b) the Maximum Rate (as defined herein).

Interest on the indebtedness evidenced by this Note shall be computed on the basis of a year of 360 days and the actual number of days elapsed (including the first day but excluding the last day) unless such calculation would result in a rate that exceeds the maximum rate allowed by applicable law (such rate, the "Maximum Rate") in which case interest shall be calculated on the basis of a year of 365 or 366 days, as the case may be. If the regularly scheduled due date for any payment under this Note is not a Business Day, the due date for such payment shall be the next succeeding Business Day, and payment made on such succeeding Business Day shall have the same force and effect as if made on the regularly scheduled due date. "Business Day" means a day, other than a Saturday, Sunday or legal holiday, on which a bank in Dallas, Texas is open for business.

Maker shall have the right to prepay this Note, in whole or in part, at any time and from time to time without premium or penalty. Amounts borrowed and repaid hereunder may not be reborrowed.

Conditions Precedent

This Note shall not become effective and Payee shall have no obligation to make the advance hereunder until Payee has received each of the following in form and substance acceptable to Payee:

(a) this Note executed by Maker;

(b) the Agreement for Purchase and Sale of CLO Participation Interests dated of even date herewith (the "Purchase Agreement"), by and between Maker and Acis Capital Management, LP, a Delaware limited partnership ("Highland"), and copies of all agreements, documents and instruments executed or delivered in connection therewith and evidence that all conditions to the effectiveness of the Purchase Agreement have been or will be fulfilled contemporaneously with the initial advance under this Note;

(c) evidence that the execution, delivery and performance by Maker of this Note and all other documents and instruments related to this Note have been duly authorized by, or on behalf of, Maker;

EXHIBIT 2
WIT: KLOS
DATE: 9-25-24
Katharene McCulley, CSR

(d) true and correct copies of the organizational documents of Maker; and

(e) such other agreements, documents, information, and other assurances as Payee may reasonably request.

Events of Default

Maker shall be in default under this Note upon the occurrence of any of the following events or conditions (each, an "Event of Default"):

(a) the failure of Maker to make any payment required to be made under this Note when such payment becomes due;

(b) Maker defaults in the performance of any obligation, covenant, or agreement now or hereafter made or owed by Maker to Payee, whether under this Note or any related document;

(c) any representation or warranty made by Maker to Payee in connection with this Note or any document executed or delivered in connection therewith, is false or misleading in any material respect when made;

(d) Maker shall commence a voluntary proceeding seeking liquidation, reorganization, or other relief with respect to itself or its debts under any bankruptcy, insolvency, or other similar law now or hereafter in effect, or seeking the appointment of a trustee, receiver, liquidator, custodian, or other similar official for it or a substantial part of its property or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it or shall make a general assignment for the benefit of creditors or shall generally fail to pay its debts as they become due or shall take any corporate action to authorize any of the foregoing;

(e) any involuntary proceeding shall be commenced against Maker seeking liquidation, reorganization, or other relief with respect to it or its debts under any bankruptcy, insolvency, or other similar law now or hereafter in effect, or seeking the appointment of a trustee, receiver, liquidator, custodian, or other similar official for it or a substantial part of its property;

(f) any lien, attachment, sequestration or similar proceeding against any of Maker's assets or properties other than liens in favor of Payee and liens in favor of Highland;

(g) any event or condition occurs that results in any indebtedness of Maker becoming due prior to its scheduled maturity or that enables or permits (with or without the giving of notice, the lapse of time, or both) the holder of such indebtedness to cause any of such indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity; or

(i) the validity or enforceability of this Note shall be contested or challenged by Maker.

Remedies

Should an Event of Default exist, Payee may but without any obligation to do so, at its option and at any time, and without presentment, demand, or protest, notice of default, dishonor, demand, non-payment, or protest, notice of intent to accelerate all or any part of the advances hereunder, notice of acceleration of all or any part of the indebtedness evidenced by this Note, or notice of any other kind, all of which Maker hereby expressly waives, except for any notice required by applicable statute which cannot be waived: (a) terminate Payee's commitment to make any advances under this Note; (b) declare the indebtedness evidenced by this Note, or any part thereof, immediately due and payable, whereupon the same shall be due and payable (provided, however, that upon the occurrence of any event described in clause (e) of the definition of "Event of Default", such indebtedness shall become immediately due and payable in full without demand or acceleration); (c) reduce any claim to judgment; (d) to the maximum extent permitted under applicable laws, set-off and apply any and all deposits, funds, or assets at any time held and any and all other indebtedness at any time owing by Payee to or for the credit or the account of Maker against any and all obligations, whether or not Payee exercises any other right or remedy hereunder and whether or not such obligations are then matured; (e) may cure any Event of Default, or event of nonperformance under this Note and/or (f) exercise any and all rights and remedies afforded by this Note, or by law or equity or otherwise, as Payee deems appropriate. No failure or delay of the holder hereof to exercise any of its rights or remedies shall not constitute a waiver thereof.

If the holder hereof incurs any costs or expenses in any attempt to enforce payment of all or any part of this Note, or if this Note is placed in the hands of an attorney for collection, Maker agrees to pay all such costs fees and expenses incurred, including without limitation, reasonable attorneys' fees.

Miscellaneous

It is expressly stipulated and agreed to be the intent of Maker and Payee at all times to comply with the applicable law of the State of Texas governing the maximum rate or amount of interest payable on or in connection with the indebtedness under this Note (or applicable United States federal law to the extent that it permits Payee to contract for, charge, take, reserve or receive a greater amount of interest than under Texas law). If such law is ever judicially interpreted so as to render usurious any amount contracted for, charged, taken, reserved or received with respect to this Note, or if any payment by Maker results in Maker having paid any interest in excess of the amount that is permitted by such law, then it is Maker's and Payee's express intent that all excess amounts theretofore collected by Payee be credited on the principal balance hereof (or, if the principal balance has been or would thereby be paid in full, refunded to Maker), and the provisions of this Note shall immediately be deemed reformed and the amounts thereafter collectible thereunder reduced, without the necessity of the execution of any new documents, so as to comply with all such applicable laws, but so as to permit the recovery of the fullest amount otherwise called for thereunder. All sums paid or agreed to be paid to Payee for the use, forbearance or detention of money and other indebtedness evidenced by this Note shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full term of such indebtedness until payment in full so that the rate or amount of interest on account of such indebtedness does not exceed the applicable usury ceiling provided by such applicable law. Notwithstanding any provision contained herein to the contrary, the total amount of interest that Maker is obligated to pay and Payee is entitled to receive with respect to this Note shall not exceed the amount calculated on a simple (i.e., non-compounded) interest basis at the maximum rate allowed by applicable law on principal amounts actually advanced hereunder to or for the account of Maker.

MAKER AND EACH SURETY, GUARANTOR, ENDORSER, AND OTHER PARTY EVER LIABLE FOR PAYMENT OF ANY SUMS OF MONEY PAYABLE ON THIS NOTE JOINTLY AND SEVERALLY WAIVE NOTICE, PRESENTMENT, DEMAND FOR PAYMENT, PROTEST, NOTICE OF PROTEST AND NON-PAYMENT OR DISHONOR, NOTICE OF ACCELERATION, NOTICE OF INTENT TO ACCELERATE, NOTICE OF INTENT TO DEMAND, DILIGENCE IN COLLECTING, GRACE, AND ALL OTHER FORMALITIES OF ANY KIND, AND CONSENT TO ALL EXTENSIONS WITHOUT NOTICE FOR ANY PERIOD OR PERIODS OF TIME AND PARTIAL PAYMENTS,

BEFORE OR AFTER MATURITY, AND ANY IMPAIRMENT OF ANY COLLATERAL SECURING THIS NOTE, ALL WITHOUT PREJUDICE TO THE HOLDER. Without limiting the foregoing, any notice or demand upon Maker in connection with this Note shall be in writing and shall become effective (a) upon personal delivery, (b) three (3) days after it shall have been mailed by United States mail, first class, certified or registered, with postage prepaid or (c) when properly transmitted by telecopy, in each case addressed to Maker's address for notice specified in connection with its signature below.

THIS NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND THE APPLICABLE LAWS OF THE UNITED STATES OF AMERICA. THIS NOTE IS PERFORMABLE IN DALLAS COUNTY, TEXAS. ANY ACTION OR PROCEEDING UNDER OR IN CONNECTION WITH THIS NOTE AGAINST MAKER OR ANY OTHER PARTY EVER LIABLE FOR PAYMENT OF ANY SUMS OF MONEY PAYABLE ON THIS NOTE MAY BE BROUGHT IN ANY STATE OR FEDERAL COURT IN DALLAS COUNTY, TEXAS. MAKER AND EACH SUCH OTHER PARTY HEREBY IRREVOCABLY (I) SUBMITS TO THE NONEXCLUSIVE JURISDICTION OF SUCH COURTS AND (II) WAIVES ANY OBJECTION IT MAY NOW OR HEREAFTER HAVE AS TO THE VENUE OF ANY SUCH ACTION OR PROCEEDING BROUGHT IN SUCH COURT OR THAT SUCH COURT IS AN INCONVENIENT FORUM. NOTHING HEREIN SHALL AFFECT THE RIGHT OF PAYEE TO BRING ANY ACTION OR PROCEEDING AGAINST MAKER OR ANY OTHER PARTY LIABLE HEREUNDER OR WITH RESPECT TO ANY COLLATERAL IN ANY STATE OR FEDERAL COURT IN ANY OTHER JURISDICTION. ANY ACTION OR PROCEEDING BY MAKER OR ANY OTHER PARTY LIABLE HEREUNDER AGAINST PAYEE SHALL BE BROUGHT ONLY IN A COURT LOCATED IN DALLAS COUNTY, TEXAS.

MAKER AND PAYEE EACH IRREVOCABLY WAIVES ITS RIGHT TO A TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF OR RELATED TO THIS NOTE OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY, IN ANY ACTION, PROCEEDING OR OTHER LITIGATION OF ANY KIND BROUGHT BY EITHER AGAINST THE OTHER, WHETHER WITH RESPECT TO CONTRACT CLAIMS, TORT CLAIMS, OR OTHERWISE. MAKER AND PAYEE EACH AGREES THAT ANY SUCH CLAIM OR CAUSE OF ACTION SHALL BE TRIED BY A COURT WITHOUT A JURY. WITHOUT LIMITING THE FOREGOING, THE PARTIES FURTHER AGREE THAT ITS RIGHT TO A TRIAL BY JURY IS WAIVED AS TO ANY ACTION, COUNTERCLAIM OR OTHER PROCEEDING WHICH SEEKS, IN WHOLE OR IN PART, TO CHALLENGE THE VALIDITY OR ENFORCEABILITY OF THIS NOTE OR ANY PROVISION HEREOF. THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS NOTE, WHETHER OR NOT SPECIFICALLY SET FORTH THEREIN.

This Note embodies the final, entire agreement of Maker and Payee with respect to the indebtedness evidenced hereby and supersedes any and all prior commitments, agreements, representations and understandings, whether written or oral, relating thereto and may not be contradicted or varied by evidence of prior, contemporaneous or subsequent oral agreements or discussions of Maker and Payee. There are no oral agreements between Maker and Payee.

Signed effective as of the date of this Note.

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: Strand Advisors, Inc., general partner

By: _____
Name: James Dondero
Title: President

Maker's address for notice:

HIGHLAND CAPITAL MANAGEMENT, L.P.
300 Crescent Court
Suite 700
Dallas, TX 75201
Attention: Frank Waterhouse
Fax: 972-628-4147

EXHIBIT A

Amortization Schedule

Interest Rate	3.0%				
Payment Date	Beg Principal	Interest	Principal	Payment	End Principal
10/7/2016	12,666,446				12,666,446
5/31/2017	12,666,446	245,694	3,125,000	3,370,694	9,541,446
5/31/2018	9,541,446	286,243	5,000,000	5,286,243	4,541,446
5/31/2019	4,541,446	136,243	4,541,446	4,677,690	-

Exhibit 23

WRITTEN RESOLUTIONS OF THE MEMBERS
OF
HIGHLAND CLO MANAGEMENT, LLC

January 30, 2017

The undersigned being all of the members (the "***Members***") of **Highland CLO Management, LLC**, a Delaware limited liability company (the "***Company***"), do hereby consent and agree to take the following actions and adopt the following resolutions:

APPOINTMENT OF INDEPENDENT MANAGER

WHEREAS, reference is hereby made to that certain Limited Liability Company Agreement of the Company, dated November 15, 2017 (as amended, modified or supplemented from time to time, the "***Company Agreement***");

WHEREAS, capitalized terms used but not defined herein shall have the meanings set forth in the Company Agreement; and

WHEREAS, pursuant to Section 3.1(j) of the Company Agreement, the Members desire to appoint an Independent Manager.

NOW, THEREFORE, BE IT RESOLVED, that, subject to the terms and conditions set forth in the Company Agreement, Don Puglisi is hereby appointed as an Independent Manager of the Company, to serve in such capacity until his resignation, removal or replacement in accordance with the Company Agreement; and it,

IN WITNESS WHEREOF, the undersigned Members have executed this written consent effective as of the date first written above.

HIGHLAND CLO MANAGEMENT HOLDINGS, L.P.

By: Highland CLO Management GP, LLC, its General Partner

By: Highland HCF Advisor, Ltd., its Sole Member

By: _____
Name: James Dondero
Title: President

HIGHLAND CLO INTERMEDIATE HOLDINGS I, LLC

By: Highland HCF Advisor, Ltd., its Managing Member

By: _____
Name: James Dondero
Title: President

Exhibit 24

PAYMENT CANCELLATION AGREEMENT

This PAYMENT CANCELLATION AGREEMENT (this "***Agreement***"), dated as of May 10, 2017, is entered into by and between Highland Capital Management, L.P., a Delaware limited partnership ("***HCM***") and Highland CLO Management, Ltd., a Cayman Islands exempted company ("***HCLOM***", and together with HCM, the "***Parties***"). Capitalized terms used herein but not defined have the meaning ascribed thereto in the Agreement for Assignment and Transfer of Promissory Note dated as of November 3, 2017 between HCM, HCLOM, and Acis Capital Management, L.P ("***Acis***") (the "***Assignment Agreement***").

RECITALS

Whereas, Acis and HCM entered into an Agreement for Purchase and Sale of CLO Participation Interests between Acis and HCM dated as of October 7, 2016 (the "***Purchase Agreement***" and the promissory note therein, the "***Note***");

Whereas, as portfolio manager of certain collateralized loan obligations listed in Schedule A of the Purchase Agreement (the "***CLOs***"), Acis was entitled to fee compensation in connection therewith as set forth therein (the "***Servicer Fees***");

Whereas, pursuant to the Purchase Agreement, Acis sold a portion of its future Servicer Fees to HCM in exchange for cash flows from HCM, in each case as set forth in the Note (such future Servicer Fees identified to be paid to HCM pursuant to the Purchase Agreement, the "***HCM Stabilization Fees***" and such cash flows from HCM, the "***Stabilization Payment***");

Whereas, pursuant to the Assignment Agreement, Acis assigned its rights as portfolio manager of the CLOs, and therefore its rights to the Servicer Fees, to HCLOM;

Whereas, pursuant to the Assignment Agreement, Acis assigned all right, title and interest of Acis under the Note, including the right to any and all Stabilization Payments not yet paid to Acis to HCLOM; and

Whereas, for so long as HCLOM receives any Servicer Fees following the Assignment, HCLOM is required to remit to HCM any portion of such fees that would otherwise have constituted HCM Stabilization Fees pursuant to the Note as if Acis was the recipient of such fees.

AGREEMENT

Now, therefore, in consideration of the promises and mutual agreements set forth herein, and in consideration of the mutual representations, warranties and covenants herein, and intending to be legally bound hereby, the Parties agree as follows:

1. **Cancellation of HCM Stabilization Fees**. HCM agrees that it will not demand payment of the HCM Stabilization Fees and hereby releases HCLOM from paying HCM any HCM Stabilization Fees pursuant to the Assignment Agreement and Purchase Agreement.

2. **Cancellation of Stabilization Payments**. HCLOM agrees that it will not demand payment of the Stabilization Payments and hereby releases HCM from paying HCLOM any Stabilization Payments pursuant to the Assignment Agreement and Purchase Agreement.

3. **Miscellaneous**.

   a. Successors and Assigns. The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the Parties, provided however that no party hereto may assign or transfer any of its rights or obligation hereunder without the prior written consent of the other parties hereto.

   b. No Third Party Beneficiaries. For the avoidance of doubt, this Agreement is not intended to and does not confer any right to any person or entity other than the Parties hereto.

   c. Terms Confidential. The Parties agree that they will keep the terms, amounts, and facts of this Agreement completely confidential, and that they will not hereafter disclose any information concerning this Agreement to anyone except their respective attorneys or accountants. Notwithstanding the foregoing prohibition, the Parties shall not be prohibited from disclosing the terms, amounts and facts of this Agreement or this Agreement itself as may be requested by governmental entities or required by law.

   d. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of Texas, with exclusive jurisdiction in the courts of Dallas, Texas.

   e. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

   f. Headings. The headings and captions used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement. All references in this Agreement to articles, sections, paragraphs, exhibits and schedules shall, unless otherwise provided, refer to articles, sections and paragraphs hereof and exhibits and schedules attached hereto, all of which exhibits and schedules are incorporated herein by reference.

   g. Costs, Expenses. The Parties shall each pay their own costs, fees and expenses in connection with this Agreement.

   h. Amendments and Waivers. Any term of this Agreement may be amended and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively) only with the written consent of the Parties.

i. Severability. If one or more provisions of this Agreement are held to be unenforceable under applicable law, such provision(s) shall be excluded from this Agreement and the balance of this Agreement shall be interpreted as if such provision(s) were so excluded and shall be enforceable in accordance with its terms.

j. Entire Agreement. This Agreement, together with all exhibits and schedules hereto, constitutes the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes any and all prior negotiations, correspondence, agreements, understandings, duties or obligations between the parties with respect to the subject matter hereof.

[Signature page follows]

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of May 10, 2018.

HIGHLAND CAPITAL MANAGEMENT, L.P.
By: Strand Advisors, Inc., its General Partner

By:

Name
Title

HIGHLAND CLO MANAGEMENT, LTD.

For and on behalf of Summit Management, Limited

Director

Exhibit 25

Delaware

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF FORMATION OF "HIGHLAND CLO MANAGEMENT, LLC", FILED IN THIS OFFICE ON THE NINETEENTH DAY OF OCTOBER, A.D. 2017, AT 5:52 O`CLOCK P.M.

Jeffrey W. Bullock, Secretary of State

6582916 8100
SR# 20176700703

Authentication: 203431480
Date: 10-20-17

You may verify this certificate online at corp.delaware.gov/authver.shtml

State of Delaware
Secretary of State
Division of Corporations
Delivered 05:52 PM 10/19/2017
FILED 05:52 PM 10/19/2017
SR 20176700703 - File Number 6582916

STATE OF DELAWARE
CERTIFICATE OF FORMATION
OF
HIGHLAND CLO MANAGEMENT, LLC

The undersigned authorized person, desiring to form a limited liability company pursuant to the Limited Liability Company Act of the State of Delaware, hereby certifies as follows:

1. The name of the limited liability company is **Highland CLO Management, LLC**.

2. The Registered Office of the limited liability company in the State of Delaware is located at 1209 Orange Street, in the City of Wilmington, County of New Castle, Delaware 19801. The name of the Registered Agent at such address upon whom process against this limited liability company may be served is The Corporation Trust Company.

3. Notice is hereby given pursuant to Section 18.215(b) of the Delaware Limited Liability Company Act (6 Del. C. 18-101 et seq.) that the debts, liabilities, and obligations incurred, contracted for, or otherwise existing with respect to a particular series of the limited liability company, shall be enforceable against the assets of such series only and not against the assets of the limited liability company generally, or any other series thereof, and none of the debts, liabilities, obligations, and expenses incurred, contracted for, or otherwise existing with respect to the limited liability company generally, or any other series thereof, shall be enforceable against the assets of such series.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Formation on this 19th day of October, 2017.

Timothy J. Cournoyer, Authorized Person

Exhibit 26

From: Christina Bodden <Christina.Bodden@MAPLESANDCALDER.com>
To: JP Sevilla <JSevilla@HighlandCapital.com>, Joni Ebanks <Joni.Ebanks@MAPLESANDCALDER.com>, Thomas Surgent <TSurgent@HighlandCapital.com>, Tim Cournoyer <TCournoyer@HighlandCapital.com>, Scott Ellington <SEllington@HighlandCapital.com>, Isaac Leventon <ILeventon@HighlandCapital.com>, Matt DiOrio <MDiOrio@HighlandCapital.com>
Cc: Sheila Crosby <Sheila.Crosby@MAPLESANDCALDER.com>, Keisha Bush <Keisha.Bush@MAPLESANDCALDER.com>, Keisha Miller <Keisha.Miller@MAPLESANDCALDER.com>
Subject: RE: New Entities
Date: Fri, 27 Oct 2017 17:18:51 +0000
Inline-Images: image001.jpg

OK – we have spoken. Will call you with any questions.

Christina Bodden
Partner

Direct +1 345 814 5180 | Mobile +1 345 525 5180
christina.bodden@maplesandcalder.com

Maples and Calder | Cayman Islands
maplesandcalder.com
maplesfs.com

CELEBRATING 50 YEARS | 1967-2017

From: JP Sevilla [mailto:JSevilla@HighlandCapital.com]
Sent: 27 October 2017 12:07 PM
To: Christina Bodden; Joni Ebanks; Thomas Surgent; Tim Cournoyer; Scott Ellington; Isaac Leventon; Matt DiOrio
Cc: Sheila Crosby; Keisha Bush; Keisha Miller
Subject: RE: New Entities

The new entities are not investment funds, nor is Pollack.

From: Christina Bodden [mailto:Christina.Bodden@MAPLESANDCALDER.com]
Sent: Friday, October 27, 2017 11:59 AM
To: JP Sevilla <JSevilla@HighlandCapital.com>; Joni Ebanks <Joni.Ebanks@MAPLESANDCALDER.com>; Thomas Surgent <TSurgent@HighlandCapital.com>; Tim Cournoyer <TCournoyer@HighlandCapital.com>; Scott Ellington <SEllington@HighlandCapital.com>; Isaac Leventon <ILeventon@HighlandCapital.com>; Matt DiOrio <MDiOrio@HighlandCapital.com>
Cc: Sheila Crosby <Sheila.Crosby@MAPLESANDCALDER.com>; Keisha Bush <Keisha.Bush@MAPLESANDCALDER.com>; Keisha Miller <Keisha.Miller@MAPLESANDCALDER.com>
Subject: RE: New Entities

Highland HCF Advisor Ltd., Highland CLO Holdings Ltd. and Highland CLO Management Ltd. each went down on express service this morning so certificates should be back by COB today.

Question - are these holding companies or investment funds? The articles which they were incorporated with were "vanilla" articles of association which we typically use for holding companies. We can change those to fund articles to contemplate the creation and issue of multiple share classes, if preferred (at least for Highland HCF Advisor, Ltd.). We can amend and restate as subscriber easily. Please advise.

The detail in relation to the share classes can be set out in the initial board resolutions which we can prepare. We can do our best with timing.

Christina

Christina Bodden
Partner

Direct +1 345 814 5180 | Mobile +1 345 525 5180

christina.bodden@maplesandcalder.com

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maplesandcalder.com
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CELEBRATING 50 YEARS | 1967-2017

From: JP Sevilla [mailto:JSevilla@HighlandCapital.com]
Sent: 27 October 2017 11:45 AM
To: Joni Ebanks; Thomas Surgent; Tim Cournoyer; Scott Ellington; Isaac Leventon; Matt DiOrio
Cc: Christina Bodden; Sheila Crosby; Keisha Bush; Keisha Miller
Subject: RE: New Entities
Importance: High

Christina et al:

- Highland HCF Advisor, Ltd. – we will need two share classes – one high vote, low value (99%vote /1% value), another low vote, high value (1%/99%). The high vote class will be owned 100% by Highland Capital Management, LP. The low vote class will be owned by Pollack, Ltd. , which is already in existence and for which MaplesFS is already director.
- Summit Limited will act as director Highland HCF Advisor.

Christina, I know the above will take some drafting – can you please confirm this can be done by close of today. Please further advise on timing of incorporating the new entities we listed yesterday.

Many thanks to all

J.P. SEVILLA | ASSISTANT GENERAL COUNSEL

HIGHLAND CAPITAL MANAGEMENT

300 Crescent Court | Suite 700 | Dallas, Texas 75201
O: 972.628.4169 | C: 917.434.0323 | F: 972.628.4147
JSevilla@hcmlp.com | www.hcmlp.com

From: Joni Ebanks [mailto:Joni.Ebanks@MAPLESANDCALDER.com]
Sent: Thursday, October 26, 2017 4:53 PM
To: JP Sevilla <JSevilla@HighlandCapital.com>
Cc: Christina Bodden <Christina.Bodden@MAPLESANDCALDER.com>; Sheila Crosby <Sheila.Crosby@MAPLESANDCALDER.com>; Keisha Bush <Keisha.Bush@MAPLESANDCALDER.com>; Keisha Miller <Keisha.Miller@MAPLESANDCALDER.com>
Subject: RE: New Entities

Thank you JP.

We will file for the express incorporations of each of Highland HCF Advisor Ltd., Highland CLO Holdings Ltd. and Highland CLO Management Ltd. tomorrow morning using the attached Memorandums and Articles of Association. We will provide you with the Certificates of Incorporation as soon as received from the Cayman Registrar.

Most grateful if you could confirm the following details for each company once you have them:

1) Who the director(s) will be;
2) Name and address of person or entity that the subscriber share should be transferred to; and
3) Whether you would like a Tax Undertaking Certificate ordered.

Kind regards,
Joni

Joni Ebanks
Associate

Direct +1 345 814 5478 | Mobile +1 345 525 5478
joni.ebanks@maplesandcalder.com

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maplesandcalder.com
maplesfs.com

CELEBRATING 50 YEARS | 1967-2017

From: JP Sevilla [mailto:JSevilla@HighlandCapital.com]
Sent: 26 October 2017 4:33 PM
To: Joni Ebanks
Cc: Christina Bodden; Sheila Crosby; Keisha Bush; Keisha Miller
Subject: RE: New Entities

Please use "Ltd." for the Highland CLO Management entity – and for the others as well, please. The mem & arts look fine. Thank you.

From: Joni Ebanks [mailto:Joni.Ebanks@MAPLESANDCALDER.com]
Sent: Thursday, October 26, 2017 4:23 PM
To: JP Sevilla <JSevilla@HighlandCapital.com>
Cc: Christina Bodden <Christina.Bodden@MAPLESANDCALDER.com>; Sheila Crosby <Sheila.Crosby@MAPLESANDCALDER.com>; Keisha Bush <Keisha.Bush@MAPLESANDCALDER.com>; Keisha Miller <Keisha.Miller@MAPLESANDCALDER.com>
Subject: RE: New Entities

Dear JP,

We have checked and can confirm that these names are available.

However for 'Highland CLO Management' there are two existing entities with very similar names (Highland CLO Management GP, LLC and Highland CLO Management Holdings, L.P.) so we would suggest adding "Limited" or "Ltd." to the end of this name so that the Registrar does not reject the application on the basis that the name is too similar to an existing entity/could be confused with the existing entities.

In the interim, please find attached drafts of the Memorandum and Articles of Association for each of Highland HCF Advisor, Highland CLO Holdings and [Highland CLO Management].

Can you kindly confirm whether you are fine with the drafts (and also confirm regarding name for Highland CLO Management) and we will arrange on the incorporations tomorrow morning on an express basis.

Best regards,

Joni

Joni Ebanks
Associate

Direct +1 345 814 5478 | Mobile +1 345 525 5478
joni.ebanks@maplesandcalder.com

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From: JP Sevilla [mailto:JSevilla@HighlandCapital.com]
Sent: 26 October 2017 4:08 PM
To: Sheila Crosby; Christina Bodden; Keisha Bush; Keisha Miller; Joni Ebanks
Subject: RE: New Entities

Thank you very much!

From: Sheila Crosby [mailto:Sheila.Crosby@MAPLESANDCALDER.com]
Sent: Thursday, October 26, 2017 3:56 PM
To: JP Sevilla <JSevilla@HighlandCapital.com>; Christina Bodden <Christina.Bodden@MAPLESANDCALDER.com>; Keisha Bush <Keisha.Bush@MAPLESANDCALDER.com>; Keisha Miller <Keisha.Miller@MAPLESANDCALDER.com>; Joni Ebanks <Joni.Ebanks@MAPLESANDCALDER.com>
Subject: RE: New Entities

Thanks JP. I've copied my colleague Joni Ebanks. She will be assisting with the express incorporations.

I will be back in the office at the end of next week.

Best,

Sheila

Sheila Crosby
Associate

Direct +1 345 814 5476 | Mobile +1 345 525 5476
sheila.crosby@maplesandcalder.com

Maples and Calder | Cayman Islands
maplesandcalder.com
maplesfs.com

CELEBRATING 50 YEARS | 1967-2017

From: JP Sevilla [mailto:JSevilla@HighlandCapital.com]
Sent: 26 October 2017 3:49 PM
To: Christina Bodden; Sheila Crosby; Keisha Bush; Keisha Miller
Subject: Re: New Entities

Copying Keisha Bush and Keisha Miller

On Oct 26, 2017, at 15:40, JP Sevilla <JSevilla@HighlandCapital.com> wrote:

Hello - can you please confirm the below entity names are available, and incorporate on an expedited basis:
- Highland HCF Advisor
- Highland CLO Holdings
- Highland CLO Management

This email has been sent by and on behalf of Maples and Calder, a partnership established in the Cayman Islands ("Maples Cayman") which is a separate and distinct business from other undertakings and entities called Maples and Calder operating outside of the Cayman Islands . The principal place of business of Maples Cayman is at PO Box 309, Ugland House, South Church Street, George Town, Grand Cayman, KY1-1104, Cayman Islands. Maples Cayman holds an operational licence issued by the Grand Court of the Cayman Islands under the Legal Practitioners Law of the Cayman Islands. A list of partners and associates of Maples Cayman is available by clicking here. The title of "partner" is used to refer to a partner of Maples Cayman or a consultant or employee with equivalent standing and qualifications.

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Exhibit 27

ASSIGNMENT AND TRANSFER AGREEMENT

THIS AGREEMENT FOR ASSIGNMENT AND TRANSFER OF PROMISSORY NOTE (this "***Agreement***"), dated as of November 3, 2017, is entered into by and between ACIS CAPITAL MANAGEMENT, L.P., a Delaware limited partnership ("***Acis***"), HIGHLAND CAPITAL MANAGEMENT, L.P., a Delaware limited partnership ("***HCM***") and HIGHLAND CLO MANAGEMENT, LTD., a Cayman Islands exempted company ("***HCLOM***", and together with HCM and Acis, the "***Parties***"). Capitalized terms used herein but not defined have the meanings ascribed thereto in the Agreement for Purchase and Sale of CLO Participation Interests between Acis and HCM dated as of October 7, 2016 (the "***Purchase Agreement***" and the promissory note therein, the "***Note***").

RECITALS

Whereas, Acis is portfolio manager to certain collateralized loan obligations listed in Schedule A of the Purchase Agreement and is entitled to fee compensation in connection therewith as set forth therein (the "***CLOs***", the governing documents thereof, the "***CLO Documents***" and such fees, the "***Servicer Fees***");

Whereas, Acis and HCM entered into the Purchase Agreement, whereby Acis sold a portion of its future Servicer Fees to HCM in exchange for cash flows from HCM, in each case as set forth in the Note (such future Servicer Fees identified to be paid to HCM pursuant to the Purchase Agreement, the "***HCM Stabilization Fees***" and such cash flows from HCM, the "***Stabilization Payments***");

Whereas, HCM has notified Acis that HCM is unwilling to continue to provide support personnel and other critical services to Acis with respect to the CLOs (the "***Notification***");

Whereas, Acis has determined that the effect of the Notification is that it cannot fulfill its duties as portfolio manager of the CLOs, and in order to ensure the continued operation of such CLOs and protection for its stakeholders, it must assign its rights as portfolio manager in the CLOs to a qualified successor portfolio manager pursuant to the CLO Documents (a "***Successor Manager***");

Whereas, HCLOM, a qualified Successor Manager, irrevocably commits to be appointed as Successor Manager in consideration of Acis assigning to it the Note, subject to the conditions set forth in the CLO Documents and pursuant to the terms herein;

Whereas, Acis is expected to incur significant costs and expenses related to ongoing claims and litigation to which Acis is either a party or is otherwise obligated with respect to such costs and expenses (the "Acis Legal Expenses"); and

Whereas, Acis also is expected to have ongoing accounting and administrative expenses (the "Acis Administrative Expenses" and together with the Acis Legal Expenses, the "Acis Expenses").

EXHIBIT 3
WIT: KJ05
DATE: 9-25-2021
Katharene McCulley, CSR

AGREEMENT

Now, therefore, in consideration of the promises and mutual agreements set forth herein, and in consideration of the mutual representations, warranties and covenants herein, and intending to be legally bound hereby, the Parties agree as follows:

1. **Succession**. Acis shall promptly provide the Controlling Class (as defined in each of the CLO Indentures) with notice requesting the appointment of HCLOM as Portfolio Manager pursuant to the requirements of the CLO Documents (each, a "***Notice***" and the period between the Notice and an Appointment (as such term is defined below), the "***Post-Notice Period***").

2. **Successor Manager**. Subsequent to the Notices, each of Acis and HCLOM shall promptly pursue Successor Manager appointment of HCLOM in respect of each CLO, including but not limited to achieving all conditions precedent required by the CLO Documents in such respect (consummation of HCLOM's appointment as Portfolio Manager of a given CLO, an "***Appointment***").

3. **Assignment and Transfer of the Promissory Note; Stabilization Payments.**

   a. Effective immediately upon execution of this Agreement by the Parties, all right, title and interest of Acis under the Note, including the right to any and all Stabilization Payments not yet paid to Acis, are hereby irrevocably assigned and transferred by Acis to HCLOM, it being understood that from the date of such assignment, HCLOM shall become the "Payee" thereunder.
   b. For so long as Acis shall receive Servicer Fees following the date hereof, Acis shall remit to HCM the HCM Stabilization Fees pursuant to the Note Purchase Agreement.
   c. For so long as HCLOM receives any Servicer Fees following any Appointment, then HCLOM shall remit to HCM any portion of such fees that would otherwise have constituted HCM Stabilization Fees pursuant to the Note Purchase Agreement if Acis was the recipient of such fees.
   d. HCLOM shall sign a joinder to Note Purchase Agreement upon HCM's written notice thereof.

4. **Expense Support**. In the event Acis delivers written notice to HCLOM that Acis is unable to pay when due any Acis Expenses, then HCLOM shall promptly pay to Acis, or at Acis' written request, to Acis' creditors, the amount of such shortfall, provided that in no event shall HCOLM's obligations under this paragraph exceed greater than $2 million of Acis Legal Expenses in the aggregate, or greater than $1 million of Acis Administrative Expenses in the aggregate.

5. **Indemnity**. Acis shall and hereby does, to the fullest extent permitted by applicable law, advance, indemnify and hold harmless any Covered Person from and against any and all claims, demands, liabilities, costs, expenses, damages, losses, suits, proceedings, judgments, assessments, actions and other liabilities, whether judicial, administrative, investigative or otherwise, of whatever nature, known or unknown, liquidated or

unliquidated ("***Claims***"), that my accrue to or be incurred by any Covered Person, or in which any Covered Person may be threatened, relating to this Agreement, including amounts paid in satisfaction of judgments, in compromise or as fines or penalties, and attorneys' fees and expenses incurred in connection with the preparation for or defense or disposition of any investigation, action, suit, arbitration or other proceeding (a "***Proceeding***"), whether civil or criminal (all of such Claims, amounts and expenses referred to therein are referred to collectively as "***Damages***"), except to the extent that it shall have been determined ultimately by a court of competent jurisdiction, in a final nonappealable judgment, that such Damages arose primarily from fraud, bad faith or willful misconduct of such Covered Person. The termination of any Proceeding by settlement, judgment, order, conviction or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that any Damages relating to such settlement, judgment, order, conviction or plea of nolo contendere or its equivalent or otherwise relating to such Proceeding arose primarily from fraud, bad faith or willful misconduct of any Covered Persons. "***Covered Person***" means each of HCLOM and HCM, as well as each and every one of their affiliates (other than Acis), and all of HCLOM's and HCM's respective managers, members, principals, partners, directors, officers, shareholders, employees and agents.

6. **Miscellaneous**.

   a. Successors and Assigns. The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the Parties, provided however that no party hereto may assign or transfer any of its rights or obligation hereunder without the prior written consent of the other parties hereto.

   b. No Third Party Beneficiaries. For the avoidance of doubt, this Agreement is not intended to and does not confer any right to any person or entity other than the Parties hereto.

   c. Terms Confidential. The Parties agree that they will keep the terms, amounts, and facts of this Agreement completely confidential, and that they will not hereafter disclose any information concerning this Agreement to anyone except their respective attorneys or accountants. Notwithstanding the foregoing prohibition, the Parties shall not be prohibited from disclosing the terms, amounts and facts of this Agreement or this Agreement itself as may be requested by governmental entities or required by law.

   d. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Cayman Islands, with exclusive jurisdiction in the courts of George Town, Grand Cayman.

e. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

f. Headings. The headings and captions used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement. All references in this Agreement to articles, sections, paragraphs, exhibits and schedules shall, unless otherwise provided, refer to articles, sections and paragraphs hereof and exhibits and schedules attached hereto, all of which exhibits and schedules are incorporated herein by reference.

g. Notices. All notices, demands and requests required or permitted to be given hereunder shall be in writing and shall be delivered by hand or sent by telecopy (with confirmed transmission), or sent, postage prepaid, by registered, certified or express mail, or reputable overnight courier service, and shall be deemed given when so delivered by hand, or confirmed after telecopying, or if mailed, three (3) business days after mailing (one (1) business day in the case of express mail or overnight courier service), as follows (or to such other address or telecopy number as a party shall specify by notice as provided herein to the other party hereto):

i. If to Acis:
Acis Capital Management, LP
300 Crescent Court, Suite 700
Dallas, Texas 75201
Facsimile: 972-628-4147

ii. If to HCM:
Highland Capital Management, LP
300 Crescent Court, Suite 700
Dallas, Texas 75201
Facsimile: 972-628-4147

iii. If to HCLOM:
Highland CLO Management, Ltd.
PO Box 309
Ugland House
Grand Cayman KY1-1104
Cayman Islands

h. Specific Performance. The Parties agree that the rights created by this Agreement are unique and that the loss of any such rights is not susceptible to monetary quantification. Consequently, the Parties agree that an action for specific performance, including for temporary and/or injunctive relief) of the obligations created by this Agreement is a proper remedy for the breach of the provisions of this Agreement, and HCM shall be

entitled to such relief without the necessity of proving actual damages or posting a bond.

i. Costs, Expenses. The Parties shall each pay their own costs, fees and expenses in connection

j. Amendments and Waivers. Any term of this Agreement may be amended and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively) only with the written consent of the Seller and the Purchaser.

k. Severability. If one or more provisions of this Agreement are held to be unenforceable under applicable law, such provision(s) shall be excluded from this Agreement and the balance of this Agreement shall be interpreted as if such provision(s) were so excluded and shall be enforceable in accordance with its terms.

l. Entire Agreement. This Agreement, together with all exhibits and schedules hereto, constitutes the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes any and all prior negotiations, correspondence, agreements, understandings, duties or obligations between the parties with respect to the subject matter hereof.

m. Further Assurances. From and after the date of this Agreement, upon the reasonable request of the Purchaser, the Seller shall execute and deliver such instruments, documents or other writings as may be reasonably necessary or desirable to confirm and carry out and to effectuate fully the intent and purposes of this Agreement.

[Signature page follows]

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of November 3, 2017.

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: Strand Advisors, Inc., its General Partner

By: _____

Name: James Dondero

Title: President

ACIS CAPITAL MANAGEMENT, L.P.

By: Acis Capital Management GP, LLC, its General Partner

By: _____

Name: James Dondero

Title: President

HIGHLAND CLO MANAGEMENT, LTD.

_____

For and on behalf of Summit Management, Limited

Director

Exhibit 28

HIGHLAND CLO MANAGEMENT, LLC

LIMITED LIABILITY COMPANY AGREEMENT

Dated as of November 15, 2017

THE LIMITED LIABILITY COMPANY INTERESTS EVIDENCED BY THIS AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR UNDER THE SECURITIES OR "BLUE SKY" LAWS OF ANY STATE OR OTHER JURISDICTION, AND MAY NOT BE SOLD OR TRANSFERRED IN THE UNITED STATES OR TO U.S. PERSONS (AS SUCH TERM IS DEFINED IN REGULATION S UNDER THE SECURITIES ACT) UNLESS THE INTERESTS ARE REGISTERED UNDER THE SECURITIES ACT, OR AN EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT IS AVAILABLE. THE INTERESTS MAY NOT BE OFFERED OR SOLD, MORTGAGED, PLEDGED, HYPOTHECATED, ASSIGNED OR OTHERWISE TRANSFERRED EXCEPT (I) IN COMPLIANCE WITH THE SECURITIES ACT, ANY APPLICABLE STATE SECURITIES LAWS AND ANY OTHER APPLICABLE SECURITIES LAWS AND (II) AS PROVIDED IN ARTICLE 7 HEREOF. THE INTERESTS MAY NOT BE TRANSFERRED OF RECORD EXCEPT IN COMPLIANCE WITH SUCH LAWS AND THIS AGREEMENT. THEREFORE, PURCHASERS OF INTERESTS WILL BE REQUIRED TO BEAR THE RISK OF THEIR INVESTMENT FOR AN INDEFINITE PERIOD OF TIME.

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LIMITED LIABILITY COMPANY AGREEMENT

OF

HIGHLAND CLO MANAGEMENT, LLC

This LIMITED LIABILITY COMPANY AGREEMENT (as amended from time to time, this "Agreement") of Highland CLO Management, LLC, a Delaware series limited liability company (the "Company"), is entered into by Highland CLO Intermediate Holdings I, LLC ("Intermediate Holdings"), as a Member with regard to the Management Series and the EU Originator Series, and Highland CLO Management Holdings, L.P., acting by its general partner, Highland CLO Management Holdings GP, LLC ("Holdings"), as a Member with regard to the Risk Retention Series, each as defined herein, and any other persons admitted as members (together with Intermediate Holdings and Holdings, the "Members"), as of the 15th day of November 2017 (the "Effective Date").

W I T N E S S E T H:

WHEREAS, the Company is a series limited liability company, formed under the laws of the State of Delaware pursuant to and in accordance with the Delaware Limited Liability Company Act (6 *Del. C.* § 18-101 *et seq.*), as amended from time to time (the "Act");

WHEREAS, Intermediate Holdings desires to be admitted as a Member of the Company as of the date hereof with regard to the Management Series and EU Originator Series and Holdings desires to be admitted as a Member of the Company as of the date hereof with regard to the Risk Retention Series;

WHEREAS, the Company has established three series as of the date hereof: the Management Series, the EU Originator Series and the Risk Retention Series; and

WHEREAS, the Members consent to the transactions contemplated hereby.

NOW, THEREFORE, in consideration of the premises and the mutual promises contained in this Agreement, each of the Members hereby agrees as follows:

ARTICLE 1

DEFINED TERMS

Section 1.1. Definitions.

As used herein, the following terms shall have the following meanings:

"Act" shall have the meaning set forth in the recitals to this Agreement.

"Advisers Act" shall mean the Investment Advisers Act of 1940, as amended.

"Affiliate" shall mean with respect to a Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with the first Person. The term "control" means (i) the legal or beneficial ownership of securities representing a majority of the voting power of any person or (ii) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether by contract or otherwise.

"Agreement" has the meaning set forth in the preamble to this Agreement.

"AIFMD" shall have the meaning set forth in the definition of "EU Risk Retention Rules."

"Applicable Law" shall mean, with respect to any Person or property of such Person, any action, code, consent decree, constitution, decree, directive, enactment, finding, guideline, law, injunction, interpretation, judgment, order, ordinance, policy statement, proclamation, formal guidance, promulgation, regulation, requirement, rule, rule of law, rule of public policy, settlement agreement, statute, writ, or any particular section, part or provision thereof, including the Risk Retention Rules, of any Governmental Authority to which the Person in question is subject or by which it or any of its property is bound.

"Authorized Representative" shall have the meaning set forth in Section 10.4.

"Available Commitment" shall mean, with respect to each Member at any time, an amount equal to the Capital Commitment of such Member in respect of any Series, reduced by all Capital Contributions made by the Member in respect of such Series.

"Business Day" shall mean any day that is not a Saturday, Sunday or day on which banking institutions in New York, New York or the Cayman Islands are authorized or obligated by law to remain closed.

"Business Documents" shall mean this Agreement, the Partnership Agreement, the amended and restated limited liability company agreement of the General Partner, each subscription agreement entered into by and between an Investor, Intermediate Holdings and Holdings.

"Calculation Date" shall mean the last day of each March, June, September and December (or if any such day is not a Business Day, on the immediately succeeding Business Day), or such other day as may be agreed by each of the Members and each of the Directors, each in their sole discretion.

"Capital Account" shall have the meaning set forth in Section 4.3.

"Capital Commitment" shall mean the commitment by a Member to contribute to the capital of any Series. The initial amount of each Member's Capital Commitment of each Series is set forth in the books and records of the Company.

"Capital Contribution" shall mean, with respect to any Member, the amount of capital contributed by such Member to a Series of the Company pursuant to Section 4.2.

"Class A Interests" shall mean the "Class A Limited Partnership Interests" issued by Holdings.

"Class A Limited Partner" shall mean any Person holding the Class A Interests and admitted as a limited partner in Holdings.

"Class B Interests" shall mean the "Class B Limited Partnership Interests" issued by Holdings.

"Class B Limited Partner" shall mean any Person holding the Class B Interests and admitted as a limited partner in Holdings.

"CLO" shall have the meaning set forth in Section 2.4.

"Code" shall mean the U.S. Internal Revenue Code of 1986, as amended from time to time.

"Company" shall have the meaning set forth in the preamble to this Agreement.

"Company Expenses" shall mean such operating costs and expenses as the Board of Directors reasonably determine to be necessary, appropriate, advisable or convenient to carry on the businesses, purposes and activities for which the Company was formed, including any such costs and expenses (including insurance expenses) incurred by the General Partner, the Sub-Advisor, the Staff and Services Provider and their respective affiliates on behalf of the Company or, in the case of the Sub-Advisor, on behalf of any warehouse or CLO Subsidiary. Company Expenses include, but are not limited to: (a) the Sub-Advisory Fee; (b) the Staff and Services Fee; (c) compensation of Company personal (to the extent not included in the Staff and Services Fee); (d) expenses related to the acquisition, holding, transfer and disposition of Portfolio Assets and other assets such as commissions, brokerage fees, custodial fees, administration fees, exchange fees, clearing costs and bank service fees; (e) costs related to borrowings or other indebtedness incurred by the Company or any subsidiary thereof, Intermediate Holdings or Holdings, including any principal, interest, fees and expenses payable under any Subscription Facility and borrowings by the Company, Intermediate Holdings or Holdings from any Investor; (f) external transaction-related expenses; (g) expenses incurred in connection with any amendments to the Business Documents; (h) external legal fees; (i) third-party professional fees relating to the Portfolio Assets (including expenses of consultants and experts, if any); (j) the cost of accounting software packages; (k) external accounting and investor reporting expenses; (l) valuation expenses; (m) auditing, accounting and tax expenses, including any expenses related to FATCA compliance obligations and any taxes imposed on the Company; (n) administrative expenses; (o) insurance expenses (including D&O and E&O insurance); (p) other similar expenses related to the Company; (q) extraordinary expenses (*e.g.*, litigation expenses, costs or damages and indemnification obligations); (r) all expenses incurred in connection with organizing the Company, Intermediate Holdings, Holdings and the General Partner, offering the Company Interests and the Holdings

Interests, entering into this Agreement and the Business Documents, obtaining any necessary regulatory registrations or authorizations and closing; (s) expenses relating to the registration and ongoing regulatory and compliance obligations of the Company, Intermediate Holdings, Holdings and the General Partner; and (t) all other normal operating expenses incurred by the Company, Intermediate Holdings, Holdings and the General Partner.

"Company Interest" shall mean a membership interest in one or more Series of the Company.

"Covered Person" shall mean the Managing Member, the Independent Manager, each member of the Investment Committee, the Service Providers, the General Partner, their respective Affiliates and any of their respective managers, members, principals, partners, directors, officers, shareholders, employees and agents.

"Designated Reserves" shall mean, with respect to the Company or any Series, appropriate reserves or other holdbacks for expenses and liabilities of the Company or such Series, as applicable, as well as for any required tax withholdings with respect to the Company or such Series, as applicable, in each case as determined by the Board of Directors in its sole discretion.

"Dispute" shall have the meaning set forth in Section 11.2.

"Distributable Amounts" shall mean, with respect to any Series, (i) current cash receipts by such Series from dividends, interest, senior and subordinated management fees and other periodic distributions from Portfolio Assets (including, for the avoidance of doubt, the Preferred Return Notes) and net cash proceeds from the sale or other disposition, maturity or early redemption of Portfolio Assets or any portion of a Portfolio Asset (for the avoidance of doubt, other than Recycled Capital) allocable to such Series, net of (ii) any Company Expenses allocable to such Series (including in the case of the Management Series Sub-Advisory Fees and Staff and Services Fees) and Designated Reserves.

"Drawdown" shall have the meaning set forth in Section 4.3.

"Drawdown Date" shall have the meaning set forth in Section 4.3.

"Drawdown Notice" shall have the meaning set forth in Section 4.3.

"Effective Date" shall have the meaning set forth in the preamble to this Agreement.

"Eligible Combination Interest" shall mean, with respect to any CLO or CLO warehouse, a combination of a U.S. Horizontal Interest and a U.S. Vertical Interest calculated proportionately, in a manner that complies with the requirements of the U.S. Risk Retention Rules.

"Eligible Horizontal Interest" shall mean a U.S. Horizontal Interest, which in the case of any CLO that is intended to comply with the EU Risk Retention Rules, shall also be an EU Horizontal Interest.

"Eligible Vertical Interest" shall mean a U.S. Vertical Interest, which in the case of any CLO that is intended to comply with the EU Risk Retention Rules, shall also be an EU Vertical Interest.

"EU" shall mean the European Union.

"EU Horizontal Interest" shall mean, with respect to any CLO, an interest in the first loss tranche of the CLO, by way of holding the minimum principal amount of such tranche required by the EU Risk Retention Rules, currently being an amount equal to five percent of the nominal value of the loans and other assets in the CLO representing principal proceeds.

"EU Originator Series" shall mean the Series designated as "EU Originator Series" as set forth on the attached Exhibit A.

"EU Risk Retention Rules" shall mean: (i) Articles 404-410 of the EU Capital Requirements Regulation (Regulation (EU) 575/2013) of June 26, 2013 as published on June 27, 2013, as supplemented by Commission Delegated Regulation (EU) No 625/2014 of 13 March 2014, together with any other applicable guidelines, technical standards and related documents published by the European Commission or the European Banking Authority in relation thereto; (ii) Chapter 3 Section 5 of the EU Commission Delegated Regulation (EU) 231/2013 implementing Article 17 of EU Directive 2011/61/EU on Alternative Investment Fund Managers (the "AIFMD"); (iii) Articles 254-257 of Delegated Regulation (EU) No 2015/35 of 10 October 2014 supplementing the Solvency II Directive (2009/138/EC); and (iv) any substantially similar requirements corresponding to those referred to in (i), (ii) and (iii) in connection with investments in securitizations by other types of EEA-regulated investors such as (once the level 2 measures are adopted under Article 50a (as inserted by Article 63 of the AIFMD) of Directive 2009/65/EC on Undertakings for Collective Investment in Transferable Securities (the "UCITS Directive")) funds requiring authorization under the UCITS Directive, (in each case, as modified or supplemented from time to time and including any further legislation, technical standards, guidance or interpretation issued by any European Union regulatory body with respect thereto).

"EU Vertical Interest" shall mean, with respect to any CLO, an interest in each tranche of securities issued by the CLO to investors on the related closing date, by way of holding the minimum principal amount of such tranche required by the EU Retention Rules, currently being an amount equal to five percent of the nominal value of each tranche of securities issued to investors on the related closing date.

"Expenses" shall have the meaning set forth in Section 5.1(b).

"FAA" shall have the meaning set forth in Section 11.2.

"Fiscal Year" shall have the meaning set forth in Section 2.5.

"Fund" shall mean any private investment fund or other investment account managed or advised by the Company.

"General Partner" shall mean (i) initially, Highland CLO Management Holdings GP, LLC, a Delaware limited liability company, and (ii) subsequently, any successor to Highland CLO Management Holdings GP, LLC as general partner of Holdings.

"Governmental Authority" shall mean (i) any government or quasi-governmental authority or political subdivision thereof., national, state, county, municipal or regional, whether U.S. or non-U.S.; (ii) any agency, regulator, arbitrator, board, body, branch, bureau, commission, corporation, department, master, mediator, panel, referee, system or instrumentality of any such government, political subdivision or other government or quasi-government entity, whether non-U.S. or U.S.; and (iii) any court, whether U.S. or non-U.S.

"Highland" shall mean Highland HCF Advisor, Ltd., a Cayman Islands company limited by shares.

"Independent Manager" means a natural person who, (A) for the five-year period prior to his or her appointment as Independent Manager, has not been, and during the continuation of his or her service as Independent Manager is not: (i) an employee, director, stockholder, member, manager, partner or officer of the Company, the Member, the Sponsors or any of their respective Affiliates (other than his or her service as an Independent Manager (or in a functionally similar independent role, including as an independent officer) of the Company or other Affiliates that are structured to be "bankruptcy remote"); (ii) a customer or supplier of the Company or any of their Affiliates (other than his or her service as an Independent Manager (or in a functionally similar independent role, including as an independent officer) of the Company); or (iii) any member of the immediate family of a person described in (i) or (ii), and (B) has, (i) prior experience as an Independent Manager for a corporation or limited liability company whose charter documents required the unanimous consent of all Independent Managers thereof before such corporation or limited liability company could consent to the institution of bankruptcy or insolvency proceedings against it or could file a petition seeking relief under any applicable federal or state law relating to bankruptcy and (ii) at least three years of employment experience with one or more entities that provide, in the ordinary course of their respective businesses, advisory, management or placement services to issuers of securitization or structured finance instruments, agreements or securities.

"Holdings" shall have the meaning set forth in the preamble to this Agreement.

"Holdings Interests" shall mean the Class A Interests and Class B Interests, collectively.

"Indemnified Person" shall have the meaning set forth in Section 3.7.

"Independent Accountants" shall have the meaning set forth in Section 10.2.

"Intermediate Holdings" shall have the meaning set forth in the preamble to this Agreement.

"Investment" shall mean any investment made by the Company or any Series within the Purpose.

"Investment Committee" shall have the meaning set forth in Section 3.3.

"Investment Company Act" shall mean the Investment Company Act of 1940, as amended.

"Investment Purpose" shall mean each of (i) making investments in or acquiring Portfolio Assets (other than temporary investments); (ii) satisfying funding or other obligations with respect to all Portfolio Assets (including, without limitation any future funding obligations with respect thereto and acquiring the Retention Interests in CLOs); (iii) funding reserves; (iv) making temporary investments, follow-on investments (including, without limitation, in additional securities, refinanced securities or re-priced securities of CLOs in which the Company holds Retention Interests), and protective investments (including, without limitation, making debtor-in-possession loans and protective advances and/or exchanges), or as otherwise intended to enhance or preserve the value of Portfolio Assets or as may be otherwise required by law, which investments may require capital commitments and ongoing obligations of the Company or any subsidiary thereof; (v) making, at the election of Intermediate Holdings, Holdings or the Company, capital contributions to avoid or cure any borrowing base deficiency, margin requirement, default, event of default, potential termination event or termination event relating to any indebtedness or other obligation incurred by Intermediate Holdings, Holdings, the Company or any subsidiary thereof, to pay any indebtedness or other obligation of Intermediate Holdings, Holdings, the Company or any subsidiary thereof, as applicable, or for any other Investment Purpose; (vi) paying any expenses incurred in connection with the refinancing of a CLO; or (vii) paying Company Expenses (including, for the avoidance of doubt, amounts due in respect of any Subscription Facility or other indebtedness) and other organizational and operating expenses.

"Investor" shall mean any Class A Limited Partner or Class B Limited Partner.

"Majority-owned Affiliate" shall mean a "majority owned affiliate" of the Company, as the term "majority owned affiliate" is defined under the U.S. Risk Retention Rules.

"Management Series" shall mean the Series designated as the "Management Series" as set forth on the attached Exhibit A.

"Managing Member" means the "Managing Member" designated as such by the Members from time to time or as provided in Section 3.01 hereof for any period in which no such designation has been made. The initial Managing Member is Highland CLO Management Holdings, L.P.

"Material Action" shall mean to: (i) institute proceedings to have the Company declared or adjudicated bankrupt or insolvent; (ii) consent to the institution of bankruptcy or insolvency proceedings against the Company; (iii) file a petition or consent to a petition seeking reorganization or relief on behalf of the Company under any applicable federal or state law relating to bankruptcy; (iv) consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or any similar official) of the Company or any property of the Company; (v) make any assignment for the benefit of the Company's creditors; (vi) cause the Company to admit in writing its inability to pay its debts generally as they become due; (vii) dissolve or liquidate the

Company; or (viii) take any action, or cause the Company to take any action, in furtherance of any of the foregoing.

"Members" shall have the meaning set forth in the preamble to this Agreement and shall include any other Person hereafter admitted to the Company in accordance with this Agreement.

"Officers" shall mean the officers of the Company appointed pursuant to Section 3.4.

"Original Member" shall have the meaning set forth in the recitals to this Agreement.

"Partnership Agreement" shall mean the First Amended and Restated Agreement of Exempted Limited Partnership of Holdings, dated as of the date hereof, as amended, modified or supplemented from time to time in accordance with its terms.

"Person" shall mean any individual, corporation, association, joint venture, partnership, limited liability company, trust, government or political subdivision thereof, governmental agency or any other entity.

"Portfolio Assets" shall mean assets acquired by the Company or any subsidiary thereof, including Retention Interests and Preferred Return Notes.

"Preferred Return Note" shall mean a note issued by a CLO entitling the holder thereof to a preferred return calculated as a percentage of the gross senior and/or subordinated CLO management fees payable by such CLO, payable *pari passu* with the other amounts of senior and subordinated CLO management fees.

"Prime Rate" shall mean the rate of interest published from time to time in The Wall Street Journal, Eastern Edition, and designated as the prime rate.

"Purpose" shall have the meaning set forth in Section 2.4(a).

"Recycled Capital" shall mean all proceeds from Portfolio Assets constituting a return of capital contributions used to acquire or fund such Portfolio Assets, or amounts constituting a return of Capital Contributions distributed to Investors, retained and reinvested or added to the unfunded Capital Commitments pursuant to Section 4.7.

"Register" shall have the meaning set forth in Section 2.7.

"Restricted Action" shall mean the taking of any action or the effectiveness of any consent or action that effects or permits, or would effect or permit, any of the following:

(a) the entry of the Company into a new line of business;

(b) issuing any other equity interests in Holdings other than the Holdings Interests, or Holdings and Highland together no longer holding, directly or indirectly, 100% of the Company Interests;

(c) any amendment to this Agreement that would have a material and adverse effect on the rights, preferences or privileges of the Class B Interests; and

(d) any sale or transfer by Highland or its Affiliates of its Class A Interests if such sale or transfer would result in the Company ceasing to be a "majority owned affiliate" of Highland, as the term "majority owned affiliate" is defined under the U.S. Risk Retention Rules.

"Retention Financing" means, as of any date of determination, indebtedness, liabilities and obligations of the Company under or in connection with any financing facility used to finance Retention Interests.

"Retention Interest" shall mean any Eligible Vertical Interest, Eligible Horizontal Interest or Eligible Combination Interest, as applicable.

"Risk Retention Rules" shall mean the EU Risk Retention Rules and the U.S. Risk Retention Rules.

"Risk Retention Series" shall mean the Series designated as the "Risk Retention Series" as set forth on the attached Exhibit A.

"Securities Act" shall mean the Securities Act of 1933, as amended.

"Series" shall mean any series of Interests established by the Managing Member related to a distinct set of Company Interests and having separate rights and power with respect to assets of the Company allocated to such Series. Any terms specific to a Series will be set forth on Exhibit A, as such Exhibit may be amended from time to time in accordance with the terms of this Agreement.

"Series Sharing Percentage" shall mean shall mean a percentage set forth in the Register of each Series with respect to each Member of such Series and which percentage shall equal the product of (i) 100 and (ii) a fraction, the numerator of which is the Capital Contributions to such Series from such Member and the denominator of which is the Capital Contributions of all Members to such Series. The sum of the Series Sharing Percentages for each Series shall at all times equal 100%.

"Service Providers" means each of the Staff and Services Provider and the Sub-Advisor.

"Staff and Services Agreement" shall mean the Staff and Services Agreement, dated as of the date hereof, by and between Highland, as Staff and Services Provider, and the Company, as amended, modified or supplemented from time to time in accordance with its terms.

"Staff and Services Fee" shall mean the fee payable to the Staff and Services Provider from time to time for the provision of Support Services, Administrative Services and Shared Employees (each as defined in the Services Agreement) pursuant to the Staff and Services Agreement. The Managing Member may elect to defer the Service Fee that may be payable by the Company to the extent deemed by the Managing Member in its sole discretion to be necessary to meet the other

obligations of the Company that are due and payable, and any such deferred Staff and Services Fee shall bear interest and become due and payable as set forth in the Staff and Services Agreement.

"Staff and Services Provider" shall mean, collectively, Highland and any other services provider that may provide administrative or middle and back office support from time to time to the Company.

"Sub-Advisor" shall mean Highland, in its role as sub-advisor to the Company with respect to all CLOs managed by the Company pursuant to the Sub-Advisory Agreement.

"Sub-Advisory Agreement" shall mean the Sub-Advisory Agreement, dated as of the date hereof, by and between Highland, as Sub-Advisor, and the Company, as amended, modified or supplemented from time to time in accordance with its terms.

"Sub-Advisory Fee" shall mean the fee payable to the Sub-Advisor from time to time pursuant to the Sub-Advisory Agreement. The Managing Member may elect to defer the Sub-Advisory Fee that may be payable by the Company to the extent deemed by the Managing Member in its sole discretion to be necessary to meet the other obligations of the Company that are due and payable, and any such deferred Sub-Advisory Fee shall bear interest and become due and payable as set forth in the Sub-Advisory Agreement.

"Subsidiary" shall mean, with respect to the Company, any Person in which, at the time of the applicable determination, such specified Person has, directly or indirectly, a 50% or greater ownership interest or any Person with respect to which such specified Person possesses (through one or more intermediaries) the power to direct or cause the direction of the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise

"Term" shall mean the period commencing on the Effective Date and terminating at such time as determined by the Managing Member following the later of (i) the receipt of all amounts reasonably expected by the Managing Member to be received with respect to the Portfolio Assets owned by the Company (and any Series thereof) or the sale thereof during the term as permitted by this Agreement and in a manner that will not cause the Company or any subsidiary thereof to violate any Applicable Law or contract and (ii) termination of the obligations of the Company as collateral manager of all CLOs (other than contingent surviving obligations for which no claim has been made). Notwithstanding the foregoing, although the Company may sell any Portfolio Assets when permitted to do so by law and contract, it is not required to do so and in furtherance but not in limitation of the foregoing, in the sole discretion of the Managing Member or when otherwise required by law or contract, the Company may continue to hold illiquid assets until the Company has received all amounts reasonably expected by the Managing Member to be received thereon. Notwithstanding the foregoing, the Company will not be required to terminate, wind up or dissolve if any such action would cause any of Holdings, the Company, the Managing Member, the General Partner, the Sub-Advisor, the Staff and Services Provider, or any of their respective affiliates to violate any Applicable Law or contract applicable to any thereof.

"Transfer" shall have the meaning set forth in Section 7.1.

"U.S. Horizontal Interest" shall mean, with respect to any CLO or CLO warehouse, an investment in the first loss class of the securities issued by the CLO (including any CLO warehouse, if applicable) equal to 5% of the fair value (determined using a fair value measurement framework under GAAP) of all securities in the CLO (or the CLO warehouse, if applicable).

"U.S. Retention Interest" shall mean an economic interest in the credit risk of the assets of a CLO (including any CLO warehouse, if applicable), which will be comprised of a U.S. Horizontal Interest, a U.S. Vertical Interest or an Eligible Combination Interest, as applicable.

"U.S. Risk Retention Rules" shall mean the final U.S. credit risk retention rules to implement Section 941 of the Dodd-Frank Wall Street and Consumer Protection Act as published in the Federal Register on December 23, 2014 (as modified or supplemented from time to time and including any guidance or interpretation issued by any federal agency with respect thereto).

"U.S. Vertical Interest" shall mean, with respect to any CLO or CLO warehouse, an investment in each class of securities issued by the CLO (including any CLO warehouse, if applicable) equal to five percent of the face value of each tranche of securities in a manner that complies with the requirements of the U.S. Risk Retention Rules.

"Value" of any non-cash capital contribution made by a Member to the Company or of any asset of the Company, as the case may be, as of any date, means the fair market value of such asset as determined by the Managing Member in good faith. Any determination of the Value or of the fair market value of any such non-cash capital contribution or of any such asset of the Company made in good faith by the Managing Member shall be binding on the Members for all purposes of this Agreement.

ARTICLE 2

GENERAL PROVISIONS

Section 2.1. Formation of the Company.

(a) Formation. Timothy J. Cournoyer acted as the organizer to form the Company as a Delaware series limited liability company by preparing, executing and filing with the Delaware Secretary of State the Certificate of Formation pursuant to the Act. The Members hereby confirm and ratifies such formation of the Company and forever discharges such organizer, and such organizer shall be indemnified by the Company, from and against any expense or liability actually incurred by such organizer by reason of having been the organizer of the Company.

(b) Members. The name and mailing address of each Member shall be as listed on the Register. On the date hereof, Holdings shall be admitted as a Member with respect to the Management Series, the EU Originator Series and the Risk Retention Series upon the execution of a counterpart to this Agreement and being listed as a Member on the Register.

Section 2.2. Name. The name of the limited liability company is Highland CLO Management, LLC.

Section 2.3. Mailing Address; Agent for Service of Process.

(a) Mailing Address. The mailing address of the Company shall be 300 Crescent Court, Suite 700, Dallas, TX 75201, or such other place or places as the Managing Member may designate.

(b) Registered Office and Agent. The registered office of the Company in the State of Delaware shall be The Corporation Trust Center, 1209 Orange Street, Wilmington, New Castle County, Delaware 19801, and the registered agent for service of process on the Company at such address shall be The Corporation Trust Company or, in either case, as the Managing Member may otherwise designate.

Section 2.4. Purpose and Powers of the Company.

(a) Purpose. The Company is being established to pursue a business acting as the collateral manager to issuers of collateralized loan obligation and borrowers under any short-term or long-term warehouse facilities (collectively, "CLOs"). In furtherance of the foregoing, the purpose of the Company, and the nature of the business to be conducted and promoted by the Company, acting through one or more Series (subject to the limitations described in Article 9) is (i) acting as a collateral manager of CLOs; (ii) engaging in related loan origination and/or trading activities including, but not limited to, holding loans for its own account as an "originator" for purposes of EU Risk Retention Rules; (iii) directly, or indirectly through one or more subsidiaries, acting as the holder of Retention Interests in such CLOs; (iv) acting as the holder of Preferred Return Notes issued by each CLO in respect of which the Company acts as the collateral manager; and/or (v) engaging in any and all activities necessary, advisable or incidental to the foregoing (including, but not limited to, complying with the Risk Retention Rules) (collectively, the "Purpose"). In connection with the foregoing and complying with the U.S. Risk Retention Rules, any reference herein to the "Company" shall refer to the Company (or one or more Series thereof) acting through any Subsidiary, as applicable. Furthermore, any reference herein to complying with the Risk Retention Rules shall refer to compliance with the Risk Retention Rules by the Company or any Series thereof, or a Subsidiary any series thereof (in relation to the U.S. Risk Retention Rules only), directly or indirectly where permitted by the applicable Risk Retention Rules.

(b) Powers. Subject to any limitations set forth in this Agreement, the Company, and the Managing Member on behalf of the Company, shall have the power and authority to take any and all actions necessary, appropriate, proper, advisable, incidental or convenient to or for the furtherance of the purposes set forth in Section 2.4(a) for the Company or the relevant Series, including without limitation the power, with respect to the Company and each Series, to:

(i) manage the business affairs of the Company and each Series, establish, organize, initiate, structure and manage CLOs, and establish and invest the assets of each Series in Portfolio Assets;

(ii) acquire, hold, manage, own or Transfer any Series' interests in Portfolio Assets or any other assets held by any Series and enter into hedge agreements as may be necessary or desirable with respect thereto (provided that the Company may not hedge credit risks with respect to Retention Interests in a manner prohibited by the U.S. Risk Retention Rules or the EU Risk Retention Rules (if applicable));

(iii) make all elections, investigations, evaluations and decisions, binding the Company and each Series thereby, that may, in the sole discretion of the Managing Member, be necessary, appropriate or convenient for the Purpose;

(iv) open, maintain and close accounts, including bank, brokerage and custodial accounts, with banks, including banks located outside the United States, which power shall include the authority to issue all instructions and authorizations to brokers regarding the securities and/or money therein to pay, or authorize the payment and reimbursement of, brokerage commissions;

(v) form any Majority-owned Affiliate or Subsidiary of the Company;

(vi) employ one or more custodians of the assets of the Company and authorize such custodians to employ subcustodians and agents and to deposit all or any part of such assets in a system or systems for the central handling of securities or other interests or with such other person or persons as Managing Member may determine;

(vii) hold cash balances or invest and reinvest the assets of the Company (whether directly or indirectly) and reinvest any proceeds income earned thereon in accordance with the investment program of the Company and each Series;

(viii) exercise all rights, powers, privileges, remedies and other incidents of ownership or possession with respect to the Company's assets, including the exercise of any voting rights or granting proxies with respect to an asset, the approval of a restructuring of an asset, the institution and settlement or compromise of suits and administrative proceedings and other similar matters, including but not limited to bringing and defending actions and proceedings at law or in equity or before any Governmental Authority;

(ix) execute and deliver proxies or powers of attorney (including with rights of substitution and delegation as the case may be) to such person or persons as the Managing Member shall deem proper, granting to such person or persons such power and discretion with relation to securities or other assets as the Managing Member shall deem proper;

(x) hold any security or other assets in a form not indicating any particular owner, whether in bearer, unregistered or other negotiable form, or in the name of Holdings or in the name of a custodian, sub-custodian or other depositary or a nominee or nominees;

(xi) consent to, participate in or initiate any plan for the reorganization, consolidation or merger of any corporation or other issuer, any security, or other interest

therein, which is or was held by the Company; to consent to any contract, lease, mortgage, purchase or sale of property by such a corporation or other issuer; and to pay calls or subscriptions with respect to any security or other asset held by the Company;

(xii) join with other security or other interest holders in acting through a committee, depositary, voting trustee or otherwise, and in connection therewith deposit any security or other asset with, or transfer any security or other asset to, any such committee, depositary or trustee, and to delegate to them such power and authority with relation to any security or other interest (whether or not so deposited or transferred) as the Managing Member shall deem proper, and to agree to pay, and to pay, such portion of the expenses and compensation of such committee, depositary or trustee as the Managing Member shall deem proper;

(xiii) institute, prosecute, defend, settle, compromise or otherwise adjust all claims (including but not limited to claims for taxes) and litigation arising out of the conduct of the affairs of the Company or any Series or in the enforcement of obligations due it, including all rights of appeal, and to file any claims in any bankruptcy proceeding on behalf of the Company or any Series and to vote with respect to, prosecute and settle any such claims

(xiv) employ, consult remove or terminate such officers, agents or independent contractors as the Managing Member may deem necessary or advisable, including primary dealers, brokers, prime brokers, auditors, counsel, consultants, custodians, independent accountants, administrators or managers, collateral administrators, valuation agents or specialists in any field of endeavor whatsoever and other agents and representatives of the Company, and authorize such agents and representatives to act for and on behalf of the Company or of any Series (including such persons, firms or companies as may be employees or Affiliates of Highland), including but not limited to hiring such employees as the Managing Member may from time to time deem proper in respect of the Management Series and entering into such agreements with third party to provide back-office or administrative services, or to arrange for leased office space or infrastructure services, in each case, as approved by the Managing Member;

(xv) set aside funds for reserves (including reserves for contingent liabilities), contingencies and working capital, in each case, as deemed reasonable by the Managing Member;

(xvi) subject to Section 5.1, determine and pay or cause to be paid out of the capital or income of the Company and any Series or partly out of capital and partly out of income, as the Managing Member deems reasonable, all expenses, fees, charges, taxes and liabilities incurred or arising in connection with the conduct of the affairs of the Company, or in connection with the management thereof, including, but not limited to the other fees and expenses to be borne by the Company, expenses and charges for the services of the Company's managers, consultants, auditors, counsel, custodians, and other agents or independent contractors, and such other expenses and charges as the Managing Member

may deem necessary or proper to incur, and in general make all accounting, tax and financial reporting determinations and decisions with respect to the Company and any Series;

(xvii) subject to clause (c) below, borrow money and make, issue, accept, endorse and execute promissory notes, drafts, bills of exchange and other instruments and evidences of indebtedness, and secure the payment thereof by mortgage, pledge or assignment of or security interest in (or other collateralization of) all or any part of the securities and other property or assets then owned or thereafter acquired, including securing such borrowings with the Company's (and the Managing Member') right to make capital calls, the Company's entitlement to receive capital contributions from the Members and/or the proceeds of such capital contributions and the accounts into which they are deposited; and further provide for such borrowing facilities to be secured by all of the Company's (and the Managing Member') rights and remedies under this Agreement including, among other things, (i) against each Member in respect of its obligation to make capital contributions and (ii) to receive all payments in respect of capital contributions, and to enforce the payment thereof and all other rights and remedies with respect thereto; provided that such security (whether by mortgage, charge, pledge, assignment, assignment by way of security or otherwise) may not convey the right to make investment decisions or other management decisions on behalf of the Company;

(xviii) subject to clause (c) below, endorse, accept or guarantee the payment of any notes, drafts or other obligations of any person; make contracts of guaranty or suretyship, or otherwise assume liability for payment thereof; and mortgage and pledge, assign and/or otherwise collateralize any part of the securities and other property then owned or thereafter acquired by the Company to secure any or all such obligations;

(xix) purchase and pay for such insurance, if any, as the Managing Member shall deem necessary or appropriate for the conduct of the business of the Company, including key man insurance policies naming the Company as beneficiary and insurance policies covering any person individually against all claims and liabilities of every nature arising by reason of being, or holding, having held, or having agreed to hold office as, a member, officer, employee, agent, investment adviser or manager, or independent contractor of the Company, Holdings, the General Partner or their Affiliates, or being, serving, having served, or having agreed to serve at the request of the Company as a partner, member, manager, director, trustee, officer, employee, agent or independent contractor of another fund, corporation, joint venture, trust or other enterprise, or by reason of any action alleged to have been taken or omitted by any such person in any of the foregoing capacities, including any action taken or omitted that may be determined to constitute negligence or gross negligence, whether or not the Company would have the power to indemnify such person against such liability;

(xx) make, amend or revoke such elections, filings and determinations under the tax laws of the U.S., the several states or other relevant jurisdictions as to any matter, including an election to adjust the basis of the assets of the Company or any Series under

Section 754 of the Code, or to be treated as an "electing investment partnership" within the meaning of Section 743(e) of the Code, as the Managing Member may determine in its sole discretion;

(xxi) enter into, perform and terminate agreements with placement agents (or any other financial institutions that may agree to place the Holdings Interests) pursuant to which the placement agent or financial institution acts as placement agent in connection with the offering and sale of Holdings Interests and is compensated directly or indirectly by the Investors, Holdings, the Company, the General Partner or its Affiliates in connection therewith, and provide indemnification by the Company in connection therewith;

(xxii) hold some or all of the Company's assets through one or more partnerships, corporations, trusts, limited liability companies or other entities, either by itself or together with one or more other holders and form any subsidiary, including any Majority-owned Affiliate or Subsidiary of the Company;

(xxiii) determine the accounting methods and conventions to be used in the preparation of any accounting or financial records or reports of the Company;

(xxiv) enter into, execute, deliver, perform and carry out contracts and agreements of every kind necessary or incidental to: (A) the offer and sale of Interests, *provided* that such offer and sale shall not violate the Risk Retention Rules; or (B) the accomplishment of any Purpose, and to take or omit to take such other action in connection with such offer and sale or with the activities of any Series as may be necessary or desirable to further the Purpose; and

(xxv) carry on any other activities necessary to, in connection with, convenient to or incidental to any of the foregoing or the Company's or any Series' affairs.

(c) Indebtedness. The Company may incur indebtedness, directly or indirectly through one or more subsidiaries, to finance Investments, to warehouse loans or to finance any Retention Interest. Without limiting the foregoing, the Company may obtain one or more credit facilities (each, a "Subscription Facility") to finance its investments, and those facilities may be secured by an assignment, pledge, charge or other security interest in (i) any or all assets of the Company, including, but not limited to, the right to receive capital from the Member (or the right of Holdings to receive capital from the Investors), (ii) the Company's right to call and receive Drawdowns from Holdings (and the General Partner's rights on behalf of Holdings under the Partnership Agreement to call and receive Drawdowns from the Investors), and/or (iii) any deposit or other account into which such Drawdowns will be deposited, and all claims, rights and interests that Company (or Holdings) may have relating to or arising from clause (i), clause (ii) or this clause (iii) (including, without limitation, the right to exercise any remedies of the Company under or related to this Agreement (or of Holdings or the General Partner under or related to the Partnership Agreement) in respect of any such capital call or such Drawdowns), which may be granted to a lender pursuant to any security documentation entered into between the Company, Holdings and/or the General Partner and any lender. Members may, upon request by the Company or the lender (if authorized

to make such request under the relevant security documentation), be required to confirm the terms of their Capital Commitments and the amount of their unfunded Capital Commitments to the lender, to honor capital calls made by the lender, to provide financial information reasonably requested by the lender and to execute other documents as may be reasonably requested in connection with obtaining such a facility. In connection with any Subscription Facility, each Member will agree and acknowledge for the benefit of the lenders (1) to make Capital Contributions without defense, counterclaim or offset, all of which will be waived as against the lenders, and (2) that all Drawdowns made by such Investor in connection with a Subscription Facility will be made to an account (in which such lenders will have a security interest) as directed by the Company or the lenders. Further, each Member will agree that all of its claims against the Company and/or the General Partner will be subordinate to all payments due to the applicable lenders.

(d) Material Actions. Notwithstanding any other provision of this Agreement or any other document governing the formation, management or operation of the Company, and any provision of Applicable Law that otherwise so empowers the Member or any other Person, no Person shall be authorized or empowered, nor shall they permit the Company to, and the Company shall not, without the prior unanimous written consent of each of the Members, take any Material Action.

(e) Separateness Covenants. The Managing Member shall cause the Company to do or cause to be done all things necessary to preserve and keep in full force and effect its existence and rights (charter and statutory); *provided* that the Company shall not be required to preserve any such right if the Managing Member shall determine that the preservation thereof is no longer desirable for the conduct of its business and that the loss thereof is not disadvantageous in any material respect to the Company. The Managing Member also shall cause the Company (and each Series where applicable) to, and the Company (and each Series where applicable) shall:

(i) maintain its own separate books and records and bank accounts;

(ii) at all times hold itself out to the public as a legal and economic entity separate from each of the Members and strictly comply with all organizational formalities to maintain its separate existence;

(iii) correct any known misunderstanding regarding its separate identity and refrain from engaging in any activity that compromises the separate legal identity of the Company;

(iv) as determined by the Managing Member in its sole discretion, maintain adequate capital and a sufficient number of employees, if any employees are so needed, in light of its contemplated business purposes, transactions and liabilities and in order to pay its debts as they become due;

(v) observe all other Delaware limited liability company formalities;

(vi) other than the Retention Interests and the Preferred Return Notes, not acquire any obligations or securities of any Member or its Affiliates;

(vii) file its own tax returns, if any, as may be required under Applicable Law, to the extent: (A) not part of a consolidated group filing a consolidated return or returns; or (B) not treated as a division for tax purposes of another taxpayer, and pay any taxes so required to be paid under Applicable Law;

(viii) not commingle its assets with assets of any other Person;

(ix) conduct its business in its own name;

(x) maintain separate financial statements, prepared in accordance with applicable generally accepted accounting principles, showing its assets and liabilities separate and apart from those of any other Person and not have its assets listed on any financial statement of any other Person other than as a consequence of the application of consolidation rules in accordance with GAAP;

(xi) pay its own liabilities and expenses only out of its own funds;

(xii) maintain an arm's length relationship with unaffiliated parties, and (except with respect to the engagement of the Service Providers, issuances of Interests and CLOs) not enter into any transaction with an Affiliate of the Company (excluding, for the avoidance of doubt, Subsidiaries) except on commercially reasonable terms similar to those available to unaffiliated parties in an arm's length transaction;

(xiii) pay the salaries of its own employees, if any, only out of its own funds;

(xiv) not hold out its credit or assets as being available to satisfy the obligations of any other Person nor pledge its assets for the benefit of any other Person nor make any intercompany loans to any Affiliate of the Company or accept any intercompany loans from any Affiliate of the Company;

(xv) allocate fairly and reasonably any overhead expenses that are shared with an Affiliate, including and for services performed by an employee of an Affiliate; and

(xvi) as long as any Retention Financing is outstanding maintain at least one Independent Manager

(xvii) cause agents and other representatives of the Company to act at all times with respect to the Company consistently and in furtherance of the foregoing and in the best interests of the Company.

Failure of (x) the Company to comply with any of the foregoing covenants or (y) the Company or any Member to comply with any other covenants contained in this Agreement, shall not affect the status of the Company as a separate legal entity or the limited liability of any Member.

(f) Separateness Negative Covenants. Neither any Member nor the Managing Member shall cause or permit the Company to, and the Company shall not, unless otherwise expressly agreed by each of the Members, the Managing Member and the Independent Manager:

(i) guarantee any obligation of any Person, including any Affiliate except in respect of indebtedness which the Company would be permitted to incur hereunder;

(ii) engage, directly or indirectly, in any business other than that required or permitted to be performed under this Agreement;

(iii) incur, create or assume any indebtedness other than as expressly permitted under this Agreement;

(iv) allow any borrowing or granting of a security interest or other transfer of assets between the Company and any other Person unless there is a business purpose for the Company and the borrowing or granting of a security interest in or other transfer of assets was not and will not be intended to impair the rights or interests of creditors and was made in exchange for reasonably equivalent value and fair consideration and has been and will be appropriately documented and recorded in its records;

(v) except as provided in furtherance of the Purpose and permitted under this Agreement, make or permit to remain outstanding any loan or advance to, or own or acquire any stock or securities of, any Person;

(vi) to the fullest extent permitted by Applicable Law, engage in any dissolution, liquidation, consolidation, merger, sale or other transfer of any of its assets outside the ordinary course of the Company's business;

(vii) except as otherwise permitted under clause (vi), fail to preserve its existence as an entity duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization or formation, or without the prior written consent of the Managing Member and the Independent Manager, amend, modify, terminate or fail to comply with this Section 2.4; or

(viii) become insolvent or fail to pay its debts and liabilities from its assets as the same shall become due.

(g) Certain Limitations. Without the written consent of each of the Members and with respect solely to the item in clause (iii) below the Independent Manager, none of the Company, the Managing Member, the Independent Manager or any other Person on behalf of the Company shall have the authority to:

(i) confess a judgment against the Company;

(ii) knowingly perform any act that would subject a Member to liabilities of the Company in any jurisdiction or the Company to liabilities of a Member; or

(iii) take any Material Action.

(h) Limitation on Amendments. Neither the Managing Member nor any Member shall consent to amend, alter, change or repeal the definition of "Material Action" or this Section 2.4 without the unanimous written consent of each of the Members and the Independent Manager.

Section 2.5. Fiscal Year. The fiscal year of the Company and each Series (the "Fiscal Year") shall be the same for accounting and U.S. federal income tax purposes, and shall be the period ending on December 31 of each year, or such other fiscal year as the Managing Member may designate from time to time or, for any period during which the Company or any Series is treated as a partnership for U.S. federal income tax purposes, as may be required in accordance with Section 706 of the Code, in which case the Fiscal Year shall be such different taxable year.

Section 2.6. Liability of the Members. Except as otherwise provided by the Act, the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Company, and none of the Members shall be obligated personally for any such debt, obligation or liability of the Company solely by reason of being a Member of the Company.

Section 2.7. Register. The Managing Member shall cause to be maintained a register which shall include, among other things, for each Member, such Member's name, address and Series Sharing Percentages and such other information as the Managing Member may deem necessary or desirable (the "Register"). The Register shall not be part of this Agreement. The Managing Member may from time to time, without the consent of any Member, update the Register as necessary to reflect any changes in any information set forth in the Register, as contemplated by Section 3.8 and any other provision of this Agreement. Any reference in this Agreement to the Register shall be a reference to the Register as in effect from time to time. The Managing Member shall have no obligation to deliver the Register to any Member, except that upon request by a Member, the Managing Member shall provide to such Member excerpts from the Register showing the name, address and interests of such Member as shown in the Register.

ARTICLE 3

MANAGEMENT OF THE COMPANY; ADMISSIONS

Section 3.1. Management Generally.

(a) Management Generally. The Managing Member shall be the "manager" of the Company and each Series as such terms are defined in the Act. Subject to Section 2.04, the business and affairs of the Company and each Series shall be managed exclusively by the Managing Member. Except as otherwise specifically provided in this Agreement, the Managing Member shall have the power to do any and all acts necessary or convenient to or for the furtherance of the purposes described herein, subject to, with respect to Material Actions the consent of the Independent Manager required pursuant to Section 2.04(g). Notwithstanding any other provision of this Agreement, the Managing Member is authorized to execute and deliver any

document on behalf of any Series without any vote or consent of any other person and shall be an agent of the Company's business, and the actions of the Managing Member taken in such capacity and in accordance with this Agreement shall bind the Company. The Managing Member is hereby designated an authorized person, within the meaning of the Act, to execute, deliver and file all certificates (and any amendments and/or restatements thereof) required or permitted by the Act to be filed in the office of the Secretary of State of the State of Delaware, and to execute, deliver and file any other certificates (and any amendments and/or restatements thereof) necessary for the Company to qualify to do business in a jurisdiction in which the Company may wish to conduct business, any documents required to obtain a U.S. taxpayer identification number, and any documents otherwise required in order for the Company to conduct business. In the event there is a conflict between the Managing Member and the Members in respect of any matter, the Managing Member may override the decision of the Members on such matter. The Members shall not have any right to manage the Company or any Series except as otherwise expressly set forth in this Agreement.

(b) Specific Management Responsibilities. The Managing Member shall be responsible, without limitation, for the following actions on behalf of the Company and each Series: (i) approving the issuance of any CLO; (ii) exercising any call option, refinancing or re-pricing with respect to any CLO for which the Company holds a majority of the equity or subordinated notes; (iii) the merger or sale of all or substantially all of the assets of the Company; (iv) appointing the Staff and Services Provider; (v) approving all other service agreements; (vi) appointing and removing officers and employees; (vii) appointing and removing Investment Committee members; (viii) creating any reserve or holdback affecting any distribution to any Member; and (ix) otherwise directing the Company to act in accordance with the Purpose.

(c) Restricted Actions. Notwithstanding the foregoing or anything to the contrary contained herein, neither the Managing Member, on behalf of the Company and each Series, nor the General Partner, on behalf of any Member, shall, without the consent of Holdings in accordance with the Holdings Partnership Agreement, take any Restricted Action.

(d) [Reserved].

(e) Voting, Approval and Consents of the Members. To the extent that any provision herein requires the vote, approval or consent of the Members as a group (other than with respect to amendments of this Agreement pursuant to Section 11.1) and such vote, approval or consent relates only to Portfolio Assets held by a particular Series or activities or operations of a particular Series, such vote, approval or consent shall require only the unanimous vote, approval or consent of the Members holding Interests in such Series (and for avoidance of doubt shall not require the vote, approval or consent of Members holding Interests only in any other Series). For avoidance of doubt, (i) if any such vote, approval or consent relates to the Company as a whole, such vote, approval or consent shall require the unanimous consent of all of the Members and (ii) any amendment of this Agreement pursuant to Section 11.1 shall require the consent of all the Members.

(f) Meetings. The Managing Member may hold meetings, both regular and special, within or outside the State of Delaware. Regular meetings may be held without notice at such time and at such place as shall from time to time be determined by the Managing Member. Special meetings may be called by the Managing Member or the President on not less than one day's notice to any required Manager by telephone, facsimile, mail, telegram or any other means of communication. Special meetings shall be called by the President in like manner and with like notice upon the written request of the Managing Member.

(g) Quorum. At all Manager meetings, the presence of the Managing Member shall constitute a quorum for the transaction of business and, except as otherwise provided in any other provision of this Agreement with respect to the consent of the Independent Manager to Material Actions, the act of the Managing Member shall be conclusive. Any action required or permitted to be taken at any Manager meeting or of any committee thereof may be taken without a meeting if the Managing Member consents thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Managers or committee, as the case may be.

(h) Electronic Communications. Any committee designated by the Managing Member may participate in meetings of the Managers (at the discretion of the Managing Member), or of any committee, by means of telephone conference or similar communications equipment that allows all Persons participating in the meeting to hear each other, and such participation in a meeting shall constitute presence in person at the meeting. If all the participants are participating by telephone conference or similar communications equipment, the meeting shall be deemed to be held at the principal place of business of the Company.

(i) Compensation; Expenses. The Member shall have the authority to fix the compensation of the Managers and the committee members. The Managers and committee members may be paid their expenses, if any, of attendance at Manager meetings, which may be a fixed sum for attendance at each Manager meeting or a stated salary or fee as a Manager. No such payment shall preclude any Manager or committee member from serving the Company in any other capacity and receiving compensation therefor. Members of special or standing committees may be allowed like compensation for attending committee meetings.

(j) Independent Manager. As long as any Retention Financing is outstanding, the Member shall cause the Company at all times to have at least one Independent Manager who will be appointed by the Member. To the fullest extent permitted by Applicable Law, including Section 18-1101(c) of the Act, the Independent Manager shall consider only the interests of the Company, including its respective creditors, in acting or otherwise voting on the matters referred to in Sections 2.4(d) or (e). All right, power and authority of the Independent Manager shall be limited to the extent necessary to exercise those rights and perform those duties specifically set forth in this Agreement. Except as provided in the second sentence of this Section 3.1(j), in exercising their rights and performing their duties under this Agreement, any Independent Manager shall have a fiduciary duty of loyalty and care similar to that of a director of a business corporation organized under the General Corporation Law of the State of Delaware. No Independent Manager shall at any time serve as trustee in bankruptcy for any Affiliate of the Company.

(k) Resignation, Removal and Replacement of the Managing Member and/or the Independent Manager.

(i) The Managing Member or the Independent Manager may resign at any time by 30 days' prior notice to the Members; provided that, the Company shall not take any action set forth in Section 2.4(d) or (e) until a replacement Independent Manager shall have been appointed and accepted its appointment pursuant to clause (iv) below. Should the Managing Member resign who is also the Member, the Member shall continue to participate in the Company as the Member and receive its share of the Company's income, gains, losses, deductions and credits pursuant to this Agreement. Upon any resignation of the Managing Member, the Member owning the largest Percentage Interest in the Company shall assume all power and authority given to the Managing Member under this Agreement until such time as the remaining Members select a replacement Managing Member which accepts appointment as such and enters into a counterpart of this Agreement.

(ii) The Independent Manager may only be removed by the Members for Cause; provided that, the Company shall not take any action set forth in Section 2.4(d) or (e) until a replacement Independent Manager shall have been appointed and accepted its appointment pursuant to clause (iv) below. The Members may remove the Managing Member with or without cause at any time; provided that any removal of the Managing Member shall be subject to compliance with Applicable Law (including the Risk Retention Rules). Should the Managing Member be removed who is also the Member, the Member shall continue to participate in the Company as the Member and receive its share of the Company's income, gains, losses, deductions and credits pursuant to this Agreement. Upon any removal of the Manager, the Member owning the largest Series Sharing Percentages in the Company shall assume all power and authority given to the Manager under this Agreement until such time as the Majority Members select a replacement Manager in accordance with the terms hereof which accepts appointment as such and enters into a counterpart of this Agreement.

(iii) Any removal of the Managing Member or the Independent Manager shall become effective on such date as may be specified by the Members in a notice delivered to the removed Managing Member or Independent Manager, as applicable and the replacement Managing Member or Independent Manager, as applicable, designated to replace the removed Managing Member or Independent Manager, as applicable; *provided* that, the removal of the Managing Member or Independent Manager in any event shall not be effective on a date earlier than the date such notice is delivered and the replacement Managing Member or Independent Manager, as applicable, accepts such appointment. Should a Managing Member be removed who is also the Member, the Member shall continue to participate in the Company as a Member and receive its share of Distributions in accordance with Section 5.1.

(iv) Upon the resignation or removal of the Independent Manager, a replacement Independent Manager that meets the requirements of the definition of "Independent Manager" shall be nominated and appointed by the Members. Such

Independent Manager shall become the Independent Manager for all purposes in accordance herewith upon its acceptance of such appointment.

Section 3.2. [Reserved].

Section 3.3. Investment Committee. The Managing Member will appoint, and delegate and delegate authority to make investment decisions, within such parameters as may be established by the Managing Member, in respect of a CLO and the Company's assets to, an investment committee consisting of certain of the employees of the Company and subject to the general supervision and oversight of the Managing Member (the "Investment Committee").

The Investment Committee will be comprised of four members. The initial members of the Investment Committee are James Dondero, Mark Okada, Trey Parker and Hunter Covitz. All decisions of the Investment Committee must be approved by a majority of its members. The presence of two members of the Investment Committee will constitute a quorum for decision making at meetings of the Investment Committee. Any action required or permitted to be taken by the Investment Committee may be undertaken and approved at any meeting of the Investment Committee by a majority of the members of the Investment Committee present at such meeting, or may be taken by a written resolution without a meeting if a majority of the members of the Investment Committee consent thereto in writing, and the resolution is filed with the minutes of proceedings of the Investment Committee.

The Company will be able to enter into transactions, including engagement letters with respect to new warehouse and CLO transactions, collateral management agreements, credit agreements, purchase and sale agreements, risk retention letters, subscription agreements and other documentation, on the instruction of the Investment Committee but without prior approval of the Managing Member or the Members if such transactions are consistent with the authority delegated to the Investment Committee by the Managing Member pursuant to this Section 3.3.

Section 3.4. Officers.

(a) Appointment and Removal of Officers. The Managing Member may appoint such Officers of the Company as shall be deemed necessary or convenient, who shall hold such titles and exercise such powers and perform such duties as shall be determined from time to time by the Managing Member. Any Officer may be elected or removed at any time, either with or without cause, by the Managing Member, and any Officer may resign at any time effective upon written notice to the Managing Member. Each officer shall hold office until his or her successor shall be duly designated by the Managing Member or until his or her death, resignation or removal by the Managing Member. Designation of a person as an officer of the Company shall not of itself create any contract rights.

(b) Powers of Officers. Any Officer appointed pursuant to this Section 3.4 shall have the power to do any and all acts necessary or convenient to or for the furtherance of the purpose of the Company set forth in Section 2.4 and subject at all times to (i) any required approvals set

forth in this Agreement, (ii) oversight of the Managing Member, and (iii) any parameters approved by the Investment Committee.

(c) Initial Officers. The names of the initial Officers of the Company are as follows:

Name	Title
James Dondero	President
Mark Okada	Executive Vice President
Scott Ellington	Secretary
Trey Parker	Assistant Secretary
Frank Waterhouse	Treasurer

Section 3.5. Transactions with Affiliates. The Company or any CLO managed by the Company may (and the Sub-Advisor may advise the Company or such CLO to) purchase debt obligations or securities originated or syndicated by an Affiliate of the Company, Holdings, the Sub-Advisor or any Affiliate thereof, or otherwise engage in affiliated transactions, but only in accordance with the requirements of Section 206 of the Advisers Act and the policies and procedures adopted by the Company, Holdings, the Sub-Advisor and their Affiliates. If the Managing Member, the Investment Committee or any Officer of the Company shall propose that the Company engage in any transaction subject to Section 206(3) of the Advisers Act, the Company shall engage establish a conflicts review board or appoint an independent third party to act on behalf of the Company (such board or party, an "Independent Review Party") to review such transactions, which shall be required to assess the merits of any transaction that requires the consent of the Company under Section 206(3) of the Advisers Act, and which shall either grant or withhold consent to such transaction in its sole judgment. Such approval of the Independent Review Party shall constitute all necessary disclosures to and consents of a client for purposes of the Advisers Act. Each Member consents by its entry hereto to such principal trades and cross trades and to the procedures set forth herein for resolving conflicts of interest.

Section 3.6. Conflicts of Interest.

(a) Potential Conflicts of Interest. The Members acknowledge that there shall be situations in which the interests of the Members (or their partners or shareholders), a Series, or the Company, in a Portfolio Asset or otherwise, may conflict with the interests of certain Directors, the Members, the Service Providers or their Affiliates or other accounts managed thereby. Each Member agrees that the activities of certain Directors, the Members, the Service Providers and their Affiliates expressly authorized by this Agreement, the Partnership Agreement, the Sub-Advisory Agreement and the Staff and Services Agreement may be engaged in by such Directors or the Company (or its subsidiaries), as the case may be, and will not, in any case or in the aggregate, be deemed a breach of this Agreement or any duty owed by any such Person to the Company, to any Series or to the Members (or their partners or shareholders).

(b) Actual Conflicts of Interest. With respect to any transaction between the Company or any Series, on the one hand, and any Members, any Service Provider or any of their respective Affiliates (other than the Company), on the other hand, that is not contemplated by this Agreement, the Partnership Agreement, the Staff and Services Agreement or the Sub-Advisory Agreement, the Managing Member will be guided by its good faith judgment as to the best interests of the Company and each Series, and shall take such actions as are determined by them to be necessary or appropriate with respect to such conflict of interest; *provided* that the Company shall obtain the consent of the Independent Review Party to the extent required pursuant to Section 3.5. If the Managing Member, the Investment Committee or any Officer takes an action in respect of a matter giving rise to a conflict of interest, neither the Managing Member, the Investment Committee or such Officer, nor any of such Person's respective Affiliates, shall have any liability to the Company or relevant Series or the Members for actions in respect of such matter to the extent such action is taken in good faith and not in violation of the terms of this Agreement.

Section 3.7. Exculpation and Indemnification.

(a) Standard of Care. Except as otherwise expressly provided herein, each Covered Person shall discharge its duties under this Agreement in the interests of the Members and the Company, and shall do so with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. To the extent not inconsistent with the foregoing, each Covered Person shall follow its customary standards, policies and procedures in performing its duties hereunder. No Covered Person shall deal with the income or assets of the Company in such Covered Person's own interest or for its own account. Each Covered Person in its respective sole and absolute discretion may separately engage or invest in any other business ventures, including those that may be in competition with the Company, and neither the Company nor any Member will have any rights in or to such ventures or the income or profits derived therefrom.

(b) Exculpation.

(i) The Covered Persons and, with the approval of the Managing Member, any agent of any of a Covered Person (including their respective executors, heirs, assigns, successors or other legal representatives) (each an "Indemnified Person") is not liable to the Company or to any of the Members for any loss or consequential, incidental, exemplary, punitive, special, or indirect damage occasioned by any acts or omissions in the performance of services under this Agreement, or otherwise in connection with the Company, its Investments or operations, unless such loss or damage has occurred by reason of the willful misconduct, bad faith or gross negligence of such Indemnified Person or as otherwise required by law; provided that nothing in this Agreement is to be construed as waiving any legal rights or remedies which the Company may have under state or federal securities laws. Notwithstanding anything in this Agreement to the contrary, no Indemnified Person will be liable for any consequential, incidental, exemplary, punitive, special, or indirect damages, whether or not the likelihood of such damages was known by such Indemnified Person. Notwithstanding any applicable provision of law or equity, to

the maximum extent permitted by the Act, an Indemnified Person will owe no duties (including fiduciary duties) to the Company or the Members; provided, however, that an Indemnified Person will have the duty to act in accordance with the implied contractual covenant of good faith and fair dealing.

(ii) The Company (but not the Members individually) must indemnify each Indemnified Person to the fullest extent permitted by law against any cost, expense (including reasonable attorneys' fees), judgment or liability incurred by or imposed upon it in connection with any action, suit or proceeding (including any proceeding before any judicial, administrative or legislative body or agency) to which it may be made a party or otherwise be involved or with which it may be threatened by reason of being or having been Managing Member or its having provided services to the Company; provided that the Indemnified Person is not so indemnified to the extent such cost, expense, judgment or liability has been finally determined (i) in a final, non-appealable decision on the merits in any such action, suit or proceeding, or (ii) on a plea of nolo contendere, to have been incurred or suffered by the Indemnified Person solely by reason of the willful misconduct, bad faith or gross negligence by the Indemnified Person.

(iii) The right to indemnification granted by this Section 3.7 is in addition to any rights to which the Indemnified Person may otherwise be entitled and inures to the benefit of the successors or assigns of such Indemnified Person. The Company must pay the expenses incurred by the Indemnified Person in defending a civil or criminal action, suit or proceeding in advance of the final disposition of such action, suit or proceeding, upon receipt of an undertaking by the Indemnified Person to repay such payment if there is an adjudication or determination that it is not entitled to indemnification as provided herein.

(iv) In any suit brought by the Indemnified Person to enforce a right to indemnification hereunder, it is a defense that the Indemnified Person or other Person claiming a right to indemnification hereunder has not met the applicable standard of conduct set forth in Section 3.7(a) or under applicable law. In addition, in any suit in the name of the Company to recover expenses advanced pursuant to the terms of an undertaking, the Company is entitled to recover such expenses upon a final adjudication that the Indemnified Person or other Person claiming a right to indemnification hereunder has not met the applicable standard of conduct set forth in Section 3.7(a). In any such suit brought to enforce a right to indemnification or to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the Indemnified Person or other Person claiming a right to indemnification is not entitled to be indemnified, or to an advancement of expenses, hereunder is on the Company (or any Member acting derivatively or otherwise on behalf of the Company or the Members) unless otherwise required by Applicable Law.

(v) Each Indemnified Person may not satisfy any right of indemnity or reimbursement granted in this Section 3.7 or to which it may be otherwise entitled except out of the assets of the Company, and no Member will be personally liable with respect to any such claim for indemnity or reimbursement. The Managing Member may obtain

appropriate insurance on behalf, and at the expense, of the Company to secure the Company's obligations hereunder.

(vi) Nothing in this Agreement is to be construed as to provide for the indemnification of an Indemnified Person for any liability (including liability under U.S. federal securities laws) to the extent that such indemnification would be in violation of applicable law but is to be construed so as to effectuate this Section 3.7 to the fullest extent permitted by law.

(vii) Each Indemnified Person is deemed a third-party beneficiary (to the extent not a direct party hereto) of this Agreement and, in particular, the provisions of this Section 3.7. The Managing Member may enter into agreements on behalf of the Company with an Indemnified Person to provide an indemnity to the same extent provided in this Section 3.7.

(c) Limits on Indemnification. Notwithstanding any provision of this Agreement to the contrary, the provisions of Section 3.7(b) shall not be construed so as to provide for the indemnification of any Covered Person for any liability (including liability under Federal securities laws which, under certain circumstances, impose liability even on persons that act in good faith), to the extent (but only to the extent) that such indemnification would be in violation of applicable law, but shall be construed so as to effectuate the provisions of Section 3.7(b) to the fullest extent permitted by law.

(d) Other Sources of Recovery, etc. The indemnification rights set forth in Section 3.7(b) are in addition to, and shall not exclude, limit or otherwise adversely affect, any other indemnification or similar rights to which any Covered Person may be entitled. If and to the extent that other sources of recovery (including proceeds of any applicable policies of insurance or indemnification from any Person in which any of the CLOs has an investment) are available to any Covered Person, such Covered Person shall use reasonable efforts to obtain recovery from such other sources before the Company shall be required to make any payment in respect of its indemnification obligations hereunder, *provided* that if such other recovery is not available without delay, the Covered Person shall be entitled to such payment by the Company and the Company shall be entitled to reimbursement out of such other recovery when and if obtained.

(e) Rights of Heirs, Successors and Assigns. The indemnification rights provided by this Section 3.7 shall inure to the benefit of the heirs, executors, administrators, successors and assigns of each Covered Person.

(f) Reliance. A Covered Person shall incur no liability to the Company or any Member in acting upon any signature or writing reasonably believed by him, her or it to be genuine, and may rely in good faith on a certificate signed by an officer of any Person in order to ascertain any fact with respect to such Person or within such Person's knowledge. Each Covered Person may act directly or through his, her or its agents or attorneys.

Section 3.8. Admission of Members. Holdings is hereby admitted on the date hereof as a Member with respect to the Management Series, the EU Originator Series and the Risk Retention Series. Any other Members may be admitted only with the unanimous consent of each of the Directors.

ARTICLE 4

CAPITAL COMMITMENTS; CAPITAL CONTRIBUTIONS; CAPITAL ACCOUNTS

Section 4.1. Capital Commitments. Each Member shall make a Capital Commitment to one or more Series with respect to which it is a Member concurrently with, and in like amount to, the commitment by each limited partner of such Member (including, for the avoidance of doubt, with any Investor making a capital commitment to Holdings). For the avoidance of doubt, a Member's Capital Commitment may consist of a single aggregate commitment to multiple Series, which may be drawn by any such Series as set forth herein.

Section 4.2. Capital Contributions. Each Member shall make a Capital Contribution to one or more Series with respect to which it is a Member concurrently with, and in like amount of cash and/or Value of other property to, each capital contribution by each limited partner of such Member, in the aggregate amount of cash and/or Value of other property of the Member's Capital Commitment in respect of such Series; provided, that in no event shall any Member be required to make a Capital Contribution to a Series at any time in an amount in excess of its Available Commitment with respect to such Series at such time; provided that any Member shall have the right to increase its Available Commitment upon written notice to the Company. If the Capital Contribution includes property other than cash, the Managing Member shall determine the Value thereof as of the date of such Capital Contributions

Section 4.3. Capital Calls. The Capital Contributions of each Member in respect of any Series shall be made in connection with an Investment Purpose (each a "Drawdown"), subject to the following terms and conditions:

(a) In order to request that the Members make a Capital Contribution, the Managing Member shall deliver a written notice (the "Drawdown Notice") to the Members setting forth:

(i) the aggregate amount in cash and/or Value of other property requested to be contributed by each Member to each applicable Series, which amount shall not exceed such Member's Available Commitment to such Series;

(ii) the date by which such Capital Contribution must be made (the "Drawdown Date"), which shall be no earlier than ten (10) days following receipt of a Drawdown Notice by the Member, unless agreed otherwise by such Member;

(iii) a description of the purpose of the Capital Contribution, which shall be an Investment Purpose; and

(iv) the bank account or collateral account, as applicable, to which such Drawdown is to be paid or contributed.

Notwithstanding the foregoing, at any time that Holdings is the only Member, to the extent that Holdings has provided a Drawdown Notice (as defined in the Partnership Agreement) directing the Investors to make Capital Contributions (as defined in the Partnership Agreement) to be funded or contributed directly to an account of the Company, and such notice includes the information described in this Section 4.3(a), such notice shall constitute a Drawdown Notice for all purposes hereunder and no further Drawdown Notice shall be necessary in order to comply with the requirements of this Section 4.3(a).

(b) Each applicable Member shall contribute to the applicable Series, (x) by wire transfer of immediately available funds, in each case in U.S. Dollars, or (y) contribution of other property to such account or accounts as shall be designated in the Drawdown Notice for such Drawdown on or prior to the Drawdown Date as specified in such Drawdown Notice, the lesser of (i) such Member's Available Commitment for such Series, and (ii) the U.S. Dollar amount or Value of property specified for such Member in such Drawdown Notice.

(c) The Managing Member shall make any adjustments it determines appropriate to Capital Commitments, Available Commitments and Capital Contributions to reflect the provisions of this Section 4.3 on the Company's books and records.

Section 4.4. Capital Accounts. Each Series is intended to be treated for U.S. federal income tax purposes as set forth on Exhibit A. For any period during which a Series or the Company is treated as a partnership for U.S. federal income tax purposes, there shall be established on the books and records of the Company an account (a "Capital Account") for each Member in respect of its interest in each Series in which it holds an Interest.

Section 4.5. Adjustment to Capital Accounts. Where applicable, the balance in a Member's Capital Account with respect to a Series shall be adjusted by (a) increasing such balance by such Member's allocable share of net profit (allocated in accordance with Section 4.6) with respect to such Series and the Capital Contributions, if any, made by such Member in respect of such Series and (b) decreasing such balance by (i) the amount of cash or the fair market value of other property distributed to such Member in respect of such Series pursuant to this Agreement and (ii) such Member's allocable share of net loss in respect of such Series (allocated in accordance with Section 4.6). Where applicable, each Member's Capital Account shall be further adjusted with respect to any special allocations or adjustments pursuant to this Agreement.

Section 4.6. Allocation of Profits and Losses. For any period during which a Series or the Company is treated as a partnership for U.S. federal income tax purposes, the Company's or any Series' net profit and net loss, as applicable, shall be allocated to the Members in a manner that as closely as possible gives economic effect to the provisions of Article 5 and the other relevant provisions of this Agreement.

Section 4.7. Recycling. The Company may retain and reinvest proceeds from Portfolio Assets constituting a return of capital contributions used to acquire or fund such Portfolio Assets for any Investment Purpose. In addition, any amounts constituting a return of Capital Contributions distributed to Members will be added to unfunded Capital Commitments and will be available to be drawn down again.

ARTICLE 5

DISTRIBUTIONS

Section 5.1. Distributions.

(a) General. Distributable Amounts with respect to each Series shall be made among the Members with regard to each Series in proportion to their respective Series Sharing Percentages. The Company shall calculate Distributable Amounts on each Calculation Date. The Company shall distribute Distributable Amounts to the Members of each such Series as soon as reasonably practicable thereafter.

(b) Allocation of Expenses. In the event that the Company or a Series incurs any cost, expense or liability, including expenses related to indemnification not paid or reserved for as described in the definitions of Company Expenses and Designated Reserves ("Expenses"), the Company will allocate such Expenses to each Series as determined by the Managing Member to be fair and equitable in their sole discretion, *provided* that any Expenses determined by the Managing Member in their sole discretion to be solely related to a Series will be allocated solely to the Member or Members of such Series based on each Member's respective Series Sharing Percentage with respect to such Series, unless the Managing Member determines that another allocation is fair and equitable.

(c) Company Expenses.

(i) The Company shall pay such the Company Expenses, and shall reimburse the Sub-Advisor, the Staff and Services Provider and any other service provider and its respective affiliates for any Company Expenses incurred by them; *provided* that any such Company Expenses shall be deferred for so long as and to the extent necessary to satisfy any due and unpaid obligations of the EU Originator Series with any such deferred Company Expenses accruing interest at the Prime Rate. The Managing Member may also cause the Company to make capital contributions or advances to any subsidiary thereof relating to the operating costs and expenses of such subsidiary.

(ii) In the event that any Company Expenses are incurred with respect to the Company or a subsidiary thereof and clients for whom the Sub-Advisor, the Staff and Services Provider, any other service provider and their respective Affiliates are providing investment advisory services, the Sub-Advisor, the Staff and Services Provider, such other service provider and such Affiliates will allocate such costs across the entities benefitting therefrom on such basis as they determine to be fair and equitable. The Sub-Advisor, the

Staff and Services Provider, such other service providers and their respective Affiliates will be entitled to reimbursement to the extent they advance or otherwise pay for Company Expenses.

Section 5.2. General Limitation on Distributions. Notwithstanding anything to the contrary contained herein, the Company, and the Managing Member on behalf of the Company, shall not make a distribution to any Member on account of the Interest of such Member if such distribution would violate the Act or other Applicable Law.

Section 5.3. Withholding Taxes. In the event that any withholding tax is imposed on distributions or allocations of income to the Member, the Managing Member shall deduct any pay over amounts necessary to satisfy such applicable withholding taxes and the Company shall not be obligated to pay any additional amounts to the Member in respect thereof. For the avoidance of doubt, amounts of tax credits received by the Company and amounts withheld for taxes shall be treated as distributions for the purposes of the calculations set forth in this Article 5.

ARTICLE 6

CERTAIN TAX MATTERS

Section 6.1. Tax Elections. Any election required to be made by the Company or any Series under the Code shall be made by the Managing Member. Tax elections by any Series will be set forth in Exhibit A. Any election permitted to be made by the Company or a Series under the Code may be made only by Managing Member, whose decision with respect thereto shall be final.

Section 6.2. Withholding. Notwithstanding any other provision of this Agreement, the Managing Member is authorized to withhold and to pay over, or otherwise pay, any withholding or other taxes payable by the Company or any of its Affiliates (pursuant to the Code or any provision of U.S. federal, state or local or non-U.S. tax law).

ARTICLE 7

TRANSFERS; RESIGNATION OF MEMBERS

Section 7.1. Transfers.

(a) General. No Member shall cause or permit the transfer, sale, assignment, pledge or other disposition (each, a "Transfer") of all or part of the Company Interest of such Member unless (i) such Member and the related transferee provides such documents, certificates and opinions of counsel as may be requested by the Managing Member and (ii) the prior written consent of the Managing Member has been obtained, which shall not be unreasonably withheld.

(b) Additional Requirements and Conditions. Notwithstanding anything to the contrary contained herein, no Member may Transfer its Company Interest without providing to the

Managing Member an opinion, in form and substance reasonably satisfactory to the Managing Member, of legal counsel either chosen by or reasonably satisfactory to the Managing Member and such other evidence as the Managing Member may reasonably require, that the Transfer would not (unless waived by the Managing Member): (i) result in a violation of, or non-compliance with, the Risk Retention Rules; (ii) require registration of the Company Interest under the Securities Act, or any state securities law; (iii) require the Company or any Series to register as an investment company under the Investment Company Act; (iv) require any Series, the Managing Member or any Affiliate thereof to register as an investment adviser under the Advisers Act; (v) or cause the Company or any Series that is not intended to be treated as an entity taxable as a corporation for U.S. federal income tax purposes to be taxable as a corporation under the "publicly traded partnership" rules of Code Section 7704.

(c) Satisfactory Written Transfer Required. Notwithstanding anything to the contrary contained herein, the Company shall be entitled to continue to treat the transferor of a Company Interest in any Series and the assignor of an interest or rights attributable to such Company Interest as the absolute owner thereof in all respects, and, to the fullest extent permitted by Applicable Law, shall incur no liability for distributions made in good faith to it, until such time as a written assignment that conforms to the requirements of this Section 7.1 has been received by and recorded on the books of the relevant Series.

(d) Purported Transfers. Any purported Transfer of Company Interests or other interests or rights attributable to such Company Interests which is not in compliance with this Agreement shall be null and void and of no force and effect whatsoever.

Section 7.2. Resignation of Members. No Member may resign or withdraw from the Company or any Series of the Company, or demand a return of all or any portion of its Capital Contribution in respect of the Company or any Series of the Company, except pursuant to an amendment to this Agreement signed by the Managing Member. The effectiveness of such amendment shall, as to the Member designated as a resigning or withdrawing Member in such amendment, constitute the resignation and withdrawal of such Member as a Member of the Company. No Member may be removed as a Member of the Company without the written consent of such Member and the Managing Member.

Section 7.3. Compulsory Withdrawals.

Unless otherwise required by Applicable Law or as set forth in the succeeding sentence, the Company shall not have the right to redeem all or a portion of any Member's Company Interest in a Series or otherwise without the consent of such Member. Subject to compliance with the Risk Retention Rules, the Managing Member, by notice to any Member, may require the Company Interests of such Member to be compulsorily withdrawn in part or in whole from any Series effective on any date designated by the Managing Member, in the event the Managing Member determines or has reason to believe that:

(a) such Member has Transferred or attempted to Transfer any portion of its Company Interests in violation of this Agreement, or any beneficial owner of such Member has Transferred

or attempted to Transfer any portion of its Holdings Interest in violation of the applicable Partnership Agreement;

(b) continued ownership of such Company Interests by such Member, or continued ownership of Holdings Interests in an amount corresponding to such Company Interests, may subject the Company, any Series, the Managing Member or such Member to regulatory, pecuniary, legal or material administrative disadvantage;

(c) such Member: (A) has filed a voluntary petition in bankruptcy; (B) has been adjudicated bankrupt or insolvent, or has had entered against it an order for relief, in any bankruptcy or insolvency proceeding; (C) has filed a petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation; (D) has filed an answer or other pleading admitting or failing to contest the material allegations of a petition filed against him or her in any proceeding of this nature; or (E) has sought, consented to or acquiesced in the appointment of a trustee, receiver or liquidator of such Member or of all or any substantial part of such Member's properties;

(d) any of the representations or warranties made by such Member in connection with the acquisition of a Company Interest, or by an Investor with regard to Holdings in connection with the acquisition of Holdings Interest (or by a limited partner with regard to a Member other than Holdings in connection with the acquisition of a limited partnership interest in such Member), were not true when made or have ceased to be true or such Member has otherwise breached an agreement with the Company; or

(e) the Company Interest has vested in any other Person by reason of the bankruptcy, dissolution or liquidation of such Member.

ARTICLE 8

DISSOLUTION

Section 8.1. Dissolution.

(a) The Company shall dissolve, and its affairs shall be wound up, upon the first to occur of the following: (a) the end of the Term, (b) the written consent of the Managing Member, (c) at any time that there is no member of the Company, unless the Company is continued pursuant to the Act, or (d) the entry of a decree of judicial dissolution under section 18-802 of the Act.

(b) A Series shall be terminated, and its affairs wound up in accordance with the Act, upon (i) the dissolution of the Company, (ii) written consent of the Managing Member to terminate a Series, or (iii) the entry of a decree of judicial termination under Section 18-215 of the Act. The termination and winding up of a Series shall not, in it of itself, cause a dissolution of the Company or the termination of any other Series. The termination of a Series shall not affect the limitation on liabilities of such Series or any other Series provided by this Agreement and the Act.

Section 8.2. Allocations. Upon dissolution of the Company, final allocations of all items of income and loss shall be made in accordance with Section 4.6. Distributions will first be made to discharge, to the extent required by any lender to or other creditor of the Company, debts and obligations of the Company (including, if applicable, any Sub-Advisory Fee or Staff and Services Fee) and compensation then owing to any Company Officers or employees. Thereafter, distributions will be made to fund reserves for contingent or unforeseen liabilities of the Company (to the extent deemed reasonable by the Managing Member), prior to any distributions to the Members. After payment or provision for payment of all liabilities of the Company and establishments of reserves in accordance with the immediately preceding sentence, the remaining assets, if any, shall be distributed in accordance with Article 5.

Section 8.3. Form of Distributions. Prior to the liquidation of the Company, the Company shall use commercially reasonable efforts to make all distributions in cash. Upon liquidation of the Company, distributions may be made in cash and/or may be made in any kind of all assets; *provided* that, in the sole discretion of the Managing Member or when otherwise required by law or contract, the Company may continue to hold illiquid assets until the Company has received all amounts reasonably expected by the Managing Member to be received thereon. Any assets distributed in-kind will be valued by the Investment Committee in accordance with the Company's valuation policies. Additionally, to the extent the General Partner has in its sole discretion offered the option to one or more Investors to take assets in-kind in connection with any dissolution or winding up of Holdings, the Managing Member may allow for such assets to be transferred, provided such transfer is made in accordance with any Applicable Law and contract and does not cause the Company, Holdings, the General Partner, the Managing Member or any of their respective affiliates to breach any Applicable Law or contract.

ARTICLE 9

SERIES

Section 9.1. Series. The Company, in the discretion of the Managing Member, may create and terminate one or more Series of Interests from time to time, which the Managing Member shall reflect on the attached Exhibit A as such Exhibit A may be amended from time to time. The Managing Member may delegate any of the activities in Section 2.4 with respect to any Series to one or more other persons or entities in the Managing Member' discretion. With respect to any Series established by the Company, the following provisions shall apply:

(a) any contracts and agreements of any kind or nature (including any agreement entered into with respect to a CLO, a Retention Interest, a Preferred Return Note or a service provider, but excluding this Agreement) or other business transacted by or on behalf of the Company shall be done solely in the name of the Company and without reference to the specific Series, except as required or otherwise determined by the Managing Member to be necessary in order to comply, or as may be required by a contractual counterparty to comply, with any Applicable Law;

(b) separate and distinct records shall be maintained for each Series, and the assets associated with any such Series shall be held and accounted for separately from the other assets of the Company or any other Series;

(c) each Series shall be allocated the profits, losses, and expenses in accordance with Exhibit A and as shall be reasonably attributable to the activities or Portfolio Assets of such Series, and the Managing Member, in its sole discretion, shall otherwise have authority to restrict allocations or transfers of Capital Contributions to or from any Series;

(d) to the fullest extent permitted by law, notwithstanding Section 18-215 of the Act, the failure of a Series to have any Member associated with it shall not in and of itself be the basis for the termination of such Series and the winding up of its affairs unless so determined by the Managing Member; and

(e) any debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to a Series shall be enforceable against the assets of such Series only, and not against the assets of the Company generally, or any other Series, except as otherwise provided in Section 9.3 herein.

All assets, income, proceeds, payments, liabilities and other obligations that are not allocated to or readily identifiable as belonging to or being attributable to a particular Series, including administrative costs and expenses of the Company as a whole, shall be allocated to such Series by the Managing Member in such manner as is deemed fair and equitable, subject to the provisions of this Agreement. Each such allocation by the Managing Member shall be conclusive and binding on all Members of all Series, for all purposes.

Section 9.2. Allocations Among Series. The Managing Member shall allocate all income and Company Expenses among the Series in a manner consistent with this Agreement and the purposes and powers of each Series as set forth on Exhibit A. In the event the Managing Member creates additional Series, the assets and liabilities of the Company shall be allocated among each Series as follows:

(a) Capital Contributions and withdrawals shall be allocated to the Series designated by the Managing Member;

(b) net profits and net losses (and items thereof) shall be allocated to the Series that generated such net profits or net losses, if applicable;

(c) any other asset or liability shall be allocated by the Managing Member to or among the Series to which it relates in the judgment of the Managing Member or if, in the judgment of the Managing Member, such asset or liability relates to the Company as a whole, to the Company to be borne among the Series in such manner as determined by the Managing Member to be fair and equitable.

The good faith determinations by the Managing Member pursuant to this Section 9.2 shall be conclusive and binding as to all Managing Member, regardless of any interest in and determination by the Managing Member or any related party as a Managing Member.

Section 9.3. Joint Liability. The undersigned agree that notwithstanding Section 18-215 of the Act or Section 9.1(e) of this Agreement, the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to the Company and each Series shall be enforceable against the Company generally, including each or any Series thereof.

ARTICLE 10

ACCOUNTS AND REPORTS

Section 10.1. Books of Account; Access. The Managing Member shall maintain complete and accurate books of account of the affairs of the Company and each Series at the Company's principal office, including a list of the name and address of each Member, the aggregate amount of Capital Contributions made by each Member with respect to each Series, and the amount of distributions received by each Member from each Series. The Company shall maintain a system of accounting established and administered in accordance with GAAP and shall set aside on the books of the Company and each Series or otherwise record all such proper reserves as shall be required by GAAP. The Members shall have the right to inspect the books and records of the Company or any Series at any reasonable time upon advance request to the Managing Member for a purpose reasonably related to their status as Members.

Section 10.2. Independent Accountants. After the end of each fiscal year, the Managing Member shall cause an audit of the Company's financial statements for such fiscal year to be made in accordance with U.S. generally accepted accounting principles by a firm of nationally recognized independent public accountants (the "Independent Accountants") selected by the Managing Member.

Section 10.3. Reports to the Member.

(a) Annual Reporting. As soon as reasonably practicable but no later than one hundred and twenty (120) days after the close of each Fiscal Year, there shall be prepared and distributed: (x) to each Member the following financial statements: (i) a balance sheet of each Series as at the end of such Fiscal Year; (ii) a statement of profit and loss of each Series for such Fiscal Year; and (iii) a statement of cash flows of each Series for such Fiscal Year, all audited by the Independent Accountants; and (y) such information (including, if applicable, IRS Forms K-1 or Forms 1099) as is necessary or reasonably requested by any Member for such Member or its direct or indirect equity holders to prepare and file any tax returns required to be filed by them or regulatory filings required to be made by them.

(b) Quarterly Reporting. Within 60 days after the end of each fiscal quarter, the Company shall distribute to each Member unaudited financial reports for each Series.

(c) Reports on Investments. In connection with each annual and quarterly report, the Company shall provide each Member with a report identifying each Investment owned directly or indirectly by each Series held by such Member. The Company may provide additional reports from time to time as directed by the Managing Member.

Section 10.4. Confidentiality.

(a) Each Member agrees to keep confidential, and not to make any use of (other than for purposes reasonably related to its Interest or for purposes of filing such Member's tax returns) or disclose to any Person, any information or matter relating to the Company and its affairs and any information or matter related to any Investment (other than disclosure to such Member's directors, employees, agents, advisors, or representatives responsible for matters relating to the Company or to any other Person approved in writing by the Managing Member (each such Person being hereinafter referred to as an "Authorized Representative")); provided that

(i) such Member and its Authorized Representatives may make such disclosure to the extent that (A) the information to be disclosed is publicly available at the time of proposed disclosure by such Member or Authorized Representative, (B) the information otherwise is or becomes legally available to such Member other than through disclosure by the Company or the Managing Member, or (C) such disclosure is required by law or in response to any governmental agency request or in connection with an examination by any regulatory authorities or association; provided that such governmental agency, regulatory authorities or association is aware of the confidential nature of the information disclosed;

(ii) such Member and its Authorized Representatives may make such disclosure to its beneficial owners to the extent required under the terms of its arrangements with such beneficial owners; and

(iii) each Member will be permitted, after written notice to the Managing Member, to correct any false or misleading information which becomes public concerning such Member's relationship to the Company or the Managing Member. Prior to making any disclosure required by law, each Member must use its best efforts to notify the Managing Member of such disclosure.

Prior to any disclosure to any Authorized Representative or beneficial owner, each Member must advise such Authorized Representative or beneficial owner of the obligations set forth in this Section 7.6(a) and each such Authorized Representative or beneficial owner must agree to be bound by such obligations.

(b) The Managing Member may keep confidential from the Members, for such period of time as the Managing Member deems reasonable, any information, including the identity of the Members or information regarding the Members or Investments, which the Managing Member reasonably believes to be in the nature of trade secrets or other information the disclosure of which the Managing Member believes is not in the best interests of the Company or could damage the

Company or its business or which the Company is required by law or agreement with a third party to keep confidential.

(c) Subject to applicable legal, fiscal and regulatory considerations, the Managing Member will use reasonable efforts to keep confidential any information relating to a Member obtained by the Managing Member in connection with or arising out of the Company which the Member requests to be kept confidential.

(d) Notwithstanding the provisions of this Section 7.6, Members (and their employees, representatives and other agents) may disclose to any and all Persons, without limitation of any kind, the tax treatment and tax structure of the Company and its transactions and all materials of any kind (including tax opinions or other tax analyses) that are provided to such Person by, or on behalf of the Company. For this purpose, "tax treatment" is the purported or claimed U.S. federal income tax treatment of a transaction and "tax structure" is limited to any fact that may be relevant to understanding the purported or claimed U.S. federal income tax treatment of a transaction. For this purpose, the names of the Company, the Members, their Affiliates, the names of their Members, members or equity holders and the representatives, agents and tax advisors of any of the foregoing are not items of tax treatment or tax structure.

(e) The Managing Member may disclose to prospective investors such information relating to the Company or the Investments as it believes in good faith will benefit the Company and facilitate investment in the Company by such prospective investors.

(f) The Service Providers and any other Person acting as a service provider to the Company has the right to access all information belonging to the Company.

ARTICLE 11

MISCELLANEOUS

Section 11.1. Amendment.

Subject to Sections 2.4(h) and 3.1(c), this Agreement may be modified or amended at any time and from time to time by a written instrument signed by each of the Members with the written consent of the Managing Member.

In addition, this Agreement may be modified or amended at any time and from time to time by a written instrument signed by Holdings, acting at the direction of the General Partner, to do each of the following:

(i) reflect a change in the name of the Company or the principal place of business or the registered office of the Company;

(ii) reflect or facilitate the admission, substitution or withdrawal of Investors from Holdings or Members in accordance with the Business Documents;

(iii) make any change to the provisions relating to the Sub-Advisory Fee or the Staff and Services Fee, so long as such amendment does not increase the amount thereof to a rate higher than the rate to which any Member is currently subject;

(iv) make any change that is necessary or, in the opinion of the General Partner, advisable to qualify the Company as a series limited liability company or to ensure that the Company has limited liability under any Applicable Laws, or to ensure that none of Holdings or any Series intending to be taxed as a partnership for U.S. federal income tax purposes will be treated as an association taxable as a corporation or as a publicly traded partnership taxable as a corporation for U.S. federal income tax purposes;

(v) make any change that, in the opinion of the General Partner, does not adversely affect the Investors in any material respect;

(vi) make any change that is necessary or desirable to cure any ambiguity, to correct or supplement any provision in this Agreement that would be inconsistent with any other provision in the other Business Documents, or to make any other provision with respect to matters or questions arising under this Agreement and the other Business Documents that will not be inconsistent with the provisions of the other Business Documents, as applicable;

(vii) correct any printing, stenographic or clerical error or effect changes of an administrative or ministerial nature;

(viii) make any change (including to the Managing Member, subject to clause (xiii) below, or that affects the tax treatment of any Company) that in sole discretion of the General Partner is necessary or advisable to enable any Company to comply, or to facilitate their compliance, with any Applicable Laws, including to address any changes thereto;

(ix) prevent the Company, Holdings or the General Partner from in any manner being deemed an "investment company" subject to the provisions of the Investment Company Act;

(x) make any change that the General Partner believes is of an inconsequential nature;

(xi) make any change that adds to the duties or obligations of the General Partner;

(xii) make any change that the General Partner believes benefits the Investors, as a whole;

(xiii) make any change in the number of the Directors on the Managing Member;

(xiv) make any change to facilitate the organization or operation of any feeder fund;

(xv) make any change to a Holdings Interest held by a feeder fund so long as such adjustment does not adversely affect the Holdings Interest of any other Investor; or

(xvi) make any other change incidental or similar in nature to the foregoing.

Section 11.2. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall together constitute one and the same instrument.

Section 11.3. Governing Law. THIS AGREEMENT SHALL BE GOVERNED IN ALL RESPECTS, INCLUDING AS TO VALIDITY, INTERPRETATION AND EFFECT, BY THE INTERNAL LAWS OF THE STATE OF DELAWARE, WITHOUT GIVING EFFECT TO THE CONFLICT OF LAWS RULES THEREOF.

Section 11.4. Waiver of Partition. The Managing Member hereby agrees that the Company assets are not and will not be suitable for partition. Accordingly, the Managing Member hereby irrevocably waives any and all rights (if any) that any Member may have to maintain any action for partition of any of such assets.

Section 11.5. Waiver of Trial by Jury. TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY HERETO, AND EACH MEMBER OF THE COMPANY BY ACCEPTING THE BENEFITS OF ITS COMPANY INTEREST, HEREBY IRREVOCABLY WAIVES ALL RIGHT OF TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTER-CLAIM, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY MATTER ARISING HEREUNDER.

Section 11.6. No Political Contributions. No money or property of the Company shall be paid, used or offered (a) to aid any political party, committee or organization, or any other entity organized for political purposes; (b) to aid any candidate for political office, or in connection with any election (including any referendum or proposed constitutional amendment) or for any political purpose whatever; or (c) for lobbying in connection with legislation or regulations.

Section 11.7. Compliance with Laws; Disclosure. The Managing Member may disclose information concerning the Company or the Members to the extent necessary to comply with Applicable Laws and regulations or policies, including any anti-money laundering or anti-terrorist laws or regulations or policies related thereto. Each Member hereby agrees to provide the Managing Member, promptly upon request, all information that the Managing Member reasonably deems necessary to enable the Company and the Managing Member to comply with Applicable Laws and regulations or policies.

Section 11.8. Compliance with Anti-Money Laundering Requirements. Notwithstanding any other provision of this Agreement to the contrary, the Managing Member (on behalf of itself and on behalf of the Company) is authorized, without the consent of any Person, including any Member, to take such action as it determines in its discretion to be necessary or advisable to

comply, or to cause the Company to comply, with any anti-money laundering or anti-terrorist laws, rules, regulations, directives or special measures.

Section 11.9. Construction.

(a) Captions. The captions used herein are intended for convenience of reference only, and shall not modify or affect in any manner the meaning or interpretation of any of the provisions of this Agreement.

(b) Certain Terms. As used herein, the singular shall include the plural, the masculine gender shall include the feminine and neuter, and the neuter gender shall include the masculine and feminine, unless the context otherwise requires. The words "hereof," "herein" and "hereunder," and words of similar import, when used in this Agreement, shall refer to this Agreement as a whole and not to any particular provision of this Agreement. All references herein to Articles or Sections shall be deemed to refer to Articles and Sections of this Agreement, unless specified to the contrary. All references in this Agreement to "include" or "including" or similar expressions shall be deemed to mean "including without limitation."

(c) Discretion, etc. To the fullest extent permitted by Applicable Law and notwithstanding any other provision of this Agreement (other than the final sentence of this Section 11.9(c)) or in any other agreement contemplated herein or applicable provisions of law or equity or otherwise, whenever in this Agreement the Managing Member is permitted or required to make a decision in its "sole discretion" or "discretion" or under a grant of similar authority or latitude, the Managing Member shall be entitled to consider only such interests and factors as it desires, including its own interests, and shall have no duty or obligation to give any consideration to any interest of or factors affecting the Company or any other Person, but in all events shall act in good faith. If any questions should arise with respect to the operation of the Company that are not specifically provided for in this Agreement or the Act, or with respect to the interpretation of this Agreement, the Managing Member is hereby authorized to make a final, good faith determination with respect to any such question, and its determination and interpretation so made shall be final and binding on all parties, absent manifest error. Notwithstanding any other provision of this Agreement, including the preceding provisions of this Section 11.9(c), the Managing Member shall comply with the implied contractual covenant of good faith and fair dealing.

Section 11.10. Severability. If any one or more of the provisions contained in this Agreement, or any application thereof, shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and all other applications thereof shall not in any way be affected or impaired thereby.

Section 11.11. Member Giveback. The Managing Member may at any time require any current and/or former Member to return distributions to satisfy the obligations and liabilities of the Company (including indemnification obligations) (i) if the Company does not have sufficient assets to discharge such obligations or (ii) as required by Applicable Law or contract. To the maximum extent permitted by Applicable Law, the Members' giveback obligation shall survive the dissolution, winding up and termination of the Company.

[*The remainder of this page is intentionally left blank*]

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, have duly executed this Agreement as of the date first above written.

MEMBERS:

HIGHLAND CLO MANAGEMENT HOLDINGS, L.P.

By: Highland CLO Management GP, LLC,
its General Partner

By: Highland HCF Advisor, Ltd.,
its Managing Member

By: _____
Name: James Dondero
Title: President

HIGHLAND CLO INTERMEDIATE HOLDINGS I, LLC

By: Highland HCF Advisor, Ltd.,
its Managing Member

By: _____
Name: James Dondero
Title: President

Exhibit A

This Exhibit A outlines the intended treatment of each Series of the Company for U.S. federal income tax purposes. The Company will consist of three Series: (i) the Management Series; (ii) the EU Originator Series; and (iii) the Risk Retention Series. All activities of the Company and all assets, liabilities, income, gain, loss, deductions, credits, costs, and expenses of the Company shall be allocated among the Series as outlined below.

Management Series

All services to be performed by the Company shall be performed by Management Series and any employees of the Company shall be employed only by Management Series. Upon formation and until the effective date of the election described in the next succeeding sentence, the Management Series is intended to be treated as a partnership, if it has more than one equity owner, or disregarded, if it has a single equity owner, for U.S. federal income tax purposes. Upon the request of the General Partner, the Management Series shall file a timely election on IRS Form 8832 electing to be treated as an association taxable as a corporation. During any period for which the Management Series has elected to be treated as an association taxable as a corporation, any asset that is expected to cause an equity owner in a Series to be treated as engaged in a trade or business for U.S. federal income tax purposes and is not held by the EU Originator Series shall be held exclusively by the Management Series.

EU Originator Series

The EU Originator Series shall not have any employees or perform any services. The activities and assets of the EU Originator Series shall be limited to performing the functions of the originator for purposes of the EU Risk Retention Rules, and the EU Originator Series shall have all rights and powers to perform those functions. Upon formation and until the election date of the election described in the next succeeding sentence, the EU Originator Series is intended to be treated as a partnership, if it has more than one equity owner, or disregarded, if it has a single equity owner, for U.S. federal income tax purposes. Upon the request of the General Partner, the EU Originator Series shall file a timely election on IRS Form 8832 electing to be treated as an association taxable as a corporation.

Risk Retention Series

The Risk Retention Series is intended to be treated as a partnership, if it has more than one equity owner, or disregarded, if it has a single equity owner, for U.S. federal income tax purposes. The Risk Retention Series shall not have any employees or perform any services. The activities and assets of the Risk Retention Series shall be limited to holding ownership interests in securities, including interests in any CLO, the Retention Interests and the Preferred Return Notes.

Exhibit 29

AGREEMENT

THIS AGREEMENT (this "***Agreement***"), dated January 10, 2018, is entered into by and among Acis Capital Management, L.P., a Delaware limited partnership ("***Acis***"), and Highland Capital Management, L.P., a Delaware limited partnership ("***Highland***", and together with Acis, the "***Parties***").

RECITALS

WHEREAS, Acis is responsible or has otherwise agreed to pay the following invoices for legal services rendered by Maples and Calder (collectively, the "***Legal Expenses***"):

Acis CLO Value Fund II Investment Team Assets, Ltd.	$2,453.66
Acis CLO Value Fund II (Cayman), L.P.	$7,656.70
Acis CLO Value Master Fund II, L.P.	$6,437.19
Acis CLO Value Fund II GP, LLC	$3,146.34
TOTAL:	**$19,693.89**

WHEREAS, as of the date hereof, an interest payment is due and payable by Highland to Acis in the aggregate amount of $122,339.64 (the "***Outstanding Interest Amount***") pursuant to that certain Promissory Note, dated October 7, 2016, delivered by Highland to Acis in the original principal amount of $12,666,446;

WHEREAS, Highland desires to pay the Legal Expenses on behalf of Acis in exchange for a dollar-for-dollar reduction in the Outstanding Interest Amount on the terms set forth herein.

NOW, THEREFORE, in consideration of the promises and mutual agreements set forth herein, and in consideration of the mutual representations, warranties and covenants herein, intending the by legally bound hereby, the Parties agree as follows:

AGREEMENT

1. On the date hereof, Highland shall pay the Legal Expenses on behalf of Acis, and the Parties hereby agree that the Outstanding Interest Amount is hereby reduced by the amount of the Legal Expenses.

2. Successors and Assigns. The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the Parties, provided however that no party hereto may assign or transfer any of its rights or obligation hereunder without the prior written consent of the other parties hereto.

EXHIBIT 8
WIT: K105
DATE: 9-25-2024
Katharene McCulley, CSR

3. No Third Party Beneficiaries. For the avoidance of doubt, this Agreement is not intended to and does not confer any right to any person or entity other than the Parties hereto.

4. Terms Confidential. The Parties agree that they will keep the terms, amounts, and facts of this Agreement completely confidential, and that they will not hereafter disclose any information concerning this Agreement to anyone except their respective attorneys or accountants. Notwithstanding the foregoing prohibition, the Parties shall not be prohibited from disclosing the terms, amounts and facts of this Agreement or this Agreement itself as may be requested by governmental entities or required by law.

5. Governing Law. This Agreement and all matters relating to this Agreement shall be governed by, and construed in accordance with, the laws of the State of Texas (without giving effect to the choice of law principles thereof). Any action based on or arising out of this Agreement or the transactions contemplated hereby shall be brought and maintained exclusively in any court of the State of Texas or any federal court of the United States, in each case located in Dallas County, Texas. Each of the Parties hereby expressly and irrevocably submits to the jurisdiction of such courts for the purposes of any such action and expressly and irrevocably waives, to the fullest extent permitted by law, any objection which it may have or hereafter may have to the laying of venue of any such action brought in any such court and any claim that any such action has been brought in an inconvenient forum.

6. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

7. Headings. The headings and captions used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement. All references in this Agreement to articles, sections, paragraphs, exhibits and schedules shall, unless otherwise provided, refer to articles, sections and paragraphs hereof and exhibits and schedules attached hereto, all of which exhibits and schedules are incorporated herein by reference.

8. Amendments and Waivers. Any term of this Agreement may be amended and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively) only with the written consent of both Parties.

9. Severability. If one or more provisions of this Agreement are held to be unenforceable under applicable law, such provision(s) shall be excluded from this Agreement and the balance of this Agreement shall be interpreted as if such provision(s) were so excluded and shall be enforceable in accordance with its terms.

10. Entire Agreement. This Agreement, together with all exhibits and schedules hereto, constitutes the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes any and all prior negotiations, correspondence, agreements, understandings, duties or obligations between the parties with respect to the subject matter hereof.

11. Further Assurances. From and after the date of this Agreement, upon the reasonable request of the Purchaser, the Seller shall execute and deliver such instruments, documents or other writings as may be reasonably necessary or desirable to confirm and carry out and to effectuate fully the intent and purposes of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the date first written above.

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: Stand Advisors, Inc., its General Partner

By: _____
Name: Frank Waterhouse
Title: Treasurer

ACIS CAPITAL MANAGEMENT, L.P.

By: Acis Capital Management GP, LLC, its General Partner

By: _____
Name: Frank Waterhouse
Title: Treasurer

Exhibit 30

From: Isaac Leventon <ILeventon@HighlandCapital.com>
To: "Michael P. Fritz" <mfritz@McKoolSmith.com>, Gary Cruciani <gcruciani@McKoolSmith.com>
Subject: RE: Terry/Acis
Date: Tue, 16 Jan 2018 21:52:16 +0000
Importance: Normal

I just got back.

From: Michael P. Fritz [mailto:mfritz@McKoolSmith.com]
Sent: Tuesday, January 16, 2018 3:52 PM
To: Isaac Leventon <ILeventon@HighlandCapital.com>; Gary Cruciani <gcruciani@McKoolSmith.com>
Subject: RE: Terry/Acis

Gary/Isaac—let's discuss later this afternoon after Gary gets done with his depo and Isaac is out of his mediation. Based on Tim's report—we cannot agree to the stipulation because some assets are already gone. The question is how do we respond. We have not heard back from Shaw on our proposal regarding collateral estoppel/res judicata, so my inclination is to wait and it may be that we simply state that the parties were unable to agree and, as a result, we will need to see how the hearing tomorrow goes.

From: Isaac Leventon [mailto:ILeventon@HighlandCapital.com]
Sent: Tuesday, January 16, 2018 11:15 AM
To: Michael P. Fritz
Subject: FW: Terry/Acis

From: Tim Cournoyer
Sent: Monday, January 15, 2018 1:39 PM
To: Isaac Leventon <ILeventon@HighlandCapital.com>
Cc: Thomas Surgent <TSurgent@HighlandCapital.com>; JP Sevilla <JSevilla@HighlandCapital.com>
Subject: RE: Terry/Acis

As discussed, see comments below in **red** as to current status:

Defendants Acis Capital Management L.P. and Acis Capital Management GP, LLC (collectively "Acis") hereby agree and stipulate that Acis has not, and will not without court order, transfer, encumber, dispose of, or in any way alienate the following assets:

1. Promissory Note from Highland Capital Management, LP;

This has already been assigned. Assignment attached.

2. Interest in Acis CLO Management Holdings, LP;

This has already been assigned in connection with the Acis CLO Management/Acis-7 restructure. Relevant documents attached.

If you have questions about the Cayman/BVI entities specifically, JP would be the person to talk to.

3. Collateral Management Agreements, including but not limited to:
    a. Acis CLO 2013-1, Ltd.

This CLO was redeemed with the intention of effecting a "Crescent" refi, but the notice of redemption was ultimately withdrawn. See attached.

My understanding is the intention is to reset this CLO, however I'm not aware of any action having been taken.

    b. Acis CLO 2013-2, Ltd.

This CLO is in liquidation.

    c. Acis CLO 2014-3, Ltd.

Acis-3/4/5 are similarly situated economically, and could all theoretically be resent concurrently. We have engaged Mizuho for all 3 resets. See attached.

Highland CLO Management, LLC, our new risk retention compliant CLO manager, is the entity that engaged Mizuho. For all resets, it is contemplated that the existing Collateral Management Agreement with Acis Capital Management, L.P. would be transferred to Highland CLO Management, LLC because the reset CLOs will need to be risk retention compliance.

My understanding is Hunter is trying to get Acis 3 done first before moving on to Acis 4 and Acis 5. The process keeps getting pushed out and I do not know a reasonable expected date of completion.

    d. Acis CLO 2014-4, Ltd.

See above.

    e. Acis CLO 2014-5, Ltd.

See above.

    f. Acis CLO 2015-6, Ltd.

My understanding is this is a reset candidate as well, but would be completed sometime after the Acis 3/4/5 resets. I am not aware of any action having been taken in connection with this CLO.

    g. Acis CLO 2017-7, Ltd.

Acis Capital Management, L.P. was never the Collateral Manager for this CLO. This was the first risk retention compliant CLO that we launched, and the Collateral Manager is Acis CLO Management, LLC.

Acis Capital Management, L.P. had an indirect interest in Acis CLO Management, LLC via its interest in Acis CLO Management Holdings, L.P. and Acis CLO Management Intermediate Holdings I, LLC. Each of those interests have been assigned to Highland CLO Holdings, Ltd.

In addition, Acis Capital Management, L.P. had a Shared Services Agreement and a Sub-Advisory Agreement with Acis CLO Management, LLC, but those agreements were also assigned to Highland CLO Holdings, Ltd.

Relevant docs attached per item 2 above.

4. Other Management Contracts, including but not limited to:

Investment Management Agreement with ultimate beneficiary of Bayerische Versorgungskammer (a.k.a. BVK)

Nothing has been done with BVK.

We also previously terminated ACMLP's Portfolio Management Agreement with Highland CLO Funding, Ltd. (f/k/a Acis Loan Funding, Ltd. (ALF)) and entered into a new Portfolio Management Agreement with Highland HCF Advisor, Ltd. See attached.

TIMOTHY J. COURNOYER | ASSISTANT GENERAL COUNSEL
O: 972.628.4100 | D: 972.628.4153 | F: 972.628.4147

From: Isaac Leventon
Sent: Monday, January 15, 2018 11:55 AM
To: Tim Cournoyer <TCournoyer@HighlandCapital.com>
Subject: FW: Terry/Acis

Please review the attached proposed stipulation from Terry and let me know if you have a minute to discuss today.

From: Michael P. Fritz [mailto:mfritz@McKoolSmith.com]
Sent: Monday, January 15, 2018 8:19 AM
To: Isaac Leventon <ILeventon@HighlandCapital.com>; Gary Cruciani <gcruciani@McKoolSmith.com>; Nicholas Mathews <nmathews@McKoolSmith.com>; Carson D. Young <cyoung@McKoolSmith.com>
Subject: Fwd: Terry/Acis

Isaac—see attached for Terry's proposal. Let's discuss our response today. Also, do you have an idea of what we want to counter with from a collateral estoppel standpoint?

Begin forwarded message:

From: Brian Shaw <shaw@clousedunn.com>
Date: January 14, 2018 at 8:46:47 PM CST
To: Gary Cruciani <gcruciani@McKoolSmith.com>
Cc: "Michael P. Fritz" <mfritz@McKoolSmith.com>, Rogge Dunn <Rogge@clousedunn.com>
Subject: Terry/Acis

Gary:

In furtherance of our conference on Friday at the Courthouse, attached is the proposed stipulation I previously sent Michael, and for which we have received no input. I sent it in Word in case you wanted to redline.

As for your res judicata/collateral estoppel issue, please send over what y'all propose so we can review it.

As we discussed with the Court, we simply agreed to attempt to agree, so the attachment and this email is sent with a reservation of all of Mr. Terry's rights, including but not limited to his right to post-judgment discovery and his right to seek injunctive relief.

Sincerely,

Brian P. Shaw
CLOUSE DUNN LLP
1201 Elm Street, Suite 5200
Dallas, Texas 75270-2142

shaw@clousedunn.com
Dir (214) 239-2707
Fax (214) 220-3833
Main (214) 220-3888 ext. 263
www.clousedunn.com

Exhibit 31

From: Tim Cournoyer <TCournoyer@HighlandCapital.com>
To: Helen Kim <HKim@HighlandCapital.com>, David Klos <DKlos@HighlandCapital.com>
Cc: JP Sevilla <JSevilla@HighlandCapital.com>
Subject: RE: Highland CLO Management, Ltd.
Date: Thu, 18 Jan 2018 16:20:45 +0000
Inline-Images: image001.jpg

JP has that info, but I don't think we've done anything with that entity yet.

TIMOTHY J. COURNOYER | ASSISTANT GENERAL COUNSEL
O: 972.628.4100 | D: 972.628.4153 | F: 972.628.4147

From: Helen Kim
Sent: Thursday, January 18, 2018 10:20 AM
To: David Klos
Cc: Tim Cournoyer
Subject: RE: Highland CLO Management, Ltd.

Tim – do you know who owns or will own Highland CLO Management, Ltd?

From: David Klos
Sent: Thursday, January 18, 2018 10:17 AM
To: Helen Kim <HKim@HighlandCapital.com>
Subject: Highland CLO Management, Ltd.

Helen,

Do you have the ownership for Highland CLO Management, Ltd?

DAVID KLOS | CONTROLLER

HIGHLAND CAPITAL MANAGEMENT

300 Crescent Court | Suite 700 | Dallas, Texas 75201
C: 214.674.2926 | O: 972.419.4478 | F: 972.628.4147
dklos@highlandcapital.com | www.highlandcapital.com

Exhibit 32

ACKNOWLEDGEMENT AND WAIVER

This Acknowledgement and Waiver (this "**Acknowledgement and Waiver**") is made by the undersigned Highland Capital Management, L.P., a Delaware limited partnership ("**HCM**"), and Highland CLO Management, Ltd., a Cayman Islands exempted company ("**HCLOM**") as of January 19, 2018.

Reference is hereby made to that certain Assignment and Transfer Agreement (the "**Transfer Agreement**"), dated as of November 3, 2017, by and between Acis Capital Management, L.P., a Delaware limited partnership ("**Acis**"), HCM and HCLOM. Capitalized terms used but not defined herein shall have the meanings set forth in the Transfer Agreement.

Pursuant to Sections 1 and 2 of the Transfer Agreement, Acis was required to promptly provide Notice to the Controlling Class of each CLO, and subsequent to the delivery of the Notices, each of Acis and HCLOM was required to promptly pursue an Appointment for each CLO.

Each of HCM and HCLOM hereby (i) acknowledge that (a) it is intended for each CLO to be "reset", (b) each such "reset" transaction will need to comply with the federal interagency credit risk retention rules, codified at 17 C.F.R. Part 246 thereunder (the "**U.S. Risk Retention Rules**"), (c) in order to comply with the U.S. Risk Retention Rules, in connection with each such "reset" transaction, each applicable CLO issuer will appoint Highland CLO Management, LLC, a Delaware limited liability company, as the collateral manager of such CLO and (d) therefore, none of the Notices have been nor will be delivered pursuant to Section 1 of the Transfer Agreement and none of the Appointments have been nor will be made pursuant to Section 2 of the Transfer Agreement, and (ii) waive any breach of Sections 1 or 2 of the Transfer Agreement, as applicable.

[*Signature Page Follows.*]

EXHIBIT 7
WIT: K105
DATE: 9-25-2024
Katharene McCulley, CSR

IN WITNESS WHEREOF, each of the undersigned have executed this Acknowledgement and Waiver as of the date first written above.

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: Strand Advisors, Inc., its General Partner

By: _____
Name: James Dondero
Title: President

HIGHLAND CLO MANAGEMENT, LTD.

_____
For and on behalf of Summit Management Limited, its Director

ACKNOWLEDGED AND ACCEPTED:

ACIS CAPITAL MANAGEMENT, L.P.

By: Acis Capital Management GP, LLC, its General Partner

By: _____
Name: James Dondero
Title: President

IN WITNESS WHEREOF, each of the undersigned have executed this Acknowledgement and Waiver as of the date first written above.

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: Strand Advisors, Inc., its General Partner

By: _____
Name: James Dondero
Title: President

HIGHLAND CLO MANAGEMENT, LTD.

_____
For and on behalf of Summit Management Limited, its Director

ACKNOWLEDGED AND ACCEPTED:

ACIS CAPITAL MANAGEMENT, L.P.

By: Acis Capital Management GP, LLC, its General Partner

By: _____
Name: James Dondero
Title: President

Exhibit 33

From: Philip Aaron <PAaron@HighlandCapital.com>
To: 'Don Puglisi' <dpuglisi@puglisiassoc.com>
Cc: Thomas Surgent <TSurgent@HighlandCapital.com>, Hunter Covitz <HCovitz@HighlandCapital.com>, Tim Cournoyer <TCournoyer@HighlandCapital.com>
Subject: RE: Independent Manager Services
Date: Wed, 31 Jan 2018 14:27:14 +0000
Importance: Normal
Inline-Images: image001.jpg

Many thanks, Don. For future reference, your CRD # has been assigned to: 6908824.

Best,
Philip

From: Don Puglisi [mailto:dpuglisi@puglisiassoc.com]
Sent: Wednesday, January 31, 2018 8:23 AM
To: Tim Cournoyer <TCournoyer@HighlandCapital.com>
Cc: Thomas Surgent <TSurgent@HighlandCapital.com>; Hunter Covitz <HCovitz@HighlandCapital.com>; Philip Aaron <PAaron@HighlandCapital.com>
Subject: RE: Independent Manager Services

Good morning, Tim,

No problem. Here's the information you've asked for:

Donald James Puglisi
Birth date 08/20/1945
SSN; 155-34-6530

If you need a copy of my passport or driver's license (I'm used to giving those for bank KYC purposes), just let me know and I'll e-mail you copies right away.

Don

From: Tim Cournoyer [mailto:TCournoyer@HighlandCapital.com]
Sent: Wednesday, January 31, 2018 9:02 AM
To: Don Puglisi <dpuglisi@puglisiassoc.com>
Cc: Thomas Surgent <TSurgent@HighlandCapital.com>; Hunter Covitz <HCovitz@HighlandCapital.com>; Philip Aaron <PAaron@HighlandCapital.com>
Subject: RE: Independent Manager Services

Don,

Apologies for the multiple emails on this topic, but as a result of the recent changes to the Form ADV, it turns out we will need to obtain a CRD # for you, as Independent Manager of Highland CLO Management, LLC. The CRD# is just an identifier number supplied by the SEC and used for their tacking purposes.

In order to apply for the CRD, we will need:

Name: Please confirm full first, middle and last name

Birth Date: 08/20/1945
SSN: Please provide

We will ensure all such information is kept confidential other than disclosing it to the SEC directly.

Thank you,

Tim

TIMOTHY J. COURNOYER | ASSISTANT GENERAL COUNSEL
O: 972.628.4100 | D: 972.628.4153 | F: 972.628.4147

From: Don Puglisi [mailto:dpuglisi@puglisiassoc.com]
Sent: Wednesday, January 24, 2018 12:53 PM
To: Tim Cournoyer <TCournoyer@HighlandCapital.com>
Cc: Thomas Surgent <TSurgent@HighlandCapital.com>; Hunter Covitz <HCovitz@HighlandCapital.com>
Subject: RE: Independent Manager Services

Great news, Tim. Thanks.

Since I don't know what a CRD # is, I'm sure I don't have one. My date of birth is August 20, 1945. Let me know if you need any other information.

Don

From: Tim Cournoyer [mailto:TCournoyer@HighlandCapital.com]
Sent: Wednesday, January 24, 2018 1:40 PM
To: Don Puglisi <dpuglisi@puglisiassoc.com>
Cc: Thomas Surgent <TSurgent@HighlandCapital.com>; Hunter Covitz <HCovitz@HighlandCapital.com>
Subject: RE: Independent Manager Services

Don,

We intend to formally appoint you as Independent Manager this week.

In that capacity, we will need to list you on Highland CLO Management, LLC's Form ADV Relying Adviser filing. Can you please let us know if you have a CRD #, and if not, you Date of Birth?

Thanks,

Tim

TIMOTHY J. COURNOYER | ASSISTANT GENERAL COUNSEL
O: 972.628.4100 | D: 972.628.4153 | F: 972.628.4147

From: Tim Cournoyer
Sent: Thursday, January 18, 2018 4:11 PM
To: 'Don Puglisi' <dpuglisi@puglisiassoc.com>
Cc: Thomas Surgent <TSurgent@HighlandCapital.com>; Hunter Covitz <HCovitz@HighlandCapital.com>
Subject: RE: Independent Manager Services

Thank you. You're stated fee is also fine.

We will follow up with a resolution formally appointing you as Independent Manager in due course.

TIMOTHY J. COURNOYER | ASSISTANT GENERAL COUNSEL
O: 972.628.4100 | D: 972.628.4153 | F: 972.628.4147

From: Don Puglisi [mailto:dpuglisi@puglisiassoc.com]
Sent: Thursday, January 18, 2018 4:10 PM
To: Tim Cournoyer <TCournoyer@HighlandCapital.com>
Cc: Thomas Surgent <TSurgent@HighlandCapital.com>; Hunter Covitz <HCovitz@HighlandCapital.com>
Subject: RE: Independent Manager Services

Thanks for sending the LLC Agreement, Tim. The role of the Independent Manager is quite standard and I don't have any questions on it. The LLC Agreement also helps explain portions of the structure chart.

Don

From: Tim Cournoyer [mailto:TCournoyer@HighlandCapital.com]
Sent: Thursday, January 18, 2018 10:28 AM
To: Don Puglisi <dpuglisi@puglisiassoc.com>
Cc: Thomas Surgent <TSurgent@HighlandCapital.com>; Hunter Covitz <HCovitz@HighlandCapital.com>
Subject: RE: Independent Manager Services

You are correct about the limited duties of the Independent Manager. Please see attached for the LLC Agreement.

Feel free to let me know if you have any questions. Thank you.

TIMOTHY J. COURNOYER | ASSISTANT GENERAL COUNSEL
O: 972.628.4100 | D: 972.628.4153 | F: 972.628.4147

From: Don Puglisi [mailto:dpuglisi@puglisiassoc.com]
Sent: Thursday, January 18, 2018 9:26 AM
To: Tim Cournoyer <TCournoyer@HighlandCapital.com>
Cc: Thomas Surgent <TSurgent@HighlandCapital.com>; Hunter Covitz <HCovitz@HighlandCapital.com>
Subject: RE: Independent Manager Services

Good morning, Tim,

Thanks for your e-mail and for thinking of me for this structure. I am familiar with this type of structure and serve as the Independent Manager for a number of them, as well as other types of bankruptcy-remote financing facilities. I assume the duties of the Independent Manager will be limited to those that pertain to the bankruptcy remoteness issue, e.g., veto power over declaring bankruptcy and certain other material actions. I would appreciate receiving a copy of the LLC Agreement—draft form is okay—so I can verify that. Other than that, I don't think there is any other information I need at this point.

FYI, my standard fee for services such as this is $3,600.00 per year or any part thereof.

Best regards,

Don
302.738.66780

P.S. I'm still working my way through the structure chart!

From: Tim Cournoyer [mailto:TCournoyer@HighlandCapital.com]
Sent: Thursday, January 18, 2018 10:14 AM

To: Don Puglisi <dpuglisi@puglisiassoc.com>
Cc: Thomas Surgent <TSurgent@HighlandCapital.com>; Hunter Covitz <HCovitz@HighlandCapital.com>
Subject: Independent Manager Services

Don,

We are currently working with Dechert to effect a 2.25 year reset one of our CLO transactions, which will be named Highland CLO 2014-3R. Attached is a preliminary term sheet regarding the transaction.

The reset deal will be risk retention compliant via Highland CLO Management, LLC (the "Collateral Manager") retaining a 5% vertical strip across each tranche of the CLO. The notes held by the Collateral Manager will be 100% financed through a repo facility with Nearwater Capital.

The Collateral Manager is structured to be a bankruptcy remote entity that will have an Independent Manager with limited veto rights at all times that the retention financing is outstanding. We would like to appoint you in that capacity.

Can you please let us know what additional information you need to accept the appointment as Independent Manager of the Collateral Manager? Happy to discuss live as well.

Thank you,

Tim

TIMOTHY J. COURNOYER | ASSISTANT GENERAL COUNSEL

HIGHLAND CAPITAL MANAGEMENT

300 Crescent Court | Suite 700 | Dallas, Texas 75201
O: 972.628.4100 | D: 972.628.4153 | F: 972.628.4147
TCournoyer@HighlandCapital.com | www.highlandcapital.com

Exhibit 35

FORBEARANCE AGREEMENT

This FORBEARANCE AGREEMENT (this "***Agreement***"), dated as of May 31, 2018, is entered into by and between Highland Capital Management, L.P., a Delaware limited partnership ("***HCM***") and Highland CLO Management, Ltd., a Cayman Islands exempted company ("***HCLOM***", and together with HCM, the "***Parties***"). Capitalized terms used herein but not defined have the meaning ascribed thereto in the Agreement for Assignment and Transfer of Promissory Note dated as of November 3, 2017 between HCM, HCLOM, and Acis Capital Management, L.P ("***Acis***") (the "***Assignment Agreement***").

RECITALS

Whereas, Acis and HCM entered into an Agreement for Purchase and Sale of CLO Participation Interests between Acis and HCM dated as of October 7, 2016 (the "***Purchase Agreement***" and the promissory note therein, the "***Note***");

Whereas, as portfolio manager of certain collateralized loan obligations listed in Schedule A of the Purchase Agreement (the "***CLOs***"), Acis was entitled to fee compensation in connection therewith as set forth therein (the "***Servicer Fees***");

Whereas, pursuant to the Purchase Agreement, Acis sold a portion of its future Servicer Fees to HCM in exchange for cash flows from HCM, in each case as set forth in the Note (such future Servicer Fees identified to be paid to HCM pursuant to the Purchase Agreement, the "***HCM Stabilization Fees***" and such cash flows from HCM, the "***Stabilization Payment***");

Whereas, pursuant to the Assignment Agreement, Acis assigned all right, title and interest of Acis under the Note, including the right to any and all Stabilization Payments not yet paid to Acis to HCLOM; and

Whereas, for so long as HCLOM receives any Servicer Fees following the Assignment, HCLOM is required to remit to HCM any portion of such fees that would otherwise have constituted HCM Stabilization Fees pursuant to the Note as if Acis was the recipient of such fees.

AGREEMENT

Now, therefore, in consideration of the promises and mutual agreements set forth herein, and in consideration of the mutual representations, warranties and covenants herein, and intending to be legally bound hereby, the Parties agree as follows:

1. **Forbearance of HCM Stabilization Fees**. HCM agrees that it will not demand payment of the HCM Stabilization Fees for a period of one (1) year and hereby releases HCLOM from paying HCM any HCM Stabilization Fees for a period of one (1) year pursuant to the Assignment Agreement and Purchase Agreement.
2. **Forbearance of Stabilization Payments**. HCLOM agrees that it will not demand payment of the Stabilization Payments for a period of one (1) year and hereby releases HCM from

EXHIBIT 5
WIT: KLOS
DATE: 9-25-2024
Katharene McCulley, CSR

paying HCLOM any Stabilization Payments for a period of one (1) year pursuant to the Assignment Agreement and Purchase Agreement.

3. **Miscellaneous**.

a. Successors and Assigns. The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the Parties, provided however that no party hereto may assign or transfer any of its rights or obligation hereunder without the prior written consent of the other parties hereto.

b. No Third Party Beneficiaries. For the avoidance of doubt, this Agreement is not intended to and does not confer any right to any person or entity other than the Parties hereto.

c. Terms Confidential. The Parties agree that they will keep the terms, amounts, and facts of this Agreement completely confidential, and that they will not hereafter disclose any information concerning this Agreement to anyone except their respective attorneys or accountants. Notwithstanding the foregoing prohibition, the Parties shall not be prohibited from disclosing the terms, amounts and facts of this Agreement or this Agreement itself as may be requested by governmental entities or required by law.

d. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of Texas, with exclusive jurisdiction in the courts of Dallas, Texas.

e. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

f. Headings. The headings and captions used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement. All references in this Agreement to articles, sections, paragraphs, exhibits and schedules shall, unless otherwise provided, refer to articles, sections and paragraphs hereof and exhibits and schedules attached hereto, all of which exhibits and schedules are incorporated herein by reference.

g. Costs, Expenses. The Parties shall each pay their own costs, fees and expenses in connection with this Agreement.

h. Amendments and Waivers. Any term of this Agreement may be amended and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively) only with the written consent of the Parties.

i. Severability. If one or more provisions of this Agreement are held to be unenforceable under applicable law, such provision(s) shall be excluded from this Agreement and the balance of this Agreement shall be interpreted as if such provision(s) were so excluded and shall be enforceable in accordance with its terms.

j. Entire Agreement. This Agreement, together with all exhibits and schedules hereto, constitutes the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes any and all prior negotiations, correspondence, agreements, understandings, duties or obligations between the parties with respect to the subject matter hereof.

[Signature page follows]

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of May 31, 2018.

HIGHLAND CAPITAL MANAGEMENT, L.P.
By: Strand Advisors, Inc., its General Partner

By: _____
Name: _____
Title: _____

HIGHLAND CLO MANAGEMENT, LTD.

_____
~~For and on behalf of Summit Management, Limited~~
John Cullinane
Director

Exhibit 36

AMENDED AND RESTATED FORBEARANCE AGREEMENT

This AMENDED AND RESTATED FORBEARANCE AGREEMENT (this "***Amendment***"), dated as of May 31, 2019, is entered into by and between Highland Capital Management, L.P., a Delaware limited partnership ("***HCM***") and Highland CLO Management, Ltd., a Cayman Islands exempted company ("***HCLOM***", and together with HCM, the "***Parties***"). Capitalized terms used herein but not defined have the meaning ascribed thereto in the Agreement for Assignment and Transfer of Promissory Note dated as of November 3, 2017 between HCM, HCLOM, and Acis Capital Management. L.P ("***Acis***") (the "***Assignment Agreement***").

RECITALS

Whereas, Acis and HCM entered into an Agreement for Purchase and Sale of CLO Participation Interests between Acis and HCM dated as of October 7, 2016 (the "***Purchase Agreement***" and the promissory note therein, the "***Note***");

Whereas, as portfolio manager of certain collateralized loan obligations listed in Schedule A of the Purchase Agreement (the "***CLOs***"), Acis was entitled to fee compensation in connection therewith as set forth therein (the "***Servicer Fees***");

Whereas, pursuant to the Purchase Agreement, Acis sold a portion of its future Servicer Fees to HCM in exchange for cash flows from HCM, in each case as set forth in the Note (such future Servicer Fees identified to be paid to HCM pursuant to the Purchase Agreement, the "***HCM Stabilization Fees***" and such cash flows from HCM, the "***Stabilization Payment***");

Whereas, pursuant to the Assignment Agreement, Acis assigned all right, title and interest of Acis under the Note, including the right to any and all Stabilization Payments not yet paid to Acis to HCLOM;

Whereas, for so long as HCLOM receives any Servicer Fees following the Assignment, HCLOM is required to remit to HCM any portion of such fees that would otherwise have constituted HCM Stabilization Fees pursuant to the Note as if Acis was the recipient of such fees;

Whereas, HCM and HCLOM are party to that certain Forbearance Agreement, dated May 31, 2018 (the "***Forbearance Agreement***"); and

Whereas, HCM and HCLOM wish to extend the forbearance under the Forbearance Agreement for an additional year.

AGREEMENT

Now, therefore, in consideration of the promises and mutual agreements set forth herein, and in consideration of the mutual representations, warranties and covenants herein, and intending to be legally bound hereby, the Parties agree as follows:

1. **Forbearance of HCM Stabilization Fees**. HCM agrees that it will not demand payment of the HCM Stabilization Fees for a period of an additional one (1) year and hereby

EXHIBIT 6
WIT: K103
DATE: 9-25-2024
Katharene McCulley, CSR

releases HCLOM from paying HCM any HCM Stabilization Fees for a period of one (1) year pursuant to the Assignment Agreement and Purchase Agreement.

2. **Forbearance of Stabilization Payments**. HCLOM agrees that it will not demand payment of the Stabilization Payments for a period of an additional one (1) year and hereby releases HCM from paying HCLOM any Stabilization Payments for a period of one (1) year pursuant to the Assignment Agreement and Purchase Agreement.

3. **Miscellaneous**.

   a. Successors and Assigns. The terms and conditions of this Amendment shall inure to the benefit of and be binding upon the respective successors and assigns of the Parties, provided however that no party hereto may assign or transfer any of its rights or obligation hereunder without the prior written consent of the other parties hereto.

   b. No Third Party Beneficiaries. For the avoidance of doubt this Amendment is not intended to and does not confer any right to any person or entity other than the Parties hereto.

   c. Terms Confidential. The Parties agree that they will keep the terms, amounts, and facts of this Amendment completely confidential, and that they will not hereafter disclose any information concerning this Amendment to anyone except their respective attorneys or accountants. Notwithstanding the foregoing prohibition, the Parties shall not be prohibited from disclosing the terms, amounts and facts of this Amendment or this Amendment itself as may be requested by governmental entities or required by law.

   d. Governing Law. This Amendment shall be governed by and construed in accordance with the laws of Texas, with exclusive jurisdiction in the courts of Dallas, Texas.

   e. Counterparts. This Amendment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

   f. Headings. The headings and captions used in this Amendment are used for convenience only and are not to be considered in construing or interpreting this Amendment . All references in this Amendment to articles, sections, paragraphs, exhibits and schedules shall, unless otherwise provided, refer to articles, sections and paragraphs hereof and exhibits and schedules attached hereto, all of which exhibits and schedules are incorporated herein by reference.

   g. Costs. Expenses. The Parties shall each pay their own costs, fees and expenses in connection with this Amendment.

   h. Amendments and Waivers. Any term of this Amendment may be amended and the observance of any term of this Amendment may be waived (either generally or in a particular instance and either retroactively or prospectively) only with the written consent or the Parties.

i. Severability. If one or more provisions of this Amendment are held to be unenforceable under applicable law, such provision(s) shall be excluded from this Amendment and the balance of this Amendment shall be interpreted as if such provision(s) were so excluded and shall be enforceable in accordance with its terms.

j. Entire Agreement. This Amendment , together with all exhibits and schedules hereto, constitutes the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes any and all prior negotiations, correspondence, agreements, understandings, duties or obligations between the parties with respect to the subject matter hereof.

[Signature page follows]

IN WITNESS WHEREOF, the Parties have executed this Amendment effective as of May 31, 2019.

HIGHLAND CAPITAL MANAGEMENT, L.P.
By: Strand Advisors, Inc., its General Partner

By: _____

Name: Frank Waterhouse

Title: Chief Financial Officer

HIGHLAND CLO MANAGEMENT, LTD.

By: _____

Name: Frank Waterhouse

Title: Treasurer

Exhibit 37

From: "Gabriela Salas (US - ASR)" <gabriela.salas@pwc.com>
To: Helen Kim <HKim@highlandcapital.com>
Cc: "Hilda Garcia (US - ASR)" <hilda.l.garcia@pwc.com>, "Allison Baker (US - Assurance)" <allison.t.baker@pwc.com>
Subject: Re: 6.30.19 Affiliates Listing - Planning
Date: Mon, 12 Aug 2019 18:08:58 +0000
Importance: Normal
Attachments: Q2_Affiliates.xlsx
Inline-Images: image001.png

Hi Helen!

Hope you had a good weekend. We had a follow up question in regards to affiliates that were created/acquired before Q2 2019.
Can you please provide insight why those were not affiliates before? Or what caused them to be considered an affiliate for Q2? I attached the listing for your reference.

Let me know if you want to jump on a call to discuss.

Best,

Gabriela Salas
PwC | Senior Associate
Dallas | +1 (915) 204 1526
PricewaterhouseCoopers LLP
pwc.com

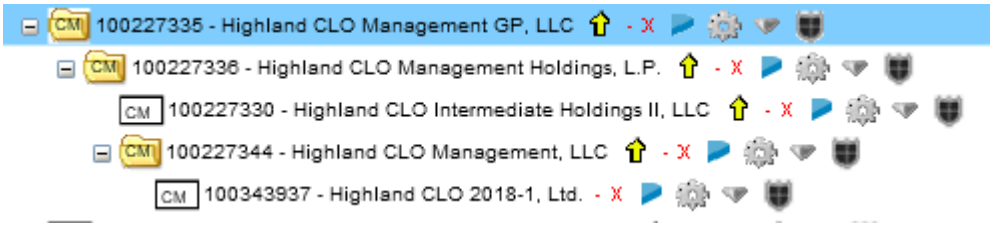
On Tue, Aug 6, 2019 at 12:07 PM Helen Kim <HKim@highlandcapital.com> wrote:

> The ordinary share is owned by MaplesFS Limited per the attached.
>
> ---
>
> **From:** Helen Kim
> **Sent:** Tuesday, August 6, 2019 12:05 PM
> **To:** 'Gabriela Salas (US - ASR)' <gabriela.salas@pwc.com>
> **Cc:** Hilda Garcia (US - ASR) <hilda.l.garcia@pwc.com>; Allison Baker (US - Assurance) <allison.t.baker@pwc.com>
> **Subject:** RE: 6.30.19 Affiliates Listing - Planning
>
> Gabriela,
>
> The proposed structure did not materialized so Highland CLO 2018-1, Ltd. is an empty shell currently.

From: Gabriela Salas (US - ASR) <gabriela.salas@pwc.com>
Sent: Monday, August 5, 2019 1:16 PM
To: Helen Kim <HKim@HighlandCapital.com>
Cc: Hilda Garcia (US - ASR) <hilda.l.garcia@pwc.com>; Allison Baker (US - Assurance) <allison.t.baker@pwc.com>
Subject: Re: 6.30.19 Affiliates Listing - Planning

Hi Helen!

Hope you had a great weekend. In addition to our follow up questions - we also need to inquire for the new direct owner for Highland CLO 2018-1, Ltd as Highland CLO Management, LLC and the lineage of Direct Owners were dissolved in Q2. See below for reference.



Let me know if you have any questions.

Best,

Gabriela Salas
PwC | Senior Associate
Dallas | +1 (915) 204 1526
PricewaterhouseCoopers LLP
pwc.com

On Sun, Aug 4, 2019 at 3:01 PM Gabriela Salas (US - ASR) <gabriela.salas@pwc.com> wrote:

> Hi Helen,
>
> Thank you for your response! Please find attached a few follow up questions on the <8.4 Follow Up> tab.
>
> Let me know if you have any questions!

Best,

Gabriela Salas
PwC | Senior Associate
Dallas | +1 (915) 204 1526
PricewaterhouseCoopers LLP
pwc.com

On Fri, Aug 2, 2019 at 5:03 PM Helen Kim <HKim@highlandcapital.com> wrote:

> Gabriela,
>
> Please see the attached. I don't have the ownership breakdown for:
>
> | |
> |---|
> | **SFR WLIF I, LLC** |
> | **SFR WLIF II, LLC** |
> | **SFR WLIF III, LLC** |
>
> **From:** Gabriela Salas (US - ASR) <gabriela.salas@pwc.com>
> **Sent:** Friday, August 2, 2019 2:32 PM
> **To:** Helen Kim <HKim@HighlandCapital.com>
> **Cc:** Hilda Garcia (US - ASR) <hilda.l.garcia@pwc.com>; Allison Baker (US - Assurance) <allison.t.baker@pwc.com>
> **Subject:** Re: 6.30.19 Affiliates Listing - Planning
>
> Hi Helen!
>
> Thank you for the update. Our team has gone through the drafted affiliates listing and we had a few follow up questions - please see attached. If you could please prioritize obtaining information for the new entities, we would greatly appreciate it.
>
> Let me know if you have any questions or concerns.

Best,

Gabriela Salas
PwC | Senior Associate
Dallas | +1 (915) 204 1526
PricewaterhouseCoopers LLP
pwc.com

On Thu, Aug 1, 2019 at 12:58 PM Helen Kim <HKim@highlandcapital.com> wrote:

> Probably Monday as the final approval person is out of office until Monday.
>
> **From:** Gabriela Salas (US - ASR) <gabriela.salas@pwc.com>
> **Sent:** Thursday, August 1, 2019 12:52 PM
> **To:** Helen Kim <HKim@HighlandCapital.com>
> **Cc:** Hilda Garcia (US - ASR) <hilda.l.garcia@pwc.com>
> **Subject:** Re: 6.30.19 Affiliates Listing - Planning
>
> Thank you!
>
> When can we expect the finalized list?
>
> Best,
>
> **Gabriela Salas**
> PwC | Senior Associate
> Dallas | +1 (915) 204 1526
> PricewaterhouseCoopers LLP
> pwc.com
>
> On Thu, Aug 1, 2019 at 12:50 PM Helen Kim <HKim@highlandcapital.com> wrote:
>
> > Please see the attached.
> >
> > Thanks.
> >
> > Helen

From: Gabriela Salas (US - ASR) <gabriela.salas@pwc.com>
Sent: Thursday, August 1, 2019 12:44 PM
To: Helen Kim <HKim@HighlandCapital.com>
Cc: Hilda Garcia (US - ASR) <hilda.l.garcia@pwc.com>
Subject: Re: 6.30.19 Affiliates Listing - Planning

Hi Helen!

Hope this message finds you well! Our team wanted to check on the status of this request and see when the 6.30 affiliates listing would be available?

Best,

Gabriela Salas
PwC | Senior Associate
Dallas | +1 (915) 204 1526
PricewaterhouseCoopers LLP
pwc.com

On Thu, Jul 25, 2019 at 9:52 AM Hilda Garcia (US - ASR) <hilda.l.garcia@pwc.com> wrote:

> Hi Helen,
>
> I hope you've been well and have had a good summer! We are reaching out to ask when the final 6.30 affiliates listing would be available?
>
> Let me know if you have any questions or concerns.
>
> Thank you,
>
> --
>
> **Hilda Garcia**
> PwC | Senior Associate
> Dallas | +1 (469) 724 6052

PricewaterhouseCoopers LLP
pwc.com

The information transmitted, including any attachments, is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any review, retransmission, dissemination or other use of, or taking of any action in reliance upon, this information by persons or entities other than the intended recipient is prohibited, and all liability arising therefrom is disclaimed. If you received this in error, please contact the sender and delete the material from any computer. PricewaterhouseCoopers LLP is a Delaware limited liability partnership. This communication may come from PricewaterhouseCoopers LLP or one of its subsidiaries.

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The information transmitted, including any attachments, is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any review, retransmission, dissemination or other use of, or taking of any action in reliance upon, this information by persons or entities other than the intended recipient is prohibited, and all liability arising therefrom is disclaimed. If you received this in error, please contact the sender and delete the material from any computer. PricewaterhouseCoopers LLP is a Delaware

Exhibit 38

From: "Gregory V. Demo" <GDemo@pszjlaw.com>

To: Isaac Leventon <ILeventon@HighlandCapital.com>, Katie Irving <KIrving@HighlandCapital.com>, Stephanie Vitiello <SVitiello@HighlandCapital.com>, David Klos <DKlos@HighlandCapital.com>, Bradley Sharp <bsharp@DSIConsulting.com>, 'Fred Caruso' <fcaruso@DSIConsulting.com>

Cc: Jeff Pomerantz <jpomerantz@pszjlaw.com>, Ira Kharasch <ikharasch@pszjlaw.com>, Maxim Litvak <mlitvak@pszjlaw.com>, "John A. Morris" <jmorris@pszjlaw.com>, James O'Neill <jo'neill@pszjlaw.com>

Subject: Highland - Foley/Lynn Pinker Retention (Committee Call)

Date: Mon, 25 Nov 2019 18:04:28 +0000

Importance: Normal

All,

I just got off the phone with Sidley on the Foley/Lynn Pinker retention applications. They've asked for additional information. Sidley did say that they have a Committee meeting tomorrow afternoon and was hoping to get responses today. They may have some additional follow up after that Committee call.

1. Neutra Appeal:
    a. The Committee wants certainty that the Acis contracts will be given back to HCMLP if Neutra is successful. They want to ensure that Dondero doesn't use his discretion to divert those contracts to another entity. I raised regulatory issues and the potential need for a fiduciary out in any agreement (to the extent we agree).
    b. The Committee would like to see the agreement concerning the reimbursement of Foley fees that we mentioned in a footnote.
    c. If possible, I'd like to give them the reimbursement agreement and include in that agreement a representation that Neutra will re-assign the contracts to the Debtor if successful (subject to any regulatory/fiduciary outs that may be required).
    d. If we can't get that agreement done before Wednesday, I think we agree to put in the proposed order that we will enter into that agreement as soon as practicable.
2. Winstead Matter:
    a. The Committee is not convinced that we have a proper business justification for continuing to press the Winstead Matter. The Committee is primarily concerned that the cost of the litigation exceeds the potential return to HCMLP (including after taking into account the need to use the disgorged fees to pay other creditors of Acis).
    b. The Committee asked to see the historical amount that was paid to Foley/Lynn Pinker on this issue to see if the cost justifies the continued expense.
    c. Ultimately, I think the Committee will reserve their right to object to the continuation of the Winstead matter.
3. Proposed Order:
    a. Committee wants the proposed order to specifically list out the postpetition Foley/Lynn Pinker engagements. This shouldn't be an issue. We will list Winstead even if we can't get to agreement, and they can just object.
    b. Committee wants language saying that HCMLP will not pay personal legal fees of Dondero, Surgent, or any other officer. Committee is fine with us reserving our right to come back to Court to request authority to pay those costs. I don't believe this should be an issue as it's consistent with what we say in the reply.
4. Ownership of Highland CLO:
    a. Committee said that they searched Highland CLO Management, LLC, and Highland CLO Holdings, Ltd. and that those entities were owned by Neutra.

b. Committee doesn't need an answer on this now but would like to know ownership with respect to prepetition payments made on behalf of those entities.
c. I think we should be able to defer on this issue for now but it is something we need to be ready for in Brad's testimony.

Please let me know if you'd like to discuss. The Winstead issue may be insurmountable, but I'd like to get the Committee comfortable on the Neutra issues today if possible.

Best,
Greg

Gregory V. Demo
Pachulski Stang Ziehl & Jones LLP
Tel: 212.561.7700 | Fax: 212.561.7777
GDemo@pszjlaw.com
vCard | Bio | LinkedIn

Exhibit 41

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In Re:	)	**Case No. 19-34054-sgj-11**
	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,	)	Dallas, Texas
	)	Tuesday, October 20, 2020
	)	9:30 a.m. Docket
Debtor.	)	
	)	MOTIONS TO COMPROMISE CONTROVERSY WITH ACIS CAPITAL MANAGEMENT [1087] AND THE REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUND [1089]

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE STACEY G.C. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE.

WEBEX/TELEPHONIC APPEARANCES:

For the Debtor:	Ira D. Kharasch PACHULSKI STANG ZIEHL & JONES, LLP 10100 Santa Monica Blvd., 13th Floor Los Angeles, CA 90067 (310) 277-6910
For the Debtor:	John A. Morris Gregory V. Demo PACHULSKI STANG ZIEHL & JONES, LLP 780 Third Avenue, 34th Floor New York, NY 10017-2024 (212) 561-7700
For UBS Securities, LLC:	Andrew Clubok Sarah A. Tomkowiak LATHAM & WATKINS, LLP 555 Eleventh Street, NW, Suite 1000 Washington, DC 20004 (202) 637-2200

APPEARANCES, cont'd.:

For UBS Securities, LLC:	Kimberly A. Posin LATHAM & WATKINS, LLP 355 South Grand Avenue, Suite 100 Los Angeles, CA 90071-1560 (213) 485-1234
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THE COURT: A little bit of a wait. I was trying to make sure I was caught up on all of the late-day filings yesterday. There were a few of them.

All right. This is Judge Jernigan, and we're ready to start our setting in Highland Capital Management, Case No. 19-34054. We have two motions set today where the Debtor is seeking approval for compromise and settlement agreements, one with Acis and related parties and one with Redeemer Committee and the Crusader Fund.

All right. We have 70 or so people on the line, so we have put you all on mute. But I am going to now take a roll call, so you'll have to take yourself off mute when I call your name for an appearance.

All right. First, for the Debtor team, do we have Mr. Pomerantz and a team of others? Would you appear at this time?

MR. KHARASCH: Good morning, Your Honor. Ira Kharasch of Pachulski Stang Ziehl & Jones on behalf of the Debtor and Debtor-in-Possession.

I'd first like to let the Court know that Mr. Pomerantz is on the phone in a listening mode. He will not be appearing today as he's still recuperating from successful surgery last week, but glad to say that he's improving daily and looking forward to appearing in front of Your Honor again in the very

near future.

THE COURT: All right.

MR. KHARASCH: I have with me today John Morris as well as Greg Demo.

THE COURT: All right. Good morning to all of you. And we wish Mr. Pomerantz well.

All right. For the Redeemer Committee, Crusader Funds, do we have a team appearing for them this morning? Go ahead.

MS. MASCHERIN: Yes, Your Honor. Terri Mascherin of Jenner & Block. I'm appearing today on behalf of both The Redeemer Committee of the Crusader Funds and also the Crusader Funds, --

THE COURT: Okay.

MS. MASCHERIN: -- whose claim is likewise resolved in the settlement.

With me today on the line are my partner Mark Hankin, and Mark Platt of Frost Brown Todd.

THE COURT: All right. Good morning to all of you.

All right. For Acis, do we have Ms. Patel and others appearing this morning?

MS. PATEL: Yes. Good morning, Your Honor. Rakhee Patel on behalf of Acis Capital Management, LP, with the Winstead firm. Also on the line is Brian Shaw of the Rogge Dunn Group, also counsel for Acis and counsel for Mr. Terry. I'll let him announce if he has additional parties.

THE COURT: All right. Mr. Shaw, are you there with us?

MR. SHAW: (no response)

THE COURT: Okay. Maybe technical --

MS. PATEL: Brian, we can't hear you.

(No response.)

THE COURT: All right. Well, Mr. Shaw, --

MS. PATEL: Well, --

THE COURT: -- we put -- the Court put everyone on mute, so if you could take yourself off mute if you are trying to appear. (No response.) Well, maybe we'll get him at some point when -- if he wants to speak up.

All right. We have several objecting parties this morning. I'll start with Mr. Dondero's counsel. Do we have Mr. Lynn or someone from his team on the phone or on the video?

MR. WILSON: Yes, Your Honor. This is John Wilson with Bonds Ellis Eppich Schafer Jones, LLP. I am joined today by John Bonds, Michael Lynn, and Bryan Assink.

THE COURT: All right. Good morning to all of you. All right.

MR. WILSON: Thank you.

THE COURT: We had Patrick Daugherty as an objecting party to the Acis settlement. Do we have Mr. Kathman and his team?

MR. KATHMAN: Good morning, Your Honor. Jason Kathman on behalf of Mr. Daugherty.

THE COURT: Okay. Good morning.

All right. We had UBS objecting to the Redeemer Committee/Crusader Fund settlement. Do we have Mr. Clubok or others appearing for UBS?

MR. CLUBOK: Good morning, Your Honor. This is Andrew Clubok from Latham & Watkins, LLP on behalf of UBS. I'm here with Sarah Tomkowiak, who will actually be leading the proceedings for us today, and also Kimberly Posin.

THE COURT: All right. Good morning to all of you.

We had a few reservation of rights type limited objections, so I'll check now on these parties. CLO Holdco: Do we have Mr. Kane or others appearing?

MR. KANE: Yes, Your Honor. John Kane on behalf of CLO Holdco, specifically related to the Acis settlement.

THE COURT: Okay. Thank you, Mr. Kane.

All right. HCLO Funding: Do we have either Mr. Maloney or Ms. Matsumora on the line?

MS. MATSUMORA: Yes, Your Honor. This is Rebecca Matsumora from King & Spalding. And Mr. Maloney may be joining us later, once we turn to the Acis settlement.

THE COURT: All right. Thank you.

HarbourVest filed a limited objection to the Acis settlement. Do we have Ms. Driver or others appearing for

HarbourVest?

MS. WEISGERBER: Good morning, Your Honor. Erica Weisgerber from Debevoise & Plimpton appearing for HarbourVest this morning.

THE COURT: Okay. Good morning.

All right. Well, I think I've covered all of the parties who filed a pleading today. I suspect the Unsecured Creditors' Committee is out there. Do we have someone appearing for them?

MR. CLEMENTE: Good morning, Your Honor. Matthew Clemente from Sidley Austin on behalf of the Unsecured Creditors' Committee.

THE COURT: All right. Good morning, Mr. Clemente.

All right. Is there anyone else who wishes to appear that I did not hear from?

All right. Well, Mr. Kharasch, do you want to start us off this morning?

MR. KHARASCH: I would like to, Your Honor, just very briefly, before I turn it over to my partner, John Morris.

As you know, Your Honor, we're down to two motions to approve the separate settlements, one with Acis and Josh and Jennifer Terry on the one hand, as well as the Redeemer Committee and the Highland Crusader Funds on the other.

There's one significant update in the case that may come up during today's proceeding, it may not, but it's that Mr.

James Dondero has resigned from his position where he held the title of Portfolio Manager where he managed certain assets under the direction of the Independent Directors, and all actions were subject to the protocols and director oversight.

Here's how we'd like to proceed, Your Honor, today. John Morris of our firm, senior bankruptcy litigator, will be the one to primarily handle most aspects of the 9019 settlement motions, including putting on the testimony of our CEO, Mr. James Seery, and responding to the objections. However, Greg Demo will deal with the response to the technical arguments raised by Mr. Daugherty.

If that works with the Court, I would now turn the floor over to John Morris to present the motions.

THE COURT: All right. Let me just ask one clarification on the Dondero announcement. Does that mean he has no role at all with the Debtor only, or does it mean he has no role with the various affiliates out there as well?

MR. KHARASCH: Your Honor, certainly, I mean, I would defer to Mr. Seery when he gets on the stand, --

THE COURT: Okay.

MR. KHARASCH: -- but there's no role with the Debtor. In terms of the word affiliates, Your Honor, that gets a little tricky in the Highland case. Certainly, you know, it's no -- no role with the controlled entities, Highland's -- the Debtor's controlled entities. But,

obviously, the word affiliates could spill over to other entities that are truly managed and owned by Mr. Dondero or his various companies.

THE COURT: Okay. I know folks tend to bristle when I use that word affiliate. I know there's nuance in some situations. But all right.

Well, let's go ahead, then, and hear from Mr. Morris. And I'll just say right now I don't think I need lengthy opening statements. I don't know if that was your intention, to go straight to the evidence. Certainly, if people feel like they've got to say a word or two, I'll let that happen, but we've done our best to read all the pleadings so I don't really think I need much of an opening statement. I'd rather go to evidence pretty quickly. Mr. Morris?

MR. MORRIS: Good morning, Your Honor. Can you hear me?

THE COURT: I can. Uh-huh.

OPENING STATEMENT ON BEHALF OF THE DEBTORS

MR. MORRIS: Thank you. John Morris from Pachulski Stang Ziehl & Jones for the Debtor. Thank you for the guidance, Your Honor. I'll probably cut considerably on what I had been prepared to say, but I appreciate the time that the Court has taken to review our papers. I know that we didn't get them in until last evening, although they weren't particularly voluminous.

We're really pleased to be here today, Your Honor. This case has just recently passed its one-year anniversary. We're here today, really, quite excited to resolve two of the most contentious, litigious cases that the Debtor has faced, both on a pre-petition basis, and frankly, in certain respects, on a post-petition basis. These cases with Acis -- and Acis, in particular, Your Honor, you're very familiar with, and I just wanted to let the Court know that our plan here is to proceed first with the Redeemer settlement.

THE COURT: Okay.

MR. MORRIS: And so let me just say a few words about that. (garbled) I've shared with all of the objecting parties, so there's no surprise here. I think everybody is prepared for the path that we're going to go down. I'd like to do my short opening. Ms. Patel and Mr. Shaw may -- I apologize, Ms. Mascherin may speak on behalf of the Redeemer Committee. Somebody may speak on behalf of the Crusader Funds. UBS, who is the only objecting party, may choose to make an opening. And I'll call Mr. Seery. And I'll do my direct of Mr. Seery. I've got just a few exhibits to put into the record, and we expect to rest. And I'll leave it to Mr. Clubok and the Latham firm to decide how they want to respond.

So, once that's completed, we will shift to the Acis settlement. I would propose to proceed in the same manner, with a very short opening, put Mr. Seery on the stand to

testify as to the issues and the facts relating to the Acis settlement, and hopefully we'll be done.

THE COURT: All right. So, in both situations, Mr. Seery would be the only witness for --

MR. KHARASCH: Yes.

THE COURT: -- the Debtor. And I guess with regard to the UBS objection to the Redeemer Committee/Crusader Fund settlement, there is a person that was identified for UBS: Moentmann. I'm not sure if I'm saying that correctly. Are we anticipating having him as a witness? I guess I need to hear from Mr. Clubok, but --

MR. CLUBOK: Yeah. Yeah, I don't -- I don't --

MS. TOMKOWIAK: I think --

MR. CLUBOK: -- I'll speak.

MS. TOMKOWIAK: Good morning, Your Honor. This this is Sarah Tomkowiak on behalf of UBS.

THE COURT: Okay. Good morning.

MS. TOMKOWIAK: Yes, we do intend to present Mr. Moentmann as a witness today.

THE COURT: All right. Well, I'm getting ahead on this because what I want to know is, do people -- can people give me a time estimate at least of your direct? Okay? I'm trying to figure out, are we going to need to put any time limitations, reasonable time limitations on witnesses?

Mr. Morris, you acted like Mr. Seery would be fairly quick

in both situations.

MR. MORRIS: Yeah, I would appreciate 10 minutes for an opening, and then certainly no more than 30 but hopefully closer to 20 minutes for direct.

THE COURT: All right. Ms. Tomkowiak, what do you think as far as time?

MS. TOMKOWIAK: Yeah. We would like about the same, approximately 10 minutes for our opening and about 20 minutes to cross-examine Mr. Seery. And then I expect that our direct of Mr. Moentmann would take about the same amount of time.

THE COURT: All right . Well, I've got some loose estimates. If you start going well beyond those estimates, I'm going to kind of rein it in, but I think this all sounds very reasonable.

All right. Mr. Morris, you may make your opening statement.

MR. MORRIS: Thank you very much, Your Honor. What I want to do with my opening is just describe at a very high level what we expect the evidence to show today. The Court is obviously familiar with the settlement terms, so I'm not going to spend any time with that. They're set forth both in our papers and in the agreement itself. The Court is familiar with the legal standard. So I'd like to spend a few minutes at the end talking about the UBS objection and why the Debtor firmly believes that it ought to be overruled.

As Your Honor is aware, the Debtor had served as the investment manager of the Crusader Funds. In 2008, following the stock market and financial crisis, the Debtor put the Crusader Funds into (garbled). Disputes arose among the interest holders of the Crusader Funds, and they spent a few years fighting among themselves. And a few years later, they came up with a plan and scheme, pursuant to which the Redeemer Committee was formed. The Redeemer Committee had the -- had the right, the unfettered right to decide when, how, and whether the Debtor would continue on as its financial manager. And in the summer of 2016, it decided to terminate the Debtor's position as investment manager.

An arbitration ensued. Litigation, frankly, throughout -- throughout numerous countries and numerous courts ensued. There were two cases in Aruba, I believe. There was a case in the Cayman Islands. There was a case filed in the Delaware Chancery Court. You had the arbitration. So I think there was litigation going on on five different fronts.

The parties spent two years in arbitration, engaged in extensive discovery and motion practice. They had a nine-day trial in September of 2018, and ultimately the panel issued an award, and that award came in three parts. The first part was called a partial final award, which was rendered in March of 2019. That was followed, I think, about eight days later with a modification award. And finally, in May, they issued their

final award.

All three awards are attached to my declaration. They have been offered into evidence under seal. The sealing order has already been entered, and that sealing order, I think, is also one of our exhibits. I'm not moving them into evidence yet. We'll get to that point. But I just wanted Your Honor to know that the arbitration awards are very much part of the record.

That award, I don't think there's any dispute that, pursuant to the award, the Debtor was obligated to pay approximately $190 million. Shortly after the award was filed, the Redeemer Committee and the Crusader Funds moved to have the arbitration award confirmed in the Delaware Chancery Court, and Highland moved for partial -- for a partial vacation of that award.

Notably, Highland did not challenge any of the Court -- any of the arbitration panel's factual findings. They didn't challenge any substance of the award. But they raised a number of procedural defects that primarily went to the overarching argument that the partial final award should have been treated as the final award, such that any relief granted in the modification award and the actual final award was impermissible.

I think UBS has calculated the value of the awards given post those two documents as approximately $36 million.

So, you've -- the Redeemer Committee has filed their claim in this case of $490 million. The Crusader Funds have filed a separate proof of claim for approximately $23 million, if I remember correctly. And their basis for the Crusader's Fund claim is that they sued to claw back certain fees that had been paid to Highland in its role as investment manager. Admittedly, I think -- I don't want to speak for the Crusader Funds -- but I do think they acknowledge that there is some overlap in those amounts.

You will hear from Mr. Seery today. Mr. Seery will describe for you what he and an independent board of directors did to educate themselves about the scope, nature, and value of the Redeemer Committee's claim. They will -- Mr. Seery will discuss the extensive advice that the board was given with respect to these matters. Mr. Seery will also describe for you the extensive negotiations that took place between the Debtor and representatives of the Redeemer Committee and the Crusader Funds. You will hear about communications between and among lawyers, communications between and among principals.

I recall, Your Honor, back in June, when we I think first alerted to the Court that we were negotiating the settlement, you expressed some mild surprise, because, after all, this is an arbitration award, so what -- what, in fact, was there to settle? And it was a very fair point, and we appreciated the

fact that you didn't have visibility into the specifics. But lo and behold, there were really -- let's just call them very two -- two very large issues.

And Mr. Seery will describe this in more detail for the Court so it's part of the evidentiary record, but the first issue related to something called deferred fees. Pursuant to the plan and scheme that were agreed upon, Highland was entitled to recover its fees as investment manager only upon the completion of the Crusader Funds' liquidation. But in the early part of 2016, as the panel found, Highland had helped itself to approximately $32 million in deferred fees, and that was one of the claims that the Crusader Fund and the Redeemer Committee brought in the arbitration, and the arbitration required that Highland return that $32 million plus interest.

So why is that an issue now in the settlement? It's an issue because the Debtor chose a different path. Rather than paying that money now and waiting for some time in the future to seek to collect that money, it compromised. And it's a very reasonable and fair and rational compromise, Your Honor. They took two-thirds of the value of the deferred fee today instead of having no settlement, continuing with the litigation, having a fight on setoff issues, because undoubtedly the Redeemer Committee would argue that they ought to get paid a hundred-cent dollars. So we'd have another litigation over setoff. We would have to wait until the

completion of the Crusader Funds' liquidation before we could even make a demand for the deferred fee. And as Your Honor knows, the Crusader Funds are going to have and the Redeemer Committee will have an allowed claim in this case, and that claim won't be satisfied until all distributions are made, and those distributions won't be completed until all estate claims are pursued.

It may be many years before this happens. And so the Debtor, I think rationally, chose to take two-thirds now rather than fight over setoff issues, rather than wait what would likely be many years to even apply for it. And then once they did that, we'd be litigating over the Redeemer Committee's faithless servant defense, one that, if you read the -- if you read the partial final award, I think it's fair to say there would be risk here that the Debtor would get nothing on the deferred fee. So that was one big issue that we dealt with.

The other one related to Cornerstone. Under the terms of the final order by the Court -- the panel, not the Court, but the panel -- but the panel found that Highland acted improperly and was required to buy -- basically buy out the Redeemer Committee and the Crusader Funds' interest in Cornerstone. They would have been required to pay $48 million to do that.

Again, issues of setoff would have abounded. And frankly,

the Debtor doesn't have the money to pay that, doesn't think it's, frankly, worth that price.

So, instead, negotiations, very, very solid negotiations, the Debtor chose to allow the Redeemer Committee and the Crusader Funds to retain those Cornerstone shares and instead give us a credit of $30.5 million against the gross value of the arbitration award.

So the $190 million is reduced first by $21 million for the deferred fee; then, second, by $30-1/2 million for the Cornerstone issue.

How did they arrive at the $30.5 million figure? We'll hear Mr. Seery testify about the diligence that he did and about how he relied in substantial part on certain valuation reports that the Debtor receives in the ordinary course of business from Houlihan Lokey.

He will tell you that these reports are provided by Houlihan for a fee. They're provided not just with respect to Cornerstone but with respect to lots of other assets that the Debtor either owns or manages.

He will tell you that the Debtor relies on the Houlihan reports for setting the marks on their books and for all kinds of other reasons.

We believe that that, again, is a perfectly rational statement, and we want to emphasize to the Court that we're not here today to tell you that this is the absolute best

result that the Debtor could obtain, because no settlement can ever represent that.

Instead, this is a compromise, where everybody gives a little and everybody gets a little. And within that context, no expert that comes in here after having spent 20 or 30 hours doing their own analysis should be able to upset this apple cart. And that's what you're going to hear from UBS's expert. This is the only point that they really make, is that he did his analysis and he thinks that the value is higher. And I don't think that's the corpus of Rule 9019. It's the Debtor's judgment. Is what the Debtor doing fair and reasonable? Has the Debtor engaged in a process to educate itself? Has the Debtor thoughtfully gone through negotiations? Is there a rational basis for where the Debtor is coming out with? There is no question as to all of those things.

And so those are the two big adjustments. Mr. Seery will tell you that there was one other more modest adjustment that was made, another million dollars in favor of the Debtor. But that is the evidence that we plan on presenting, Your Honor.

We think that there will be no dispute that this negotiation was arm's length, it was not the product of fraud or collusion, and that it is in the paramount interest of the Debtor and its estates and all constituents that this litigation with the Redeemer Committee finally be brought to an end.

I have no further comment, unless you have any questions, Your Honor.

THE COURT: Thank you. I guess I should ask Ms. Mascherin, before I go to Ms. Tomkowiak: Did you have anything you wanted to say, as you represent the settling party, obliviously?

MS. MASCHERIN: Yes, Your Honor, I would appreciate it if you'd allow me just a brief set of remarks.

THE COURT: Okay.

OPENING STATEMENT ON BEHALF OF THE REDEEMER COMMITTEE

MS. MASCHERIN: The standard, of course, that governs us today is a familiar standard under Fifth Circuit law. In the Debtor's papers, the Debtor has cited to *In re Cajun Electric Power Co-Op, Incorporated*, 119 F.3d 349, a Fifth Circuit decision from 1997. And the Fifth Circuit tells us that approval is to be given to a settlement if it is fair and equitable and in the best interest of the estate. And the Fifth Circuit has guided courts to consider such issues as probability of success in litigation, taking into account any uncertainties in fact and in law; the complexity and likely duration of a litigated resolution of the dispute, and any attendant expense, inconvenience, and delay; and other factors, such as whether the settlement would be in the best interest of all creditors and whether the settlement was the result of arm's-length negotiation.

Your Honor, I would -- I will submit that after you hear Mr. Seery's testimony, and even in light of the Debtor's -- or UBS's, rather -- effort now to turn this into a valuation dispute over Cornerstone, that the Court will agree that this settlement was in the reasonable business judgment of the Debtor and is in the best interest of the creditors.

Just very briefly, Your Honor, the current state of affairs is that the Redeemer Committee holds an arbitration award entitling it to almost $190 million in damages. As part of that award, as Mr. Morris said, the Debtor is required to pay $48 million in principal plus an additional $21 million in pre-judgment interest to purchase the 42 percent minority interest in Cornerstone that's held by the Crusader Fund.

In addition, under that award, the Redeemer Committee is entitled to the cancellation of several limited partnership interests in Crusader Funds which the panel found Highland Capital Management had obtained by way of breaching the Crusader Fund plan of liquidation and breaching its fiduciary duties.

Only one small piece of that limited partnership interest relief was challenged by the Debtor in the action to confirm or vacate the award, and only one small piece of that, which we'll refer to, I think, in arguments later, perhaps, is the Barclay's claim for a limited partnership interest which Highland transferred to its wholly-owned affiliate Eames,

E-A-M-E-S, is at issue in UBS's objection.

In addition to the relief that the Redeemer Committee was granted in the arbitration award, Your Honor, the Crusader Fund, as Mr. Morris says, has asserted its own separate claim to claw back certain fees paid in the past to the Debtor and also to avoid the payment of any further fees under what New York law recognizes as the Faithless Servant Doctrine, which I will submit there is ample findings in the arbitration awards in this case of breaches of fiduciary duty, and New York law holds that when a servant has been found to have breached its fiduciary duties and acted unfaithfully, that servant is not entitled to further compensation from the client -- in this case, the Crusader Fund.

Now, all of that, as Mr. Morris notes, would be for litigation many years from now upon complete liquidation of the Crusader Fund, because the deferred fees that the Crusader Fund would seek to avoid paying would not be payable in any event unless and until the Fund -- the Crusader Fund was completely liquidated, which, as Mr. Morris notes, could not happen until this claim is fully paid, because this claim now is -- will be the single largest claim -- the single largest asset, rather -- of the Crusader Fund.

Your Honor, this compromise, this settlement, would be to the benefit of the Debtor's estate for several reasons. First and foremost, as Mr. Morris emphasized, it will end all

disputes between the Redeemer Committee and the Crusader Fund on one hand and Highland Capital Management, the Debtor, on the other, and would provide for releases of the Debtor and several of its affiliates and employees in connection with the settlement.

As a net matter, this compromise would reduce the amount of the Redeemer Committee's damages claim to an allowed claim of just over $137 million, a reduction of over $54 million from the amount of the arbitration award.

This settlement would also allow a very modest claim to the Crusader Funds of only $15,000, Your Honor.

It would provide for the same relief as the arbitration panel ordered with respect to the disputed limited partnership interests, including the interests that is currently held by the Debtor's wholly-owned affiliate, Eames.

And, significantly, it would also relieve the Debtor of its obligation to purchase the shares of Cornerstone that are held by the Crusader Fund -- as I mentioned, a 42 percent minority interest in that company -- which otherwise, under the terms of the award, the Debtor would be required to pay a total of $79 million to acquire. As Mr. Morris said and as I believe Mr. Seery will testify, the Debtor doesn't have that kind of money and has no interest in buying those shares. The Debtor is in liquidation, and its interest is in monetizing the 58 percent majority interest that it owns or controls in

Cornerstone.

And significantly, Your Honor, to that end, this settlement also includes an agreement by my clients, the Redeemer Committee and the Crusader Fund, to cooperate with the Debtor so that the Cornerstone asset, the company as a whole, can be monetized jointly. And we've even agreed upon some terms, which I won't get into because they are confidential, given that this is an asset that the Debtor will be seeking to deal with in the future, but under those terms, faithfully cooperate and will attempt to achieve a monetization that would bring in substantial value of what the Debtor could otherwise achieve holding a 58 percent interest rather than a 100 percent interest in that asset.

So, Your Honor, in sum, I submit that this settlement was in the reasonable business judgment of the Debtor and it amply meets the requirements for approval that the Fifth Circuit set forth in *In re Cajun Electric Power Co-Op*. Thank you.

THE COURT: All right. Thank you.

All right. Now I will go back to UBS. Ms. Tomkowiak? Am I saying your name correctly? Correct me if I'm not.

MS. TOMKOWIAK: It's pretty close for a first try.

THE COURT: Okay.

MS. TOMKOWIAK: It's Tomkowiak.

THE COURT: Tomkowiak? Okay. Thank you. You may proceed.

MS. TOMKOWIAK: Thank you, Your Honor. Before I proceed, I did want to raise one housekeeping issue that hopefully will not count against my time, but I think it's important to resolve it before I do my opening statement.

As you just heard from both the Debtor and Redeemer's counsel, part of the -- one of two very large issues in this settlement relate to the value of Cornerstone, and specifically the value of Crusader's ownership interest in Cornerstone. The Debtor put -- assigned a value to that of $30.5 million, and they put that in their papers, they filed that in court, they've said it here again here today, and they've said that Mr. Seery intends to testify as to the diligence that he purportedly did in order to arrive at that number.

We've, you know, received documents from the Debtor and Redeemer showing the valuations that were alluded to. The numbers in those valuations are substantially higher. Our own expert has also performed his own analysis of the valuations, and his own valuation analysis, and we would like to be able to testify to those numbers and talk about them.

Frankly, we're surprised that the Debtor doesn't want to put those valuations into evidence, considering that it is the Debtor's burden to show that the settlement had some rational basis, as they just said.

But, and we have previewed that to the Debtor, and they

have expressed their views that those values and those valuation reports are confidential and should not be part of the public record. We think that is prejudicial. We think it is prejudicial to put the lowest of the low of any of these ranges into the public record without also being allowed -- allowing us to put on evidence that the true valuation is, in fact, much higher.

Again, they put into the record that the perceived fair market value of this asset, which is critical and central to our objection and to their -- the value of the settlement and whether or not it's fair and equitable, they've put that into the record, and we would like to be able to get evidence into the record relating to that number and relating to our analysis of it and why we believe it's well, you know, below any range of reasonableness.

We don't think it's confidential. We think it should all be part of the public record. We do not object if the Court wishes to proceed in some other manner, such as, you know, sealing the courtroom, although, again, that's not our preference. We would prefer to just be able to talk about the evidence and the numbers. But we would welcome your Court's guidance on this. You know, I believe, and I won't speak for the Debtor's counsel, but I believe that that is -- was their preference.

MR. MORRIS: May I be heard, Your Honor?

THE COURT: You may.

MR. MORRIS: Okay. Your Honor, the reports that are being referred to are reports that were provided on a confidential basis. They're stamped confidential. They were produced pursuant to the protective order.

I'm a little confused as to why no effort has been made to deal with the issue prior to the last 12 hours or so, because (garbled). They received the documents as confidential documents. There's no question about that.

And the important point here, Your Honor, is why are they marked confidential. It's one thing to disclose a settlement number. It's very different to disclose the analyses. There may be discounts. There may be adjustments. We're about to embark, if this settlement is approved, the Debtor and the Redeemer Committee and the Crusader Funds are about to embark on a sales and marketing process. That part is known to the public. But the value, if the value -- I'm stunned that UBS is surprised that we care. There's probably not many things that we care about more than maintaining the confidence of the value -- of our perception of value, how we get there, the methodologies that were employed, and particularly when we're about to go into the marketplace. And we believe this information really does need to be kept confidential for that reason.

The option that I can think of, Your Honor, and I know it

may not be popular with everybody here, but there is only one objecting party. There's nobody else here. You've got your statutory committee. You've got the U.S. Trustee. They've got statutory obligations to continue to be part of the process. You've got UBS and you've got the Debtor. I would respectfully request that this part of the proceeding be limited, or at least the portion when their expert witness is testifying, because -- well, be limited to those folks, and everybody else just has to go off the line. That would be my proposal, Your Honor.

If this information gets into the marketplace, not only the Debtor but the other stockholders, including the Crusader Funds, will be harmed.

MS. MASCHERIN: Your Honor, may I speak?

THE COURT: You may.

MS. MASCHERIN: May I, just briefly?

THE COURT: You may.

MS. MASCHERIN: On behalf of the Crusader Funds and the Redeemer Committee, Your Honor, I join in Mr. Morris's objection. We have produced in discovery and UBS has included on its exhibit list the independent third-party valuations that the Crusader Fund has obtained, pursuant to strict confidentiality obligations, with respect to the Crusader Funds' shares in the Cornerstone asset, as well as highly confidential portions of reports by the Crusader Funds'

manager to the Redeemer Committee concerning its opinions regarding the value of that asset.

And we share the concern. And there should be a concern, I think, Your Honor, with respect to anyone who cares about the Debtor's ability to maximize the value of the Cornerstone asset. The market should not see the confidential valuation reports and other advice that the Debtor and my clients considered when we negotiated this compromise.

THE COURT: Okay. Let me --

MS. TOMKOWIAK: Your Honor, may I --

THE COURT: Let me think about --

MS. TOMKOWIAK: May I briefly make just a couple points?

THE COURT: Well, just a minute. Let me think about the mechanics here. I know there was a declaration of your expert submitted ahead of time. Have you filed under seal -- I've granted lots of sealing motions and I'm losing track -- have you filed under seal a valuation report of your expert?

MS. TOMKOWIAK: Your Honor, we have filed these papers under seal, to be cautious. Again, we view that differently than an open proceeding. These documents were on our exhibit list. No one objected to them. Some of these documents we did not have a chance to file because, although we've been asking for them for a very long time, we've only received them in the last, you know, 36, 24 hours.

So while some of them are under seal, there are other more recent valuations that would not be. And, again, we have a very different view here of what would or would not be harmful to a sales process.

We believe it is incredibly more harmful and prejudicial to have put in their motion, and I'm looking at it -- Page 10, Paragraph 31 -- to say that there's a $30.5 million perceived fair market value of Crusader's 42 percent ownership in Cornerstone, and then not be able to put into the public record all of the numbers in these, you know, secret valuations that suggest that it should be much, much higher than that. Substantially higher than that. Double, triple higher than that.

So that's our view. And, you know, again, we're willing to proceed as the Court wishes, but, you know, we have a very different view of who's really being harmed here, and, you know, we think it's the estate and we think it's us.

THE COURT: All right. Well, what I was thinking is, because this is going to be mechanically cumbersome and we're not going to have complete certainty about the integrity of the process if I say everyone has to leave the call except UBS, Redeemer, the Debtor, and the Committee, there's always a risk of someone somehow slipping by, I'm wondering if we can have your witness later and he can testify about the under-seal document without -- I don't know, can we have testimony

with him just referring to page whatever for the Court to look at, without saying the numbers out loud? Is that a ridiculous thought, or is that possible, do we all think?

MS. TOMKOWIAK: That might be possible, Your Honor, when it comes to our witness. And it might be possible to, for example, share slides with you in advance with respect to both my opening and our experts so that only you could see them but then we would talk about them vaguely.

I do, you know, I hesitate because we'd also like to use these documents potentially in our cross-examination of Mr. Seery. Again, we literally got some of these, you know, yesterday. And so I'm not sure that that's -- entirely solves the problem.

I mean, one other suggestion is that we could pause here and switch to the Acis claim and try in the meantime to work something out. You know, we've already proceeded down this road, though.

MS. LAMBERT: Judge Jernigan?

THE COURT: Yes.

MS. LAMBERT: This is Lisa Lambert for the United States Trustee. I had not anticipated needing to make an appearance in this hearing, but the U.S. Trustee has asked for sealed documents in this case, some of which have not been sent. And in addition, we'd ask to be excluded specifically as contemplated in the argument, but I wasn't sure the Court

was aware that we were on the call.

THE COURT: Okay. You're saying that if we have sealed testimony or documents, the U.S. Trustee wants to be included?

MS. LAMBERT: Yes.

THE COURT: Okay.

MS. LAMBERT: And for those who have not e-mailed those documents, we would be grateful if there were e-mailed, because I do not have all of them yet.

THE COURT: Okay. All right. This is a little bit --

MR. MORRIS: Your Honor?

THE COURT: -- challenging -- Mr. Morris, I'm going to go to you -- in a vacuum. I mean, I don't know what the whole set of documents are. I mean, a part of me is torn here. If we have the UBS expert's information out there for public consumption, will that alone, in the Debtor's view, chill the bidding process? I mean, this is one objecting party's view of the world, and, you know, perhaps it would simply be perceived as one objecting party's view of the world and not the end-all be-all on value. What do you think?

MR. MORRIS: Yeah. You know, I know this is a little unusual, Your Honor, but can Mr. Seery be heard since he is the CEO? I don't want to put him under oath and do -- but I think he can probably articulate much better than I can as to

the Debtor's concern. He's very familiar with the documents. He's reviewed them. And I don't know if -- Mr. Seery, are you able to hear me? Do you want to speak up on this particular topic?

MR. SEERY: I can hear you, yes. If the Court can hear me, if the Court wants to hear me, I'm happy to --

THE COURT: I would like --

MR. SEERY: -- describe what these documents are and how they derive into this issue.

THE COURT: Please. Go ahead.

MR. SEERY: Your Honor, each month -- and this is not unique to the Debtor -- with respect to what our view is of -- of the three -- two or three assets, the Debtor gets valuations from a third-party service, in this case Houlihan Lokey, which is probably the most prominent valuator of these assets, these types of assets. They set a -- well, what we call fair value. We use it for our NAV. Doesn't mean that it's fair market value. It's their perception of what value can be for these assets using various models and comparisons.

And we use those every month, we try to do it on a consistent basis, and that's how we value all our liquid assets.

Houlihan also does this service for a myriad of funds, investment funds, as well as the retail funds that are smaller affiliated with the Debtor but we don't control. So these

valuations for various assets go into the NAVs that those entities produce.

Again, they're not fair market value, but perception using models and desktop analysis as to what the value is, to allow investors in the funds to understand movements in the value of assets and get a sense of what the value may be.

In this case, the Debtor owns around three percent of Cornerstone. RCP owns --

THE COURT: I'm sorry.

MR. SEERY: -- around 55 --

THE COURT: I got the math wrong. What is the Debtor's ownership?

MR. SEERY: About three percent, Your Honor.

THE COURT: Okay.

MR. SEERY: RCP, which is a fund called Restoration Capital Partners, --

THE COURT: Uh-huh.

MR. SEERY: -- we've dealt with a little bit in the case before, is a fund with third-party investors mostly, a -- an interest by some Dondero-affiliated entities, and about 16 percent owned by the Debtor. That owns 55 percent of Cornerstone.

So, roughly, the Debtor's derivative interest in the asset is around 11 percent, 12 percent. In that neighborhood. The rest is owned by Crusader.

UBS -- we provide these documents on a regular basis to the Unsecured Creditors' Committee. UBS sits on that Committee. Our confidential information we provide to the Debtor and provide to the Committee, and have been doing exclusively for months, contains various valuations using these marks, and then what we think we can achieve for various outcomes.

We're working with Cornerstone management to put in a management retention program and enhance that opportunity for them so that interests are aligned. We think that's in the best interest of RCP, with whom -- manage the asset. We think it's in the best interest for the estate and our interest. Also in the best interest for Crusader.

We hope to then be able to go to the market. We may or may not be able to go to the market. The market may not be ready. It may not be the right time. We may have to do different things to the asset to get it in the best condition to sell it. We may have to even think about (inaudible) to get the best value. Because we have a duty to RCP as well. Releasing the detail that's in these NAV valuations that we get from Houlihan every month would be extremely detrimental to that process.

The interests of the Debtor, as I said, it's material, but there's significant third-party interests here. Significant third-party interests. For UBS -- these are not the types of

reports that ever are or should be released generally, and they will have an effect on the sale process.

MR. MORRIS: Thank you, Mr. Seery.

THE COURT: All right. Well, let me go back.

MS. TOMKOWIAK: Your Honor, may I -- may I just real briefly reply to that?

THE COURT: Let me ask you this first. Are we -- I want to make sure I understand the universe of documents we're talking about. Is it just your expert plus these Houlihan documents?

MS. TOMKOWIAK: Well, yes, and a couple of other documents that were produced by the Redeemer Committee. The -- those documents, I think what's confidential about them is that they refer back to these Houlihan valuations.

THE COURT: Okay. Isn't there a simpler answer to all of this, and that is, if I don't have a Houlihan person, if I don't have the person who created these documents, then they're hearsay I shouldn't allow in.

MS. TOMKOWIAK: Well, Your Honor, but we're not -- we're not necessarily putting them in for the truth of what's in them. In fact, we think what's in them is unreasonably low and significantly flawed and inaccurate. But, you know, they are relevant for other purposes, including the fact that they are much, much higher than the perceived fair market value that the Debtor put into their motion.

I was confused to hear Mr. Seery say that these don't show anything about fair market value, and those were their words, not ours. It's their burden to show that they had a rational basis and sound business judgment in entering into this settlement, so we are -- we should be allowed to explore with Mr. Seery what, to quote the Debtor's counsel, what diligence he did, including if he looked at these reports; why he didn't accept the higher values that are in these reports; why he took a value as of March, over six months ago, as opposed to the much more recent values in these reports that show that Cornerstone has continued to improve its performance. So, and the -- of our expert, who is allowed to rely on hearsay and allowed to explain what he did and what he reviewed in coming to his own analysis that this asset is worth, you know, two to three times the value that it's been assigned to it, the value that the Debtor's estate is giving up and that Redeemer is getting as part of this deal, which we just think is a windfall. And I don't understand how the Court can have all of the information available to make that independent judgment without --

THE COURT: Okay.

MS. TOMKOWIAK: -- without seeking that information.

THE COURT: Okay. So I'm going to take --

MS. TOMKOWIAK: I mean, we want these assets to be worth more. We want them to be able to monetize them and

maximize their recovery. We just -- we, again, disagree as to what's more harmful, having one very low, incredibly low, unreasonable number out in the public, or having, you know, the -- all of the information out there in the public that shows that the value of these assets is much higher.

THE COURT: Okay. Well, let's take this in chunks. I'm not going to allow any evidence in regarding these Houlihan reports. There was a way to do this, and I may or may not have been amenable to this way, but you could have subpoenaed the Houlihan person. I don't know what kind of fight you would have had on your hand. Probably would have had one. But without a Houlihan person to testify about this, this is hearsay and I think it would be offered to prove the truth of the matter asserted. So I'm not allowing the Houlihan information in for that reason.

I'll say a couple of additional things. We have a longstanding rule in this District that the Debtor can always testify about value. Okay? So, it goes to, obviously, the weight and credibility I give it, but -- so if he speaks about value, he's entitled to speak about value. It's just how much weight do I give it. He has the burden of proof.

The last thing I want to say on this topic is we all know that, in a 9019 context, the Court is not technically required to have a mini-trial. It needs to consider all facts and circumstances that "bear on the wisdom of the settlement

proposed." But I think that is probably yet another reason to keep this information out, that it's going a little bit beyond what I think is necessary today. And, again, the Debtor is either going to meet its burden or not. It has the burden. So that's the Houlihan-related stuff.

You've alluded to Redeemer Committee or Crusader Fund information. That's another category of stuff we're talking about?

MS. TOMKOWIAK: Yes and no, Your Honor. I think we also have presentations that were provided to the Crusader Fund, I believe by Alvarez & Marsal, that show -- again, discuss the valuation of Cornerstone as of particular dates, and frankly, we believe, directly contradicts the testimony that the Debtor has indicated that they intend to elicit from Mr. Seery and shows how unreasonable the efforts were here.

THE COURT: All right. Well, I think my ruling needs to be consistent, then, with the ruling with regard to the Houlihan information. I don't have an Alvarez & Marsal witness. It would be hearsay without the Alvarez & Marsal person here to testify about it. I think it would be offered for the truth of the matter asserted. And so I'm not going to allow that.

So, does that bring us down to just this one category of Mr. Moentmann and his work product?

MS. TOMKOWIAK: I believe so, Your Honor, in terms

of, you know, can he testify about his, you know, his own valuation, his own analysis of what he believes that these assets are worth and the flaws that he's identified in the Houlihan valuations as well, which I think, with respect to his own analysis, you know, I believe it would be helpful for the Court to hear the numbers and, you know, the flaws in what Houlihan has done. That's part of his opinions. And I think he could do that without, you know, referencing specific numbers, if that's what the Court would prefer.

THE COURT: All right. So I'm going to go back again to Mr. Morris and Ms. Mascherin. I'm inclined to let Mr. Moentmann testify, and I can -- he can refer to his report that's here under seal. And as long as he doesn't make references to numbers of Houlihan, Alvarez & Marsal, I'm not sure I'm convinced it would hurt the future marketing effort. Again, wouldn't the market just say this is one objector's opinion and they either give it weight or not?

MR. MORRIS: Your Honor, I probably should have said this earlier. I am going to have a very short *voir dire*. And I think, you know, if you would allow me to do that, the Debtor expects to move to exclude this witness in its entirety, in his entirety. He's a lovely man, I'm sure he knows his work very well, but I don't think it's worth the time, money, and effort to continue down this path on a 9019 motion. And so we will be making that motion.

I suppose if that motion is denied, you know, if he can be limited in the manner you're describing, we could probably live with that. But we do intend to make that motion.

THE COURT: All right. Ms. Mascherin, anything to add?

MS. MASCHERIN: No, Your Honor.

THE COURT: Okay. So that is the path we'll take. We'll let Ms. Tomkowiak call Mr. Moentmann. We'll either allow it or exclude it depending on where I go on that request. And then, if he does testify, he will be directed to just cross-reference his report that's here under seal and not mention numbers of other experts that he may be critical of.

All right. So, with that, Ms. Tomkowiak, you may make your opening statement.

OPENING STATEMENT ON BEHALF OF UBS SECURITIES, LLC

MS. TOMKOWIAK: Okay. Thank you, Your Honor. And to -- just to be crystal clear, I do intend in that statement to refer to the conclusions, his own, not those of anybody else.

THE COURT: All right.

(Pause.)

MS. TOMKOWIAK: Your Honor, as I -- I also appreciate you taking the time to read all of our papers. As you know, UBS strongly believes that the settlement is not fair, it is not equitable, and it is not in the best interest of the estate.

It is the Debtor's burden, that nobody disagrees about that, to show that it has exercised business judgment within a range of reasonableness. And the Debtor has not submitted to this Court any evidence whatsoever to meet that burden. The Debtor -- Mr. Seery testified at his deposition that he agreed that the only thing before the Court to determine whether or not the settlement is fair and equitable is their motion and that's it.

As you've observed, no one from Houlihan Lokey intends to come here and testify today. There is no evidence before you to independently evaluate the true value of these two very large issues, as the Debtor's counsel described them. It's just Mr. Seery and his say so of what he thinks is reasonable. And we don't think that that is enough to show that the settlement is reasonable, we think there's been a complete abdication of business judgment here, and we don't think this is in the best interest of the estate.

We believe that the Debtor and Redeemer have negotiated a sweetheart deal, frankly, that gives Redeemer a ginormous windfall and deprives the estate of its right to these meaningful assets that could be available to UBS and to other creditors.

And, so, yes, in addition to harming the estate, this deal is absolutely to the detriment of UBS, and we are a significant unsecured creditor whose rights are affected by

this deal. Our views must be taken into consideration under the Fifth Circuit law that Ms. Mascherin cited to. And respectfully, we just don't think that the Debtor has met its burden for giving Your Honor the full picture necessary to fully understand the value of this settlement compared to the arbitration award on which it's supposedly based.

I wanted to briefly talk a little bit about that arbitration award, if you can go to the next slide. So, again, that we all agree that the claim is based upon an arbitration award. No court has ever confirmed this award. It's not a final judgment. I want to walk you briefly through the components of that award as they're relevant here. So, Gail, if you could pull that up.

You know, Redeemer asserted a number of claims against Highland and they're laid out here, including the panel's findings. The first row is the uncontested claims. And by that, I mean that, you know, no one has disputed that portions of them should be subject to vacatur in Delaware law.

The next component, there are legal fees and costs that the panel awarded to Redeemer. Next, we have the deferred fee claim. And this was alluded to in the openings of the Debtor and Redeemer as well. And the panel agreed with Redeemer that Highland had, to quote the Debtor's counsel, helped itself to over $32 million in fees that were supposed to be deferred until the end of liquidation of the Crusader Fund.

The panel awarded Redeemer damages, but it did not relieve Redeemer of its obligation to pay the Debtor those fees in the future when they are due. And I don't think that is reasonably in dispute here.

The Cornerstone award, as we've all acknowledged, that was a finding by the panel that Highland did not act appropriately in liquidating Cornerstone and Crusader's interest in Cornerstone. And so the panel awarded Redeemer nearly $70 million for that claim. Or, I'm sorry, over $70 million for that claim. And that was based on the panel's view at the time, around a year or so ago, that the fair market value of Crusader's interest in Cornerstone was $48 million, approximately, and then plus pre-judgment interest, for a total of $71 million.

And then there was also this claim relating to the Barclay's interest. This particular award was included by the panel as a modification to its first final award. That second final award also increased the amount of pre-judgment interest that Redeemer was receiving under the arbitration award by extending the period of time by which they could receive that.

It's that portion of the Barclay's claim here, which is approximately $30 million, and then another $6 million of pre-judgment interest. That is the subject of the motion to vacate that was filed in Delaware a long time ago and was set to be heard the day that the Debtor filed this case for

bankruptcy.

So, the sum of these components, in terms of what Redeemer was owed, is approximately $190 million, but the story does not end there, as the Debtor and Redeemer would like you to believe. And I think, in fact, they acknowledge, you know, this is not a straightforward arbitration award, because there are reciprocal obligations that Redeemer still owed to the Debtor. And Gail, if you could click here.

So, what's reflected here are the various setoffs and other issues that we believe you need to consider when you think about the true value of the arbitration award. So the first one is the Cornerstone shares. We all agree that the arbitration award required -- required Redeemer, simultaneously with payment of the damages award, to give back, to tender back to the Debtor, absolutely no question, not in dispute, they were required to give those shares back to the Debtor.

And so we've assigned here, just for purposes about thinking about the arbitration award at the time it was issued, a value of $48 million, which, again, is the fair market value that the panel concluded was appropriate for Cornerstone at the time this award was issued, which, again, was a long time ago.

And then there was the payment of deferred fees. I think you heard a lot about those today. These are the fees that,

again, the panel found that Highland took them too soon, but they are required to get -- they are -- they have a right to get them at some future point in time when the Crusader Funds are fully liquidated. And so nothing about the arbitration award relieved Redeemer of its obligation to pay those fees, even though, necessarily, and as you can see by their name, they were deferred until some future point in time.

And then finally here, you know, any -- we -- there's a certain amount of contested claims. And, again, that relates to the Barclay's claim and with respect to the amount of pre-judgment interest that was included in the second final award.

That -- you know, Mr. Seery, I think, testified at his deposition that he believed they had little chance of succeeding on that motion, and they've assigned that zero value in their settlement and gave one hundred percent of the value of that to Redeemer. We believe that's inappropriate and we believe that even if you take 50-50, although, you know, we think it should be higher than that, but even if you just assume for settlement purposes that they might win that issue, they might lose that issue, and you take 50 percent of those contested amounts that are subject to vacatur by the Delaware Court, or frankly, by this Court, then, accounting for that litigation risk, you should remove another $18 million from the value of this arbitration award.

And so, at the end of the day, you've got an adjusted

award of around $90 million, and that's what we believe is the true value of the award.

If you go to the next slide. We really just have two large problems with the proposed settlement. The first is the Cornerstone shares. And, again, without getting into the numbers, they are -- indisputably, the Debtor's fair market value calculation is based on the very lowest end of the valuation range prepared by Houlihan Lokey for Crusader, not the Debtor. It's a bit confusing, but Houlihan Lokey actually provided two different valuations: one for Crusader, one for the Debtor. They used the one provided for Crusader, and they took the very lowest end of that range as of March 2020. They did it despite having a different valuation that had a higher range and despite the Debtor's own policy of typically marking assets at the mid-point.

They provided no basis for using a valuation in March, when the COVID pandemic was in its very initial stages. The market was very, very low. They've only said and we expect Mr. Seery to testify that, well, that's when the parties first started negotiating this deal. But the settlement wasn't finalized until, you know, six months later, and the Debtor is not bound by that valuation or some handshake deal. They could have but they did not insist that more current numbers were used.

And our expert, you know, we intend to offer his testimony

that they've used some very flawed assumptions and that the 30.5 is well below any range of reasonableness that you could assign to the shares.

And then really the -- you know, we don't think that the Debtor has appropriately taken litigation risk into account. You know, they've given a very large litigation discount for a claim regarding the deferred fees and this applicability of the Faithless Servant Doctrine that hasn't even been filed. I mean, that -- that litigation is hypothetical. It's not pending. It's a future dispute that isn't even ripe yet. And yet they've applied a very large litigation discount for that claim.

Conversely, they've applied a zero litigation discount for a claim that has been fully briefed to the Delaware court in the form of a motion to vacate. And again, inexplicably, they just (inaudible) amount and provided Redeemer with a hundred percent of the value of that claim.

Can you go to the next slide?

You will hear from our expert, Mr. Moentmann. He's a principal at Grant Thornton. He has over 30 years of experience in valuations. He specializes in healthcare valuations.

I heard Ms. Mascherin say that we would like to turn this into a valuation case. Well, frankly, we don't see how valuation is not relevant when the settlement includes the

forfeiture of a very, very meaningful asset such as Cornerstone.

He's going to testify, again, that, in his opinion, when he has looked at all of the information and corrected for these assumptions, that the true value of Crusader's ownership in Cornerstone as of June is, you know, as great as -- as much as triple the value that has been assigned to it by Highland as the "perceived fair market value."

We believe that this is the value that the estate is giving up. The estate has the right to those shares, and we believe that in forfeiting the right to them they're giving up a meaningful asset that -- that's -- has a much greater value than the amount taken into account by -- in the settlement.

And by the way, no one disputes that this asset is performing better today than it was in June, and certainly than it was in March, when they took the very, very lowest of the range of valuations done at that time.

What that means is that, under the proposed settlement, Redeemer actually does far better than it ever could under the underlying arbitration award.

And if we can go to the next slide, where I have hopefully provided redacted -- yep. And what that means is what the Debtor has said and what Mr. Seery has testified is that he expects the Debtor to be solvent. He expects that Redeemer will recover one hundred percent of its allowed claim in real

or one hundred dollars. And so what that means here is that they get to keep their $137 million allowed claim. They're receiving a release of their obligation to pay $32.3 million in deferred fees --

MS. MASCHERIN: I'm sorry, Your Honor. I must object. This line I believe at the bottom essentially includes the same, if you do the math, the very same values that are discussed in the confidential documents that were just the subject of their sidebar discussion.

THE COURT: All right. That does seem to be the case, Ms. Tomkowiak. Agree? I can go backwards and figure out --

MS. TOMKOWIAK: Yes, I do apologize. We --

THE COURT: -- what that redacted number is. So, yes, move on to another screen, please.

MS. TOMKOWIAK: We redacted these on the fly, Your Honor, and we just didn't redact the full column.

THE COURT: Okay.

MS. TOMKOWIAK: So we apologize for that. I believe it has now been fixed.

THE COURT: Okay.

MS. TOMKOWIAK: Sarah, does that address your concern? So, --

MS. MASCHERIN: No, that's -- no, you're -- you still have a reference in the last column, Counsel.

MS. TOMKOWIAK: The 30.5? That's public. That is --

MS. MASCHERIN: No, the other number, Counsel. The other number comes from confidential documents.

THE COURT: Okay. I thought the --

MS. MASCHERIN: Unless I was misreading it.

THE COURT: I think it was Grant Thornton. There was a -- there was the public number, the 30.5 March number, and then there was the Grant Thornton number. I think she revised it where those were the only two remaining, correct?

MS. TOMKOWIAK: Correct.

THE COURT: Okay.

MS. MASCHERIN: I apologize, Your Honor. I misread it.

THE COURT: Okay. Go ahead.

MS. TOMKOWIAK: Okay. Gail, if you could put that back up.

The bottom line, then, Your Honor, is that when you take into account one hundred percent recovery in real dollars on the allowed claim, release of the obligation to pay $32.3 million in deferred fees in the future, retaining Crusader's interest in Cornerstone as opposed to giving it back to the estates, we believe that Redeemer could be receiving an actual recovery of over one hundred percent of its filed claim under the arbitration award. Grant Thornton's estimate, you know, over $60 million -- $60 million over its allowed claim.

But even, even using the 30.5 perceived market value that the Debtor assigned to Cornerstone in the settlement, they still recover more than one hundred percent on their claim, as reflected in that Final column.

THE COURT: All right. Ms. Tomkowiak, we have gone well over the ten minutes. I know there have been lots of starts and stops, but you need to wrap it up pretty soon. Okay?

MS. TOMKOWIAK: Will do. Absolutely. All right. And I guess I'll just -- I don't -- I don't have any more slides.

I will just say that there's a genuine dispute, I think that is apparent now, about the value of Cornerstone. We don't think the Debtor has provided the Court with any evidence, let alone sufficient evidence to accept their valuation of this asset. We don't think Mr. Seery will testify that he's ever talked to Houlihan about this valuation. Houlihan is not here to defend their methodology. And we, fundamentally, we agree that settlement is desirable, we understand that, particularly here in this complex case, and that it is tempting to approve and allow all of this litigation to go away.

Quite frankly, UBS still believes that its claim can be settled and the mediation is still open and we're hopeful that we can resolve our claim, too, and we're making every effort

to do that. But this, this settlement is designed to overpay Redeemer, frankly. We feel like it has bought their support and they're working together with the Debtor to object to our claim.

We think that, at minimum, the settlement should not be approved without further information being provided to the Court in the form of real evidence or an independent valuation of Cornerstone being done.

Alternatively, Your Honor, the final thing I will say is that, in the alternative, if Your Honor is inclined to approve the settlement, the -- one of the terms of the settlement requires the -- Redeemer and the Debtor to work together to sell Cornerstone over a period of time. In the event that sale occurs and the purchase price is, as UBS suspects it will be, well above the value that's been calculated by the Debtor, then we believe that it would be appropriate for the Court to take Crusader's proceeds of that sale into consideration at the time of plan confirmation, when distributions are to be made, and any upside should be taken into account when calculating Redeemer's actual recovery.

THE COURT: All right.

MS. TOMKOWIAK: I appreciate your indulgence, Your Honor, and that's all I have.

THE COURT: All right. Thank you. Mr. Morris, shall we go ahead and have Mr. Seery testify now?

MR. MORRIS: I'd be delighted.

THE COURT: All right. Mr. Seery, welcome back. I need to swear you in. Please raise your right hand.

JAMES P. SEERY, DEBTOR'S WITNESS, SWORN

THE COURT: All right. Thank you. You may proceed.

THE WITNESS: Can you hear me, Your Honor?

THE COURT: We can hear you loud and clear. Thank you.

MR. MORRIS: Thank you.

DIRECT EXAMINATION

BY MR. MORRIS:

Q Good morning, Mr. Seery. Before we get into the substance, let me just ask you. Is it your -- have you rolled over here?

A I'm not known for that. The answer is no.

Q Okay. When were you appointed an independent director?

A In January of this year.

Q Okay. And you were appointed as the CEO in July; is that right?

A That's correct.

Q And the Court approved that in the form of an order; is that right?

A Yes, it is.

Q Okay. I want to move this along as efficiently as I can, so let me ask you an open-ended question: Can you describe

for the Court the diligence that you and the independent directors did to familiarize yourself with the claims that are being made by the Redeemer Committee and the Crusader Funds?

A Yes. From the start, and obviously we have several litigation claims, but Redeemer was a significant litigation claim and they sit on the Committee. So right from the start, even before the appointment as an independent director, I and I'm relatively certain Mr. Dubel, read the Redeemer partial arbitration award and then the final arbitration award. After our appointment and our selection of Mr. Nelms as the third director, I am quite sure that Mr. Nelms did the same thing.

So we looked at the awards, investigated with the Debtor's team the underlying nature of the awards, what led to the disputes. Then we worked with counsel, going through the underlying case issues that the arbitration raised. And in particular, the disputes between the partial final award and the final award.

And that took place through our initial appointment, after we got our feet wet, as I said, early in February and in March, because we thought this was one of the key issues we had to determine: Would we continue to litigate with Redeemer or would we seek to reach an accommodation and a compromise with respect to their arbitration award?

Q And did counsel provide you with written analyses, including advice concerning the nature and scope of the

Redeemer Committee's arbitration award?

A As with each of the claims that we've looked at, we've had counsel, and I think the time records reflect it, do significant work researching the underlying claims, getting to know the underlying case law. In this case, looking at the arbitration awards. Thinking about the defenses. Thinking about and analyzing the issues that Highland raised, challenging the final award. Analyzing the situation of the Delaware Chancery Court, including the appeals. And then report to us as an independent board on those issues.

Our practice -- you know, I don't have a specific recollection if this is the case of every one of the claims -- our practice is to have a board meeting after those documents that counsel's produced have been reviewed. Our practice is to challenge them. Our practice is to challenge them quite vigorously and send counsel back to do more work and hopefully educate us in a way that we have a good understanding of the risks and rewards with respect to various options with respect to each of the litigation claims.

Q And did the board spend time and did you personally spend time considering and getting advice on the issue of the Faithless Servant defense?

A We did. To be frank, it's one that, despite having a lot of experience in these areas, I had not heard of it before. So the board requested that counsel do research and provide

additional written information regarding the defense, its likelihood of success, and particularly with respect to the facts that are outlined in the partial award and in the final award and how those might impact attempts that we would have to get around that defense.

Q All right. Let's shift from the diligence that you and your fellow board members did to the manner of the negotiations. Did you (audio gap) participate in the negotiations?

A I'm sorry. There was a -- there was a beep.

Q Did you -- do you have personal knowledge as to the negotiations that led to the agreement?

A I did, yes.

Q All right. Again, can you just describe in general terms for the Court the process that the Debtor undertook in negotiating the agreement that led to this motion?

A Well, there was extensive back and forth, as I think everyone in the case knows, that we started with a hundred percent case, and we negotiated that with Redeemer very aggressively. Redeemer brought in Crusader at times. We negotiated various points to -- where they gave and we did, back and forth. We went back and did additional research on some of their claims with respect to -- and particularly with respect to the interests, which we can get into in detail, that are extinguished in the award. We spent a ton of time

not only with our counsel but also with the Highland team to understand the underlying history, how those interests were obtained, whether they -- what did they cost when they originally purchased them, how they potentially were found to violate the -- the scheme. And then negotiated those points with Redeemer.

Q And just to complete the record, did you personally speak with one or more principals who were representing the interests of the Redeemer Committee to negotiate any aspect of the settlement?

A I did. We had many discussions, all telephonic, negotiating the particular terms. We also had a number of meetings with counsel with the entire board, with the professional -- the personnel who represented Redeemer plus their professionals, plus counsel and representatives of Crusader in Zoom calls. So there were multiple sessions, both on the phone directly with the Redeemer principal who sits on the Committee as well as with the Redeemer principal and his counsel.

Q All right. Let's talk about the adjustments that were made to the gross value of the arbitration award of $190 million. Just to identify them, they include the issue of the deferred fee. Do I have that right?

A Yes. I think you summarized it in the opening quite well. Highland had, in the scheme that was approved originally to

liquidate the Crusader Fund, Highland had agreed to a fee arrangement where the vast majority of the fees were deferred, and they were deferred until the end of the liquidation -- *i.e.*, until all of the assets in the Crusader Fund had been liquidated and funds were distributed, and then Highland would be entitled to receive its fees. And along the lines, for a variety of reasons that the arbitration panel did not give much credence to, Highland took them before the end of the liquidation.

Q And did the Debtor decide to reach a compromise with respect to the amount of fees that it might have been owed had it successfully requested them at the end of the day?

A We did. We obviously, or maybe not so obviously, but we did start with asking for the full reduction, with the argument that this liquidation will get done quickly, we've only got a couple assets left in Crusader, and we should be entitled to the full setoff.

Redeemer's position and Crusader's position was, wait a second, you're asking us to pay you fees on account of a scheme that you were breaching while you were supposedly earning these fees, and then you took the fees that you earned while you breached it early. And they were of the belief that they did not have to pay any of those fees. So we negotiated off of those two positions.

The arbitration award does not deal with the fees. It

talks about the repayment of the $32 million plus the interest, but it doesn't say what happens later. And it's a -- it's a failing or (inaudible) in this, you know, for Highland, but it doesn't -- it certainly doesn't give Highland the award of the fees.

And we had similar arguments with respect to briefing before the panel, arguments before the panel, where we were arguing that we were -- we'd be entitled to get those fees at the end, and that Redeemer and Crusader knew it, but there were some holes in those arguments.

Q Let's see if we can identify that. Ultimately, the board agreed with the Redeemer Committee and the Crusader Fund to accept a credit today for two-thirds the value of the total deferred fee; is that right?

A That's the math in terms of what the reduction in the claim is. It was hard-fought in that we wanted to make a decision if we could get a full settlement with a number of components or whether we would try to get pieces and litigate the other piece. Redeemer wasn't interested in a partial settlement. It was either full or litigate. And that left us, we thought, exposed, both with respect to the time and cost as well as the risk of a complete loss, which we factored into our settlement.

Among other things, you know, and this will permeate the case, and we'll talk about it with Acis as well, this case,

the business runs the way it runs. It does have revenues and the team does provide service to a number of counterparties and they do a great job. So the employees of Highland are able to execute and perform a valuable service to their shared service counterparties and the funds to which they provide investment management services. But these litigations have been hanging over this case for most of ten years. And it's remarkable in that, every time we try to settle one, someone else wants to keep them going.

Q All right. Let's just talk about some of the factors that the Debtor considered or may have considered in agreeing to the compromise that you've described. Did the Debtor take into account the possibility that if there was no agreement that there would be a separate litigation on the question of setoff and how the compensation would have been -- how the compensation would go back and forth?

A Certainly. And we considered -- we considered whether that litigation would happen in the Bankruptcy Court in front of Judge Jernigan or whether we would be sent back to the aforementioned Chancery Court, which as counsel for UBS noted, those arguments have already been briefed. And the risks with respect to both avenues in terms of pursuing a -- either a knockout win or a partial win, the time delay, and then the risk of a knockout loss or a partial loss.

And so we thought about that with respect to each of the

settlement components.

Q All right. So, under the agreement, will the Debtor get the value of $21 million with respect to the deferred fees immediately upon the allowance of the claim?

A Well, it reduces the claim. So I think that that's a fair -- that's a fair way to look at it. And each of the board members analyzed it with that perspective.

Q And did you and the board members try to make any determination as to how long the Debtor would have to wait before it had the opportunity to request or demand the deferred fee?

A We did. It's hard to estimate. So I think that it's, in a vacuum, the Crusader Fund should be able to liquidate pretty quickly. The problem is that the Crusader Fund's liquidation are tied to Highland's liquidation or monetization. And the timing on that, depending on the parties, can be uncertain. We would hope to be able to monetize the assets quickly, but we also are contemplating a litigation trustee. And as we've seen, that -- that litigation can take some time with these parties.

In addition, while we -- we had a grand bargain opportunity, we continue to negotiate with Mr. Dondero, who's made a material effort with his counsel on an ongoing but certainly a recent movement. And that could expedite it. It's very uncertain as to how long -- how long a complete

liquidation would take. If we -- if we were able to reach an agreement with Mr. Dondero, we hopefully can, at least with respect to part of the case, resolve it quickly. And I think that that would be more of a pot plan type approach.

The problem with a pot plan is that we still have a number of unresolved litigation claims that will take time to resolve.

Q All right. So let's just focus on what would happen if we didn't have the agreement. And just assume for the sake of argument that at some point in the future, however many years that may be, the Crusader Fund has completed its liquidation. Do you have any reason to believe that at that time the Crusader Fund would roll over and no longer assert the Faithless Servant defense in the face of a demand for the deferred fee?

A Well, I guess you'd have to look at it two ways. If -- if the fees do not reduce the Crusader claim, Redeemer's claim, then there would be nothing to roll over on. Because what's really important that everybody has to understand is Highland got the fees. It took them. It took the cash. And so the only -- the only way that you have a deferral of recovery of that fees, those fees, is if you pay back hundred-cent dollars to Redeemer and Crusader, which would include the $32 million plus the interest.

Q Okay. Are there any other reasons that you can think of

at this time that the board and you as CEO took into account in deciding on the compromise of the deferred fee issue?

A Of the fee component? Well, I think -- I think that -- that really summarized it. It's not that complex. The only -- the complexity is really if you consider not settling, what are your avenues to, if you will, be able to keep the full amount of the fees and interest.

Q So, would it be fair to describe it as taking a certain two-thirds of the fee today rather than a speculative chance of getting a full fee at some undetermined time in the future, after spending money to litigate the Faithless Servant defense?

A I think that that -- that's very -- to be honest, it may cabin it too much. We looked at this as a total settlement. And so it's not just one piece. And in an effort to move this case forward, we looked for the reasonableness of each transaction as a whole, and I think that's a more full way to look at it. We could litigate with Redeemer and Crusader for another two years, maybe. I'm sure that there's ways to keep it going and diminish all the assets of the estate in litigation costs. But we thought that this was a fair and equitable settlement as a whole, and this component we thought was pretty straightforward. Getting the full amount of fees, which we would have liked, we thought was not something that we had much success -- much chance of a success if we

litigated this.

Q Okay. Let's shift to Cornerstone. Can you just describe for the Court what Cornerstone is and who the stakeholders are. I think you -- I think you may have (garbled), but just for context.

A Cornerstone is a portfolio company. It's Cornerstone Healthcare Group. It's a portfolio company of Highland, in that Highland owns about three percent of the equity. Restoration Capital Partners, which is a liquidating fund, and Highland, as the advisor to that fund, owns about 55 percent, and Crusader owns about 52 [sic] percent. Cornerstone operates in the LTAC space, which is Long Term Acute Care, Senior, and Behavior Health. Senior living. And it has a home hospice, a smaller home hospice and home -- home business that also helps with rehab, and which -- and some of those are newer acquisitions.

It's a -- it's a company that I believe Highland first got involved with in 2007, I believe. And so it's been another asset that's a long-term holding. We have a solid management team. We like the -- we like the team a lot. We think that they've performed and done a great job in incredibly difficult circumstances, you know, through the first half of this year. Against -- against that, some of the related entities, the CLOs, have a loan, a term loan, and there's also other mortgage debt and equipment financing at Cornerstone.

Q And do you understand that the Crusader Fund's interest in Cornerstone is a subject of the arbitration award?

A Yes.

Q And can you describe for the Court your understanding of what the panel found and determined with respect to that asset?

A The panel found that basically Highland has an obligation to purchase Cornerstone back from -- those Cornerstone shares back from Crusader. And it assigned a value of $48 million to those shares, which was considerably in excess of fair market value at the time of the award, we believed, as well as at all times since then.

Q And you reached an agreement with the Redeemer Committee on the treatment of the Crusader Fund's interest in Cornerstone; is that right?

A Yes.

Q Can you describe the treatment of that interest for the Court?

A What we agreed with Crusader is that we wouldn't buy back the shares, because we don't have the capital to do that, that we would reduce their total claim by about $30 million.

Q Okay. Before we get to that specific point, are there other aspects of the settlement agreement that concern the Cornerstone asset?

A Well, we -- the other piece of Cornerstone is really a

Crusader issue. As I laid out the share holdings, the combined Highland interest, if you will, is about 58 percent. Crusader's is 42 percent. This is a private company. It does not trade. It -- it is -- it was controlled by the majority shareholders. And Crusader was interested in trying to find some liquidity in either their shares --

(Audio cuts out.)

THE COURT: Uh-huh. Mr. Seery?

THE WITNESS: And so we --

THE COURT: Mr. Seery, we lost you for about 20 seconds there. You were speaking but we couldn't hear you. So repeat the last 20 seconds, please.

THE WITNESS: I'm sorry. I'm sorry, Your Honor. That cut out. Highland owns or controls 58 percent, with RCP as the main holder in Highland holding about three percent. Highland's the manager for RCP. Crusader is a minority holder. It has 42 percent. It really has no say or control over the company and what it does.

Crusader was looking to create the opportunity to either get real liquidity in for this interest, not just us reducing our claim, or -- or at least the appearance of that, frankly. And so what we have agreed is that, since RCP is actually a liquidating fund and we want to monetize the asset, that we will work with Crusader to try to monetize Cornerstone in 2021.

Now, it -- there's -- the way the agreement works is that we'll work in good faith to try to do that. If we're not able to do that, there's really no -- there's no breach. There's no -- there's no damages. There's no -- no penalty. And the reason for that is that monetizing this asset may take work. The management team, as I mentioned, is excellent. They're doing a great job. And we're working with the management team to assure their long-term commitment to the business and the line of interests.

But there may be different ways to monetize this asset. It may be that we sell parts of it. May be that we invest in parts of it. It may be that we sell the whole company. It may be that we would go to meet a banker with the management team, that the banker says don't do it now, you should do x, y, and z in order to enhance the value. While RCP is liquidating, we are looking to procure value for their stake in -- in Cornerstone. And we'll take all of those issues into account. And even if Redeemer wants -- or Crusader wants to sell but RCP doesn't and management doesn't, it's unlikely that this asset will trade.

That said, as I mentioned, we are looking to see if we can monetize it, and we are looking to try to cash out and liquidate Redeemer -- RCP's interests as well.

Q As part of the negotiations that -- the board has agreed to certain milestones and a schedule for the sale and

marketing of the asset?

A We did. But as I mentioned earlier, I think this had a lot more lead for Crusader than it exactly had for -- for me and for Highland. We've talked to RCP about it and we talked to management at Cornerstone about it.

Milestones with respect to a sale process, you know, usually, the only thing you know for certain is that they likely won't be met. And, really, they depend on the market. If you tried to do the same milestones in 2020 as are -- our aspiration to put up for 2021, there's no chance of that. And so we'll have to see what the market looks like, and most importantly, what the management team thinks is in the best interest of the enterprise and what the bankers think is in the best interest of the enterprise and then -- and question -- equally importantly is what RCP wants to do.

Q All right. Now let's turn to the $30.5 million value. I think you heard counsel for UBS refer to our pleading as -- I forget what the exact term was, but an indicator or predictor of -- of fair market value. Did you hear her in that commentary?

A I heard it, yes.

Q Okay. And do you have a view as to whether that was necessarily the best characterization of the -- of the --

A Yeah, I -- I think the reports that we get monthly and that all investment firms get monthly are where they're

referred to as fair value valuations. And they help set the NAV.

There's a reason they're not called fair market value. There's no market test whatsoever. And so they are -- they are -- they are desktop model-driven valuations. You look for comparables. You look for a DCF. You do a bottoms-up in terms of asset value, depending on the type of asset. And you try to come up with a reasonable way to assess the value of the asset.

They are not market tests. So, and I can give you dozens of examples of why they're not, really simple examples of why they're not, as to -- as to fair market.

Nevertheless, we use them and rely on them. And investors use them and rely on them. And Houlihan Lokey is probably the preeminent firm doing this in the U.S.

Q Do you believe, if 30.5 doesn't represent a fair market value, do you believe that it is nevertheless a fair and reasonable place to come for purposes of the negotiation with the Redeemer Committee?

A Certainly. It's typically within our range of reasonableness. We look at, you know, where we have NAVs. We considered the issues with respect to the business. You know, we -- we thought about the total of 48. We considered where third parties, you know, might want to purchase it. But we did not go get a market test.

I'm quite certain that if UBS wanted to make a bid because they thought it was so low, that if they took the advice of their expert, they would have a willing seller, and -- and Crusader would sell. We would certainly have a willing seller in RCP. We'd -- happy to negotiate in the range that they threw out. It's a giant bank. They should probably buy it if it's that cheap.

Q Do you communicate with either officers or directors of Cornerstone on a regular basis?

A I wouldn't say on a regular basis. I do -- I do communicate with them. We have a team that serves as the board of directors at Cornerstone, and they -- they deal on a regular daily and weekly basis with the Cornerstone team, and then they feed me the information and we analyze it and we send them back.

So I have talked to the team at Cornerstone. I've discussed the business with them and the approach we're taking in the case, because it's obviously important to them. Their -- their stock is -- it's a -- it's a big company. Their stock is owned by a liquidating fund managed by Highland, a liquidating fund suing Highland, and a small amount by Highland. So I've tried to keep them up to speed. As I -- as I said, we like the team. We think they're -- they're good and we want to see them stay.

Q And does your work with the team and the communications

that you've just described, do they help to inform you as to the fairness and the reasonableness of the number that you arrived at with the Redeemer Committee?

A It certainly -- it certainly factored in. Yeah. We looked at the overall quality of the business, where it was in the -- in cycle, the market that we're in now in terms of where they have to perform, and considered the NAVs that we have as well as the litigation risk with respect to -- with respect to Crusader.

Q Do you have a view as to whether Cornerstone has done anything in terms of its business model or business generally that would cause valuation to fluctuate, or is it more attributable to the fluctuations of the marketplace?

A Oh, well, I don't think that the value of Cornerstone has moved or should move materially through the year. It probably was depressed from a perception standpoint early, and I think the team has done a good job. They've grown EBITDA from where it was on a trailing basis to, you know, I think quite well. And so the business is in a good, steady place.

The LTAC business is performing very well and I think is -- is -- has proven itself to be a valuable asset in the -- in the COVID. The senior living business is more challenged. That business relies on a lot of capital, which we are capital-constrained compared to some of the competitors. And if we look at the public comps for those, those businesses, I

think it's fair to say that some of the larger ones are challenged. And I think the company has done a nice job.

But if -- I guess the question is, has -- do I think it's materially different than it was early in the year? Depending on perceptions, just like the market, you know, there's highs and lows, but the company is doing a nice job. I think they're planning on a steady pace.

Q Did -- you testified to it just a moment ago, but let's talk about the Houlihan Lokey reports. Without going into any substance, can you tell me how many assets or portfolio companies does the Debtor commission Houlihan Lokey to produce valuation reports similar to the one that's been described there?

A Yeah. I don't have the exact number, because the Debtor doesn't just do it for its portfolio companies. We have to perform shared services for a myriad of funds, including public funds, and Houlihan provides the -- the NAVs with respect to their Level 2 and 3 assets as well.

Q And does the Debtor rely on those reports in the ordinary course of its business?

A It does, yes.

Q Can you describe for the Court how the Debtor relies on the Houlihan Lokey reports?

A In front of -- you know, Level -- Level 1 are assets that have a market that you can look to directly to figure out the

value of your asset. Think about Apple stock.

Level 2 assets are there is a market, but it may be more -- more of a trade-by-appointment market. Think about not the bigger high-yields, but high-yield loans, distressed or stressed names where there's not a ton of market activity.

And Level 3 assets are ones where there's not real good discernible market inputs and you try to value those on a market -- on a model basis.

So, we use Houlihan reports in order to set the exit value of various funds. We use it to report to the creditors in our case. We use it for, as I said, like RCP, which is a fund that gets -- strikes a NAV every month. And we use it with respect to the CLO assets that we manage.

Q And to the best of your recollection, was the $30.5 million number that has been agreed upon, was that within the range of any of the Houlihan Lokey reports that you reviewed as you were considering whether or not to enter into the agreement?

A The number we agreed, the 30.5, was in the range, and it was in the range when we -- when we struck this deal, which I think was April-May. So I think it would fit in the range in the May Houlihan valuation. I don't know about each month. As I said, there are -- because it's a desktop and model-driven valuation, there are anomalies that show up. And we try to review those with Houlihan to try to make it as

accurate -- use as accurate information as they can. But that, you know, their numbers in their model over model, we like to use it consistently. And you'll see that with respect to any kind of assets that get this type of valuation before the -- as opposed to a market valuation.

Q Okay. Before we leave the topic, let me just ask you: Is there anything else that you recall taking into account when -- when you and the board decided to accept the $30.5 million number?

A Well, we -- we didn't just -- we didn't just accept it. As I say, we negotiated starting at 48, which we didn't think there was a chance that we could sell it for that value. And we negotiated with the Crusader and Redeemer interests to try to come up with a settled amount.

So the same issues with respect to the deferred fees factored in here. Again, it's a package deal, so we looked at the litigation, the timing, the risk of not being able to get a deal done and the damages that we would have, the potential impact on RCP and Highland's interest in Cornerstone, the impact on the management team at Cornerstone, the litigation about the -- of who owns the equity interests. And so all of those factors in trying to get to a deal weigh in as we analyzed whether to do this transaction.

Q All right. I want to shift gears to one argument that has been made by --

THE COURT: Mr. Morris? I'm just letting you know, you've gone 35 minutes. And I said I wouldn't, like, get the shepherd hooks out after 30 minutes, but let's try to wrap it up so we finish today. Okay?

MR. MORRIS: Yeah. No problem, Your Honor. I really appreciate it. In fact, I'm going to wait and let UBS question Mr. Seery on its theory concerning going back to Chancery Court and I'll just skip that, because it's not -- it's not -- not my -- it's not our issue anyway.

BY MR. MORRIS:

Q Mr. Seery, let me just finish up, then, and see if we can identify the various litigations that are being resolved if this settlement approved. Would the settlement resolve the Delaware Chancery Court litigation, to the best of your knowledge?

A Yes, it would.

Q Are you aware that there's litigation pending between the Redeemer Committee and the Debtor in the Cayman Islands?

A I -- I've heard of it. To be frank, we haven't looked at it. It was part of the original discussions around all of the open issues, but we expect that will be resolved as well.

Q And are you aware that there are two pending litigations in Bermuda between the Redeemer Committee and the Debtor?

A Same -- same answer. We looked at those. We understood what they -- you know, in terms of a board perspective.

Counsel spent time on them. From a board perspective, it was more of a sideshow. Those will be resolved. We thought the main event was the arbitration award and the issues in Delaware.

Q Okay. And did the -- did the elimination of the -- of all of those litigations, the fees that might be incurred with respect to them, the litigation risk, was that also a factor in the board's determination to accept this settlement?

A Yeah, it always is. And again, not just the fees with respect to this particular litigation but the overall case. So it factors into analyzing whether this is a good, fair deal for the entire estate and whether each component works to support that overall thesis.

Q Okay. Last question. Can you explain to the Court why the Debtor believes that this settlement is in the best interest of the Debtor's estate?

A Hopefully, I've encapsulated that in the prior testimony, but I think that, with respect to settling this claim, this one was more straightforward than many of them, notwithstanding the complexity of the arbitration award, because there was an arbitration award. And it had been litigated in front of the arbitration panel, which was an esteemed panel, for a couple years, with tons of testimony, tons of documents, and a partial finding and then a final award that really hit on all the various issues with respect

to disputes among the parties.

And if we don't settle it at all, I think we're going to be back in for potentially a lengthy litigation, depending on what happens in the Chancery Court. If we lose in the Chancery Court, it's a significant impact to the estate. So we viewed this as reasonable. We continually updated it and -- our analysis, and, you know, feel confident that this is in the best interest of the estate, the Highland interests, the creditors, the investors.

MR. MORRIS: I have no further questions, Your Honor.

THE COURT: All right. Pass the witness.

Ms. Mascherin, when I was doing my time calculations earlier, I didn't take you into account. Do you have any examination that's not duplicative of Mr. Morris?

MS. MASCHERIN: I'll make this easy, Your Honor. No.

THE COURT: Thank you. Ms. Tomkowiak, it is your turn to examine Mr. Seery. Go ahead.

MR. CLUBOK: Your Honor?

MS. TOMKOWIAK: Thank you, Your Honor. My colleague, Andy Clubok, will be cross-examining. Appreciate it.

THE COURT: All right. Mr. Clubok, go ahead.

MR. CLUBOK: Yes, Your Honor. Ms. Tomkowiak is going to let me do this part of the proceeding.

CROSS-EXAMINATION

BY MR. CLUBOK:

Q Mr. Seery, you just testified that the $30.5 million assigned credit for Cornerstone was within the range of the Houlihan Lokey reports that you get on a monthly basis. Correct?

A Yes.

Q Okay. And, in fact, the -- have you reviewed the latest Houlihan Lokey reports?

A I have.

Q Okay. And isn't it the case that -- or, what's the date of that report, by the way?

A There's a draft in for September and there was one for August.

Q So, that draft report for September has not been provided to us, and certainly not been submitted to the Court.

Let me ask you, then, about the August valuation. It's fair to say that $30.5 -- well, what Houlihan does is that they give you a low and a high, and that's the so-called range in the value of Cornerstone, in their valuation reports. Correct?

A They do.

Q And typically what Highland does is it assumes the midpoint is the best number to use for that -- for what it uses those reports for. Correct?

A Yes. Yeah.

Q Okay. And in the August 2020 Houlihan report, there is a

low to high range, and in fact, 30.5 falls below the lowest point in that range. Isn't that true?

A I don't recall the specifics of the report.

Q Well, you said that 30.5 falls within the range, and my question to you, sir, is would you agree that, at least in the August report, which is the latest that has been provided to us, just, actually, about 24 hours ago, that 30.5 is below the lowest point of the range and not within the range? Would you agree with that?

A I don't know the answer off the top of my head. If I had the report, I could look at it.

Q Yes, please. If you could look at the report and confirm that.

A I don't have it.

Q Oh, I'm sorry. You said you don't have it? I see.

MR. CLUBOK: Your Honor, I'm mindful of your order and I don't want to run afoul of it, but Mr. Seery testified under oath that he believes that 30.5 is in the range of the Houlihan report, which I will proffer to you that it is not. It is below the range. I would like to present the report to show at least Mr. Seery that contention. I'm not using it for hearsay to prove the truth. Frankly, I think the Houlihan reports (echo) themselves what a reasonable expert will say. But they certainly are in a range that is above the 30.5.

THE COURT: All right.

MR. CLUBOK: So I'd like to --

THE COURT: Let me start with your premise that he testified inconsistently. My notes are that he said at the time they struck the deal in April or May that this value was within the range of the Houlihan modeling. Okay? So is someone able to correct me one way or another? That -- I may have written it down wrong, but that's what I thought I heard and wrote down. Mr. --

MR. MORRIS: Your Honor?

THE COURT: Go ahead.

MR. MORRIS: Very briefly.

THE COURT: Go ahead.

MR. CLUBOK: If I may, I believe that is -- Your Honor, I do believe that's what he said on the direct, but I think under cross I asked him if it was in the range of the most -- for the most recent report, and he said it was. That's what I thought he just testified to in response to my question. And if -- if that's the -- if -- Your Honor, if there was a court reporter -- I don't have a real-time transcript, so maybe I misheard it. But --

THE COURT: Well, Mr. Seery, why don't you just say again what the answer to that question is, if we're confused what you said. Go ahead.

THE WITNESS: Yeah. I think Your Honor had it correctly. When we struck the deal, this was within the

range, because I checked.

The ranges do move, and they have moved considerably, which is one of the interesting things about these kinds of valuations. Because it's model-input, it does move around even though there's not a market to say that someone would pay more or less for their stock. So, there would be times during 2020 that that number would be outside of the range. And even in the -- in the May time frame, the April-May, I don't remember exact numbers off the top of my head, it would be in the -- in the lower end of the range.

THE COURT: Okay. Proceed.

MR. CLUBOK: Okay. I'll proceed with that, Your Honor.

THE COURT: Okay.

BY MR. CLUBOK:

Q So we're clear, Mr. Seery, as we sit here today, the last completed valuation, the most recent completed final valuation, which was during August, for Houlihan Lokey has a current range such that the lowest point of that range is above the $30.5 million number, correct?

A I don't recall off the top of my head. You've represented it. I wouldn't quibble with it.

Q And, in fact, the midpoint of the most current Houlihan Lokey valuation is significantly higher than $30.5 million; isn't that true?

MR. MORRIS: Objection to the form of the question.

THE COURT: Sustained.

MR. CLUBOK: Your Honor, I -- this is where I would like the read the exact numbers. I have the exact numbers right here. I'm looking at them.

THE COURT: We --

MR. CLUBOK: And I -- I'm going -- I can impeach him.

THE COURT: We've already addressed this issue that we would need a Houlihan witness if you're going to give details about a Houlihan report. And he testified he didn't know. He wouldn't quibble with you. So I think that was sort of a lack of foundation objection Mr. Morris waged, and I'm sustaining it. Okay.

MR. CLUBOK: Okay.

BY MR. CLUBOK:

Q Did you, before submitting the settlement to the Court, check the range of the most current available Houlihan Lokey report before the settlement was submitted to the Court?

A I -- I think I may have. I don't -- I don't recall specifically.

Q Okay. If we compare to the motion that you submitted, and I think you explained that before the motion was filed you read it carefully and discussed it with your lawyers and had opportunity to ask questions with the other directors about the entirety of the motion. Is that correct?

A I think -- I think we -- we fought about the word carefully. I try to read everything carefully, but I assumed you were trying to pin me down to some -- some super-fine reading. I did read the motion. I did comment on the motion. Yes.

Q Okay. Now, if we can put the motion up, please. This is Debtor's motion. It's Docket No. 1099, I believe. Yes. You were asked by Mr. Morris about the language that was supposedly used in the motion that my colleague, Ms. Tomkowiak, referenced in her opening. I just want to turn to that exact language that was used in your motion. It's on Page 10, Paragraph 31. And what it said in your motion is that the damage award will be reduced by approximately $30.5 million to account for the perceived fair market value of those shares.

Well, the first question I have is, before this was submitted -- well, strike that. Fair to say you have not performed what you would consider to be a fair market valuation of the shares, or caused that to be performed before filing this motion, correct?

A Yes.

Q Okay. But you did have documents from Houlihan Lokey that reports a -- what they called a fair valuation, and that gives a range of what Houlihan Lokey calls a fair valuation, and you have them -- have available to you every month for the

Cornerstone shares, correct?

A Yes.

Q And do you know whether or not the fair valuation of the most current Houlihan Lokey report that you had in your possession prior to causing this to be submitted to the Court put that fair valuation at, say, at least 50 percent higher than 30.5?

A I don't know and I -- off the top of my head, I don't have in front of me. I said I wouldn't quibble with you, but I don't want to accede to your math.

Q You wouldn't -- but you wouldn't quibble, based on your -- you know enough to know about Cornerstone today that you wouldn't quibble with that rough math? Correct?

A Without -- without -- I believe that the valuation in the more current Houlihan values is higher than it was in May. I don't know if it's higher than it was at the beginning of the year off the top of my head. And I don't know whether 50 percent is the right number or 40 percent or 52 percent. I take you at your word that it's higher and that this number doesn't fall within the range.

Q Okay. Now let's go back, because you said, well, it did fall within the range at one point. I guess you said back in May it fell within the range. Is that correct?

A I believe that's correct, yes.

Q Okay. So there was a Houlihan Lokey report that was

available to you in May of 2020 that had a range where $30.5 million fell within, correct?

A There's a report every month. I'm not sure exactly which report we looked at.

Q Well, the point on the -- I believe you did testify, this is what the Judge heard, too, that there is a report that you looked at around April or May that had a range from Houlihan Lokey, and 30.5 fell within that range, and that's what you used to in your mind justify the reasonableness of the $30.5 million at that time. Is that correct?

MR. MORRIS: Objection to the form of the question.

THE COURT: Overruled.

MR. MORRIS: Mischaracterizes.

THE COURT: Overruled. He can answer.

THE WITNESS: The answer is to, with respect to that piece of the discussion, which went along with Mr. Morris's analysis, yes. And it did fall the within the range.

BY MR. CLUBOK:

Q Right. And, in fact, --

MR. CLUBOK: Your Honor, I would like to proffer that the Houlihan Lokey report that was dated -- that was available in April and May had a range that was, in fact, higher at the low point than 30.5. And if we could use that document to impeach Mr. Seery, or we could demonstrate, proffer evidence that's not for hearsay but they're offering it for the truth

of the matter asserted. We think that (inaudible) and certainly shows -- it impeaches Mr. Seery telling you repeatedly that 30.5 at least fell within that range.

THE COURT: Well, I --

MR. MORRIS: Your Honor, may I be heard?

THE COURT: I overrule -- I heard him say that at various points during 2020 the modeling of Houlihan would go to different points. I'm not sure what you think you're impeaching. What --

MR. MORRIS: Your Honor, may I --

THE COURT: Okay. Mr. Morris, go ahead.

MR. CLUBOK: Well, Your Honor, I mean, --

THE COURT: Mr. Morris, go ahead.

MR. MORRIS: Your Honor, I would also point out, Your Honor, consistent with exactly what you just said, that UBS's witness, expert witness, which is one of the reasons why I think he ought to be excluded, expressly says in his report that the value came within the range of the Houlihan Lokey valuation. I think it was from March. But he makes the admission expressly. Expressly. It's --

MR. CLUBOK: That is not true. There is a Houlihan Lokey report that I'm looking at right now that was for March of 20 -- I know Mr. Seery just said off the top of his head that the values fluctuate. There is -- I will represent there is no Houlihan Lokey report since March, which was the lowest

point of COVID, through today, that ever had a range that was provided to Highland where 30.5 falls within, as opposed to below the range. So we have the reports. We have every report they produced to us. We asked for all of them. We've got them. We could offer them to the Court and you would see that Mr. Seery's statement off the top of his head that it is in the middle or that it varies or have been telling you that it fluctuates and the ranges go up and down is just not true, --

THE COURT: All right.

MR. CLUBOK: -- based on the actual Houlihan reports that we have that they just provided to us a few days ago.

THE COURT: Okay. Let me take this in parts. I've already ruled that the Houlihan reports will not get in, the main reason out of two or three reasons being that it's hearsay without a Houlihan person here. Okay? And someone could have subpoenaed a Houlihan person and maybe I would have been enforced that subpoena. All right?

But second, I just want to be clear what I'm hearing. What I heard -- again, I've taken notes occasionally. The testimony that I guess you're wanting to use the Houlihan reports to impeach is that Mr. -- I heard Mr. Seery say that when the deal was struck, the proposed compromise with the Redeemer Committee was struck in April or May, that he thought this $30.5 million value was in the range of the modeling --

the models or the valuations that Houlihan had done. And I have inferred from other comments and testimony that it was a March -- it was March Houlihan modeling that he was looking at at that point.

As for anything else, I'm not sure he used the word -- the words ups and downs. I think he used the words that if you would check at various points in time during 2020, Houlihan's modeling showed different numbers for valuation, but he relied on the information in the April-May time frame when the deal was struck.

All right. So, based on what I've heard, I don't think there is some independent grounds to try to get the Houlihan reports in now as impeachment.

All right. So that's the ruling. Continue.

MR. CLUBOK: Okay.

BY MR. CLUBOK:

Q Today's fair market value of Cornerstone, in your best judgment, with all the information you have available to you, for 42 percent, is significantly above $30.5 million, correct?

A Fair market value? I don't have that information. I don't -- I don't think that today, if you wanted to transact those shares, in my opinion, other than an insider, that you could sell those shares today for $30.5 million.

Q If the shares were being marketed and sold together, as the settlement requires the Debtor to do in good faith over

the next year, the fair value estimates currently today available to the Debtor show that it's worth significantly more than $30.5 million; isn't that true?

A The Houlihan share value marks show a higher value, yes. They're not fair market. Let's make sure we are precise.

Q Understood. Houlihan uses the phrase "fair value" in its reports. And the current marks that you pay Houlihan to provide to Highland shows today, October 20th, 2020, that the value of 42 percent of Cornerstone is significantly higher than $30.5 million, correct? The fair value? Whether or not --

A I believe it's -- I believe it's higher. And the last one we have is 8/31. I just don't remember the amount that it is.

Q Okay. You did not offer that information into evidence in support of your motion? You chose not to do that, correct?

A I -- I chose -- I think -- I don't know what counsel put in other than -- than me.

Q Well, you are aware, actually, that the only evidence that counsel put in the record to support this motion is the motion itself and your testimony?

MR. MORRIS: Objection, Your Honor. He -- he's here testifying. And --

(Audio interruption.)

MR. MORRIS: We'll -- we'll be putting our exhibits in as well. But to continually refer to the motion itself as

the only evidence is just not right.

THE COURT: Okay. Overruled.

MR. CLUBOK: I'll move on, Your Honor.

THE COURT: Okay.

MR. MORRIS: Thank you.

BY MR. CLUBOK:

Q You said in your direct that Houlihan -- you called them the premier -- you used some superlative. Said they're the premier valuation experts or something for -- for modeling or -- some superlative about Houlihan. Do you recall that?

A Yes, I do. In terms of providing third-party valuations to investment funds and others, I think they are the premier firm.

Q Okay. Who -- you don't know who at Houlihan actually works on the valuations for Cornerstone, correct?

A I don't, no.

Q You have no idea what the credentials are of anybody at Houlihan who have done any work to help prepare those valuations that you've got other than from them, correct?

A That's not true.

Q You're -- do you know the names of any of these -- their people?

A No.

Q Okay. You've never spoken to any of them, correct?

A In regard to this assignment? No.

Q Yeah. You've never asked for anyone at Houlihan who works on valuing Cornerstone to be available to you as part of due diligence in preparing for this settlement review, though. Correct?

A I -- I have not, no.

Q You yourself have never done a valuation of a health company, healthcare company on your own, correct?

A On my own? No.

Q You have -- you've never heard -- I asked you on Saturday, but before Saturday, at least, you'd never heard of something called the Gordon Growth Model for estimating terminal value with respect to healthcare funds. That is correct?

A I had not heard of it before Saturday, no.

Q You have no idea whether or not the choice of using a low exit multiple as compared to using a Gordon Growth method would affect a proper DCF analysis for analyzing a healthcare company like Cornerstone, correct?

A No. That's not true.

Q Well, you don't know that the Gordon Growth method -- you don't know how the Gordon Growth method factors into any analysis of DCF, correct?

A That's not true.

MR. CLUBOK: Could we put up Mr. Seery's deposition?

BY MR. CLUBOK:

Q Well, you certainly don't know how the Gordon Growth

method factors into Houlihan's analysis of Cornerstone, correct?

A I don't think they use it. They show on their valuations a terminal multiple. And they do a DCF and do a terminal multiple, which is the way virtually everybody does it in these kinds of assets, because Gordon Growth focuses on continued growth businesses that continually grow their dividends.

Q Well, now, that -- that statement you gave about Gordon Growth method, that's something you just learned between Saturday and today, correct?

A That is correct.

Q Okay. Who told you that?

A I both looked it up and talked to professionals.

Q Who, exactly?

A I'd rather not say the names of my friends who provide me help on these things.

Q Well, with all due respect, Mr. Seery, if it relates to the basis for a statement you make, I'd just like the source of that statement.

MS. LAMBERT: Your Honor, I object on the ground of relevance. I've -- I've held my tongue for overall, but I don't think this is really germane to the issues.

THE COURT: Sustained.

MR. MORRIS: I join in the objection.

THE COURT: I sustain.

BY MR. CLUBOK:

Q You expect, Mr. Seery -- well, per the settlement, proposed settlement, Crusader would have (garbled) that a claim valued -- a stipulated claim of about $137 million. Correct?

A That's correct.

Q And also Redeemer would be allowed to keep their 42 percent interest in Cornerstone that the arbitration award had otherwise said needed to be tendered to Highland, correct?

A That's correct.

Q You, based on your current analysis, expect that the -- Redeemer would be fully paid in the full amount of that allowed claim of roughly $137 million, according to current thinking of the Debtors and creditors in the estate. Is that correct?

A I can only speak to my thinking, and that we put forth relatively conservative numbers in our projections, that assuming that the denominator ends up where I believe it should end up, which is the number of claims in the case, which assumes UBS has a zero claim, and that Mr. Daugherty's claim is capped at the amount that we've -- we've agreed to in our papers, which I believe is around $3.7 million, and that HarbourVest has a zero claim, and then there are some assumptions around operating costs, I believe that we will be

able to pay these claims in full.

Q Well, but you've made it clear to Redeemer that your current expectation is to be able to pay that $137 million allowed claim in full, if everything goes the way you just described you think it should go or you believe it will go?

A I've never had that discussion with Redeemer.

Q You have advised Redeemer in words or substance that you expect there to be full payment of a $137 million allowed claim under the settlement? Is that true?

A I don't believe I have.

Q You don't believe you've ever (inaudible) that, in words or substance, with either Redeemer or any of its counsel?

A I don't believe I have, no.

Q Okay.

MR. CLUBOK: Just one moment, Your Honor, while I (inaudible).

(Pause.)

BY MR. CLUBOK:

Q Mr. Morris asked you, asked you whether you roll over. You said no. Then he asked you whether you thought that Redeemer would roll over on one of their claims completely, and you said no.

With respect to one point in the settlement, the EERS (phonetic) interest, those (inaudible) that Highland currently holds, if there was a settlement it would it extinguish

roughly five to six million dollars of your current valuations. Is that right?

A I think that's about right.

Q And those -- that five to six million in value is one of the issues that would be subject to a ruling on the vacatur motion that we talked about, the idea that -- that additional substantive elements were added to the arbitration award after the first part of the award. Is that correct?

A I believe that's one of the issues that -- that I am briefed.

Q Yeah. And on that issue, under this settlement, you're giving a hundred percent credit to Crusader's or Redeemer's claims with respect to that particular element. Correct?

A That's correct.

Q And, in fact, you're giving a hundred percent credit to all of Redeemer's claims with respect to the amounts that were disputed under the argument that claims added after the first final arbitration award are impermissible, correct?

A I'm -- I just -- I'm not -- I'm not sure what you're asking me there. I'm sorry.

Q Well, for example, that Barclay's claim is another claim that's worth about $30 million in total. And that's -- that's about $21 million awarded, about $9 million pre-judgment interest. That $30 million, like the EERS, is subject to this argument that it shouldn't be properly -- it was impermissibly

awarded by the arbitration panel because it came after the first final award. Correct?

A I think that there's an argument to that effect, correct.

Q Yeah. And under the proposed settlement, you're giving it a hundred percent -- you're giving a zero percent settlement discount, or a very -- a zero percent settlement discount for Highland, correct?

A That's correct.

Q Thank you.

MR. CLUBOK: I have nothing further.

THE COURT: All right. Redirect?

MR. MORRIS: Just a few questions, Your Honor.

THE COURT: Okay.

REDIRECT EXAMINATION

BY MR. MORRIS:

Q Mr. Seery, if the Debtor walks away from this agreement, has the Debtor done any analysis and taken advice on the likelihood of succeeding in Chancery Court?

A The Debtor has, yes.

Q And can you share with the Court the Debtor's view as to the likelihood of success in the Chancery Court?

MR. CLUBOK: Objection. Objection, Your Honor. Just, number one, I don't think that's -- to the extent that that's going to rely on advice of counsel, I just (inaudible). We're going to get a -- the percentage that's based on --

waiving the privilege. I raised that ahead of time.

MR. MORRIS: I appreciate that, counsel. We're certainly not intending to waive the privilege. I'm just asking for a statement as to the Debtor's position as to why it does not believe it is likely to succeed in Chancery Court. I'm not asking him to share any confidential communications, but thank you for the comment.

THE COURT: Okay. Please proceed.

MR. CLUBOK: Um, --

THE COURT: Mr. Seery, you can answer.

THE WITNESS: Thank you, Your Honor. When we looked at the Chancery Court, there is a number of the issues the Debtor raised previously in the arbitration. There was a partial award that clearly says it's a partial award. And then the Debtor raised a number of procedural issues that there were additions to the partial award between the partial and the final. And the final goes through those in detail with this panel that, as we said, is -- was esteemed and had lot of work on it.

For example, in one section, they gave the whole rationale in the partial and they left out the damage number. So they -- they had ruled basically fully against the Debtor, but without giving a number. And so Highland attempted to argue that to the arbitration panel in between the partial and the final. The arbitration panel said that's a scrivener's error,

we're allowed to do this, and they went through the analysis.

Our counsel looked at these issues again. And we thought that the likelihood of success at the Chancery Court to re-raise these issues was very low. So we did factor it in and we did analyze it. It wasn't something that we missed. We just didn't think it was a fruitful opportunity to litigate in the Chancery Court.

MR. MORRIS: I have no further questions, Your Honor.

THE COURT: All right. Any recross?

MR. CLUBOK: No, Your Honor.

THE COURT: All right.

MR. MORRIS: Your Honor, may I just move my exhibits into evidence, and then I'll rest?

THE COURT: Okay. You may.

MR. MORRIS: Okay. The Debtor would like, then, to move into evidence exhibits that are marked 1 through 4. And to be specific, and we can take them one at a time, Exhibit 1 is Proof of Claim #72. That was filed, I believe, on behalf of the Crusader Funds.

MR. CLUBOK: Your Honor, objection on hearsay grounds, Your Honor. It has been offered into evidence.

THE COURT: All right.

MR. CLUBOK: It's the proof of claim.

MR. MORRIS: Object to the compromise. I'm not -- it is the proof -- I'm not offering it for the truth of the

matter asserted at all, actually.

THE COURT: Okay.

MR. CLUBOK: That's fine. If it's not being offered for the truth of the matter asserted, but just for those purposes, then we have no objection.

THE COURT: Okay. So that --

MR. MORRIS: Correct.

THE COURT: -- is admitted. And to be clear where this appears in the Court record, Docket Entry #1178, Debtor's witness and exhibit list, I think it was attached to that as Exhibit 1. That's admitted.

(Debtor's Exhibit 1 is received into evidence.)

MR. MORRIS: Exhibit 2 is Proof of Claim #81, is the proof of claim filed by the Redeemer Committee. The Debtor respectfully moves that exhibit into evidence as well.

THE COURT: Okay. Same sort of concept, for notice purposes only, it's admitted.

(Debtor's Exhibit 2 is received into evidence.)

MR. MORRIS: Okay. And the Debtor also moves into evidence the declaration of John Morris submitted in support of the 9019 motion and the exhibits annexed thereto. To be clear, Exhibit 1 to my declaration is the stipulation of settlement. Exhibits 2, 3, and 4 are the partial final award, the modification award, and the final award. Those three documents have been filed under seal pursuant to a sealing

motion which is on our exhibit list as Exhibit #4. And I think there might also be duplicate copies of the proofs of claim attached to my declaration as well. But we'd move all of those documents into evidence, subject to the sealing order.

THE COURT: All right. Any objection? All right.

MR. CLUBOK: No objection, for the non-hearsay purposes of those.

THE COURT: All right. So, Exhibit 3, with all of those subparts, some of which are under seal, are admitted.

(Debtor's Exhibit 3, including subparts, is received into evidence.)

MR. MORRIS: I do want to clarify, Your Honor, that with respect to the three parts of the award, we're offering them for the truth of the matter asserted insofar as they are the findings of fact and the conclusions of law of the arbitration panel.

MR. CLUBOK: No objection.

THE COURT: Okay.

MR. MORRIS: Thank you, Your Honor.

THE COURT: Thank you.

MR. CLUBOK: Your Honor, and I do have a -- also similar housekeeping. And I raise this with a trembling voice because I really am -- very respectfully. I'd just like to make a proffer that there are four Houlihan Lokey exhibits

that have been recently produced to us in the last few days.

THE COURT: Okay.

MR. CLUBOK: If I can just make my proffer, then I'll stop.

THE COURT: Let me -- let me stop -- let me stop you. I'm not sure Mr. Morris was finished yet with the exhibits he was going to offer. Let me clarify.

Are you finished, Mr. Morris?

MR. CLUBOK: Oh, I apologize.

MR. MORRIS: Just -- just to be clear, I think I was, but Exhibit #4, which is the sealing order, we also offer into evidence, just to support the sealing of Exhibits 2, 3, and 4 to my declaration.

THE COURT: All right. Well, I can certainly take judicial notice of that and we'll go ahead for clarity and admit that as a witness -- as an exhibit.

(Debtor's Exhibit 4 is received into evidence.)

THE COURT: All right. So, with that, you rest, Mr. Morris?

MR. MORRIS: Yes, Your Honor.

THE COURT: All right. Now, Mr. Clubok, you were saying?

MR. CLUBOK: I appreciate it, Your Honor. There are -- we had a document request. We were provided four Bates-labeled productions within the last few days of Houlihan Lokey

reports that are dated March 2020, June 2020, July 2020, and August 2020, the only ones that they've been -- have been provided to us during that time period.

I understand Your Honor ruled that they are hearsay and can't come in for the truth of the matter, but we believe that they should properly be admitted for the purpose of notice, the fact that that information is available to Mr. Seery, and also, frankly, for impeachment if we are allowed to present that for the Court's view, at least under seal. I believe we've already submitted two of them under seal on Friday night. The other two, we just got like last night or the wee hours of the morning yesterday. And we would like to proffer that there are four Houlihan Lokey exhibits that were made available to us that should be admitted for non-hearsay purposes.

THE COURT: All right. Well, I once again will make clear for the record that I am not admitting those. I think they are hearsay. I think you would need the creator or supervisor of the reports here to properly offer them into evidence.

I also think that, as I said earlier, I'm not required to conduct a mini-trial and accept every piece of possible evidence of valuation. I am supposed to, you know, consider facts and circumstances that bear on the wisdom of the compromise. And so I've heard valuation testimony from Mr.

Seery and what he considered the range of reasonableness.

Anyway, I primarily rely on the hearsay problem here in not admitting these four exhibits. So that is the ruling.

If you want to put them into the record under seal for purposes of maybe appeal purposes -- he or she made an error, she didn't accept this stuff -- then obviously you can submit them under seal for the court reporter to keep them in the record. So I assume you'll coordinate after the hearing getting those into the court reporter's hands under seal. Okay?

MR. CLUBOK: Thank you, Your Honor. Thank you very much. Appreciate it.

THE COURT: Okay. So, I guess at this point we've had the Debtor rest and we're going to go to UBS's evidence. I want to make the most efficient use of time possible. And let me clarify. I had told you all I would stop at 12:30 Central time. It's 12:19. My quandary is that I have a 1:30 status conference in an adversary proceeding in another case, and then I have a 2:30 hearing that should not last very long in yet another case. So I have told you all you can come back at 3:00 o'clock.

Is there anything worthwhile you think we can accomplish in ten minutes, or shall we just break? What do you all think?

MR. CLUBOK: What I do think, Your Honor, is if we

have the ten minutes, maybe we can work to make sure that we have addressed any other confidentiality issues and make sure that Mr. Morris and his law firm are comfortable with what we're going to do with our next witness so we don't have an accidental foot fault. I think that can be useful. We'll spend the time doing that to make sure that --

THE COURT: Okay. You mean talk offline?

MR. CLUBOK: Yeah. The attorneys will talk amongst themselves and just --

THE COURT: Okay.

MR. CLUBOK: We don't want to accidentally put something up that is going to be objected to. We'd rather show it -- now show it to Mr. Morris in advance and hopefully work it out so that we don't have to accidentally put something in the record they're, you know, going to object to.

THE COURT: All right. Well, I am good with that. And so let's talk about a couple of additional things. My courtroom deputy I think has put up the instructions for how to reconnect at 3:00 o'clock, because obviously we're going to have to break this off and I have other video hearings. So, you know, contact my courtroom deputy if you don't see those instructions. The instructions should be on the website, as far as numbers and passwords and whatnot to use for the new setting or the new resumption of this hearing at 3:00 o'clock.

The next thing I will say is I think I told you all we

could go until 5:00 or 5:30-ish. I do want to again be efficient and break when it makes sense to break. I have availability to come back tomorrow at 9:30 in the morning. So maybe you all could be thinking ahead with regard to the Acis motion. You know, do you want to start late today and do your darnedest to finish, or is that a pipe dream and we'll have to come back tomorrow?

MR. MORRIS: Your Honor, just speaking for the Debtor, I don't think that we're going to have -- I don't anticipate having any of the same confidentiality issues.

THE COURT: Uh-huh.

MR. MORRIS: I think that this was handled as efficiently as it could under the circumstances. I have a better sense of how to get this done. I'm hopeful that we won't need but a few more minutes to finish the Redeemer, and I'd like to try to get to as much of the Acis part as we can.

THE COURT: Okay. Well, we will shoot to try to get it done today if we can. And if that means we need to go a little later that I've projected, we will, if we can avoid coming back tomorrow.

All right. So I shall see you all at 3:00 o'clock Central time. Okay.

MS. PATEL: Your Honor, if I -- this is Rakhee Patel. If I could, just quickly on the Acis issue, I am unavailable tomorrow morning, so I just wanted to put everybody -- to put

that out there. I haven't discussed that with either Mr. Morris or Mr. Demo. But unfortunately, I've got an unmovable conflict tomorrow morning. So, if it did run over, I wouldn't be available. So if we could finish it today, that would be greatly appreciated.

THE COURT: All right. Well, I have in my notes that we'll have Mr. Seery again. And Mr. Daugherty was listed as a witness, possible witness, by his lawyer. And then Ms. Rappaport as a possible expert witness. I'm not a hundred percent clear what the scope of that testimony would be. I don't know if there are objections. But if we do in fact have three witnesses, it may be a challenge finishing tonight. But, you know, I will go past 5:00 or 5:30, but not insanely past those hours. Okay? I don't want to be up here at 9:00 o'clock when we have staff who isn't getting paid overtime. So, all right.

MR. MORRIS: We're grateful, Your Honor.

THE COURT: Okay. Thank you. We stand adjourned.

MS. PATEL: Thank you, Your Honor.

THE CLERK: All rise.

(A recess ensued from 12:24 p.m. until 3:01 p.m.)

THE CLERK: All rise.

THE COURT: All right. Please be seated. Welcome back. We are going to resume our Highland hearing. It looks like we've got a lot of folks on the phone once again.

When we broke at 12:20, the Debtor had rested on the motion to approve the compromise with the Redeemer Committee and the Crusader Fund, and we were about to hear from UBS and their evidence objecting to the settlement.

Any housekeeping matters before we turn it over to Mr. Clubok?

All right. Well, Mr. Clubok, are you there? Are you ready to call your witness?

MR. CLUBOK: Your Honor, it's actually Ms. Tomkowiak.

THE COURT: Oh.

MS. TOMKOWIAK: I going to handle this portion of the hearing.

THE COURT: Okay.

MS. TOMKOWIAK: And we are ready to call Mr. (audio gap).

THE COURT: Mr. Moentmann? Is that how you say the name? Is it Mr. Moentmann?

MS. TOMKOWIAK: Yes, Your Honor.

THE COURT: All right.

MR. MOENTMANN: That's -- yes, that's correct.

THE COURT: All right. Mr. Moentmann, I need to swear you in. So there you are. I can see you now. Please raise your right hand.

W. KEVIN MOENTMANN, UBS SECURITIES, LLC'S WITNESS, SWORN

THE COURT: All right. You may proceed.

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MS. TOMKOWIAK: Great.

DIRECT EXAMINATION

BY MS. TOMKOWIAK:

Q And Mr. Moentmann, I understand that you've prepared some demonstratives to assist with your testimony; is that correct?

A That is correct.

Q Okay.

MR. MORRIS: Excuse me. May I -- as I previewed earlier, I have a motion. I'd like to *voir dire*. It'll be about 12 questions, and then I'd like to make a motion to exclude the witness's testimony. May I?

THE COURT: All right. Well, Ms. Tomkowiak, you knew this was coming. Anything you want to say at this point?

MS. TOMKOWIAK: I don't think this is the motion. I mean, I haven't -- I haven't -- I heard that earlier, but no preview as to the grounds for a motion were provided.

THE COURT: All right. Mr. Morris, what about that?

MR. MORRIS: It's *voir dire*, Your Honor. I would just like to ask questions to see if this witness can provide testimony consistent with Federal Rule of Evidence 702. I just took his deposition yesterday.

THE COURT: Okay. You may proceed with *voir dire*.

MR. MORRIS: Okay. Thank you.

VOIR DIRE EXAMINATION

BY MR. MORRIS:

Q Sir, you had never heard of Cornerstone before this case; is that right?
A That's correct.
Q And you were retained just a couple of weeks ago; is that right?
A Yes.
Q And you spent approximately 20 or 30 hours preparing your analysis, right?
A Yes. Up until my deposition on Saturday, yes.
Q Yes. And without getting into the details, one of the biggest drivers in the difference between the values that you come up with and the values that Houlihan Lokey comes up with is a difference in one aspect of the methodology, whereby you use what's called the Growth Model and Houlihan Lokey uses exit -- exit multiples. Do I have that right?
A That is one area, yes.
Q And it's one of the biggest areas; isn't that right?
A It's -- yes and no.
Q Okay. But you'll agree that the use of exit multiples in the manner that Houlihan Lokey has done is an accepted practice in the valuation industry; isn't that right?
A If the multiples selected are reasonable, yes.
Q Okay. The methodology is certainly accepted; is that right?
A It's -- it's not the prevalent one that is accepted.

Q Okay. And your firm is Grant Thornton; is that right?
A Yes. That's right.
Q And Grant Thornton prepares valuation reports similar in nature to the ones that Houlihan Lokey prepares; is that right?
A Yes, we do.
Q And in fact, you personally consider Houlihan Lokey to be a competitor; is that fair?
A Yes.
Q And you've reviewed Houlihan Lokey reports before being engaged in this matter, haven't you?
A I have.
Q And based on your professional experience, you believe Houlihan Lokey has a good reputation in the field of valuation; isn't that correct?
A I believe it is a reputable firm, yes.
Q In fact, you're aware that from time to time Grant Thornton's own audit clients have used Houlihan Lokey's valuation services; isn't that right?
A I couldn't tell you specifically which clients, but I'm sure they have, given the large number of audit clients that we have, yes.
Q And those audit clients use Houlihan Lokey even though Houlihan Lokey uses a methodology different from the one employed by Grant Thornton; isn't that right?

A I couldn't say that affirmatively. I don't know if they use a different methodology when they're performing the valuation for our audit client.

Q Okay. You're aware, though, that your audit clients not only use Houlihan Lokey but they actually rely on Houlihan Lokey's valuation services; is that fair?

A Again, I'm assuming they do, just given the large number of audit clients. We have, you know, thousand plus audit clients, I would imagine, so I would assume that Houlihan is doing some of them.

Q Okay. And --

A (overspoken)

Q I'm sorry to interrupt.

A Yeah. I was just -- I was actually just getting to answer your question. So I'm sure they do and rely on Houlihan for valuation.

Q Okay. Thank you, sir. Putting aside your own personal views as reflected in your declaration, you have no reason to believe that it was unreasonable for the Debtor to utilize Houlihan Lokey's reports in this instance; isn't that correct?

A Well, I think I've pointed out several areas where I think, given the assumptions made, that it -- it is unreasonable.

Q Okay. I'm going to ask the question one more time and ask you to listen very carefully. Putting aside your own personal

views as reflected in your declaration, you have no reason to believe that it was unreasonable for the Debtor to utilize Houlihan Lokey's reports in this instance; isn't that correct?

A Putting aside my -- my different viewpoint from a valuation -- as a valuation professional, yes.

Q Okay.

MR. MORRIS: Your Honor, Rule 702 requires that qualified experts may only offer opinion testimony if four specific conditions are satisfied.

One of those conditions is that the opinion testimony will help a trier of fact understand the evidence or determine a fact at issue. The only issue in this case is whether or not this settlement is fair or reasonable. This is not a valuation fight. This is not a fight over whether or not the Debtor is maximizing value. This is a dispute over whether or not the Debtor is properly exercising its business judgment, whether it's done a fair and reasonable investigation and diligence of the matters at issue. And I think, given the witness's testimony just now that his own clients use Houlihan Lokey and that he has no reason to believe that it would be unreasonable for the Debtor to use Houlihan Lokey in this instance, I don't see (garbled) respect to the witness. Because I'm not challenging his qualifications. This is not a *Daubert* motion. I just don't see how this is at all useful to you as the trier of fact to understand the evidence and

determine a fact at issue.

Thank you, Your Honor.

THE COURT: Okay. Your response, Ms. Tomkowiak?

MS. TOMKOWIAK: Well, Your Honor, I feel like it's important to acknowledge that -- he's saying this is not a *Daubert* motion. This is not a 702 issue. This witness is extremely qualified to provide his opinion on the valuation of Cornerstone, which is an issue in the settlement. It does go exactly to the question that Your Honor is being asked to evaluate, which is, you know, is this settlement fair, equitable, and in the best interest of the estates?

I don't understand this hypothetical about, putting aside your opinion, do you have a view? I mean, his opinion is his view. And I believe that it is absolutely relevant. He should be allowed to testify to it. His testimony is based on facts and data. It's the product of a reliable methodology that everybody agrees, you know, can be applied to value an asset. Is to apply that methodology to the facts of this case.

So, you know, I understand that the Debtor chose not to put on any evidence regarding the value of this incredibly meaningful asset that they decided to give up in this settlement, but that doesn't mean that UBS shouldn't be allowed to do so in support of its valid objection to the settlement.

THE COURT: Okay.

MS. TOMKOWIAK: So, I object and I believe we should be allowed to proceed with our examination of Mr. Moentmann.

THE COURT: Okay. I overrule the objection. I'm going to allow some testimony. Go ahead.

MS. TOMKOWIAK: Thank you. Okay.

DIRECT EXAMINATION, RESUMED

BY MS. TOMKOWIAK:

Q And Mr. Moentmann, I think you prepared some slides to assist with your testimony today; is that correct?

A That's correct.

Q Can you pull those up? All right. So, very briefly, let's just go to the first slide. Please tell the Court, where do you currently work?

A Yes. I work at Grant Thornton.

Q How long have you worked at Grant Thornton?

A For just over four years.

Q Briefly, what are your responsibilities at Grant Thornton?

A I'm the principal in the firm responsible for providing valuation services. I provide those services extensively in the healthcare industry to a variety of healthcare entities.

Q Where were you employed prior to (garbled)?

A I believe the question was prior employment. Was at a -- was at another professional services firm, CBIZ.

Q And what was your role at CBIZ?

A My role at CBIZ, which is publicly-traded professional services firm, was similar. I was a managing director responsible for the Central Region, but provided valuation services really across the country, and, again, extensively in the healthcare industry.

Q What's your educational background?

A Yes. I'm -- my undergraduate degree was -- was a finance degree from University of Missouri Columbia. I received my MBA, again with a finance emphasis, from Washington University in St. Louis.

Q Do you have any professional certifications?

A Yes. Two. One, the CFA. And the second, the CEIV. That's a newer designation. I received it through the AICPA. It's Certified -- as you can see there, it's Certified in Entity and Intangible Valuations. But it addresses specifically fair value determinations for publicly-traded entities.

Q Over the course of your career, how many valuations have you performed?

A I wish I'd kept a log, but over the course of thirty-plus years, you know, maybe fifty or so a year, so well over a thousand. Maybe close to two thousand.

Q How many of those have involved healthcare companies?

A My focus has been on healthcare really since the early '90s, so maybe two-thirds of my valuation work and experience

has been healthcare-related.

Q Broadly speaking, when performing a valuation, what do you do?

A Yes. All valuations, whether it's on a business or an asset, regardless of the industry, we're looking at three approaches to value: An income approach, a market approach, and an asset or cost approach.

Q Are these methodologies commonly used and accepted by your peers as well?

A Yes. Yes, they're widely accepted.

Q And when you're performing a valuation of a healthcare company, in your day-to-day -- your role at your job, what is the purpose of that valuation work?

A It ranges. Oftentimes, we're brought in pre-transaction to assist healthcare entities with their M&A activity. If we're assisting not-for-profits, it's a combination of their M&A activity as well as providing regulatory support if that valuation is ever challenged. We also provide valuations post-transaction for financial reporting purposes.

Q And did you apply those same methodologies that you use in your ordinary job to the assignment in this case?

A Yes, I did.

Q How many times have you testified under oath as an expert?

A Probably over -- over the last thirty years, maybe every other year, so maybe -- maybe fifteen times.

Q Has any court ever rejected you as an expert?

A No.

MS. TOMKOWIAK: Your Honor, at this time, pursuant to Rule 702, I'd just like to tender Mr. Moentmann as an expert in the field of valuation.

THE COURT: Any comment?

MR. MORRIS: No objection.

THE COURT: All right.

MR. MORRIS: No objection.

THE COURT: He is so accepted.

BY MS. TOMKOWIAK:

Q Mr. Moentmann, what were you asked to do in this case?

A Yes. I was asked to assess the valuation of Cornerstone based on the most recent information available, which in this case were certain valuation reports that were prepared for 2020. The latest available up until a few days ago were the June 30 reports.

Q Have you -- have you formed any opinions?

A Yes. We have.

Q Let's talk about your opinions. So if you can go to the next slide. Can you please explain to the Court what your first opinion is?

A Yes. The first opinion reflects my calculation of Crusader's ownership interest in Cornerstone. It shows, as presented in the second bullet on the slide here, that the

subject equity interest ranges in value from $48 through $87 million.

Q If you can go to the next slide. Can you walk the Court through your second opinion that's reflected on this slide?

A Yes. Yes, the -- the second opinion here focuses on various issues that we identified in our review of the information that was made available.

The first issue was the selection of very low market multiples. The multiples used in the -- in the valuations relative to what we observed in the marketplace were low, and we did not see any explanatory information as to the selection of those multiples.

The second, it was previewed a few minutes ago, and I don't want to get too complex here, but involved the use of the -- or, the estimate of the terminal value, their methodology. And this was in the income approach that was referenced earlier. The methodology that was used was market multiples. They were essentially the same market multiples that were applied in the market approach, rather than a Gordon Growth method. And as I mentioned a few minutes ago, the Gordon Growth method is what we typically see. It is the more common of its -- in my experience.

I answered a question both yes and no because one could use the market approach, an exit multiple, I think it was -- as it was called in the question. But that exit multiple

still needs to be consistent with market data, and to the first point here, we think that -- you know, I think -- I feel the exit multiples is -- is low, in my opinion.

The third issue here involves a CARES Act loan that the company has on its books. It's a $30 million liability. The observation here is that, based on the information available, we don't know to what extent, if any, this CARES Act loan is forgivable.

Q Okay. And then I see the last bullet there references inconsistencies between valuations. What do you mean by that?

A Yeah. The last bullet applies less to our conclusion and more our observation of -- Houlihan had prepared reports as of the same date for different clients, for Highland as well as Crusader. And we're observing that they had a different value opinion depending upon -- a different value range depending on who the client was, even though the valuation was performed as of the same date.

Q And I think you said you reviewed multiple valuations provided by Houlihan. Were the issues you identified here -- in particular, the first and second issues -- present in all of the valuations that you reviewed for Houlihan, regardless of the particular time period?

A Yes. They were prevalent in all. I would say the CARES Act loan I believe did not hit the books until April, so may not have been prevalent in the early -- the early -- the

valuations prior to them.

Q What happens when you use, in your opinion, the right assumptions?

A The use of the -- the right assumptions, is your question? Right. I -- the use of the right -- could you repeat the question?

THE COURT: Yes. Could you repeat your answer? You broke off a little bit, sir.

MR. MORRIS: Your Honor, I've -- I've objected to the question.

THE COURT: Oh. I didn't hear you were -- okay. You objected to the question. And what is your basis?

MR. MORRIS: Just the use of the phrase the right approach. Don't know if his opinion is any or more less valid than any other opinion.

THE COURT: All right.

MS. TOMKOWIAK: Your Honor, I'm -- I can -- I'm happy to rephrase the question.

THE COURT: Okay.

BY MS. TOMKOWIAK:

Q What happens when you use the approaches that you use, Mr. Moentmann?

A Yes. The use of the assumptions that -- that I believe are reasonable result in a valuation range -- actually, the valuation range presented earlier.

Q You listened to Mr. Seery testify both at his deposition and in court today; is that right?

A Yes, I did.

Q What are your reactions to his testimony as it relates to the Cornerstone value?

A I've -- I had a handful of reactions to the testimony. One was with regard to fair value and fair market value. And as someone who's been in the valuation industry for over thirty years, both premises of value, fair value and fair market value, represent a valuation firm's, whether it's Houlihan or Grant Thornton, it is that firm's opinion and best estimate of a market participant value. Both definitions, whether it's fair value or fair market value, focuses on market participant, market participant concepts.

Another observation was the -- the use of -- the Gordon Growth method only being applicable for dividend-paying companies. And I can assure you, that's -- that is not the case. This -- there are some methods, the discounted cash flow method and -- and/or the Gordon Growth method, the use of the Gordon Growth method to calculate a residual value or a terminal value is used for all companies, regardless of whether they're dividend-paying or not.

Q What is the most -- and by what, I mean by -- not the information itself, but the date -- what is the most recent value -- valuation information that you've been provided with

respect to Cornerstone?

A We -- we recently received a valuation, I think within the last day or two, as of August 31st.

Q And so that was after you prepared and submitted the declaration that you submitted in this case?

A Yes.

Q If we could go to that slide.

MS. TOMKOWIAK: So, consistent with Your Honor's rulings, you know, we would proffer that we have this information, the valuation performed by Houlihan in August, but we have redacted it per this morning's rulings regarding confidentiality.

BY MS. TOMKOWIAK:

Q Mr. Moentmann, my question is, without talking about the numbers themselves, based on your of view of that valuation, you know, what did it show in terms of, you know, trends in the -- or performance with respect to the valuation of Cornerstone?

A The valuation reflected an upward trend. Really, a continued upward trend in the valuation of Cornerstone.

Q Were you able to tell if that was -- what that was based on? Again, broadly speaking.

A Based on a quick review of it, yes. The -- that upward trend in value was being driven primarily by the company's continued strong performance and improvement in -- in

earnings.

Q If you took this latest valuation information, this latest valuation into account in your own analysis, what impact would it have?

A It would have a positive impact. The August information reflecting the company's performance through August was strengthening and is -- it would increase our valuation.

Q Let's go to the next point on the slide. So, I know that you had summarized the various valuations that you have reviewed. And, again, we have all of these valuations. We have all of these numbers. Pursuant with the Court's rulings this morning, we have redacted the numbers themselves except for the $30.5 million that the Debtor has already put in the public record and your own valuation. Do you understand -- have you reviewed the Debtor's motion for approval of the settlement that we've been discussing today?

A Yes.

Q And you understand that in that motion they've represented that, for settlement purposes, they valued Crusader's ownership interest in Cornerstone at a perceived fair market value of $30.5 million?

MR. MORRIS: Objection to the form of the question.

THE COURT: Okay. What exactly was it about the question that you found objectionable?

MR. MORRIS: The number is the result of

negotiations. And I think Mr. Seery testified quite clearly that the notion of perceived market value, you know, probably was a little bit misstated. It's -- it's a negotiated number. That's where we are. That's all.

THE COURT: Okay. If you could rephrase, I sustain that objection.

BY MS. TOMKOWIAK:

Q You understand that the damage award in this case is, according to the Debtor in the motion that it's filed, it's reducing the Redeemer award by approximately $30.5 million to account for the value that they've assigned to the Cornerstone shares owned by Crusader, right?

A Yes. That's my understanding.

Q In your opinion and based on the accepted valuation methodologies and standards in your field, is $30.5 million within the range of reasonable valuation of Crusader's interest in Cornerstone today, based on the information available to you?

MR. MORRIS: Objection to the form of the question.

THE COURT: Overruled.

MR. MORRIS: The use of the phrase --

THE COURT: Okay.

MR. MORRIS: Thank you.

THE COURT: I overrule.

THE WITNESS: No. As shown here, our opinion of

value is presented at the bottom here. I found $48 to $87 million, I mean, is significantly in excess of the agreed-to amount.

BY MS. TOMKOWIAK:

Q Right. And then the same question as of June 30, 2020. In your opinion and based on the accepted methodologies and valuation standards in your field, is $30.5 million within any range of a reasonable valuation of Crusader's interest in Cornerstone, even as of June 30, 2020?

A Again, though, I misspoke on the earlier question. I was referencing June on the earlier question. The August valuation, as mentioned earlier, I think it would be only higher than this. In both cases, no.

MS. TOMKOWIAK: Subject to redirect, I don't have any further questions.

THE COURT: All right. Pass the witness. Mr. Morris, any questions?

MR. MORRIS: Just a few, Your Honor.

CROSS-EXAMINATION

BY MR. MORRIS:

Q Your valuation hasn't been market-tested, has it, sir?

A I'm not sure I understand the question of market testing.

Q It's not the result of any negotiation, is it?

A No, it is not.

Q Okay. And your valuation was prepared for purposes of

this motion; isn't that right?

A Yes, it was.

Q And you understand that the reports that were prepared by Houlihan Lokey were prepared for the client's sole benefit, not for purposes of litigation; is that right?

A Well, I'm not sure I understand that. I did not review the engagement letter.

Q Okay. But you do understand that they -- because you reviewed a number of monthly reports, you -- withdrawn. You do understand that these reports are prepared monthly for the benefit of Highland; is that right?

MS. TOMKOWIAK: Objection. This witness lacks foundation on that.

THE COURT: Overruled. He can answer if he knows.

THE WITNESS: That's my understanding from the testimony of Mr. Seery.

BY MR. MORRIS:

Q And in fact, you said that your firm prepares reports similar in nature to the Houlihan reports, right?

A Yes.

Q And you don't prepare them in the ordinary course of your business for purposes of litigation; is that right?

A Can you repeat the question?

Q Do you -- do you participate in the preparation of monthly reports on behalf of clients?

A No, not in the context of -- of establishing an NAV.
Q Okay. I believe you testified that you could use a market approach; there's nothing in the rules or principles of valuation methodology that prohibits the use of a market approach; is that right?
A Yes. I testified that a market approach is one of the three primary approaches to value.
Q And I think -- I think on one of the slides there were a couple of issues that were raised, and I think you testified or you were asked whether the issues identified were prevalent in each of the Houlihan Lokey reports. Do you remember that?
A Yes.
Q And that's -- they were prevalent because Houlihan Lokey used consistently the same methodology; is that right?
A Yes. They used the same methodology.
Q And that's the methodology that you don't think they should use but they think they should use; is that fair?
A With respect to the income approach, that's -- that is correct.
Q Okay. Have you ever seen anybody publicly criticize Houlihan Lokey for using a market approach as a methodology?
A Again, the question -- I think your question is specifically to the use of the market approach within the income approach and calculation of an exit multiple. I have not seen any public statements regarding that topic.

Q And in fact, you can't identify any peer-reviewed article or industry publication that specifically says that the Gordon Growth Model is the preferred methodology as opposed to the one employed by Houlihan Lokey; isn't that right?

A I can't point you to a peer-reviewed article, but I can tell you from our review of peers what is the prevalent methodology.

Q Okay. But nobody's out there writing that; that's your interpretation of the marketplace. Is that fair?

A Well, I would say if the marketplace -- there are publications that state how a discounted cash flow analysis is to be performed. There's courses out there that address this. So, --

Q Did you ever -- did you ever tell any of your clients who use Houlihan Lokey that they shouldn't do it because Houlihan Lokey uses a flawed methodology?

A I've never been asked or had the opportunity to comment on Houlihan's valuation work.

Q In the competitive nature, in the competitive field of competing for clients, you never tried to tell you clients, don't use Houlihan, use Grant Thornton, we've got a better method?

A I don't run into Houlihan that often in the healthcare industry. I've got too much work myself to -- I find it poor practice to badmouth my competition.

Q Good for you. I'm not surprised. Do you think -- do you think Houlihan Lokey artificially manipulated their analysis to come up with a lowball number?

A I don't -- I don't know what Houlihan -- I have no idea what Houlihan was thinking with regard to their assumptions in their analysis.

Q Did you make any attempt to reach out to anybody at Houlihan to speak to them about their methodologies and the areas that you claim to have identified?

A No, I did not contact Houlihan.

Q Can you think of -- does Houlihan have a reputation in the industry for undervaluing assets?

A I'm not aware of Houlihan's reputation for overvaluing or undervaluing assets.

Q So you, in your thirty years of practice, you've never heard anything that causes you to conclude that Houlihan has a reputation for undervaluing assets; is that fair?

A That's fair.

Q Okay. Can you think of any motivation that Houlihan Lokey would have to undervalue the assets that are reflected in Cornerstone?

A No, I'm not aware of Houlihan's motivations.

Q Okay. You said that the company was on an upward trend; is that right?

A Yes. Specifically, the LTAC business, yes.

Q And do you recall yesterday I asked you about the cause of any fluctuation in the value of Cornerstone and you told me that it was the result of market forces and maybe COVID issues?

A Yes. The upward trend could be attributed to market forces, including COVID issues.

Q Right. Do you remember yesterday I'd asked you whether, since coming to your conclusions, you've gone to your clients and -- or informed your colleagues to try to find a buyer of this grossly-undervalued asset? Remember I asked you about that?

A Yes. I recall the question very well.

Q And you hadn't done so, right?

A I think it would be against our ethical guidelines, so I have not done that.

Q Have you made any attempt to confer with either the Redeemer Committee or the Debtor to see if you could, you know, maybe Grant Thornton could act as a broker to, you know, use their valuation report to sell this asset?

A No. We are not in the brokerage business.

Q Okay.

MR. MORRIS: I have no further questions, Your Honor.

MS. MASCHERIN: Your Honor, I have just a few questions --

THE COURT: Okay.

MS. MASCHERIN: -- on cross, if I may.

THE COURT: You may. Go ahead, Ms. Mascherin.

MS. MASCHERIN: Thank you, Your Honor.

CROSS-EXAMINATION

BY MS. MASCHERIN:

Q Mr. Moentmann, am I correct that the earliest numbers that you've referred to in the two different value estimates that you gave on your last slide, the earliest of those dates was June 30th of 2020? Is that correct?

A Yes, that is correct.

Q And that was based upon your review of Houlihan Lokey valuation reports dated as -- for -- for the date as June 30th, 2020, correct?

A Yes. It was their reports as of that same date.

Q And would you agree, sir, based on your experience in performing valuations, that that likely indicates a valuation report that was prepared sometime after June 30th of 2020, so as to take into consideration the company's performance during the month of June?

A Yes, I would agree.

Q And do you have any idea, sir, when it was that either the Crusader Fund or Highland Capital Management received valuation reports for the Cornerstone asset valued as of June 30th of 2020?

A I don't recall specifically. I thought it was in -- in

July. It ought to have been subsequent to the June 30 date.

Q And you heard Mr. Seery testify this morning that the negotiations that led to the compromised setoff for the value of the Cornerstone asset took place in the March/April/May time frame? Did you hear that testimony?

A Yes.

Q Now, in your report, sir, your declaration, and in your testimony today, you made reference to certain different reports that were prepared by Houlihan Lokey for different clients. Do you recall that testimony, sir?

A Yes.

Q And what you meant by that is that, on the one hand, a team from Houlihan Lokey does regular valuation reports under contract for the Debtor, valuing the 50 -- approximately 58 percent or so interest that the Debtor owns or manages in Cornerstone; is that correct?

A Yes.

Q And would you agree that the Debtor and its managed fund, Restoration Capital Partners, together own the majority interest of the shares in Cornerstone?

A Yes. I believe I even pointed that out in my declaration, yes.

Q Right. And Crusader, on the other hand, owns something in the low forty percents of the shares of Cornerstone, correct?

A Correct.

Q And would you agree, sir, that the -- based upon the documents you've seen, the Crusader Fund's manager, Alvarez & Marsal, contracts as well with a team from Houlihan Lokey to value Cornerstone's interest in the Crusader -- or, in the Cornerstone asset?

A Could you -- could you repeat the question?

Q Sure. You've seen documents that lead you to know, sir, that Crusader likewise uses Houlihan Lokey to value Crusader's low forty percent share of the Cornerstone asset, correct?

A Yes.

Q And you would agree that Cornerstone -- or, that Crusader's interest in Cornerstone is a minority position?

A Yes.

Q And you would agree that the Houlihan Lokey valuations that are provided to Crusader value Crusader's interest in Cornerstone on a non-marketable minority interest basis, correct?

A That's right.

Q And wouldn't you expect, sir, based upon your experience, that there would be a difference in the value of -- in the fair value estimate for a minority position in a privately-traded company as compared to an estimate of value of a majority interest in that same company?

A Generally speaking, yes.

MS. MASCHERIN: No further questions, Your Honor.

THE COURT: All right. Redirect?

MS. TOMKOWIAK: Yes.

THE COURT: Okay.

MS. TOMKOWIAK: I just have one, one question.

REDIRECT EXAMINATION

BY MS. TOMKOWIAK:

Q Sir, even setting aside your opinion regarding the errors and the flawed methodologies in the Houlihan reports, is it fair to say that, just looking at the most recent valuation that you were provided, in your opinion is $30.5 million within any reasonable range of valuation for Crusader's share of Cornerstone?

MR. MORRIS: Objection to the form of the question.

THE COURT: Overruled.

THE WITNESS: No.

BY MS. TOMKOWIAK:

Q So, your answer?

A Yes. My response was no. Again, based on our analysis and the valuation range that was presented, we don't -- I don't believe it would be reasonable.

Q Okay.

MS. TOMKOWIAK: I have no further questions.

THE COURT: Any recross on that --

MR. MORRIS: Nothing, Your Honor.

THE COURT: -- question?

MR. MORRIS: Nothing, Your Honor.

THE COURT: I have one follow-up question.

EXAMINATION BY THE COURT

THE COURT: I tend to think, and maybe I'm being affected by certain healthcare Chapter 11s I've had in recent months, but is it a tough time to value a healthcare business like Cornerstone in 2020, with COVID? Are there challenges, or am I making something up here?

THE WITNESS: I'd say it depends on the segment within the healthcare industry. Some segments are of benefit. I recently called three or four public companies in the healthcare industry on behalf of a client that was selling with -- a business within -- a segment of those within the healthcare industry, and found all four public companies to be highly interested and still very active in their acquisition process.

THE COURT: Okay.

THE WITNESS: But I am aware there are some companies that have been impacted. And that's -- that's the appearance people --

THE COURT: Okay. Well, and maybe I asked it in too general a way. I mean, the understanding I have of Cornerstone is there's the long-term acute care business, which you said is on an upward track, but then we have senior living facilities as another big segment. So, focusing not

generally but more on private company in these segments in healthcare, are there challenges with a company like this, valuing it in a post-COVID/still under COVID times?

THE WITNESS: I think this is a segment with the healthcare industry that -- where that challenge does not exist. They're well-positioned for what's happening to the population demographically within the United States. I think the performance of the company during this time period is reflective of the ability to continue to perform well and make the evaluation process easier, if you will, or less -- less impacted as compared to some of the other healthcare industry peers.

THE COURT: So your answer is no, you don't think there's any challenge valuing Cornerstone right now because of the pandemic?

THE WITNESS: That's correct.

THE COURT: Okay. How big a segment of its revenue is the senior care segment?

THE WITNESS: From a valuation perspective, on an enterprise level, I believe it accounted for 10 to 20 percent --

THE COURT: Okay.

THE WITNESS: -- of the aggregate enterprise value.

THE COURT: Okay.

THE WITNESS: That's including all the real estate.

Yes.

THE COURT: Okay. All right. Thank you.

I always give the lawyers a chance, if they want to ask any follow-up questions, only based on the Court's question, I think that's fair. So, anyone feel the need to ask a follow-up question based on my questions?

MR. MORRIS: Just one, Your Honor.

THE COURT: Okay.

RECROSS EXAMINATION

BY MR. MORRIS:

Q And that is, talking about COVID, does your valuation assume that Cornerstone has received cash from the government that is forgivable?

A We presented our value in a range to reflect that the cash that was received, the $30 million that I referenced, could be completely repayable or could be completely forgivable. We weren't privy to information with regard to the forgiveness of that liability.

Q Okay. But that, that liability and that influx of cash is something that is unique to the COVID period. Is that fair?

A It's -- it's fair. The cash is, or was, at least in the -- in the company, although, as mentioned earlier, so is the liability. So, on the one hand, it's neutral. I received $30 million of cash; I have a liability for $30 million --

Q Certainly --

A -- (overspoken).
Q Certainly helps cash flow, doesn't it?
A Yes. And that's why I made the statement about -- it does help liquidity, yeah.
MR. MORRIS: Okay. No further questions, Your Honor.
THE COURT: All right. Either Ms. Mascherin or Tomkowiak?
All right. Well, thank you, Mr. Moentmann. We appreciate your testimony.
THE WITNESS: Thank you.
THE COURT: All right. Ms. Tomkowiak, do you have any other evidence?
MS. TOMKOWIAK: I don't have any other witnesses, Your Honor. Give me one moment, Your Honor, to confer with my colleagues.
THE COURT: Okay.
(Pause.)
MR. CLUBOK: Your Honor, I don't know if this is particularly out of order, but I'm going to just ask Your Honor if we may also proffer. There were two Houlihan Lokey valuations that were prepared for Redeemer and also a presentation that was produced to us by Redeemer, all of those excluded by your order this morning. We just would like to be able to offer them under the same terms that we offered the Houlihan valuations for -- that were prepared for Highland.

We'll put them under seal and just proffer them for the record. We think the collection of all that shows a very different story than what Mr. Seery described. But we would get that for the time being, yes, Your Honor, as to avoid that.

THE COURT: All right. So, just to be clear, you've offered those and I have declined to admit those for reasons I've stated earlier today. But you can put them in the record as an offer of proof under seal, so that if there's any appeal the higher court can see what it was that I refused to allow. Okay? So you're going to have to get with the courtroom deputy later and submit those under seal to be kept in the record in case there's an appeal, okay?

MR. CLUBOK: Thank you, Your Honor.

THE COURT: All right. Any other evidence from UBS, then? I think that's it, right?

MR. MORRIS: Your Honor, I would just -- I'd just ask that it change sides to (garbled). In fairness (garbled), put them all in, rather than being selective.

THE COURT: Okay. So you're saying that if -- you want all --

MR. MORRIS: Otherwise (inaudible) better.

THE COURT: -- all of the Houlihan -- all of the Houlihan reports should go in as part of the offer for proof? Because your argument is if some of them were allowed in and

it was error, then all of them should go in. Is that your point?

MR. MORRIS: Correct.

THE COURT: Okay.

MR. MORRIS: Correct.

THE COURT: So I don't know how far you mean to go back in the past.

MR. MORRIS: Sure. Just to be very specific, from March, I think, until August is the last one that has been prepared by Houlihan, and it's been provided to UBS.

THE COURT: All right. So, Mr. Clubok, that is what you're going to submit to the courtroom deputy to be your offer of proof on this, March through August.

MR. CLUBOK: And first, Your Honor, that's fine, Your Honor, with also the clear intention by doing that it reflects that information, then -- and since -- now, since Mr. Morris added that, then I'd (inaudible) there's also some sealed testimony of Mr. Seery during his deposition that I didn't get into because it was all, I thought, excluded under the same rubric. And so the point-counterpoint, if Mr. Morris has an offer of proof, that's fine, but if we just pull the whole record in, the whole line, everything we got into, we could put it in as an offer of proof and combine the information Mr. Morris said and then the deposition testimony of Mr. Seery's deposition. I would have explored all of this had I been

allowed to get into it. We make that as an offer of proof.

THE COURT: Okay.

MR. MORRIS: Your Honor?

THE COURT: I'm very confused.

MR. MORRIS: Yeah, the Debtor -- this is -- this is -- they offered the reports, Your Honor made the ruling, and they're doing this because they actually made an offer of proof. They actually sought to introduce this into evidence. They had Mr. Seery on the stand. They could have done the exact same thing. They can't clean it up now.

THE COURT: Agree.

MR. CLUBOK: We -- hold on a second.

THE COURT: I sustain that objection.

MR. CLUBOK: Your Honor, if I can just respond here.

THE COURT: I sustain that objection, okay?

All right. Anything else?

All right. Anything in rebuttal, Mr. Morris?

MR. MORRIS: No, Your Honor.

THE COURT: All right. I'll hear closing arguments.

CLOSING ARGUMENT ON BEHALF OF THE DEBTOR

MR. MORRIS: Your Honor, I do want to keep this relatively brief because I think the Debtor was easily -- are you hearing background?

THE COURT: We're hearing a little bit of background. Is that -- was that on Mr. Morris's end?

THE CLERK: Yes, because he's moving around.

THE COURT: Okay. I think it was just because you were moving around, according to the court reporter. So, anyway, but --

MR. MORRIS: I apologize.

THE COURT: -- I'm timing. Let's keep it within --

MR. MORRIS: It's five minutes.

THE COURT: -- you know, five to ten minutes per argument, okay? You may proceed.

MR. MORRIS: Yeah. Thank you very much, Your Honor. I think this is a very, very simple case under the standards of 9019, a standard the Court is quite familiar with. And I don't think there's any dispute between or among the parties is focusing on the terms of the compromise, determining the probability of success in litigation, the complexity and likely duration of the litigation, other factors that courts in the Fifth Circuit have interpreted to mean the paramount interests of creditors, with proper deference to their reasonable views, and the extent to which the settlement is truly the product of arm's-length bargaining and not fraud or collusion.

I'll take the last point first, Your Honor, because it's just so simple. There's absolutely compelling evidence that this settlement was the product of lengthy negotiations between counsel, between principals, between counsel and

principals. You've heard Mr. Seery testify quite credibly that there was a lot of back and forth. And obviously, there is no evidence of fraud and collusion. So I think we get a hundred percent on that prong of the ledger.

With respect to the paramount interests of creditors, Your Honor, as the evidence shows, the Debtor, in choosing to exercise its judgment to enter into this settlement, will be ending litigation, I think, in five different courts in three different countries, litigation that has cost the estate an enormous amount of money, and they're doing so on terms that are really fair and reasonable. And that is the standard, Your Honor. It is not, is the Debtor maximizing value? While you always hope to do so, that's really difficult when you're in a 9019 motion. I've never heard of a movant either have the burden or even suggest that somehow they're entering into a compromise that maximizes value.

We've heard from the one witness that UBS offered. I -- there's no reason to challenge his qualifications. I'm sure that he's a perfectly able professional. But I think the Court should take into account the context in which he prepared his analysis. That analysis was prepared in a mere 20 or 30 hours. It was prepared solely for purposes of this litigation. And to his credit, the witness testified unambiguously that his own clients rely on Houlihan Lokey. There's nothing -- fraud in the methodology that Houlihan

Lokey employs. And the ultimate question is that he has no reason to believe that it was unreasonable for the Debtor to rely on the Houlihan Lokey report.

The evidence also showed, Your Honor, though, that the Houlihan Lokey report was not the only data point that Mr. Seery considered. He testified unambiguously and unchallenged that he also communicated with Cornerstone's management, with Cornerstone's board of directors, that he gets regular updates about the financial condition and the performance of the business, and that he specifically used that information to validate the (garbled) further negotiation on this (echoing).

With respect to the reasonable deference of creditors, Your Honor -- I don't know if somebody's -- can put their phone on mute.

With respect to the reasonable deference of creditors, Your Honor, there's only one creditor here who is challenging the Debtor's motion, and not surprisingly, that creditor, UBS, has had a very longstanding dispute itself with -- with the Redeemer Committee. And I think it would be fair if the Court took that into account in terms of litigation and perhaps prejudice and bias.

The likelihood of success, I think, goes to UBS's argument that the Debtor really should walk away from this deal and go back to Chancery Court to relitigate the issues that the panel has already decided with respect to whether the procedural

issues and the rendering of the award were proper.

You know, we've had a chance to analyze. Mr. Seery actually, I think, described in some detail how the panel came about, about its decision. I think he testified quite clearly that Highland would be a particularly unsympathetic litigant in the Chancery Court, having voluntarily participated in arbitration for years, an arbitration pursuant to which the parties engaged in substantial discovery.

Your Honor has the evidentiary -- not the evidentiary record, but Your Honor has the very extraordinarily detailed findings of the panel. Those findings refer to substantial evidence, both documented and testimonial evidence. The findings made severe credibility findings, a lot of which, quite frankly, are not flattering to the Debtor. And Mr. Seery specifically testified that he took all of that into account in assessing the probability or the likelihood of success of going back to Chancery Court and prevailing.

With respect to the compromise that was made on the deferred fees, in all honesty, Your Honor, I don't see how that can be challenged on any rational basis. If you followed UBS's path, we would have, in the first instance, another litigation over setoff. And once that litigation was resolved, whether it's hundred-cent dollars or bankruptcy dollars, the Debtor would have to return that to Redeemer Committee and then wait until this bankruptcy is over before

it can even ask for the deferred fee.

You've heard very, very clear, unambiguous testimony, unchallenged testimony, from Mr. Seery that when they finally do get around to making that request, they're going to be involved in another litigation. Why? Because during the negotiations, the Redeemer Committee made it crystal clear that it was relying on the Faithless Servant defense. Is it one that is, you know, common? It's not common, but it has been used successfully. And the fear that Mr. Seery specifically described is that the findings in the arbitration award might give credence to the Faithless Servant defense. And having gone through the setoff litigation, having paid the money, having waited the time, having spent the cost to litigate the issue again, they might lose. And I think if Your Honor reads the partial final award, you may come to the same conclusion.

Whether you do or you don't, Your Honor, the point is that the evidence is crystal clear that there is a very strong foundational evidentiary basis for the Debtor's decision to enter into this award, and there's no question that it meets the standard of 9019.

Again, Your Honor, we would remind the Court, not that I need to, but that the test here isn't maximization of value. It's not getting the most that you possibly can. It's taking everything into account. Is this in the best interest of the

estate? And I do not think this is a close call.

Unless Your Honor has any questions, I have nothing further.

THE COURT: I did have one follow-up question on the deferred fee compromise. I'm wondering if you could generally quantify: Assuming a hundred percent success for UBS, I'm trying to figure out how big a discount the 20 percent -- I mean, the $20 million number was. Because I understand $32 million is what Highland paid itself early. But then I understand the component, the award component of the $190 million arbitration award, it was $43.105 million because of, I guess, interest, calculating interest from the date they paid themselves the $32 million until the time of the award. Right? And the award, was it March of 2018 or September 2018?

MR. MORRIS: The partial final award was March.

THE COURT: Yes.

MR. MORRIS: The final award was May.

THE COURT: Okay. So I assume, then, we keep calculating interest post --

MR. MORRIS: Until the petition date.

THE COURT: Until the petition date.

MR. MORRIS: Yeah.

THE COURT: So we're at -- and it was a high interest rate, right? Nine percent? High these days, right? Nine percent?

MR. MORRIS: Well, just to be clear, Your Honor, you're absolutely right, you have a great memory, it is nine percent. But that's statutory interest in New York.

THE COURT: Right.

MR. MORRIS: Those of us who live in New York always call it the absolute best investment you could make if you actually have a liquid defendant. I mean, nine percent guaranteed.

THE COURT: I'd rather have that --

MR. MORRIS: No doubt --

THE COURT: I'd rather have that than my mutual fund right now. So, --

MR. MORRIS: Yeah.

THE COURT: So we're talking close to $50 million. But that's not even the whole story, right? Because they, they'll get it -- not only would they maybe never have to pay it back because of this Faithless Servant award, but even if they did have to pay it back, it wouldn't be until the Crusader Fund was liquidated, --

MR. MORRIS: Correct.

THE COURT: -- and litigation?

MR. MORRIS: Which can't happen until this -- which can't happen until this case is completed, --

THE COURT: So, --

MR. MORRIS: -- which means the estate claims that

are going to be prosecuted by the UCC and any of its successors against Mr. Dondero and his affiliates, all of that has to play out. And UBS, more than anybody in this courtroom, should know how long it takes to litigate with Mr. Dondero. Maybe he'll have a change of heart. Maybe something different will happen. But based on prior experience, I don't think this Court or anybody should make any assumptions as to this case being ended quickly.

THE COURT: Okay.

MR. MORRIS: Just based on history.

THE COURT: All right. Thank you. I'll go to friendly parties next.

Ms. Mascherin, anything you wanted to say as far as closing argument?

MS. MASCHERIN: Yes, Your Honor. Thank you.

CLOSING ARGUMENT ON BEHALF OF THE REDEEMER COMMITTEE

MS. MASCHERIN: First of all, with regard to the deferred fees, I think Your Honor has already made all the points that I would have made had I argued that. Suffice it to say that I think any reasonable person would conclude that it is a reasonable compromise for the Debtor to retain two-thirds of the $32.3 million that the Debtor, as the panel found, as Mr. Seery testified, helped itself to in early 2016. That amount -- there's no assurance that that amount would ever come back to the estate upon complete liquidation of the

Fund, and the Redeemer Committee at least is quite confident that, whether or not a settlement here, the factual findings that were made in that arbitration certainly were replete with findings of breaches of fiduciary duty, of willful misconduct, and of other misconduct which would provide a firm basis for showing that Highland was, in fact, a faithless servant.

I would submit that's why the Redeemer Committee fired them as manager of the Fund when it -- when the Committee learned that they had taken the $32.3 million without the right to take it.

With regard to the likelihood of success assessment, Your Honor, I would submit that the record is likewise clear. The only issue that UBS raises with regard to the litigation, the compromise of the litigation, has to do with two procedural challenges that the Debtor had raised when -- in the proceedings to confirm the award in Delaware. As Your Honor knows, arbitration awards under the Federal Arbitration Act are pretty close to sacrosanct. The grounds on which an arbitration award can be challenged are quite limited.

The two procedural arguments that the Debtor made, one having to do with whether pre-judgment interest should continue to run after the date of partial final award, and the other dealing with the relief that the panel, as Mr. Seery testified, inadvertently omitted due to a scrivener's error with respect to what was referred to in the arbitration as the

Barclay's claim, both of those procedural issues were raised by the Debtor and were ruled upon by the arbitration panel. And the panel found that it -- that because its first award was specifically denominated as a partial award and not a final award, that the panel had jurisdiction to award additional pre-judgment interest for the small period between March and May, which is all that was at issue with respect to that disputed pre-judgment interest amount.

And likewise, the panel found that it had the power under the AAA rules to correct the scrivener's error, the clerical error that resulted in the omission -- the inadvertent omission from the partial final award of the damages amount that the panel was awarding for the finding it made in the partial final award that Highland Capital Management had taken -- had improperly taken for its own account any of the partnership's interest that had belonged to Barclay's, and Highland had done that despite the Committee's express disapproval of the terms of a settlement with Barclay's.

Importantly, Your Honor, the AAA rules specifically allocate to the panel the jurisdiction to interpret the AAA rules. And the Fifth Circuit has held that in circumstances like this, where the applicable arbitration awards -- or arbitration rules give the arbitrator the jurisdiction to interpret the rules, the arbitrator's findings bind the parties to the arbitrator's interpretation, so long as it is

within reasonable limits, even where reasonable judges and arbitrators could interpret the AAA rules differently. That's coming from the *Communication Workers of America, AFL-CIO v. Southwestern Bell Telephone Company* case, 953 F.3d 822, a Fifth Circuit decision from this year, 2020, Your Honor. And that's cited in our -- in the Debtor's motion to approve the settlement.

So I think it certainly is the case that the Debtor made a reasonable assessment that it would be unlikely to succeed if it continued to prosecute in Delaware that motion to vacate those two small parts of the arbitration award.

Finally, Your Honor, with regard to the Cornerstone asset, let me review what the current state of facts is with regard to that asset. And I feel that I must need to -- I must do this this because Ms. Tomkowiak, if I said that correctly, Ms. Tomkowiak suggested a couple of times that the Cornerstone asset somehow is an asset of the Debtor's estate. She made reference to the Debtor forfeiting the Cornerstone asset or giving up the Cornerstone asset. That is, simply put, Your Honor, a fallacy.

As things stand right now, the Crusader Fund owns approximately 42 percent of the shares of Cornerstone. The Debtor and its managed fund, Restoration Capital Partners, owns the rest. The panel ordered the Debtor, as part of its award, to pay the Crusader Fund $48 million in principal plus

approximately $24 million in pre-judgment interest on that amount, for a total of $72 million. And the award specifically provides that, upon payment of that amount to the Crusader Fund, the Crusader Fund should transfer its 42 percent interest in Cornerstone to the Debtor.

Your Honor, it is undisputed that the Debtor doesn't have $72 million to pay to purchase those shares. We heard Mr. Seery today testify that the Debtor doesn't want to acquire those shares. The Debtor is in liquidation. So what the parties did here was reach a compromise.

In addition to the substantial offset of the arbitration award relating to the two-thirds of the deferred fees that I already spoke about, the parties also agreed to offset a negotiated amount for a fair market value of Crusader's minority 42 percent shares in Cornerstone as of the time of the negotiations, as Mr. Seery testified, in the spring, late spring of 2020. That offset that the parties agreed to as a compromise was $30.5 million.

Now, to be clear, Crusader and the Redeemer Committee would have the right not to enter into any settlement and to ask Your Honor to confirm the arbitration award or to go back to Delaware and seek to lift the stay to have the award confirmed there. And if we did that, then we would continue to hold a claim for seventy -- you know, a portion of which $72 million would be for, for sale of that -- of those

Cornerstone shares to the Debtor.

But Your Honor, that's a fantasy. We much prefer to enter into a settlement here. We think that the -- I would submit that the compromise that my clients and the Debtor reached to allow the Debtor not to have to purchase those shares, to allow for what the parties agreed to as a reasonable offset to the claim amount to account for the fact that the Debtor will not be purchasing their shares, is eminently fair. And it's of great value to the estate. The estate doesn't have to pay to buy those shares and the Debtor gets, in addition, the benefit of the Redeemer Committee and the Crusader Fund agreeing to compromise to try to monetize its minority position in Cornerstone, along with the majority position that's held by Highland Capital Management and its managed fund, Restoration Capital Partners.

And as Mr. Seery testified, there are -- Restoration Capital Partners is majority-owned by a number of independent investors. They're entitled to the best value for their shares in Cornerstone. My clients are entitled to the best value for its shares in Cornerstone. And Highland is entitled to the best value for the shares it owns in Cornerstone. And that value can only be maximized, Your Honor, if the company is available to be monetized as a whole.

So I would submit, Your Honor, the compromise is eminently reasonable. The Debtor, I believe, has met its burden of,

under the applicable Fifth Circuit case law, of demonstrating that the compromise is reasonable and is fair to the estate and to the creditors of the estate. And we would ask that Your Honor approve the settlement. Thank you.

THE COURT: Thank you. Ms. Tomkowiak, you're next.

MS. TOMKOWIAK: Thank you, Your Honor.

CLOSING ARGUMENT ON BEHALF OF UBS SECURITIES, LLC

MS. TOMKOWIAK: I'll try to keep (garbled) I'm responding to two.

Your Honor, the -- this settlement is not fair, equitable, or (garbled). We don't think it's a close call, either. Whether you look at each component or you evaluate it as a whole, as Mr. Seery purports to do, we think that the Debtor did in fact roll over. The bottom line there is that the compromises made by the Debtor result in Redeemer getting more than a hundred percent recovery on their claim, in real hundred-dollars, even using the very lowest possible value that anybody has calculated for Crusader's Cornerstone shares, as the Debtor did.

It's the Debtor's burden to show that it exercised business judgment here within a range of reasonableness. They haven't submitted any evidence to meet that burden or to allow this Court to conduct the independent analysis that it's supposed to do before approving this deal.

Again, the analysis of problems with it -- including with

respect to the way that the parties have allocated litigation risk, giving a lot of value to claims which have not even begun to be litigated and giving zero value to claims which, in fact, are at the very late stages of litigation in Delaware and could be dealt with in short order.

But the biggest problem, again, with the settlement is that instead of the estate getting a meaningful asset that could be worth up to $80 million, Redeemer effectively gets to keep it and -- for $30 million.

We believe that the Debtor has grossly undervalued those shares. Their fair market value calculation, or whatever they want to call it -- they called it in their motion their fair market value calculation -- is based on the very lowest end of a valuation range prepared by Houlihan Lokey back in the spring, despite the availability of much more recent information.

Mr. Seery has provided no basis for using a valuation back in March, and particularly in the midst of the uncertainty caused by the developing pandemic at the time. The testimony was, so that's when we started to negotiate this deal. But the settlement was not finalized until six months later. And so if there was a lot of back and forth, as Mr. Morris just said in his closing, well, I guess that happened, you know, six months ago, when apparently the Debtor has chosen to freeze inexplicably the value of this asset.

Again, there is no evidence that that $30.5 million is fair or within any range of reasonableness. Not only did the Debtor not put in any evidence, it was successful in excluding evidence that went directly to the valuation of this asset.

Despite succeeding on that, Mr. Seery did not quibble with my colleague Mr. Clubok's questioning. He agreed with the general proposition that the current value of Cornerstone is higher today than what's been taken account into the settlement.

This is a settlement of a, you know, a $190 million claim, and UBS notes that the Debtor has scores of financial advisors who are being paid tens of millions of dollars every month to analyze claims and assets. We see their fee statements. And not a single one of them, including Houlihan Lokey, anyone at the premier firm of Houlihan Lokey whose names Mr. Seery did not even know, are here to testify today. Or any of the other financial advisors.

According to our expert, who is, you know, the only evidence that is before this Court, Mr. Moentmann -- he does this for a living; he values healthcare companies in the real world, unlike Mr. Seery, who does not -- the value assigned to Cornerstone in the settlement falls below any reasonable range of what Cornerstone is worth today or even what it was worth back in June, let alone back in March.

And yes, he prepared his opinion for purposes of this

litigation, but he's not a professional testifier. This is what he does for a living. He testifies once every couple of years. And he did a valuation analysis exactly like what he would do in the real world for a healthcare company, as he's done for the past 30 years.

And when he corrects for the significant flaws in the assumptions used by Houlihan Lokey, the true value of the asset that the Debtor is giving up -- they're giving up the right to receive it. I understand that they don't have it, but they -- the arbitration award explicitly said that they have the right to get it. It is -- it should be theirs. And they're giving up that asset. And according to Mr. Moentmann, when he accounts for all of the significant flaws in the assumptions used, that asset is worth double or triple what the Debtor has assigned to it for settlement purposes.

Now, again, Mr. Seery testified today that he expects Redeemer will recover one hundred percent of its allowed $137 million claim in real dollars. I don't -- based on those numbers alone, I don't understand, respectfully, Ms. Mascherin's argument that the Debtor somehow doesn't have the ability to purchase the shares for $48 million.

I also, frankly, don't understand the argument that the value can only be maximized when monetizing this asset as a whole. And to be clear, I understand that argument, but I don't get why that can only happen in a settlement where

Redeemer and the Debtor agree to work together to do that, as opposed to the Debtor getting Crusader's portion of the Cornerstone shares, as it was required to, and then working to monetize that asset as a whole.

My final few points, Your Honor. I think the value of Cornerstone -- it's been said a lot today that this is not a valuation case, but it matters when you are looking at an asset with potentially a $50 million swing in the true value of it. That matters in the context of a case where the Debtor has said that they expect to distribute $195 million to creditors. So giving -- giving up the right to this asset matters. And yes, it hurts the remaining major creditor, which is UBS.

Now, Mr. Morris talked about, you know, UBS's motive and our supposed prejudice and bias. And we have no longstanding dispute with the Redeemer Committee. Ironically, it's actually the Debtor and Redeemer who have had their longstanding dispute. But now they've teamed up to object to our claim and to, you know, strike this deal that we believe provides Redeemer with a more than one hundred percent recovery windfall.

So, Your Honor, we think the settlement should not be approved, and we only -- don't think it should be approved without holding the Debtor to its burden to provide actual evidence, including evidence of the value of the Cornerstone

shares that are forfeited in this settlement.

And alternatively, I would just reiterate what I said in my opening, that if you are inclined to approve the settlement anyways, in the event that a sale of Cornerstone does occur in the future and the purchase price is well above the value that that asset has been assigned here, then we request that the Court take the proceeds of that sale into consideration at the time of plan confirmation when the distributions are to be made. And it should -- the outcome of that sale should be taken into account when calculating Redeemer's recovery.

THE COURT: Okay.

MS. TOMKOWIAK: Thank you, Your Honor.

THE COURT: Thank you.

Well, I thank you all for your hard work in the pleadings as well as the presentations here today. I assure you that we've read the paperwork very carefully and considered all your evidence carefully today.

As we know, with regard to this motion to approve compromise of controversy, the Court is guided by Bankruptcy Rule 9019. And that rule does not say a heck of a lot, but we've got lots of jurisprudence to guide the Court. Cases such as the *AWECO* case, the *Jackson Brewing* case, the *TMT Trailer Ferry* case, *Cajun Electric*, *Foster Mortgage*, all of these were cited in the papers. And the legal standards that those cases instruct this Court to use are the Court has to

evaluate whether the compromise and settlement is fair and equitable and in the best interest of creditors when considering three things: One, the probability of success on the merits in future litigation, with due consideration for uncertainty of law and fact; two, the complexity and likely duration of litigation and any attendant inconvenience and delay; and three, all other factors bearing on the wisdom of the compromise.

The Court is also supposed to consider the paramount interests of the creditors.

So I will back up and find that we have had all required notice of this motion. And when applying those legal standards I just outlined, the Court finds that this settlement is eminently reasonable, fair and equitable, in the best interest of creditors, and so therefore I am approving it.

I will note a couple of pieces of evidence, or more than a couple, a few pieces of evidence that were especially persuasive to me. First, I will say that Mr. Seery's testimony was very credible to me. And I do believe that he did not consider this a laydown by any means, and I don't think it was by any means. The facts are that this settles many, many years of litigation, as someone said, in five different fora, in three different countries. And there was a nine-day trial in front of a very respected arbitration panel.

And I agree with the verbiage of Ms. Mascherin that the arbitration award is very much sacrosanct. This isn't a situation where, you know, if I lifted the stay and allowed things to go forward in the Delaware Court to see if they would confirm the arbitration award, it's not a situation where there would be a heck of a lot of arguments the Debtor could make to refute the $190 million award or knock it down very much. Things like fraud, misconduct, a very narrow set of circumstances would have to be demonstrated. It certainly wouldn't sit in the shoes of an appellate court.

So I think that is a very relevant factor that certainly shows the Debtor didn't lay down here. The Debtor's options were narrow with regard to challenging very many aspects of the arbitration award.

I believe that Mr. Seery and the board did a lot of due diligence as far as evaluating their options here. I believe that there were good-faith arm's-length negotiations. And specifically, the reductions, if you will, seem extremely reasonable to this Court.

With regard to the $20 million credit on the $190 million award for the deferred fees, it appears to me the Debtor got a pretty good deal on that one. You know, it looks like to me we really started at a number around $43 million that would have gone up with time in interest. And there was a strong argument that, once the Debtor paid that back, that there

would be no obligation to ever kick in under the Faithful Servant Doctrine for the Redeemer Committee/Crusader to ever have to pay it back again to the Debtor. So I think that $20 million number settled on is a very fair number.

With regard to the $30.5 million number for the Cornerstone credit that has been so contentious today, I respect the arguments, but ultimately it bears emphasizing this was a negotiated amount, not a situation where there was a precise valuation that was even required.

And I think it is very significant that we're talking about a minority interest, a 42 percent minority interest that Highland was required to buy back. And one could almost take judicial notice that minority interests in private companies are darn hard to value, and some might say should be discounted.

And while I found Mr. Moentmann to certainly be well qualified and explained well his different views, at bottom, I don't find them to be as persuasive as Mr. Seery, in that he has spent two weeks on the assignment and 20 to 30 hours. You know, certainly, I think reasonable minds can differ, but at bottom the $30.5 million number was within the range of reasonableness for a compromise on this amount.

I'll just emphasize further that, with regard to Cornerstone, I felt like the $30 million CARES Act loan should be regarded as a huge question mark, uncertainty, as far as

affected value. The fact that no one knows if it's forgivable or not, well, that's a pretty big deal. And it's just one of many reasons I think there's a big range of possibilities here, so that the number that the Debtor settled on is certainly within the range of reasonableness.

All right. So, with that, I approve the compromise and will look to Debtor's counsel to submit a form of order. All right. Thank you again.

We now are going to turn to Acis, and let's talk about timing. Mr. Morris, are you the key presenter on this one or is Mr. Demo going to be?

MR. MORRIS: No, I will be the presenter on this one, though Mr. Demo will address the Court certainly with respect to two of the legal issues on the Daugherty objection. But otherwise this one is all mine as well.

THE COURT: All right. So, shall we roll to extremely brief opening statements? I guess one thing I'll need you to tell me is, do we really have five objections, or do we have two? Have the sort of limited objections been resolved, or no?

MR. MORRIS: Your Honor, that is an excellent question. They haven't been resolved consensually, but they ought to be, based on the testimony from Saturday's deposition. And if I can, I'd be happy to just start with that issue first, if you'll just give me a moment.

(Pause.)

THE COURT: Okay.

OPENING STATEMENT ON BEHALF OF THE DEBTOR

MR. MORRIS: Okay. Putting aside Mr. Dondero and Mr. Daugherty for the moment, there are three other objections: One by CLO (garbled). That was filed at Docket No. 1177. One by Highland CLO Funding Limited, filed at Docket No. 1191. And one filed by HarbourVest at Docket No. 1195.

I believe all three of these objections or responses either objected to or reserved their right to object to one provision of the settlement agreement pursuant to which the Debtor would have the obligation to transfer its rights in an entity called Highland HCF Advisors Limited to Acis if the Debtor had received written advice from nationally-recognized external counsel that it is even permissive -- permissible to make that transfer.

That can be found, Your Honor -- the settlement agreement is Exhibit 1 to my declaration, and I believe when I offer that into evidence it'll be Exhibit #3. But that's where the settlement can be found, and this is Paragraph 1(c). And that matter really, from the Debtor's perspective, has been resolved. Mr. Seery testified on Saturday and he will testify again today that the Debtor has obtained the advice of the WilmerHale firm, I believe, and that advice is that it is -- they cannot give the comfort that if they transferred that

asset that it would be legally permissible and that the Debtor would bear no risk.

So, from my perspective, that objection or reservation of rights, depending on the party, should be resolved.

There were two other issues, I think, raised. I know it was HarbourVest. I'm not sure who the other one was. But they're both related to whether or not the release applied to them. HarbourVest in particular objected on the ground that the release -- to make sure that the release doesn't release any claims that HarbourVest may have. It does not, Your Honor. I think a plain reading of the release shows that HarbourVest is not implicated.

In addition, HCLOF also -- HarbourVest is an investor in HCLOF. And HarbourVest -- HCLOF, rather, Your Honor, is specifically excluded from the release. So HarbourVest is not included, and HCLOF, the entity in which HarbourVest invested, is actually specifically carved out of the release, so that there's no ambiguity.

So I think, on that basis, Your Honor, perhaps it would be most efficient to hear from those three particular parties. You know, Mr. Seery will testify, and if you want to take him out of turn and do that now on the issue of the advisors and the advice that he's received, I'd be happy to do that.

THE COURT: All right. Well, maybe we should first hear from our objectors.

Let me start with HarbourVest. I have misplaced for a minute my appearance. I think it was Ms. Weisgerber. Was it Ms. Weisgerber who was appearing for HarbourVest?

MS. WEISGERBER: Yes.

THE COURT: Okay.

MS. WEISGERBER: Yes, Your Honor.

THE COURT: Do you -- have you heard what you need to hear to withdraw your limited objection, or no?

MS. WEISGERBER: Your Honor, I think we're -- we're pleased to hear those updates from the Debtor. I think, from our perspective, we'd just look to a couple of housekeeping matters regarding documentation of this. Specifically with respect to the release point, in the settlement itself there are certain entities that are explicitly carved out of the release, and we would ask that HarbourVest be included as an explicitly carved-out party, for the avoidance of doubt, whether that appears in the settlement agreement or in the order approving the settlement.

So, I'll pause on that, and then I'll just turn to the second issue, to confirm if the Debtors are amenable to that.

MR. MORRIS: Well, we don't have the exclusive right in this regard. If you'll give me one moment, I'm going to just confer --

(Pause.)

MR. MORRIS: -- the Court to the next issue, if you

may, while I'm trying to resolve this. Because that is certainly our intent. We never intended HarbourVest to be part of this. And we would have no objection if the Court, either through an order or otherwise, made it clear that HarbourVest is not subject to the release.

MS. PATEL: Well, let me chime in. Mr. Morris, if it's me that you're looking to confer with, I'm not sure, or if it's Mr. Seery, but I think I can go ahead and address this.

And, Your Honor, just to back up for a quick second on this issue, I wanted to just, of course, remind not only the Court but the other parties of the overall structure here. And as Your Honor may remember, Acis is the portfolio manager for certain CLOs in which Highland CLO Funding owns the -- either the majority or all of the equity strip and equity piece.

Separate and apart from that, Highland CLO Funding's investors, conversely, are an entity by the name of CLO Holdco, who has filed a limited reservation of rights, solely, frankly, on the HCF Advisor transfer piece. More on that in a minute, if you care to hear it. But, and also HarbourVest. And HarbourVest, just to refresh the Court's recollection and the other parties, was the secret third-party investor that you heard oodles and oodles and oodles of testimony regarding during the Acis bankruptcy case.

And then Highland and certain Highland employees' retirement funds own the other remaining two percent equity interest in Highland CLO Funding.

So what we're really talking about here, Your Honor, in connection with HarbourVest, is something that is one step removed from even the equity piece. So I just want to be on record as saying, number one, Acis would dispute very hotly that any duties -- and whether any duties are owed to entities such as CLO Holdco or HarbourVest or HCLOF. There is -- it's frankly beyond the scope of the hearing today. And our position is that, certainly as it relates to HarbourVest or CLO Holdco, Acis owes no duties by virtue of its role as portfolio manager to the Acis CLOs.

Secondly, Your Honor, let's go to the issue of whether there are even any potential claims. And with respect to that, you know, there's at least, if not by implication, and perhaps not in connection directly with HarbourVest, but others that are objecting, so I'll just go ahead and address the issue now: There are implications of some sort of mismanagement. And I and Acis want to be clear on record as saying those are obviously hotly-disputed issues as well. Your Honor, frankly, those types of implications or claims are unfounded and specious with respect to any mismanagement allegations, and are frankly offensive, given the facts here. Many are based by certain of the objectors and have -- on

prior -- testimony provided prior to the confirmation and have been soundly rejected by this Bankruptcy Court.

Second, these Acis CLOs, frankly, Your Honor, have performed either as well or better than the broad CLO market since Brigade took over from Highland. And as you may recall, Your Honor, Brigade started behind a $300 million eight-ball created by former Highland Capital Management leadership. So to argue that there is some form of Acis mismanagement is frankly just jaw-dropping.

All of this, Your Honor, is particularly remarkable in light of the fact that these deals are some of the only deals now -- and by deals, I mean, the Acis CLOs -- passed through the investment period. They haven't been reset. Acis has tried to engage in reset discussions, and Your Honor heard about this in the Acis status conference and in the Acis bankruptcy, but I want to make sure it's on the record here: Acis tried to engage in reset discussions with HCLOF -- again, the entity in which HarbourVest, et al. have the investments -- but they've been rebuffed, and in fact have been sued by HCLOF's investor once removed, CLO Holdco, and then ultimately the DAF (phonetic), and been named in all the scorched-earth litigation that HCLOF has brought against Acis and Mr. Terry in this Court and all around the world.

So, this allegation that there is some form of mismanagement and that there are claims that need to be

reserved, again, I think are angels on the heads of pins.

Nevertheless, I think, to the extent it makes somebody feel better to include that language in there, I think HarbourVest's rights -- and I'll be specific to HarbourVest here, since they're the party raising the issue -- to the extent that they are concerned that the release somehow impacts them, to the extent that they flow through HCLOF, I think that they're already covered. But if you want some belt-and-suspenders language that they're not included either, that their rights that flow through HCLOF are also excluded from release, then I suppose that's okay.

THE COURT: All right. So, we got the agreement of Acis that, for belts and suspenders, they are agreeable to language in any order approving this settlement, if there should be one, they're agreeable to clarification that HarbourVest claims are not released pursuant to this settlement.

So, Mr. Morris, back to you.

Mr. Seery, you all would be good with that extra language?

MR. MORRIS: Yes, Your Honor.

THE COURT: All right. So, with that assurance, Ms. -- I'm sorry, Ms. Weisgerber, you are withdrawing the HarbourVest objection. Is that correct?

MS. WEISGERBER: I just wanted to address briefly the other issue regarding the transfer of Highland HCF Advisor and

confirm, so it will not go forward, whether it will either be carved out of the settlement agreement or whether the Court will not be approving that transfer as part of the settlement order. Again, just confirm that it's been excepted, it's not going forward, but we just want to be -- it to be confirmed that, with our concerns if later the Debtors got subsequent legal advice and attempted to engage in a transfer. I think, again, we always say belts and suspenders, Your Honor, but, you know, my client has a history here that we'd like to be certain about what we're getting when dealing with all the parties here.

THE COURT: Well, Mr. Morris, --

MR. MORRIS: Your Honor?

THE COURT: -- we heard you say that you didn't get the legal advice you needed and so you aren't going to be transferring direct or indirect interests in HHCF pursuant to the settlement agreement. Is there something you can add to -- I don't know. This is it. There's --

MR. MORRIS: Your Honor?

THE COURT: Go ahead.

MR. MORRIS: If you want to put it in an order, that's fine, but I don't see any reason to go and tinker over language in the settlement agreement. If Your Honor, you'll make a finding based on Mr. Seery's testimony that the Debtor has received advice, and based on that advice, the asset will

not be transferred. And that'll be part of the order, it seems to me. We don't need to do this.

THE COURT: All right. So, Ms. Patel, you agree? It's not happening?

MS. PATEL: That's -- that is correct, Your Honor. We understand that the Debtor attempted to and has otherwise complied with the terms of the settlement agreement. They had -- they did not get that opinion from nationally-recognized counsel. And Acis understands where that ended up.

THE COURT: Okay.

MS. PATEL: So, no. No problem.

THE COURT: All right. So there, there's your answer, Ms. Weisgerber, on both of your points.

So I'll move on, I guess, to Highland CLO Funding now. Are you in a position to say if your objections are resolved by these announcements? Ms. Matsumura, are you there?

MS. MATSUMURA: Your Honor, my colleague, Mr. Maloney, had joined the call, but perhaps he's having technical difficulties.

Our -- based on what's been said here, our reservation or rights has been resolved.

Of course, the other issue that we had that I don't think Mr. Morris addressed was the business of the appeal. I don't think we need anything else said on that. We just wanted to note for the record that we don't consent to dismissing our

portion of that appeal.

THE COURT: Okay. Well, let's turn, then, to Mr. Kane, CLO Holdco. Have you heard what you needed to hear to get comfortable?

MR. KANE: Yes, Your Honor. John Kane for CLO Holdco. The discussion about the satisfaction of our concerns on Section 1(c) of the settlement agreement has resolved our concerns.

THE COURT: Okay. Very good.

All right. So we're down, I guess, to Mr. Dondero and Mr. Daugherty. All right . Mr. Morris, did you want to make anything further as far as an opening statement, or call your witness?

MR. MORRIS: Yes. You know what, I'm happy to call the witness, and then I'll reserve my time for closing argument, if Your Honor (garbled).

MR. DEMO: Mr. Morris, this is Greg Demo. Just as one more brief item before we do that, certain of the employees are also being released by this agreement. We've had conversations with their counsel. They didn't file a formal reservation, but they asked a few clarifying questions, which I believe that we and Ms. Patel are in agreement with. And so those employees who are being released by the settlement with Acis, we did want to clarify on the record that the release does not affect any of their rights against

-- to assert a claim against the estate. Some of these employees have filed proofs of claim. Others may have administrative claims. And the settlement does not affect their rights under those claims.

The settlement also does not affect their rights under the -- to vote for or against the plan.

And then, finally, if any of those employees are subpoenaed or subject to discovery requests, it does not affect their right to truthfully respond to those.

THE COURT: All right. Anyone disagree with that announcement? (No response.) All right.

MS. PATEL: Acis confirms, confirms the agreement, Your Honor.

THE COURT: Okay. Thank you.

All right. So I promised people you will get ample time to do closing arguments, but I think, given how late in the day it is, we need to just go to the evidence. And so, Mr. Morris, you call Mr. Seery?

MR. MORRIS: Yes, Your Honor. The Debtor calls James Seery.

THE COURT: All right. Mr. Seery, are you there? Can you hear me?

MR. SEERY: I am, Your Honor. Can you hear me?

THE COURT: We can hear you. We can't see you yet, but if you'll say "Testing 1, 2" it'll pick you up.

MR. SEERY: Testing 1, 2.

THE COURT: All right. There you are. All right. Well, I've sworn you in once today. Do you understand you're still under oath?

MR. SEERY: I do, Your Honor.

THE COURT: All right. You may proceed.

MR. MORRIS: All right. Thank you very much, Your Honor.

I don't know if anybody else has had the issue, but there were a couple of times when the screen froze for a second or three. So we'll just see how it goes.

THE COURT: Okay.

JAMES P. SEERY, DEBTOR'S WITNESS, PREVIOUSLY SWORN

DIRECT EXAMINATION

BY MR. MORRIS:

Q Good afternoon, Mr. Seery. We're here on the 9019 motion for Acis. Can you describe for the Court generally the diligence that you and the independent board members did to educate yourself about the claims that the Debtor had against Acis and the claims that Acis had against the Debtor?

A Yes. Recognizing that we're making a separate record, I will -- I'll do all the points, but I'll try to do them slightly more quickly, since it's very similar to what I testified with respect to Redeemer.

When we were appointed as directors, we initially did a

lot of work around various claimants and what claims they had, particularly those who were on the Creditors' Committee. And that necessarily led us to dig into the Acis bankruptcy case and the issues surrounding both Mr. Terry and Acis, of which the Court is very familiar.

Starting on the very first day of the case, when -- first day that we were appointed, we actually met with Mr. Terry and his counsel, discussed the issues that they raised with respect to their claims and what they thought were substantial claims coming out of the Acis bankruptcy against the Highland estate.

After that, we engaged our counsel to research the claims, to do significant work around the legal issues.

Early on, as those -- as that work was going on, Mr. Nelms and I ended up going to a meeting with Mr. Terry and Ms. Patel, extensive debriefing on their claims and challenging a number of the positions that they had. We took that back and did extensive work with the team, which is the team at both Highland, in terms of the underlying factual issues related to the Acis case, as well as the legal issues both from Acis and as were articulated by Ms. Patel and Mr. Terry.

When they filed their claim, we dug into that completely and analyzed it both with respect to the legal and factual issues, and had numerous meetings with the board and with counsel with respect to each and every section of the

complaint, as well as the -- how that would dovetail into our case.

Q Did you have an opportunity to review any of the Court's decisions in the Acis bankruptcy case?

A Yes, we did. We -- I did, and I know that each Mr. Nelms and Mr. Dubel did as well.

There were numerous decisions, including the confirmation of orders and the (inaudible) that started, you know, back in the arbitration decision, which we also all read, and then right into the case, into the plan of reorganization, and the specifics with respect to the various transfers that were articulated or laid out in the Acis complaint.

Q Did you receive advice and review yourself the advice on issues, on legal issues such as those arising out of the *Mirant* decision, and did you read that case?

A I read -- I read *Mirant*. I read all of the cases cited in *Mirant*. I think I read most of its progeny, although it's got a lot of different avenues that courts have taken. I was familiar with the case as an investor because we invested in the Mirant debt back in -- when *Mirant* had filed, and so I was familiar and aware of it.

I think the issues with respect to *Mirant* are some of the things that I was already familiar with, but we dug in again, and I certainly reread the cases.

Q And did the board request and did (inaudible) extensive

analyses, written memorandum covering the issues surrounding the Acis claims?

A Like the Redeemer case, the Redeemer issues, we requested memoranda from the Debtor's counsel. Debtor's counsel did extensive work on the issues, both with respect to the Acis case as well as the complaint coming out of the case. We had extensive meetings regarding that memoranda, and then sent counsel back to work harder and to come back, challenging their assumptions and some of their conclusions. So it was -- it was an aggressive effort by the team.

In addition, we incorporated the Highland team because they had the factual underpinnings. We had our own analysis, but we wanted to see if there was something we were missing to really challenge some of the assumptions that we were making with respect to the claims.

Q Thank you.

MR. MORRIS: Your Honor, a lot of the factual background is really contained in the Court's own rulings from the Acis case, so we're not going to spend any time on that. I would ask the Court to take judicial notice of its own decisions, including the decisions not of this Court but of the District Court on appeal with respect to the matters that were handled in the Acis bankruptcy.

THE COURT: Okay. I'll do that.

MR. MORRIS: Is that --

THE COURT: I'll do that.

MR. MORRIS: Okay. Thank you.

BY MR. MORRIS:

Q Mr. Seery, during the course of your diligence, did you learn that Acis and the Debtor and related parties were litigating in different forums?

A It didn't -- yeah, the answer is yes. We understood that. We also, you know, received copies of litigation, and even from related-party litigation, from my lawyer, Ms. Patel, the lawyer for Mr. Terry, with respect to various litigations, including the Guernsey litigation and litigation initiated in New York. Obviously, the underlying pleadings from the bankruptcy adversary proceeding in Acis that became the basis of the proof of claim in this case.

Q And did you learn that there were also proceedings that were pending, or frankly, that were commenced after you were appointed, in the Texas state court system related to certain of Highland's employees?

A Yes, and those, those we learned from the employees. Basically, I think coming out of the Acis case and the positions that Mr. Terry had, litigation was initiated against certain employees that we thought was pretty aggressive litigation, frankly. And it was certainly disturbing, even if -- even if one is indemnified as an employee and there is some insurance, it's unsettling to be sued. So it's certainly sent

a ripple through the organization.

Q And under the proposed settlement that the Debtor has negotiated with Acis and (garbled), is the litigation that you've just described going to end, at least for the Debtor, the employees that signed the releases, and the affiliates that are specifically identified in the release?

A Yes. As a management team and a board of directors, but also as a CEO, it's critical to us to try to get as much of this litigation resolved as possible.

As the Court is aware, this is some other litigation that's gone on for a really long time. It's multi-front. It involves multiple parties. It has collateral damage like the employees. And we wanted to try to resolve all of that litigation, to the extent that we could. We can't bind this, as the Court heard earlier some of the -- those who had reservation of rights. We can't bind entities that we don't own or control. And if it's an entity that we manage, it would have to be in the best interests of that entity in order for us to bind that entity.

So we wanted it to be as full as possible. We wanted it to be -- if we were going to have a settlement, that it had to be obviously fair and beneficial to the estate. And if we weren't, we were going to take a pretty aggressive litigation posture vis-à-vis the claims.

Q All right. Let's shift from -- well, before I shift, is

there anything that you think the Court wants to hear in regard to the diligence that you and the board did to educate yourself about the nature, scope, and value of the Acis claims, Mr. and Mrs. Terry's claims, and the Debtor's claims against Acis?

A I think the one additional factor that we have in this claim as opposed to Redeemer -- because Redeemer, although it wasn't completely done before the mediation, and there were certainly hard negotiations after the mediation started, it was outside of mediation. In addition to all the work that we did leading up to our objection to claim, our initial negotiations with Ms. Patel as counsel for Acis, and then Mr. Terry and his own counsel, we also prepared for the mediation. And that was an incredible amount of work, to really examine our own positions, understanding the failings, the weaknesses, and also the strengths, set up what we thought was the most appropriate way to proceed in a mediation there. We hoped to come out with a settlement, if possible, but knowing (inaudible). So we had an additional step with respect to the Acis claim that we didn't have in the Redeemer.

Q Well, let's talk about the period prior to the mediation, because obviously you weren't able to, as in your testimony, you weren't able to reach an agreement prior to that. But can you describe for the Court in general terms how the negotiations went, who took part in the negotiations, so the

Court has a good mindset as to the level of arm's length of discussions that took place?

A Well, in the pre-mediation negotiations, we, as I said, had had extensive dealings with and among counsel, and the board was kept regularly informed of any of those discussions. In addition, each of the board members -- Mr. Dubel, Mr. Nelms, and myself -- had direct negotiations with Mr. Terry regarding the very specific pieces of his complaint or of the Acis complaint. And those were numerous, and they went on for a considerable amount of time.

We initially made settlement offers to Acis and to Mr. Terry, really, around the -- around the crucible of what this -- monetization plan. As I mentioned earlier this morning, we still hoped to have a more grand bargain, and maybe that will get rid of more litigation. As I mentioned further, Mr. Dondero' has made a proposal that I think is -- certainly merits additional work. But we, we set up the plan that is on file that will in front of the Court on Thursday, and it's the alternative plan, but it sets up a crucible that if you are -- if we're unable to settle, we're going to litigate claims. And we're still going to be open to settling. I think that -- that sort of fostered some early pre-mediation dialogue with Acis and Mr. Terry to set up a possibility that something could get done.

Q Is it fair to say that at certain points during these

negotiations frustration set in? Did they -- were they difficult negotiations? Were they -- how would you characterize them?

A I would say, to be perfectly fair, and not at all aggrandizing to anybody or flattering, they were arm's length and they were hard negotiations, but they were extremely professional. So I don't think there was, you know, ever any particular difficulty, animus, you know, pre-mediation. The mediation might have gotten a little hot, but at the mediation, we don't want to go into details, but it was very -- it was very professional. It was very arm's-length but it was very professional. It was -- it was slow going.

Q I do want to spend just a moment talking about the objection that the Debtor filed to the Acis claim. Do you recall that the Debtor filed an objection to the Acis claim?

A Yes.

Q Do you recall the arguments? You know, in general, what was the position that the Debtor took with respect to the Acis claim in its objection?

A I think our objection had three main components. Number one, and maybe it had good merit, it's legally valid, but some very technical objections. So, we objected to some specific allegations regarding either constructive fraudulent conveyances or fraudulent conveyances, whereas the Acis complaint alleges that the Debtor got them, and some of our

objections were things like no, we didn't get them, a subsidiary got it. And so that would be a technical objection, which I think has merit. You know, as an equitable argument, it could certainly be argued that, well, you control that a hundred percent or 99-1/2 percent, so how do you say you didn't get the benefit? So there were those types of issues.

Some of them were, I think, what I would call (inaudible), that they were excellent arguments and they would have been very difficult for Acis and Mr. Terry to ever overcome.

The other big overriding objection that we had was that we -- we wanted to get around the *Mirant* holding and really lean on the equities of the case. And so our position was that, while -- while Acis and Mr. Terry had gone through a difficult time, they had a plan of reorganization, and ultimately -- ultimately, Mr. Terry would receive the full amount of his original arbitration award, less the amount he paid for the equity, and that that should probably be enough from an equitable perspective to satisfy him, as opposed to having claims against our estate. Our estate.

And the third, which ties into this, was an interesting Supreme Court case, and it just -- *Punta* -- it'll come back to me. Which was an argument, I think it's a good argument, hasn't been really applied in bankruptcy often, but that the buyer of an estate doesn't get to get the benefit of claims

because -- against the former owners of the estate or the company because that was factored into the price.

I think the challenge with that is, in the bankruptcy context, these claims are often preserved and always pursued. Or often pursued. So there was a challenge to that part of it. But I think we were -- you know, we had solid technical grounds on many of the objections, and we had, I think, a good, creative argument on merit -- on *Mirant* that really was dependent, though, on the perception of the equities of the case.

Q Okay. There is a mediation privilege here, so I don't want to divulge anything about the mediation or the end -- the following. Just some very specific questions. Did the -- was -- did the Court enter an order pursuant to which the Debtor, Acis, and others participated in the mediation?

A Yes.

Q Did the Debtor submit a mediation statement in connection with the mediation?

A Yes, an extensive one.

Q And was the agreement -- I think it's already been revealed to the Court, but we'll do it again -- was the settlement -- were the settlement terms agreed upon during the mediation?

A Yes. And the -- just to be clear and not to reveal the specifics, that part of mediation was very hard-fought. And

then in order to get the actual terms of the deal done, which was exceedingly difficult -- were just good negotiations on each side, I think -- that was done just directly between the parties without the mediators. The actual drafting of the provisions, the structuring of the releases, the limitations on those releases, those were negotiated by the parties without the mediators. The product -- the settlement is a product of the mediation, but those specific pieces were actually done between the parties directly, without the mediators.

Q Thank you for the clarification. So, at some point early in the summer, the Debtor files an objection, pursuant to which it claims it has no liability. Is that fair?

A I -- I think that's fair, yeah. I think we -- we believed we had a defense to -- at least some defense to every one of their points.

Q And then you come out of the mediation and you have this agreement that we're now asking the Court to approve; is that right?

A That's correct.

Q Okay. Can you just explain to the Court the factors that you and your fellow board members took into account, considered, debated, in deciding that this was a fair and reasonable deal?

A Sure. We -- we did believe we had good, meritorious

defenses, and certainly defenses that we put up in good faith, but we had a lot of risk. And so when we went through each count, we thought about the risks that the prior rulings of the Court were in the Acis case and how that might affect our own attempt to deflect our liability.

Some of them, we looked at and we thought those were actually, if we could get that settlement as part of it, it would be a pretty straightforward trade. So with respect to an intercompany note that's about $10 million, it was arguably (inaudible) transferred from -- from Acis, it was transferred -- its claim was it was transferred to Highland. Highland paid on the note. It was actually transferred to an entity that Highland owns and controls. That transfer was done without consideration, was about $10 million. We would have been liable on that note.

We now believe that, for example, that one, we had very little defense on other than a technical defense, and that we would have -- we'd have -- not going to have any liability on it because we effectively owe it to ourself, and now we believe it can be recharacterized or should have been recharacterized as equity in the first instance.

So, there are a number of provisions like that. And it's a long complaint. There are a number of allegations that are duplicative, but things like changing the fees. We thought that you could argue that the fee change was a market change

and made sense in the context of what Highland was doing, and I think that's a good, valid defense. The problem with it was the timing. And like a lot of the things in the Acis case, the timing did not help with respect to the equities tilting in favor of Highland. They tilted more towards Acis and Mr. Terry.

So when we went through count by count, we put risk probabilities and thought about whether we would be able to prevail or whether there was an opportunity to settle.

In addition, you know, just like Redeemer, if this case is going to get resolved, we're going to have to reach settlements. They're not going to be our opportune -- not going to be the best outcome that we would hope. Our best outcome was zero. Our best outcome with Redeemer would have been to deduct everything. But these are settlements that we think are fair and reasonable based upon the risks of -- the likelihood of success, the risks and the rewards of the -- the timing, and the cost.

Q And the cost that we're referring to is the cost of litigation; do I have that right?

A That's correct.

Q Okay.

A But by the way, just the cost on these settlements is not just the cost of the two sides' litigation. It's we have a bankruptcy case that, you know, as I've testified before,

Highland's employees do a really good job doing the job they do. The company has a small operating burn. The case is just chewing up the value of the assets. And if everything litigates until the end, we're not going to be in a position to make very good distributions at all.

So there's a compelling argument that we should be trying to settle any claims that are meritorious. We have no reason to settle claims that are not meritorious, but claims that are meritorious, we should try to settle if we can.

Q Okay. Let's talk for a moment about some of the claims other than the main Acis claims, because there's a few, and I just -- quickly. Claim No. 156 is characterized in our -- as the Terry claim. That's the claim that relates to the taking of the retirement funds. Can you just explain to the Court the board's rationale and their reasoning in deciding to treat the claim in the manner that is being proposed under the settlement?

A Yeah, I think this one is again pretty straightforward, that Highland, you know, had arguable justification for the treatment of that account. We went through it pretty closely. It ended up with Mr. Terry and Mrs. Terry receiving no value from the -- the value from his -- from his 401(k). And we thought that this was a claim that was pretty straightforward that should have been settled years ago. And that -- and it's not a large amount of money, but it's, we think, in the

context of the case, the right answer was to simply settle that one for the full value of the claim.

Q Thank you. And Claim #155 is defined as the Acis, LP claim. I think that's the claim arising out of the NWCC litigation in New York. Can you just describe briefly for the Court what that -- your understanding of what that claim is and why the Debtor has chosen to enter into the agreement for the settlement of that claim?

A Yeah. And this is another one. It's not as personal and difficult in terms of settling it, but it is one that's nettlesome. Highland -- it's a long saga, but Highland had retained a party to assist with some (inaudible) kind of financing. It turned out it didn't either want or need it. It turned over the contract. It owed a small amount of money under the contract. And then it just didn't pay. And that party sued in New York Supreme Court, and then Highland was deleterious. Its counsel just failed to respond.

Ultimately, after getting an extension, its counsel responded. Its counsel responded, including with respect to Acis. Unfortunately, Acis was controlled by a trustee, so Acis then never -- never got the proper notices. And the case proceeded to Acis's detriment, and this is the cost of the fees to try to undo that, which ultimately Acis was able to do. It's still, I believe, a defendant in the case, but was able to -- to separate from default-type judgments and risks

it had incurred because Highland's counsel had not properly dealt with the case.

Ultimately, the case went against Highland. I think it's one that should not have gone against it. And what was a very small amount that was owed is now a few hundred grand.

Q Hmm. And then the last piece of the puzzle, I believe, is the satisfaction of the fees incurred in connection with Guernsey. Can you describe for the Court your understanding of what that provision of the settlement pertains to and why the Debtor believes it's in the best interests of creditors to do that?

A Yes. The Guernsey litigation was brought by HCLOF in Guernsey. The Debtor was not part of it. However, the Debtor has an advisory agreement through HCF that we talked about earlier. And Acis and Mr. Terry took the view that we had the ability to stop that litigation. We actually went out and had outside counsel tell us we did not have that ability. And after doing -- doing work on it. But it was one of those issues, again, a nettlesome one, where HCLOF lost in Guernsey. Guernsey is a loser-pays jurisdiction. And this is one of those items that I suspect that, because of our case as a manager, it was something that was really important to Mr. Terry. And for the amount of the settlement, in order to get the overall deal done, we agreed that we would compromise that amount, his statutory amount, and then he could litigate for

his full fees.

So, rather than have either HCLOF or Acis go and spend additional dollars to litigate in Guernsey to determine the fees -- which we don't really know how that would have come out, but there's at least a minimum, the statutory amount -- we compromised it.

Q Last question, as I did with the earlier settlement: We've touched, I think, on all of the factors at play under a 9019 analysis, but can you just explain to the Court in your own words why you and the Debtor and the independent board members believe that this settlement is in the paramount interests of creditors?

A Well, we, again, we went through a rigorous examination of the risks and rewards of the litigation. The timing, the costs overall to the estate, and the claims that Acis and Mr. Terry had. The challenge that we had is that, where we are in the case, it's not just creditors that are at -- potentially on the other side, the creditors of Highland on the other side. And that means that there's a risk that a finder of fact, looking at the totality here, based upon *Mirant* and the subsequent cases, when you balance the equities, they may not always find that they tilt in Highland's favor. So the risks that they would tilt against us was material, and that left us open to potentially a significant award.

In addition, as I mentioned, of the total amount, we think

that the note was one that we actually owe, and we owe it to somebody, but now we owe it to ourselves. So of the total settlement amount, $10 million really is self-funding because we're not going to have to pay that obligation.

So our view is that, overall, this is a -- like the Redeemer. It's a fair total settlement that we can reach with Acis and Mr. Terry. We can wrap up a number of litigations, including litigations against the employees, and that is -- even though I think it's got good, meritorious defenses, having that over one settlement, harder to bring this case to a close, and we'd be -- we'd be relying every day on those very employees. And I can tell you for certain that it was important to them to eliminate that risk from their day-to-day lives.

Q You know, I apologize, there was one other question I wanted to ask with respect to the probability of success on the merits. Did you and the independent board take into account the credibility findings that this Court made in prior decisions and the equities that the Court might interpret based on the Court's prior findings in assessing the likelihood of success on the merits?

A Yes. And the risk that we saw, frankly, is that if we were just dealing in the pure world of constructive fraudulent conveyance and we were dealing in a pure world where equities were balanced and didn't tilt against us, then we would be

more likely to push the litigation angle of it. I think this case still should settle, but it would give us more likelihood that we would have a probability of winning.

With the prior decisions, it puts a significant amount of risk on the *Mirant* equities argument. And once we -- if we were to lose that, or if it was to be found that these were actual fraudulent conveyances, and based upon some of the prior testimony, one might assess that there were some risks there, that certainly leads us to believe that this is a fair settlement.

MR. MORRIS: Your Honor, I have no further questions and no further witnesses. But I would like at this time to move for the introduction -- for the admission into evidence of certain exhibits.

THE COURT: All right. Point me to where those appear on the docket again.

MR. MORRIS: Yeah. I really apologize. That's the one docket number I don't have. I think we filed it on Friday evening, if that helps.

THE COURT: Okay. Just a moment. Okay. Let me back up. Your witness and exhibit list is at Docket 1202.

MR. MORRIS: Okay.

THE COURT: And I'm sorry, you're wanting to move into evidence all of the items on here, or no?

MR. MORRIS: The four items, the first four items on

there.

THE COURT: All right. So the three proofs of claim at issue and then the declaration of Mr. Demo that I think was just attaching the settlement agreement and related items, correct?

MR. MORRIS: That's exactly right, Your Honor. Mr. Demo's declaration can be found at Docket No. 1088.

THE COURT: All right.

MR. MORRIS: And there was just the two exhibits, the settlement agreement and the release. And the Debtor respectfully moves for the admission into evidence of those documents.

THE COURT: All right. Any objection? (No response.) All right. Those four exhibits are admitted. Again, they are found at Docket Entry 1202.

(Debtor's Exhibits are received into evidence.)

THE COURT: All right. So you have the passed the witness. First, any friendly examination that is not duplicative? Ms. Patel, anything from you?

MS. PATEL: No, Your Honor. We'd reserve anything for redirect, if at all.

THE COURT: All right. So I'll turn now to counsel, I guess, for Mr. Dondero first. Any cross-examination?

MR. WILSON: Yes, Your Honor. This is John Wilson for Mr. Dondero.

THE COURT: Mr. Wilson, you have cross?

MR. WILSON: Yes, ma'am.

THE COURT: All right. Go ahead.

CROSS-EXAMINATION

BY MR. WILSON:

Q Good afternoon, Mr. Seery. Can you hear me?

A I can, yes.

Q All right. And we met over Zoom on Saturday, but again, I'm John Wilson and I represent James Dondero. I just wanted to ask you a few questions. And we -- Mr. Dondero and I don't want to re-plow a lot of ground, but you described earlier about how, when you were appointed to the independent board, you began meeting with members of the Official Committee of Unsecured Creditors and then to try to determine what their claims were and began to undertake an analysis of those. Would that be fair?

A Yes.

Q And in the process of doing so, the board instructed the Pachulski firm to undertake specific legal analysis of the Acis claims and all the causes of action asserted therein; is that correct?

A That's correct.

Q And in fact, the board worked closely with counsel to analyze the Acis proof of claim, correct?

A I -- you broke up. Did we work closely?

Q Yes.
A Yes, we did.
Q All right. And you described that you requested memoranda and conducted meetings with counsel, instructed counsel to go back and work harder. Is that a fair characterization of what you testified to a minute ago?
A I think that is part of it, yes.
Q Okay. So, through this process, when you were analyzing the Acis proof of claim and becoming familiar with the particular claims asserted therein, you became aware that this was the subject of an adversary proceeding in the Acis bankruptcy, correct?
A Yes.
Q And in fact, that there is -- the Acis proof of claim attaches the second amended claim from the Acis versus Highland adversary proceeding; is that correct?
A You broke up at the end, but I think the answer is yes, if it was that it attaches the second amended complaint. I believe that's correct.
Q Right. And that Acis v. Highland adversary proceeding had been the subject of litigation at the time the Highland bankruptcy was filed, right?
A I believe yes, it had commenced.
Q And that litigation had been proceeding for actually many months, correct?

A Yeah. The Acis case and the adversary had been initiated well before our filing.

Q Right. And you became aware through your analysis and attempts to discover information about this claim that discovery was being conducted in that adversary proceeding; that's correct?

A I don't know that I ever saw any of the specifics of discovery. I assume there was discovery.

Q Well, and I think you testified on Saturday that you were aware that discovery was being conducted in the adversary proceeding.

A I mean, I'm sure -- I'm sure I knew that there was discovery in the adversary, but I don't -- I don't have a specific recollection of what the discovery was. That's not something --

Q Right. And my question wasn't whether you reviewed all the discovery. It was just that you were aware that it was being conducted, correct?

A I was aware that it had. I don't know that it was current at the time that we got involved.

Q Now, I think that -- I think you've offered testimony that you worked with the Pachulski firm in developing the written objection that was ultimately filed to the Acis proof of claim?

A That's correct.

Q And before that objection was filed, you and the other members of the board reviewed it, right?

A Yes.

Q And the other members -- you and the other members of the board took the position or agreed with the position taken in the written objection, correct?

A Yes.

Q And the board approved the written objection before it was filed?

A That's correct.

Q And so ultimately the Pachulski firm filed Highland's objection to Acis' proof of claim on June 23rd, 2020?

A I believe that's correct. I don't know the date off the top of my head.

Q And would you agree with me that the Highland objection took a pretty aggressive stance with regard to the Acis proof of claim?

A I agree, yes.

Q And in fact, the Highland objection took the position that the Acis claim should be disallowed in its entirety; is that right?

A That's correct.

Q I've got Bryan Assink from my firm here with me, and he's, excuse me, going to try to share a document on -- on the webcam. What we're going to look at is Exhibit G, which is

actually -- it's Dondero Exhibit G, which is actually the Highland objection to the Acis proof of claim. Can you see that on your screen?

A I can, yes.

Q All right. And if you look at the top of that, the very top where it has the file stamp that shows that -- it shows that it was indeed filed on 6/23/20, and it's Docker No. 771. Can you go to Page 3 now? And I don't want to work through the entire 65 pages of this document, but I'd like to kind of work through some of the -- some of the statements made in the preliminary statement that I think are intended as a -- somewhat of a summary of the positions taken in the document.

But if you look on Page -- if you look on Page 3, about halfway down, the beginning of that Paragraph No. 2, where it says, (inaudible) Terry keeps a $75 million windfall, which would come not at Dondero's expense but from the pockets of the Debtor's innocent creditors, including unsecured trade creditors, the Redeemer Committee, the Highland Crusader Fund, with an arbitration award of $191,824,557, and UBS Securities (inaudible).

And so Highland took the position on June 23rd that Mr. Terry was seeking a $75 million windfall, correct?

A That's correct.

Q And they took the position that that windfall was not going to come at Mr. Dondero's expense but instead at the

expense of Debtor's innocent creditors, correct?
A That's what we said, yes.
MR. WILSON: All right. Can you go to Page --
BY MR. WILSON:
Q Now, this is the next page of the document, Page 4, where it says that James Dondero and Mark Okada were Acis's sole owners, and it's hornbook law that sole owners do not owe fiduciary duties to their company.
MR. WILSON: Can we go to the top of Page 5?
(Pause.)
MR. WILSON: Sorry. Having technical difficulties.
BY MR. WILSON:
Q And starting at the bottom of that paragraph, it says that Delaware law does not permit creditors of a limited partnership to sue third parties for breach of fiduciary duties, nor does it permit a trustee to sue on their behalf. These claims are not and cannot as a matter of law be brought for the benefit of Acis's foreign creditors.
And so on June 23rd, 2020, Highland was thinking that the breach of the -- the breach of fiduciary duty claims could not be brought as valid claims in the Highland bankruptcy, correct?
A Yes.
MR. WILSON: And then go to the bottom of Paragraph B.

BY MR. WILSON:

Q It says -- the last sentence of Paragraph B says that even if the equities are applied as this Court once held they may, there is no equity in permitting a new owner to sue persons for conspiring with the old owner in order to parlay a $1 million investment into $75 million, at the expense of this Debtor's creditors.

And once again, you're taking the -- I'm sorry -- Highland is taking the position that there is no equity in Acis's claim because they're parlaying a $1 million investment into $75 million at the expense of Debtor's creditors. And that was Highland's position on June 23rd, 2020, correct?

A That's correct.

MR. WILSON: Go to Page -- actually, just go down a little bit.

BY MR. WILSON:

Q And then with respect to the fraudulent transfer claims, Highland took the position that, third, the fraudulent transfer claims fail and may be summarily resolved because the Debtor did not receive the benefit of the alleged fraudulent transfers since, with one exception, it was not the transferee of the transferred rights.

So Highland had taken the position on June 23rd, 2020 that the fraudulent transfer claims must be fail and can be summarily resolved, correct?

A That's correct.

MR. WILSON: All right. Go to D on the next page.

BY MR. WILSON:

Q And here in Paragraph D, it says there is nothing left of the former Acis estate. Creditors were paid, Old Equity was cancelled, and New Equity is held by a purchaser who paid $1 million, no different than if he had done so at an auction. There is no estate to benefit.

So, and then it continues on, authorities before and after *Mirant* hold that the (inaudible) recovery should be limited based on equitable considerations. Unlike *Mirant*, in this Court's *Texas Rangers* decision, this is not a case in which the recovery will enable the debtor to satisfy outstanding claims, obligations, or one in which creditors are forced to take equity instead of cash and are depending on its value for recovery on their claims. There is no estate and no equity to support Mr. Terry's windfall.

So, Highland, on June 23rd, 2020, was taking the position that there was no estate to benefit because all the creditors have been paid and Old Equity was transferred and New Equity was held by Josh Terry; is that correct?

A That's correct.

Q In Paragraph E, that's where Highland discusses how the (inaudible) Doctrine holds that the purchase of controlling equity in a company may not be used to control through

corporate machinery to turn around and assert claims against the prior owners if the claims arose prior to the date when the purchaser took control.

So Highland was saying on June 23rd, 2020 that the (inaudible) Doctrine prohibited many of Terry's claims? Or Acis's claims, I'm sorry. Is that correct?

A That's correct.

Q All right. Now, on Paragraph F. Acis (inaudible) seeking $7 million in so-called overpayments have no legal basis and should be summarily disallowed.

So Highland took the position on June 23rd, 2020 that the overpayment claims can be summarily disposed and had no legal basis, correct?

A That's correct, sir.

Q And 11G says that Acis's civil conspiracy claim also fails as a matter of law because that claim is not recognized. So now -- H. Acis's tortious interference claim fails as a matter of law because it does not apply to at-will contracts. I, Acis's breach of contract claim, like its claim for breach of fiduciary duty, rests on the fallacy that Acis had legal interests that were distinct from those of its sole owners. J, alter ego liability was inadequately pled (inaudible) claim, and moreover, is unavailable on the alleged grounds.

MR. WILSON: The top of the next page.

BY MR. WILSON:

Q And then K, you talk about Debtor's defenses that are meritorious but may not be able to be decided summarily.

So, on these 55 pages of this claim, there's a lot of legal argument and briefing over the objections, but I think you would have to agree with me that Highland asserted the position that every single one of the 34 Acis claims could be resolved by summary disposition, correct?

A I don't -- I don't think that's correct. I think we said that numerous of the claims could be dealt with by summary disposition, and certain other ones we had meritorious defenses that would have to be litigated because they were fact-based.

Q But in any event, you would agree with me that the bulk of this claim was argued could be disposed by summary disposition, correct?

A That's correct.

MR. WILSON: All right. Now --

BY MR. WILSON:

Q And I think you told me on Saturday that, with respect to your -- Highland's claim that there's no estate to benefit in Acis, that if there was an estate it would be Josh Terry; is that correct?

A I don't believe that's correct, no.

Q You don't believe that that's correct or you don't believe that you testified to that?

A I'd probably say both.
Q Well, maybe I can refresh your recollection as to that.
MR. WILSON: Page --
BY MR. WILSON:
Q We've produced the infamous video. I'm going to try to pull up Page 38 of the deposition that you gave on October 17, 2020.
MR. WILSON: It's at the top.
BY MR. WILSON:
Q So starting at Line 3, where it says, I don't think that will be necessary, but in practical terms it's Acis's estate, now just Terry. Mr. Morris asserted an objection. And the answer was, Yeah, I think we would certainly from a litigation perspective try to cabin it that way. And there are a bunch of technical reasons for that, but it's certainly a bit broader than that. There's not a big creditor body, but there are still a few creditors. He is, in my understanding, the only shareholder -- there are, you know, in fact, customers, albeit the management of the investment outsourced some of the funds, so we would -- you know, we tried and attempted to draft it in a way that cabined it to a couple different creditors that could be paid off in --
MR. MORRIS: And Your Honor? Your Honor, if I may, just in the future I would respectfully request that if my witness or my client is going to be cross-examined with

deposition testimony, and I've lodged an objection specifically to preserve the objection, that the Court rule on the objection before the answer is read into the record. Thank you.

THE COURT: All right. So, I'm sorry, you had --

MR. MORRIS: Yeah.

THE COURT: Let me be clear if you have a pending objection at the moment.

MR. MORRIS: If it's not -- if the Court doesn't deem it too late, since it's already been read into the record, yes, I would just ask the Court to rule on the objection that I made during the deposition. That's why we do that.

THE COURT: Okay. Well, I got lost, I suppose, on what the objection was that was lodged during the deposition.

MR. MORRIS: I objected to the form of the question to the extent it calls for a legal conclusion.

THE COURT: All right.

MR. WILSON: And Your Honor, I'm --

MR. MORRIS: I just want it to be clear that if the Court sustains the objection, that whatever Mr. Seery testified to is not going to be somehow binding as some kind of legal conclusion. That's all.

THE COURT: All right.

MR. WILSON: Your Honor, my response to that --

THE COURT: Response, Mr. Wilson?

MR. WILSON: Yes. My response to that objection will be that I did not ask him for a legal conclusion. I asked him a question in practical terms, if Acis's estate now is just Terry.

THE COURT: Okay. I overrule the objection.

MR. MORRIS: All right. Thank you, Your Honor.

THE WITNESS: So I think I answered it correctly. You asked me what I thought, and I said, from a -- this answer is from a litigation perspective. That's the position we took, yes. I think a moment ago you asked me what I thought now from a factual perspective. Most of the issues are laid out in my answer.

BY MR. WILSON:

Q Turn with me to -- on Page 9. I'm now going to direct your attention to Paragraph 4 of the Highland objection on Page 9, which says, The rights of creditors to be paid were the legal basis of the Acis plan injunction, which is why the injunction terminates once those creditors are paid in full. Mr. Terry elected to acquire new equity for $1 million. He is not entitled to receive another $75 million by claiming that Acis was damaged by those transfers, much less from the pockets of the Debtor's unpaid creditors. To impose on the former partners and third parties such as the Debtor a duty to restore $75 million to the former business, not to pay its creditors but for the sole benefit of successor owner who

bought the diminished entity for $1 million, would be a legally groundbreaking windfall, to say the least. The Acis claim can and should summarily be disallowed in its entirety on the record before the Court.

And so does that paragraph to you pretty much sum up Highland's position on the Acis claim as of June 23rd, 2020?

A Yes. That's the position we took.

Q And the board believed in good faith that these arguments it was making were meritorious, correct?

A That's correct.

Q And the board had a good faith belief that the legal contentions made in Highland's objection were warranted by existing law, correct?

A The legal what?

Q The legal contentions were warranted by existing law.

A Yes.

Q And the board had a good faith belief that the factual contentions in Highland's objection had evidentiary support, correct?

A That's correct.

Q And so Highland had a good faith belief that Acis's claim could be disposed of, disposed of in its entirety on summary judgment. Correct?

A Largely, yes.

Q And you agree with me that if claims can be disposed of

summarily, that would be a shorter and less expensive legal process than a trial on those issues?

A If they are summarily dismissed, that is correct.

Q And in fact, an agreement was reached by the parties in this case that Highland and Acis would file motions for summary judgment regarding the Highland objection to the Acis claim by September 16th, 2020, and that those motions would be heard on October 20th, which is today. Do you recall that?

MR. MORRIS: Objection, --

MR. WILSON: I'm sorry, go ahead.

THE WITNESS: That's fine. We don't need to agree. We took a very aggressive position that we wanted to get to court as quickly as we could to put pressure on the Acis side.

BY MR. WILSON:

Q But my point in asking you these questions is -- so they took the position that there was summary adjudication available for these claims in the -- in the Bankruptcy Court. Is that correct? Would you agree with that?

A We were definitely scheduled to have that, yes.

Q Okay. Because I read the Debtor's omnibus reply that came in yesterday. And on Page 7, it says there was no indication that summary adjudication is available in this Court. And I just wanted to make that clear, that there was actually an agreed-upon procedure that was approved by the Court. So Highland's initial position was that if Highland paid the Acis

claim they were going to give a $75 million windfall to Terry, correct? And we've just gone through reading a few times in the objection. Can you agree with that?

A Yes.

Q But I think that you have previously described how there's a counterargument to that windfall from Terry's perspective. Is that right?

A There is a counterargument, yes.

Q And what would that counterargument be?

A In sum, when you look at *Mirant* and the related cases, they do talk about restoring the estate. And so while we -- we believed an argument was I think strong that the initial injunction in Acis quote/unquote made Mr. Terry whole, there's a strong argument to be made that the estate has claims and that the owner of an estate who buys it through a plan open to everybody is entitled to try to benefit from those claims. So the recovery for the benefit of that enterprise is permitted, and that just happens to be what the law is.

Moreover, while we said it was inequitable, there's a counterargument that Mr. Terry would make, which is that he's been -- he had a claim that could have been settled easily and could have been paid off and it wasn't. Instead, there was a long litigation. And it came about because assets from Acis were pulled out of Acis. It's a pretty straightforward factual recitation that we get from the prior decisions of

this Court. And there's a strong equitable argument that Mr. Terry makes that his life has been turned upside down and there's a lot of damage that comes from that. Now, we have, as we lay out, what we thought were meritorious defenses, but they do rely a lot on the equities.

Q Right. And we'll get to it now. In your deposition on Saturday, I think you described this with a little more color.

(Pause.)

BY MR. WILSON:

Q On Lines 7 through 13, you were discussing the Highland position related to the windfall, but starting I think and you said equally on the other side, we could say that the man's life was ripped out from him, that his position was taken away, that he got an arbitration award that arguably the Debtor and the Debtor's management at the time stripped away all the assets (inaudible) to try to leave him with no recovery. And then when he sought a recovery, they sought to sue him in every jurisdiction in the world to make sure to ruin the guy's life and put him in a position where, while for some it might seem a windfall, to him it might seem just.

MR. WILSON: And skip down toward -- go on to that next answer.

BY MR. WILSON:

Q Where it says, that it took a bunch of years of his life and destroyed his career is not really our issue.

So these are the equities that you were considering when you -- when the board decided to settle this claim, this Acis claim?

A Overall. This is my summation. I wouldn't want to engraft it necessarily on Mr. Dubel and Mr. Nelms. But certainly this general position. I'm not quite sure why you read it out. But yes, that's the other side, in a nutshell.

MR. MORRIS: Your Honor, this is -- this is John Morris. Mr. Seery made a point, frankly, that I was thinking of, but it is an important point. There's really, in my experience, no need to go to a deposition transcript unless it's being used for impeachment purposes. If Counsel has a question of my witness, I would -- I would respectfully request that he simply ask it.

THE COURT: All right.

MR. MORRIS: Thank you.

THE COURT: Mr. Wilson, what do you have to say about that?

MR. WILSON: Yes, Your Honor.

THE COURT: I think he's correct. Anything you want to challenge about that point?

MR. WILSON: Well, not really, Your Honor. I could -- I could ask the questions, but I just, in that instance, I thought it was easier to get the exact testimony on the record. I don't think it's inadmissible for any purpose. And

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he's, you know, he's welcome to comment on it if he needs to or put it in context or -- I mean, if there's a (inaudible) or something else, you know, I'll live with that. I was just doing it for ease, instead of having to ask him a bunch of individual pointed questions.

THE COURT: Okay. Well, we've got him here, so let's just -- you know, we've got him here so we don't need to use the deposition unless, you know, there's some impeachment purpose.

So let me just ask you. You have -- you've been going 27 minutes on cross. I really want to break tonight at a point that makes sense, which to me suggests we should finish this witness. How much longer do you feel like you need?

MR. WILSON: I believe I'm at least halfway done, if not further along, Your Honor.

THE COURT: All right. Well, hmm. I'm going to ask you to just speed it up. I'm going to stop -- well, here's the deal. We have maybe two more witnesses, right? You all have named Professor Rappaport, and Mr. Daugherty is named as a witness. And I said I would come back tomorrow, but I'm trying to respect the fact that Acis's counsel, their lead counsel is not available tomorrow. So add to this complication that, as we have been conducting this hearing this afternoon, four objections to the disclosure statement have been filed that at some point -- that at some I need to

read and a lot of other lawyers in the room need to read. And I'm -- what is our hearing? It's Thursday. Is it 9:30 in the morning Thursday? Yes. My law clerk is saying yes. So we're running --

MS. MASCHERIN: I believe that's right.

THE COURT: We're running out of available hours here. So, with respect, Mr. Wilson, I'm going to give you 15 more minutes. So we're going to pass the witness --

MR. KATHMAN: Your Honor, this is --

THE COURT: Yes?

MR. KATHMAN: Your Honor, this is Jason Kathman. And I don't know if this helps or makes things more difficult, but I think my cross of Mr. Seery is at least probably 20 or 30 minutes, and so I'm just telling you now, if the Court's thinking about breaking now, and to give Mr. Wilson another 15 minutes, I'm not a five-minute cross-examination. I don't think I'm an hour, but it's certainly more than five minutes. So, again, I say that. I don't know if that helps or hurts, but I wanted to pass that information if it affects the Court's decision-making.

THE COURT: Okay. Mr. Wilson, continue. You've got 15 minutes to wrap it up.

MR. WILSON: Thank you, Your Honor.

BY MR. WILSON:

Q Now, Mr. Seery, is it true that prior to filing that

Highland objection that we just reviewed that Highland made an offer to settle the Acis claim for $4 million?

A We did. We made an initial settlement offer to Acis for $4 million plus withdrawing our claims in the Acis case.

Q Okay. And around that same time, did Highland make an offer to settle UBS's $1 billion proof of claim for approximately $20 million?

A I think that's about the right amount, yes.

Q Okay. And you believe the Debtor in this case is solvent, correct?

A Yeah. I believe, and I think I testified earlier, and also on Saturday, that I believe that we have projections that, if we are able to hit them, we have to improve on them, and we have to keep our costs down, and if we have a claim amount for UBS which we think is zero, and we do believe that's the case, as well as zero for HarbourVest, which I argue is the same, and Mr. Daugherty I believe it's 3.7, that we would be very close to paying claims in full, yes.

Q So, based on those assumptions, you believe there'll be room for equity to participate under the currently-filed plan?

A It would be -- it would be close, yeah, but there's a potential, certainly. It would be close. But again, to -- again, there's -- again, there's -- these are not -- it's not a matter of distributing a sack of cash. These are assets that we have to manage and then sell into the market. And as

we had testimony earlier on Cornerstone, these are not big, giant high-grade companies. These are private, smaller companies with issues and risks.

Q Okay. And it's your information that the allowed amount of the UBS claims should be zero, right?

A Yes.

Q And I won't ask you again to give your reasons for that. And can you -- there's been lots of argument and talk about this all day today, but I think it's a pretty simple question. But you would agree with me that, in the Fifth Circuit, and that's based on U.S. Supreme Court precedent, that a bankruptcy court should not approve a settlement unless it's fair and equitable and in the best interest of the estate, correct?

A I think that's generally the standard, yes.

Q Right. And you believe that, although Highland's 9019 motion to approve the Acis settlement doesn't actually use the phrase "fair and equitable," I believe you testified that you believe the Acis settlement is fair and equitable; is that correct?

A Yes, I do believe that.

Q And can you briefly describe for me why that is that you have that belief?

A Yeah. I believe I testified earlier that a lot of our defenses were, you know, technical defenses, or that we have

the -- we had some straight legal defenses which we think are very good, and then a lot of them rested on *Mirant* and the equities. And that we felt strongly about the legal defenses. The technicals are more difficult because I think a court of equity could look through them. And the *Mirant* was really a question of the -- of the equities and how they tilt.

And so you have to think your way through those based upon the prior experience of this Court and Acis's prior litigation, and there's, frankly, prior rulings talking about certain of the valuations and the transfers. And the risks on those were significant.

If we could win on *Mirant* and argue that there is no real estate, I think that would be -- would have been an interesting argument, and in a different circuit we may have had a stronger argument. I think that *Mirant* in particular, which, although I guess not for me to say, but I don't think it's the right law, but it's the law. And so we have to -- we have to adhere to the legal framework that we have, as well as the factual underpinnings of the case, including the history in Acis.

And so we think that, in the context of this case, settling this multi-year litigation that involves a myriad of different parties, a myriad of different courts, is a fair and equitable settlement for this estate to try to move it forward.

Q And you believe that the equities in this case tilt heavily in favor of Terry and heavily against Highland, correct?

A I wouldn't -- I wouldn't -- I wouldn't want to say that directly. I don't think that that's necessarily the case. I think that they tilt -- they tilt in Mr. -- in Acis's favor and Mr. Terry's favor on a lot of the key issues. And I think one could argue that they're heavily -- they heavily tilt on -- you know, I think that there's a lot of -- there are certainly equities in Highland's favor in terms of the Highland team and what they do and how they perform, and the creditors in the Highland estate and their claims against Highland, but there are certainly -- certain of the equities tilt very favorably towards Mr. Terry and Acis.

Q And in applying those standards that the Fifth Circuit sets for approving a 9019 motion, do you understand that the Fifth Circuit has instructed courts to consider certain factors such as the probability of success on the litigation? Is that correct?

A Yes.

Q And did you consider that factor in reaching a settlement with Acis?

A We did, yes.

Q And we've talked about how Highland maintained the position as of June 23rd, 2020 that the Acis claims should be

disallowed in its entirety, correct?

A That's correct.

Q All right. And the next factor that the Court is supposed to consider is the expected duration and expense of litigation. Did you consider that factor?

A We did.

Q And we talked about how it was Highland's position on June 23rd, 2020 that all of Acis's claims were amenable to summary disposition, which is, as you agree, substantially less expensive and time-consuming than a full trial, correct?

A Yes. If you are successful, it's much more efficient, yes.

Q And did the board conduct a specific analysis as to the time and expense that the litigation -- of the litigation anticipated to resolve the Acis claim would require?

A I'm not sure what you mean by a specific analysis. It was certainly part of our analysis that if we went forward with summary judgment, we felt strongly that we had a real opportunity to prevail on a certain number of the claims. However, if we lost, we were going to be at a significant disadvantage because that would have meant most likely then showing that there were factual issues and most likely would have hinted that there were some equitable issues. And that would have put us in a very difficult position both in litigating those claims and pushing the case forward.

Q Did the board come up with a specific number or a range of numbers that it considered?

A I don't recall a specific number. I think at the deposition you asked me what I thought it would cost to try these claims. And from probably just one side I could come up with that number. But as I testified before, there's multiple sides here. And the case also continues to burn, from a legal and professional fee perspective, additional overhead as that trial would go on.

Q Okay. And even if the Acis settlement is approved, and we know now that the Redeemer settlement is approved, the UBS claim remains outstanding, which will require lengthy litigation, correct?

A I disagree with that. The UBS claim does remain outstanding, but we have summary judgment papers in front of the Court, and they're very narrow issues. We think that the vast majority of UBS's claims, which are against foreign subsidiaries with no recourse to the Debtor whatsoever, are going to be disposed of. So we're going to be down to what we think are equally weak or unfortunately factual claims on fraudulent conveyances. And -- but they're minimal dollar amounts.

Q And did the board conduct an analysis of how long that litigation is going to take?

A A specific analysis to how long a fraudulent conveyance

litigation would take? We haven't done a specific one, but we've thought about it. This one's pretty straightforward because it's not going to be real complicated in order to value the assets because the assets that were returned by HFP -- there's a much more difficult process for UBS because they don't have a claim against HFP, which is the transferor. They have a -- they have to get an alter ego first. So it is -- it is -- there's a number of steps. But the defenses and the valuation is very easy because these are assets that were, just prior to the -- in the same year as the fraudulent conveyance, I think, or maybe 14 months after, had been purchased by Multi Strat, which was a firm that had third-party investors as well.

Q Okay. And I just want to ask a handful more questions, because I think I'm running out of time. But one of the other factors that the Fifth Circuit looks at is whether the settlement was reached by an arm's-length transaction. And I would ask what you believe arm's-length bargaining means.

A What I think arm's-length bargaining means?

Q Yes.

A I think it's two parties that are on opposite sides, that do not have undue influence on each other, that do not have -- there's no collusion. There's no side deals. That they're negotiating fairly and they're negotiating in their own interests. That is the typical definition of arm's length.

Q And I believe that Highland has maintained a mediation privilege as to the specific negotiations that were undertaken in this case, but it's your position that this settlement was conducted pursuant to an arm's-length bargaining?

A Absolutely. With or without the mediation. We have no -- no interests in -- nor does anyone else -- with Acis or with Mr. Terry or his counsel. These were hard-fought. They were multifaceted. They involved a lot of analysis. They did involve the mediators and their -- their leaning on one side or the other. We don't what they said specifically to Acis. I only know what they said to our side. But it was the product of a mediation.

But even without the mediation, this was -- this would have been arm's length because it's folks without undue influence on each other and no interests in each other's sides.

Q Okay. If this settlement is approved, will it end all the litigation regarding Acis's claims?

A Unfortunately, I don't think so. And we had a little bit of a preview of that earlier. And frankly, unfortunately for our cases, is limited by what we can do in our own case. But it will end all litigation with respect to Acis and Mr. Terry and Highland and the entities owned by Highland more than 51 percent, or more than 50 -- 50 or more percent, I think it is. Anyone that we directly manage. And all of the employees at

Highland. So, in retrospect, it does solve all the litigations related to Highland vis-à-vis Acis, Highland employees, Mr. Terry and Mrs. Terry.

Q All right. But you'd agree with me that the substance of many of these claims have been asserted against other parties and they're pending in other places, including an adversary proceeding in the Acis bankruptcy case?

A There are some. And to be fair, you know, we considered whether we should try to involve third parties. There's lawsuits against law firms that Acis and Mr. Terry have brought. I don't know who brought each one. There's against individual lawyers. We just -- we can only solve the problems that we have control over and we can solve. I would love to have been more expansive, but we didn't have, you know, the facility or the legal right to do those, and we didn't want to try to bring in more parties than we could or we would never get this done.

Q Okay. Is it your position that we need the -- that any two of the three large unsecured creditors who are members of the Creditors' Committee, which you probably know them, referring to Acis, UBS, and Redeemer, that you need the support of two of those three to support the plan?

A I would say to do -- to do any kind of grand bargain, we would need at least two of those three. And to have the Committee not object, because it's a four-person Committee, we

would need two of four.

But I do think that, you know, with respect to the plan that we have, we're going to need probably two of those creditors, at least two of those creditors to support it. And those negotiations are equally hard-fought, and the positions that we're taking, you know, we're -- we feel very confident in and we intend to pursue them.

THE COURT: All right.

BY MR. WILSON:

Q And so was that one of the motives --

THE COURT: Last question.

BY MR. WILSON:

Q -- for settling the Acis claim?

THE COURT: Last question, Mr. Wilson. It's been 15 minutes.

MR. WILSON: Okay. Thank you, Your Honor.

THE COURT: Last question.

BY MR. WILSON:

Q Yes. So my question was: Was that part of your motive for settling with Acis?

A Certainly, settling with Acis, settling with everybody, you know, to try to resolve the case, if they're fair settlements and in the best interest of the estate, we would do it. We obviously are not settling with everybody. There are claims that we think are (inaudible) and don't merit real

dollars, and we've been unable to settle those claims because of that.

But yes, settling -- settling with Acis, settling with, you know, any of the creditors, we think is critical to try and move this case forward. You know, we would love to have everybody settle. As I said, there are some claims we think are worth zero and we would love to settle them at a dollar. That may require some judicial intervention.

Q All right. Thank you, Mr. Seery.

MR. WILSON: That was my last question.

THE COURT: All right. Let's talk about whether we're going to break or not.

Mr. Morris, is there any way you can predict how long your redirect might take, not knowing what Mr. Kathman is going to ask?

MR. MORRIS: At the moment, I have none, Your Honor.

THE COURT: Okay. Then I'm going to ask -- Mr. Seery, I'm going to put your opinion above all others because you have been testifying --

THE WITNESS: Sure.

THE COURT: -- a long time. If I cut -- if I limit Mr. Daugherty's cross to 20 minutes, would you rather do that and be done tonight or do you need to break? It's late, obviously.

THE WITNESS: Your Honor, I'm open. I do most of my

work for the estate, and so it's really your call and your staff's call. If you want to do it tomorrow, I'm certainly ready to do that. If you want to do it tonight, we'll just keep going. Either way.

THE COURT: All right.

THE WITNESS: I'm completely open. And I didn't mean to throw it back at you like that, but, you know, you have a staff and I -- I just have a small abode here.

THE COURT: Okay. Mr. Kathman, you've got 20 minutes for your cross. And, you know, I'm sorry. We've just been going a long time today and we just had a very extensive cross by Mr. Wilson, so I'm hoping you can give some non-duplicative cross for us. All right.

CROSS-EXAMINATION

BY MR. KATHMAN:

Q Mr. Seery, like Mr. Wilson, we met on Saturday at your deposition, correct?

A That's correct.

MR. KATHMAN: And for the record, Jason Kathman for Patrick Daugherty.

BY MR. KATHMAN:

Q Mr. Seery, Acis makes its money from managing CLOs, correct?

A That's my understanding, yes.

Q Okay. And Acis was essentially Highland's CLO business;

isn't that right?

A I think that's fair, yes.

Q Okay. In fact, I think your words were Acis was just a shell for Highland; isn't that right?

A I don't know if I said -- I think Acis as a corp was a shell. I don't -- so I want to make sure we're not saying shill. But having a shell corporation, there's nothing wrong with it, that's where the Acis -- that's where the Highland business was moved to, into the Acis corporate loan, and Acis then took off from there. But it's the Highland -- it was the Highland business, my understanding.

Q Highland's CLO business was moved to Acis and Acis ran Highland's CLO business, correct?

A That's correct.

Q Okay. In fact, I think your testimony on Saturday was Acis was Highland, right?

A Well, they're two -- they're two separate corporations. There's nothing -- there's nothing wrong with being two separate corporations. But Acis was Highland in that Highland provided the employees. I don't believe at the time -- there were partners in Acis, but I don't think there were employees in Acis. I think they were all from -- from the Highland business. And the payroll, everybody who worked there I believe was on the Highland payroll.

Q Acis is the manager of certain CLOs, right?

A That's correct.
Q Okay. And as the manager of those CLOs, it owes certain fiduciary duties to its client, the CLOs, correct?
A Yes. I think that's a fair assessment.
Q Okay. Under the Advisors Act, right?
A Yeah. That's correct.
Q And not just the CLOs, but also the investors in those CLOs, correct?
A Well, I think it's actually more (garbled). I think it's actually more the investors. The CLO is just a thing, so it's sort of hard to owe a fiduciary duty to just a thing which is just an investment vehicle.
Q Understood. So you would agree with me, then, Acis, as the manager of the CLOs, owed fiduciary duties to the investors in those CLOs.
A That's my understanding, yes.
Q Okay. And in exercising those duties, the manager, under the Advisors Act, has a duty to subordinate its interest to the interests of those investors in the CLOs, correct?
A I think, I think generally when you think about the fiduciary duty, and I think that we -- I want to make sure I'm very specific about this -- is that the manager has a duty -- fiduciary duties -- there's a whole bunch of legal analysis of what they are -- but they are significant, serious (inaudible) that the manager owes to the investors. And to the extent

that the manager's interests would somehow be -- somehow interfere with the investors in the CLO, he's supposed to -- he or she is supposed to subordinate those to the benefit of the investors.

Q Okay. So I think your answer, I think the answer to my question was yes, the manager has to subordinate its interests to the interests of the investors in the CLO, correct?

A Yeah. But your problem -- words was pretty loaded. That's why I had to -- no self-interest. Not fees. There's a whole bunch of different analysis. So I think it's fair to say yes. I don't want to quibble with you about your presentation. But we had a long discussion about this on Saturday.

MR. MORRIS: Your Honor, if I may, I don't want to interrupt Counsel's flow, but I'm not sure what the purpose of this is, but I just want to make it clear that Mr. Seery is not being offered as an expert on fiduciary duties, and to the extent any of these questions are designed to elicit some type of binding result on the Debtor, I would object.

THE COURT: What about that, Mr. Kathman?

MR. KATHMAN: Your Honor, may I respond?

THE COURT: Please.

MR. KATHMAN: I would like to respond to that, Your Honor. There was a hearing held on March 4th in this hearing where the Debtor put Mr. Seery on the stand and he testified

pretty extensively about what his duties are under the Advisors Act. They were trying to pay people. Ms. Hayward had him under direct examination and Mr. Seery testified there about what the duties are under the Advisors Act.

So to the extent that Mr. Seery has already been asked questions in this case about what an advisor's duties are under the Advisors Act, I think that that has opened the door and he can answer questions on what his understanding and belief is under the Advisors Act.

MR. MORRIS: Your Honor?

MS. MASCHERIN: Your Honor, I'm going to also join in with a relevance objection, and I fail to see how testimony at a March hearing that was not a 9019 motion, what possible relevance that has here.

THE COURT: Okay. How about the relevance objection, Mr. Kathman? I'm a little concerned.

MR. KATHMAN: Sure, I'll answer the relevance objection, Your Honor. The main thrust of one of our objections is that the Acis releases are too -- are essentially premature at this point. And the testimony I think you're going to hear from Mr. Seery is that he didn't consider at all whether Acis had violated its own Advisors Act obligation to any of its investors. He's going to testify he doesn't know who the investors are in the Acis CLOs and whether Acis may have liability for violation of the Advisors

Act. That just purely wasn't something that he considered in determining whether to grant these releases that are -- or agree to these releases that were included in the settlement agreement.

And so what I want to know, Your Honor, is, is there potential liability that's there? And I'm getting at the question, I'm asking Mr. Seery, did he consider those things? His answer is going to be no. I took his deposition on Saturday. And that's relevant, Your Honor, because as Mr. Clemente -- and I'm almost done, Your Honor. As Mr. Clemente said a couple of months ago, these things all looked at individually can a lot of time be justified, but when you put it in context and you look at the broader scope of things, you have to examine all of these settlements and all of these motions in the broader context.

And our argument, Your Honor, is that there's a whole lot of litigation pending right now. We have the Committee that has a deadline to potentially bring causes of action against Highland CLO Funding. There's a HarbourVest objection on file right now that involves stuff going on with Highland CLO Funding. And all of those facts relate to potential obligations that Acis has to Highland CLO Funding. You heard Ms. Patel talk about that relation earlier when she was speaking.

And so, Your Honor, part of our argument is that until we

know what the result of all of that litigation is, that these releases are just a little premature. And Mr. Seery's testimony is going to be he didn't consider any of that in determining whether to approve the settlement.

MR. MORRIS: Your Honor, may --

THE COURT: You say these releases, plural. I mean, we've already heard that HCLOF and Holdco and HarbourVest are carved out.

MR. KATHMAN: I understand.

THE COURT: So it's all about the Highland release, right? Or no? I mean, I don't know who you're talking about.

MR. KATHMAN: The answer to that question, Your Honor, is the Committee, again, has specifically said in this Court that they investigated the quote/unquote Byzantine empire. They're undertaking an investigation right now of whether to bring alter ego causes of action and fraudulent transfer causes of action.

So the concern that I have and the concern my client has is if at some point Highland CLO Funding and all of these entities that are in the Highland Byzantine get collapsed back into Highland, Highland has no ability to go back and point the finger at Acis because it's given that release away, it's given that release away in the settlement agreement.

THE COURT: I'm not understanding. Okay. Let's start with this fundamental. Acis went through its own

bankruptcy. So I guess you're talking about post-confirmation Acis.

MR. KATHMAN: Correct.

THE COURT: January 2018 --

MR. KATHMAN: Correct.

THE COURT: -- is the only Acis that claims can be asserted against, okay?

MR. KATHMAN: Correct. Yes.

THE COURT: Post-January --

MS. PATEL: 2019, Your Honor, to be clear.

THE COURT: Oh, 2019? Okay.

MS. PATEL: Yes, Your Honor.

THE COURT: Time flies.

MS. PATEL: Our plan went effective actually February of 2019.

THE COURT: Time flies. So, can we agree that nobody has any ability -- well, I say nobody. I mean, there are -- there's the proof of claim of Highland. There's the administrative expense claim in Acis's case that are being -- that's been compromised. But if anyone is going to say Acis is part of an alter ego type theory, it's too late, right? It's too late because --

A VOICE: Not the --

MR. MORRIS: Exactly.

THE COURT: That's not your argument? Then --

MR. KATHMAN: No, Your Honor.

THE COURT: -- I'm confused what, what the argument is.

MR. KATHMAN: Your Honor, my argument is that Highland CLO Funding or CLO Holdco or any of the entities that the Committee is targeting, okay, --

THE COURT: Uh-huh.

MR. KATHMAN: -- there are -- there are entities. Back in July, remember Mr. Clemente came before this Court and you put a 90-day deadline --

THE COURT: Right. Right.

MR. KATHMAN: -- on him to investigate those claims and causes of action.

THE COURT: Uh-huh. Uh-huh.

MR. KATHMAN: Okay? That was just recently extended, I think, last week. If any of those entitles, CLO Holdco, Highland CLO Funding, or any other of those entities that the Committee might target for alter ego, not Acis, --

THE COURT: Uh-huh.

MR. KATHMAN: -- if any of those entities are ultimately determined to be the alter ego and are collapsed back into Highland, and those entities, like Highland CLO Funding, which the Debtor is carving out of this release, --

THE COURT: Uh-huh.

MR. KATHMAN: -- or CLO Holdco, which it's carving

out of the release, --

THE COURT: Uh-huh.

MR. KATHMAN: -- if those entities end up getting clawed back, or even fraudulent transfers for the CLOs that were transferred to those entities get brought back into Highland, --

THE COURT: Uh-huh.

MR. KATHMAN: -- Highland can't sue for anything that Acis did post-confirmation because it's giving those releases away in the settlement. I see I lost you.

THE COURT: Well, I -- I mean yes, that's the point of the settlement.

A VOICE: Yeah.

THE COURT: But I'm not sure -- I'm not sure where the questioning about fiduciary duties, where it ties into this.

MR. KATHMAN: It's really, Your Honor -- and I can probably skip a lot of this by asking Mr. Seery a penultimate question: Did he consider any of this in determining whether to approve the settlement or not? That will shortcut it. That will shortcut it because his answer is going to be no, that wasn't considered as a part of this settlement.

MR. MORRIS: Your Honor?

MS. PATEL: I still don't --

MR. MORRIS: Yeah. I would just -- I would just

point out that his reliance on the UCC, which hasn't even filed an objection to this motion, is misplaced for that very reason. I don't see how he gets to piggyback on something Mr. Clemente said a couple months ago in a different context in a motion today in which the UCC doesn't take a position. It's -- this is just so far afield, Your Honor.

THE COURT: All right. Mr. Kathman, I'm going to sustain what is essentially a relevance objection. I'm not connecting the dots on -- since we established at the beginning of this hearing that there would be no release of HCLO Funding or CLO Holdco or HarbourVest, no mutual releases, I feel like the scenario you have defined as being your concern, what if the Committee decides to bring causes of action against them or seek alter ego remedies, I don't know how that's impacted by this proposed settlement. I just don't get it.

MR. KATHMAN: Yeah. Can I answer that, Your Honor,

THE COURT: Please.

MR. KATHMAN: -- and address that concern?

THE COURT: Please.

MR. KATHMAN: Okay. This really isn't the crux of what our objection is, Your Honor. Is that if you -- and I'm not asking the Court to, I'm just -- to agree with me. What I'm proposing is that, in the event Highland CLO Funding has some cause of action against Acis for breach of the Advisors

Act, okay, under the settlement as it is sitting right now carved out, no problems. Correct? But if --

THE COURT: So, for post-January 2019, yeah.

MR. KATHMAN: Right. All I'm saying -- and I'm talking about --

THE COURT: The others are barred by the confirmation order, okay?

MR. KATHMAN: I'm talking about post -- post-confirmation Acis causes of action, Your Honor.

THE COURT: Uh-huh. Uh-huh.

MR. KATHMAN: If Highland CLO Funding were to have causes of action for that, as currently proposed, yes, it's carved out in the settlement agreement. But in the event Highland CLO Funding is collapsed into the Debtor, okay, those are causes of action that the Debtor would then have. Because if Highland CLO Funding is collapsed into the Debtor, the Debtor then possesses those causes of action against Acis for violations of the Investors Act. But the Debtor would not be able to bring those causes of action for violations of the Investors Act because of these releases in the settlement agreement. My point is it's premature.

THE COURT: I'm not sure I agree with you legally. I mean, can you give me some authority for that?

MR. KATHMAN: I don't, Your Honor. To be honest with you, no, off the top of your head, I do not have authority

that if it's collapsed back in there the -- if Highland -- well, I --

THE COURT: I disagree with the premise so I'm going to find the line of questioning irrelevant, okay? So please move on.

MR. MORRIS: Thank you.

MR. KATHMAN: Can I ask my penultimate question?

THE COURT: Go ahead.

BY MR. KATHMAN:

Q The penultimate question being: Mr. Seery, in determining whether to approve this settlement, did you consider whether Acis might have violated its Investors -- its Advisors Act duties to the investors in the Acis CLO?

MR. MORRIS: Objection.

MS. MATSUMURA: Objection, relevance.

THE COURT: Sustained.

MS. MATSUMURA: Sorry. This is Rebecca Matsumura from Highland CLO Funding. I just want to state on the record that we also object to the premise of this line of questioning and don't understand why he would be raising these on behalf of our client, and we would object to whatever alter ego argument he seems to be suggesting.

THE COURT: All right.

MS. MATSUMURA: Thank you.

THE COURT: All right.

MR. KATHMAN: Your Honor, I don't have any further questions.

THE COURT: Okay. All right. Any redirect, Mr. Morris?

MR. MORRIS: No, Your Honor.

THE COURT: All right. Well, Mr. Seery, thank you. That concludes your testimony, unless someone recalls you for rebuttal tomorrow.

All right. So we're going to recess, and we'll start back at 9:30 in the morning.

Do we want to talk a little bit about -- well, Mr. Morris, are you resting? I shouldn't have assumed you're resting. I think this was your only witness, correct?

MR. MORRIS: He was. We -- exhibits -- rebuttal. And so we -- we went through the --

THE COURT: We did.

MR. MORRIS: -- Exhibits 1 through 4.

THE COURT: We did.

MR. MORRIS: So the Debtor does rest, Your Honor. And I think it'll be up to Mr. Daugherty and Mr. Dondero as to whether Mr. Daugherty is going to testify. He was on a witness list. And whether Professor Rappaport is going to testify. I think those are the only two potential witnesses, if they're still planning on doing it.

THE COURT: All right. Well, let me double-check

with Ms. Patel. I can't remember if you filed a witness and exhibit list. Did you have any separate evidence on this? You did file a witness and exhibit -- but it didn't say, it didn't designate a witness. It just said --

MS. PATEL: It did not, Your Honor.

THE COURT: Okay. So you're not going to put on any evidence?

MS. PATEL: We are not putting on any additional evidence, Your Honor. Our witness and exhibit list was essentially a "Me, too" along with the Debtor.

THE COURT: Okay. So the Debtor has rested.

And Mr. Kathman, can I presume you're putting on Mr. Daugherty if we reconvene tomorrow morning?

MR. KATHMAN: Well, that would have been a good presumption before this argument here, Your Honor. I'm going to talk to my client about that, because if Your Honor's not going to hear any testimony about potential causes of action that may exist and potential liabilities out there, that may alleviate the need for Mr. Daugherty's testimony. So I'm going to talk to him. And what I'd like to do is reserve my right to call him tomorrow morning, but I can't tell you definitively one way or the other as I sit here.

THE COURT: All right. And then Mr. Wilson, can you tell us about witnesses you plan to call? Was there anyone besides Professor Rappaport?

MR. WILSON: No, Your Honor. We had two witnesses on our list, one of which was Mr. Seery, and I've covered everything we need to cover with him, so I wasn't going to recall him in our case in chief.

We do have potential scheduling issues with Professor Rappaport. She is a practicing professor, and her teaching schedule does not allow her to appear tomorrow morning. She has somewhat of a limited schedule. She told us that Thursday morning or Tuesday --

THE COURT: I'm sorry, she told you what?

MR. WILSON: That she was available Thursday morning or Tuesday. Or next Tuesday.

THE COURT: All right. Well, I'm sorry. We gave this hearing date quite a while back. So you're saying even if I went tonight until 8:00 o'clock she wasn't available tonight; is that correct?

MR. WILSON: Well, I do believe she has another hour available today.

THE COURT: Well, you know, it is 6:37 Central time, and we've been going a very long time today. Remember, I've had two other hearings besides these.

Let me ask this: Is there any objection to Professor Rappaport? I'm not sure what the nature of her testimony is going to be. And were there any objections, or no?

MR. MORRIS: You know, Your Honor, I actually was

planning on making another motion. Can we just take two minutes and let me confer with my colleagues? If -- what I'm considering, if it would be okay with counsel for Mr. Dondero, is to just let the report in for what it is, without testimony. I don't know if that's something that they would consider. And then subject to, you know, consulting with my client, that would be something that I might recommend in order to move this along.

It sets forth her opinions. I'm not sure -- you know, and if I don't object to it, I'm not sure why we need to hear from the witness.

THE COURT: All right. What about that, Mr. Wilson?

MR. WILSON: If you'll allow me a real quick consult with my co-counsel, I'll give you an answer.

THE COURT: Okay.

MR. MORRIS: Can we just take three minutes, Your Honor?

THE COURT: Yes.

MR. MORRIS: Not a long break.

THE COURT: But yes, please, three minutes. There may be people wanting to watch the World Series, but others of us are just tired. Okay.

MR. MORRIS: Thanks so much.

THE COURT: Okay. Three minutes.

(A recess ensued from 6:40 p.m. to 6:43 p.m.)

MS. PATEL: Your Honor, during the break if we could also -- if Mr. Kathman wouldn't mind asking his client, I believe Mr. Daugherty's on the hearing as well, if they could make a decision. Assuming a couple dominoes fall into place, if Mr. Daugherty's not going to testify, and assuming Professor Rappaport's report is going to come in, I'm hoping you close this tonight or talk about when we're going to do closing those arguments if they're going to be lengthy.

MR. KATHMAN: Your Honor, Ms. Patel has always -- maybe sometimes, maybe not always, but sometimes a step ahead of me. I have spoken with Mr. Daugherty and we're not going to call him.

THE COURT: You are not going to call him? That's what you said?

MR. KATHMAN: No.

THE COURT: Okay.

MR. KATHMAN: No, we are not going to call him, Your Honor.

THE COURT: Okay.

MR. MORRIS: The Debtor is prepared to allow her report to come in without testimony. And without objection.

THE COURT: I'm sorry, say again?

MR. MORRIS: Your Honor, the Debtor would consent, if Mr. Dondero consents, the Debtor would consent to the admission of Professor Rappaport's report into evidence

without objection, provided there's no testimony.

THE COURT: All right. So do we have Mr. Wilson back?

MR. WILSON: Yes, Your Honor. Mr. Dondero will agree to the admission of Professor Rappaport's report in lieu of her testimony.

I would ask a couple things. Number one, that I be allowed an opportunity to admit the exhibits on my exhibit list, which include the report and Professor Rappaport's CV.

And then the second thing I would ask is that Judge Lynn had prepared a closing argument and we would like sufficient time to -- for him to give that before the close of this hearing.

THE COURT: All right. Well, as far as Dondero's exhibits, they are at Docket #1194. There are --

MR. KATHMAN: Your Honor, can I make a suggestion with closing arguments, I mean, potentially?

THE COURT: Okay. Let me take these in steps. We have Exhibits A through AA, A through Z plus AA, that I think you're offering. That's --

MR. WILSON: Well, Your Honor, briefly, we're not going to try to put in the Seery depo, the Seery video, or the Nancy Rappaport depo.

THE COURT: Okay.

MR. WILSON: I guess we'll just do Dondero Exhibits A

through X.

THE COURT: A through X have been offered. Does anyone object?

MR. MORRIS: Just one second, Your Honor.

THE COURT: Okay.

(Pause.)

MR. MORRIS: Only to Exhibit P as in Peter. That is the expert report. And as long as it's not being offered for the truth of the matter asserted, it's being offered solely for the purposes of expert testimony, the Debtor has no objections to any other of the proffered A through X.

THE COURT: All right. Any other objections?

All right. With that caveat -- Mr. Wilson, I assume you don't have any issue with the caveat on the Rappaport report. So with that, I'll --

MR. WILSON: No, there is none.

THE COURT: I'll admit these.

(James Dondero's Exhibits A through X are received into evidence.)

THE COURT: If I go to the docket, the expert report of Professor Rappaport is actually there on the docket at 1194.

MR. WILSON: (inaudible). Yes, Your Honor.

THE COURT: Okay. So I need to read that before we come back tomorrow, and I guess see if there's anything else

on here I haven't looked at.

So what we will do is we'll come back tomorrow morning for closing arguments. And Mr. -- well, let me ask. I was going to say 9:30, but would 10:00 o'clock, by chance, be a little bit better? That'll help me look at this Professor Rappaport report. I don't know how long it is, but --

MR. MORRIS: I will be available whatever time is convenient for the Court. Can you give us some guidance as to how long you will tolerate closing statements?

THE COURT: Tolerate. Your word. I think, you know, 20 minutes each ought to be plenty.

MR. MORRIS: That's fair.

THE COURT: So we'll start at 10:00 o'clock Central and we'll hear those closing arguments. And when we're done tomorrow or with this issue, I'd love to get a preview as far as the disclosure statement hearing Thursday at 9:30. I think I told you four. Five objections were filed in the last, you know, few hours we've been in court. Every member of the Creditors' Committee plus the Creditors' Committee filed an objection. And I have not looked at them to know how lengthy they are. But I'd love to get a preview on whether you're going to be working and trying to resolve these and maybe we'll start and adjourn, or if we're going to have a knock-down drag-out. Okay?

MR. KATHMAN: Your Honor, I would like to offer two

exhibits. I don't think they're controversial. It's just the Debtor's plan and disclosure statement. They were our PHD 23 and 24. They're filed at Docket #1079 and 1080 in the case. It's the Debtor's plan and disclosure statement. I can't imagine there's any objection to those.

THE COURT: Okay.

MR. MORRIS: No objection.

THE COURT: All right. Those will be admitted.

(Patrick Daugherty's Exhibit 23 and 24 are received into evidence.)

THE COURT: All right. So we'll see you at 10:00 o'clock in the morning.

MS. PATEL: Your Honor?

MR. ANNABLE: Your Honor?

MS. PATEL: If I may.

THE COURT: Briefly.

MS. PATEL: My apologies. I know I kind of started off late in the hearing, but as I explained earlier today, I have an in-movable conflict tomorrow morning. Mr. Shaw will handle closing arguments for us. And may I be excused from appearing tomorrow?

THE COURT: You are excused. Thank you. All right. Good night.

MS. PATEL: Thank you, Your Honor.

MR. ANNABLE: Your Honor? Your Honor?

THE CLERK: All rise.

MR. ANNABLE: This is Zach Annable. Your Honor? Your Honor?

THE COURT: This better be good, Mr. Annable.

MR. ANNABLE: I apologize. This is just a housekeeping matter. For purposes of the continued hearing tomorrow morning, I know it's too late for your staff to probably set up the WebEx meeting information, but if you could have Ms. Ellis distribute that to me tomorrow morning, I will try to make sure to get it out to everybody. Just letting you know we will need a new WebEx invitation for the hearing tomorrow morning.

THE COURT: All right.

MR. MORRIS: Thank you. Thank you. Good catch.

THE CLERK: She's probably listening anyway. She usually listens.

THE COURT: Yes. She -- hang on. Knowing Traci, she is listening.

(Pause.)

THE COURT: Well, she surprised me. She didn't pick up the phone. I promise you, she'll be all over it, so we'll --

THE CLERK: I'll send an e-mail.

THE COURT: Yes. Mike's sending her an e-mail right now, so you all will have it in plenty of time to get

connected. Okay. Thank you. Mr. Annable, that was worth it. Okay?

MR. ANNABLE: Thank you, Your Honor.

THE CLERK: All rise.

(Proceedings concluded at 6:51 p.m.)

--oOo--

CERTIFICATE

I certify that the foregoing is a correct transcript to the best of my ability from the electronic sound recording of the proceedings in the above-entitled matter.

/s/ Kathy Rehling **10/22/2020**

Kathy Rehling, CETD-444 Date
Certified Electronic Court Transcriber

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Exhibit 42

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	§	Case No. 19-34054-sgj11
Reorganized Debtor.	§	**Response Deadline: March 6, 2023 at 5:00 p.m. (CT)**

HIGHLAND CAPITAL MANAGEMENT, L.P.'S OBJECTION TO SCHEDULED CLAIMS 3.65 AND 3.66 OF HIGHLAND CLO MANAGEMENT, LTD.

Pursuant to sections 502(a)-(d) and 558 of title 11 of the United States Code (the "Bankruptcy Code") and Rule 3007 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), the reorganized debtor in the above-referenced bankruptcy case, Highland

[1] Highland's last four digits of its taxpayer identification number are (8357). The headquarters and service address for Highland is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

Capital Management, L.P. (as temporally required, referred to as "Highland" (the entity that existed before the Petition Date) or the "Debtor" (the entity that existed from the Petition Date until the Effective Date) or "Reorganized Highland" (the entity that came into existence upon the Effective Date)), hereby objects to scheduled claim numbers 3.65 and 3.66 (together, the "HCLOM Scheduled Claim") carried on Schedule F of the Debtor's Amended Schedules [*see* Docket No. 1082] with respect to Highland CLO Management, Ltd. ("HCLOM").

Reorganized Highland respectfully submits that there are numerous bases for the disallowance of the HCLOM Scheduled Claim and represents as follows:

Preliminary Statement[2]

1. The HCLOM Scheduled Claim arises out of a note dated October 7, 2016 (the "Note") executed by Highland in favor of Acis Capital Management, L.P. ("Acis", and together with Highland and HCLOM, the "Parties"), then an affiliate of Highland, in the original amount of $12,666,446.00, which was then purportedly assigned to HCLOM. The HCLOM Scheduled Claim should be disallowed because HCLOM provided no consideration for the Note and otherwise materially breached the Parties' agreements, thereby relieving Highland of any obligation to perform under the Note.

2. The background facts are straight-forward. At all relevant times, Mr. Dondero controlled each of the Parties. Acis managed certain CLOs and received certain Servicer Fees in exchange. Since Acis had no employees of its own, Highland provided the services on behalf of Acis that enabled Acis to fulfill its obligations to the CLOs. In October 2016, Acis and Highland entered into the Purchase Agreement pursuant to which Highland tendered the Note to Acis in exchange for purported "Participation Interests" in Acis' Servicer Fees over a specified

[2] Capitalized terms not defined in this Preliminary Statement shall have the meanings ascribed to them below.

period, less certain expenses. Highland and Acis appeared to perform their respective obligations under the Purchase Agreement through early November 2017.

3. In November 2017 (immediately after the Joshua Terry arbitration award was issued but before the Acis involuntary), Highland purportedly notified Acis that it was unwilling to continue to support Acis' management of the CLOs, leaving Acis unable to fulfill its obligations as the CLOs' manager. HCLOM, a newly-formed entity created to replace Acis, purportedly offered to step into the breach and serve as Acis' Successor Manager in exchange for an assignment of the Note. On November 3, 2017, the Parties executed the Assignment pursuant to which, among other things, (a) HCLOM was to become the CLOs' Successor Manager, (b) Acis and HCLOM were to remit the Servicer Fees to Highland, and (c) the Note was assigned to HCLOM. Dondero executed the Assignment for both Highland and Acis. One of the Dondero entities' then-regular Cayman Islands directors, John Cullinane, executed the Assignment on behalf of HCLOM.

4. Notwithstanding the purported Assignment, HCLOM and Acis failed to perform their respective obligations under the Assignment and HCLOM never provided anything of value to Highland in exchange for the Note. HCLOM and Acis breached the Assignment by, among other things, failing to tender any Servicer Fees associated with the Acis Participation Interests and failing to "promptly pursue Successor Manager appointment . . . in respect of each CLO, including but not limited to achieving all conditions precedent required under the CLO Documents." (Assignment § 2).

5. Consequently, HCLOM never obtained an Appointment (defined in the Assignment as the "consummation of HCLOM's appointment as Portfolio Manager of a given CLO"), the entire purpose and purported *quid pro quo* of the Assignment. In fact, Acis has

continued to manage the CLOs, including during the first six months after the Assignment was executed while Mr. Dondero remained in control of Acis, but no Servicer Fees were paid to Highland. These failures (a) constituted material breaches of contract that relieved Highland of its obligations under the Note, both by the express terms of the Parties' agreements and also pursuant to applicable law; and (b) resulted in a complete failure of consideration under the Assignment, which had the effect of voiding the assignment of the Note.

6. As set forth in more detail below, Reorganized Highland has no continuing liability under the Note and received nothing of value for the Note. The HCLOM Scheduled Claim should, therefore, be disallowed in its entirety. Alternatively, if Reorganized Highland is determined to have any continuing obligations under the Note, any such obligations would be subject to Reorganized Highland's rights of offset and recoupment for all amounts due from both Acis and HCLOM (*i.e.*, all covered Servicer Fees on the Acis CLOs from the date of the Note to present). On information and belief, such amounts exceeded the purported amount of the Note.

Jurisdiction

7. The Court has jurisdiction over this matter under the Bankruptcy Code and pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. §§ 157(b)(2)(A), (B), and (L). Venue is proper in this District under 28 U.S.C. §§ 1408 and 1409.

8. The statutory predicates for the relief requested herein are 11 U.S.C. § 502(b)-(d), 11 U.S.C. § 558, and Federal Rule of Bankruptcy Procedure 3007.

Factual Background

9. On October 16, 2019 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the Bankruptcy Court for the District of Delaware, Case No. 19-12239 (CSS) (the "Delaware Court").

10. On December 4, 2019, the Delaware Court entered an order transferring venue of the Debtor's Bankruptcy Case to this Court [Docket No. 186].[3]

11. On February 22, 2021, this Court entered the *Order Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (ii) Granting Related Relief* [Docket No. 1943] (the "Confirmation Order"), which confirmed the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* [Docket No. 1808] (the "Plan").

12. The Plan became effective on August 11, 2021 (the "Effective Date") [Docket No. 2700].

The Note and Purchase Agreement

13. Prior to the Petition Date, Acis, using Highland employees, provided management services with respect to certain collateralized loan obligations ("CLOs") in exchange for management fees ("Servicer Fees") paid by the CLOs to Acis. Purportedly, because "cash flows from the Servicer Fees [we]re unpredictable," Acis sought to "obtain[] a guaranteed fixed amount of cash flow" in exchange for the Servicer Fees it earned from the CLOs. Purchase Agreement (as defined) at 102. In that context, Highland, as Purchaser, and Acis, as Seller, entered into the *Agreement for Purchase and Sale of CLO Participation Interests* dated October 7, 2016 (the "Purchase Agreement").

14. Pursuant to Section 1 of the Purchase Agreement, Acis agreed to sell to Highland "participation interests in the Servicer Fees (the "Acis Participation Interests") in an amount equal to . . . the total Servicer Fees paid to Seller [Acis] by each of the CLOs beginning in November 2016 and ending August 2019," less certain specified amounts. In exchange for the

[3] All docket numbers refer to the docket maintained by this Court.

Acis Participation Interests, Highland agreed to pay Acis $666,655 in cash and to execute the Note in favor of Acis as Payee. Thus, the Note was the primary form of consideration tendered by Highland to Acis in exchange for the Acis Participation Interests.

15. The Note and the Purchase Agreement were inextricably tied together as part of the purchase transaction. The Purchase Agreement attached a copy of the Note as an exhibit and made repeated references to the Note. Moreover, by its terms, the Note was to become effective only upon the effectiveness of the Purchase Agreement, which was executed contemporaneously by Highland and Acis. A condition precedent to the effectiveness of the Note provides:

> ***This Note shall not become effective and Payee shall have no obligation to make the advance hereunder until*** Payee has received each of the following in form and substance acceptable to Payee:
>
> . . . .
>
> (b) the Agreement for Purchase and Sale of CLO Participation Interests dated of even date herewith (the "Purchase Agreement"), by and between Maker and Acis Capital Management, LP, a Delaware limited partnership ("Highland") [*sic*], and copies of all agreements, documents and instruments executed or delivered in connection therewith and evidence that ***all conditions to the effectiveness of the Purchase Agreement have been or will be fulfilled contemporaneously with the initial advance under this Note***;

Note at 1 (emphases added).

16. Moreover, as highlighted above, Acis' obligation to remit the cash received with respect to the Acis Participation Interests to Highland was expressly incorporated into the terms of the Note through multiple references to the obligation of the Payee (*i.e.*, Acis) to make advances "hereunder" or "under this Note" to the Maker (*i.e.*, Highland). For example, as quoted above, the Note provides that "*Payee* shall have no obligation to make *the advance hereunder* until Payee has received" certain specified documents. Note at 1 (emphases added). The Note also

states that, in the event of a default by the Maker, the Payee may "terminate Payee's commitment to make any advances under this Note." Note at 3. The Note further provides:

> Notwithstanding any provision contained herein to the contrary, the total amount of interest that Maker is obligated to pay and Payee is entitled to receive with respect to this Note shall not exceed the amount calculated on a simple (i.e., non-compounded) interest basis at the maximum rate allowed by applicable law ***on principal amounts actually advanced hereunder to or for the account of Maker***.

Id. (emphasis added).

17. These repeated references to amounts to be advanced by the Payee to the Maker "under" the Note describe Acis's obligations to "remit" the cash received with respect to the Acis Participation Interests to Highland, as noted in Section 4 below.

18. Section 4 of the Purchase Agreement is titled "Covenants" and imposes several obligations on the parties to the Purchase Agreement. Section 4.1 of the Purchase Agreement includes the following covenant of the Seller (*i.e.*, Acis): "The Seller agrees to promptly remit, or cause to be promptly remitted, to the Purchaser the cash received with respect to the Acis Participation Interests." Purchase Agreement, § 4.1.

19. Section 3.6 of the Purchase Agreement further provides:

> Subject to Section 1.5, the Purchaser acknowledges and agrees that: (a) except as provided in Section 1.5, *should the Seller's rights with respect to the Servicer Fees be terminated, such termination shall not affect the Purchaser's obligations under the Note*; (b) except as provided in Section 1.5, ***the Seller may exercise all of its legal rights and remedies to enforce the Purchaser's obligations under the Note*** *even if the Acis Participation Interests are not paid, in full or part, by the CLO trustees for any reason, including the termination of the Seller as the manager, a hostile buyout of such CLO, or any other reason* ***(other than as a result of the Seller breaching its covenants under this Agreement or as a result of fraud or by willful misconduct of the Seller);*** and (c) Purchaser has had the opportunity to consult with its own legal counsel with respect to the purchase of the Acis Participation Interests. The Purchaser understands such actions could negatively impact the timing and amount of payment of such Acis Participation Interests during the pendency of such dispute by the trustee of such CLO. *The Purchaser bears the sole risk with respect to nonpayment of the Acis Participation Interests* ***(other than as a result of the Seller breaching its covenants under this Agreement or as a result of the fraud or willful misconduct of the Seller)***.

Purchase Agreement, § 3.6 (emphases added).

20. Thus, the Purchase Agreement is clear that, whereas Highland would remain obligated under the Note if Acis did not receive Servicer Fees from the CLO third parties, in the event that Acis breached its covenants under the Purchase Agreement to remit the cash received with respect to the Acis Participation Interests to Highland, Acis would forfeit the right to enforce the Note (subject to Section 1.5, which addresses a seizure or forfeiture of Servicer Fees due to governmental action, which did not occur here). In short, Highland's payment obligations under the Note were conditioned upon Acis' compliance with its own agreement to transfer to Highland the cash received with respect to the Acis Participation Interests pursuant to Sections 1 and 4.1 of the Purchase Agreement.

21. Section 5.7 of the Purchase Agreement provides Highland with the right to seek specific performance of the Purchase Agreement in the event of a breach by Acis:

> The Seller and the Purchaser agree that the rights created by this Agreement are unique and that the loss of any such rights is not susceptible to monetary quantification. Consequently, the Seller and the Purchaser agree that an action for specific performance (including for temporary and/or permanent injunctive relief) of the obligations created by this Agreement is a proper remedy for the breach of the provisions of this Agreement, and the Purchaser shall be entitled to such relief without the necessity of proving actual damages or posting a bond.

Purchase Agreement, § 5.7.

22. Both the Purchase Agreement and the Note are governed by Texas law.

The Purported Assignment of the Note to HCLOM

23. In November 2017, Highland (controlled by Mr. Dondero) notified Acis that it was "unwilling to continue to provide support personnel and other critical services to Acis with respect to the CLOs." Acis (also controlled by Mr. Dondero) then determined that it could no longer "fulfill its duties as portfolio manager of the CLOs" and needed to find a replacement,

and HCLOM (also controlled by Mr. Dondero) offered to fill the void. Assignment (as defined below) at 1.

24. To address the problem that Mr. Dondero manufactured, Highland, Acis, and HCLOM then entered into that certain *Assignment and Transfer Agreement* dated as of November 3, 2017 (the "Assignment"), the purpose of which was to have HCLOM replace Acis as the Successor Manager for the CLOs and assume all of Acis' rights and obligations under the Purchase Agreement and Note.

25. Thus, pursuant to the Assignment, (a) HCLOM agreed to act as Acis's Successor Manager, (b) Acis assigned to HCLOM all rights in the Note, (c) each of Acis and HCLOM agreed to transfer to Highland any Servicer Fees received by Acis and HCLOM, respectively, that Acis would have been required to remit to Highland pursuant to the Purchase Agreement, and (d) HCLOM agreed to execute a joinder to the Purchase Agreement.

26. A recital to the Assignment provides: "HCLOM, a qualified Successor Manager, irrevocably commits to be appointed as Successor Manager ***in consideration of Acis assigning to it the Note***." Assignment at 1 (emphasis added).

27. Section 1 of the Assignment required Acis (again, then under Mr. Dondero's control) to "promptly provide the Controlling Class (as defined in the CLO Indentures) with notice requesting the appointment of HCLOM as Portfolio Manager pursuant to the requirements of the CLO Documents."

28. Section 2 of the Assignment provides that each of Acis and HCLOM would "promptly pursue Successor Manager appointment of HCLOM in respect of each CLO." Assignment, § 1.

29. Section 3 of the Assignment provides:

3. Assignment and Transfer of the Promissory Note; Stabilization Payments.

a. Effective immediately upon execution of this Agreement by the Parties, all right, title and interest of Acis under the Note, including the right to any and all Stabilization Payments[4] not yet paid to Acis, are hereby irrevocably assigned and transferred by Acis to HCLOM, it being understood that from the date of such assignment, HCLOM shall become the "Payee" thereunder.

b. For so long as Acis shall receive Servicer Fees following the date hereof, Acis shall remit to HCM the HCM Stabilization Fees[5] pursuant to the Note Purchase Agreement.

c. For so long as HCLOM receives any Servicer Fees following any Appointment, then HCLOM shall remit to HCM any portion of such fees that would otherwise have constituted HCM Stabilization Fees pursuant to the Note Purchase Agreement if Acis was the recipient of such fees.

d. HCLOM shall sign a joinder to Note Purchase Agreement upon HCM's written notice thereof.

Assignment, § 3 (emphasis added).

30. Thus, the parties to the Assignment contemplated that HCLOM would assume Acis's rights under the Note, subject to HCLOM becoming the Successor Manager and to the continuing obligation of both Acis and HCLOM to remit Servicer Fees received by each entity to Highland.

31. Section 6.h of the Assignment contains a right of specific performance for breach and provides:

> The Parties agree that the rights created by this Agreement are unique and that the loss of any such rights is not susceptible to monetary quantification. Consequently, the Parties agree that an action for specific performance, including for temporary and/or injunctive relief) of the obligations created by this Agreement is a proper remedy for the breach of the provisions of this Agreement, and the Debtor shall be

[4] The term "Stabilization Payments" is defined in the Assignment to mean "cash flows from HCM," as set forth in the Note.

[5] The term "HCM Stabilization Fees" is defined in the Assignment to mean the "future Servicer Fees identified to be paid to HCM pursuant to the Purchase Agreement."

entitled to such relief without the necessity of proving actual damages or posting a bond.

Assignment, § 6.h.

32. After the parties executed the Assignment, Acis and HCLOM failed to consummate the appointment of HCLOM as Successor Manager. Moreover, although Acis retained the benefit of the CLO servicer arrangements and received the Servicer Fees that were the subject of the Purchase Agreement and Assignment, neither Acis nor HCLOM made any further payments to Highland.

33. Following the commencement of the Acis bankruptcy, HCLOM and Highland released each other from the obligations under the Note and the Assignment.

Objection

A. Legal Standard

34. The Bankruptcy Code establishes a burden-shifting framework for proving the amount and validity of a claim. As the HCLOM Scheduled Claim was scheduled in the Debtor's schedules but was not scheduled as disputed, contingent, or unliquidated, the HCLOM Claim is deemed filed under section 501 of the Bankruptcy Code, notwithstanding that no proof of claim was filed by HCLOM. 11 U.S.C. § 1111(a). Furthermore, "[a] claim . . . , proof of which is filed under section 501 [of the Bankruptcy Code], is deemed allowed, unless a party in interest . . . objects." 11 U.S.C. § 502(a). "A proof of claim executed and filed in accordance with the [Bankruptcy Rules] shall constitute *prima facie* evidence of the validity and amount of the claim." FED. R. BANKR. P. 3001(f); *see also In re Armstrong*, 347 B.R. 581, 583 (Bankr. N.D. Tex. 2006). However, the ultimate burden of proof for a claim always lies with the claimant. *Armstrong*, 347 B.R. at 583 (citing *Raleigh v. Ill. Dep't of Rev.*, 530 U.S. 15 (2000)).

35. The HCLOM Scheduled Claim is based upon the Note. For the reasons described below, the Debtor is not liable on the Note. The HCLOM Scheduled Claim should, therefore, be disallowed in full.

B. Acis' Material Breaches of Contract Excused the Debtor's Performance under the Note

36. For the reasons discussed below, Acis' material breaches of the Purchase Agreement, the Note, and the Assignment relieved the Debtor from any purported payment obligations under the Note.

1. HCLOM and/or Acis' Breach of the Purchase Agreement Relieved the Debtor from any Purported Payment Obligations under the Note.

37. Pursuant to the terms of the Note, Highland was to make three payments to Acis. The first payment was scheduled to be made on May 31, 2017 in the amount of $3,370,694. The second payment was scheduled to be made on May 31, 2018 in the amount of $5,286,243, and the third payment was scheduled to be made on May 31, 2019 in the amount of 4,677,690. Highland made the first payment, but not the other two for the reasons set forth below.

38. As noted above, Acis agreed in Section 1 of the Purchase Agreement to remit to the Debtor the cash received with respect to the Acis Participation Interests through August 2019. Acis last remitted cash to Highland with respect to the Acis Participation Interests on November 1, 2017, before the Assignment was executed. Upon information and belief, the CLOs consistently paid the Servicer Fees to Acis on a regular basis. HCLOM and Acis breached their obligations under the Assignment by failing to remit to Highland any of the Servicer Fees related to the Acis Participation Interests (or any other amounts). The failure to remit such cash to Highland constituted a material breach of that agreement.

39. Pursuant to the express terms of the Purchase Agreement, HCLOM's and Acis' breach of their covenant to remit the cash received with respect to the Acis Participation Interests to Highland excused Highland's own performance under the Note. As explained above, Section 3.6 of the Purchase Agreement provides that Acis would retain the right to enforce Highland's obligations under the Note except where Acis' failure to transfer the cash received with respect to the Acis Participation Interests to Highland is "a result of [Acis] breaching its covenants under" the Purchase Agreement.

40. Upon information and belief, HCLOM and/or Acis apparently continued to receive Servicer Fees after November 3, 2017; they simply failed to remit those fees to Highland as the Purchase Agreement required. Since this failure to remit was due to a breach of the covenant to make such payments under the Purchase Agreement, Highland's obligation to pay any amounts under the Note was excused under Section 3.6 of the Purchase Agreement, and Acis (as well as any assignee) forfeited its rights to enforce Highland's obligations under the Note.

41. Indeed, even had Highland's obligations on the Note not been excused by the express terms of the Purchase Agreement, HCLOM's and Acis' material breaches would still have excused Highland's performance under applicable law. *See, e.g.*, *Allied Elevator, Inc. v. E. Tex. State Bank*, 965 F.2d 34, 38 (5th Cir. 1992) (holding that, if defendant had materially breached an agreement to procure life insurance, as required by the terms of a promissory note provided by plaintiff to the defendant in exchange for borrowed money, plaintiff would be excused from performing under the note, because "'[a] fundamental rule of contract law is that whenever a party to a contract … commits a material breach, the other party to that contract, at its election, is excused

from further performance'") (quoting *Bernal v. Garrison*, 818 S.W.2d 79, 83 (Tex. App. 1991); *see also MJR Corp. v. B & B Vending Co.*, 760 S.W.2d 4, 20-21 (Tex. App. 1988) ("It is fundamental that whenever one party to a contract commits a material breach, the other party, at its election, is excused from further performance") (citing *Mead v. Johnson Grp., Inc.*, 615 S.W.2d 685, 689 (Tex. 1981)).

2. HCLOM and Acis Breached the Note, Thereby Excusing the Debtor's Performance.

42. The failure by HCLOM and Acis to remit the requisite Servicer Fees to Highland resulted in a breach of the Note. As described above, the Note expressly requires Acis to make advances to Highland "under" the Note. The only advances that Acis committed to make to Highland in connection with the transactions that were the subject of the Purchase Agreement and the Note were those constituting the Servicer Fees received with respect to the Acis Participation Interests. By failing to honor the payment obligations under the Note, HCLOM and Acis materially breached their obligations under the Note.

43. Such material breach of the Note deprived Highland of the benefit of its bargain under that agreement in a manner that excused Highland's performance under the Note, which was given as the primary form of consideration provided in exchange for the Acis Participation Interests. *See, e.g.*, *Mustang Pipeline Co. v. Driver Co.*, 134 S.W.3d 195, 199 (Tex. 2004) (defendant's material breach of contract discharged plaintiff from its duties under the contract); *see also In re Dallas Roadster, Ltd.*, 846 F.3d 112 (5th Cir. 2017) ("A fundamental principle of contract law is that when one party to a contract commits a material breach of that contract, the other party is discharged or excused from any obligation to perform") (quoting *Hernandez v. Gulf Grp. Lloyds*, 875 S.W.2d 691, 692 (Tex. 1994)).

3. Alternatively, HCLOM's and Acis's Breach of the Purchase Agreement also Breached the Note, which Excused the Debtor's Performance under the Note.

44. It is a general rule of contract interpretation under Texas law that "separate instruments or contracts executed at the same time, for the same purpose, and in the course of the same transaction are to be considered as one instrument, and are to be read and construed together." *Jones v. Kelley*, 614 S.W.2d 95, 98 (Tex. 1981); *see also Vista Dev. Joint Venture II v. Pac. Mut. Life Ins. Co.*, 822 S.W.2d 305, 307 (Tex. App. 1992) (applying rule to promissory note and deed of trust).

45. The Note was unquestionably an integral part of the Purchase Agreement. It was tendered by Highland as the primary form of consideration in exchange for the Acis Participation Interests, it was executed at the same time as the Purchase Agreement, and the Purchase Agreement attached a copy of, and made repeated references to, the Note. Similarly, the Note is conditioned on the effectiveness of the Purchase Agreement. The Purchase Agreement and the Note should, therefore, "be considered as one instrument, and . . . be read and construed together." *See Kelley*, 614 S.W.2d at 98.

46. When considered as part of the Purchase Agreement, HCLOM's and Acis' material breach of the Purchase Agreement excused Highland's obligations under the Note. *See, e.g.*, *Fitzpatrick v. Animal Care Hosp., PLLC*, 104 A.D.3d 1078 (N.Y. App. Div. 2013) (where promissory note executed contemporaneously with purchase agreement represented partial consideration for the purchased assets and the purchase agreement specifically referred to the note, the court concluded that the parties' rights and obligations set forth in the note and purchase agreement were inextricably intertwined and one party's breach of the purchase agreement permitted the other party to offset its obligations due under the promissory note against any damages caused by the breach); *see also Ingalsbe v. Mueller*, 257 A.D.2d 894 (N.Y. App. Div.

1999); *A+ Assocs. v. Naughter*, 236 A.D.2d 655 (N.Y. App. Div. 1997); *Windmill Run Assocs. v. Fannie Mae (In re Windmill Run Assocs.)*, 566 B.R. 396, 444 (Bankr. S.D. Tex. 2017) (applying Texas law; "[s]eparate documents executed at the same time, for the same purpose, and in the course of the same transaction are to be construed together.... The note, the deed of trust, and the RRSA [replacement reserve and security agreement] were executed contemporaneously. The court concludes that these documents form the contract between the parties"); *Rieder v. Woods*, 603 S.W.3d 86, 94 (Tex. 2020) ("We construe a contract in a manner that gives 'effect to the parties' intent expressed in the text,' but we may also take into account 'the facts and circumstances surrounding the contract's execution.' In that vein, Texas courts have long recognized that, under appropriate circumstances, 'instruments pertaining to the same transaction may be read together to ascertain the parties' intent, even if the parties executed the instruments at different times and the instruments do not expressly refer to each other.' Where appropriate, 'a court may determine, as a matter of law,' that multiple separate contracts, documents, and agreements 'were part of a single, unified instrument.' In determining whether multiple agreements are part and parcel of a unified instrument, a court may consider whether each written agreement and instrument was 'a necessary part of the same transaction'" (footnotes and citations omitted)); *Nat'l City Bank of Ind. v. Ortiz*, 401 S.W.3d 867, 884 (Tex. App. 2013) ("National City's [noteholder] claims for breach of contract and judicial foreclosure cannot be parsed fairly into claims under the Note and claims under the Deed of Trust. Because the two documents form a single contract, both the Note and the Deed of Trust must be considered on remand in relitigating these claims"); *Wasaff v. Lipscomb*, 713 S.W.2d 730, 732 (Tex. App. 1986) ("We hold that the 'Trusteeship Agreement,' the promissory note and the deed of trust securing same must be read together and that when so read together, they permit the trustee to conduct the sale").

47. Notably, the Purchase Agreement expressly provides for specific performance and injunctive relief in the event of a breach by Acis. Because the Note and the Purchase Agreement must be construed together, absent strict performance by HCLOM and Acis of their obligations under the Purchase Agreement, Reorganized Highland cannot be compelled to honor any obligations under the Note.

4. The Note Is Unenforceable Due to a Failure of Consideration

48. The Note is unenforceable because there was a failure of consideration provided by HCLOM or Acis to support the Note. "Failure of consideration generally 'occurs when, because of some supervening cause after an agreement is reached, the promised performance fails.'" *Ropa Expl. Corp. v. Barash Energy*, No. 02-11-00258-CV, 2013 Tex. App. LEXIS 7290, at *15 (Tex. App. June 13, 2013) (quoting *US Bank, N.A. v. Prestige Ford Garland Ltd. P'ship*, 170 S.W.3d 272, 279 (Tex. App. 2005). "[F]ailure of consideration may result as a consequence of one party's failure to perform its obligations under the agreement, resulting in the other party's failure to receive the consideration set forth in the agreement." *City of The Colony v. N. Tex. Mun. Water Dist.*, 272 S.W.3d 699, 733 (Tex. App. 2008). The defense of failure of consideration "challenges the agreement as a whole." *Doskocil Mfg. Co. v. Sang Nguyen*, No. 02-16-00382-CV, 2017 Tex. App. LEXIS 5961, at *15 (Tex. App. June 29, 2017).

49. Highland tendered the Note to Acis in exchange for the Acis Participation Interests and Acis' obligation to remit the related cash received with respect to such interests. HCLOM's and Acis' failure to honor the obligation to remit those amounts after the Assignment was executed deprived Highland of its bargained-for consideration. Because the performance promised by Acis failed, the Note is unenforceable, including by Acis' assignees.

C. Material Breaches of the Assignment by HCLOM and Acis Excuse the Debtor's Performance under the Note

1. HCLOM's Failure to Perform under the Assignment Resulted in the Note Being Unenforceable Due to a Failure of Consideration.

50. The Parties purportedly entered into the Assignment because:

> (a) Highland sent the Notification (as defined in the Assignment) to Acis pursuant to which Acis was informed that Highland was "unwilling to continue to provide support personnel and other critical services to Acis with respect to the CLOS,"
>
> (b) Acis determined that in light of the Notification, it could not "fulfill its duties as portfolio manager of the CLOs," and
>
> (c) HCLOM "irrevocably commit[ted] to be appointed as Successor Manager [as defined in the Assignment] in consideration of Acis assigning to it the Note."

Assignment at 1.

51. Thus, the whole purpose of the Dondero-engineered Assignment was to have HCLOM step into Acis' shoes as the Successor Manager of the CLOs. Assignment §§ 1, 2. Until the Appointments (as defined in the Assignment) were consummated, Acis agreed to remit to Highland the "HCM Stabilization Fees pursuant to the Note Purchase Agreement" (to the extent Acis received Servicer Fees). After the Appointments (as defined in the Assignment) were consummated, HCLOM agreed to remit to Highland the any portion of such Fees that would have constituted HCM Stabilization Fees had they been received by Acis. *Id*. § 3(b), (c).

52. Although the Note was purportedly assigned to HCLOM, HCLOM never succeeded to Acis' role as the Successor Manager, no Appointments were ever consummated, and, therefore, HCLOM never transferred any Servicer Fees to Highland. In short, because the intent of the Assignment was never realized, HCLOM cannot receive all of the benefits of the transaction – *i.e.*, the Note – without accepting any of the burdens or providing anything of value in exchange for the Note or payments thereunder.

53. The total failure of consideration provided by HCLOM to support the Assignment, to which Highland was a party, renders the Assignment unenforceable as against Reorganized Highland. As described above, "failure of consideration may result as a consequence of one party's failure to perform its obligations under the agreement, resulting in the other party's failure to receive the consideration set forth in the agreement." *City of The Colony*, 272 S.W.3d at 733. HCLOM agreed in the Assignment to assume certain rights and obligations then held by Acis, including the obligation to transfer Servicer Fees to Highland. The assumption of those obligations constituted the consideration provided by HCLOM in exchange for the right to receive an assignment of the Note and to receive payments from Highland under the Note. Indeed, Highland consented to the Assignment only because HCLOM agreed to perform in accordance with its agreements under the Assignment.

54. HCLOM's failure to succeed to Acis as Successor Manager meant that HCLOM never assumed any servicer obligations, controlled any Servicer Fees, or transferred any Servicer Fees to Highland; indeed, HCLOM completely failed to perform under the Assignment as the parties intended. As a result, Highland never received any of the consideration for which it bargained under the Assignment. The total failure of performance by HCLOM under the Assignment renders the Note unenforceable by HCLOM.

2. Alternatively, HCLOM's Breach of the Assignment Excused the Debtor's Performance under the Note.

55. Even if the Assignment is not rendered unenforceable for failure of consideration, HCLOM's failure to comply with its obligations constituted material breaches thereof. Specifically, HCLOM breached the Assignment by failing to: (a) "provide the Controlling Class (as defined in each of the CLO Indentures) with notice requesting the appointment of HCLOM as Portfolio Manager," as required by Section 1 of the Assignment; (b) "promptly pursue

Successor Manager appointment," as required by Section 2 of the Assignment; (c) "achiev[e] all conditions precedent required by the CLO Documents," as required by Section 2 of the Assignment; and (d) execute a joinder to the Purchase Agreement, as required by Section 3.d of the Assignment.

56. HCLOM's material breaches of the Assignment excused Highland's obligations under the Note. *See, e.g.*, *Mustang Pipeline Co.*, 134 S.W.3d at 199 (defendant's material breach of contract discharged plaintiff from its duties under the contract).

D. <u>Any Obligations that May Be Due under the Note Are Subject to Highland's Rights of Offset and Recoupment</u>

57. Even if Reorganized Highland's remaining obligations under the Note are not excused, Reorganized Highland's rights of setoff and recoupment would reduce those obligations by an amount that is not less than the amount of unpaid Servicer Fees that should have been remitted to Highland through August 2019 by Acis and HCLOM. On information and belief, that amount exceeds the face amount of the Note.

58. As discussed above, Highland became obligated to Acis under the Note in exchange for Acis' simultaneous commitment to transfer Acis Participation Interests to Highland. Acis assigned its interests in the Note to HCLOM on the condition that HCLOM share Acis' payment obligations to Highland. Both Acis and HCLOM failed to transfer any cash received with respect to the Acis Participation Interests to Highland from and after November 3, 2017.

59. As summarized by the Texas appellate court:

> "Recoupment" allows a defendant to reduce the amount of a plaintiff's claims by asserting a counterclaim which arose out of the same transaction. There are two general requirements for recoupment: (1) some type of overpayment must have been made, and (2) both the creditor's claim and the amount owed the debtor must arise from a single transaction. . . .

. . . .

> The right of setoff allows entities that owe each other money to apply their debts to each other. Where setoff is allowed, there are mutual debts arising from different transactions, which contrasts with the single transaction required in recoupment.

Sommers v. Concepción, 20 S.W.3d 27, 35 (Tex. App. 2000) (citing *Matter of Kosadnar*, 157 F.3d 1011, 1013 (5th Cir. 1998)).

60. Because Highland's obligations under the Note arose from the same transaction as Acis' payment obligations under the Purchase Agreement, Highland's obligations must be reduced under a theory of recoupment by the amount of Acis' obligations to Highland. Similarly, since Highland's consent to the assignment of the Note by Acis to HCLOM was conditioned on the agreement by both Acis and HCLOM to continue making payments to Highland under the Purchase Agreement, Reorganized Highland's obligations must be reduced under a theory of recoupment by the amount of HCLOM's obligations to Highland.

61. Alternatively, even if Highland's obligations under the Note are not viewed as arising under the same transaction as Acis' or HCLOM's respective obligations to Highland, Reorganized Highland's obligations must be reduced under a theory of setoff by all amounts owed by Acis and HCLOM to Highland, which include all unpaid obligations of those entities under the Purchase Agreement and the Assignment.

E. Reservation of Rights

62. Reorganized Highland reserves its right to supplement, amend, or modify this Objection based on facts adduced in discovery or otherwise, including to assert further objections, defenses or arguments in support of the disallowance of the HCLOM Scheduled Claim.

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WHEREFORE, Reorganized Highland respectfully requests (i) that the HCLOM Claim be disallowed in its entirety, and (ii) for such other and further relief as this Court may deem just and proper.

Dated: February 2, 2023

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Counsel for Highland Capital Management, L.P.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	Chapter 11
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	§	Case No. 19-34054-sgj11
	§	
Reorganized Debtor.	§	

ORDER SUSTAINING
HIGHLAND CAPITAL MANAGEMENT, L.P.'S OBJECTION TO
SCHEDULED CLAIMS 3.65 AND 3.66 OF HIGHLAND CLO MANAGEMENT, LTD.

Upon consideration of the *Objection to Scheduled Claims 3.65 and 3.66 of Highland CLO Management, Ltd.* [Docket No. __] (the "Objection")[2] filed by Highland Capital Management, L.P., the reorganized debtor (as temporally required, the "Debtor" or "Reorganized Highland") in the above-captioned chapter 11 case (the "Bankruptcy Case"), and the Court (1) having considered the Objection and (2) finding that (a) notice of the Objection was good and sufficient upon the particular circumstances and that no other or further notice need be given, (b) the Objection is a

[1] The last four digits of the Reorganized Debtor's taxpayer identification number are 8357. The headquarters and service address for the Reorganized Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

[2] Capitalized terms not otherwise defined in this Order shall have the meanings ascribed to them in the Objection.

core proceeding under 28 U.S.C. § 157(b), (c) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (d) venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409, and (e) Highland CLO Management, Ltd. ("HCLOM") was properly and timely served with the Objection and the notice of hearing on the Objection, and good and sufficient cause appearing therefor,

it is **HEREBY ORDERED THAT**:

1. The Objection is **SUSTAINED**.

2. The HCLOM Scheduled Claim is **DISALLOWED** with prejudice.

3. To the extent applicable, the official claims register in the Debtor's Bankruptcy Case will be modified in accordance with this Order.

4. Reorganized Highland is authorized and empowered to take any action necessary to implement and effectuate the terms of this Order.

5. The Court shall retain jurisdiction over all disputes arising out of or otherwise concerning the interpretation and enforcement of this Order.

###END OF ORDER###

Exhibit 43

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.	Case No. 19-34054 (sgj)
Reorganized Debtor.	

RESPONSE OF HIGHLAND CLO MANAGEMENT, LTD. TO HIGHLAND CAPITAL MANAGEMENT, L.P.'S OBJECTION TO SCHEDULED CLAIMS 3.65 AND 3.66 OF HIGHLAND CLO MANAGEMENT, LTD.

Highland CLO Management, Ltd. ("HCLOM"), by and through its undersigned attorneys, hereby submits this response to *Highland Capital Management, L.P.'s Objection to Scheduled Claims 3.65 and 3.66 of Highland CLO Management, Ltd.* [Docket No. 3657] (the "Objection"). In support of its response, HCLOM states the following:

I. INTRODUCTION

1. In the Objection, reorganized debtor Highland Capital Management, L.P. ("HCMLP" or the "Debtor") seeks to expunge the undisputed, non-contingent, liquidated claims it scheduled for HCLOM for a promissory note [the "Note"] and related interest. Although

HCMLP asserts that there was a prior material breach of contract under the Note and other documents and asserts that such prior material breach is both itself a defense and gives rise to a failure of consideration, these allegations are inconsistent with the language of the Note, the underlying facts, and, importantly, positions the Debtor has successfully taken elsewhere in this bankruptcy proceeding.

II. FACTUAL BACKGROUND

2. On October 16, 2019 (the "Petition Date"), HCMLP filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code, 11 U.S.C. §§ 101 – 1532 in the United States Bankruptcy Court for the District of Delaware.

3. Pursuant to an *Order Transferring Venue of this Case to the United States Bankruptcy Court for the Northern District of Texas*, the resulting bankruptcy case was transferred to this Court on December 4, 2019.

4. On December 13, 2019, the Debtor filed its schedule of liabilities. The schedule of creditors who have unsecured claims included a claim for "Interest payable" in the amount of $599,187.26, and a claim for "Note payable" in the amount of $9,541,446.00. The schedule incorrectly listed the promissory note principal and interest as payable to Highland CLO Holdco.[1]

5. James P. Seery, Jr. was engaged as Chief Executive Office and Chief Restructuring Office ("CEO/CRO") for the Debtor effective as of March 15, 2020.

6. The Debtor filed amended schedules on September 22, 2020 (the "Amended Schedules"), correcting the claimant name to HCLOM, but leaving the amounts the same.[2]

[1] *See* Official Form 206Sum, dated December 13, 2019 ("Original Schedules"), Dkt. 247 in Case No. 19-34054-sgj-11. Schedule E/F, §§ 3.64 and 3.65, annexed hereto as Exhibit 1 ("Ex. 1") at App. 0027.

[2] Notice of Filing of Debtor's Amended Schedules, dated September 22, 2020, Dkt. 1082 in Case No. 19-34054-sgj-11, Schedule E/F, §§ 3.65 and 3.66 (the "HCLOM Scheduled Claims"), annexed hereto as Exhibit 2 ("Ex. 2") at App. 0105.

7. The Amended Schedules did not list the HCLOM Scheduled Claims as disputed, contingent or unliquidated. Mr. Seery, in his role as CEO/CRO for the Debtor, signed the Amended Schedules under penalty of perjury.

8. The Debtor's note principal and interest obligations to HCLOM arose under a Promissory Note in the original principal amount of $12,666,446 with HCMLP as the maker, and Acis Capital Management, L.P. ("Acis") as the payee. [3]

9. The Note originated as part of a transaction in October 2016 whereby Acis agreed to pay fifty percent (50%) of its collateralized loan obligation ("CLO") servicing fees over a period of years to the Debtor pursuant to an Agreement for Purchase and Sale of CLO Participation Interests (the "CLO Participation Agreement"), and in exchange the Debtor promised to pay Acis the principal amount of the Note over a period of three years. [4]

10. The Debtor was to make principal amortization payments under the Note in May of each of the three scheduled payment years, and Acis was to pay the Debtor its portion of the CLO servicing fees on a quarterly basis (the "Servicer Fees").[5]

11. The Note was assigned to HCLOM pursuant to an Assignment and Transfer Agreement between Acis, HCMLP and HCLOM dated November 3, 2017 (the "Note Transfer Agreement").[6]

12. Following execution of the Note Transfer Agreement, an involuntary bankruptcy petition was filed against Acis in this Court on January 30, 2018, leading to the entry of an order

[3] Promissory Note from Highland Capital Management, L.P. to Acis Capital Management, L.P. in the amount of $12,666,446, dated October 2016, Dkt. 3695-3 in Case No. 19-34054-sgj-11, annexed hereto as Exhibit 3 ("Ex. 3") at App. 0115-0120.
[4] *Id.* at Exhibit A, Amortization Schedule, App.0120.
[5] Agreement for Purchase and Sale of CLO Participation Interests by and between Acis Capital Management, L.P. and Highland Capital Management, L.P., dated October 7, 2016, annexed hereto as Exhibit 4 ("Ex. 4") at App.0122-0135.
[6] Agreement for Assignment and Transfer of Promissory Note between Acis Capital Management, L.P. and Highland Capital Management, L.P., dated October 7, 2016, Dkt. 3695-3 in Case No. 19-34054-sgj-11, annexed hereto as Exhibit 5 ("Ex. 5") at App.0137-0142.

for relief on April 16, 2018 in *In re Acis Capital Management, L.P. and Acis Capital Management GP, LLC*, Case No. 18-30264 (the "Acis Bankruptcy Case").

III. LEGAL STANDARD

13. The Debtor listed the HCLOM Scheduled Claims on the Amended Schedules and did not schedule them as disputed, contingent, or unliquidated. As a result, the HCLOM Scheduled Claims constitute prima facie evidence of the validity and amount of the claims pursuant to Federal Rule of Bankruptcy Procedure 3003(b)(1).

14. Once such prima facie evidence is established, the claimant will prevail unless a party objecting to a claim produces evidence to rebut at least one of the allegations that is essential to the claim's legal sufficiency. *See In re Fidelity Holding Co., Ltd.*, 837 F.2d 696, 698 (5th Cir. 1988); *McGee v. O'Connor (In re O'Connor)*, 153 F.3d 258, 260 (5th Cir. 1988).

15. If the objecting party rebuts the presumption of validity, the claim is not *per se* denied. *In re Armstrong*, 320 B.R. 97, 104 (Bankr. N.D. Tex. 2005). Rather, "[t]he claimant may still establish the claim's validity at an evidentiary hearing." *In re Today's Destiny, Inc.*, 2008 WL 5479109 at *4 (Bankr. S.D. Tex. Nov. 26. 2008). At this point the burden shifts back to the claimant to prove its claim by a preponderance of the evidence. *In re Armstrong*, 347 B.R. 581, 583 (Bankr. N.D. Tex. 2006).

IV. RESPONSE

A. No Alleged Breaches of the CLO Participation Agreement and/or the Note Excuse the Debtor's Performance under the Note.

16. The Debtor first argues that Acis's breaches of contract excuse the Debtor's performance under the Note. In doing so, it alleges breaches of the CLO Participation Agreement by "HCLOM and/or Acis." Objection, ¶¶ 36 – 47.

17. However, HCLOM is not a party to the CLO Participation Agreement, and could not breach it.

18. Further, although the Note was made as consideration for the CLO Participation Agreement, the Debtor's liability on the Note contains no provision conditioning the Debtor's payment obligations on performance by Acis of its obligations under the CLO Participation Agreement.[7]

19. In fact, the plain language of the Note states the opposite. The "Note embodies the final, entire agreement between Maker [Debtor] and Payee [Acis] with respect to the indebtedness evidenced hereby" and does not incorporate the CLO Participation Agreement by reference.[8]

20. Courts are tasked with construing a contract by looking at the langue of the parties' agreement. *Barrow-Shaver Res. Co. v. Carrizo Oil & Gas Inc.*, 590 S.W. 3d 471, 479 (Tex. 2019). The court must "give effect to the parties' intentions, as express in their agreement" unless the "plain, grammatical meaning would clearly defeat the parties' intentions." *Id.* (internal citations omitted).

21. In claiming that alleged breaches of contract by Acis excuse the Debtor's performance under the Note, the Debtor cites to cases holding that in certain circumstances multiple documents can be deemed to be part of one instrument. However, this concept cannot be stretched to replace the parties' intentions when preparing the documents.

> Where appropriate, "a court may determine, as a matter of law," that multiple separate contracts, documents, and agreements "were part of a single, unified instrument." In determining whether multiple agreements are part and parcel of a unified instrument, a court may consider whether each written agreement and instrument was "a necessary part of the same transaction." But when construing multiple documents together, courts must do so with caution, bearing in mind that tethering documents to each other is "simply a device for ascertaining and giving effect to the intention of the parties and cannot be applied arbitrarily and without regard to the realities of the situation."

[7] Ex. 3, p. 4, at App.0118.
[8] *Id.*

Rieder v. Woods, 603 S.W.3d 86, 94–95 (Tex. 2020).

22. Here, the CLO Participation Agreement states that

> [E]xcept as provided in Section 1.5, the Seller [Acis] may exercise all of its legal rights under and remedies to enforce the Purchaser's [Debtor's] obligations under the Note even if the Acis Participation Interests are not paid, in full or in part, by the CLO Trustee for any reason… The Purchaser bears the sole risk with respect to non-payment of the Acis Participation Interests (other than as a result of the Seller breaching its covenants under this Agreement or as a result of the fraud or willful misconduct of the Seller).[9]

The only exception, § 1.5, contemplates Acis failing to pay the Participation Interests/Servicer Fees as a result of regulatory proceeding against Acis, which did not occur.[10]

23. In furtherance of its efforts to tie the Note to the CLO Participation Agreement, the Debtor cites the provision in the CLO Participation Agreement stating that the Note shall not be payable until "all conditions to the effectiveness of the Purchase Agreement have been or will be fulfilled contemporaneously with the initial advance under this Note." Objection at ¶ 15. While "initial advance" is not defined in the Note, the Debtor was obligated to pay Acis an initial amount of $666,655 under the CLO Participation Agreement.[11] There is no dispute that the Debtor made that payment and that the conditions precedent for the Note to become effective were met.

24. The Debtor also made further payments to Acis on the Note, additional evidence that the Debtor was performing under the Note and that the conditions precedent was satisfied.[12] While HCLOM requires discovery to obtain the complete payment history, the Debtor's schedules show that $9,541,446 25 remains owed on the original Note balance of $12,666,446. *Compare* Ex. 1 with the Amended Schedules at Schedule E/F §3.66. This reflects that the Debtor made a principal pay down of $3,125,000 prior to the Petition Date. According to Ex. 1 at Exhibit A

[9] Ex. 4, § 3.6, at App.0127-0128.
[10] *Id.,*§ 1.5, at App. 0124.
[11] *Id.,*§ 1.1, at App.0123.
[12] October 20, 2021, Hr'g Tr., 191:8-12, annexed hereto as Exhibit 6 ("Ex. 6") at App.0334.

thereto, the Amortization Schedule shows that a principal payment was due May 31, 2017, in the amount of $3,125,000.[13]

B. HCLOM Did Not Breach the Note Transfer Agreement, Nor Would Any Alleged Breach Excuse the Debtor's Performance under the Note.

25. The Debtor then argues that HCLOM breached the Note Transfer Agreement, thus excusing the Debtor from performing under the Note. However, HCLOM acted to perform under the Note Transfer Agreement.

26. HCLOM "irrevocably commits" in the Note Transfer Agreement to be appointed as successor manager.[14] The Note Transfer Agreement contemplated that the controlling class of each of the Acis-managed CLOs would provide a notice to replace Acis with HCLOM as the manager of the CLOs.[15]

27. The controlling classes of the Acis CLOs issued optional redemptions attempting to effectuate the process of designating HCLOM as the manager of the Acis CLOs.[16] However, this Court entered a temporary restraining order, and then a plan injunction in the Acis Bankruptcy Case, preventing the Notices from being effectuated.[17]

28. As a result, HCLOM never was appointed as the manager of the CLOs.

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[13] The Amended Schedules also reflect a balance of $599,187.26 in unpaid interest on the Note. *See* Ex. 2, Schedule E/F §3.65, at App.0105.
[14] Ex. 5 at App.0137.
[15] *Id.,*§ 1, at App. 0138.
[16] Acis CLO Notices of Optional Redemption dated April 30, 2018, Dkt. 3695-2 in Case No. 19-34054-sgj-11, annexed hereto as Exhibit 7 ("Ex. 7") at App.0401-0412.
[17] *See* Ex Parte Temporary Restraining Order, dated June 21, 2018, Dkt. 310 in Case No. 18-30264-sgj-11, annexed hereto as Exhibit 8 ("Ex. 8") at App.0418; Agreed Extension of Temporary Restraining Order, dated June 29, 2018, Dkt. 354 in Case No. 18-30264-sgj-11, annexed hereto as Exhibit 9 ("Ex. 9") at App. 0424; Bench Ruling and Memorandum of Law in Support of: (1) Final Approval of Disclosure Statement; and (B) Confirmation of Chapter 11 Trustee's Third Amended Joint Plan, dated January 31, 2019, Dkt.827 in Case No. 18-30264-sgj-11, annexed hereto as Exhibit 10 ("Ex. 10") at App. 0430-0476; Findings of Fact, Conclusions of Law, and Order Granting Final Approval of Disclosure Statement and Confirming the Third Amended Joint Plan for Acis Capital Management, L.P. and Acis Capital Management GP, LLC, as Modified, dated January 31, 2019, Dkt. 829 in Case No. 18-30264-sgj-11, annexed hereto as Exhibit 11 ("Ex. 11") at App.0512.

29. Prior to HCLOM becoming the manager, Acis continued to be responsible for paying the Servicer Fees due to the Debtor under the CLO Participation Agreement.[18] The Note Transfer Agreement is clear that only when HCLOM became the replacement manager of the CLOs and started to receive fees would HCLOM be obligated to remit a portion of the Servicer Fees to the Debtor.[19]

30. HCLOM never received any of the Servicer Fees contemplated under the Note Transfer Agreement §3(c). Instead, Acis at all times continued to receive such Servicer Fees.

31. Therefore, HCLOM was under no obligation to remit any Servicer Fees to the Debtor, and could not breach the Note Transfer Agreement by failing to do so.

32. Nor would any alleged breach of the Note Transfer Agreement excuse the Debtor's obligation to perform under the Note. Under the Note Transfer Agreement, the Note was transferred from Acis to HCLOM "effective immediately upon execution" of the agreement and was not conditional.[20]

C. The Debtor's Allegations in the Objection Are Inconsistent with the Debtor's Positions Taken in this Case and the Acis Bankruptcy Case.

33. The Debtor's claims in the Objection that is has no obligation to perform under the Note stand in stark contrast to the positions it has taken and testimony it has provided both in this case and in the Acis Bankruptcy Case.

34. In the Acis Bankruptcy Case adversary proceeding, *Acis Capital Management, L.P. and Acis Capital Management GP, LLC v. Highland Capital Management, L.P., et al.*, Adversary

[18] *See* Ex. 5, §3(b), at App.0138..
[19] *Id.*, §3(c), at App.0138.
[20] *Id.*, §3(a), at App.0138.

Proceeding No. 18-03078 (the "Acis Adversary Proceeding"), Acis asserted claims against both the Debtor and HCLOM for fraudulent transfer with respect to the Note.[21]

35. The Debtor moved to dismiss these claims, but did not assert a defense that the Note was either invalid or subject to set off because of prior material breach.[22]

36. After the Debtor filed for bankruptcy, Acis incorporated the Acis Complaint into its proof of claim filed in this case designated as Claim No. 23 in the Claims Register maintained by the Debtor's noticing and claims agent (the "Acis POC").[23]

37. In its objection to the Acis POC ("Acis Claim Objection), the Debtor stated that "Not only did the Debtor not receive the Note, it remains liable!"[24] The Debtor continued that "Debtor did not receive the Note, and indeed remains liable on the Note."[25]

38. The Debtor enumerated five separate grounds for objecting to the Note-related claims in the Acis Complaint, but never argued that Debtor was not liable on the Note for failure of consideration or prior material breach.[26] Notably, the Debtor's objection was filed in June 2020, well after the Independent Board has assumed control of the Debtor from previous management and Mr. Seery stepped in as CEO/CRO.

39. Subsequently, the Debtor reached a settlement of a $23 million allowed claim amount on the Acis POC, which was documented in a settlement agreement (the "Acis Settlement

[21] Second Amended Complaint (Including Claim Objections and Objections to Administrative Expense Claim), dated June 20, 2019, Dkt. 157 in Case No. 18-03078-sgj, annexed hereto as Exhibit 12 ("Ex. 12") at App.0708-0815.
[22] Highland Capital's Partial Motion to Dismiss the Second Amended Complaint and Brief in Support, dated July 22, 2019, Dkt. 171 in Case No. 18-03078-sgj, annexed hereto as Exhibit 13 ("Ex. 13") at App.0817-0849.
[23] Acis Proof of Claim #23 in Case No. 18-30264-sgj-11, dated December 31, 2019, annexed hereto as Exhibit 14 ("Ex. 14") at App. 0851-0964
[24] Debtor Objection to Acis Claim, dated June 23, 2020, Dkt. 771 in Case No. 19-34054-sgj-11, annexed hereto as Exhibit 15 ("Ex. 15"), ¶ 58, at App.1001.
[25] *Id.*, ¶ 58(a), at App.1002.
[26] *Id.*, ¶ 58(c)(1-5), at App.1002.

Agreement").[27] As part of this settlement, Acis specifically disclaimed and released all claims for payment with respect to the Note (the "Acis Release").[28] . Acis further agreed to withdraw its claims against the Debtor-controlled defendants.[29]

40. Consistent with the Acis Settlement Agreement, on November 3, 2020, Acis moved to voluntarily dismiss all claims against HCLOM in the Acis Adversary Proceeding, which was promptly approved by this Court.[30]

41. In obtaining the Court's approval of the Acis Settlement Agreement, Mr. Seery specifically addressed the Debtor's liability on the Note. When asked to explain the basis for the settlement, Mr. Seery testified:

> Some of them [the Acis claims], we looked at and we thought those were actually, if we could get that settlement as part of it, it would be a pretty straightforward trade. So with respect to an intercompany note that's about $10 million, it was arguably (inaudible) transferred from -- from Acis, it was transferred -- its claim was it was transferred to Highland. Highland paid on the note. It was actually transferred to an entity that Highland owns and controls. That transfer was done without consideration, was about $10 million. We would have been liable on that note.
>
> We now believe that, for example, that one, we had very little defense on other than a technical defense, and that we would have – we'd have -- not going to have any liability on it because we effectively owe it to ourself, and now we believe it can be recharacterized or should have been recharacterized as equity in the first instance.[31]

Mr. Seery continued "In addition, as I mentioned, of the total amount, we think that the note was one that we actually owe, and we owe it to somebody, but now we owe it to ourselves. So of the

[27] Order Approving Debtor's Settlement with (A) Acis Capital Management, L.P. and Acis Capital Management GP, LLC (Claim No. 23) (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156, and (C) Acis Capital management, L.P. (Claim No. 159) and Authorizing Actions Consistent Therewith, dated October 20, 2020, Dkt.1302 in Case No. 19-34054-sgj-11, annexed hereto as Exhibit 16 ("Ex. 16"), p. 6, at App.1037-1044.
[28] *Id.,* at App.1046-1055; and at App. 1047 (Acis Release releasing, among other claims, all debts, liabilities, and obligations against any Debtor-controlled party, which included HCLOM).
[29] *Id.*, § 2, at App.1049.
[30] Acis Motion to Dismiss Less than All Defendants, dated November 3, 2010, Dkt. 215 in Case No. 18-03078-sgj, annexed hereto as Exhibit 17 ("Ex. 17"), at App.1057-1060; Order Dismissing Less than All Defendants, dated November 6, 2020, Dkt. 216 in Case No. 18-03078-sgj, annexed hereto as Exhibit 18 ("Ex. 18"), at App.1062-1063.
[31] Ex. 6, 191:6-21, at App.0334.

total settlement amount, $10 million really is self-funding because we're not going to have to pay that obligation."[32]

42. In addition to providing evidence that the Debtor believes its performance is required under the Note, to the extent that this Court relied on Mr. Seery's testimony in approving the settlement with Acis, the contract positions in the Objection should be barred by the doctrine of judicial estoppel. "In order for judicial estoppel to apply, three requirements must be satisfied: (1) the party's position must be clearly inconsistent with the position previously taken by the party; (2) the court must have accepted the previous position; and (3) the previous position (or non-disclosure) must not have been inadvertent." *In re Tex. Rangers Baseball Partners*, 521 B.R. 134, 173 (Bankr. N.D. Tex. 2014); citing *In re Superior Crewboats Inc.*, 374 F. 330, 335 (5th Cir. 2004).

43. As Mr. Seery expressed above, the Debtor owed on the Note, but Mr. Seery understood that the Note was transferred to "an entity that Highland owns and controls," so the Debtor could effectively wipe out the Note obligation as a result of the settlement.

44. However, Mr. Seery either misapprehended or misstated the structure of HCLOM, in which the Debtor then held controlling, but not economic, interest. Any inadvertence in understanding the nature of the Debtor's interest in HCLOM was not inadvertence in its belief that it was liable under the Note. Apparently believing that the Debtor effectively owned the Note, Mr. Seery freely admitted that the Note was payable.

45. Mr. Seery knew or should have known that the Debtor did not have an economic interest in HCLOM. The declaration in support of the Debtor's first day motions addressed the

[32] *Id.*, 196:25-197:4, at App.0339-0340.

Note. Specifically, the Debtor stated that, as of the Petition Date, "[t]he Debtor's obligations under the CLO Purchase Agreement and CLO Note are unsecured."[33]

46. The Debtor further stated that Acis had assigned the Note to HCLOM in November 2017, and that "the Debtor does not have any beneficial ownership interest in HCLOM."[34] It concluded that "[a]s of the Petition Date, the aggregate principal balance of the CLO Note was approximately $9.5 million."[35]

47. Subsequent to the Acis settlement, the Debtor and Mr. Seery further confirmed that the Note was a valid liability of the Debtor owed to HCLOM. As explained above, the Debtor's original schedules filed prior to the installation of the Independent Board incorrectly recorded the Note principal and interest as payable to a similarly named affiliate called Highland CLO Holdco.[36]

48. The Debtor executed the Settlement Agreement with Acis on September 9, 2020,[37] and thirteen days later, the Debtor filed the Amended Schedules properly reflecting that the Note principal and interest were owed to HCLOM.[38] Mr. Seery signed the Debtor's Amended Schedules under penalty of perjury.

49. Neither HCLOM nor any other party took any action to prompt the Debtor to make this amendment to its schedules, so this amendment appears to be the Debtor's independent belief about its own liability on the Note. As of the date of this Response, the Debtor has not amended its Schedules to remove this liability. At all times, from its First Day declaration to its current schedules, the Debtor readily admitted that it owed this liability.

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[33] Declaration of Frank Waterhouse in Support of First Day Motions, dated December 4, 2019, Dkt. 11 in Case No. 19-34054-sgj-11, annexed hereto as Exhibit 19 ("Ex. 19"), at App.1065-1108.
[34] *Id.*, ¶ 18, at App. 1071.
[35] *Id.,* ¶ 20, at App.1072.
[36] Ex. 1, Schedule E/F §§3.65 and 3.66, at App.0027.
[37] Ex. 16 at App. 1037, 1043-1044
[38] Ex. 2, Schedule E/F §§3.65 and 3.66, at App.0105.

D. The Debtor's Arguments about Failure of Consideration for the Note Are Inconsistent and Unavailing.

50. The Debtor also tries to argue that the Note is unenforceable due to a failure of consideration. When there is a written agreement between parties, the "written contract presumes that there was consideration for its execution." *Gooch v. Am. Sling Co*., 902 S.W.2d 181, 185 (Tex. App.—Fort Worth 1995, no writ) (citing *Wright v. Robert & St. John Motor Co*., 122 Tex. 278, 282, 58 S.W.2d 67, 69 (1933); *Hargis v. Radio Corp. of Am.*, 539 S.W.2d 230, 232 (Tex. Civ. App.—Austin 1976, no writ)).

51. Under Texas law, failure of consideration is recognized as an affirmative defense to an action on a written agreement. *See Nat'l Bank of Commerce v. Williams*, 125 Tex. 619, 84 S.W.2d 691, 692 (Tex. 1935). As such, the burden is on the Debtor to prove a failure of consideration.

52. There was no failure of consideration under the CLO Participation Agreement, to which HCLOM is not a party. As the Debtor admits in the Objection, "Highland and Acis appeared to perform their respective obligations under the [CLO Participation] Agreement through early November 2017." Objection at ¶ 2.

53. Nor was there a failure of consideration under the Note Transfer Agreement. The Note Transfer Agreement came about after the Debtor informed Acis that it was "unwilling to continue providing support personnel and other critical services to Acis with respect to the CLOs."[39] As explained above, HCLOM irrevocably agreed to step in as successor manager and Acis and HCLOM took efforts to effectuate the transfer as promised.

[39] Ex. 5, p. 1, at App.0137.

54. Any subsequent failure by Acis to transfer the Servicer Fees to HCMLP was not a failure by HCLOM, and such underlying claims have been released in the Debtor's settlement with Acis.

55. Additionally, Debtor has no standing to object to the Note Transfer Agreement. As a matter of law, the Debtor is not permitted to object to failure of consideration for a contract if the Debtor was not a party to that specific contract. *Berger v. Berger*, 578 S.W.2d 547, 549 (Tex. Civ. App. – Houston [1st Dist.] 1979, no writ) (holding a grantor was the only person who could set aside a deed for failure of consideration); *see also Lopez v. Morales*, No. 04-09-00476-CV, 2010 WL 3332318, at *3 (Tex. Civ. App. – San Antonio 2010, no pet.) (holding a grandson did not have standing to assert a claim for failure of consideration on behalf his grandfather when the grandson was not a party to the deed).

56. Even if payment on the Note is deemed an undeserved windfall, then it is a windfall received by Acis and allowed to occur by the Debtor and its counsel. Similarly, as asserted by the Debtor against Acis in the Acis Claim Objection, any claim by HCMLP against its alleged co-conspirators would be barred by *in pari delicto*, as HCMLP was a least equally culpable in all of the conduct it alleges."[40]

57. Texas courts refer to the doctrine of *in pari delicto* as the "unlawful acts rule." *Rico v. Flores*, 481 F.3d 234, 241 (5th Cir. 2007). It is an equitable affirmative defense which bars a party from asserting an action where the party itself has engaged in substantially equal wrongdoing or criminal conduct. *Id.* at 242. Although it is an open question in the Fifth Circuit *whether in pari delicto* can be asserted against a trustee or reorganized debtor, there is support for doing so.

[40] Ex. 15, ¶ 69, at App.1010.

See Osherow v. York, No. 5:17-CV-483-DAE, 2019 U.S. Dist. LEXIS 200382, at *16-17 (W.D. Tex. Aug. 5, 2019).

58. The same lawyers that signed the Objection in February 2023 signed the Acis Claim Objection in June 2020. The Debtor's First Day Declaration, which they also helped prepare, put them on notice of the issues surrounding the Note. The same lawyers assisted in negotiating the settlement of the Acis POC and sponsored Mr. Seery's testimony at the Acis 9019 hearing that the Note was a valid obligation of the Debtor.

59. The underlying facts and law are the same now as they were then, as are the persons making the arguments for the Debtor. If the Debtor is correct in its currently asserted arguments, then the Debtor's management and professionals permitted a windfall payment to Acis and the objection should be denied under the doctrine of *in pari delicto*.

E. The Debtor Has No Right to Setoff or Recoupment Against HCLOM.

60. Finally, the Debtor argues in the alternative that if its performance under the Note is not excused, its obligations are subject to setoff and recoupment.

61. As the Debtor noted in the Objection, recoupment requires that "(1) some type of overpayment must have been made, and (2) both the creditor's claim and the amount owed the debtor must arise from a single transaction." Objection, at ¶ 59 (citing *Sommers v. Concepción*, 20 S.W.3d 27, 35 (Tex. App. 2000)).

62. No overpayment has been made by the Debtor. As the Debtor admits in the Objection, "Highland and Acis appeared to perform their respective obligations under the [CLO Participation] Agreement through early November 2017." Objection at ¶ 2.

63. Nor did the Scheduled HCLOM Claims and HCMLP's alleged right to Servicer Fees arise from a single transaction. Any amounts owed to the Debtor arose under the CLO

Participation Agreement and the Scheduled HCLOM Claims arose under the Note, which was assigned to HCLOM over a year later pursuant to the Note Transfer Agreement.

64. Setoff is similarly unavailable to the Debtor. "In order for one demand to be set off against another, there must be mutuality." *F.D.I.C. v. Projects American Corp.*, 828 S.W.2d 771, 772 (Tex. App. - Texarkana1992, writ denied). "Mutuality of demand exists where debts are owing between the same parties in the same right or capacity." *Id.*

65. Here there is no mutuality. HCLOM had no obligation to pay the Debtor under the Note Transfer Agreement. Any right of the Debtor to be paid is against Acis, and such claims were unequivocally released in the Acis settlement.

WHEREFORE, HCLOM respectfully requests that this Court enter an Order (i) overruling the Objection; (ii) allowing the HCLOM Scheduled Claims; and (iii) granting such other and further relief as this Court may deem equitable and proper.

Dated April 3, 2023

Respectfully submitted,

STINSON LLP

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on April 3, 2023, a true and correct copy of this document was served electronically via the Court's CM/ECF system to the parties registered or otherwise entitled to receive electronic notices in this case.

/s/ Deborah Deitsch-Perez
Deborah Deitsch-Perez

Exhibit 44

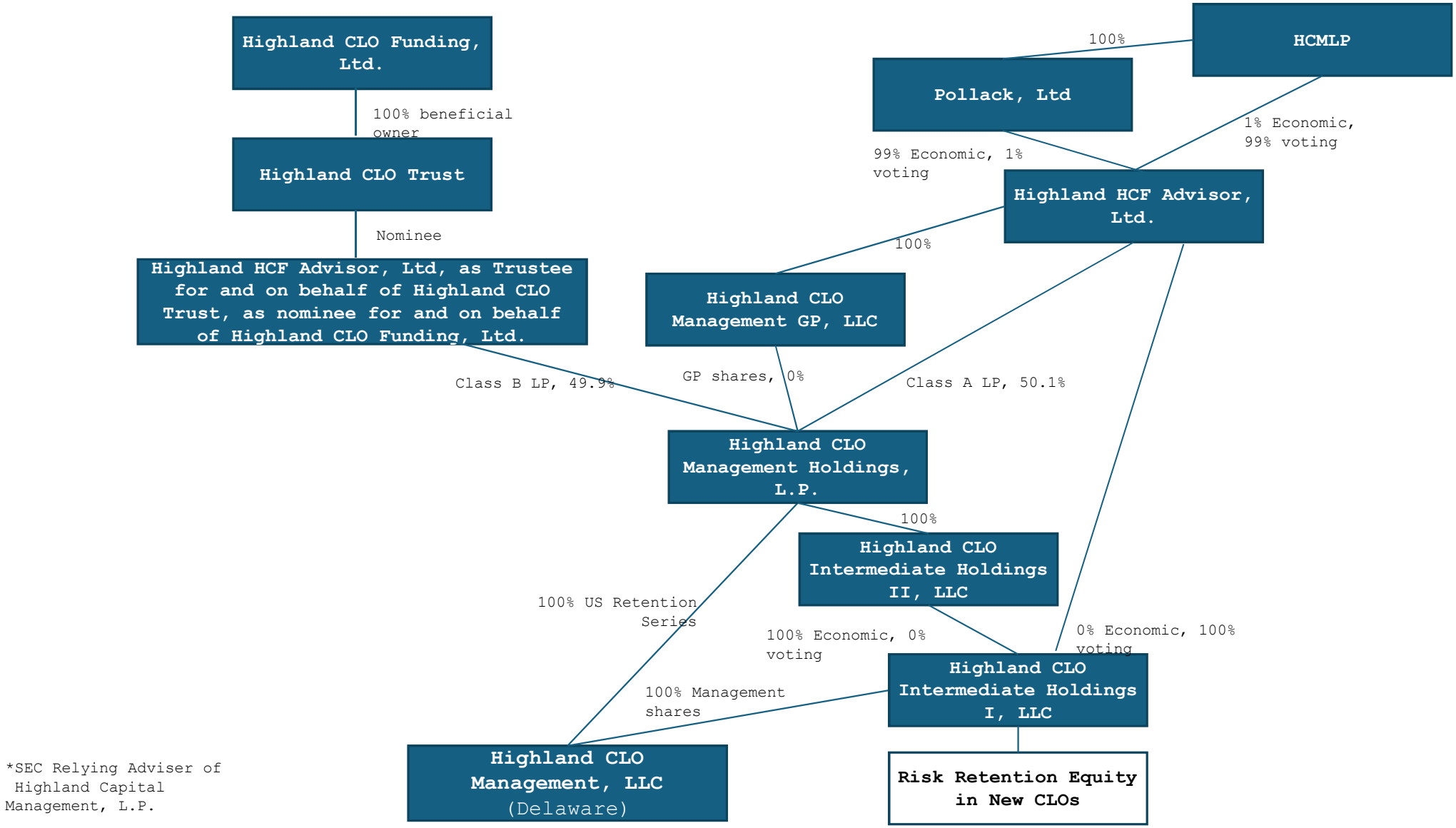
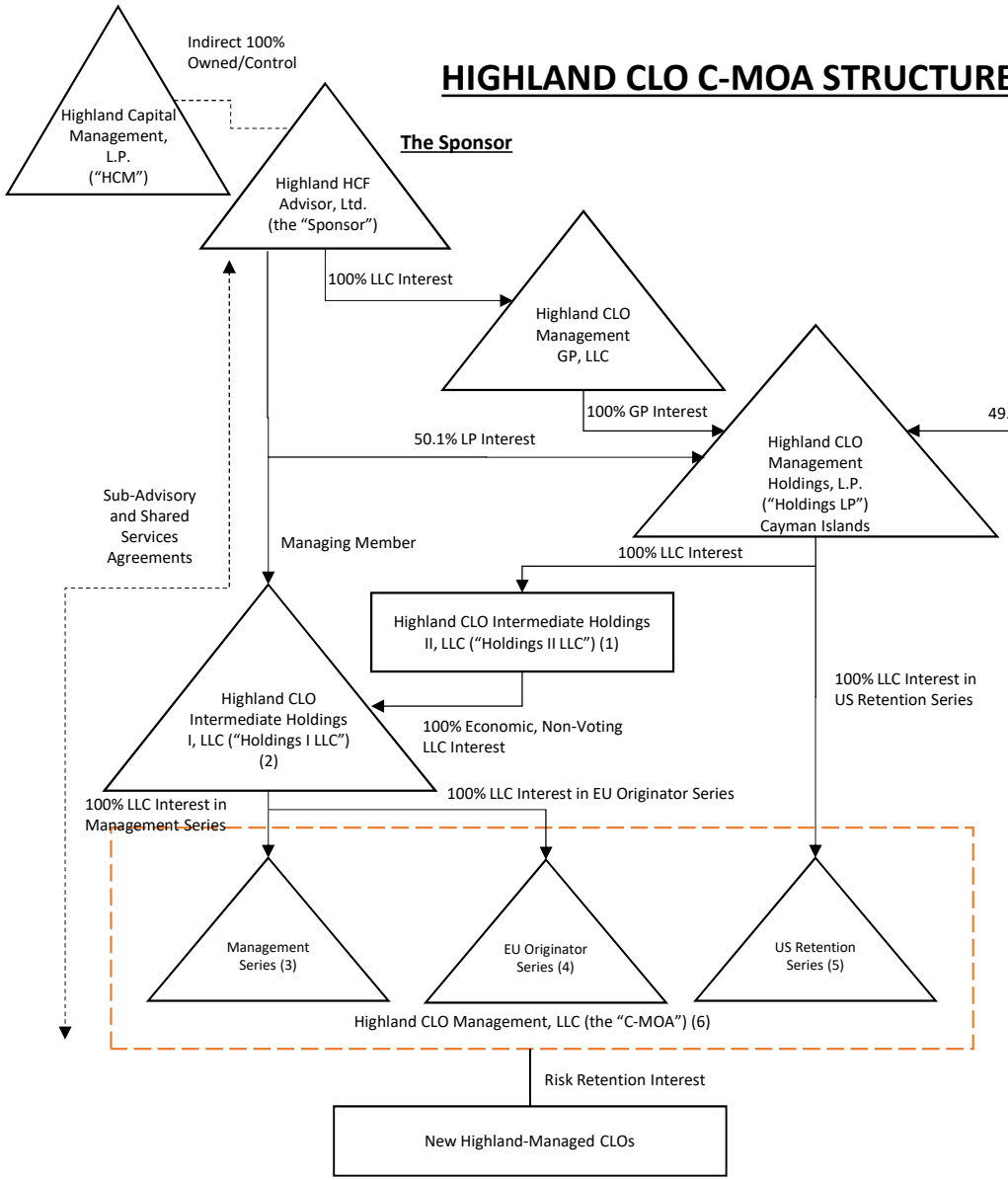

Highland CLO Funding, Ltd.
100% beneficial owner
Highland CLO Trust
Nominee
Highland HCF Advisor, Ltd, as Trustee for and on behalf of Highland CLO Trust, as nominee for and on behalf of Highland CLO Funding, Ltd.
100%
HCMLP
Pollack, Ltd
1% Economic, 99% voting
99% Economic, 1% voting
Highland HCF Advisor, Ltd.
100%
Highland CLO Management GP, LLC
Class B LP, 49.9%
GP shares, 0%
Class A LP, 50.1%
Highland CLO Management Holdings, L.P.
100%
Highland CLO Intermediate Holdings II, LLC
100% US Retention Series
100% Economic, 0% voting
0% Economic, 100% voting
100% Management shares
Highland CLO Intermediate Holdings I, LLC
Highland CLO Management, LLC (Delaware)
Risk Retention Equity in New CLOs
*SEC Relying Adviser of Highland Capital Management, L.P.

Exhibit 45

HIGHLAND CLO C-MOA STRUCTURE



Explanation:

(1) A Delaware LLC that elects to be treated as a corporation for tax purposes.

(2) A Delaware LLC treated as a partnership for tax purpose.

(3) Management Series of the C-MOA that is disregarded as separate from Holdings I LLC for tax purposes.

(4) EU Originator Series of the C-MOA that is disregarded as separate from Holdings I LLC for tax purposes.

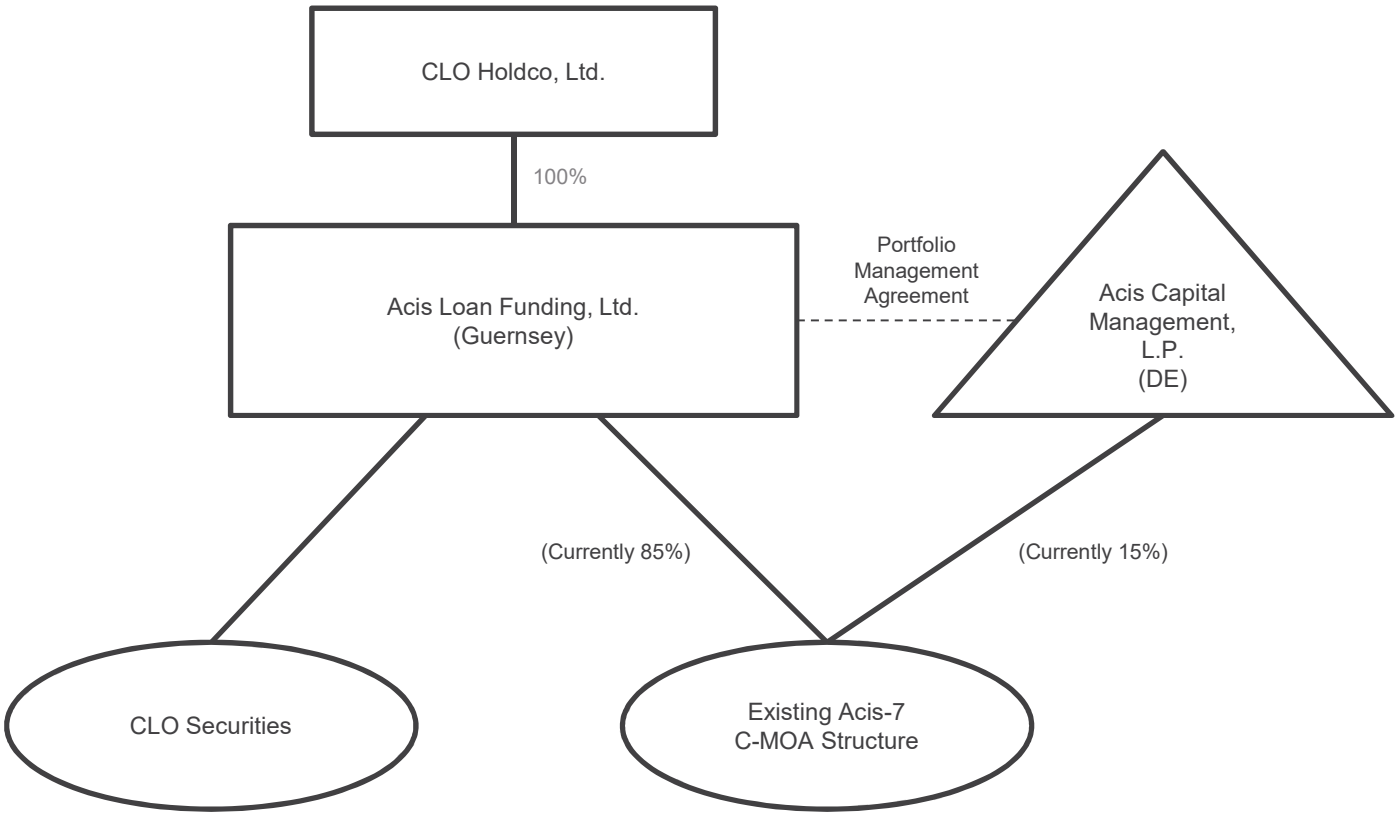
(5) US Risk Retention Series of the C-MOA that is disregarded as separate from Holdings LP for tax purposes.

(6) A Delaware series LLC and the portfolio manager of new CLOs sponsored by HCM.

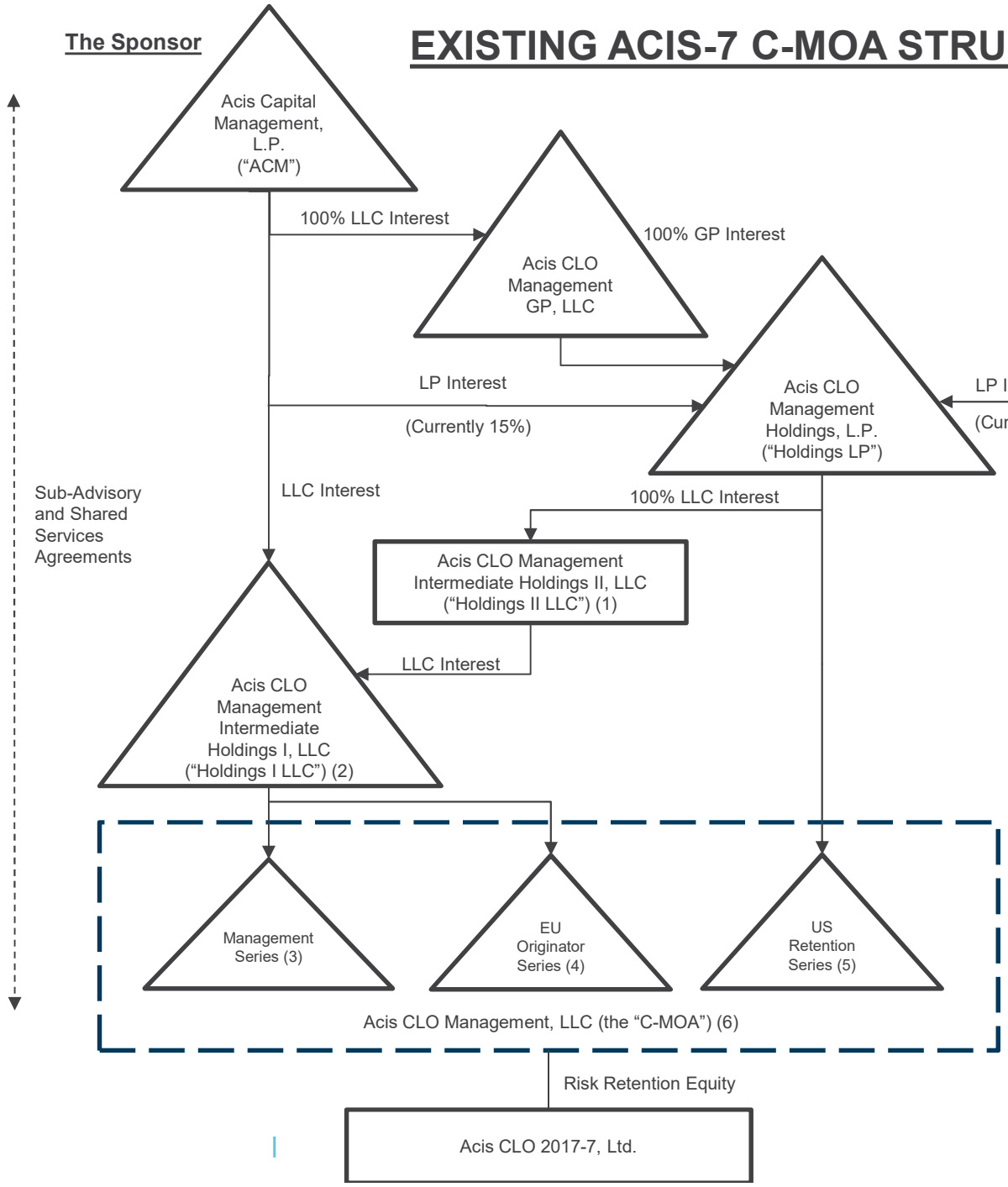
- 11bps of the 15bps total senior and sub management fees received by Management Series are paid to HCM under the Sub-Advisory and Shared Services Agreements.
- The remaining fee income flows up to Holdings I LLC, and thereafter allocated between Holdings II LLC and the Sponsor.
- Holdings II LLC pays corporate tax on its share of the fees and distributes the after-tax proceeds to Holdings LP.
- Holdings LP specially allocates the distribution income Holdings II LLC to Highland CLO Funding Ltd.

Exhibit 46

PRIOR FUND STRUCTURE



EXISTING ACIS-7 C-MOA STRUCTURE



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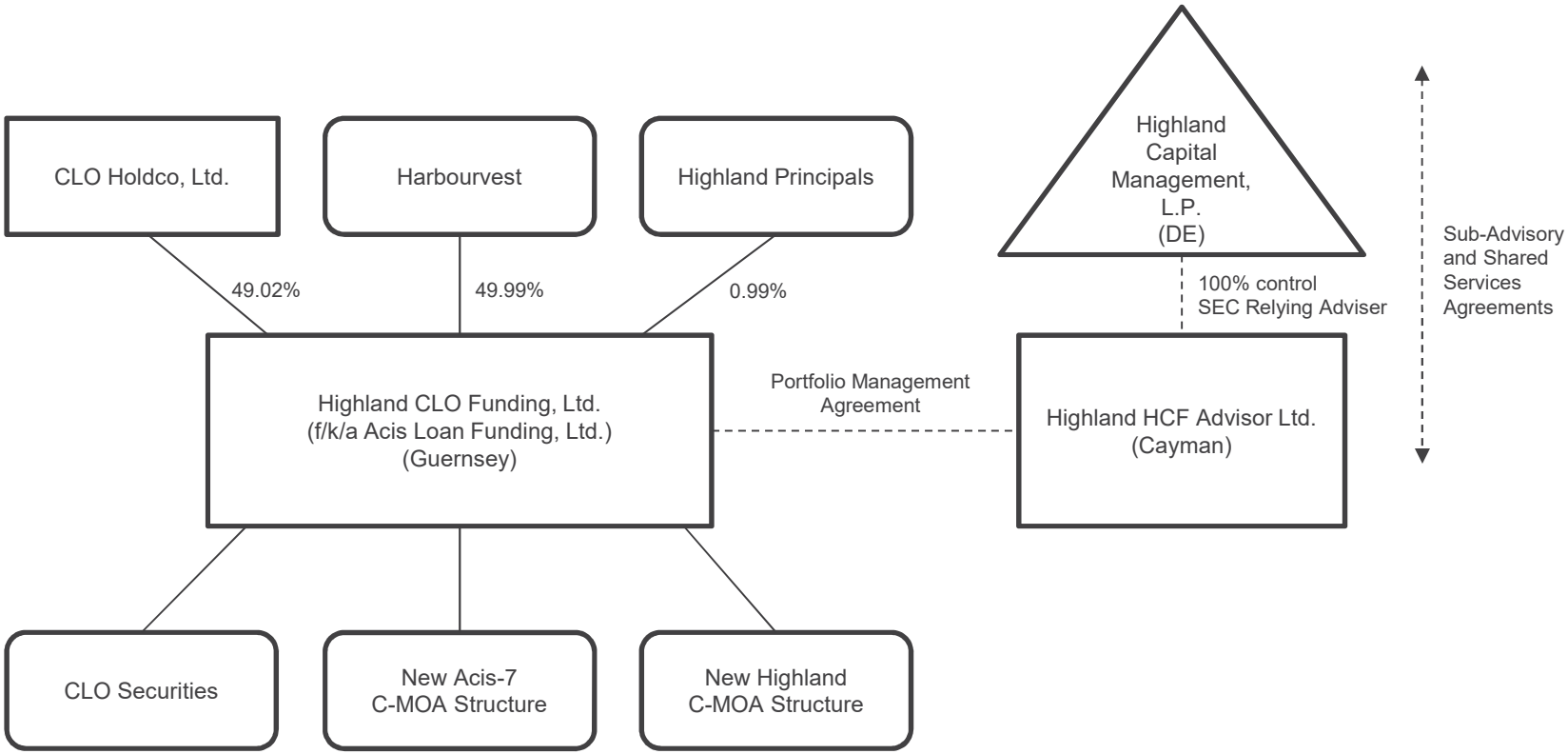
(5) US Risk Retention Series of the C-MOA that is disregarded as separate from Holdings LP for tax purposes.

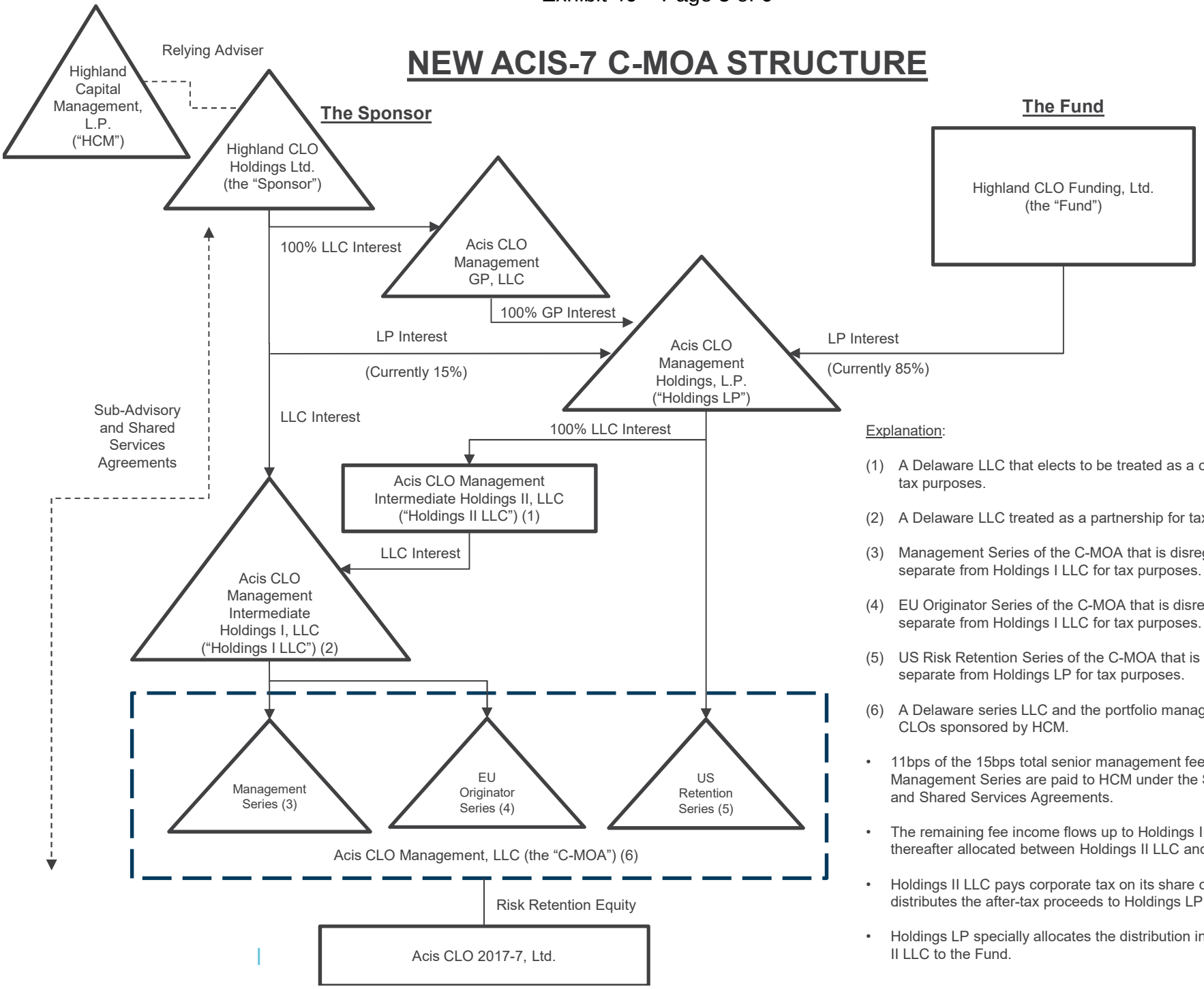
(6) A Delaware series LLC and the portfolio manager of new CLOs sponsored by ACM.

- 11bps of the 15bps total senior management fees received by Management Series are paid to ACM under the Sub-Advisory and Shared Services Agreements.
- The remaining fee income flows up to Holdings I LLC, and thereafter allocated between Holdings II LLC and ACM.
- Holdings II LLC pays corporate tax on its share of the fees and distributes the after-tax proceeds to Holdings LP.
- Holdings LP specially allocates the distribution income Holdings II LLC to the Fund.

NEW STRUCTURE



NEW ACIS-7 C-MOA STRUCTURE



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(6) A Delaware series LLC and the portfolio manager of new CLOs sponsored by HCM.

- 11bps of the 15bps total senior management fees received by Management Series are paid to HCM under the Sub-Advisory and Shared Services Agreements.
- The remaining fee income flows up to Holdings I LLC, and thereafter allocated between Holdings II LLC and HCM.
- Holdings II LLC pays corporate tax on its share of the fees and distributes the after-tax proceeds to Holdings LP.
- Holdings LP specially allocates the distribution income Holdings II LLC to the Fund.

NEW HIGHLAND CLO C-MOA STRUCTURE

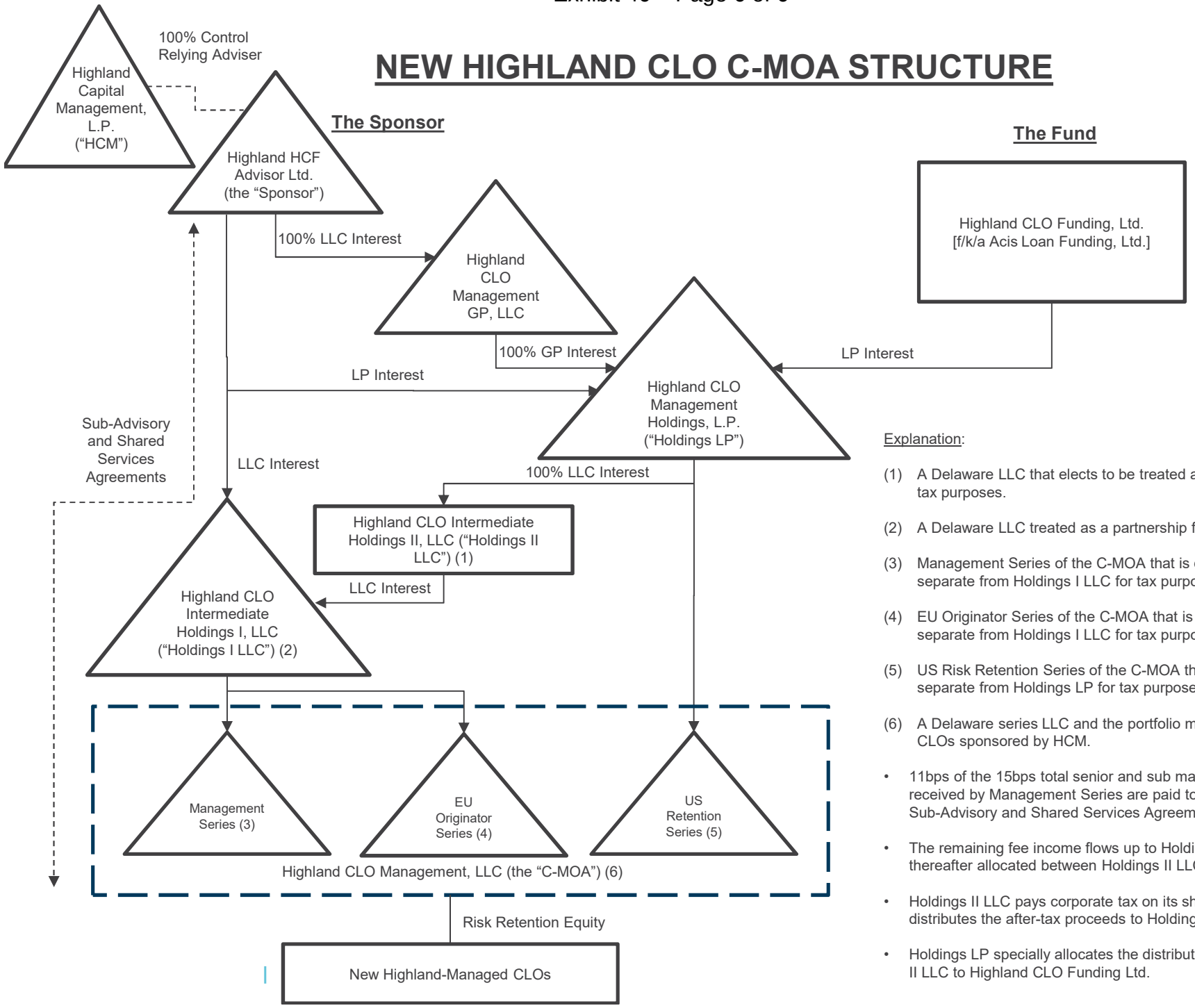

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Exhibit 47

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	)	
	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,	)	Case No. 19-34054-sgj11
	)	
Reorganized Debtor.	)	

ORAL/ VIDEOTAPED/ REALTIME DEPOSITION OF

FRANK WATERHOUSE

INDIVIDUALLY AND AS CORPORATE REPRESENTATIVE OF

HIGHLAND CLO MANAGEMENT, LTD.

SEPTEMBER 24, 2024

ORAL/ VIDEOTAPED/ REALTIME DEPOSITION OF FRANK WATERHOUSE, produced as a witness at the instance of the Reorganized Debtor, and duly sworn, was taken in the above-styled and numbered cause on September 24, 2024, from 10:09 a.m. to 4:44 p.m., before Christy Cortopassi, CSR in and for the State of Texas, reported by machine shorthand, at the law offices of Stinson LLP, 2200 Ross Avenue, Suite 2900, Dallas, Texas 75201, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto.

A P P E A R A N C E S

FOR THE REORGANIZED DEBTOR:

Mr. John Morris
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310.277.6910
jmorris@pszjlaw.com

FOR HIGHLAND CLO MANAGEMENT, LTD.:

Mr. Michael P. Aigen
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2200 Ross Avenue
Suite 2900
Dallas, Texas 75201
214.560.2201
michael.aigen@stinson.com

ALSO PRESENT:
Alexis Frank - Videographer

INDEX

EXHIBITS

Please be advised that an UNCERTIFIED ROUGH DRAFT version of this transcript exists. If you are in possession of said rough draft, please replace it immediately with this CERTIFIED FINAL TRANSCRIPT.

P R O C E E D I N G S

THE VIDEOGRAPHER: We are going on the record in the videotaped deposition of Frank Waterhouse for Highland CLO Management, LTD.

This deposition is being taken under the Federal Rules of Civil Procedure in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, in re: Highland Capital Management, LP, Chapter 11, Case Number 19-34054-SGJ11.

Today's date is September 24, 2024. The time is 10:09 a.m. This is the start of Media 1.

For the record, counsel will state their appearances and the court reporter will swear in the witness.

MR. MORRIS: Good morning, John Morris, Pachulski Stang Ziehl & Jones for the reorganized Debtor, Highland Capital Management, LP.

MR. AIGEN: Michael Aigen from Stinson representing HCLOM.

FRANK WATERHOUSE,

having been first duly sworn, testified as follows:

EXAMINATION

BY MR. MORRIS:

Q. Good morning, Mr. Waterhouse,

A. Good morning.

Q. I'm going to give to you a document that has been labeled Highland Capital Management's Amended Notice of Rule 30(B)(6) Deposition and ask you if you -- I would like to mark that as Exhibit 1.

MR. MORRIS: Do you have a stapler?

Thank you.

(Exhibit 1 marked.)

Q. (BY MR. MORRIS) Have you had a chance to look at Exhibit 1, sir?

A. Yes.

Q. Have you seen it before?

A. I haven't -- I don't think I have seen this particular document.

Q. Have you seen a form of this document before?

A. Yes.

Q. Do you understand that you are here today in your individual capacity and as in your capacity as a corporate representative of Highland CLO Management Ltd.?

A. I thought I was just the representative for HCLOM but if I'm here individually, then understood.

Q. And do you understand that as the corporate representative of Highland CLO Management, Ltd., your answers and testimony will be binding on that entity?

MR. AIGEN: Objection; form.

A. Yes.

Q. (BY MR. MORRIS) If I use the phrase "HCLOM," will you understand that I'm referring to the entity that is named Highland CLO Management, Ltd. and no other entity?

A. I'm sorry. You said HCLOM?

Q. Yes.

A. Yes.

Q. Are you aware that there's a different entity called Highland CLO Management, LLC?

A. I'm not aware. I just don't recall.

Q. So when I use the phrase "Highland CLO Management, Ltd.," I'm -- withdrawn.

When I use the phrase "HCLOM," I'm only referring to Highland CLO Management, Ltd. Do you understand that?

A. Yes.

Q. Okay. Did you do anything to prepare for today's deposition?

A. Yes.

Q. What did you do?

A. I met with Michael here and Deborah. We went through documents and just had a discussion.

Q. Did any of the documents refresh your recollection?

A. Yes. I mean, the -- they refreshed recollection to the extent that I had memories of that.

Q. Okay. And can you describe for me the documents that you reviewed that refreshed your recollection in any way?

A. Yes. There was a note agreement between Highland and Acis. There was a purchase and sale agreement of servicing fees between Acis and Highland. There was a transfer agreement between Acis for the note or there was a transfer agreement from the note between Acis and HCLOM.

We reviewed other documents like topics. We reviewed Pachulski's, I don't know, we'll call it observations, Stinson's answers, things like that.

Q. Did you review any emails?

A. No.

Q. Did you review any transcripts of any prior testimony or any prior proceeding?

A. I briefly reviewed some testimony, yes.

Q. And do you recall who was testifying?

A. It was Jim Dondero.

Q. And do you know, was that in the Highland case or was that in the Acis case; do you recall?

A. That was the Acis case.

Q. And do you recall if it was deposition

testimony or trial testimony or both?

A. I don't recall that.

Q. Did you review an entire transcript on your own?

A. No.

Q. Were there portions of the transcript that you were focused on?

A. Not really. Just scanning the document that was provided to me.

Q. Were you previously familiar with Mr. Dondero's testimony as you read it?

A. No.

Q. So can you describe for me what you recall about the testimony that you read?

A. Yeah. It was focused around the transactions between Highland and Acis.

Q. And was the note and the purchase and sale agreement and the transfer agreement among the transactions that were the subject of the deposition testimony that you reviewed?

A. I don't know, because they weren't specifically stated.

Q. Did you review any other -- withdrawn.

You are aware that at some point Acis was put into involuntary bankruptcy, right?

A. Yes.

Q. Okay. And you just testified that you reviewed at least portions of the transcript in which Mr. Dondero gave testimony in connection with the Acis bankruptcy, right?

A. Yeah. I believe it's a transcript or a summary or something that had portions of what he testified. I mean, it wasn't -- I have reviewed transcripts where you have people's names. It wasn't like that, but it was testimony that Jim Dondero gave.

Q. Do you recall if you reviewed any other document or transcript that was created in connection with the Acis bankruptcy?

A. I did not.

Q. Are you aware that there's ongoing litigation in the Acis bankruptcy between Acis and Mr. Dondero?

A. I am not.

Q. Do you recall what year Mr. Dondero testified that resulted in the transcript that you reviewed?

A. I don't know.

Q. Did you speak with anybody other than counsel in connection with the preparation for today's testimony?

A. I did not.

Q. So just to be clear, you're here today as

HCLOM's 30(b)(6) witness but you never spoke with Mr. Dondero to prepare for today's deposition, correct?

A. Correct.

Q. Do you know who John Cullinane is?

A. I know -- yes. He's -- yes, I do.

Q. Did you make any attempt to speak with Mr. Cullinane in connection with the preparation for today's deposition?

A. I did not.

Q. Have you ever spoken with Mr. Cullinane?

A. No.

Q. Have you ever communicated with Mr. Cullinane by email or otherwise?

A. Not that I recall. But I don't have access to emails that I would have acted in a capacity. So I could have, but I don't remember.

Q. Okay. How about J.P. Savilla, did you speak with him as part of your preparation for today's deposition?

A. No.

Q. Did you speak with Scott Ellington to prepare for today's deposition?

A. No.

Q. Did you speak with Isaac Levanton to prepare for today's deposition?

A. No.

Q. So again, other than counsel, you did not speak with any person to prepare for today's deposition; is that fair?

A. Correct.

Q. Let's just look at the topics quickly on Exhibit 1. If you can turn, I guess, to the document that says 7 of 9 at the top. You will see their topics.

A. Uh-huh.

Q. The first topic concerns the purchase agreement. Do you see that?

A. Yes.

Q. And did you review the purchase agreement to prepare for answering questions on Topic 1?

A. Yes. I reviewed the purchase agreement.

Q. Are there any other documents that you reviewed to prepare for answering questions on Topic 1 --

MR. AIGEN: Objection; form.

Q. (BY MR. MORRIS) -- that you recall?

A. I just read portions of the purchase agreement and discussed it with counsel.

Q. Okay. Would the answer be the same for the note, do you recall -- withdrawn.

Did you review the note?

A. Yes.

Q. Okay. Do you recall reviewing any other documents to prepare to answer questions about the note?

A. No. I -- no.

Q. How about the assignment, did you review the assignment?

A. Yes.

Q. And did you review any other documents to prepare to answer questions concerning the assignment?

A. No.

Q. I have defined the term "ancillary agreement" to refer to several other agreements. Are you prepared to answer questions on the topic of the ancillary agreements?

A. Yeah. We did review other ancillary agreements as well. So yes.

Q. And when you say other ancillary agreements, if we can go to the definition of ancillary agreement, it refers specifically to three agreements or four agreements, rather.

A. Yes. Counsel and I reviewed the forbearance agreements.

Q. Right.

A. And the acknowledgement -- we reviewed these agreements together.

Q. Did you review any other agreement other than

the ancillary agreements and the ones that were the subject of the prior topics in connection with the preparation of today's deposition?

A. Not that I'm aware.

Q. Okay. On the next page, Topic 5 refers to actually one more agreement, the cancellation agreement.

Are you familiar with the cancellation agreement?

A. Cancellation agreement? Generally.

Q. Okay. How about the formation and operation of HCLOM, are you prepared to testify as to the facts and circumstances concerning the formation and operation of HCLOM?

A. Yes.

Q. And are you prepared to testify to the balance of the topics that are here? We don't need to go through them all, but is it safe to say that you are prepared to testify to all topics on this notice?

A. Sure.

Q. Okay. What's your current position, sir?

A. I'm the chief financial officer for Skyview Group.

Q. And what is Skyview Group?

A. Skyview Group is a -- it's an entity that provides back-office services to financial services

firms.

Q. Does Skyview Group provide financial services to any firm in which Mr. Dondero lacks an ownership, a direct or indirect ownership interest, or control position?

A. Yeah, there are entities -- if you are asking -- if I'm understanding your question correctly, that Skyview Group provides services to -- that are not -- that Mr. Dondero does not own, yes. If that's the question.

Q. It was a little broader than that. Don't worry. I'll just move on.

Did you ever serve as an officer of HCLOM?

A. I don't recall.

Q. Do you know if you're an officer of HCLOM today?

A. I don't know. But I am the representative.

Q. For today's deposition?

A. For today's deposition.

Q. I appreciate that.

Did you ever serve as a director of HCLOM?

A. No.

Q. No. So you can affirmatively state that you have never served as a director but you are unsure as to whether you have ever served as an officer; is that

fair?

A. Correct.

(Exhibit 2 marked.)

Q. (BY MR. MORRIS) All right. Let's mark as Exhibit 2, a document ending in Bates Number 9363 and it's certain resolutions that are dated October 27, 2017. Let me know when you have had a chance to review that.

A. Okay. Okay.

Q. All right. So do you understand that these are certain resolutions that were prepared for HCLOM?

A. I think that's -- yeah, that's what it appears to be.

Q. Have you ever seen this document before?

A. Not that I recall.

Q. You didn't see this document in connection with your preparation for today's deposition, right?

A. I did not.

Q. Do you see that it's signed and dated as of October 27, 2017?

A. Yes.

Q. Do you understand that that's the date on which HCLOM was formed?

A. That's what this -- yes.

Q. Okay. And do you see that under paragraph two,

Summit Management, Limited was appointed the sole director of HCLOM?

A. Yes.

Q. Do you know who Summit Management, Limited is?

A. It's -- they are the directors of HCLOM.

Q. Do you know where Summit Management, Limited is located?

A. They would be located in where this entity was incorporated.

Q. Do you know where this entity was incorporated?

A. Yeah, I believe it was the Cayman's.

Q. What's the basis for that belief?

A. Just looking at Ltd., you know, reviewing the documents with counsel prior, John Cullinane, as you alluded to, was a director. So, you know, he's -- this is an officer entity. So that's my belief.

Q. Okay. Do you know how Summit Management came to be HCLOM's sole director at formation? Do you know who decided that?

A. I don't.

Q. Are you aware of any communications with either Mr. Cullinane or Summit Management, Limited concerning the formation of HCLOM?

A. I -- I'm -- no. I'm not aware of any communications.

Q. Do you know whether someone at Highland caused HCLOM to be created?

A. Do I know why someone at Highland --

Q. Do I know -- withdrawn.

Do you know whether Highland caused HCLOM to be created?

A. I don't know who formed HCLOM.

Q. Were you aware that HCLOM was formed in October 2017?

A. Generally, yes.

Q. Do you recall any discussions concerning the formation of HCLOM?

A. I generally recall discussions of -- yes, of HCLOM's formation.

Q. Who did you have those discussions with?

A. Generally been the Highland legal team and Mr. Dondero.

Q. Do you recall anything about your conversations with the Highland legal team and Mr. Dondero concerning the formation of HCLOM?

MR. AIGEN: And, John, I just want to interject. Obviously, that brings a privilege but it is your privilege. Are you willing to waive privilege related to that?

MR. MORRIS: We have waived all privileges

prepetition.

MR. AIGEN: Okay.

MR. MORRIS: So can't call that back now. That was in the Kirschner suit.

MR. AIGEN: Okay.

A. I, generally, recall with the need for HCLOM to be formed due to the issues that Acis was having.

Q. (BY MR. MORRIS) What issues was Acis having?

A. Acis was -- basically had a large liability to Josh Terry that it was not able to meet. You know, it wasn't in a position to continue to serve as the manager for the CLOs that it managed. So therefore, there was a need to create a new CLO asset manager.

Q. Okay. So is it fair to say that in October 2017, you discussed with Highland's team and Mr. Dondero the need to form HCLOM, who was intended to substitute as the collateral manager and portfolio manager of the Acis CLOs?

A. I don't recall specifically whether that was in October. I don't -- I don't remember. But I remember generally that there were discussions about the issues that Acis was having and therefore there was a need to create a successor asset manager for the CLOs.

Q. Was Acis facing any issues other than the adverse judgment that Mr. Terry obtained?

A. From what I re- -- yes.

Q. Can you identify any issue that Acis was confronting in October 2017 that caused the formation of HCLOM, other than Mr. Terry's judgment -- or arbitration award?

A. Again, I can't speak directly to the date. So I don't know if it was October 2017. But Highland, from what I recall, notified Acis that it would no longer support Acis from a personnel prospective.

Q. Anything else?

A. I generally recall that having been told that the investors in the CLOs did not want to be associated with Acis due to its difficulties.

Q. Who told you that?

A. Just Highland personnel.

Q. Do you know -- can you tell me -- can you identify any of Highland's personnel who told you that, in fact, investors didn't want to be associated with Acis?

A. These were general discussions that I don't -- I mean, I -- this was seven years ago. I generally recall those discussions being had or being informed of them. I can't tell you who exactly or where. This was seven years ago; it's a long time.

Q. Do you recall if any investors were identified?

A. I -- I -- as an asset manager, what I do recall is that, you know, the asset manager knows who the investors are that are invested in the deals, especially the CLO. So I don't recall who those investors were, but we had a team at Highland who's -- that's what they did and, you know, they were in touch with those investors.

Q. Okay. But my only question is whether you recall whether anybody identified any particular investor who expressed the view that they didn't want to be associated with Acis any longer?

A. I don't recall. Again, I heard -- I remember general conversations. So I don't recall.

Q. Do you recall whether any of these conversations occurred before the Terry arbitration award was issued?

A. I don't remember.

Q. Do you know why HCM, LP told Acis it would no longer support it?

A. I don't remember specifically, no.

Q. Do you know whether HCLOM ever engaged in any business activities?

MR. AIGEN: Objection; form.

A. Yes, generally.

Q. (BY MR. MORRIS) Can you describe the business

activities that you believe HCLOM engaged in?

A. Well, HCLOM was formed to be the successor CLO servicer for the Acis deals.

Q. I appreciate that's the reason it was formed. But it never served in that capacity, correct?

A. Correct.

Q. Okay. So did HCLOM ever generate a dollar of revenue?

A. Not that I'm aware.

Q. Did HCLOM ever incur any expenses?

A. It may have -- I don't remember. There may have been some expenses incurred for formation.

Q. As well as preps, director fees; is that right?

A. Perhaps.

Q. Okay. And are you aware that Highland paid all of HCLOM's expenses?

A. I don't remember.

Q. Other than formation expenses and perhaps director's fees or other lawyer's fees, do you know whether HCLOM ever incurred any other expenses?

A. I don't have access to HCLOM's records. So I don't know.

Q. You were the treasurer of HCLOM, right?

A. I -- like I said earlier, I don't know.

Q. Do you know if HCLOM ever had any employees?
A. Not that I'm aware.
Q. Do you know if HCLOM ever had a shared services agreement with Highland or any other entity?
A. Not that I remember.
Q. Do you know if HCLOM was ever party to an advisory agreement or a sub-advisory relationship with Highland or any other entity?
A. Not that I'm aware.
(Exhibit 3 marked.)
Q. (BY MR. MORRIS) Okay. All right. Let's mark as Exhibit 3 a one-page document ending in Bates Number 1373468, which are written resolutions of HCLOM dated February 7, 2018, and have you had a chance to review this exhibit, sir?
A. Yes.
Q. And have you ever seen this before?
A. Not that I recall.
Q. Do you see that you are identified as the treasurer of HCLOM?
A. Yes.
Q. But until you saw this document, you had no recollection of being HCLOM's treasurer; is that fair?
A. I don't have recollection but, you know, I'm not surprised that I was named treasurer due to my

former position at Highland Capital Management. So I just didn't remember if I was or not.

Highland Capital Management owned a lot of entities and so there was -- you know, he had a lot of assets under management, things like that. So, I mean, I can't remember every single position that I'm a part of.

Q. Right. But this is the entity that is asserting a $10 million claim against Highland, right?

A. Again, I'm not the lawyer here. But, I guess, yes. Again, as the representative of HCLOM, I think HCLOM's books and records and all of their -- were held at Highland, or things like, you know, documents.

Q. Right. Do you see that we produced this document in response to your lawyer's request since it has got that Bates number on it?

A. If that's what the Bates number identifies, sure. I see a number here.

Q. All right. And one of the topics you were asked about, if you look back at Exhibit 1, is the formation and operation of HCLOM, including as set forth in subpart C, the identification, appointment, and/or selection of HCLOM's officers and directors.

Do you have any idea who HCLOM's officers and directors are today?

A. I do not.

Q. Other than the people identified as officers on Exhibit 3 and Summit Management, Limited who is identified as the director of HCLOM on Exhibit 2, are you able to identify who at any time was an officer or director of HCLOM?

A. I don't have a list of all the officers and directors at HCLOM, no.

Q. Okay. So is it fair to say you don't recall anybody discussing with you becoming the treasurer of HCLOM in February of 2018?

A. I don't remember those discussions, specifically.

Q. Okay. Is it fair to say that since you weren't aware that you were the treasurer of HCLOM, you didn't perform any services for HCLOM, in your capacity as the treasurer of HCLOM?

A. I don't recall myself providing services. You know, like I said, HCLOM was formed to be the successor manager of the Acis CLOs.

Q. And it never did that, correct?

A. It tried to. But, yeah, I mean, HCLOM tried to become the successor manager of the Acis CLOs. What I don't recall about providing services is there were -- you are asking -- I'm a representative, I'm an

individual and now you are asking me for treasurer.

So, John, it is a little bit difficult to kind of -- you know, HCLOM was working with the investors of the Acis deals because, again, there was issues with Acis.

So there were likely numbers that were needed. There were likely presentations, data, you know, things like that provided to those investors.

So I mean, again, do I remember specifically if I provided those services seven years ago when this was formed? I -- you know, that's so long ago. But HCLOM definitely did a lot of work. They tried hard, worked with investors, communicated with investors. There were resets that were in the market. They did a lot with the investors to become the successor managers of the Acis CLOs.

Q. Okay. Do you know if everything you just described was done not by HCLOM but by Highland CLO management, LLC, or do you not know the difference?

A. I don't recall.

Q. You don't recall that there were two entities that were called Highland CLO Management, one of which was Ltd. and one of which was LLC?

A. John is -- Pachulski and Highland has asserted throughout this case, there are thousands of entities in

the Highland company. I don't remember every single entity that was there.

Q. Okay.

A. And if we're talking about the substitution of one word seven years ago, I don't recall.

Q. Okay. Do you know if HCLOM ever held title to a bank account?

A. Not that I recall.

Q. Do you know if HCLOM ever had a bank account?

A. Not that I recall.

Q. Do you know if anybody ever prepared financial statements for HCLOM?

A. Not that I recall.

Q. Do you know if anybody ever maintained any books and records on behalf of HCLOM?

A. Not that I recall.

Q. Do you know if HCLOM was a registered investment advisor?

A. Not that I recall.

Q. Do you know if HCLOM was ever qualified to be a portfolio manager?

A. I mean, presumably. Right? When HCLOM is working with the investors to transfer the agreements to HCLOM, they would have demonstrated the ability to manage those assets. And, you know, the investors would

not have submitted, you know, these resets if they didn't feel confident that HCLOM had the ability to manage the CLOs.

Q. Have you ever seen a document concerning resets where HCLOM was identified as the proposed portfolio manager as opposed to Highland CLO Management, LLC?

A. I have not.

Q. Okay. I'm getting to my last document to try to move this along.

A. Okay.

Q. I'll mark as Exhibit 4 a document entitled Acknowledgment and Waiver, which begins at Bates Number ending in 2807.

(Exhibit 4 marked.)

Q. (BY MR. MORRIS) This is one of the ancillary documents that was cited in the Rule 30(b)(6) Notice.

Are you aware of that?

A. Yes.

Q. Have you seen this before?

A. Yes.

Q. Do you know what it is?

A. Yes.

Q. What is it?

A. Pursuant to the transfer agreement, it says here in paragraph -- "Acis was required to promptly

provide notice to the controlling class of each CLO and subsequent to the delivery notices to each of Acis and each H-C-L-O-M, HCLOM was required to promptly pursue an appointment for each CLO."

So basically -- this document basically waives that.

Q. Okay. And do you see that it is signed by Mr. Dondero on behalf of Highland and it's acknowledged by him on behalf of Acis?

A. Yes.

Q. And do you see Mr. Cullinane signed on behalf of HCLOM?

A. Yes.

Q. And do you see at the top that it's dated as of January 19, 2018?

A. Yes.

Q. And so this is just about, what, ten weeks after the transfer agreement is signed -- withdrawn.

I can bring it out if you would like, but do you recall that the transfer agreement was dated November 3rd, 2017?

A. It says under the paragraph two. So yeah, sure.

Q. Okay. So this acknowledgment and waiver is signed, what, about ten weeks later?

A. Yes.

Q. And it's signed by Mr. Dondero and Mr. Cullinane in their capacities as indicated?

A. Yes.

Q. Okay. And is there anything about this document that you think is inaccurate or incorrect?

MR. AIGEN: Objection; form.

A. Not that I'm aware.

Q. (BY MR. MORRIS) Okay. And you would agree, then, as set forth in paragraph three, "That pursuant to Sections 1 and 2 of the transfer agreement, Acis was required to promptly provide notice to the controlling class of each CLO, and subsequent to the delivery of the notices, each of Acis and HCLOM was required to promptly pursue an appointment for each CLO."

Have I read that accurately?

A. Yes.

Q. And are you aware that this acknowledgment and waiver is signed and executed before the involuntary bankruptcy was filed against Acis?

A. I don't remember the exact date for the Acis involuntary.

Q. Do you recall that it was at the end of January?

A. I remember it was towards the end of January.

Q. Right. And so HCLOM and Highland acknowledge in this document that A, each CLO was going to be reset.

Have I paraphrased that fairly?

A. Yes. It was intended for each CLO to be reset.

Q. B, that each reset transaction will need to comply with certain rules.

Is that fair?

A. Fair.

Q. C, in order to comply with those risk retention rules in connection with each reset, "Each applicable CLO issuer will appoint Highland CLO Management, LLC as the collateral manager of the CLO."

Do you see that?

A. Yes.

Q. Okay. So is it your understanding as the corporate representative of HCLOM, that in this acknowledgment and waiver from January 19, 2018, that HCLOM was acknowledging that Highland CLO Management, LLC would succeed Acis as the collateral manager and not HCLOM, Ltd.?

A. I don't know. I mean, I didn't draft this document or sign it. It could be just a typo.

Q. That's pure speculation on your part, right?

A. I -- yeah. I'm just -- but I don't know. But it could be just a typo.

Q. Well, do you still think it's a typo when you look at the next clause that says, "None of the notices have been nor will be delivered"?

A. That's what it says.

Q. And do you understand that to be a fact that as of January 19, 2018, quote, "None of the notices have been nor will be delivered pursuant to Section 1 of the transfer agreement and none of the appointments have been nor will be made pursuant to Section 2 of the transfer agreement"?

A. As of January 19, 2018, it is my understanding that none of the CLOs were reset at the time and -- but that's what this document says.

Q. Doesn't it also say that the notices and appointments required under the transfer agreement will never occur?

A. Yes.

Q. And, in fact, the notices and appointments described in the transfer agreement never occurred, correct?

A. Yes. But, I mean, there could be other ancillary reasons for that.

Q. Okay. But you are not aware of any?

A. I'm not aware of any.

Q. And is it fair to say that since the Acis

bankruptcy started after the date of this acknowledgment and waiver, that the Court's injunction preventing the resets had nothing to do with the failure to deliver the notices or attend the appointments as set forth in this document?

MR. AIGEN: Objection; form.

A. I mean, I can't say that with -- agree with that with certainty. I mean, if, again, it's asset managers talk to their investors, and yes, there are policies and procedures that are in deal, but if you are talking to investors and they're going to reset deals or do certain things, the manager and the investors can -- you know, they can agree to whatever they want to agree to.

So I wasn't in any of these discussions; that wasn't my position. But it doesn't surprise me that an asset manager or the investors can say, "Hey, we're going to reset these deals. We are just not going to give you these notices, because we're talking about it, you don't need it."

I mean, I'm not saying it didn't happen; I'm not saying it did happen. But it wouldn't surprise me that this -- that something like this would be filed.

MR. MORRIS: I'm going to move to strike.

Q. (BY MR. MORRIS) Let's try and take this in

smaller bites.

A. Well, you were asking about if these were delivered.

MR. AIGEN: Let John ask a question.

THE WITNESS: Okay.

Q. (BY MR. MORRIS) Are you prepared to testify about the resets?

A. I know generally of the resets.

Q. Okay. And does your general knowledge include knowledge about the identity of the specific entity that was identified in 2018 to be the substitute collateral manager and portfolio manager for the Acis CLOs?

A. I'm sorry. I don't follow the question.

Q. Do you know who -- withdrawn.

Do you know the name of the entity that was designated in 2018 to be the successor collateral manager or portfolio manager of the Acis CLOs?

A. I mean, Highland CLO manager or HCLOM, as we have been referring to it, it was my general understanding that it was going to be the manager.

Q. And looking at this document, was it your understanding that it was going to be HCLOM, Ltd. or HCLOM, LLC or you didn't really have an understanding at the time?

A. Well, I -- again, Highland CLO Management, LLC

could be a subsidiary of HCLOM, Ltd. I mean, I don't --

Q. Do you have any facts that support that statement?

A. Well, just given the fact that HCLOM was going to be the successor manager, it just makes sense.

Q. Okay. Other than what you think makes sense, are you aware of any facts? Do you know who owns HCLOM?

A. Yeah. Today, yeah. Yes.

Q. And who owns HCLOM?

A. Dugaboy and Okada.

Q. Okay. And who owns HCLOM, LLC?

A. I don't know who the name there is -- or who the owner is. I said it could be the -- it could be HCLOM, for all I know.

Q. Or it could be you, right?

A. Well, no. I would know if I owned it.

Q. You didn't know you were the treasurer of HCLOM; isn't that right?

A. That doesn't mean I -- being a treasurer and owning something --

MR. AIGEN: Objection; form. I don't think that was a serious question.

A. Being treasurer and owning something are pretty big distinctions.

Q. (BY MR. MORRIS) Well, is there a distinction

in your -- if -- I think you said that you thought HCLOM was formed in the Cayman Islands because it ended in Ltd. Do I have that right?

A. Yes.

Q. Okay. In your experience, do Cayman Island entities ending in LLC, are they formed in the Cayman Islands?

A. Well, this says here it's a Delaware Limited Liability Company and it says it right there.

Q. Okay.

A. But that doesn't mean that -- just because you have an officer entity, it doesn't mean that an officer entity can't be owned by an officer, you know.

Q. It's a very simple question, sir. Can you tell me any facts to support your speculation --

A. It --

Q. Let me finish the question.

A. Okay.

Q. -- that there is an ownership relationship between HCLOM, Ltd. and HCLOM, LLC?

A. No. It's generally based on my experience of being the CFO at Highland Capital Management for -- for my work there since being employed from October of 2006 to February of 2021.

MR. MORRIS: Okay. I move to strike

everything after the word "no."

Q. (BY MR. MORRIS) And I will ask you to turn back to Exhibit 1, and let's look at Topic 6(e), which refers to the direct or indirect ownership of HCLOM at all time since formation and the timing and reasons for ownership changes.

I think you mentioned that Dugaboy and Mr. Okada owned HCLOM; is that right?

A. They're the owners now, yes.

Q. And have there ever been any other owners of HCLOM?

A. Yes.

Q. Who were the other owners of HCLOM?

A. Highland Capital Management.

Q. And when was Highland Capital Management the owner of HCLOM?

A. I think as recently as 2022.

Q. Are you sure that Highland had an ownership interest as opposed to a voting interest?

A. I -- it may have had both. I don't -- I don't -- it's my understanding that Highland was the owner of HCLOM until a few years ago.

Q. Has any other person or entity ever had an ownership in HCLOM, other than Highland Capital Management, L.P., Mr. Okada, and Dugaboy?

A. Not that I'm aware.

Q. Did you do any work to prepare to answer questions about the ownership of HCLOM or were you just going from your memory?

A. Just what I generally understand or know.

Q. Okay. And based on your general understanding, you have no reason to believe that Highland CLO Management, LLC ever had an ownership interest in Highland CLO Management, Ltd., correct?

A. I don't recall Highland CLO Management. I --

Q. I'm not sure that -- that sounded like a fragment there.

A. Sorry.

Q. I'm going to ask the question again.

Based on your general understanding, you have no reason to believe that Highland CLO Management, LLC ever had a direct or indirect ownership interest in Highland CLO Management, Ltd., correct?

A. I don't know.

Q. Do you know who owned HCLOM at the time it was formed?

A. From what I recall, it was Highland Capital Management.

Q. Do you know when Dugaboy and Mr. Okada obtained an ownership interest in HCLOM?

A. It was sometime in 2022.

Q. So it's your testimony as the 30(b)(6) representative today, that HCLOM was owned solely by Highland at all times from formation until 2022 when Mr. Okada and Dugaboy became owners?

A. I would say that without these records, I mean, generally, that's my understanding, yes. You know, I haven't been -- you know, Highland could have assigned its interest, you know, to another Highland entity prior to 2022. Again, I don't -- I was let go of Highland in February 2021. So something could have happened in between but...

Q. Okay. I don't want the speculation. I just want your knowledge here today, sir.

A. Well, that's -- I mean, I can only talk to what I know. And so if there were things that happened when I wasn't there, then, I mean, I can't really speak to that.

Q. And that's fine.

But based on what you know, based on your understanding, Highland was the sole owner of HCLOM from the time of formation until sometime in 2022 when Dugaboy and Mr. Okada obtained ownership interest in HCLOM; is that right?

A. Yeah. That's generally my understanding.

Q. And when Mr. Okada and Dugaboy obtained the ownership interest in HCLOM, did they obtain 100 percent of the ownership interest or something less than that?

A. A hundred percent is my understanding.

Q. Okay. So to the best of your knowledge, at the time of this transaction, Highland sold its 100 percent interest in HCLOM to Mr. Okada and Dugaboy, right?

A. I don't know whether they sold it or they transferred it, assigned it. But Mr. -- or Dugaboy and Mr. Okada were -- became new owners of HCLOM.

Q. Okay. Do you know who controlled HCLOM from the time it was formed until the time it was sold to Dugaboy and Mr. Okada?

A. You showed me the officer and director list earlier. So those would have been the officers and directors at -- you know, after that. I don't know.

Q. Let's switch gears now to Acis.

You're familiar with an entity called Acis Capital Management, L.P., right?

A. Yes.

Q. Do you know when Acis was first formed?

A. I don't remember. It was -- I don't recall.

Q. Were you at Highland when it was formed?

A. Yes.

Q. Do you know if Mr. Terry had a role at Acis at

least until June of 2016?

A. Yes.

Q. And was he the portfolio manager of Acis?

A. I mean, he was a portfolio manager.

Q. Who else served as portfolio manager of Acis prior to June of 2016?

A. I recall Mr. Okada and Mr. Dondero having, you know, involvement with Acis.

Q. Do you know if Mr. Terry was ever employed by Acis?

A. He wasn't an employee.

Q. He was employed by Highland, right?

A. Yes.

Q. And he was terminated on June 9, 2016, correct?

A. I -- I don't remember.

(Exhibit 5 marked.)

MR. MORRIS: Let's just mark this as Exhibit 5 --

THE WITNESS: I don't mean to rush -- slow things down but can we take a bathroom break soon.

MR. MORRIS: Yeah. Of course. Just --

THE WITNESS: We can do it whenever is a good stop time.

MR. MORRIS: It's perfectly fine. Let's go off the record.

THE VIDEOGRAPHER: Off the record. The time is 11:13.

(Break taken from 11:13 a.m. to 11:23 a.m.)

THE VIDEOGRAPHER: Back on the record. The time is 11:23.

Q. (BY MR. MORRIS) Are you ready to proceed, Mr. Waterhouse?

A. Yes.

Q. Earlier I asked you about your preparation for today's deposition and you mentioned that you met with counsel. Do I have that right?

A. Yes.

Q. And you looked at documents; is that right?

A. Yes.

Q. And you searched your memory; is that right?

A. Yes.

Q. And those were all the things you did to prepare for today, correct?

A. Yes.

Q. How many times did you meet with counsel for purposes of preparing for today's deposition?

A. Just once.

Q. And when was that?

A. A couple of weeks ago.

Q. And how long did you spend with counsel to

prepare for today's deposition during that one meeting?

A. Two or three hours.

Q. Where did the meeting take place?

A. In his conference room.

Q. Did anybody participate in that meeting, other than you and Mr. Aigen, Ms. Deitsch-Perez?

A. No.

Q. I have put in front of you what we have marked as Exhibit 5, which is one of the bankruptcy court's decisions from the Acis matter, just to identify some basic facts. If you look at paragraph seven, does that refresh your recollection that Mr. Terry was terminated on June 9, 2016?

A. It doesn't refresh my recollection, but I -- if it's in here, sure.

Q. You don't have any reason to dispute that, correct?

A. I don't.

Q. Okay. Are you aware of the circumstances surrounding Mr. Terry's termination?

A. Generally.

Q. Can you tell me generally what you know about the circumstances surrounding Mr. Terry's termination?

A. From what I recall, Mr. Dondero was not happy with Mr. Terry and decided to terminate him.

Q. Do you know what made Mr. Dondero unhappy with Mr. Terry?

A. Honestly, at this point, I have kind of blanked it all out.

Q. So you have no recollection of why Mr. Dondero was so unhappy with Mr. Terry that he terminated him?

A. I don't remember if it was for performance reasons or, you know, things like that. I don't remember the specifics of what led to his termination on this date, on June 9th. Just he wasn't --

Q. Would that be -- I'm sorry.

A. He wasn't -- obviously, he wasn't happy with him. I don't remember exactly why.

Q. Okay. Were you ever an officer of Acis?

A. Yes.

Q. What position did you hold?

A. I was likely treasurer.

Q. And do you know when you became the treasurer of Acis?

A. I don't remember.

Q. Is -- do you know -- I assume you ceased to be the treasurer of Acis at some point?

A. Yes.

Q. And do you know when that was?

A. It was likely sometime during the bankruptcy.

I don't remember the exact date.

Q. Okay. Are you aware that after Mr. Terry was terminated, you and Mr. Dondero were the only officers of Acis?

A. I don't remember, but...

Q. Okay. Let's mark as Exhibit 6 -- I'm sorry.

A. I mean, I don't remember. This was long ago and I don't remember. I didn't -- we're going off memory of years ago and, you know, we were preparing on HCLOM, not Acis too. So I don't...

Q. Well, Acis is very much involved in the transactions that we're here to talk about, right? Acis entered into the original participation agreement, right?

A. Yes.

Q. Okay.

THE COURT REPORTER: Are we marking this?

MR. MORRIS: Yes.

(Exhibit 6 marked.)

Q. (BY MR. MORRIS) Have you seen this before, sir?

A. Not that I remember.

Q. Do you see that it's the consent of the sole member of Acis Capital Management, GP and it's dated June 10, 2016?

A. Yes.

Q. And at least based on Judge Jernigan's decision, this is the day after Mr. Terry was terminated?

A. Yeah. That was June 9, right?

Q. Yeah.

A. Yes.

Q. And do you see the first resolution below states that Mr. Terry was removed as the portfolio manager of the company?

A. Yes.

Q. And you and Mr. Dondero are identified as the sole officers of Acis as of that time, correct?

A. Yes.

Q. Do you know if anybody was ever added as an officer of Acis at any time prior to the Acis bankruptcy?

A. I don't remember. I -- it wasn't -- I don't remember. No, I don't remember.

Q. All right. This consent is signed by Nancy Dondero in her capacity as the trustee of the Dugaboy Investment Trust. Do you see that?

A. Yes.

Q. Did you ever discuss your appointment as treasurer of Acis with Ms. Dondero?

A. No. I mean, if I was --
Q. Sure.
A. No, because if I was treasurer before, I wouldn't have talked to Nancy.
Q. Okay. I'm asking a broader question without regard to time.
A. Okay.
Q. Did you ever have a conversation with Nancy Dondero concerning your appointment as the treasurer of Acis?
A. No.
Q. Have you ever had a conversation with Nancy Dondero regarding anything having to do with Acis?
A. Not that I recall.
Q. Do you know who made the decision that you and Mr. Dondero would be the only officers of Acis following Mr. Terry's departure?
A. I don't remember.
Q. I think we have established that in late January 2018, Mr. Terry filed an involuntary bankruptcy petition against Acis and its general partner, right?
A. Yes.
Q. And do you recall that sometime in the spring of 2018, Robin Phalen was appointed the trustee of the Acis entities?

A. I have heard that name, yes.

Q. And do you recall that Mr. Phalen was appointed sometime in the spring of 2018?

A. I really don't know.

Q. Okay. Do you know if there were any changes in Acis' roster of officers between June 10, 2016, and the time of Mr. Phalen's appointment as trustee?

A. I don't know.

Q. Do you know whether Acis was a registered investment advisor at least until control shifted to Mr. Phalen?

A. I generally recall that it filed form A, D & Es so that would I think make it an RAA.

Q. Would you agree that Mr. Dondero controlled Acis from at least June 2000 -- withdrawn.

Would you agree that Mr. Dondero controlled Acis at all times from at least June 10, 2016, until Mr. Phalen's appointment during the bankruptcy case?

A. Yes.

Q. Nobody else controlled Acis during that period, true?

A. I mean, Dugaboy is the -- you know, like I said, Dugaboy Investment Trust, Trustee of Acis Capital Management GP, LLC, there could have been. I mean, again, I didn't have discussions with Nancy. The other

officer could have. There could have been other things. I wasn't involved in that.

Q. And you certainly never turned to Nancy Dondero for her approval with regard to anything having to do with Acis, correct?

A. I didn't talk -- I didn't talk to Nancy. I didn't have a conversation with Nancy. But again, I -- but that's my experience. I'm not saying that -- you are asking about Acis in general. I don't know if there were other things if -- you know, if she was involved in Acis, talking with Jim, I don't know.

Q. Okay. But whenever you believed you needed approval to do something in your capacity as the treasurer of Acis, you sought that approval from Mr. Dondero and nobody else, correct?

A. I -- yeah. I would talk to Jim.

Q. Okay. And the reason that you would talk to Jim is because it was your perception that he controlled Acis, correct?

A. When I was employed at Highland Capital Management, Jim Dondero was my boss.

Q. Is it your understanding that from the time Acis was formed until the bankruptcy filing in 2018, that Acis never had any employees?

A. Correct.

Q. But Acis was party to a shared services agreement as amended with Highland, correct?

A. Yes.

Q. Acis was also party to an advisory agreement as amended with Highland, correct?

A. Acis -- I believe Acis and Highland were -- there was a sub-advisory agreement.

Q. Okay. And is it your understanding that Acis was able to perform its duties as portfolio manager because it had entered into the shared services agreement and the sub-advisory agreement with Highland?

A. Yes.

Q. Acis couldn't have fulfilled its duties as portfolio manager unless it entered into the shared services and sub-advisory agreements, correct?

MR. AIGEN: Object to form.

A. Yes.

Q. (BY MR. MORRIS) Withdrawn. That's a fair objection.

The services that Acis received from Highland under the shared services agreement as amended and the sub-advisory agreement as amended were required in order to enable Acis to fulfill its duties as portfolio manager, correct?

MR. AIGEN: Object to form.

A. Yes. Acis hadn't -- had no employees.

Q. (BY MR. MORRIS) Right. And Acis paid Highland for those services under those two agreements as amended, correct?

A. Yes.

Q. Let's take a look at those agreements for a moment. The first one we'll look at is The Second Amended and Restated Sub-Advisory Agreement, which we will mark as Exhibit 7 and actually attached to it as Exhibit A is the Shared Services Agreement. So it's all in one document.

(Exhibit 7 marked.)

A. Thank you.

Q. (BY MR. MORRIS) And the first document here is The Second Amended and Restated Sub-Advisory Agreement.

Do you see that?

A. Yes.

Q. And if you turn to the page ending in Bates Number 5305, you will see some signatures. Let me know when you are there.

A. I'm there.

Q. Okay. And am I right that Mr. Dondero signed this agreement on behalf of both Acis and Highland Capital Management?

A. Yes.

Q. And this document is signed the month after Mr. Terry was terminated, correct?

A. Um.

Q. At the top. I apologize. It said it was made this 29th day of July 2016 but effective as of the beginning of the year. Do you see that?

A. Yes.

Q. Okay. So Mr. Dondero signs this agreement the month after he terminates Mr. Terry, correct?

A. Yes.

Q. Were you aware that a second amended and restated sub-advisory agreement was being prepared?

A. I don't recall. I don't remember.

Q. Do you recall discussing whether Acis sub-advisory agreement with Highland needed to be amended at any time in the summer of 2016?

A. I wasn't -- I don't -- I wasn't in any of those discussions. If those discussions were had, I wasn't in those discussions, that I can recall.

Q. Did anybody ask for your input with respect to any of the terms of the proposed second amended and restated sub-advisory agreement?

A. I don't remember. And this was -- I don't remember.

Q. Okay. Do you recall doing any analysis in

connection with the preparation of this document?

A. This was eight years ago; I don't remember.

Q. Do you recall whether you directed anybody on your team to undertake any work or any analysis in connection with the preparation of this agreement?

A. I don't remember. I don't remember. I mean -- when I'm saying I don't remember, could it have happened? Maybe. Could it have not happened? Maybe. I don't remember.

Q. Okay. And, Mr. Waterhouse, we have done this a few times. And you must know that "I don't remember" is a perfectly reasonable answer if you don't remember.

A. Yeah. I don't.

Q. Okay? I don't mean to embarrass you. I don't mean to make you uncomfortable. I do understand it was a while ago. I'm just going to ask my questions and if you remember, great. If you don't, just say "I don't remember."

What I don't want you to do is say "I don't remember" when you do; is that fair?

A. Yeah. Sure.

Q. Okay. Do you know why the sub-advisory agreement was amended and restated the month after Mr. Terry was terminated?

A. I don't remember. I don't recall. I don't

know.

Q. Do you know if Mr. Terry's departure was a factor in the decision to amend and restate the sub-advisory agreement?

A. I don't remember what the sub-advisory agreement said. I would have to read -- yeah, I don't remember the sub-advisory agreement.

Q. Okay. Let's take a look at Section 2 of this document where the heading is Sub-Advisory Duties. Do you see that?

A. Yes.

Q. Is it generally fair -- is it fair to summarize this paragraph as saying that Highland, in its capacity as the sub-advisor, would provide both the shared services as set forth in Exhibit A and it would also provide advisory services as set forth in this document?

A. Yes.

Q. Okay. And at the time, Highland was controlled by Mr. Dondero, right? As Highland's president?

A. Yes.

Q. And Highland was to provide the shared services and the advisory services to Acis in its capacity as the investment manager, correct?

A. Yes.

Q. And Acis was also controlled by Mr. Dondero at

the time, correct? In his capacity as Acis president?

A. Yes.

Q. Okay. Turn to page five, please. And we'll look at paragraph five, Compensation. Simply take your time to read it and let me know when you have done that.

A. Okay.

Q. All right. Did you have any input into paragraph five?

A. I don't remember.

Q. Do you remember having any conversation with anybody in July 2016 concerning the compensation that Highland was to receive from Acis in exchange for this shared services and the sub-advisory services Highland was going to provide?

A. I remember having general conversations with Mr. Dondero, but this was eight years ago.

Q. Do you remember anything about those general conversations?

A. I just remember we had discussions about -- but I don't -- again, I just remember there were just discussions.

Q. Okay. And is it fair to just summarize paragraph five by saying the compensation for shared services was set forth in the shared services agreement attached as Exhibit A and the compensation for the

sub-advisor fees were going to be set forth in Schedule A to this agreement?

A. Yes.

Q. All right. So let's just take a look at Schedule A. It's on the page ending Bates Number 5306.

A. Okay.

Q. All right. Simple question. Is it your understanding that under this agreement, Acis agreed to pay Highland 20 bases points for sub-advisory services?

A. That's -- as I am reading it now, that's what it appears to say.

Q. And does that interpretation of this agreement comport with your memory, did Acis in fact begin paying Highland 20 bases points for sub-advisory services in July 2016?

A. I don't re- -- I mean, there was a prior sub-advisory agreement. I don't recall when Acis started paying Highland fees as sub-advisory. I don't remember.

Q. Is it your recollection that there was a period of time when Highland was providing sub-advisory services to Acis without compensation, without receiving compensation?

A. I don't remember.

Q. Do you remember if there was any method of

calculating the compensation by which Acis would pay Highland for sub-advisory services, other than 20 bases points?

A. I don't remember how, you know, how 20 bases points was derived. I don't remember.

Q. Do you know who determined that the compensation would be set at 20 bases points?

A. I mean, I -- since Mr. Dondero signed the agreement I would -- I mean, I -- the assumption is he was fine with 20 bases points being the appropriate amount of fees to be remitted to Highland.

Q. And even though you were the treasurer of both -- well, withdrawn.

Even though you were the treasurer of Acis and the CFO of Highland at this time, you don't know whether the 20 bases points set forth in Schedule A represented a change in the method of compensation for sub-advisory services; is that fair?

A. Yeah. I don't remember something that happened eight years ago. I don't remember what was on the initial document. I mean, I -- if we had the other document we could compare the first document to this document but I don't remember.

Q. Do you know if this was ever an issue in the Acis bankruptcy case, the amount of fees that were being

charged pursuant to this agreement?

A. I wasn't involved in the Acis bankruptcy case.

Q. Okay. The last sentence says quote, "The parties may agree to a different allocation from that set forth above during any period in order to reflect the then current fair market value of the services rendered."

Do you see that? I'm still on Exhibit A or Schedule A.

A. I'm --

Q. Yeah, it ends in 06.

A. 06.

Q. Take your time. Do you see that last sentence?

A. Yes.

Q. Okay. Do you have any recollection as to whether the parties ever agreed to a different allocation than the 20 bases points set forth in Schedule A?

A. I don't recall.

Q. Okay. Do you see that it's -- the fee is retroactive to January 1st, 2016?

A. It says effective January 1st, 2016.

Q. Do you recall any discussion as to why the agreement was made retroactive to January 1st, 2016?

A. I don't. I mean, I don't -- I don't --

Q. Do you recall whether Acis had to pay Highland any money on account of the retroactive date of January 1, 2016 to make Highland whole?

A. I don't recall. I -- but if the agreement was effective as of another date, I mean, you know, I just don't remember. I mean, I just don't remember what happened.

To the extent that the document that was executed, you know, one date but effective another date, what happened, you know, to make that effective.

Q. Okay. But the fact that it's retroactive to January does suggest to you that there is a change, right? Otherwise, there would be no reason to make it retroactive, fair?

A. Yeah. Yeah. I mean, fair.

Q. But you just don't know what the change is as you sit here today, fair?

A. Yeah. I don't remember.

Q. And you don't know who determined what the change would be, fair?

A. I mean, I don't. I don't -- I don't -- again, I don't -- I don't remember what -- again, I don't -- can't even -- I can't tell you if there was a change because I don't have the other document.

And again, presume -- I don't know if

Mr. Dondero determined this number -- you know, I mean, he signed the document, but I don't know.

Q. Is it fair to say that from your prospective, Mr. Dondero would have had to have approved the 20-bases-point formula on behalf of both Acis and Highland before it was effective?

A. Yes.

Q. Okay. Do you recall whether any analysis of -- withdrawn.

To the best of your knowledge, as Acis' treasurer and Highland's CFO, was -- did Acis pay Highland 20 bases points for sub-advisory agreements from January 1, 2016 until the time Brigade took over in the summer of 2018?

A. I recall Acis remitting payments to Highland. But I don't recall when that started or exactly when it -- you know, I don't -- or when it stopped. I don't -- don't have those details from that long ago.

Q. Okay. Let's go to Section 10 of this agreement. No, I apologize, it's 14. Do you see Section 14 deals with duration and termination?

A. Yes.

Q. Okay. And do you see that in Subpart A on page six, there's a reference to the agreement being in effect for ten years?

A. Yes.

Q. Okay. And then on the next page it says that "Subject to Section 14(b), the agreement could be terminated under (i) by Highland at any time with 60 days written notice."

A. Yes.

Q. Okay. Are you aware as to whether or not Highland ever provided written notice of termination under this agreement?

A. I'm not aware.

Q. You never saw a written termination of this agreement, correct?

A. Yeah. No. I'm not aware.

Q. And nobody ever told you that Highland had given notice of termination of this agreement, correct?

A. Not that I recall.

Q. And the shared services agreement was amended and restated at the same time, correct? If you take a look at the agreement beginning with the page ending in Bates Number 5308, do you see that's the Third Amended and Restated Shared Services Agreement?

A. Yes.

Q. And again, if you go to page 12 of the agreement ending in Bates Number 5319, can you confirm that Mr. Dondero signed on behalf of both parties?

A. Yes.

Q. And were you aware that the shared services agreement was being amended in the summer of 2016?

A. I don't recall.

Q. Okay. Do you recall whether anybody asked for your input with respect to any of the terms of this agreement?

A. I don't recall specifically. But generally, with shared services agreements, you know, there was an analysis, you know, we tried to put together to estimate the cost of providing services under Annex A.

Q. Okay. Do you have any recollection as to why the shared services agreement was amended and restated at this time?

A. I -- I don't remember what prompted this to be amended and restated.

Q. Okay. Turn to Article IV on page four, please.

Are you familiar with the methodology set forth in Article -- in Section 4.01?

A. I don't recall this cost allocation formula but I -- I am reading it now.

Okay.

Q. Was there somebody on your team who was responsible for making sure that Acis paid Highland the proper amounts under this amended and restated shared

services agreement?

A. There would be someone who would be responsible for that.

Q. Do you recall who that person was?

A. I don't -- it would have been someone on the corporate accounting team.

Q. And so would that be either Mr. Closs or Ms. Hendrix?

A. Yes. I mean -- okay. We're going back to 2016. I don't remember what their titles were eight years ago but we had other individuals there. You know, Drew -- there were other individuals besides Mr. Closs, Ms. Hendrix -- Ms. Hendrix, you know, we typically had another accountant. So it would have been someone on that team.

Q. And it would have been someone who reported to you, correct?

A. Yes.

Q. Do you know if Highland sent bills to Acis for shared services or did Acis just remit payment to Highland?

A. I didn't generate any of these invoices, but for form they -- Highland should have, you know, generated an invoice out of the accounting system to bill Acis for the services rendered.

And I can't tell you sitting here today what was provided but it was always -- we always tried to, you know, to the extent possible provide support.

Q. All right. If we go back to Article IV, is it fair to summarize it as saying that in Subpart A, if there is an item demonstratively attributable to Acis, Acis will pay a hundred percent of the cost; if a specific percentage could be identified, that under B, that specific percentage would be charged, but under C, if you are not really sure, you would go to exhibit B -- Annex B?

A. No. If you weren't sure, it says that cost would be allocated between fee-earning assets. So you would -- I -- what I'm reading is you would take Acis' proportion of the fee-earning assets related to Highland and they would be allocated that way.

Q. Okay. And if you look at Annex B, which is the last page --

A. And annex -- that's what this said. Maybe that's what Annex B says. I'm just reading.

Q. That's okay.

So am I reading this correctly that under Annex B, if to the extent Annex B was being relied upon to set the shared service fee, Acis was agreeing to pay 15 bases points from each of the funds that it managed?

A. Yeah. It looks like -- yes. So under Annex B, there was a 15 bases point shared service fee that was being paid from these funds listed in the annex, to Highland.

Q. Okay. Can you recall at any time after June of 2016 that Acis was charged 100 percent of an item that was demonstratively attributable to it? I'm looking at 4.01A. Yeah. Let me try this differently.

Are you aware of any methodology that was used to calculate the fees due for shared services, other than the application of the 15 bases points, after the summer of 2016?

A. I -- what I do remember is, if there were costs attributable to Acis outside of this annex, Acis was charged those expenses. They paid those expenses. I don't recall that changing in time, so after 2016. I don't recall that changing.

So to the extent there were items that were allocable to Acis under this cost allocation, I don't recall that changing.

Q. Okay. Is it fair to say, looking at the two documents, the sub-advisory agreement and the shared services agreement, that it's your understanding of -- both based on recollection and looking at the documents now, that Acis was going to pay Highland a total of 35

bases points for sub-advisory services and shared services?

A. Under these documents, yes.

Q. Okay. Can we go to Section 7.02, Termination. And you will see in Subpart A, it says that "Subject to 7.02(b), either party may terminate this agreement upon at least 30 days' advance written notice at any time prior to expiration."

Do you see that?

A. Yes.

Q. Okay. To the best of your knowledge, did either party ever provide 30 days' written notice of termination of this agreement?

A. I -- earlier I said that Highland notified Acis that it would not be providing services. That's what I recall.

Q. Okay. So let me ask my question again.

A. Uh-huh.

Q. To the best of your knowledge, did either party ever provide 30 days' written notice of termination of this agreement as set forth in Section 7.02 A?

A. I don't recall.

Q. Okay. Did you ever see a written notice of termination?

A. I may have. I don't remember.

Q. Okay.
A. I don't recall.
Q. Okay. Did anybody ever tell you that the -- that the written notice of termination had been tendered by one party to the other?
A. That -- I don't remember. This was -- I don't know how many years -- I don't remember.
Q. Okay. In fact, both of these agreements were amended in 2017, right?
A. This is -- this is made in July 2016.
Q. That's right.
And do you recall that the following spring in 2017, the agreements were amended yet again?
A. I -- again, this was years ago. I don't remember.
Q. Okay. Let's just look at them quickly and then we can take our lunch break.
(Exhibit 8 marked.)
Q. (BY MR. MORRIS) So I have marked as Exhibit 8, the Fourth Amended and Restated Shared Services Agreement dated March 17, 2017. You know what, I'm just going to go ahead and mark as Exhibit 9, the Third Amended and Restated Sub-Advisory Agreement also dated March 17, 2017.
(Exhibit 9 marked.)

Q. (BY MR. MORRIS) And looking at Exhibit 8, do you see the title page, the Fourth Amended and Restated Shared Services Agreement between Acis and Highland dated March 17, 2017?

A. Yes.

Q. And if you go to the page ending in Bates Number 3337, do you see that Mr. Dondero has signed on behalf of both entities again?

A. Yes.

Q. Okay. And if you look at the last page, do you see the annualized staff and services fees is 15 bases points for each of the funds?

A. Yeah. Yes. Yes.

Q. Okay. And if we look at Exhibit 9, that's the Third Amended and Restated Sub-Advisory Agreement between Acis and Highland dated also March 17, 2017.

Do you see that?

A. Yes.

Q. And if you go to page ending in Bates Number 3483, you will see Mr. Dondero has signed on behalf of both parties, correct?

A. Yes.

Q. And if you go to Exhibit A, the chart that's on the page ending in 3485, you will see that the sub-advisory fee was 20 bases points, correct?

A. Yes.

Q. So that with these amended agreements, Acis agreed, again, to pay a total of 35 bases points to Highland on account of the shared services and sub-advisory services, correct?

A. Yes.

Q. Okay. And do you know why the agreements were amended and restated in March 2017?

A. I don't remember.

Q. This is -- so if Mr. Terry was terminated in June of 2016, this is about nine months after he was terminated, right?

A. Yes.

Q. So is it fair to say that Acis was still the vehicle through which the Acis CLOs were expected to be managed?

A. Yeah. I mean, these are the agreements in place, correct. That's right.

Q. Well, you wouldn't go through the trouble of amending and restating agreements if you didn't think that Acis was going to continue to be the portfolio manager of the Acis CLOs; is that fair?

A. Yes. I mean, I -- I don't know why these are restated, but, yes, there is agreements that -- there is sub-advisory, there's shared services arrangements

between Highland and Acis dated in March, so...

Q. And through these -- through Mr. Dondero's execution of these agreements on behalf of both parties, it was your understanding that Acis would continue to manage the Acis CLOs for the foreseeable future, fair?

A. Yes.

Q. Do you recall whether as of the first quarter of 2017 anybody ever suggesting that Acis should not continue to manage the Acis CLOs?

A. I don't recall.

Q. You don't recall any of the investors expressing any concerns about the continuation of Acis as the portfolio manager of the Acis CLOs, correct?

A. Yeah. I never talked to the CLO investors directly, so I would hear things secondhand. I don't recall any of those conversations.

Q. Right. You don't recall anybody telling you in the first quarter of 2017 that they had heard from investors that they had concerns about Acis continuing on as the manager of the Acis CLOs; is that fair?

A. Yeah. Not at this time. In 2018, with all the problems with Acis, yes, there were -- I remember discussions happening then. But not -- these agreements are dated in March of 2017.

Q. Okay. We can turn to Article VII, which at

Section 7.01, which is on the page ending in Bates Number 3332. Okay. At the bottom it says, "Either party may terminate this agreement at any time upon at least 30 days' written notice to the other."

Do you see that?

A. Yes.

Q. Do you know if either party ever gave written notice of termination to the other party pursuant to this provision?

A. I don't recall.

Q. Have you ever seen written notice of termination of this agreement pursuant to Section 7.01?

A. I don't remember.

Q. Do you recall whether anybody ever told you that written notice of termination was given?

A. I don't remember.

Q. In fact, this agreement was never terminated, correct?

MR. AIGEN: Objection; form.

MR. MORRIS: Withdrawn.

Q. (BY MR. MORRIS) To the best of your knowledge, sir, this agreement was never terminated, was it?

MR. AIGEN: Objection; form.

A. I mean, yeah. I mean, what --

MR. MORRIS: Withdrawn.

I appreciate the objection now that I realize what he was objecting to.

Q. (BY MR. MORRIS) To the best of your knowledge, this agreement was not -- was never terminated until the transition of services to Brigade in August of 2018, correct?

A. I don't even know that. I don't know. I don't recall. All -- what I do remember is there was the involuntary bankruptcies we talked about and there was a TRO put in place. I don't remember -- usually when TROs are put in place, everything stays as is.

So I don't -- I don't remember if and when this was terminated or what the TRO did -- I don't recall. I wasn't involved in those proceedings.

Q. Do you recall that there was a time that Brigade replaced Highland as the provider of shared services and advisory services to Acis?

A. I recall the name Brigade that -- now that you bring that up. I don't remember what capacity they served.

Q. Okay.

A. But they were involved, you know, while the bankruptcy was going on.

Q. Okay. Is it fair to say that you have no reason to believe the shared services agreement was

terminated prior to the Acis bankruptcy?

MR. AIGEN: Object to form.

A. I don't know.

Q. (BY MR. MORRIS) Okay. Let's turn to Section 8.01. That deals with amendments. Do you see that?

A. Yes.

Q. The agreement cannot -- withdrawn.

"The agreement may not be amended or modified except by an instrument on writing signed by each party."

Do you see that?

A. Yes.

Q. Do you know if the parties ever amended or modified this agreement in writing?

A. I don't remember.

Q. Have you ever seen a writing signed by both parties that amended or modified this agreement?

A. I may have. I don't remember.

Q. Okay. Do you remember if anybody ever told you that a written amendment or modification existed?

A. I don't recall.

Q. Okay. The next section is 8.02; it deals with assignment and delegation. Do you see that?

A. Yes.

Q. Do you know if this agreement was ever assigned or delegated to anybody?

A. I don't remember this ever -- that ever happening, so I don't recall.

Q. You never saw a written consent pursuant to Section 8.02, pursuant to which, you know, all or any of the rights or responsibilities under this agreement were assigned or delegated, correct?

A. Again, I may have. I don't remember. This was years ago. I may have at some point. I just don't remember.

Q. Okay. Do you remember if anybody ever told you that Acis or Highland had assigned or delegated any part of their rights or obligations under this agreement?

A. I don't recall.

Q. Looking at Subsection C, there's a reference to the staff and services provider.

That's Highland, correct?

A. The agreement doesn't say Highland but, I mean, I don't think it names Highland. It just says staff and services provider.

Q. If you look on the very first page.

A. Uh-huh. Is it Highland?

Q. Yeah. Ending in 3319.

A. Okay.

Q. You see there's a reference to Highland Capital Management as the staff --

A. Staff and services provider.

Q. Okay.

A. Yes.

Q. So you will agree, based on that, that Highland is the staff and services provider referred to in Section 8.02(c)?

A. Yes.

Q. And do you see that it didn't need to obtain prior written consent to assign any of its rights or obligations under the agreement as long as it was assigning it to an affiliate under the circumstances set forth in that paragraph?

A. Yes.

Q. Okay. So do you know whether Highland ever assigned any of its rights or obligations under this agreement to any affiliate?

A. Not that I'm aware.

Q. Have you ever seen anything, any document that purported to assign any of Highland's rights or obligations under this agreement to an affiliate?

A. I'm not aware.

Q. And you don't have any recollection of anybody ever telling you that Highland had assigned any of its

rights or obligations under this agreement to an affiliate, correct?

A. Yeah. I don't recall any of those discussions.

Q. Okay. Let's just knock off the sub-advisory agreement and then we'll take a break. If we can switch to Exhibit 9. Again, I apologize if I asked you this question, but if you turn to page ending in Bates Number 3483, can you just confirm that those are Mr. Dondero's signatures?

A. Yes.

Q. And do you have any recollection as to why the sub-advisory agreement was amended and restated in March of 2017?

A. I don't.

Q. If you take a look at -- oh, no, look at that.

Let's go to Section 6, Termination, which is page eight.

A. Okay.

Q. Okay. So for purposes of this agreement, Acis is identified as the management company and Highland is either Highland or the sub-advisor.

Do you see under 6(a), Acis had the ability to terminate this agreement upon 30 days' prior written notice to Highland?

A. Yes.

Q. Okay. Do you know if Acis ever gave written notice of termination of this agreement to Highland?

A. I'm not aware.

Q. Okay. Did anybody ever tell you that Acis had provided written notice of termination of this agreement?

A. I don't recall any of those discussions.

Q. Okay. Do you know if this agreement was ever terminated by anybody at any time prior to the Acis bankruptcy?

A. I'm not aware of that.

Q. You never saw any document that stated that the Third Amended and Restated Sub-Advisory Agreement had been terminated prior to the Acis bankruptcy, correct?

A. The third -- I don't remember seeing a document.

Q. And nobody ever told you that the Third Amended and Restated Sub-Advisory Agreement had been terminated at any time prior to the bankruptcy, correct?

A. I don't -- yeah, I don't remember those conversations but...

Q. Okay. If we can turn to page nine, Section 9. That deals with amendments and assignments.

Do you know if this agreement was ever amended?

A. I don't remember.

Q. Did you ever see any document that purported to amend this agreement?

A. There could be a fourth amendment. I don't remember.

Q. Okay. Do you recall if anybody ever told you that this agreement was amended?

A. I don't remember. And again, I don't know.

Q. Okay.

A. There could be an amendment. I don't remember.

Q. How about assignment, are you aware of this agreement ever being assigned to anybody?

A. I'm not aware of that.

Q. Have you seen a -- do you recall ever seeing any documents that purported to assign this agreement to anybody?

A. No. I don't recall any.

Q. Did anybody ever tell you that Highland had assigned any of its rights or obligations under this agreement to an affiliate?

A. Not that I recall.

Q. All right.

MR. MORRIS: Let's break.

THE VIDEOGRAPHER: Off the record. The time is 12:26.

(Lunch break from 12:26 p.m. to 1:13 p.m.)

THE VIDEOGRAPHER: Back on the record. The time is 1:13.

Q. (BY MR. MORRIS) Mr. Waterhouse, are you ready to proceed?

A. Yes.

MR. MORRIS: Mr. Aigen, you ready to go?

MR. AIGEN: Absolutely.

MR. MORRIS: Okay.

Q. (BY MR. MORRIS) We're going to mark as the next exhibit, Exhibit Number 10, the Acis -- the agreement for purchase and sale of CLO participation agreements that begins with Bates Number ending in 3384.

THE COURT REPORTER: Oh.

MR. MORRIS: Uh-huh. You're up.

(Exhibit 10 marked.)

Q. (BY MR. MORRIS) All right. Have you seen this document before, sir?

A. Yes.

Q. What is it?

A. To summarize, Highland purchased an interest of -- interest in Acis' SM management fees.

Q. And what did it pay for the -- what -- do you have an understanding of what it paid for that interest, if anything?

A. What Highland actually purchased -- I mean, it exchanged a promissory note for that.

Q. So is it your understanding that -- we'll look at this in a bit. Okay. Do you know who prepared this document?

A. What I recall is like on page nine, Hunton & Williams was involved, which is why they were referenced under Section 5.6. But I don't recall specifically who prepared this.

But I remember an outside law firm being involved and it could have been involved with in-house attorneys again, but there was -- there was several -- there were many people involved in this.

Q. Okay. And if you go to the page ending in 3398, can you just confirm for me that Mr. Dondero signed this agreement on behalf of both Acis and Highland?

A. Yes, he did.

Q. Do you know who came up with the idea to enter into this agreement, the idea of a participation interest agreement?

A. I mean, yeah. Generally, yeah. It was -- this agreement and a promissory note were the -- it was an overall tax -- it was a tax-driven strategy to enter into these agreements, both on Acis' and Highland's

part.

Q. And is it your understanding that that's the purpose of this agreement and the note, was that those -- the entry into both agreements was part of a tax strategy?

A. I would say generally tax and there's also, from Highland's prospective, some cash management advantages as well.

Q. What cash management advantages were there from this arrangement?

A. Well, I mean Highland would receive fees in advance of when they had to pay them out. So they had the ability to use cash. It is like -- it's kind of like -- what's a good analogy? Like, you have the cash, you can use it, right? And then you don't have to pay for it until a later day.

Q. Okay. So if I understand you correctly, Acis was going to pay Highland the servicer fees at a faster rate than Highland was supposed to pay under the terms of the note?

A. Yeah. Acis was remitting fees as they received them on a quarterly bases, while Highland's obligation to remit payments under the note were done on a yearly bases.

Q. So that -- and at the end of the process, was

the expectation that Highland would pay to Acis an amount that equalled what Acis was expected to pay to Highland?

A. I don't remember the specifics of the numbers. I think there -- I think it's in the ballpark.

Q. So that at any given moment in time, Acis may have paid more to Highland than Highland paid to Acis, but the expectation was at the end of the agreement, everybody should be about equal; is that fair?

A. I mean, maybe Acis has paid a little more and -- but, yeah. I mean, I -- I, again, it's a timing so -- and, again, not -- there's all sorts of calculations that go into what the quarterly service fees are, right?

The promissory note was fixed at inception. You know, you could have assets that go down in the -- right in the -- again, there's a lot of unknowns going in the future. But I think in -- if you just take the assumption that nothing -- everything stays kind of static and the same, which it's very hard to predict the future, the cash flows are in a ballpark.

Q. Okay.

A. Yeah.

Q. Okay. And that was the intent; is that fair?

A. Yeah. I mean, I think, yeah. I mean, I think

the intent of -- yes.

Q. Okay.

A. Yes.

Q. Did you participate in any discussions concerning this agreement before it was actually executed?

A. Yes. I was involved in discussions, for sure.

Q. And do you remember the substance of any of the discussions?

A. I mean, the substance was around -- and in tax planning, it was around, just like I said, you know, cash management. But it's more optimizing, you know, they're more focused around tax.

Q. And who is "they"?

A. Just with internal tax folks at Highland and outside tax counsel.

Q. And who is the internal tax folks that you spoke to?

A. It would have been Mark Patrick, Rick Swadley.

Q. Did you speak with Mr. Dondero about this agreement before you signed it?

A. Yes. Yes. We definitely spoke with Jim.

Q. And was Jim supportive of creating a mechanism that would assist in tax planning and cash management?

A. Yes.

Q. Are you aware of any discussions with anybody at any time that suggested there was a purpose or intent with the participation and agreement other than tax planning and cash management?

A. I generally, what I generally remember is that these were, again, the drivers for the transaction.

Q. Okay. And this agreement is entered into in October 2016, if you look at the first page; is that right?

A. Yes.

Q. And this is just four months after Mr. Terry was terminated, correct?

A. Yes.

Q. And just maybe a month after litigation was commenced between Terry and Highland, correct?

A. I don't recall the -- when litigation between Terry and Highland commenced.

Q. Did anything happen in September or October of 2016 that caused folks to think that of -- that that was the right moment to do this tax planning and cash management through these agreements?

A. I don't recall a significant, you know, "Oh, this really happened therefore" -- you know, at Highland we are tax planning and, you know, optimizing things are always just part of the job.

Q. Okay. Do you know whether the concept of a participation agreement was ever considered before Mr. Terry was terminated?

A. Again, we're going back many years. I don't -- I remember we had discussions over the years of things of this nature. I can't really put in a timeline around was it post or pre Mr. Terry being terminated.

But there were always discussions around tax optimization. It's just so long ago to pinpoint where exactly on the timeline these discussions took place.

Q. Okay. Do you know whether Mr. Terry's termination and subsequent litigation was a factor at all in the decision to enter into this agreement?

A. I don't recall that being a factor.

Q. And do you know if any option was considered to address the tax issues and the cash management issues, other than the participation agreement and note?

A. We strive to come up with different tax planning ideas year to year. I don't recall what other options were available in 2016.

But there are, I guess, as past practices we do try to brainstorm as business conditions change and, you know, tax laws change, things like that, various options.

But I can't tell you, sitting here today, what was on the table in 2016. I just don't remember.

Q. Did -- could a loan have addressed the issues that you have identified, the cash management and tax issues, if Highland had just loaned Acis the money?

A. No. I don't believe so. No.

Q. Is -- Acis was a pass-through entity, correct?

A. Yeah. I mean, Acis was a partnership, yes.

Q. Do you know who the ultimate beneficial owners of Acis was at the time the participation agreement was executed?

A. Um.

Q. Is that just Dugaboy and Mr. Okada?

A. I don't remember. Mr. Terry was an owner in Acis. I don't remember when he -- when his -- I think -- his ownership, right, was -- I don't remember if it was terminated when he was terminated or exactly what happened to that.

But, yes, there was a point where there were three owners in Acis and then it was Mr. Okada and Mr. Dugaboy -- or Dugaboy.

Q. Okay. So you mentioned that tax benefits were one of the drivers of this agreement; is that right?

A. Correct.

Q. And Acis is a pass-through entity, correct?

A. Yes.

Q. Who was the beneficiary on the Acis side -- withdrawn.

Were Acis' ultimate beneficial owners the beneficiary of the tax benefits on the Acis side?

A. Yes.

Q. And the same is true with respect to Highland, correct?

A. Yes.

Q. Highland was a pass-through entity, correct?

A. Correct.

Q. And this transaction and the note together created tax benefits for the beneficial owners of Highland, correct?

A. Yes. And the beneficial owners of Acis, as well.

Q. All right.

A. Because they're one and the same. Unless Mr. Terry somehow in there and I can't -- I don't remember what -- when he exited.

Q. Do you have an understanding of what the tax benefit was?

A. Yes.

Q. What's your understanding of the tax benefit?

A. It's a deferral of income.

Q. And who was deferring the income?

A. Acis.

Q. And how did this agreement and the note permit Acis to defer income?

A. The income that Acis paid to Highland was not -- was not reported as income upon receipt, upon Highland receiving. The income would then be reported as when -- when Acis -- when there were payments made to Acis is -- is -- I mean, that's what I generally remember. I mean, I could be screwing this up.

Q. And how about from the Highland side? How did Highland -- how did the beneficial owners of Highland receive a tax benefit from the entry into the participation agreement and note?

A. From what I recall, income on the Highland side was shielded by other tax planning.

Q. And is that through Hunter Mountain?

A. I mean, Hunter Mountain was involved. I don't think it's Hunter Mountain.

Q. Well, was Highland able to write off the income it received from Acis against the debt that Hunter Mountain had as the beneficial owner of Highland?

A. I don't think it would work like that.

Q. Okay. I'll just ask one more time and I -- I can see of we can do this a clean way.

Can you describe for me the tax benefits from the participation agreement and the note for Highland and its beneficial owners?

A. Highland received income from Acis which was shielded at the Highland level, and then as cash went out from Highland to Acis, that income was then picked up at the Acis' level.

So therefore the timing between the cash being received and paid by Acis to Highland versus the deferral of recognition of income just, you know, it created tax benefit because you are deferring when taxes are eventually being paid. Taxes are being paid; it's just a deferral.

Q. Do you know if anybody quantified the tax benefit to Acis or Acis' ultimate beneficial owners from the participation agreement and note arrangement?

A. Yes. I remember generally.

Q. What do you remember generally about that?

A. I remember working with Hunton & Williams and there were models that were put together to basically, you know, calculate what the benefits were.

Q. Do you have any recollection as to the range of the benefits?

A. I don't remember.

Q. Do you remember if it was more than a million

dollars?

A. I don't remember, but it likely was.

Q. And how about from the Highland side? Was a similar analysis done to attempt to quantify the tax benefits to Highland from entering into the participation agreement and note?

A. It would have been done from both sides. So -- and sorry. To clarify that, a million dollars of that was specifically -- if that was just what Acis was saving. I'm just remembering generally from the transaction just with both parties.

I can't say with specificity what did Acis say, what did Highland say. I don't remember those details. But it was significant enough where, you know, this transaction with tax benefits was put together.

Q. And is it your understanding at the time that, other than perhaps Josh Terry, the ultimate beneficial owners of Acis were the same as the ultimate beneficial owners of Highland?

A. Yes. I mean, Highland has -- I mean, what I recall from Acis is you had Dugaboy and you had Mr. Okada. At Highland you had -- on the Okada side you had other trusts that I remember being owners in Highland. I don't -- I can't -- I wasn't involved with Mr. Okada that much.

So if you are saying are they the exact same people? I don't know, because I don't know how those trusts reported income, what kind of trusts they were on Mr. Okada's side.

I mean, there were Okada entities involved; there were Dondero-related entities involved.

Q. Can you identify the Dondero-related entities?

A. I mean, it would have been Dugaboy.

Q. Okay. So is it fair to say that other than Mr. Terry, all of the beneficial owners of Acis and Highland at the time the participation agreement and note were entered into, were entities that were either owned, controlled, or affiliated with Mr. Dondero and Mr. Okada?

A. Yes. Unless Mr. Akada's trusts -- again, I --

Q. Right.

A. -- I don't know how those trusts were structured.

Q. Okay.

A. So maybe there was a different beneficiary other than Mr. Okada and those trusts. I don't know.

Q. And so the analysis that Hunton & Williams did, was that an analysis done to determine the net tax benefit looking at both entities at once or were each entity looked at in isolation, if you recall?

A. I don't remember. I just remember generally they were putting together calculations. I don't remember if it was separate, whether it was together or anything like that.

Q. Okay. Now you were the treasurer of Acis and the CFO of Highland at the time, correct?

A. Yes.

Q. Okay. Would you have recommended this transaction to Mr. Dondero if the only benefit were the cash management issues that you identified earlier and that there was no tax benefit?

MR. AIGEN: Objection; form.

A. I don't remember -- I don't remember the cash -- I don't remember the significance of the cash -- I mean -- and I don't remember where cash was. So -- I don't know. I mean, what I do recall is there were cash benefits and there were also tax benefits. So, again --

Q. (BY MR. MORRIS) Do you know -- do you recall if anybody did any analysis to determine the benefit to Highland on the cash management side, on the cash management issue? Was that ever quantified?

A. I think what I remember generally, it was part of these models or whatever was put together. It was, you know, again, another benefit of the transaction.

Q. All right. So if the cash management was a

benefit to Highland, then it must have been a disadvantage to Acis; is that fair?

A. No. As we talked about, there was a -- it had these advisory agreements and shared services agreements. But if it had -- and it didn't have any other employees or really any other, you know, significant expenses.

So if it is just sitting on -- if it just has cash that's just sitting there and it's not doing anything, you know, I wouldn't say it would hurt Acis, you know.

Q. How could the flow of funds under the participation and note benefit one side without hurting the other side? Isn't it binary?

MR. AIGEN: Objection; form.

A. Well, I mean, I'm looking at this to the -- yeah. I -- like, well, I guess, you are right there -- well, there is a benefit to Highland. So if the opposite of that is could Acis have used that cash for another purpose? Sure. It could have decided to have done that.

I think it looked at this transaction and said, "Hey, you know, this transaction overall with the tax benefits and everything is beneficial, you know, there are benefits." So there could be cash management

detriments. But I think maybe, you know, in this transaction it says, well, you know, we do benefit better off from tax, you know, prospective.

So I think if there were some cash management detriments to Acis, which I can't really -- it could have invested the money or something like that. But it made the decision that it was -- that was in the best benefit or interest of Acis.

Q. (BY MR. MORRIS) Is it true that prior to the entry into this agreement, Acis used its revenue to pay its expenses and to make annual distributions to its equity holders?

A. Acis -- yes. I, you know, recall Acis paid for its expenses and then there were distributions made to its owners. I don't remember the amounts, magnitude, and frequency. I just don't remember those details but I generally recall that.

Q. Okay. If you take a look at the agreement, the first page and you look down at the fourth whereas clause, it says that the seller here, which is Acis, was -- I'm summarizing and paraphrasing. If you disagree with my summary or paraphrasing, let me know.

But Acis was engaged -- had engaged a banker to try to actively market a new CLO to prospective investors. Do you see that?

A. Yes.

Q. Was that true at that time?

A. I don't remember.

Q. Okay. Were you involved? Do you recall being involved in any activities relating to the marketing of the new CLO to prospective investors in October of 2016?

A. I don't remember. I mean -- I -- yeah. I don't remember.

Q. Okay. Do you see the next whereas clause refers to a risk retention amount?

A. Yes.

Q. And are you generally familiar with the concept of risk retention mandates of managers of CLOs?

A. Yes.

Q. And what's your general understanding of the risk retention mandate?

A. It's -- the manager of the CLOs has to retain a certain interest, like it says here, in -- in the equity of the CLO.

Q. Okay. And then the next whereas clause refers to a joint venture with another entity to originate and sponsor new CLO investments pursuant to which Acis would contribute 51 percent of the risk retention amount.

Do you see that?

A. Yes.

Q. Do you know anything about that?
A. I don't -- I don't remember it.
Q. Do you have any idea who the joint venture partner was?
A. I don't remember.
Q. Do you know if there was a joint venture partner?
A. I don't recall.
Q. Do you know how it was decided that Acis would contribute 51 percent of the risk retention amount?
A. I -- I don't remember. I guess, like I said earlier, we had a special group at Highland that all they did was manage the CLOs. They managed the investments. You know, that's -- that was all their purview.
Q. Okay. Do you see towards the bottom, the next of the last whereas clause says, quote, "Cash flows from the servicer fees are unpredictable and unstable."
A. Yes.
Q. Do you know who made that determination?
A. I guess, I don't understand -- I think -- I guess I don't understand the question. Any investments that are -- or any fees that are calculated on an investment portfolio, right, investment portfolio by nature can go up, go down. So I just...

Q. So was that a known fact for a long time?

A. I think it was a general fact about investments in general. So it's like, I mean.

Q. That's all that is intended to convey, is that investments can fluctuate?

A. That's how I read. Like earlier I testified like, hey, there's, you know, your -- Acis is paying management fees on Acis. Right? Those can be -- those vary as market conditions can -- market conditions dictate.

And, you know, markets depending on -- sometimes we've got bear, you know, bull markets or bear markets, right? We could have recessions. How I read that is I think it's unpredictable and completely unstable.

Q. Okay. Servicer fees are paid by the issuer to the portfolio manager, right?

A. Servicer fee -- so, yeah. Those are paid by the CLO to the manager of the CLO but they are paid by the -- there's a trustee at the CLO. The trustee is the one who calculates that and pays that out.

Q. And as -- in the trustee's capacity is the agent for the CLO, right? The trustee is not paying its own money, is it?

A. Yeah. No, the trustee is the trustee over the

CLO. Yeah.

Q. So --

A. Yeah, I mean, yeah.

Q. And this agreement related to participation interest only in the CLOs that are identified on Schedule A at Bates Number ending 3399, right?

A. Yes.

Q. Okay. You know, the first of those CLOs was formed in 2013, correct?

A. Yes.

Q. Okay. Did Acis do anything from 2013 until this agreement was entered into to mitigate the risk of investments in the manner that you described earlier? The instability and the unpredictability of the servicing fees, did they do anything to mitigate that risk until now?

A. I mean, I -- just generally, that's the job of the portfolio manager is to -- right? You're managing assets to provide a return but also mitigate risks. I mean, that's just -- that's just -- you know, so I guess it's a long way of saying yes.

But I guess I just don't understand the question, because that's their job.

Q. I appreciate that's their job.

I'm asking you if you can identity anything

that Acis did prior to October 2016 to mitigate against the unpredictability and the instability of servicing fees.

A. Just by performing its duties, performing its job. That's inherent, it was providing services. So I would say yes.

Q. Okay. So it could have -- it was mitigating the risk without a participation agreement, in your view; is that fair?

A. Acis was providing advisory services to the CLOs and as part of that agreement. It -- you know, it's managing the assets and the CLO. A participation interest isn't needed for that to occur.

Q. Okay. Do you know if the unpredictability and instability of servicing fees ever caused Acis to breach any obligations under any contract?

A. I don't -- not that I recall.

Q. Okay. Do you recall if the unpredictability and instability of the servicer fees ever caused Acis to fail to timely pay for expenses and goods that it had purchased or acquired?

A. Not that I recall.

Q. Okay. As the treasurer of Acis and the CFO of Highland, can you identify any adverse consequences flowing to Acis from the alleged unpredictability and

instability of servicer fees?

A. You are asking if the Acis fees are unpredictable and unstable, what consequences does that do to Acis? Is that what you are --

Q. Kind of. You testified that, you know, like all investments, servicer fees, can be unpredictable and unstable; is that fair?

A. Yes.

Q. Okay. Can you identify any adverse consequence to Acis arising from the instability and uncertainty of the servicing fees? Because they didn't breach contract, right?

A. Yeah. I mean, if those servicing fees became unstable where they couldn't pay for expenses, that would be adverse to Acis.

Q. Right. But that never happened, correct?

A. I mean, in hindsight, yes, that did not happen. That isn't to say when you enter into an agreement that it couldn't happen.

Q. I appreciate that but I'm just asking a really simple question.

Can you identify any adverse consequence to Acis from the alleged unpredictability and instability of servicing fees?

A. Not that I'm aware.

Q. Thank you.

The contracts that gave Acis the right to receive the servicing fees, those are portfolio management agreements, correct?

A. I don't -- there is a special con- -- there is a specific contract between the CLO and the -- the manager of the CLO. I don't know if it's called a portfolio management agreement. I don't -- there -- or an advisory agreement or a servicing fee agreement. There is a special name in the CLO world for the agreement.

Q. Okay. And that agreement, whatever it's called, is the agreement that gives -- that obligates Acis to perform portfolio management services and gives it the right to receive the servicing fees in exchange for those services, correct?

A. Yes.

Q. Okay. And I think you said this earlier, the party who is obligated -- the counterparty is the issuer, correct?

A. Yes.

Q. Okay. Well, who controlled the Acis CLOs before Mr. Terry was terminated; do you know?

A. I guess the trustees control the CLO, right, because they're trustee.

Q. Uh-huh. Okay. Withdrawn. Good point.

Who controlled the management of the CLOs before Mr. Terry was terminated?

A. My recollection is Mr. Terry, Mr. Dondero, Mr. Okada, and there are other analysts that worked at Highland that provided analysis.

There was a CLO group at Highland that would provide analysis, right? To -- so it was -- there was a team of people.

Q. Right. I don't want to know about who did analyses. I want to know who the ultimate decision-makers were for Acis.

Was Mr. Dondero an ultimate decision-maker? Could he have -- did he have the authority and the ability to make decisions on behalf of Acis prior to Mr. Terry's departure?

A. Yes.

Q. And could Mr. Terry do that too?

A. Yes.

Q. And could Mr. Okada do that too?

A. Yes.

Q. Was there anybody else who had that ability?

A. Not that I'm aware. They were the owners.

Q. Okay. And after Mr. Terry was terminated, did Mr. Dondero and Mr. Okada retain the control and

authority to manage Acis?

A. Yes.

Q. And was that true until Mr. Phalen was appointed the trustee of Acis?

A. Yes. Mr. Phalen took over Acis then that presumably ceased.

Q. Do you know if any of the Acis CLOs ever breached their obligation to pay the servicing fees to Acis?

A. I don't recall.

Q. Do you recall whether Acis ever declared a default as a result of the issuers failure to timely pay all servicer fees it owed?

A. I don't recall. I'm not aware of any.

Q. Okay. Let's go to Section 1 of the agreement, which is on the page ending in Bates-stamped 3387.

A. Okay.

Q. Section 1 deals with the sale and purchase of the Acis participation agreements, correct?

A. Yes.

Q. And the participation agreements are shown on Schedule A, correct?

A. Yes.

Q. And that's at the page ending in Bates-stamped 3399, right?

A. Yes.

Q. And on page -- on Schedule A, Schedule A lists the CLO issuers that are the subject of this agreement, correct?

A. Yes.

Q. And the total servicer fees or the total fees that Acis is entitled to receive from each CLO in exchange for its portfolio management services, correct?

A. I believe so. I mean, I don't remember the agreements but if it is -- this matches the agreement, yes.

Q. Okay. And so then the next two columns divide up the total servicer fee between what Acis is going to keep, which is the servicer fee retention amount and the Acis participation interest, which is what Highland is supposed to get; is that right?

A. Yes.

Q. So, for example, for the 2015-6 CLO, is it fair to say that Acis was going to receive from that CLO 40 bases points as its servicing fee, it was going -- and it was going to split that fee between Highland and itself?

A. Yes.

Q. Okay. Do you remember earlier that we concluded that under the amended and restatement shared

services agreement and sub-advisory agreement that Acis was going to pay Highland 35 bases points for those services?

A. Yes.

Q. And here they're promising to pay Highland an additional 20 to 30 bases points as part of the participation interest, right?

A. Yes.

Q. So can you conclude -- is it fair to conclude that between this agreement, the shared services agreement and sub-advisory agreement, Acis was obligated to pay to Highland more than it expected to receive in servicing fees?

A. Yeah. If all those agreements were in force, yes.

Q. Okay. If you look down further on that page there's the purchase price. Do you see that?

A. Yes.

Q. And in Section 1.1 it says, quote, "In consideration of the sale of the Acis participation interest to the purchasers, to the purchaser, the purchaser shall do two things."

It's going to pay the cash purchase price and it's going to give up the note. Is that a fair summary of that?

A. Yes.

Q. Are you familiar with the phrase "quid pro quo"?

A. Yes.

Q. Okay. And is the quid pro quo here that Acis would transfer to Highland the Acis participation interest and Highland would give to Acis the cash purchase price and the note?

A. I mean, I'm familiar with quid pro quo. I mean, it just says, "In consideration of the sale."

Q. Right.

A. "Of the Acis part- -- then the purchaser shall pay to seller this amount 606,655 and deliver to seller a promissory note and the initial principle balance of 12,666,446."

Q. Right. So Highland is giving the cash purchase price and the note to Acis in exchange for Acis' promise to share the Acis participation interest as defined in this agreement, fair?

A. Fair.

Q. Okay. All right. And that was your understanding as the treasurer of Acis and the CFO of Highland at the time, correct?

A. Yes.

Q. Do you see that if you add up the -- withdrawn.

Do you know how the cash purchase price and the initial principle balance of the note were determined?

A. I don't recall. Again, I talked about there were models done and things like that. I'm sure it was in the model.

Q. Do you recall whether if you added the cash purchase price and the initial principle balance of the note, if you added those two numbers together, do you recall if that total number equalled to the dollar the projected value of the Acis participation interest as defined in this agreement?

A. I don't remember.

Q. Do you know if these numbers in Section 1.1 were the subject of any negotiation?

A. I don't recall.

Q. If you turn to the Section 1.3 on the next page, it says that "The parties acknowledge and agree that the purchase price reflects the arm's-length value of the Acis participation interest as of the date of the agreement as determined by mutually-agreed appraisal methods."

Do you see that?

A. Yes.

Q. Isn't that -- do you see that the purchase

price is defined as the cash purchase price and the delivery of the note on the bottom of the prior page?

A. Yes.

Q. So would you agree that in Section 1.3 the parties are agreeing that the value of the cash purchase price plus the note reflects the arm's-length value of the Acis participation interest as of the date of the agreement?

A. That's what the parties agreed to.

Q. All right. And so your understanding is that, in fact, the purchase price and the value of the Acis participation interest were supposed to be the same, at least as of the date of the agreement?

A. I don't know if that's -- I don't know if they were the same.

Q. Well, it says that the purchase price reflects the arm's-length value of the Acis participation agreements. Doesn't that mean that they were supposed to be equal? They reflect the same value.

A. Arm's-length value doesn't mean the same value. It just means what -- you know, someone will participate in an arm's-length transaction. You know, that's not saying value. I don't agree that arm's-length transaction is saying value.

Q. Do you know how the purchase price was

calculated?

A. I don't remember.

Q. Do you know if it was intended to be the equivalent of the expected value of the Acis participation interest?

A. Like I said, I don't remember.

Q. Well, you're here as the 30(b)(6) witness today. Does HCLOM have a view as to how the purchase price was determined?

MR. AIGEN: Objection; form.

A. Again, we -- I discussed there is models, right? That was -- that were put together around this transaction, presumably the models, right? Modeled what an arm's-length transaction would have been.

So again, there's different ways to value different transactions. So presumably that's what was in the model.

Q. (BY MR. MORRIS) All right. I appreciate that you presume a lot of things.

Did you do anything to prepare today --

A. I don't --

Q. -- to determine how the purchase price was calculated?

A. I don't have access to the models. HCLOM doesn't have access to the models. I don't know.

Q. Okay. Does HCLOM have a view as to whether or not the purchase price was intended to equal the value of the Acis participation interest as of the date of the agreement?

MR. AIGEN: Objection; form.

A. I mean, from HCLOM's point of view, I don't think HCLOM was around on October 27, 2016. So this agreement was between Acis and Highland. It looks like Acis and Highland's -- those parties acknowledge that it was supposed to be done in an arm's-length transaction. HCLOM wasn't even there.

Q. (BY MR. MORRIS) I appreciate that.

A. So --

Q. Thank you very much. So let me ask the question again.

As the treasurer of Acis and the CFO of Highland, do you have a view as to whether the purchase price was intended to equal the value of the Acis participation interest as of the date of this agreement?

A. It was intended -- it should have intended to be whatever the arm's-length value was determined.

Q. Do you have any idea what that was?

A. I don't recall. I don't have any of those models.

Q. Can you think of a reason why one party would

be giving the other party more money --

MR. AIGEN: Objection; form.

Q. (BY MR. MORRIS) -- than it was expecting to receive?

A. Yeah. What's, you know, there's other benefits involved. We talked about tax benefits or things like that. Sure. I mean, there's all sorts of things that you model into the model.

So, again, without looking at the details of the model and you are talking about you are actually going to have to model in maybe variability of servicing fees, and discount rates, and tax benefits, I mean, there's all sorts of things you can assume. But it's intended per 1.3 for however what was decided to reflect the arm's-length value.

Q. There's a reference there to mutually agreed appraisal methods. Do you see that?

A. Yes.

Q. Can you identify those appraisal methods?

A. I don't remember what was used.

Q. Do you know if any appraisals were actually done?

A. Well, I don't -- it doesn't say -- it says appraisal methods. It doesn't say appraisals. So I don't know what appraisals were done. It says appraisal

method. So you can put something together using an appraisal method.

So again, I don't have access to these records. I don't remember what was done.

Q. Okay. Let's look at the promissory note.

MR. MORRIS: Let's mark that as Exhibit 11 I think.

(Exhibit 11 marked.)

Q. (BY MR. MORRIS) Have you seen this before, sir?

A. Yes.

Q. And what is this?

A. This is the -- this is the note between Highland Capital and Acis Capital Management.

Q. And is this the note that HCLOM contends it's the holder in due course of today?

A. Yes.

Q. And is this the note that HCLOM contends Highland is obligated to satisfy?

A. Yes.

Q. Do you know -- this note was executed at the same time as the participation agreement, correct?

A. Yes.

Q. And they were part and parcel of the same overall transaction, correct?

A. Yes.

Q. Do you know if the terms of this note were negotiated?

A. This was part of the transaction. I don't remember. As we talked about, these numbers were derived from models and things like that.

So again, they are -- the different assumptions are in these models. I don't remember the back and forth but it's somehow derived --

Q. Are the same people making decisions on behalf of both Acis and Highland at this time in connection with the participation agreement and the note? It's the same human beings, right?

A. Yeah. Acis doesn't have employees.

Q. Right. And Jim Dondero was signing everything on behalf of everybody, right?

MR. AIGEN: Object to form.

A. I mean, Jim executed these agreements, correct.

Q. (BY MR. MORRIS) Right. And he executed them on behalf of both parties, right?

A. Yes.

Q. All right. Acis and Highland didn't obtain independent counsel, did they?

A. I just recall Hunton & Williams being involved. I don't -- I -- you would have to look at the engagement

letter. I don't know how those things are written.

Q. Was there a team at Highland that was dedicated to protecting Highland's interest and another team that was dedicated to protecting Acis' interest?

A. I don't recall that at Highland. So, again, I -- but, you know, if there's outside counsel involved, maybe there's other dynamics there as well.

Q. Do you remember any law firm being involved other than Hunton & Williams?

A. No. I just recall Hunton.

Q. Do you know who established the terms of the notes -- of the note?

A. I don't remember those. I don't remember that detail.

Q. Okay. And you don't know how that principle amount of the note was determined, correct?

A. Like I said before, it would have been in these analyses, and cash consideration, and other consideration and all that would have been determined.

Q. Do you believe Acis would have agreed to give Highland a portion of its servicing fees without receiving an agreement to receive the cash purchase price and the note?

MR. AIGEN: Objection; form.

A. I'm sorry. Acis would have agreed --

Q. (BY MR. MORRIS) Withdrawn.

Do you believe that Acis would have agreed to give a portion of its servicing fees to Highland if Highland didn't simultaneously agree to give that cash purchase price and the note to Acis?

MR. AIGEN: Objection; form.

A. I think that was all -- in order for the tax planning to work, I mean, Acis had to receive compensation later.

Q. (BY MR. MORRIS) Stated another way, in order for the tax planning to work, Acis had to share the servicing fees with Highland and Highland had to make that cash purchase price payment and the payments under the note. That was the intent, correct?

MR. AIGEN: Objection; form.

A. No. I mean, no. I mean, the -- for the tax planning to work the note here had to be a real bona fide note. You don't -- you have to create tax planning with economic substance. Without economic -- real economic substance, it's not tax planning; it's just shuffling papers.

So this note is a real binding note between Highland and Acis. If -- you know, and Highland has to pay, and is obligated to pay that to Acis. Without that, it's not tax planning.

Q. (BY MR. MORRIS) Okay. I don't mean to quarrel with you but let me try and make this easier.

In order for the tax planning to work, you need both pieces to happen, right? You need both Acis to share its participation interest and you need Highland to give the note, correct?

MR. AIGEN: Objection; form.

A. I mean, the agreement was to share the participation interest because that was agreed to. But if the participation interests were never paid, it's still a bona fide note.

But Highland bears the risk of this planning to pay those amounts to Acis. You know, as we -- and as you pointed those whereas clauses, the markets are uncertain and unstable. So, you know, we saw that through the great recession, right, in 2008, 2009.

So to the extent that those payments -- that was the deal, right? As you said, that was the -- but if those payments aren't made, the promissory note is still a good note. You have to have -- you have to make good on these agreements.

Q. (BY MR. MORRIS) But the failure to pay the servicing fees had nothing to do with the unpredictability and instability of the market, right?

MR. AIGEN: Objection; form.

Q. (BY MR. MORRIS) It had to do with the involuntary bankruptcy that filed against Acis?

A. No. I mean, I'm saying in the -- when we entered into this in 2016, right? The -- you don't know what markets are going to do. So the whole idea is in the event there is turmoil in the markets and here it is an ability not to pay, as we saw in a prior turmoil, there still is an obligation under this note to make payment to Acis.

Q. Did you discuss with anybody at any time before this transaction was entered into, that there was a risk that Highland might receive zero in servicing fees?

A. Sure. A hundred percent.

Q. And Mr. Dondero and you as the officers of Highland agreed to give this promissory note with the understanding that you might receive nothing in return?

A. One, I will tell you what I remember and what stands up, 110 percent we sat with Jim, the tax team, and said you understand if you make this note and for some reason these participation interests are not paid on, you still owe this money. Yes, that was the understanding.

There was no way we wanted to obl- -- like that's part of tax planning. If you don't do that, the

tax planning doesn't work.

Q. But isn't the failure to pay servicing fees a breach of the agreement?

MR. AIGEN: Objection; form.

A. When you say -- we're talking about the note. There is a note between Highland and Acis. This note doesn't say if you don't pay -- like it's my understanding that, you know, these are real -- again, it's my understanding that these payments under the note were real obligations and that was stressed.

I remember having those conversations with this transaction.

Q. (BY MR. MORRIS) So you are saying that Highland gave the note and -- it gave the note not in exchange for the participation interest?

A. No. No. It did. It received the participation interest. But as we talked about, those participation interests can vary, right? There's variability under those participation interests.

So to the extent there's -- you know, again, Highland is making a fixed commitment, right, which is outlined in this promissory note.

And the fees that are received, you know, you are -- you are -- they are -- they were modeled out initially. But they're models. And models, you know,

again, you are projecting out to the best of your ability but I, you know, again, markets move.

Q. Did the market cause HCLOM to not pay servicing fees?

MR. AIGEN: Objection; form.

Q. (BY MR. MORRIS) Withdrawn.

HCLOM never paid Highland any servicing fees, right?

A. We already talked about that earlier, yes.

Q. Okay. Why didn't HCLOM pay Highland any servicing fees?

A. Because despite its best efforts, HCLOM -- the -- these servicing, you know, these resets we talked about were never effectuated over to HCLOM. It never became the collateral manager of the CLOs.

Q. And why didn't it become the collateral manager of the CLOs?

A. Because of the Acis bankruptcy.

Q. Okay. Great.

Can you turn to Exhibit A on the note.

A. Yes.

Q. The first payment was due on May 31, 2017, correct?

A. Yes.

Q. And that payment was made, right?

A. Yes.
Q. Did Highland make the payment that was due on May 31, 2018?
A. It did not.
Q. Did HCLOM declare default under this note?
A. Not that I'm aware of.
Q. Did you discuss with anybody declaring a default under the note?
A. No, because there was a forbearance in place.
Q. Instead of declaring a default you entered into a forbearance agreement, correct?
A. Correct.
Q. After the participation agreement was signed, Acis satisfied its obligations by paying Highland its allocated portion of the servicing fees through at least October 2017, correct?
A. Correct. I mean, I remember Acis making the payments. That's -- so I don't recall when that stopped.
Q. And Highland made its payment in the spring of 2017, correct? We just established that.
A. Yeah, in May of 2017.
Q. Do you recall that as of the end of October 2017, for the timing reasons you described earlier, Acis had paid Highland about $3 million more in servicing

fees than Highland had paid under the note?

A. I don't remember numbers.

Q. As of November 1st, 2017, you and Mr. Dondero were the sole officers of Acis, correct?

A. Yes.

Q. And you remained the sole officers of Acis until Mr. Phalen was appointed in the summer or spring of 2018, correct?

A. Yes.

Q. Okay. Acis continued to receive servicing fees after November 1st, 2017, correct?

A. Yes. I mean, the CLOs paid quarterly. So it would have received -- yeah, I mean -- your question is did it received fees after November? Yes. I mean, the CLOs kept paying. So yes.

Q. And did Acis remit any servicing fees to Highland after November 1st, 2017?

A. I don't recall.

Q. The participation agreement, remember, referred to a potential new CLO issuance by Acis. Do you remember that?

A. Yes. There was a...

Q. And in fact, in April 2017 a new Acis CLO was issued, correct?

A. I don't recall. What was the name of the --

Q. It's Acis CLO seven.

A. Okay. Okay.

Q. And so do you remember that that launched in the spring of 2017?

A. Vaguely.

Q. Okay.

MR. MORRIS: Let's mark this the next Exhibit 12, a portfolio management agreement for Acis seven.

(Exhibit 12 marked.)

Q. (BY MR. MORRIS) This is 12. Okay. Have you seen this document before, sir?

A. I may have. If I did, I just don't remember.

Q. And if you go to the page ending in Bates-stamped 7089, you will see Mr. Dondero signed on behalf of Acis CLO Management, LLC, correct?

A. Yes.

Q. Okay. So here it is April 2017, Mr. Terry's been gone for ten months. And under Mr. Dondero's direction, Acis is launching a brand-new CLO, correct?

A. Yes.

Q. And he wouldn't have done that if he didn't believe the Acis CLO Management, LLC couldn't perform its obligations as the portfolio manager, correct?

A. Yes.

Q. You don't recall any discussions before April 20, 2017, where anybody expressed a concern regarding Acis' ability to perform?

A. I didn't -- we have a team of folks that put together CLOs. They source the CLOs. They put together the warehouses. I'm not involved in any of that, so...

But I don't remember discussions being directed towards myself.

Q. Do you know if Acis Seven had a -- had to make a risk retention payment?

A. I don't recall. But again, it's part of the rules. So, I mean, presumably an entity made that -- you are not going to issue a CLO without the risk retention of that percentage being retained by somebody.

Q. Do you have a recollection as to how the risk retention amount was funded?

A. I don't remember.

Q. Do you remember that Highland actually loaned Acis $3 million for the purpose of making the risk retention payment in connection with the launch of Acis seven?

A. I don't remember. But if that's what happened, that's what happened.

Q. Mr. Dondero used Highland to make loans to affiliates from time to time. We know that, right?

A. Yes.

Q. And did Mr. Dondero cause Highland to make loans to Acis from time to time?

A. I don't recall loans between Acis and Highland. You know, if you said that -- if Highland loaned Acis the $3 million, I don't recall there being a flurry of loans between Highland and Acis.

Q. Do you remember that Acis just used the money that it received on May 31, 2017, to repay Highland for the loan that Highland had just made so it could make its risk retention payment? That doesn't ring a bell?

A. No. This is seven years ago.

Q. Okay. In late 2017 and early 2018, Acis was looking to reset certain of the CLOs, correct?

A. Late '17, late '18, yes.

Q. Okay. Do you have an understanding of what a reset is?

A. Yeah. You're -- yes.

Q. What's your understanding of a reset?

A. You are basically resetting the cap structure in the underlying CLO.

Q. And why was Acis looking to reset the CLOs in late 2017, early 2018?

A. From what I recall, it was Acis 2013-3. So I think it had hit -- you know, it -- there was a time, a

life of a CLO and you can extend that life by doing a reset.

Q. Okay. And was it -- do you know if it was contemplated that a new entity would replace Acis as the portfolio manager for those CLOs that were successfully reset?

A. Are you saying -- and can you go back to your timeline? Are you saying at the time of the reset in 2017?

Q. Yeah. When -- in late 2017, early 2018, when the concept of resets was being discussed, was a decision made that an entity other than Acis would serve as the portfolio manager for the reset CLOs?

A. I don't recall the reset of Acis 2013-3 was a reset with Acis Capital being the manager.

Q. And when did that take place; do you remember?

A. It was like January of '18, early '18.

Q. So your recollection is that with the reset of Acis 2013 CLO, Acis was going to remain as the portfolio manager?

A. That's what I generally remember. But, again, this was six years ago. So there may be a document that refutes that but that's what I generally remember.

Q. Did you look at any documents to prepare for your testimony today on the topic of resets?

A. No. I looked -- I looked at the documents that were in the topics. I don't recall the resets being -- but I generally am aware of resets.

Q. Can you take Exhibit 1 out? It's the first exhibit.

A. Yeah. Okay.

Q. And the last topic is Topic 12, on page three.

A. Uh-huh.

Q. Can you tell me what documents you looked at to prepare yourself to answer questions about Topic 12?

A. I didn't look at any documents. I am generally aware of the resets that occurred, but I didn't look at any documents.

Q. So you didn't look at any documents and you didn't talk to anybody other than counsel, correct?

A. Just counsel.

Q. And you weren't directly involved in the resets, correct? You had no personal direct involvement in any of the issues concerning the resets, correct?

A. I -- we have -- there was a team at Highland Capital that managed that process.

Q. Were you part of that team?

A. I was not.

Q. So, again, you had no personal knowledge about any of the issues surrounding the proposed resets in

late 2017 or early 2018, correct?

A. I'm aware of the resets that did occur, the potential resets.

Q. What resets occurred?

A. Well, there's the Acis 2013-3, right? That was -- the reset -- they reset in and it went to market and there was a -- like an article the day before and publication, and then that's when Josh Terry filed the involuntary, like, you know, the day that it was supposed to reset.

Q. But it didn't reset, correct?

A. No. The -- yeah, but there -- that was the attempted reset, right? So that reset was occurring but it didn't -- it wasn't finalized because of the involuntary bankruptcy.

And there was -- there were other reset attempts by investors, I think one in April, April -- end of April of 2018, another like mid-June. These are 45-day resets. So, again, they're 45 days.

But the investors were trying to reset these. Again, with Acis in bankruptcy, right. The investors wanted to reset these.

MR. MORRIS: All right. Can we take a break now?

MR. AIGEN: Yes.

THE VIDEOGRAPHER: Off the record. The time is 2:37.

(Break taken from 2:37 p.m. to 2:51 p.m.)

THE VIDEOGRAPHER: Back on the record. The time is 2:51.

MR. MORRIS: Okay. Let's mark as the next exhibit, it's 13, the Assignment and Transfer Agreement. It was previously marked Exhibit D in a different deposition.

(Exhibit 13 marked.)

Q. (BY MR. MORRIS) Mr. Waterhouse, do you recall that the arbitration panel issued its final award in favor of Mr. Terry and awarded him damages of $8 million on October 20, 2017?

A. I'm aware of it.

Q. Okay. Did the award come as a surprise to you?

MR. AIGEN: Objection; form.

A. I didn't think of it either way. I wasn't close to the case. I mean, I -- I'm not a lawyer. I don't know. You know, Josh did not treat me well at my time at Highland. So -- but I didn't have a dog in the fight. He was just a very abusive person, abusive towards me and things like that.

Q. (BY MR. MORRIS) The trial was in September, right, of 2017?

A. I don't recall.

Q. And you are part of the senior management team at Highland at the time, right?

A. Yes.

Q. Were people talking about the case, was the senior management team talking about how the case was going?

A. I mean, they may have. I wasn't really talking to them. I mean, I don't really talk to lawyers and say, hey, how's this going or how's that going. And unless someone --

Q. Okay.

A. -- really offers their view, kind of like near a water cooler, you know, I'm not really -- you know, I think I have testified before, I like to go to work. I like to do a good job. I like to come home. I like to see my family and my kids.

Q. Amen. Me too. That's all I want to do myself, to be honest with you.

A. So I mean --

Q. But around the water cooler, I mean, did anybody give you any indication as to how they thought the case was going?

A. Not that -- I mean, I just remember, hey, we have arguments. These guys have arguments as far as --

it's being heard.

Q. Was there any reaction when the award was rendered on October 20th? Did anybody talk about it?

A. Yeah. When the award was rendered. It's like, I remember, you know, I remember it's -- I remember learning at some point that Josh Terry won and I thought -- you said the amount was $8 million. I thought it was like 6. You know, it was a seven-figure amount.

Q. And was anybody -- did anybody express any emotion at the rendering of the award? Did anybody react at all?

MR. AIGEN: Objection; form.

A. I mean, I think there was disappointment that he -- that Josh Terry won. I mean, I don't remember, you know, people cussing or yelling or -- you know, it wasn't like an emotional lash-out. People weren't happy. But I wouldn't say it was -- there was very disappointment is what I recall.

Q. (BY MR. MORRIS) Do you recall any discussion at any time in September, October 2017, about transferring assets away from Acis so that Josh would be unable to collect on his judgment?

A. I don't recall the time frame. I don't.

Q. Do you recall the substance of what I

described, just not when the conversations took place?

A. I really don't recall, you know, conversations around Josh or what Josh would get, you know, things like that. I think he was entitled to what he was entitled to.

Q. Well, he had judgment against Acis, correct?

A. Yes.

Q. Okay. Did anybody give any instruction or direction to transfer assets from Acis to other entities in October 2017?

A. I don't recall assets leaving Acis at that time. I mean, I don't remember cash moving or Acis -- I don't remember Acis having other, you know, other items of value on its balance sheet, probably just the cash. I don't remember that just leaving.

So I don't remember those conversations being had.

Q. Are you aware that Josh filed the involuntary against Acis because Acis had no assets to satisfy the arbitration award and judgment he obtained?

A. No. I thought -- my understanding was that Josh filed the involuntary when that Acis 2013 was being reset. So, again, when it was being reset into a new -- my recollection, it was being reset into a new manager. And that reset is when Josh filed the involuntary.

Q. And as the CFO of Acis, you have no recollection of any transfers occurring in the fourth quarter of 2017, any transfer of assets, any assets out of Acis to other Highland affiliates?

A. We have billions of dollars of AUM at Highland. Acis was just one part of it. I don't remember every transfer that occurred.

Q. I'm not asking you to remember any particular transfer.

I'm asking you if you have a recollection of that in the fourth quarter of 2017, transactions were undertaken to transfer Acis' assets to other Highland entities?

A. I don't remember those -- I don't remember even generally that happening.

Q. Do you recall that the day before the arbitration award was rendered, Highland created Highland CLO Management, LLC?

A. I wasn't aware at that time.

Q. Are you aware today that Highland caused an entity called Highland CLO Management, LLC to be formed in Delaware?

A. I didn't remember that until you showed me -- you know, you showed me the entity names earlier or, yeah. Again, I don't recall the entity's date of

formation. There's all sorts of entities at Highland that we have gone through and I mean -- I'm not aware of specifics.

Q. Did you know before today that an entity called Highland CLO Management, LLC existed?

A. I may have known at one time but I just don't remember.

Q. So is it fair to say that you also don't know why the entity was formed?

A. I can speculate but I don't know.

Q. No. Do you know who authorized the creation of that entity?

A. I don't.

Q. Did you have any discussions with anyone at any time concerning the formation of HCLOM, LLC?

A. I don't recall any discussions. I mean, typically -- the lawyers are the ones that are involved in entity formation and things of that sort. I'm typically not in -- you know, in my role at Highland and Acis I'm typically not involved in those types of discussions.

Q. Do you know if HCLOM, LLC ever managed any of the Acis CLOs?

A. Not that I'm aware.

Q. Going back to the transfer agreement, do you

know why this agreement was entered into at this time?

A. I mean, it's --

MR. AIGEN: Are you asking him why it was entered or why it was entered on that specific date?

MR. MORRIS: At this time, as of November 3rd, 2017.

A. November 3rd, 2017, I mean, I don't recall the events of exactly why it was entered as of November 3rd, 2017. But, you know, just that there were issues at Acis and, you know, there are new entities being formed and this was part of -- this assignment and transfer agreement was part of the issues that Acis was facing.

Q. (BY MR. MORRIS) Well, other than the adverse judgment entered against it, what other issues was Acis facing at this time?

A. I mean, I think we talked about Highland wasn't willing to provide support to Acis as well. So it was facing -- I mean, you know, without employees it's not able to perform its duties.

Q. Okay. So we've got the adverse judgment and Highland said it wouldn't support it anymore, right?

A. Yes.

Q. Anything else?

A. That's what I recall generally.

Q. Okay. So Mr. Dondero with his Highland hat

told Mr. Dondero with his Acis' hat that he wasn't going to support Acis any longer?

MR. AIGEN: Objection; form.

Q. (BY MR. MORRIS) Do I have that right?

A. Highland made that determination that it wouldn't support Acis on a go-forward bases at some point.

Q. Okay.

A. You know --

Q. All right. Other than the adverse judgment -- withdrawn.

Other than the adverse arbitration award that was entered into against Acis' and Highland's decision that it would no longer support Acis, were there any other issues that Acis was confronting in the fourth quarter of 2017?

A. Not that I can recall.

Q. And is it your testimony on behalf of HCLOM that those are the two reasons why the assignment and transfer agreement was entered into?

A. Yeah. I mean, that's what I -- yes. That's what I generally remember from an HCLOM prospective. I mean, could there be something else that I don't remember? But that's what generally was going on at the time.

Q. Okay. And who made the decision to enter into this agreement?

A. I don't -- well, we can see who executed it.

Q. Right.

A. It looks like Jim did. Looks like Jim and the new director of HCLOM.

Q. So Jim did it both on behalf of Highland and Acis and Mr. Cullinane did it on behalf of HCLOM, correct?

A. Yes.

Q. Do you know why Dondero entered into this agreement on behalf of Acis and Highland?

A. Yes, generally. I mean, if Mr. Dondero sees, right, that the manager of the Acis CLOs is not going to be Acis Capital Management going forward, then to preserve the planning that's going on, he would have to sign and transfer the fees.

Q. And the reason that Acis wasn't going to be the manager of the CLOs is because Highland said that it would no longer support Acis, correct?

A. Highland would not support Acis, but also Acis didn't have the wherewithal for -- to make its obligations to Mr. Terry.

Q. All right. What was the purpose of the agreement; do you know?

A. The purpose of Exhibit 13?

Q. Yes, sir.

A. To transfer the participation interest. Transfer -- I'm sorry. The interest and the promissory note.

Q. Is that the only purpose of the agreement was to transfer the promissory note?

A. Well, and the interest too.

Q. Which interest are you referring to?

A. The CLO participation interest.

Q. That's the servicing fees we referred to earlier?

A. Yes.

Q. Was it anticipated that HCLOM would succeed Acis as the manager of the CLOs?

A. That was my understanding.

Q. And it was only as the manager of the CLOs that HCLOM would have been entitled to receive the servicing fees that are the subject of the participation interest, correct?

A. Yes. For -- HCLOM would only get the -- it had to become the manager, right, of the Acis deals to receive the servicing fees to then in turn remit the participation interest to Highland. That was it.

Q. Do you know if this agreement was the subject

of any negotiations?

A. I don't know.

Q. Do you know what role, if any, Mr. Cullinane played in the drafting or negotiation of this document?

A. I wasn't involved. I don't know.

Q. Did you ever ask anybody who the -- and he was the person acting on behalf of HCLOM at the time, correct?

A. He's the director of HCLOM, yes.

Q. Did you do any diligence at all to try to figure out what his intent and his motivation was in signing this agreement on behalf of HCLOM?

A. At the time of execution?

Q. At any time.

A. Documents like this are typically handled by the attorneys. So I would assume the attorneys would have hashed any of that out or anything like that.

Q. But in preparation for today's deposition as HCLOM's representative, you didn't make any effort to speak with Mr. Cullinane to determine what he was thinking when he entered into this agreement on behalf of HCLOM, correct?

A. I did not.

Q. Are you aware of any demands or requests Mr. Cullinane made on behalf of HCLOM with respect to

this agreement?

A. I'm not aware.

Q. Okay. If we look at the agreement, the third recital says, "HCM has notified Acis that HCM is unwilling to continue to provide support personnel and other critical services to Acis with respect to the CLOs."

Do you see that?

A. Yes.

Q. Okay. Who made that decision on behalf of Highland that Highland was unwilling to continue to provide support personnel and critical services to Acis?

A. I mean, that would be Mr. Dondero.

Q. Do you know the reasons for the decision -- withdrawn.

Did he ever tell you what his reasoning was for that decision?

A. I'm trying to -- talking about in November. I mean, I don't know if it was related -- I mean, again, this is in November 2017. I don't know. There is an -- you know, Josh Terry has an award that's I think public, from my understanding and you're managing assets at the time with a very public dispute. You have investors that aren't happy about it.

So I think my general understanding was

it's best to move on from -- you know, you want a clean manager to manage these assets. You don't -- on a go-forward bases.

Q. What's the bases for your recollection that the award was public as of November 3rd, 2017?

A. I don't know. Just -- that's what I kind of generally remember. I thought it was like a, you know, something that was known.

Q. Do you recall seeing any articles in the press prior to November 3rd about the arbitration award?

A. I don't recall seeing it in the press. Like, you know, when there's decisions made in court cases, right, those remain -- you know, like those are published by the Court, things like that.

So, again, this is -- this happened seven years ago. I kind of -- I thought that was part of the caliculus. Sort of like, hey, you know, the investors don't want this, right?

You got to -- you have to move to a different manager or otherwise, you know, the business is that -- you just -- it doesn't look good for the business.

Q. But Mr. Dondero was in control of Acis before and after the arbitration award, correct?

A. Yes.

Q. So there was no change in control with the issuance of the arbitration award, correct?

A. There was not.

Q. Was there a -- did you perceive that there was a loss of confidence in Mr. Dondero?

A. No.

Q. Mr. Dondero was the face of Acis at this time, correct? He was the leader of Acis, correct?

A. Yeah. Yes. He was the control -- but there was a team, a CLO team, right? That -- yeah, but -- Mr. Dondero is always kind of the head, right? So he's the head of all these entities. There's a CLO team there that is, you know, interfacing on a day-to-day bases.

So there's -- to answer your question, yeah, Mr. Dondero was there. There's a team of people still managing the Acis deals. Jim can't do it all by himself.

Q. Right. And that team was the exact same as it had been since Mr. Terry left Acis in June of 2016, correct?

A. I believe so. I don't remember anyone leaving afterwards but -- again, it could be. It was so long ago.

Q. So, in fact, the only thing that happened to

Acis between June 1, 2016, and the date of entry of this agreement is, number one, Mr. Terry left, correct?

A. He did, yes.

Q. And Mr. Terry's departure didn't cause any problems for Acis, correct?

A. I -- look, I think whenever there is portfolio manager turnover and there is -- I mean, there are perceptions in the market, right, of what people -- when you invest your own money, you want to know who the manager is. Josh was the day-to-day person. I mean, you know, it could have upset some of the investors. I don't know.

Q. Well, Mr. Dondero certainly had enough confidence in the Acis' brands to enter into two different sets of sub-advisory and shared services agreements after Mr. Terry left, correct? We have looked at those.

A. Yes.

Q. And Mr. Dondero certainly had enough confidence in Acis and the Acis' brand to launch the Acis Seven CLO in the spring of 2017, correct?

A. Yes.

Q. Okay. So is it fair to say that notwithstanding Mr. Terry's termination -- oh, one more thing. Mr. -- Highland sued Mr. Terry in the fall of

2016, correct?

A. I don't remember the dates, so...

Q. It was a public litigation, right? And then Mr. Terry forced it into arbitration. Do you remember that?

A. Vaguely.

Q. So notwithstanding Mr. Terry's departure and the public litigation that Highland itself commenced, Mr. Dondero was still confident enough in the Acis' brand to both enter into new restated and amended shared services agreements and sub-advisory agreements and launch a new CLO under the Acis' brand, correct?

A. Yes.

Q. So is it anything other than the arbitration award that caused the entry into this assignment and transfer disagreement?

A. Yeah, I don't know. What I generally remember was that the Acis' brand at that time was -- the award was not a positive for the Acis' brand. And the decision was made to therefore, you know, kind of shift things to a new manager.

Q. Okay. Do you know who on behalf of Highland provided the notification referred to in the third whereas clause?

A. I don't know who did that.

Q. Do you know who received the notification on behalf of Acis?

A. I don't.

Q. But you would agree that Mr. Dondero was the control person for both entities at this time, correct?

A. Yes.

Q. At the time, do you recall whether Acis was in default under the shared services agreement?

A. I don't remember.

Q. At the time, do you recall if Acis was in default under the sub-advisory agreement?

A. I don't remember.

Q. At the time, do you recall if Acis was in default under any agreement with anybody in the world?

A. I don't remember.

Q. Did Highland ever send a notice of default to Acis for failure to pay for services rendered under any agreement that it had with Acis?

A. I don't know. You would have to ask the attorneys.

Q. Okay. As the accountant, are you aware -- withdrawn.

As the chief financial officer of Highland, are you aware as you sit here right now of Acis failing to pay Highland any monies due and owing, other than the

participation fees?

A. I don't -- I don't know -- this was seven years ago. I don't remember. There could have been some outstanding bills. I don't remember.

Q. All right. But your speculation aside, you have no recollection of that, correct?

A. Yeah. Without documents, it's like -- I don't know.

Q. The next whereas clause says that, quote, "Acis has determined that the effect of the notification is that it cannot fulfill its duties as the portfolio manager of the CLOs."

Do you see that?

A. Yes.

Q. So Highland is the one who gave the notification and as a result of Highland's notification, Acis determined that it couldn't fulfill its duties, correct?

A. Yeah. I guess, if Highland notified Acis that it's not going to provide support and then -- then turn around and says, yeah, Acis has determined the effect of the notification is that it cannot fulfill its duties as portfolio manager of the CLOs.

Q. Okay. And Mr. Dondero is the person on behalf of Highland who made the decision not to continue to

provide support to Acis, correct?

A. Yes.

Q. And was Mr. Dondero also the person who made the decision on behalf of Acis that Acis could no longer fulfill its duties as portfolio manager as a direct consequence of the decision he made on behalf of Highland not to provide support?

A. Yeah. Yes. It was the portfolio manager and also I think the fees it was going to incur and, like I said, the brand was damaged at that point.

Q. Okay. Was there any damage to the brand other than the issuance of the arbitration award?

A. I generally recall that as being, you know, again, as kind of -- that was pretty much it. I'm trying to remember if there was any other -- I'm not -- I mean, I just --

Q. So as you sit here today, you can't remember any cause of the alleged damage to the Acis' brand other than the issuance of the arbitration award, correct?

A. Yeah. I can't -- there may have been other factors. Again, I'm not talking to the investors. Where I sit, that's my general understanding.

Q. Okay. There are other entities that provide similar shared services and sub-advisory services other than Highland, correct?

A. Are you saying there's this other third-party servicing entities?

Q. Yeah.

A. Yes.

Q. In fact, Brigade is one, right? Brigade wound up providing the same services to Acis that Highland used to provide to Acis, correct?

A. Yes. Yes. I mean, there are other CLO servicers.

Q. Is it fair to say Mr. Dondero made a determination on behalf of Acis that the Acis CLOs would not be managed -- withdrawn.

Do you know if Acis ever considered finding a service provider other than Highland before it determined that it couldn't fulfill its duties?

A. No.

Q. Are you aware that under the shared services agreement and the sub-advisory agreement, unless Acis consented, then Highland could not terminate their provision of services unless and until a replacement was found?

A. I don't remember that.

Q. But that's actually what happened, right?

A. Yeah. I mean, it's in this document. It says Highland is not going to provide services. Right.

Q. But Highland did continue to provide services, notwithstanding Mr. Dondero's statement to the contrary, correct?

A. Yes.

Q. Okay. Did Acis ever consider suing Highland for breach of contract?

A. I don't know.

Q. Is it fair to say that Acis simply accepted Highland's notification and said, okay, we're done?

A. Yeah.

Q. Again, notwithstanding the notification, Highland continued to provide services to Acis and Acis continued to perform until Mr. Phalen was appointed the Chapter 11 Trustee, correct?

A. Yes. I mean, if you are -- if a successor manager is going to take over the existing Acis deals, you still have to continue to provide support. Otherwise, those deals are going to fall apart.

Even if you telegraphed your intent to not provide support, you are still going to provide support until the transfer is effectuated.

Q. Can you turn to paragraph four of this agreement? Do you know that -- what paragraph four relates to?

A. The expense support paragraph?

Q. Yes.

A. It looks like when -- you are transferring from one manager to another manager, right? And I think this agreement is contemplating that there were some expenses that will still be in Acis' name, right?

But then HCLOM, I think the intent was going to receive fees, right? So then you are saying HCLOM shall promptly pay to Acis or Acis with a request to Acis' creditors the amount of such shortfall.

Right in the middle of that, HCLOM's obligations -- this paragraph two -- exceed greater than 2 million of Acis' legal expenses --

THE COURT REPORTER: You are going to have to either slow down for me or read in your head.

THE WITNESS: Okay.

A. Or greater than 1 million of Acis' administrative expenses in the aggregate. I guess these are all defined.

I think that's -- I think what the attorney is trying to -- you know, you are moving from Acis to HCLOM, HCLOM was going to receive fees. There may not be anything in Acis to pay some of these expenses.

I think that HCLOM owes to Acis for whatever reason. And so that's what this -- that's what this pair is trying to do.

Q. Did you have any involvement in the drafting of this section?

A. I don't remember, really.

Q. Do you remember participating in any discussions concerning expense support?

A. No.

Q. As the HCLOM corporate representative today, is it your understanding that HCLOM owed Highland any obligations or had any duties under this agreement?

MR. AIGEN: Objection; form.

Q. (BY MR. MORRIS) I'm not asking for a legal conclusion. As a matter of fact, is it, you know, did HCLOM have any responsibilities to Highland after this agreement?

A. Responsibilities to Highland?

Q. Yes.

A. I'm not aware of any.

Q. Okay. So it's your testimony as HCLOM's representative, that you're not aware of any obligation that HCLOM undertook to Highland under this agreement?

A. Yeah. I mean, HCLOM, the purpose of this agreement is to assign and transfer the note and assume our participation interest.

I mean, those are -- the note would then be owed from Highland to HCLOM and the Acis fees from the

Acis CLOs to HCLOM. I just don't see how HCLOM, you're asking, would have an obligation to Highland.

Q. Well, the expectation was that HCLOM would succeed Acis, including the right to receive the servicing fees, right?

A. Right. And then HCLOM would then remit the fees to Highland, right? And that -- that's -- because they're going to step into Acis' shoes, under this -- that agreement, right?

So then HCLOM will have the obligation under the CLO participation interest agreement to remit, you know, that 20 bases points over to Highland.

Q. And is it fair to say that the reason Highland agreed to transfer the note to HCLOM is because HCLOM was agreeing to become the new portfolio manager for the Acis CLOs and would share in the servicing fees after that happened?

A. Yeah. My general recollection is to preserve the planning and -- and you change the collateral manager. So you just assign over all the agreements to preserve the planning.

Q. Okay. So --

A. Yeah, that's my general recollection.

Q. Okay. The reason Highland agreed to transfer the note to HCLOM is because the parties intended and

expected HCLOM to succeed Acis as the portfolio manager of the Acis CLO and reap the benefits in the form of the servicing fees, which it would share with Highland, correct?

A. I mean, it -- I just view it as there's a note between Acis and Highland and there's a CLO participation agreement. And that each agreement is moving to HCLOM as successor manager to preserve the tax planning that was effectuated Acis, you would preserve that at HCLOM.

So I guess, my view isn't, well, you moved the note because you're getting a new manager. It's just you had the planning set up at Acis. Now you have the planning set up at HCLOM.

Q. So you move the two of them in tandem, right?

MR. AIGEN: Objection; form.

Q. (BY MR. MORRIS) That's what this agreement does, isn't it?

A. Yeah. I mean, yeah. I mean, both -- both agreements were -- yeah, I mean, both -- they were -- both of them were moved over, just like they were --

Q. Could you think of any reason why Highland would give HCLOM the note, assign the -- I mean, Highland isn't even the one signing the note, right? It's Acis.

Can you think of why Acis would assign the note to HCLOM if it wasn't also assigning the obligation to become the portfolio manager?

A. I mean, if you are saying would the Acis that are -- be -- if HCLOM got the CLO participation interest and then the Acis note wouldn't move over, again, that wasn't part of the planning. So I just don't see that as the tax planning.

To me, they are -- you know, the planning contemplated the sale of the CLO participation interest and a note to the CLO manager. So if HCLOM is the successor manager, it just -- those -- those agreements move as well.

Q. All right. But under the note, Highland agreed originally to pay Acis money, correct?

A. Yes.

Q. What did Highland receive in consideration of the agreement to pay money?

A. Again, we talked about there was tax benefits of this transaction. There was cash management benefits of this transaction. So that's what Highland is --

Q. Did it not also agree to issue the note because it was going to obtain its participation interest in the servicing fees? Was that not a reason to give the note?

A. So we're saying when Highland initially entered

into the note with Acis, it entered into the -- again, it entered into the note with Acis as part of the deferral.

You know, it's -- the tax planning would have been, hey, pay participation interest and Highland just keep that, right? So the tax planning was you pay a portion of your CLO fees, Highland, right?

But those -- that transaction, that -- like I said earlier, that note irrespective of what fees you would receive -- let's say the fees went to zero. That note between Highland and Acis was a real bona fide note subject to risk, subject to -- you know, again, subject to the payment streams that Highland agreed to pay Acis, the fixed payment stream.

Q. Again, notwithstanding that transfer agreement, Highland continued to provide services to Acis under both the sub-advisory agreement and the shared services agreement, correct?

A. Yes.

Q. Okay. In fact, Highland wound up filing proofs of claim in the Acis bankruptcy case, correct?

A. Highland filed proofs of claim for -- are you asking me the question of -- I'm sorry. I don't understand what --

Q. Are you aware that Highland filed proofs of

claim against Acis in the Acis bankruptcy case for unpaid fees under the shared services and sub-advisory agreement?

A. Obviously, I was involved. I don't -- there was so much going on at the time, John, I don't recall.

Q. Okay.

MR. MORRIS: Let's mark as the next exhibit, which is 14, a proof of claim from the Highland bankruptcy case that was marked as Claim Number 27.

(Exhibit 14 marked.)

MR. MORRIS: Good stapler you have there.

MR. AIGEN: Right. I can't believe it is still going.

MR. MORRIS: Okay. Very good.

Q. (BY MR. MORRIS) All right. Mr. Waterhouse, do you see this is a proof of claim that was filed by Highland in the Acis bankruptcy?

A. In the Acis bankruptcy, yes. I see this. This is the Acis bankruptcy.

Q. Right.

A. Okay.

Q. And if you look at the second page, the bases for the claim is the sub-advisory services and the shared services agreements in Number 8 there.

A. Yes.

Q. And the claim is for over $4.6 million. Do you see that?

A. I do.

Q. And it was signed by Mr. Ellington on August 1, 2018. Do you see that?

A. I do.

Q. Okay. And so does that refresh your recollection that Highland filed an unsecured proof of claim against Acis in the Acis bankruptcy for unpaid fees under the shared services agreement and the sub-advisory agreement?

A. I don't recall even -- as I was saying, I'm not aware that this happened but obviously it did. I was -- I had pretty much zero involvement in the Acis bankruptcy.

Q. Well, as the Highland CFO, were you aware in 2018 that Highland was carrying a receivable from Acis in excess of four and a half million dollars?

A. I don't recall, but if it's on the books, it's on the books.

Q. Are you aware that Highland also filed an administrative claim in the Acis bankruptcy?

A. I had zero involvement in the Acis bankruptcy.

Q. All right. So you are not aware of it?

A. I just...

MR. MORRIS: Let's mark as the next exhibit which is --

THE COURT REPORTER: 15.

MR. MORRIS: -- 15.

(Exhibit 15 marked.)

Q. (BY MR. MORRIS) HCLOM's Combined Discovery Responses and Objections. I need a copy of that. We'll come back to it. Instead, let's go back to -- let's see if we can get side-by-side Exhibit 4, which is the acknowledgment and waiver and the assignment and transfer agreement, which is Exhibit 13.

Okay. So the assignment and transfer agreement is signed as of November 3rd, 2017, right?

A. Yes.

Q. And if you look at Section 1 and 2 of that agreement, Acis was required to promptly provide notice to the controlling class of each CLO and subsequent to the delivery of the notices each of Acis and HCLOM was required to promptly pursue an appointment for each CLO, correct?

A. Yes.

Q. Okay. And those things never happened, correct?

A. No. I mean, we talked about the resets, right? They were working with the existing investors in the

Acis CLOs about a successor manager. There was a reset on the table, as we discussed, Acis 2013-3, that got nixed because of the bankruptcy.

There were subsequent reset attempts, right? But it was all stopped because of the bankruptcy. As there was a TRO from what I --

Q. Well, so look at Exhibit 4. That's the acknowledgment and waiver. That's where HCLOM agreed that those things never happened and never would happen and it's dated January 19, 2018, before the Acis bankruptcy is even filed. Isn't that correct?

A. Well, I think this acknowledgment and waiver just says we have to promptly provide notice. But again, we talked about this. I think this is just waiving the notice provision, but they're talking to the investors of the CLO in definitely January 2018, Acis 2013-3.

So my interpretation is that they -- whoever drafted this is saying we don't have to provide you the notice -- yeah. There's a notice provision and we're just waiving that.

Q. But that's because HCLOM, Limited will never become the successor manager, correct? That's what this is saying?

A. I don't think they -- the Acis 2013 reset, what

I remember, was that at the end of January. Right? This is January 19th. So again, I think that CLO went to market and -- at the end of January.

Q. And who was marketing that reset? Was that Mizuho?

A. Our CLO team was working with a third -- you know, a counterparty. I don't remember the counterparty but Hunter Covitz, the CLO team, was working on that reset as --

Q. And if the reset was successful, do you know who the portfolio manager was going to be?

A. It's my understanding, HCLOM.

Q. HCLOM, LLC or HCLOM, Ltd.?

A. My understanding is HCLOM, Ltd.

Q. And what's the bases for that understanding?

A. Yeah, just kind of -- just general knowledge of being in there.

Q. Even though this agreement, this very agreement that HCLOM signed says that each applicable CLO issuer will appoint Highland CLO Management, LLC?

A. Yeah. I mean, that's what this document says. It was just my general understanding that HCLOM was going to be the successor management.

I don't recall the interface between how Highland CLO Management, LLC or maybe -- again, I wasn't

involved in drafting these documents. I'm not -- or notice provisions under the attorneys.

I mean, the attorneys could be contemplating it goes to, you know, again to HCLOM. Maybe there's a subsidiary of HCLOM. I don't know.

Q. But you have said multiple times today that seven or eight years ago is a long time and that you don't remember, correct?

A. Yeah. I mean, you are --

Q. Just let me finish.

Is that correct?

A. Yes.

Q. And you did not look at one single document to prepare for the topic on resets, correct?

A. That's correct.

Q. And so all you are doing here today is going on your memory of what you think happened seven or eight years ago, correct?

A. Yes. I'm doing that for a lot of things.

Q. Okay. And do you think -- how do you explain the fact that Mr. Dondero and HCLOM signed an agreement that says that CLO Management, LLC will be appointed as the new collateral manager of the CLOs and not HCLOM, Limited? How do you explain that?

A. No. I think I said earlier, I mean, it could

be just an oversight. It could be a typo. Could be when we went through expense report in para four. When we read the -- parsed this. Did you see HCLOM is referred to as HCOLM, H-C-O-L-M, instead of H-C-L-O-M?

These things are very close to each other. Just as an attorney messed this up, it could have easily messed this up too.

Q. So that's your testimony, that that's the speculation, that this is a typo? Is that HCLOM's explanation for this document is that it's a typo?

A. What I'm saying is, I don't know for sure and I have testified to that.

Q. Do you understand that indeed the reason, you know, C follows -- D follows C, correct?

A. Yes.

Q. And C says that "In order to comply with the U.S. Risk Retention Rules, in connection with each such reset transaction, each applicable CLO issuer will appoint Highland CLO Management, LLC as the collateral manager of such CLO."

Have I read that accurately?

A. Yes.

Q. Okay. And the very next sentence says, "Therefore."

And what does therefore mean to you?

That's a consequence, right? Is that a fair way to read therefore?

A. Yes.

Q. As a consequence of the decision to appoint Highland CLO Management, LLC, quote, "None of the notices have been, nor will be delivered pursuant to the transfer agreement and none of the appointments have been, nor will be made pursuant to the transfer agreement."

Have I read that in substance correctly?

A. Yes.

Q. So is it fair as HCLOM's corporate representative today to say that D is the effect of C? There's a cause and effect there?

MR. AIGEN: Objection; form.

A. I mean, it's saying that in order to comply with each -- you know, each reset transaction, it's saying none of the notices have been nor will be delivered. I mean, it's --

Q. (BY MR. MORRIS) It's because -- the reason the notices have not and will not be delivered is because a different entity has been designated to be the portfolio manager or the collateral manager, correct?

A. I don't know that, but...

Q. Okay. You're HCLOM's corporate representative

today, right? And this is one of the ancillary agreements, right?

A. I mean.

Q. Is that correct?

A. Correct.

Q. You understood that before you walked in the room today, that I would be asking you questions about this document in your capacity as HCLOM's corporate representative, correct?

A. Correct.

Q. And you didn't talk to anybody who signed this document about whether or not there was a typo or what it meant, correct?

A. Correct.

Q. And you don't have any -- and you weren't involved in the drafting of this document, correct?

A. I was not.

Q. You didn't have any input into the terms of the document, correct?

A. Not that I recall.

Q. And you didn't look at any of the reset documents, correct?

A. I did not.

Q. So you don't know whether HCLOM, Ltd. or HCLOM, LLC is identified as the prospective portfolio manager

of the reset Acis CLOs, correct?

A. I don't. I don't know.

Q. We talked earlier that Highland owed a payment under the note as of May 31, 2018. Do you remember that?

A. Yes.

Q. Okay. And I think you acknowledged at the time that Highland didn't make that payment, right?

A. Yes.

Q. And instead of making the payment, a forbearance agreement was entered into; is that right?

A. Yes.

Q. Let's mark as the next exhibit which is 15, the forbearance agreement dated as of May 31, 2018.

(Exhibit 15 marked.)

Q. (BY MR. MORRIS) Now, you signed this document, right?

A. I did.

Q. Is that your electronic signature or is that your wet signature, if you know?

A. I really don't know.

Q. Do you remember the circumstances surrounding your execution of this document?

A. Not really.

Q. Do you know why Highland didn't make the

payment that was due on May 18 -- withdrawn.

Do you know why Highland didn't make the payment that was due on May 31, 2018?

A. I don't recall.

Q. Do you know if Mr. Dondero made the determination not to make the payment at that time?

A. I don't remember.

Q. Did you discuss with anyone whether Highland should make the payment that was due on May 31, 2018?

A. I don't recall.

Q. Did HCLOM ever demand the payment?

A. Not that I recall.

Q. Do you know if HCLOM ever declared a default under the note for failure to make the payment that was due on May 31, 2018?

A. I don't believe it did.

Q. Do you know if HCLOM ever exercised any remedies arising from Highland's failure to make the payment that was due on May 31, 2018?

A. I'm not aware of any.

Q. Instead, the forbearance agreement was entered, correct?

A. A forbearance agreement was entered into.

Q. Okay. And did you review this document before you signed it?

A. I don't remember signing this document. So I don't even -- I may have. I may not have.

Q. This is another one of the ancillary agreements that was identified in the 30(b)(6) notice, correct?

A. Yes.

Q. What did you do to prepare yourself to answer questions about this agreement?

A. Just read through the agreement.

Q. You never spoke with Mr. Cullinane about this agreement, right, because you never spoke to him at any time, correct?

A. Correct.

Q. Do you recall discussing this document with anybody before you signed it?

A. I don't recall.

Q. Do you recall who asked you to sign it?

A. I don't.

Q. Do you recall where the idea of a forbearance agreement originated?

A. I don't.

Q. What was the benefit to HCLOM from entering into this forbearance agreement -- withdrawn.

Do you know why HCLOM entered into this forbearance agreement?

A. It's my general understanding that everything

that was going on with the Acis bankruptcy and the litigation there, the forbearance agreement was entered into to kind of let things settle in the Acis bankruptcy.

Q. Is it HCLOM's position that Highland had an obligation to pay on the note regardless of whether or not it received any benefits in connection with the transfer agreement?

A. Yes.

Q. Okay. So then what does the Acis bankruptcy have to do with anything? You mentioned the Acis bankruptcy and wanting to let things, you know, settle down. How does the Acis bankruptcy have any impact on Highland's obligation to pay HCLOM under the note?

A. I don't know. That's what I generally remember.

Q. HCLOM was relieved of the obligation to make the HCM stabilization fees, correct?

A. HCLOM was, yes.

Q. But HCLOM -- everybody knew that HCLOM wasn't receiving any fees under the portfolio management agreement, correct?

A. Yes.

Q. So there's no benefit to HCLOM from being relieved of an obligation it didn't have, fair?

A. There's no benefit to HCLOM -- I mean, yeah. HCLOM didn't have any assets.

Q. Right. And it didn't have any -- it wasn't receiving anything which would be defined as the HCM stabilization fees, correct?

A. Correct. Yeah. I mean, HCLOM never received -- it didn't have any assets; it wasn't getting any.

Q. And everybody knew that, right, at this time?

A. I mean, yes. There were people at HCLOM or Highland that knew about this.

Q. What was the benefit to HCLOM from entering into this forbearance agreement?

A. I mean, it's working with the investors. It's working with Highland to preserve that relationship with Highland. It's working to -- the CLO fees I think were still, you know, trying to be reset or moved over at some point. So I mean it's HCLOM's benefit to, you said, hasn't received anything, to work with Highland and kind of preserve that relationship.

Q. What investors are you referring to?

A. The investors in the CLOs.

Q. Why do the investors in the CLO care if Highland pays HCLOM under the note?

A. I mean, the investors care about entering into

new agreements with HCLOM as manager of the CLO. What I'm referring to is HCLOM entered into forbearance while all that's going to be worked out with Highland to preserve its relationship with Highland.

Q. So HCLOM did this as a solid to Highland; that's the benefit that it got?

MR. AIGEN: Objection; form.

A. I mean, you know, there's -- people work things out. There are work-outs. There are things that happen like that. I mean, it's -- if you get in a loan work-out situation, yeah, things like that happen.

Q. (BY MR. MORRIS) But usually the lender gets something in return, right? I'm not familiar with lenders agreeing to forebear and getting nothing in return and I'm still struggling to identify what -- I'm still struggling to hear from you if you can identify, as HCLOM's corporate representative today, what exactly HCLOM got in exchange for not getting paid.

A. Again, it's preservation of relationship, things like that.

Q. Okay. Any other things like that?

A. No.

Q. Did Mr. Dondero ever tell Mr. Cullinane that if HCLOM pressed for the payment under the notes, HCLOM can forget about being a CLO manager in the future?

A. You would have to ask Mr. Dondero.

Q. Did you ever hear that?

A. I didn't.

Q. Do you think the relationship would have been damaged if HCLOM asked for what it now contends it was entitled to under the note?

A. I mean, that's my understanding.

Q. Who did you get that understanding from?

A. Just being in the environment, being in -- it's -- if you are going to forebear something, right, with Highland -- what is HCLOM getting? HCLOM didn't receive cash. So, again, you are looking at this saying to enter into the forbearance agreement, right, what is it getting? It is getting a promise to pay in another year. And so it's preserving that relationship and kind of kicking the timetable out. So that's just kind of my bases just reading the document.

Q. Is it fair to say that there's a quid pro quo in this document that Highland won't ask for the HCM stabilization fees and HCLOM won't ask for the stabilization payments?

A. I mean, it's saying in one, HCM agrees it will not demand payment. Right? And then it says HCLOM agrees it will not demand payment of the stabilization payments for a period of one year.

So it's saying Highland agrees it will not demand payment of stabilization fees for a year, kicks it a year, and then HCLOM is saying that they won't demand payment for a year as well.

Q. Let's look at the next document which is the other forbearance agreement dated a year later.

(Exhibit 16 marked.)

Q. (BY MR. MORRIS) And you have seen this document before, sir?

A. Yes.

Q. And you signed it now on behalf of both HCLOM and Highland, correct?

A. Yes.

Q. By this time, the Acis's plan had been confirmed, correct?

A. I don't remember when it was confirmed, but...

Q. Do you remember it was in the summer of 2018?

A. Okay. So, yeah.

Q. So there's no more Acis resets going on in May of 2019, correct?

A. Yeah, I don't think there are.

Q. And you signed this document on behalf of HCLOM, correct?

A. Yes.

Q. Do you remember the circumstances that led you

to sign this document in May of 2019 on behalf of both Highland and HCLOM?

A. I don't I mean absolutely. I think HCLOM -- when I reviewed this document, I looked at it and said, oh, wow, I signed on behalf of both entities.

Q. Yeah.

A. But, no, I don't recall.

Q. Is it fair to say that as of May 2019, there's no chance that HCLOM is ever going to be the portfolio manager for Acis, any Acis CLO?

A. The Acis bankruptcy was confirmed. If all that went to Brigade, then yeah. None of the Acis deals would have been able to go to HCLOM.

Q. Was there any business being contemplated with HCLOM in the first half of 2019?

A. The CLO group is always trying to want CLOs and do deals. I don't remember specifically.

Q. Do you remember generally? Do you remember HCLOM ever being identified -- let me finish -- do you remember HCLOM, Ltd. ever being identified as a portfolio manager in 2019?

A. I don't recall. Again, I don't recall, but there's a CLO team at Highland and it's responsible for that, but I don't recall.

Q. What benefit was there to HCLOM from entering

into this amended-and-restated forbearance agreement?

A. The only thing I can think of is for -- again, to preserve that relationship as well.

Q. To preserve it for what?

A. For future fees or things like that.

Q. But you are not aware of any attempt being made by anybody in 2019 to install HCLOM, Ltd. as a portfolio manager that would generate fees, correct?

A. I don't recall, but I'm not saying there weren't efforts that were ongoing.

Q. But you have no reason to believe that there were any efforts ongoing; it's pure speculation, correct?

A. There is a team at Highland that is responsible for managing the CLOs. They routinely were, again, coming up with new CLOs, talking to investors. Just because I'm not aware of it doesn't mean that it wasn't going on in the background.

Q. Okay. You weren't a member of the team, right?

A. I wasn't.

Q. You had no personal knowledge of anything you are speculating about, correct?

A. I wasn't -- I wasn't a member of the Highland CLO team. I typically never engaged in any type of marketing or I never talked to CLO investors, anything

like that. So that's part of that team and that's the unique thing about Highland is it was a CLO manager and there was a team of folks and that's how it grew up.

Q. And in fact, you have no personal knowledge of any discussion or attempt by anybody in the world after January 19, 2018, to install HCLOM, Ltd. as the portfolio manager of the CLO, correct?

A. I'm not aware of any, but that doesn't mean they weren't going on in the background.

MR. MORRIS: I'm going to move to strike everything after "I'm not aware of any."

Q. (BY MR. MORRIS) Do you recall anybody explaining to you why the amended-and-restated forbearance agreement was needed?

A. I don't remember.

Q. Do you know why Mr. Cullinane didn't sign this document?

A. No.

Q. Do you know who's handwriting it is that put your name and your titles on this document?

A. I do.

Q. Who is that?

A. Kristin.

Q. Kristin Hendrix?

A. Uh-huh.

Q. Did she explain to you what this document was?
A. I can speculate, but I don't remember.
Q. I appreciate the lack of speculation.
MR. MORRIS: Let's take a short break. I'm really near the end. I have one or two documents left maybe.
THE VIDEOGRAPHER: Off the record. The time is 4:12.
(Break taken from 4:12 p.m. to 4:25 p.m.)
THE VIDEOGRAPHER: Back on the record. The time is 4:25.
Q. (BY MR. MORRIS) I have just a few more minutes, Mr. Waterhouse. Thank you for your patience. Let's go to what we'll mark as Exhibit 17, which is HCLOM, Limited's response to Highland's objection.
(Exhibit 17 marked.)
Q. (BY MR. MORRIS) Do you see this document, sir?
A. Yes.
Q. And have you read it before?
A. Yes.
Q. And do you see that it was prepared in April of 2023?
A. Uh-huh.
Q. As HCLOM's corporate representative today, are you aware of any mistakes in this document?

A. I'm not aware.

Q. Are you aware of any amendments needed to fully and accurately set forth HCLOM's factual and legal bases for responding to the claimed objection?

A. I'm not aware.

Q. So HCLOM doesn't intend to amend this in any way; is that correct?

MR. AIGEN: Objection; form.

A. Not that I'm aware of.

Q. (BY MR. MORRIS) There's a section in here starting on page eight concerning the Debtor's position taken in this case in the Acis bankruptcy case. Do you see that?

A. Which paragraph?

Q. It's the heading that's above 33.

A. Yeah.

Q. Do you see that section of this brief?

A. Uh-huh.

Q. As HCLOM's corporate representative, are you aware of any factors that are relevant to the position described in Heading C that are not described in this document?

MR. AIGEN: Objection; form.

A. I'm not aware.

Q. (BY MR. MORRIS) Let's mark as the next

Exhibit 18, a document that is labeled HCLOM's Combined Discovery Responses and Objections.

(Exhibit 18 marked.)

Q. (BY MR. MORRIS) Do you know what this document is, sir?

A. Yes.

Q. What is this document?

A. It's Highland's Combined Discovery Responses and Objections.

Q. If you look at page ten, you will see it's dated August 23, 2024. Do you see that?

A. August 23, 2024, yes.

Q. Did you personally review this document at any time before August 23, 2024?

A. I did not.

Q. So is it fair to say that this document doesn't reflect any comments or -- withdrawn.

Is it fair to say, then, that you did not have an opportunity to amend this document before it was served on me?

A. Yes. I mean, I didn't review it as of -- I read it later.

Q. Okay. You read it in accordance with the last page, the verification on or about September 11, 2024, correct?

A. Yes.

Q. In looking at the verification, it says that -- towards the bottom, quote, "Based on my personal knowledge and/or knowledge obtained from other persons believed to have personal knowledge, HCLOM's answers to the Debtor's interrogatories are true."

Have I read that correctly?

A. Yes.

Q. Can you identify what other persons you are referring to there with personal knowledge?

A. I didn't talk to anybody.

Q. Well, but it says that you did.

MR. AIGEN: Objection; form.

Q. (BY MR. MORRIS) It says, quote, you obtained knowledge from, quote, "From other persons believed to have personal knowledge."

Is that just not accurate?

A. Yeah. I mean, I prepped with Deborah and Michael.

Q. And in verifying these interrogatories answers, you did not obtain any knowledge from other persons believed to have personal knowledge, correct?

A. Yeah. I just read through this document.

Q. Okay. So would it be more accurate to amend that statement to say, "Based on my personal knowledge

and/or discussions with counsel, Highland's answers to the Debtor's interrogatories are true"?

MR. AIGEN: Objection; form.

A. Sure.

Q. (BY MR. MORRIS) That would be more accurate because you did not, in fact, speak with anybody that you believed had personal knowledge, correct?

A. True.

Q. And you have no reason to believe that the lawyers you spoke with have personal knowledge regarding any of the facts of these interrogatory responses, correct?

A. Correct.

Q. Are the responses set forth in this document accurate today to the best of your knowledge?

A. Yes.

Q. Are you aware of any responses that need to be amended or modified in any way to make them more accurate?

A. I'm not aware.

Q. Can you turn to Response Interrogatory Number 1, which is on the second page of the document.

Do you understand that HCLOM was asked to identify each thing of value that HCLOM provided for Highland's benefit in exchange for the transfer of the

note? That's what the interrogatory asked, right?

A. Correct. Yeah.

Q. Does the answer to Interrogatory Number 1 accurately describe what HCLOM contends is, quote, "each thing of value" that HCLOM provided for Highland's benefit in exchange for the transfer of the note?

A. Yes. I mean, this seems fine.

Q. I'm looking at Interrogatory Number 2. That asks HCLOM to identify the person who negotiated the assignment on behalf of each party thereto. Do you see that?

A. Yes.

Q. HCLOM states that Mr. Surgent and Mr. Cournoyer drafted the terms of the assignment. Do you see that?

A. Uh-huh.

Q. Do you know if anybody instructed them to do so?

A. I'm not aware.

Q. Do you have any reason to believe that Mr. Surgent and Mr. Cournoyer drafted the terms of the assignment without instruction or direction?

A. I wasn't -- I don't know.

Q. Did you make any effort to ascertain the voracity of the statement concerning Mr. Surgent and Mr. Cournoyer before signing the verification?

A. No. I took what counsel provided as correct.
Q. Then it says that Mr. Dondero executed the assignment on behalf of Acis and Highland. Do you see that?
A. Uh-huh.
Q. And you can see that from the document, correct?
A. (Moving head up and down.)
Q. And you can also --
A. Yes.
Q. And you can also see that Mr. Cullinane executed on behalf of HCLOM, correct?
A. Uh-huh.
Q. Okay. But this interrogatory response doesn't identify the person who negotiated the assignment on behalf of each party thereto, correct?
A. Correct.
Q. Is that because the assignment wasn't the subject of any negotiations?
A. I don't know.
Q. You don't know if it was the subject of negotiations?
A. I don't know, yeah.
Q. And you didn't speak with anybody who might have personal knowledge as to whether or not the

document is the subject of negotiations, correct?

A. Yes.

Q. Interrogatory Number 8 asks when HCLOM first disclosed the existence of the agreement to Mr. Terry or his counsel. Do you see that?

A. Uh-huh.

Q. And the answer is that -- there's an objection because Highland was actually the party that made the disclosure. Do you see that?

A. Yes.

Q. Do you know who on behalf of Highland made the disclosure?

A. I don't.

Q. Did you ever ask anybody who made that disclosure?

A. No.

Q. Do you know when the disclosure was made?

A. I don't.

Q. Do you know if it was before or after Acis filed for bankruptcy?

A. I don't know.

Q. Do you know anything about Highland's disclosure of the assignment to Acis or Mr. Terry?

A. I don't.

Q. If you flip a few pages there are Request for

Admission. Do you see that?

A. Uh-huh.

Q. The first Request for Admission says, "Admit that HCLOM did not provide anything of value for Highland's benefit in exchange for the transfer of the note."

Do you see that? And HCLOM has denied it?

A. I'm sorry. What page are you --

Q. It's page seven. Take your time. I know we're all anxious to finish.

A. Yes, I see that.

Q. Okay. Do you see that Acis denied -- withdrawn.

Do you see that HCLOM denied the first Request for Admission?

A. Yes.

Q. Do you know the bases for the denial?

A. I don't.

Q. Can you identify anything that HCLOM provided for Highland's benefit in exchange for the transfer of the note?

MR. AIGEN: Objection; form.

A. It kind of goes along with the forbearance. You are preserving -- as a successor manager you are preserving that relationship. You are trying to reset

the CLOs at the time, so...

Q. (BY MR. MORRIS) But HCLOM is receiving the note?

A. Yeah.

Q. So I'm asking you what, if anything, HCLOM gave to -- withdrawn.

The request to admit had asked HCLOM to identify -- withdrawn.

The request to admit asks HCLOM to admit that it didn't give anything of value to Highland in exchange for the note, correct? And it was denied?

A. Correct.

Q. So does that mean that HCLOM contends that it gave something of value for Highland's benefit in exchange for the transfer of the note?

MR. AIGEN: Objection; form.

A. Based on the denial, it's saying it did not provide -- sorry.

Q. (BY MR. MORRIS) Take your time. It's late and it's a double-negative.

A. Admit that HCLOM did not provide. So we're denying. So HCLOM did provide value for Highland's benefit in exchange for transfer of the note.

Q. Exactly. And now I'm asking you what it actually provided of value to Highland's benefit.

Is it just what's in response to Interrogatory Number 1?

A. I --

Q. Because Interrogatory Number 1 asks HCLOM to identify anything of value. So can we just incorporate by reference? Can we say the denial is based on response to Interrogatory Number 1?

A. I -- I view -- my view is that HCLOM, again, is working -- again, working with Highland, become successor manager. As part of that, it's preserving that relationship. It's preserving the tax planning. You know, to me that's the benefit HCLOM is providing to Highland.

Q. The relationship is between and among the same people; isn't that right?

A. They are the same people, but as we established, they're different entities.

Q. But the same people are making the same decisions on behalf of both entities, correct?

A. Yeah. I mean the same individuals are involved, yes.

Q. And we looked at the roster of HCLOM's officers earlier, right?

A. Right.

Q. And it's you and Mr. Dondero and Mr. Ellington,

correct?

A. Yes.

Q. Who were the same leadership at Highland, correct?

A. Yes.

Q. And are you worried about preserving the relationship with yourself?

A. I view this more as the -- you have a separate entity. This is just my view and then there are -- you are trying to respect the formalities. Right? So, yes, I understand that they're same players here but -- or the same individuals but, you know -- that's it.

Q. Just try and summarize here. HCLOM and Highland were at all times controlled by the same people, correct?

A. Yes.

Q. And at all times the owners of HCLOM -- withdrawn.

And at all times the beneficial owners of HCLOM and Highland were the same, correct?

A. Yes. Up until 2022.

Q. Up until 2022.

MR. MORRIS: All right. I have no further questions. Thank you very much.

MR. AIGEN: Okay.

THE COURT REPORTER: Before we go off the record, do you want a copy of the transcript?

MR. AIGEN: Yeah. Can you get us a rough quickly?

THE COURT REPORTER: Yes. I'll send rough drafts out today. The final is being rushed for tomorrow. Do you need a rush?

MR. AIGEN: I don't need the final that quickly. Thursday is fine for me.

THE VIDEOGRAPHER: This deposition is off the record at 4:44 p.m.

(Proceedings concluded at 4:44 p.m. CST)

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	)	
	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.	)	Case No. 19-34054-sgj11
Reorganized Debtor.	)	

REPORTER'S CERTIFICATION
DEPOSITION OF FRANK WATERHOUSE
SEPTEMBER 24, 2024

I, Christy Cortopassi, Certified Shorthand Reporter in and for the State of Texas, hereby certify to the following:

That the witness, FRANK WATERHOUSE, was duly sworn by the officer and that the transcript of the oral deposition is a true record of the testimony given by the witness;

That the original deposition was delivered to Mr. John Morris;

That the amount of time used by each party at the deposition is as follows:

Mr. John Morris.....05:11
Mr. Michael P. Aigen.....00:00

I further certify that pursuant to FRCP No. 30(f)(i) that the signature of the deponent:

_____ was requested by the deponent or a party

before the completion of the deposition and that the signature is to be returned within 30 days from date of receipt of the transcript. If returned, the attached Changes and Signature Page contains any changes and the reasons therefor;

__X__ was not requested by the deponent or a party before the completion of the deposition.

I further certify that I am neither counsel for, related to, nor employed by any of the parties or attorneys in the action in which this proceeding was taken, and further that I am not financially or otherwise interested in the outcome of the action.

Certified to by me this 25th of September, 2024.

Christy Cortopassi
_____
Christy Cortopassi, Texas CSR 6222
Expiration Date: 10/31/2026

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WORD INDEX

WORD LIST

Exhibit 48

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	
	§	
HIGHLAND CAPITAL	§	
MANAGEMENT, L.P.,	§	Chapter 11
	§	Case No. 19-34054 (sgj)
Reorganized Debtor.	§	
	§	
	§	
	§	

REMOTE ORAL DEPOSITION OF
TIMOTHY JOSEPH COURNOYER
NOVEMBER 13, 2024
VIA VERITEXT VIRTUAL

REMOTE ORAL DEPOSITION OF TIMOTHY JOSEPH COURNOYER, produced as a witness at the instance of Highland CLO Management, Ltd. and duly sworn, was taken in the above-styled and numbered cause on the 13th of November 2024, from 1:00 p.m. to 2:44 p.m. CST, before Jennifer Quick Davenport, CSR in and for the State of Texas, reported by machine shorthand, in the City of Dallas, County of Dallas, State of Texas, pursuant to Notice and the Federal Rules of Civil Procedure.

A P P E A R A N C E S

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ALSO PRESENT:
Patricia Tomasky

I N D E X

P R O C E E D I N G S

THE REPORTER: Going on the record at 1:00 p.m. My name is Jennifer Davenport, Texas Shorthand Reporter Number 1683. I am reporting the deposition by stenographic means remotely from Dallas, Texas. The witness is located in Dallas, Texas.

Will all counsel please state their appearances for the record at this time.

MR. AIGEN: Michael Aigen from Stinson on behalf of Highland CLO Management, Ltd., and I'm here with my partner Deborah Deitch-Perez and my paralegal Tricia Tomasky.

MR. MORRIS: This is John Morris from Pachulski Stang Ziehl & Jones for Highland Capital Management, L.P. I'm here with my colleague Hayley Winograd, and we're here representing the witness today.

TIMOTHY JOSEPH COURNOYER,

having been first duly sworn or affirmed, testified as follows:

EXAMINATION

BY MR. AIGEN:

Q. Good afternoon, Mr. Cournoyer.

A. Hello.

Q. Can you state your full name for the record,

please?

A. Timothy Joseph Cournoyer.

Q. And you're an attorney; is that correct?

A. I am.

Q. Fair to say that you're generally aware of what goes on with a deposition?

A. Yes, although I've only been deposed once before.

Q. I'll go over a couple of the ground rules pretty quickly, but I assume I don't need to go through them in full detail.

But you understand we're here so I could ask you some questions and hopefully get some answers?

A. Understood.

Q. And as you just did, to the extent you can, please answer audibly rather than with a shake or nod of the head so the court reporter can take it down.

Does that make sense?

A. Yes, it does.

Q. And I will do my best to not interrupt you, but I'm sure I will, so I'll do my best to let you answer your question in full. And I'll ask that you do your best to let me ask my -- sorry. I'll let you answer the question in full, and I'll ask that you let

me ask the question in full before your answer.

Does that make sense?

A. Makes sense.

Q. And if you don't understand a question, which will certainly happen at times, feel free to tell me that the question makes no sense or you don't understand it, and I will gladly rephrase it for you.

Does that make sense?

A. Makes sense.

Q. You said you've been deposed a few times before?

A. Just once before.

MR. MORRIS: Object to the form of the question.

Q. (By Mr. Aigen) Was that related to Highland?

A. It was, yeah -- well, it was -- actually, it was in a proceeding that Highland wasn't a party to, but it was Josh Terry dispute with some either Dondero or Dondero-affiliated entities.

Q. Can we -- I just want to start off with a little bit of your background.

Can you just give me at a high level your educational background, where you went to school and what degrees you got?

A. Sure. Went to Emory University in Atlanta

for undergrad. Graduated in 2007.

Went to New York University School of Law and graduated in 2010.

I stayed in New York after law school, and I worked at O'Melveny Myers and Paul, Weiss. I did two secondments at Apollo Capital Management while I was at Paul, Weiss.

I moved to Dallas in 2013 and worked for Thompson & Knight here in Dallas, and then I joined Highland Capital Management in -- I think it was April 2016.

Q. When you joined Highland in April 2016, what was your position?

A. Assistant general counsel.

Q. And did you report to Mr. Ellington?

A. I reported to Scott Ellington and Thomas Surgent but ultimately Scott Ellington.

Q. And as associate general counsel, generally what were your duties and responsibilities?

A. It was assistant general counsel. Not that it's a meaningful difference, but that was the title.

I primarily -- I was a transactional attorney. Prior to joining Highland, I mostly worked on mergers and acquisitions transactions. I did do the secondment at Apollo, which was in their capital

markets group, and got some experience to private funds and capital markets and particularly credit-focused funds in that role.

When I joined Highland, I would consider myself to be sort of a point transactional attorney for stuff that was going on in what I'll call the private fund side of the Highland complex.

The distinction, I guess, I'll draw there is there's what I call a private fund platform and a retail platform, you know, funds that were regulated by the Investment Company Act versus with, you know, larger institutional investors. So I was working on the private side.

I did a lot of things, right? As I sit here today, what I can think of is, you know, fund formation; reviewing, you know, fund-governing documents, investor subscriptions, and redemptions from those funds.

We had CLOs. There were private equity-focused funds that were doing transactions, M&A-type transactions, and I may have worked on those. Things like NDAs, just any number of transactional matters.

Q. And so you started in April of 2016. Between then and let's say the time of the Highland bankruptcy

in October of 2019, did your position change in any way at Highland?

A. Yeah. At some point prior to or around the time of the bankruptcy, I became more involved with the private equity platform in a business capacity. My title today is managing director and assistant general counsel, so I kind of, you know, wear both hats, depending on the task at hand.

Q. I asked you before what your duties and responsibilities were, and you went into that.

At any point prior to the Highland bankruptcy, did those duties and responsibilities change in any significant way?

A. In what way?

Q. You told me what you did. And I was asking what you did not at your whole time at Highland. I was just asking when you were just assistant general counsel, did those --

A. I mean, there -- there may have been other things. As best I can recall right now, the largest most significant change I can recollect is that I became more involved with the private equity platform and the portfolio companies that sat there.

Q. And you said you reported to Mr. Ellington and Mr. Surgent, but it was primarily Mr. Ellington;

is that correct?

A. Well, day to day, Scott Ellington wasn't in the office very often. Thomas Surgent was in the office almost every day. So, I mean, I worked with Thomas very closely. And so I think, you know, Thomas reported to Scott in his -- Thomas's deputy general counsel role, and I reported to both of them. But, I mean, day to day, I was interacting with Thomas certainly a lot more than Scott.

Q. Did you ever report directly to Mr. Dondero?

A. Not that I'm aware of. I had discussions with him directly, but in terms of how the org chart was set up, I don't believe that I did.

Q. And we'll get into it in more detail.

But did you ever have discussions with Mr. Dondero about any of the issues related to this transaction?

MR. MORRIS: Objection to the form of the question.

A. Not -- not that I can specifically recall. However, I have seen calendar invites, meeting invites that suggest we were in meetings together, and my belief is that, yes, but I don't have a specific recollection.

Q. (By Mr. Aigen) Okay. We'll get into those.

Your current title is managing director and you said assistant or associate general counsel?

A. Assistant general counsel.

Q. And how would you describe your duties and responsibilities now?

A. Well, I was primarily working on the monetization and sale effort, I guess in accordance with the bankruptcy plan of reorganization, to monetize the different privately held portfolio companies that were on the platform either held by Highland or funds or accounts that Highland managed.

In addition to that, you know, on the assistant general counsel side of things, you know, I still review and negotiate legal contracts, right, that involve Highland.

There's a number of things. Some of the things I can think of right now, I mean, I worked on the exit financing, you know, when we were coming out of bankruptcy. There's different commercial agreements that come across my desk from time to time for review or negotiation.

There still are matters involving our private funds and accounts that we manage, and I may be involved in those. I'm sure there's other things as well.

Q. And who do you report to at Highland?
A. In my assistant general counsel capacity, it would be Thomas Surgent. In my managing director capacity, it would be Jim Seery.
Q. We're going to talk about a couple of entities today, and I'm going to use shorthand names for them. So the first entity I want to put out is the -- is the entity I'm representing here, and it's called Highland CLO Management, Ltd.
Are you familiar with that entity?
A. Yes, I am.
Q. And I'll refer to that entity as HCLOM Ltd.
Will that work for you?
A. That works for me.
Q. And there's another entity that we'll talk about at some point called Highland CLO Management, LLC.
Are you familiar with that entity?
A. I am also familiar with that one.
Q. And will it work for you if, when I'm referring to that entity, I say HCLOM LLC?
A. That works for me.
Q. Those will be the two entities we're mostly talking about today. If another entity comes up, I'll try to use the full name. But if you don't know who

I'm talking about, please stop me and let me know, and then I apologize if I do that.

A. Will do.

Q. Let's start with HCLOM Ltd.

You're familiar with that entity; is that correct?

A. Yes.

Q. Did you have any role with respect to its formation?

A. I do not recall having a role with respect to its formation, and my recollection, I think, is corroborated by emails that I have seen, you know, leading up to today. It was another individual I think that reached out and sort of handled the formation of that entity.

Q. And was that JP Sevilla?

A. It was.

Q. Okay. And who was he reaching out to?

A. Attorneys at Maples and Calder in the Cayman Islands.

Q. Do you have any understanding as to why this entity was being created?

MR. MORRIS: Objection to the form of the question.

A. So as best I can recall today, there were

three entities that were formed, all on the same date, all pursuant to the same email to Maples and Calder attorneys, one of which was HCLOM, HCLOM Ltd.

And this is where it's difficult to sort of differentiate, right, like, what I remember specifically from seven, six, seven, eight years ago versus documents and communications that I've reviewed more recently.

But my general belief and understanding was that HCLOM Ltd., along with the other two entities that were formed on that same date, were all set up to become transferees, for lack of a better word, of assets that were previously held by Acis Capital Management, LP.

Q. (By Mr. Aigen) And what is the basis for that belief? Where do you believe you learned that?

A. Well, I know it came right on the heels of the arbitration award in the Josh Terry matter.

I also do have an actual specific recollection from that time of Scott Ellington being in the office quite a bit around this time. And that was actually unusual from my memory. You know, I think I had been at Highland 12, 14 months, something like that, at that point. I mean, I could be wrong about this, but my recollection is I probably have

seen Scott in person half a dozen times, maybe, right, up until that point.

But the Josh Terry arbitration was going on. The award comes down. And Scott's in the office a lot. And it was absolutely, you know, my -- my general recollection is that these entities were set up to take assets of Acis following that arbitration award.

Q. At the time that Ltd. was being created, were you involved in any -- any conversations where someone indicated that the reason that Ltd. was being formed was to strip the assets of Acis?

A. I don't recall whether anyone used the phrase "strip the assets from Acis." And I don't have a specific recollection of, you know, I met or discussed with X, Y, Z person on X, Y, Z date, and this specifically was said.

But I do have a general recollection that, yes, you know, these entities were being formed. There was this monetary award, right, in the arbitration.

And I remember not just the direction that we're moving assets out of Acis but that there was quite a bit of time pressure and that it had to happen quickly.

Q. And this -- this understanding that it was created to take or strip the assets out of Acis, do you believe that it is an understanding you had at the time the Ltd. was being formed or something you gathered years later as part of this litigation?

A. That's -- that's really difficult to parse. And part of the reason for that, I think, is that I don't know that I really had perfect information as to all that was going on, right, with the Josh Terry litigation and arbitration, what strategic decisions may be, you know, taking place with regards to trying to resolve that or not resolve it.

So I suppose the answer is I'm not sure --

Q. Okay.

A. -- to your question.

Q. So sitting -- it's a weird question.

So sitting here today, do you believe that back in 2017, you actually believed that Ltd. was being created to take the assets out of Acis?

A. I -- I think I have a belief that it was set up to, as I said, become the transferee of these assets. What the real purpose of doing that was, I don't -- I don't know that I knew at the time.

Q. Okay. So at the time, you at least believe

you were aware that Ltd. was being set up to receive the assets of Acis.

Is that fair to say?

A. Yes.

Q. And what do you believe your basis was for that? How did you learn that at the time?

A. I'm not sure how to answer that, right, because I can't remember seven years ago, you know, this was the moment somebody said something, right, to give me that belief, but it is my belief.

Q. And that's fine. All I'm trying to do is figure out if you get on the stand one day and say, Hey, I remember all these conversations where we discussed Ltd. when it was being formed, I just want to hear about that now.

So I'm just asking, sitting here today, do you recall any conversations at the time Ltd. was being formed about the fact that it may have been formed so that it could take the assets from Acis?

A. Around this time, generally, as I said, I remember Scott Ellington being in the office a lot. I do have a recollection of meetings taking place. There was a conference room called the "bois d'arc" conference room that was right near the legal department and where all of us sat. There was a

conference room that attached to Scott's office, right?

I remember there being meetings, multiple meetings, around that time, Josh Terry and the arbitration being the general subject of those meetings. I can't remember if they took place prior to the formation of HCLOM Ltd., after, at the same time, and I can't remember specifically what was said in any, you know, one of those meetings.

Q. And we can bring them up if it helps, but I think you said you saw these already.

There were emails where Mr. Sevilla was getting these companies created by Maples.

Do you remember seeing those emails?

A. I do remember seeing those.

Q. And we can bring them up, but are you aware that within that chain, you were eventually added to that email correspondence of the asking for these entities to be created?

A. Yes. I mean, I think there was a lengthy correspondence, right, over a number of months with respect to the different entities that are the subject of the email. I do know at some points I may have been copied in. But I also know that, you know, in responding to your discovery requests, right, and

being part of the team that was pulling together those communications, there were lots of communications that I wasn't on.

Q. And I guess what I'm asking do you have any recollection as to why you would have been added to that email chain about the formation of HCLOM Ltd.?

A. Specifically, no. I mean, I can guess as to why that is.

Q. And we can -- why don't we bring it up. It might make things easier.

MR. AIGEN: Tricia, if you can, put Tab 7 on the screen. This will be the email. I think we called it Bodden October 27, 2017 email.

MR. MORRIS: Can you give me -- I need the Bates number. That's all.

MR. AIGEN: Oh. Well, we'll get it from the screen. I don't have a printed-out copy.

So the Bates label looks to be HCLOM419.

Q. (By Mr. Aigen) And I know usually you work on these on reverse order to understand it, but if you look at the first page, you can see up top you're on that email, and then on the middle of that page, you're on it, and then on the bottom of that page, you're not.

So it appears you got added on to the

October 27th 12:07 p.m. on this whole email chain.

MR. MORRIS: So let me just interject here, Tim. I don't know that you've ever taken a -- given a deposition by Zoom before.

THE WITNESS: I have not.

MR. MORRIS: It's a little awkward because you're not in the room with the lawyer or the documents, and I would just encourage you to ask Mr. Aigen to show as much of the document as you think is necessary to have a full understanding of context and terms.

MR. AIGEN: Yeah. And to help probably put this into context, the first email is not actually on the last page. It's the second -- well, it looks like it's Page 4 of 6. There's an email from JP. Scroll down a little more. Yeah, right there.

Q. (By Mr. Aigen) Take a look at it. This is where it starts.

Does this look -- I know you're not on this, but you testified that you're aware that Mr. Sevilla is the one who asked to get these funds put together.

So let me just ask you is this an email that you have seen before?

A. It looks familiar, and I believe I've seen

this email before.

Q. And that, if you see, is dated October 26th.

And then if you scroll back up to the first page, you can see, like I said, you seem to be added on to it near the top when they're still sort of discussing putting this together. That's sort of the next day.

So my question again is simply any idea why you seem to have been added to this email chain by Mr. Sevilla?

A. Yeah. I guess really is the question do I recall as of that time, or do I have any idea why --

Q. Let's start with sitting here today.

Sitting here today, do you have any idea why you were added to an email chain about the formation of HCLOM Limited?

A. Yeah. My guess is because ultimately I worked on a number of the transfers that took place, right, with assets being transferred to these entities that were set up.

Q. Okay. And when you say "the transfers," you're talking about transfers out of Acis into other Highland-owned entities?

A. Yeah. And, I mean, there were a number of assets. Some may have been transfers. Some may have

been -- taken some other form. But the end result, you know, being the same, right, something that was formerly sitting underneath Acis, you know, being removed from Acis and placed into one of these entities.

Q. And I asked you a similar question to what I'm about to ask you about conversations before, so I'm switching to documents.

Have you ever seen any documents or emails that indicated to you that the purpose of creating Ltd. was to be a transferee of assets from Acis?

A. I'm trying to recall. The best I can recollect today, I have not seen a communication where, you know, at the time, right, the entity is formed, somebody said it's being formed for this purpose.

I believe, as best as I can recall today, very shortly in time, though, right, following the formation of at least HCLOM Ltd. and also Highland HCF Advisor, Ltd., things happened, right, where assets were moved or put in place in those entities.

Q. It's fair to say, then, you don't remember having any conversations with anyone or seeing any specific documents where it was stated that the

purpose of creating Ltd. was to be a recipient of assets of Acis; is that correct?

A. Specific recollection, again, no. But I do have a general recollection, right, you know, that's -- that's why these entities were set up, and there was no other purpose for them being set up.

Q. And that makes sense that I get it's your general recollection. But if there was some specific basis for you remembering it, whether it's a conversation or email, I would just want to get into that, but if it's your general recollection, that's fine, too. Again --

A. Not -- not that I can recall at this moment. If I think of it later, I'll let you know.

Q. Fair enough. Fair enough.

MR. AIGEN: Tricia, actually, for the record, let's mark this exhibit as Exhibit 1.

Nothing you have to do, Mr. Cournoyer.

(Exhibit No. 1 marked.)

MR. AIGEN: Tricia, let's take this down, and can we put up Tab Number 12, which is another email from January 18th, 2018? I think this is a shorter one. You can -- it's all on one page, although we can only see -- actually, we can see it all here. This is the entire document. It's

HCLOM418. And, obviously, it probably makes sense to start from the bottom and -- actually, let me ask you just the first question.

Have you ever seen this document before?

A. Yes, I have.

MR. AIGEN: And for the record, let's mark this one as Exhibit 2.

(Exhibit No. 2 marked.)

Q. (By Mr. Aigen) Can you tell me when you remember seeing this document?

A. Sometime in the last three months.

Q. And it's dated 2018. Do you happen to have a recollection of seeing it on or -- in or about 2018, or you just don't remember?

A. I do not have a specific memory of January 18, 2018 regarding this email or otherwise. I do recall seeing this email more recently in the past few months.

Q. And in this email, Mr. Klos was asking you -- oh, I apologize.

Mr. Klos was first asking Ms. Kim, "Do you have the ownership for Highland CLO Management, Ltd.?"

Do you see that?

A. I do.

Q. And then she asks you the same question and cc's Mr. Klos.

Do you see that?

A. I do.

Q. And then your response is "JP has that info, but I don't think we've done anything with that entity yet."

Do you see that?

A. I do.

Q. And I just want to see if you can give me any context to this.

Do you have any recollection as to whether people were asking about the ownership interest in Ltd. at this point in time?

A. No, I do not have any specific recollection of people asking about the ownership of HCLOM Ltd., you know, on that date.

Q. And just in general, do you have any recollection of people having discussions with you or email correspondence about trying to figure out who the owners were of the entity?

A. Specifically, no.

Q. Did you discuss this email with Mr. Klos in preparation for today's deposition at all to try to refresh your recollection?

A. I've had lots of conversations with Mr. Klos, first really in preparing Jim Seery for his deposition as 30(b)(6) witness. I don't recall having discussed this email specifically with him.

Q. And we started off on this. I asked about the formation, and let me just sort of close that loop.

Did you have any role with respect to the formation of Ltd.?

A. No, not that I recall. And it's emails such as this that, you know, sort of corroborate my recollection where, you know, if I had known or if I had access to the information to answer the question, my expectation is I would have answered it. I don't have a specific recollection, but that's what I would have expected to see, and instead I was asking JP if he had the information.

Q. Any idea why Mr. Klos would be asking you about this specific entity?

A. Well, he first asked Helen Kim. I guess he never asked me specifically, right?

Helen Kim was a paralegal, and I, at least, had a practice of any time I had executed documents, I forwarded them to Helen in order for her to save them down on our internal SharePoint system.

And so she is sort of the starting place, you know, anyone that had been around Highland for a long time would probably reach out to for a question such as this.

But, you know, what this suggests to me is no such document was ever forwarded to her, and I didn't know it as of that time either. At least that's what the email suggests to me.

Q. So as of, let's say, the date of this email, which is January 2018, you told me you had no role with respect to the formation of the Ltd. entity.

A. Uh-huh.

Q. Subsequent to its formation, do you remember doing any work at all with respect to the Ltd. entity?

A. Specific recollection, again, from seven years ago, no.

I know that the note, the note from the Acis participation agreement, was purportedly assigned to HCLOM Ltd. prior to January 18, 2018.

Q. Is that something you knew at the time, or is that something you learned as part of this litigation?

A. I don't know for sure. I would guess that I probably would have known it at the time.

Maybe to provide some additional context, I also have a general recollection of there were a lot

of different entities with similar names and a lot of different transactions and restructurings that were taking place over whatever, the three- or four-month period leading up to January 18th, 2018. And it was certainly difficult to keep that straight in your head, right, without referring back to the documents because things were formed very quickly. Maybe something else happened with it; maybe it didn't. Maybe it sat there.

And so I do have a general recollection of needing to go back frequently to review the docs, right, when questions were asked about all of these entities that were formed around this time and all of these transfers that took place around this time.

But, yeah, that's just a general -- a general memory.

Q. Well, sitting here today, do you remember any specific work you did at Highland related to HCLOM Ltd.?

A. I know that I reviewed the transfer agreement and that JP drafted, but I have that knowledge from having reviewed email communications more recently.

Q. Other than reviewing your emails as part of preparation for this litigation, you have no recollection as to any work that you did related to

HCLOM Ltd.; is that correct?

A. Not specifically. It wouldn't have surprised me either way, you know.

Q. Do you remember any discussions you had with anyone else at Highland about HCLOM Ltd.? And we're talking about prior to the Highland bankruptcy.

A. Oh. Again, I absolutely have general recollections of discussions with folks like JP Sevilla, Isaac Leventon, Scott Ellington.

I can't remember exactly when they had -- what was said in any specific conversation or meeting, et cetera. But I have a general recollection of that, and I have a general recollection of HCLOM Ltd., along with all these other entities, being a topic of discussion.

Q. Were you involved in any discussions with Mr. Dondero about HCLOM Ltd. in any way?

Again, not that I can specifically recall. I will caveat that answer by saying I have seen meeting invites, right, that suggests I was one of a number of Highland employees, right, that were in meetings around this time where it appears this was the topic of discussion, but I can't specifically recall, you know, seven years ago.

Q. Sitting here today, do you remember any

specific discussions? Because you told me there might have been general discussions.

Do you remember anything specific you discussed with either Scott, Isaac, or JP about HCLOM Limited?

A. Specifically, as I sit here right now, not specifically.

Q. And at the time it was being formed, you've testified that it was your understanding that HCLOM Limited was being formed in order to receive assets from Acis; is that correct?

A. Generally, yes, yeah.

Q. And at that time, did you believe there was anything improper about that?

A. I don't -- I don't remember what was in my head, you know, seven years ago. So I -- I don't recall at the time whether I thought it was proper or improper.

Q. Okay. Fair to say that you remember at the time it was created why it was being created to receive the assets, but you don't remember whether you believed it was improper or proper at that time?

A. Yeah. I don't recall, as I sit here today, whether I believed then it was proper or improper.

Q. And at some point in time, is it fair to say

that you did form a belief as to whether forming that entity to receive the assets of Acis was proper or improper?

A. I guess I'm struggling with, you know, how do you define "proper" or "improper." But, yeah, I have -- I have beliefs and impressions and perceptions, and I've drawn conclusions since about HCLOM Ltd. and this transaction.

Q. Sitting here today, do you believe that there was something improper about creating HCLOM Ltd. to receive the assets of Acis?

A. In and of itself and theoretically, not necessarily.

Q. I don't mean theoretically. I mean --

A. Yeah.

Q. -- in reality.

A. Yes. So, I mean, in reality, there's a document, the transfer agreement, right, that purportedly assigns the note to HCLOM Ltd.

My belief today is that document states a number of things that are simply incorrect, and it states additional things, obligations, covenants that HCLOM Ltd. was purportedly going to do, none of which happened and none of which HCLOM Ltd. was ever really capable of making happen.

Q. And the assignment you're talking about is the November 3rd, 2017 Assignment and Transfer Agreement; is that correct?

A. Yes.

Q. And you stated before that it's your belief that that was drafted by Mr. Sevilla; is that right?

A. In the first instance, yes.

Q. What do you mean "in the first instance"?

A. I've also seen email communications where I provided comments to his draft. And I think two versions of the agreement were actually executed. JP sent a document to the director of HCLOM Ltd., John Cullinane, and then I think we subsequently made some modifications to the agreements and scrapped the first one, and he executed the second one.

Q. And that's what I was getting at.

You were involved in some way in the preparation of the Assignment and Transfer Agreement; is that correct?

A. Yes. In that way, having provided comments, yes.

Q. And why were you specifically the one providing comments?

MR. MORRIS: Objection to the form of the question.

A. Yeah, I don't -- I don't specifically recall, but it doesn't surprise me that I would have been, just as a general corporate attorney, you know, on the legal team.

Q. (By Mr. Aigen) And at the time you assisted in the preparation of the Assignment and Transfer Agreement, did you believe there was anything improper about it?

MR. MORRIS: Objection to the form of the question.

A. I don't know if this is a different question than what was asked before, but I don't -- I don't specifically recall seven years ago if I thought it was proper or improper.

Q. (By Mr. Aigen) And just to be clear, I think the previous question I was talking about the formation of Ltd., and that's why this question is a little different.

Does that change your answer in any way?

MR. MORRIS: Objection to the form of the question.

A. Same answer. I don't have a specific recollection of what was in my head at that time.

Q. (By Mr. Aigen) Sitting here today, is it your understanding or belief that there is something

improper about the Assignment and Transfer Agreement?

MR. MORRIS: Objection to the form of the question.

A. What do you mean by "improper"?

Q. (By Mr. Aigen) Well, we've been using the term "improper" for -- throughout this deposition.

A. Well, I have been saying I don't have a recollection one way or the other, so it didn't matter as much what the definition was. But you're asking me today --

Q. Well, then.

A. Yeah.

Q. So I'm asking if that changed at some point.

As you're sitting here today, do you now believe that the transaction and the Assignment and Transfer Agreement was improper?

MR. MORRIS: Objection to the form of the question.

A. I don't have a recollection from seven years ago about what was in my head one way or another --

Q. (By Mr. Aigen) Yeah, and I'm not talking about --

A. -- proper or improper.

If you want me to answer today do I think it was proper or improper, I'm asking what do you mean

by "proper"?

Q. Do you think there was anything wrong -- sitting here today, do you believe there was anything wrong with the Assignment and Transfer Agreement?

MR. MORRIS: Objection to the form of the question.

A. There is a number of things. Some of the things that I can recall right now is I think there was no consideration given by Highland to consent to the transfer.

I believe there was no consideration given by HCLOM Ltd. in order to receive the note.

And I believe there was no consideration given by Acis or received by Acis to transfer the note.

Q. (By Mr. Aigen) Did you learn anything since the time this agreement was entered into that led you to that conclusion, or was that based on facts that you knew at the time the assignment was drafted?

A. I don't specifically recall what I knew at the time the assignment was drafted, so it's difficult to answer the question.

Q. Okay. Do you have any recollection as to telling anyone at the time of the Assignment and Transfer Agreement that there were consideration

issues with the transactions?

A. I don't have a specific recollection of telling somebody that at the time.

Q. You said "specific," so let me ask you, generally, do you have any recollection as to having any discussions with anyone about consideration issues with respect to the Assignment and Transfer Agreement at the time it was being drafted?

A. At the time it was drafted, I don't have a general recollection. I do have general recollection subsequent to the agreement being executed.

Q. Okay. Let's break that down a little bit.

Are you talking about after the Highland bankruptcy or before the Highland bankruptcy?

A. I'm talking about before the Highland bankruptcy but after the transfer agreement was executed.

Q. Tell me about that.

What sort of recollection do you have about discussing potential consideration issues with respect to the Assignment and Transfer Agreement prior to the Highland bankruptcy?

A. I just have a general recollection of discussing that the transfer agreement calls for HCLOM Ltd. to do a bunch of stuff, and, hey, none of

that stuff has gotten done. When are we doing that stuff? And, ultimately, I have a general recollection of this acknowledgement and waiver agreement that was executed in advance of at the time what we were trying to do with the Acis 3 CLO reset.

Q. And these conversations that you had about consideration potentially being an issue, who would you have had those with?

MR. MORRIS: Objection to the form of the question.

A. I don't -- I don't have a specific recollection, right, of the conversations. I believe the conversations would have included Isaac Leventon, JP Sevilla, Scott Ellington, probably Thomas Surgent. There could have been others.

Q. And you mentioned the Acknowledgement and Waiver document?

A. Yes.

MR. AIGEN: Might as well -- John, I assume you have a copy of that you can put in front of him.

MR. MORRIS: I can't. I'm not in the same room.

MR. AIGEN: Okay.

Tricia, this is Tab 13. Why don't we

just bring this up. And let's mark this -- what are we on? -- Exhibit 3.

MR. MORRIS: I think 2.

MR. AIGEN: Well, I wanted to mark that second email, HCLOM9418, as Exhibit 2, so I don't remember if I did that. So let's make that Exhibit 2, and then the Acknowledgement and Waiver document will be Exhibit 3.

(Exhibit No. 3 marked.)

Q. (By Mr. Aigen) Tim, do you recognize this, and is this the Acknowledgement and Waiver document you were talking about?

MR. MORRIS: Just one second. Let me get the document.

MR. AIGEN: Sorry.

MR. MORRIS: Okay. Go ahead.

A. Yes, I do recognize the document, and this is the document I was referring to.

Q. (By Mr. Aigen) Okay. Did you have any role with respect to this document's preparation?

A. I believe I'm the one that drafted it.

Q. Who would have asked you --

A. I don't recall specifically from the email communications whether I've seen that or not, but I believe I'm the one that drafted it.

Q. And is your recollection that you may have been the one to draft it coming from your general memory or documents that you have seen in preparation for today?

A. This is general memory.

Q. And what do you remember about being asked to create this document?

A. I remember that we were getting very close to resetting the Acis 3 CLO. And part of the structure of the Acis 3 CLO reset involved Acis Capital Management, LP, being replaced with Highland CLO Management, LLC, as the collateral manager.

And I remember, you know, at that point, everything that was said in the note transfer agreement around HCLOM Ltd. becoming a successor manager was clearly out the window, right, and never even going to happen in the most metaphysical, theoretical sense.

And the concern was Josh Terry has an award against Acis Capital Management. I don't remember this specifically, you know, having these thoughts at the time, but it's clear he's coming for Acis Capital Management, for lack of a better phrase.

And my general recollection with respect to the purpose of this document was it was really kind

of a Band-Aid, best-we-can-do sort of document to address the fact that HCLOM Ltd. did none of the stuff that it was supposed to have done under the Transfer Agreement.

Whether it was effective in accomplishing that goal, you know, then or now, you know, I don't know.

But that's -- the concern was, you know, somehow the note ends up back at Acis. And what started out with a left-pocket/right-pocket tax planning transaction, the original CLO participation interest agreement, is no longer left pocket/right pocket.

Q. Okay.

A. That's what I recall generally.

Q. And that recollection, tell me who you had conversations with about that at or about the time this document was created.

A. Again, I don't have a specific recollection of any specific conversation, but I believe those conversations would have been had with JP, Isaac, Scott, and Thomas. There could have been others.

Q. Sitting here today, do you remember any specific conversations you had with anyone about why the Acknowledgement and Waiver document was being

created on or about the time it was created?

A. Not -- not specifically.

Q. And I believe you said one of the reasons that this was created or your recollection was because the Ltd. entity was not doing anything with respect to the reset; is that correct?

A. Yeah. So the --

MR. MORRIS: Objection to the form of the question.

A. Yeah. What I was saying was, once the Acis 3 reset was closed and done, the contemplated structure was for a completely different entity, Highland CLO Management, LLC, not Ltd., to be the go-forward portfolio manager.

And so at that point, the transfer agreement calling for HCLOM Ltd. to become a successor manager for the CLO was absolutely never going to happen.

Q. (By Mr. Aigen) And I think that's the language you used before, so let me try to use that.

At the -- at or about the time this Acknowledgement and Waiver was being created, you were -- it's your general recollection that the Ltd. entity was never going to do any of the things that it was supposed to do under the transfer agreement; is

that correct?

A. I don't recall specifically. I just know it was the lead-up to the Acis 3 reset. So for at least with respect to Acis 3, that CLO, it clearly wasn't going to happen.

Q. Okay. But I'm talking specifically about what it was supposed to do under the transfer agreement.

So leading into --

A. Okay.

Q. -- the Acknowledgement and Waiver, did you have a recollection at the time that the Ltd. wasn't doing what it was supposed to do under the transfer agreement?

A. Specifically, as of that time, no, I don't have a recollection.

Q. Again, because you said "specifically," let me ask the follow-up.

A. Yeah.

Q. Generally, at the time the Acknowledgement and Waiver was being drafted, was it your general belief that the Ltd. entity wasn't doing what it was supposed to be doing under the transfer agreement?

A. Yeah, generally, yes.

Q. And let me ask you this.

Is that something you figured out on your own, or is it your recollection that someone told you that?

A. I don't recall that either way. I do generally recall being aware of it. I also know, right, from more recent review of email communications in response to your discovery requests, there were sort of checklists, right, that I put together.

And I believe, if I'm recalling correctly, you know, one of the issues identified on one or multiple versions of these checklists was the fact that, hey, like, HCLOM Ltd. never notified the controlling class of any CLO that it wants to be a successor manager. It's never done anything to qualify as an SEC-registered portfolio manager. All of the stuff that was in the transfer agreement, like, we haven't done any of that yet.

Q. And the transfer agreement was in November, November 3rd, 2017, and this acknowledgement waiver was January 19th, 2018, so we're talking, what, two and a half months later. Does that sound about right?

A. Between the transfer agreement and the Acknowledgement and Waiver?

Q. Correct.

A. Yeah, yeah.

Q. Is it your recollection that during that time period, you were aware that Ltd. was not performing obligations it was supposed to do under the transfer agreement?

MR. MORRIS: I'm sorry. Can I have -- hold on.

A. Yeah, I --

MR. MORRIS: Hold on. I got distracted for just a second. Can I -- can I get that question again?

MR. AIGEN: Probably not, but let me try.

MR. MORRIS: Yeah. I apologize.

MR. AIGEN: That's all right.

Q. (By Mr. Aigen) Between the date of the transfer agreement, which was October 7th -- sorry -- November 3rd, 2017, and the date of the Acknowledgement and Waiver, which was January 19th, 2018, so in that time period, was it your belief that HCLOM Limited was not performing its obligations under the transfer agreement?

A. Generally, yes, yeah.

Q. Do you remember telling anyone that HCLOM Limited wasn't performing obligations it was supposed to be performing?

A. I -- I don't have, again, specific

recollections of specific conversations. I do have a general recollection of this being discussed, meaning, like, HCLOM Ltd. said it was going to do stuff under this transfer agreement, and it hasn't.

And I also know from having reviewed more recent email communications, like, that, at least partially, was pointed out, right, in these checklists that were shared with various members of the legal team.

Q. What do you mean by that, "partially pointed out"?

A. I don't recall specifically what issue, you know, I wrote in the checklist, but I do recall, you know, having reviewed stuff coming up to today that, Hey, you know, Highlands never gave the notice to Acis that Highland was going to cut off the shared services and sub-advisory services, right, that that was stated in the recitals of this agreement.

HCLOM Ltd. never provided a notice to the controlling class of the CLOs, which it would have had to do in order to become the successor manager of the CLOs.

So, yeah, I do have a general recollection of those items being discussed in this two-and-a-halfish-month period.

Q. Did you find it troubling in any sort of way that HCLOM Limited wasn't performing obligations that it was contractually obligated to perform?

A. I -- again, you know, these recollections are, you know, not perfect, and this isn't specific, but, generally, I mean, depending on what you mean by "concern," I, at a minimum, thought it was an issue. And I also believe that thinking it was an issue is a big part of the reason why this Acknowledgement and Waiver document even came to exist.

Q. Have you had any discussions about the transfer agreement with Mr. Seery?

A. Yeah.

Q. When was the first time you had a discussion about the transfer agreement with Mr. Seery?

MR. MORRIS: So let me just interrupt here and say, Tim, just like I allowed Jim to testify as to communications with you regarding factual matters, I'm going to allow you to do the same thing to the extent that you were discussing them with Jim for purposes of either preparing our objection or preparing him to testify as the Rule 30(b)(6) witness, but please don't divulge any attorney-client communication, any advice that I gave you. But otherwise we're not waiving the privilege. I just

want you to have that distinction in your mind.

A. I don't know if it was the first time I ever discussed it with him. The first time I can recall discussing it with him, as I sit here today, I believe was sometime in the last couple of years, but I can't recall more specifically than that.

Q. (By Mr. Aigen) Are you aware that there was disputes between Acis and Highland over this note in the Acis bankruptcy?

A. I -- I'm aware of that generally now, yes.

Q. During that time, did you ever talk to Mr. Seery about the note?

A. Not that I can recall.

Q. Did you ever tell Mr. Seery that the Assignment and Transfer Agreement existed during the time that Acis and Highland were having this dispute about the note?

A. I don't recall having discussions with Jim Seery about the Acis dispute at all during that time whether in regards to this note or otherwise.

Q. How many people are in the legal department of Highland currently?

A. Currently, there's two.

Q. And that -- are you counting yourself as one of them?

A. Yes.

Q. You and Mr. Surgent are the two?

A. Correct.

Q. And both you and Mr. Surgent were aware of the Assignment and Transfer Agreement at the time it was entered into; is that correct?

MR. MORRIS: Objection to the form of the question.

A. Again, you know, specific memory, difficult to recall specifically. But my belief and expectation is that, yes, I absolutely was.

I also believe Thomas was as well, but I can't say for certain.

Q. (By Mr. Aigen) And same question with respect to the Acknowledgement and Waiver. Is it fair to say that both -- well, let's start off with you were certainly aware that the Acknowledgement and Waiver was entered into at the time it was created, correct?

A. Correct.

Q. That's because you created it?

A. Correct.

Q. Do you know whether Mr. Surgent was aware of the Acknowledgement and Waiver at the time that it was created?

A. Same -- same answer. I believe that he was, but I can't specifically recall for sure.

Q. Is there any specific reason that you wouldn't have told Mr. Seery about the Assignment and Transfer Agreement during the time that Acis and Highland were having a dispute over the note?

MR. MORRIS: Objection to the form of the question.

A. Yeah. I mean, the specific reasons were I just -- I wasn't involved in the settlement of the Acis claims and wasn't having discussions with Jim Seery about it, so, you know.

Q. (By Mr. Aigen) But at the time those discussions were going on, even though you weren't asked, you were aware of the Assignment and Transfer Agreement.

Is that fair to say?

MR. MORRIS: Objection to the form of the question.

A. Was I -- the question is was I aware of the existence of the transfer agreement at that time?

Q. (By Mr. Aigen) Yes.

A. Yeah.

Q. Touching on something you said earlier, again, I don't like putting words in witness's mouths,

but I thought you said the reason you might have been -- well, let me ask you a different question.

Did you say that you were doing some work at the time of the judgment related to Mr. Terry with respect to taking assets out of Acis?

MR. MORRIS: Objection to the form of the question.

A. I believe what I said, if we're thinking about the same answer, is you were asking why I might have been included ultimately later on down the email thread, where JP had reached out to Christina Bodden at Maples to form these entities.

Q. (By Mr. Aigen) Yeah.

A. And my guess was that ultimately I had involvement around the transaction documents that effectuated these various transfers into these entities that were being formed.

Q. Can you give me a little more detail and just tell me what transfers you were talking about with respect to that testimony?

A. Yeah. They -- they happened at different times. But there was the Acis portfolio management agreement with a private fund vehicle called Acis Loan Funding, Ltd., referred to as ALF.

Ultimately, the name of that fund vehicle

was changed to Highland CLO Funding, Ltd. And the portfolio management agreement that previously resided at Acis was either assigned to Highland HCF Advisor, Ltd. or it was terminated and a new one was entered into with Highland HCF Advisor, Ltd. in lieu of Acis. I can't remember if it was an assignment or a termination and a new document. That was one.

There was also the interest -- the equity interest that Acis Capital Management had in the Acis 7 CLO structure. We had set up a structure that we referred to as the CMOA structure in order to comply with U.S. risk retention rules that were in effect at the time the Acis 7 CLO was issued and launched.

Acis Capital Management had an equity ownership interest in that structure, and those interests were transferred to another one of the entities that were formed in JP's original email, Highland CLO Holdings, Ltd.

There were also -- I'm trying to remember. There may have been others I'm forgetting. And there's, of course, the promissory note that was attached to the Acis participation interest agreement, which was transferred as well.

Q. And what role did you have with respect to

that note?

A. The note itself?

Q. Correct.

A. Yeah. So I know I didn't draft that note. I know Mark Patrick was working with outside counsel. I believe it was Hunton & Williams, or maybe they had a different name then. But outside counsel drafted both the purchase agreement and the note.

I know I provided limited comments to the agreement just from having reviewed emailed communications at the time.

If you're asking me what I remember specifically, I do remember -- I remember Mark Patrick walking over to the legal department side of the building to talk about the transaction, and I remember Isaac not being particularly happy about it simply because we had -- I don't remember the dates, but it was very close in time to when either the litigation against Josh or the arbitration -- I guess it wouldn't have been the arbitration. It must have been the original litigation that Highland filed against Josh had started.

And it was a little bit, like, really, we have to do a transaction right now involving, you know, assets of Acis, you know, right as we're getting

into this court litigation dispute with Josh Terry.

I remember reaching out to Isaac myself, not knowing, right, really what the issues were or what the status of that dispute was but knowing he was involved in really leading the litigation effort. Like, Hey, are we okay with this? Do we need to check with outside counsel?

And I remember it being, you know, completely a tax transaction involving two of our principal entities, meaning no investment advisory clients were involved. There wasn't any securities law issue that, you know, I remember being concerned about.

So it was, Hey, you have outside tax counsel drafting this document. If they say it works for tax reasons, you know, that's great. I wouldn't know one way or another. Completely outside my area of expertise.

And so, you know, that's sort of my general recollection of the transaction at the time.

Q. And I know you said you're not a tax expert, but do you have an understanding as to the tax reasons for setting up the transaction in this way with a purchase and sale of CLO participation document in the note?

A. I have some general understanding now. At the time, I'm not sure that I even did or would have concerned myself with it. And I can give you some contextual reasons for why that is, if you want, but I'm not sure that I even did understand at the time.

Q. Are you aware as to whether there was any desire to have the payments from the promissory note delinked from the payments under the participation agreement for tax purposes? Is that something that you're familiar with at all?

MR. MORRIS: Objection to the form of the question.

A. Am I familiar with it from that time?

Q. (By Mr. Aigen) Sitting here today, are you familiar with that being an issue?

A. I mean, as I'm sitting here today, you know, I think there could be a number of issues with that original tax planning transaction, as I'll call it.

But at the time, I'm not sure that I was attuned to that issue, and I also think I would have bucketed that in sort of the category of, like, that's -- that's a tax issue and criteria that needs to be satisfied, and we have Mark Patrick, internal tax counsel, as well as outside tax counsel's, you know, blessing it for those reasons.

Q. So you wouldn't have worked on any tax issues related to these transactions at the time.

Is that fair to say?

A. Absolutely not.

Q. Let's talk a little bit about the other HCLOM entities, so Highland Capital Management, LLC.

You're familiar with that document --

A. I'm familiar with that --

Q. -- with that entity -- with that entity?

A. Yes, I'm familiar with that entity.

Q. And you worked on creating that entity; is that correct?

A. I did, correct.

Q. And you signed the certificate of formation for that entity; is that correct?

A. I -- I don't recall if I signed it or not, but it wouldn't surprise me either way.

Q. Okay. Why were you involved in the creation of HCLOM LLC?

A. So, again, in my role as sort of the lead transactional attorney on the private fund side of things, you know, CLOs fell, you know, in that -- in that universe.

We had just, or not that long prior to that, had completed the Acis 7 CLO issuance, which was

the first CLO that Highland or an affiliate of Highland had issued under the new risk retention rules.

We had set up what I referred to earlier as this Acis CMOA structure in order to satisfy those rules.

And Highland CLO Management, LLC, was the bottom-tier entity in what we were now calling the Highland CMOA structure, which was a complete dupe of the Acis CMOA structure and governing documents, in order to create a structure that flowed not up to Acis but to Highland and could satisfy the risk retention rules for either new CLO issuances or resets of existing CLOs.

Q. Would it be accurate to say that HCLOM LLC was created to become the collateral manager of the Acis CLOs?

A. Post- -- postreset of those Acis CLOs, yes, that was contemplated.

Q. Is there any particular reason that you're aware of that HCLOM LLC was created for that purpose when you had HCLOM Ltd., who had a contractual obligation that you discussed earlier?

A. HCLOM LLC was actually contemplated and formed prior to HCLOM Ltd., so it's the other way

around.

Q. Can you repeat that? I kind of blanked on that for a second.

A. HCLOM LLC was both contemplated and actually formed prior to HCLOM Ltd., so it's actually the other way around. You could ask why would we put the note in HCLOM Ltd. when HCLOM LLC already existed?

Q. Let me ask you was there any reason that HCLOM Ltd. was not used to become the collateral manager postreset?

MR. MORRIS: Objection to the form of the question, asked and answered.

A. Yeah, I think there's a number of reasons. HCLOM Ltd. had no capital. HCLOM Ltd. was never registered as an investment advisor. HCLOM Ltd. did not have a structure around it that would have allowed it to satisfy risk retention rules postreset.

HCLOM Ltd. had no employees. HCLOM Ltd. had no sub-advisory or shared service agreements in place that could, you know, allow it to perform investment advisory services despite not having employees.

And those are all things that we knew how to do, right, and did very recently for other structures in the Highland complex.

But when it came to HCLOM Ltd., never got done.

Q. (By Mr. Aigen) Is there anything about the fact that HCLOM Ltd. was an offshore entity that would have prevented it from being the collateral manager?

A. Of -- of anything or of, like, the CLOs or --

Q. Like the CLOs.

A. I just don't know. I don't know if its status as an offshore entity somehow prevented it from being a portfolio manager of the CLO.

Q. And was it common for Highland to use offshore entities in this time period?

A. I would say it was not common to use offshore entities to serve as the portfolio manager or investment advisor for advisory clients. We certainly had offshore entities in other contexts and for other purposes.

Q. What would be the other contexts and purposes that Highland would typically use offshore entities?

A. The one that comes to mind right now is, you know, in private fund structures, we often use what's referred to as a master feeder structure.

So you have a master fund, which actually holds the asset -- assets, right, that limited partners or investors are investing in, but then you

might have onshore and offshore vehicles sitting on top of the master fund to facilitate the investment from either U.S. investment -- U.S. investors versus foreign, non-U.S. investors.

Q. Switching a little bit back to what you discussed earlier.

So HCLOM LLC took steps to become the manager of the CLOs; is that correct?

MR. MORRIS: Objection to the form of the question.

A. You're referring to the Acis CLOs, correct?

Q. (By Mr. Aigen) Right.

A. Yeah. HCLOM LLC signed engagement letters, I believe, at least with respect to Acis 3, 4, and 5.

HCLOM LLC certainly took steps and came very, very close to becoming a successor portfolio manager for reset Acis 3. Ultimately, it didn't. I can't recall whether it took other affirmative steps to become a replacement manager for the other Acis CLOs.

Q. Do you remember whether the LLC entity ever became the manager of any of the Acis CLOs?

A. I don't believe that it ever did, no.

Q. Why not?

MR. MORRIS: Objection to the form of the

question.

A. Well, I mean, for Acis 3, right, that was a CLO that, you know, the reset was actually priced, I think. And, yeah, it ultimately didn't happen following Acis's -- or it wasn't Acis's filing but I guess Josh Terry filing an involuntary bankruptcy petition for Acis.

Q. (By Mr. Aigen) Did that involuntary bankruptcy have an effect on Acis's reputation in the market with respect to the CLOs?

MR. MORRIS: Objection to the form of the question.

A. Not that I'm aware of. Not that I can recall.

Q. (By Mr. Aigen) Why would the -- do you know whether the litigation between Josh Terry and Highland had any effect on Acis's reputation in the market?

MR. MORRIS: Objection to the form of the question.

A. I'm not aware of -- well, I guess I'll qualify it.

I mean, I can't recall any indication from the, quote/unquote, marketplace about Acis and the, quote/unquote, marketplace's perception of Acis period, so I can't recall.

Q. (By Mr. Aigen) What was -- and I always pronounce the name incorrectly -- but Mizuho's role with respect to these resets?

A. Mizuho, yeah. They were the placement agent. They're the ones that are, you know, going up and trying to figure out who is going to purchase the debt that the CLO is issuing as part of the reset.

Q. Did you have any conversations with anyone at Mizuho about these potential placements?

A. I don't recall if I was ever on phone calls with Mizuho directly or not. It wouldn't surprise me if I was, but I don't recall.

Q. Are you aware of whether anyone at Mizuho had a view that the litigation between Josh Terry and Highland had a negative effect on the Acis CLOs?

A. Repeat the question one more time.

Q. I'll try.

Are you aware as to whether anyone at Mizuho had a belief that the litigation between Terry and Highland had a negative effect on the Acis CLOs?

MR. MORRIS: Objection to the form of the question.

A. I don't recall being aware either way.

Q. (By Mr. Aigen) And at some point, it came about that Mizuho stopped working on this placement;

is that correct?

A. No, I don't think that's correct. I think it was -- I think Highland CLO Management, LLC -- well, I'll pause there because I actually can't recall who signed that engagement letter.

But where I was going was I think Goldman Sachs was actually involved, and Mizuho sort of stepped in once Goldman fell away.

Q. And then did Mizuho complete it, or did they stop doing the work on it?

A. Goldman or Mizuho?

Q. Mizuho.

A. I can't recall the sequence, but basically I think there was -- if I'm recalling correctly, there was a motion in the bankruptcy court to stop, right, like, any traction that would result in the portfolio management agreements that Acis was a party to from leaving Acis, which effectively stopped the reset of Acis 3 because Highland CLO Management, LLC, was going to replace Acis as collateral management or portfolio manager, whichever phrase it was.

Q. So that injunction or order in the Acis bankruptcy prevented HCLOM LLC from becoming the manager of those CLOs; is that correct?

A. I don't know if that's technically correct or

not, but that's my general understanding.

MR. AIGEN: We've been going a little over an hour. Why don't we take a five-minute break.

THE WITNESS: Sure.

THE REPORTER: Off the record at 2:16.

(Recess 2:16-2:26.)

THE REPORTER: Back on the record at 2:26.

Q. (By Mr. Aigen) Almost done here with this. A few more questions.

Tim, are you aware of any agreements of any sort entered into between HCLOM Ltd. and HCLOM LLC?

MR. MORRIS: Objection to the form of the question. Other than the ones that we've looked at?

A. Actually, I don't -- even the ones we looked at, I'm not aware of any agreements between HCLOM Ltd. and HCLOM LLC.

MR. MORRIS: I apologize. I misunderstood the question. Thank you.

Q. (By Mr. Aigen) Have you ever done a search for any documents like that?

A. I've searched our folders for, you know, agreements and documents to which each of those entities are a party. So I both -- I would expect

that I would know about them if they existed, and I expect that I would have found them if they did exist.

Q. Would you -- given what transpired in this case, would you have expected there to be some sort of agreement between those two entities for some reason?

MR. MORRIS: Objection to the form of the question.

A. Not for any reason I can think of right now.

Q. (By Mr. Aigen) So at the time you were working on drafting the Acknowledgement and Waiver document that's from January of 2018, at that time, you were aware that HCLOM LLC was taking the steps necessary to become the CLO manager that HCLOM Ltd. was supposed to do under the Assignment and Transfer Agreement.

Is that fair to say?

A. Yes. I mean, I don't recall specifically, but I would have been aware of that, yes.

Q. Was there -- did you consider at the time possibly doing some sort of agreement with the two parties where you would have assigned the obligations from HCLOM Ltd. to LLC?

A. I don't recall either way.

Q. Okay. Do you remember having any discussions with anyone about potentially doing some type of

agreement between the two entities given the fact that the LLC entity was performing these steps and not the Ltd. entity?

A. I don't recall either way.

Q. Sitting here today, is there anything you can think of that would have prevented Highland from assigning the rights and obligations of the Ltd. entity to the LLC entity?

A. When you say assigning rights and obligations, you mean, I guess, the note and the obligations under the transfer agreement?

Q. Correct.

A. So the question is am I -- can I think of a reason why HCLOM Ltd. could not have assigned that stuff to HCLOM LLC?

Q. Correct.

MR. MORRIS: Objection to the form of the question.

A. There could be a reason, but I can't think of one right now.

Q. (By Mr. Aigen) Okay. And what I'm getting at is simply that there appear to be certain things that HCLOM Limited was supposed to do under the Assignment and Transfer Agreement that it did not do and instead HCLOM LLC did.

Would you agree with that?

MR. MORRIS: Objection to the form of the question.

A. So I agree that HCLOM LLC took steps to at least become the replacement manager for Acis 3. Whether it was contemplated that HCLOM LLC was doing that instead of HCLOM Ltd., in lieu of HCLOM Ltd., with HCLOM Ltd., you know, in mind at all, I -- I don't recall that.

Q. (By Mr. Aigen) Putting aside intent -- I understand that.

But the steps that HCLOM LLC was taking to become the manager were things that HCLOM Ltd. was supposed to do under the Assignment and Transfer Agreement; is that correct?

A. Yes, with the caveat that HCLOM LLC was only going to become a replacement manager postreset.

Q. Is that different than what was contemplated for Ltd. under the Assignment and Transfer Agreement?

A. I don't -- I don't recall as to intent again, but, I mean, theoretically, you know, the transfer agreement calls for this, right, like, giving a notice to the controlling class of the CLOs today, promptly, whatever it says, to become the successor manager.

Q. That -- sorry.

A. That's sort of irrespective, right, of a reset transaction.

Q. And correct me if I'm wrong, but my understanding, the way it typically works are notices of change in managers are usually done in coordination with resets. Isn't that how it's usually done in this industry?

MR. MORRIS: Objection to the form of the question.

A. That's not my understanding of how it's usually done. That's a way it could be done. I think there's lots of different ways.

Q. (By Mr. Aigen) That --

A. Some other entity could become a replacement manager to a CLO.

Q. But it's not your understanding that it's usually done in conjunction with a reset, to have a change in manager?

MR. MORRIS: Objection to the form of the question.

A. No -- well, sorry.

I don't know this. Like, I'm not -- I'm not an expert on, you know, the CLO marketplace.

But my expectation would actually be the opposite, that typically when there's a reset, there's

no change in manager at all.

Q. (By Mr. Aigen) Okay. But if you are going to change a manager, you've been involved in instances where you changed the managers without a reset.

Is that fair to say?

MR. MORRIS: Objection to the form of the question.

A. Have I been involved in a situation where we've changed the manager of a CLO?

Q. (By Mr. Aigen) Outside of a reset.

MR. MORRIS: Objection to the form of the question.

A. As best I can recall right now, I don't think I've been involved in the actual change of a portfolio manager of a CLO, period, whether it was in connection with a reset or completely separate from reset.

Q. (By Mr. Aigen) So this work that you did with the reset of the one Acis entity, the attempted one with the LLC, that was the only time you've worked on this?

A. As best I can recall, yes.

Q. Fair to say you don't have an expertise on when and how managers are usually replaced with respect to CLOs?

A. I've -- I've reviewed the governing documents

of our CLOs in detail, so I know the contractual mechanics that can take place, how that can take place.

What other CLO managers unaffiliated with Highland or Acis do out in the marketplace, I agree I'm not an expert and don't have a lot of knowledge about.

MR. AIGEN: That is all the questions I have. I thank you for your time. I appreciate it.

MR. MORRIS: Can we take just five minutes? I want to consider whether I have anything to ask.

MR. AIGEN: Sure.

MR. MORRIS: The time right now actually is 3:34. Give me until 3:45.

MR. AIGEN: Sounds good.

THE REPORTER: Off the record at 2:34.

(Recess 2:34-2:42.)

THE REPORTER: Back on the record at 2:42.

MR. MORRIS: This is John Morris for Highland Capital. We have no questions for this witness at the time. We do have an agreement, though, and I'd ask Mr. Aigen to confirm that he will not make any attempt to call Mr. Cournoyer on HCLOM Limited's

affirmative case.

While they can designate portions of the transcript and we have the right to do the same, if Highland chooses to call Mr. Cournoyer on its direct case, HCLOM Limited will be strictly limited to cross-examination on the topics that are addressed during direct.

Is that fair?

MR. AIGEN: That sounds consistent with what we already put in writing, but to the extent there's any differences between that and what's in writing, I'll defer to what's in writing per our agreement.

MS. DEITSCH-PEREZ: And the only other thing, John, I would say is that HCLOM can also submit whatever testimony is appropriate from the deposition.

MR. MORRIS: I just said that.

MS. DEITSCH-PEREZ: Okay. I didn't know whether you were saying if, in fact -- if you bring him live, then somehow we can't submit the testimony, we have to only cross-examine. So I'm just confirming we can do both, submit the testimony and cross-examine.

MR. MORRIS: Let's make it clear. We can both use the transcript. Only Highland can call him

on its direct case in chief. And if it does so, HCLOM Limited will be strictly limited to cross-examination. Good?

MR. AIGEN: I think we're good.

MR. MORRIS: Thanks, folks.

THE REPORTER: Mr. Morris, do you want a copy of the transcript?

MR. MORRIS: I do. Within a week, for both this morning and this afternoon.

THE REPORTER: Okay. Thank you.

(Deposition concluded at 2:44 p.m.)

CHANGES AND SIGNATURE

WITNESS NAME: TIMOTHY JOSEPH COURNOYER 11-13-2024

PAGE	LINE	CHANGE	REASON

Job No. TX7022352

I, TIMOTHY JOSEPH COURNOYER., have read the foregoing deposition and hereby affix my signature that same is true and correct, except as noted above.

_____

TIMOTHY JOSEPH COURNOYER

THE STATE OF _____)

COUNTY OF _____)

Before me, _____, on this day personally appeared TIMOTHY JOSEPH COURNOYER, known to me (or proved to me under oath or through _____) (description of identity card or other document) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this _____ day of _____, 2024.

_____

NOTARY PUBLIC IN AND FOR

THE STATE OF _____

My commission expires: _____

STATE OF TEXAS)
COUNTY OF DALLAS)

I, Jennifer Quick Davenport, Certified Shorthand Reporter, in and for the State of Texas, certify that the foregoing deposition of TIMOTHY JOSEPH COURNOYER was reported stenographically by me at the time and place indicated, said witness having been placed under oath by me; and that the deposition is a true record of the testimony given by the witness.

I further certify that I am neither counsel for nor related to any party in this cause and am not financially interested in its outcome.

Given under my hand on this the 20th day of November, 2024.

Jennifer Quick Davenport
Texas CSR No. 1683
Expiration: 10-31-25
Firm Registration No. 571
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Time used by each party:
Mr. Aigen - 1:16
Mr. Morris - 0:00

John A. Morris - jmorris@pszjlaw.com

November 20, 2024

RE: In Re: Highland Capital Management, L.P. v.
DEPOSITION OF: Timothy Joseph Cournoyer (# 7022352)

The above-referenced witness transcript is available for read and sign.

Within the applicable timeframe, the witness should read the testimony to verify its accuracy. If there are any changes, the witness should note those on the attached Errata Sheet.

The witness should sign and notarize the attached Errata pages and return to Veritext at errata-tx@veritext.com.

According to applicable rules or agreements, if the witness fails to do so within the time allotted, a certified copy of the transcript may be used as if signed.

Yours,

Veritext Legal Solutions

[& - acis]

q

r

Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

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Exhibit 49

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

IN RE:	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,	Case No.:
Reorganized Debtor.	19-34054-sgj11

VIDEOTAPED DEPOSITION

WITNESS:	JAMES DONDERO
DATE:	Monday, November 4, 2024
START TIME:	11:04 a.m., CT
END TIME:	3:31 p.m., CT
REMOTE LOCATION:	Remote Legal
PROCEEDINGS OFFICER:	Kindel McDermott, CDR-3527
JOB NO.:	30439

A P P E A R A N C E S

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BY: MICHAEL AIGEN, ESQUIRE
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Appearing for HCLOM, LLC, and the Witness

ALSO PRESENT:
Andrea Bates, Legal Assistant to Mr. Morris

I N D E X O F T E S T I M O N Y

I N D E X O F E X H I B I T S

(available for download)

P R O C E E D I N G S

THE PROCEEDINGS OFFICER: Good morning. We are now on the record. Today's date is November 4th, 2024, and the time is approximately 11:04 a.m., Central Time.

My name is Kindel McDermott. I'm the -- I am the officer designated by Remote Legal, 11 Broadway, Suite 468, New York, New York, to take the record of this proceeding.

This is the deposition of James Dondero, taken in the matter of In Re: Highland Capital Management, L.P., Case Number 19-34054-SGJ11, filed in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division.

Would all counsel please identify themselves for the record and state who they represent, starting with the noticing attorney.

MR. MORRIS: Good morning. This is John Morris, Pachulski Stang Ziehl & Jones, for the reorganized Highland Capital Management, L.P. I'm here with my partner, Jeff Pomerantz, and my legal assistant, Andrea Bates.

MS. DEITSCH-PEREZ: Hi. This is Deborah Deitsch-Perez from Stinson, representing HCLOM and the witness. I'm here with my partner, Mike Aigen.

THE PROCEEDINGS OFFICER: Thank you.

This deposition is being taken remotely on behalf of the reorganized debtor and is being conducted pursuant to the procedural rules and laws governing this matter.

As such, all parties agree to this means of capturing the official record, which may include recording by audio, audiovisual, and/or stenographic means, and agree not to oppose admissibility of the testimony in this proceeding on the basis of the personnel or method by which the testimony was captured.

Further, all parties agree that the deposition officer or person administering the oath may be authorized to administer the oath under the rules where they reside.

Do the parties all stipulate?

MS. DEITSCH-PEREZ: Yes.

MR. MORRIS: On behalf of Highland, yes.

THE PROCEEDINGS OFFICER: Thank you. I will now swear in the witness.

Mr. Dondero, please raise your right hand. Please state and spell your name for the record.

THE WITNESS: James Dondero, J-A-M-E-S, D-O-N-D-E-R-O.

THE PROCEEDINGS OFFICER: Do you swear or

affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth?

MR. DONDERO: I do.

WHEREUPON,

J A M E S D O N D E R O,

having been called as a witness, being duly sworn by the notary public present, testified as follows:

THE PROCEEDINGS OFFICER: Thank you, sir. You may put your hand down.

And, Counsel, we're ready to begin.

MR. MORRIS: Okay.

EXAMINATION

BY MR. MORRIS:

Q Good morning, Mr. Dondero.

A Morning.

Q Nice to see you again. I hope you're well. Where are you located right now, physically?

A Dallas.

Q Are you in a -- whose office are you in?

A I'm in a conference room.

Q And is there anybody in the conference room with you?

A Just Deborah and I.

Q Okay. Do you have a telephone that's on at the moment?

A No.
Q Okay. Do you have a computer in front of you?
A Just the one I'm talking into.
Q Thank you for the clarification. Do you have any notes of any kind?
A No.
Q Do you understand that you're here today to give testimony in connection with the claim objection relating to Highland Capital Management, LTD?
A Not the specific entity, but I -- I know it's regarding a note, the $10 million note.
Q Do you know who holds the $10 million note today?
A No.
Q Did you do anything to prepare for today's deposition?
A Not other than meeting with Deborah.
Q And when did you meet with Deborah?
A For half an hour on Friday -- or an hour on Friday and 15 minutes today.
Q So was Mr. Aigen present for either of those meetings?
A No.
Q Okay. So you met -- to prepare for today's deposition, you met with Deborah on Friday for 30 to 60

minutes and today for up to 15 minutes? Do I have that right?

A Yeah.

Q Okay. Did you review any documents to prepare for today's deposition?

A No.

Q Did you speak with anybody other than Deborah for today's deposition?

A No, I did not.

Q Did you speak with anybody concerning the events that are the subject of this litigation in connection with today's deposition at any time in the past 60 days?

A No.

Q Are you aware that Frank Waterhouse was deposed in connection with this particular litigation?

A No.

Q So is it fair to say that you didn't speak with Mr. Waterhouse about his testimony?

A I did not.

Q Have you reviewed any transcripts of Mr. Waterhouse's testimony?

A No.

Q Okay. Are you familiar with an entity named Highland CLO Management Limited?

A I -- I just know it was one of the entities involved with the resolution of Acis after Josh Terry left.

Q And do you know what role that entity played in connection with the resolution of the issues that you just referred to?

A Not specifically.

Q Do you have any knowledge at all as to what role Highland CLO Management Limited played in connection with the post-Josh-Terry issues surrounding Acis?

A Just generally.

Q And what's your general understanding?

A That it was one of the entities involved in -- on the note, and it was one of the entities that was going to be involved in refinancing or resetting of the CLOs.

Q What does it mean -- what -- when you use the term "involved," do you have any -- can you elaborate at all on what that term means in connection with this particular entity?

A Not specifically.

Q Do you know when Highland CLO Management Limited was formed?

A No.

Q Can I refer to that entity going forward as HCLOM? Just the acronym, H-C-L-O-M?
A HCLOM, you want to use for the limited entity?
Q Yes, sir.
A Okay.
Q Do you know where HCLOM was formed?
A And -- other than that Limited, generally, is a payment entity, other than that, no.
Q Do you know who directed the formation of HCLOM?
A I -- I believe it would have been the lawyers, the internal --
Q Do you know -- I appreciate that. Do you know -- can you identify any specific lawyer, or are you just saying, generally, you believe it would have been the lawyers?
A I believe it, excuse me, generally would have been our legal staff or internal lawyers.
Q Okay. Are you aware that there is a similarly named entity called Highland CLO Management, LLC?
A Yes.
Q Do you know when that entity was formed?
A No.
Q Do you know why that entity was formed?
A I -- not specifically, but it's -- it sounds

like it's an onshore entity involved in the same process that we're talking about.

Q Do you know who decided to form -- I'm going to -- withdrawn.

I'm going to refer to that entity as HCLOM, LLC. So we've got HCLOM, LLC, and then just HCLOM, which refers to HCLOM Limited; is that okay?

A Okay.

Q Okay. So do you know who decided to form HCLOM, LLC?

A Same answer. I believe it would have been our internal legal staff.

Q Do you know if HCLOM, LLC, and HCLOM ever had common ownership?

A I don't know.

Q Do you know if they ever had a contractual relationship?

A I -- I believe they had to have some contractual relationship because ultimately, the assets have to be managed by an RIA and managed with people or some -- some sub-advisory agreement that gives it people. And I -- and I believe that was all at the LLC level, not at the LTD level.

Q Are you aware -- have you ever seen a contract between HCLOM, LLC, and HCLOM?

A Not that I'm -- not that I remember.

Q Do you recall if anybody ever told you that there was a contract that existed between HCLOM, LLC, and HCLOM?

A Not that I recall.

Q When did you first become aware that there was two different entities that were similarly named, one that was HCLOM, LLC, and one that was HCLOM?

A Excuse me. I don't know. Year -- years ago.

Q Did you ever ask anybody why there were two similarly named entities?

A No. I -- I wasn't specifically involved in any of the details on a transaction of this size. I was aware of the creation of the note and the moving away from Acis as a -- as a manager in the resets. But the specifics, the -- the specifics -- my -- my awareness is just general.

Q So is it fair to say that you never asked anybody why there were two entities created, one named HCLOM Limited, and one named HCLOM, LLC; is that fair?

A I never asked specifically, and I gave my best speculation as to why there would be.

Q Okay. Did anybody ever explain to you why there were two HCLOM entities that were formed, one HCLOM Limited and one HCLOM, LLC?

A Not that I recall.

Q I apologize if I'm repeating here, but you don't know today who holds the note in question; is that fair?

MS. DEITSCH-PEREZ: Can you -- can you say that again? Because I apologize. My phone rang while you were talking.

MR. MORRIS: No problem.

BY MR. MORRIS:

Q Mr. Dondero, do you know who holds the note that is the subject of this litigation?

A Not specifically.

Q Do you know generally?

A I don't -- I don't know generally.

Q Okay. Can you identify the ultimate beneficial owners of HCLOM Limited today?

A Not specifically.

Q Do you know generally who the ultimate beneficial owners of HCLOM Limited are today?

A Just generally, it's our side of the table, but I don't know -- I -- I don't know the ownership of the entities.

Q And when you refer to your side of the table, are you referring to you or entities in which you have a direct or indirect ownership interest?

A Yes. I -- I believe it's generally -- generally, it's monies that are due to -- that are owed to us.

Q But you can't identify any specific entity that has a direct or indirect ownership interest in HCLOM Limited today, correct?

A Correct.

Q Okay. Do you know who the ultimate beneficial owners of HCLOM Limited were at the time of formation?

A No.

Q Do you know if there was ever a change in the beneficial ownership of HCLOM Limited?

A I -- I would need to be refreshed on that. I -- I don't specifically remember.

Q Okay. Did you ever direct anybody to change the ultimate beneficial ownership for HCLOM Limited?

A No. Not that I recall.

Q Do you know who controls HCLOM Limited today?

A I do not.

Q Did you ever know? Do you know who -- withdrawn.

Do you know who controlled HCLOM Limited at any time?

A I -- I do not. I do not -- I do not recall. This is a small transaction. I wasn't involved in

details.

Q Okay. Do you control HCLOM today?

A I don't know. I'm -- I'm willing to be refreshed, but I don't know.

Q Yeah. Did you ever ask anybody who controlled HCLOM Limited?

A No.

Q Do you know who's authorized to act on behalf of HCLOM Limited today?

A I do not specifically know, no.

Q Do you know if you're authorized to act on behalf of HCLOM Limited?

A I -- I don't know.

Q Are you aware that HCLOM Limited filed a response to Highland's objection to the scheduled claims that are at issue in this litigation?

A I'm aware we're pursuing or trying to get the note paid. I don't -- I -- I don't know the specific motions.

Q Have you ever seen any written response that was filed on behalf of HCLOM Limited in connection with this litigation?

A Not that I recall.

MR. MORRIS: Okay. Andrea, can you please put up on the screen tab 15, which we'll mark as

Dondero Exhibit 1?

(Exhibit 1 marked for identification.)

BY MR. MORRIS:

Q All right. Mr. Dondero, we've done this a few times, so the last thing I want to do here is try to trick you. If there's anything about a document that you think you need to read for full context, let me know.

I don't expect to ask substantive questions about this document. But if we could just scroll down a little bit on this first page, this is a document that we've marked as Exhibit 1. You can see it was filed in the bankruptcy court in Docket 3715 on April 3rd, 2023.

MR. MORRIS: And if we could just scroll to the title of the document, please?

MS. DEITSCH-PEREZ: Yeah. You're aware that very little of the document is visible on the screen because of the size, right?

MR. MORRIS: Yeah.

THE PROCEEDINGS OFFICER: So I also wanted -- sorry to interject here. I just wanted to bring to your attention -- you can also control the document on your end if you would like. There's a plus or minus at the top of the document that you can zoom in or out. There's a hand icon for panning around on the

document if you end up zooming in far enough.

MR. MORRIS: Oh, I see. Okay. Great. Enough said. Okay.

BY MR. MORRIS:

Q Mr. Dondero, do you see --

MR. MORRIS: I really do appreciate that.

BY MR. MORRIS:

Q Mr. Dondero, do you see this document is called Response of Highland CLO Management, Ltd. to -- and I'll just paraphrase here, to Highland's objection to the schedule claims?

Do you see that that's the title of the document, sir?

A Hold on. I can't -- that's all I got. I got --

MR. MORRIS: Deborah, scroll down on the document.

MS. DEITSCH-PEREZ: Yeah, we're trying.

MR. MORRIS: It's just trying to --

THE PROCEEDINGS OFFICER: Sorry. My screen froze for a moment, and I had to refresh.

MS. DEITSCH-PEREZ: All right. You can hit the down arrow.

THE WITNESS: All right.

MS. DEITSCH-PEREZ: And wait --

THE WITNESS: Response to -- okay.

BY MR. MORRIS:

Q Okay. I invite you to scroll down. Are you able to scroll down on the document?

A Yes. Yeah.

Q So take your time. You can read as much of the document or as little of the document as you want. My only question for the moment is whether you've ever seen it before, so take your time.

A Not that I recall.

Q So is it fair to say that you don't recall reviewing this before it was filed?

A Correct.

Q And because you don't recall ever seeing it before, is it fair to say that you have no basis to say whether it's true or accurate today?

A Well, I -- I believe in the capabilities of my internal legal and accounting and my external legal to vet the pleadings. So I believe it's accurate, but it's not -- I don't -- it -- it's not a document that I created or reviewed.

Q Okay. Is there somebody within your organization who is responsible for handling this litigation on behalf of HCLOM Limited?

A I do not know. I mean, yes. There would be

internal legal involved, but I -- I don't know who.

Q Did you ever designate somebody to be responsible for handling this litigation?

A I did not.

Q And nobody ever informed you as to the identity of an in-house professional who was charged with the responsibility of overseeing this litigation on behalf of HCLOM Limited, correct?

A Correct. I don't know who specifically internally was responsible or interfacing with externals.

Q Did you ever speak with anybody internally concerning the litigation that is the subject of this response, that is, Highland's claims?

A I do not.

MR. MORRIS: Okay. Let's shift gears. You can take that down.

MS. DEITSCH-PEREZ: John, you're frozen on the screen. I don't know if that matters, but --

THE PROCEEDINGS OFFICER: So one thing we can try and do, Mr. Morris, if you move your mouse over your -- over where your image is supposed to be, it will bring up a little blue box at the top right corner of your image. If you click on that, you can say, refresh video.

MR. MORRIS: Appear to -- you see me, Deb?

MS. DEITSCH-PEREZ: No. Now you're gone entirely.

MR. MORRIS: You're probably better off.

THE WITNESS: I don't see him on my screen, either.

MS. DEITSCH-PEREZ: Yeah.

THE WITNESS: I mean, he's not -- he's not anywhere on my screen.

MR. AIGEN: Scroll down. You can see John's window, but there's no image. Looks like his video is turned off right now. If you scroll down, you can see his box. I think he moved down when --

MS. DEITSCH-PEREZ: I give up.

THE PROCEEDINGS OFFICER: I'm not sure why you're not showing back up. Would you like me to take us off the record while we figure this out?

MR. MORRIS: Yes, please. Apologies, folks.

THE PROCEEDINGS OFFICER: Taking us off the record.

(Off the record.)

THE PROCEEDINGS OFFICER: We are now back on the record, 11:32 a.m., Central Time.

BY MR. MORRIS:

Q Mr. Dondero, can you hear me okay?

A Yes.

Q Okay. You're familiar with an entity called Acis Capital Management, L.P., correct?

A Yes.

Q And we're going to refer to that entity as Acis for purposes of this deposition; is that okay?

A Okay.

Q Acis was formed by Mark Okada, Josh Terry, and you back in around 2011, correct?

A Yes.

Q And it was formed to be a registered advisor to manage and invest in certain collateralized loan obligations, correct?

A Yes.

Q Okay. And we're going to refer to collateralized loan obligations as CLOs, okay?

A Okay.

Q And Acis managed those CLOs through certain management agreements with the issuers of the CLOs, correct?

A I -- yes, in -- in conjunction with a shared services agreement with Highland.

Q I appreciate that. But just focusing on the

relationship between Acis and the issuers, Acis obtained its role as the manager of the CLOs pursuant to management agreements with the issuers; is that fair?

A Yes.

Q Okay. And pursuant to those CLO management agreements, Acis would receive fees for its services, correct?

A Yes.

Q And is it okay with you if, going forward, I - I refer to the fees that are due under the CLO management agreements as servicing fees?

A Let's call them management fees because that's what they are.

Q Okay. In early 2018, Josh Terry commenced an involuntary bankruptcy case against Acis and its general partner, correct?

A Yes.

Q At all times prior to the commencement of the Acis bankruptcy case, your family owned a majority of Acis's limited partnership interest, correct?

A At all times prior, I -- I don't remember what the original percentages were, if they were a majority or not. I -- I believe, after Josh Terry left, it was a majority, but I -- I don't know. I don't know if it was before that.

Q Do you recall that at some point during the Acis bankruptcy, a gentleman named Robin Phelan was appointed as the Chapter 11 trustee, and in that capacity, he took control of Acis?

A I do remember that.

Q Okay. From the time of formation until Mr. Phelan's taking of control during the Acis bankruptcy case, you served as the president of Acis, correct?

A I -- yeah. I don't specifically remember it, but it's logical.

Q Is it fair to say, until Mr. Phelan took control of Acis as part of the Acis bankruptcy, that you personally controlled Acis?

MS. DEITSCH-PEREZ: Object to the form.

BY MR. MORRIS:

Q In your capacity as --

MR. MORRIS: I appreciate the objection. Withdrawn.

BY MR. MORRIS:

Q Mr. Dondero, as an office -- withdrawn.

You were an officer of Acis at all times prior to Mr. Phelan's appointment Chapter 11 trustee, right?

A I -- same answer. I -- I don't remember. It's logical that I would've been, but I don't remember.

Q Do you know if there was any time prior to Mr.

Phelan's appointment when you did not control Acis?

A I -- I don't -- I don't remember. And it's -- what is -- I -- I don't remember. And I -- I don't remember if I was an officer. I'm willing to be refreshed, you know? And I don't remember if I had majority ownership prior to Josh leaving.

Q Okay. Josh left in or around June 2016, right?

A Yes. I remember -- yeah, mid-16. I remember. Yes.

Q And he left because you terminated him, correct?

A I -- that's -- I think that's been subject to litigation, and I -- I don't want to opine on that.

Q I'm not asking you to opine. I'm just asking about facts. It's a fact that you terminated Mr. Terry from his position at Acis in or around June 2016, correct?

A There were issues of aberrant behavior on his part, and I remember there were issues on whether or not it was for cause. And I don't remember, ultimately, how it was characterized or decided.

Q Okay. I want to assure you, Mr. Dondero, I'm not here to re mitigate the circumstances surrounding his departure. I'm just looking to establish some

foundation. But if you don't remember specifically the circumstances of Terry's departure, that's fine.

We can agree, though, that he left Acis in or around June 2016, right?

A Yes. That's how I'd like to leave it.

Q That's fine. And following his departure, Mr. Terry's ownership interest in Acis was allocated between and among entities owned or controlled by you and Mr. Okada, fair?

A Yes. I believe that's the case.

Q Okay. And who decided to allocate Mr. Terry's ownership interest in Acis between and among entities owned or controlled by you and Mister --

A I -- I believe that came from internal counsel as the appropriate way to handle the reconfiguring of a partnership when the primary operating partner left.

Q Okay. Can you identify any particular lawyer, or do you think it was just in-house counsel? Is that the best you can do today?

A That's the best I can do today.

Q Was there anybody at Highland's internal -- withdrawn.

Was there any in-house counsel that was specifically tasked with the responsibility of addressing Acis and the issues that arose following Mr.

Terry's departure?

A I don't know. I don't know who was specifically assigned to it.

Q Do you recall if Mr. Ellington was the person ultimately responsible among the in-house team addressing the issues following Mr. Terry's departure?

A He was -- he was the overall senior general counsel, but I -- I don't believe he handled the nuts and bolts. I believe he delegated it.

Q Did you delegate to a particular person the responsibility for addressing issues arising from Mr. Terry's departure?

A No.

Q Following Mr. Terry's departure, do you know who controlled Acis?

A I -- I believe the reconfigured partnership agreement outlined that.

Q And the only partners of Acis following Mr. Terry's departure were entities owned and/or controlled by you and Mr. Okada; is that fair?

A Yes, as far as ownership is concerned. But -- but again, control is a -- subject to various descriptions, and there -- there would've -- again, there was a shared services agreement which would've given control, so to speak, of the asset management

and/or the accounting and other services. I think back to Highland. I think describing the ownership as reconfigured with Mark and I is correct, but I -- I don't want to -- I -- I don't want to broadly agree to control over all aspects just because we were the owners.

Q Okay. So following Mr. Terry's departure, his ownership interest gets allocated to you and Mr. Okada or entities owned directly or indirectly by the two of you, fair?

A I believe that's the case.

Q And as part of that process, your recollection is that Dugaboy or other entities owned or controlled by you held a majority of the limited partnership interest in Acis, correct?

A I believe so.

Q Okay. As the person who owned, directly or indirectly, a majority of the limited partnership interests of Acis, are you willing to tell me who, at any time following Mr. Terry's departure, actually controlled Acis?

A I'll say it one more time. Again, you know, the -- how to handle the document properly with the exit of the operating partner would've been done by internal and external legal, with the assistance of accounting

where relevant. And I believe the portfolio management and the accounting and regulatory stuff was governed by shared services, as -- as it typically is when we have a -- offshoot RNAs.

Q Was there any particular person who was authorized -- personally authorized to act on behalf of Acis following Mr. Terry's departure other than its owners?

A I don't recall specifically delegating or specifically designating anybody.

Q Do you know if Mister -- withdrawn.

Do you -- can you identify any officers of Acis following Mr. Terry's departure?

A I don't remember, but I'm willing to be refreshed.

Q Do you know if you ever controlled Acis at any time after Mr. Terry's departure?

A I -- I think I've asked and answered that several times.

Q No. I'm now -- I'm not -- I'm now asking specifically about you. Do you know if you ever controlled Acis after Mr. Terry's departure?

MS. DEITSCH-PEREZ: Object to the form.

THE WITNESS: Not -- not beyond what I've answered already.

BY MR. MORRIS:

Q Did you ever take any action following Mr. Terry's departure that bound Acis that you can recall?

A I -- I would've signed the documents, as put forward by internal and external legal staff often. Usually, I'm the signatory and stuff.

Q And when you signed things, is it fair to say that when you signed documents, you understood that you were binding Acis?

MS. DEITSCH-PEREZ: Object to the form.

MR. MORRIS: Withdrawn.

BY MR. MORRIS:

Q You understood, when you signed documents in your capacity as an officer of Acis, that you were binding that entity, correct?

A I -- I just understood I was the appropriate signatory on appropriate legal documents, as put forward by internal/external counsel.

Q And what was the basis for your understanding that you were the appropriate person to do those tasks?

A Trust in the legal department and trust in the external legal counsel.

Q Okay. Is there anybody who you can identify that specifically informed you that you were the appropriate person to sign documents on behalf of Acis?

A Not that I recall.

Q Okay. At some point in the fall of 2016, Highland sued Mr. Terry in Texas State Court; do you recall that?

A Not specifically.

Q Okay. I'm going to refer to Highland Capital Management L.P. as Highland; is that okay?

A Sure.

Q And you controlled Highland at all times until the independent board was appointed in January of 2020, correct?

A Yes.

Q And you authorized Highland to file for bankruptcy, correct?

A That turned out to be a mistake. I --

Q But you did authorize it, right?

A I believe so.

Q Okay. So going back to the fall of 2016, did you also authorize Highland to commence the action against Mr. Terry?

A Did I -- yes, I was aware of it. I would've ultimately had to authorize it, yes.

Q Okay. And a few weeks later, Mr. Terry, do you recall, he made his Motion to Compel Arbitration, and the dispute got submitted to arbitration? Do you

recall that?

A Yes.

Q Okay.

MR. MORRIS: Can we put tab up -- tab 1 up on the screen, just so we can have a point of reference?

BY MR. MORRIS:

Q So this, Mr. Dondero, I'll represent to you is Mr. Terry's Motion to Compel Arbitration. You'll see that it's got the Highland versus Mr. Terry caption, and you'll see in the upper right-hand corner that it was filed in Dallas on September 12th, 2016.

Do you see that?

A Yes.

Q Okay. So just as a point of reference, Mr. Terry gets -- Mr. Terry departs from Acis in June 2016. Highland, based on your authority, commences a lawsuit against Mr. Terry in the fall of 2016. And Mr. Terry responds on September 12th with this Motion to Compel Arbitration.

Does that generally conform with your recollection of events?

A Generally.

Q Okay. And then short -- a short time later, Acis and Highland enter into what some of us have been

referring to as a participation agreement.

Do you have any recollection of that?

A No. I'll need to be refreshed on that.

MR. MORRIS: Okay. Can we put up tab 2? Which we will - I guess, let's -- before you take this down, let's mark this Motion to Compel Arbitration, I think, as Exhibit 2.

THE PROCEEDINGS OFFICER: Yes, it would be Exhibit 2.

I didn't get a chance to mark that, though, ma'am -- Ms. Bates.

MR. MORRIS: Can we take care of that at a break?

MS. BATES: I'm sorry. I'm bringing it up now. There you go.

MR. MORRIS: All right. Go ahead.

(Exhibit 2 marked for identification.)

THE PROCEEDINGS OFFICER: Okay. We're good there. Sorry.

MR. MORRIS: That's okay. I'm learning to process myself.

So let's take that down and put up what we'll mark as Exhibit 3, which is tab number 2.

THE PROCEEDINGS OFFICER: Great. Thank you.

(Exhibit 3 marked for identification.)

BY MR. MORRIS:

Q And Mr. Dondero, again, feel free to scroll through this document as you see fit. But do you see that this is an Agreement for Purchase and Sale of CLO Participation Interest between Acis and Highland, dated as of October 7, 2016?

MS. DEITSCH-PEREZ: And I'll just note for the record it's 22 pages. And he's -- this is the most (indiscernible) reviewed.

MR. MORRIS: Yeah.

BY MR. MORRIS:

Q Do you see that that is what the document is called, sir?

A Yeah. That -- that's all I got. I'm trying to scroll. It's not taking the button, so it's a little -- it's not taking this.

THE PROCEEDINGS OFFICER: So when you try and scroll, go down.

MS. DEITSCH-PEREZ: So what -- hang on. We got it. If you push down when it's in there, then it will go. Otherwise, it will move this screen over here.

THE WITNESS: Yep. I got it.

MS. DEITSCH-PEREZ: All right.

THE WITNESS: Yes, I see the document.

BY MR. MORRIS:

Q Okay. And if you go down to page -- I think it's 15 of 22, can you just confirm for me that you signed this agreement on behalf of both Highland and Acis?

A Yes.

Q Okay. Do you recall if you read this document before you signed it?

A I did not.

Q Do you have an understanding today of what this document was intended to accomplish?

A Yes.

Q What is your recollection of what this document was intended to accomplish? And again, you know, to Deborah's point, if you'd like to scroll, I don't mean to rush you.

A No, that's okay. My -- my general understanding, and we've done several of these over the years, is a -- a purchase of -- of fees, expected fees for a note -- note -- note in cash or sometimes cash, sometimes note, whatever, that has some tax advantages to it, generally, in terms of deferring taxes and in some cases, recharacterizing short-term income as capital gains.

Q So is it fair to say that your understanding

of -- is that the purpose of this document was to capture tax benefits, either through the deferral of income or through the recharacterization of income from ordinary income to capital gains income?

A I -- I believe that's the structure and my general purpose.

Q Okay. And do you understand that Acis is what was known as -- what is known as a pass-through entity? Are you familiar with that term?

A Yes.

Q Okay. What's your understanding of what a pass-through entity is?

A A pass-through entity is typically a partnership or an LLC that passes through the tax liability directly to the owners and does -- isn't a tax-paying entity in and of itself.

Q And so the benefits that you've described from this agreement, it was your understanding -- withdrawn.

It was your understanding, at the time you signed this agreement, that the intended beneficiaries of this transaction were the ultimate beneficial owners of Acis; is that fair?

A Well, the deferral and recharacterization benefits all parties. And then it's reflected, usually, in the price and timing and interest rate on the note.

But it's -- yeah. It -- it's -- the accountants weigh the benefits to all parties and then determine the appropriate variables.

Q Highland was also a pass-through entity, correct?

A Yes.

Q So that neither Highland nor Acis were the tax-paying entities for the income and losses that Highland and Acis experienced, right?

A Yeah. I don't understand why that's relevant, but -- yes.

Q Right. So that -- so that whether it's income or losses, those -- and that income and those losses would pass through Highland or Acis, respectively, to the beneficial owners of each entity, correct?

A Correct. And the ownership interest was similar in both entities. And the transaction, again, has a benefit to all parties in terms of deferral and some recharacterization.

Q Would you need -- would you need -- withdrawn. I'll get to it.

Was it your understanding that under this agreement, Acis agreed to pay Highland a portion of the management fees that we discussed earlier?

A I -- I don't know exactly how the mechanism

works, whether it's --

Q Let's try and go through it. I'm sorry. We can -- if you can go to Section 1 of the document, which --

A What page?

Q It's right under "Agreement." It's page 2. It's got Bates Number 8900 in the lower right-hand corner. So it's page 4 of the screen --

A Okay.

Q -- as you go through the document. And if you could just take a moment to read paragraph 1 to yourself? And just -- does --

A Yes. I -- I read it. This is why you're using -- you wanted to use the word "servicer fee" versus "management fee."

Q Yes.

A Okay. I -- I read it.

Q Okay. So when you signed this agreement, did you understand that Acis was agreeing to pay to Highland a portion of the servicing fees that it was going to receive from serving as the portfolio manager of the CLOs?

A Yes.

Q And do you see at the end of Section 1, there is a reference to Schedule A?

A Yes.

Q Can we take a look at Schedule A? I think it's the last page of the document. It's not the -- it's not the last page of the document. It's the page right after the signature page. It's 16 of 22, ending in Bates Number 8912.

A Yes.

Q So let me see if I understand this. This is the Schedule A that's referred to Section 1 in the agreement that we just looked at, right?

A Yes.

Q And these are the -- there's a list of CLO issuers in the left-hand column, and then there's a column called Total Servicer Fee; do you see that?

A Yes.

Q And the total servicer fee are the fees that Acis was going to receive from the issuer in exchange for managing the CLOs, correct?

A Yes.

Q And the next two columns show how that fee would be divided between Acis and Highland, fair?

A Yes.

Q So that servicer fee retention amount is the amount that Acis was going to retain as its portion of the total servicer fee that it expected to receive from

the issuer, correct?

A Just, I don't want to get tripped up in the exact words, so I'm going back to page 4.

Q Take your time.

A It looks like the gross amount minus the retention is the servicer fee payment amount, which is --

Q Right. Okay.

A -- which is that second column, I guess.

Q Right. So the last column, the Acis Participation Interest, that is the amount of the total servicer fee that Acis was agreeing to pay to Highland, fair?

A I thought it was -- I thought it was saying the opposite of that. Hold on. Servicer fee payment is the aggregate minus the retention amount. The aggregate minus the retention amount, so --

Q Try this just one more time and say that --

A In the aggregate minus, so it's one -- Column 1 minus Column 3 equals Column 2.

Q Correct. Or Column 1 minus Column 2 equals Column 3. You could go either way, right?

A Yeah. Yes.

Q Okay. And the last column, the Acis Participation Interest, that's the portion of the total

servicing fee that was supposed to go to Highland, correct? Under this agreement?

A Sorry. That -- but one -- one goes to Highland, and one goes to Acis, right?

Q That's right. And it's servicer fee retention amount that goes to Acis, and it's the Acis participation interest that go to Highland, right?

A Let's make sure we get that right. Yes. It's the Acis participation amount that goes to Highland.

Q Okay. So in exchange for the Acis participation interests, as set forth in Schedule A, Highland agreed to give some cash and a note; is that right?

A Yes.

Q Okay. And that's set forth in Section 1.1, if you go to that.

A Okay.

Q Okay. So am I correct that when you signed this document, you understood that Acis would give to Highland the participation interest set forth in the last column of Schedule A, and in exchange, Highland would give to Acis the cash purchase price and the note described in Section 1.1?

A I -- I believe that was the -- the economics, yeah.

Q Okay. Is it your understanding that nobody could get any of the tax benefits that you described earlier unless you had this exchange of cash in the form of the Acis participation interests on the one hand, and the payments that were required under Section 1.1 on the other hand?

MS. DEITSCH-PEREZ: Object to the form.

THE WITNESS: Yeah. I -- I don't -- I don't have an awareness of the nuts and bolts that it -- it takes to be bona fide for tax purposes. But it -- it's something that our internal lawyers and accountants would've always vetted and gotten an opinion with outside tax counsel, too.

MR. MORRIS: Okay. Let's take this down, and let's put up -- actually, hold on one second. The mote may be attached to this document. Oh, it's unsigned. Let's take this down. And let's put up and mark as the next exhibit -- thin.

k it's Exhibit 4, tab number 3?

THE PROCEEDINGS OFFICER: Yes, sir. Exhibit 4.

(Exhibit 4 marked for identification.)

BY MR. MORRIS:

Q Okay. So you'll see up on the screen, what's been marked as Exhibit 4 is a promissory note dated

October 7th, 2016, in the principal amount of $12,666,446.

Do you see that?

A Yes.

Q And if you scroll down, you signed this promissory note, right?

A There we go again. There's the whole thing.

Q The next-to-the-last page. It's page 5 of 6.

A Yes.

Q Okay. And then what you did when you signed this document is, you obligated Highland to make the payment forth on Exhibit A, correct?

MS. DEITSCH-PEREZ: I think he's talking about the next page.

MR. MORRIS: Yeah.

MS. DEITSCH-PEREZ: Exhibit -- after the signature page, there's another. There's one more page.

THE WITNESS: Yes.

BY MR. MORRIS:

Q Okay. And this note and that cash payment that we just looked at in Section 1.1, those were given to Acis in exchange for the promise of the future stream of servicing fees that we just looked at in the last column of the participation agreement, right?

A Yes. I believe that was the economics.

Q Okay. And if we go back to the top of the document, you know, the principal amount of the note is 12 -- I'm just going to call it $12.6-plus million.

Do you know how that amount -- when combined with the cash payment that was due under Section 1.1, do you know how that amount was calculated?

A No. I wouldn't have been involved with that. But again, that's where there's a give and take on the variables and to be compliant with the tax code and to provide some cushion and IRR, relative to the fee stream on the other side. But -- but how that note -- how that number is calculated, I -- I have no specific awareness or no specific involvement at all.

Q Do you know, if you added the cash payment with the principal amount of the note, whether that would've equaled the servicing fees that Acis was to give Highland under the participation agreement? Were they supposed to be equal?

A I don't know. But my memory of other transactions in the past is that typically, it's not equal. There's, you know, again, some kind of cushion or present value or interest component to it, also. But -- but I -- I don't know. Let me just leave it at, I don't know.

Q Okay. Do you know if the cash flow between

the two entities -- subject to the participation agreement, were they supposed to at least approximate each other?

A Can you guys hear me? You guys kind of zapped in and out there for a second.

Q I can hear you.

A Okay. Was the question approximately? Was that the question?

Q Yep.

A I -- I'll say, in the ballpark. I -- I don't want to use the word "approximately," implying that it's close, because I don't think it's necessarily close.

Q Do you know if there's any relationship between the cash payment and the principal amount of the note and the cash flow that Highland expected to receive from Acis under the participation agreement? Is there any relationship between those two numbers at all?

A Yeah. Well, the same answer I've been giving. I mean, subject to time, value of money, a cushion, an interest rate, IRS tax code, there -- there's a bunch of variables that go into setting it. And I -- I don't -- I -- I don't know the -- I don't know the tax laws, but again, it's something that is done with the internal accountants and outside opinions and et cetera. But I'm not the person involved in any of those details.

MR. MORRIS: Okay. I'm just going to move to strike.

BY MR. MORRIS:

Q And I'm just -- it's a really simple question. Do you know if there's a relationship between the cash flow that was expected to go from Acis to Highland and the cash flow that was supposed to go from Highland to Acis?

MS. DEITSCH-PEREZ: Object to the form.

THE WITNESS: Wow. Okay. You want to strike my last answer? I'll just give you a short one. No.

BY MR. MORRIS:

Q Thank you very much. What was the benefit to Highland from entering into the participation agreement and signing the promissory note?

A Benefit? Again, my understanding is, these are structured to provide tax benefits to both sides that are reflected either in the tax benefits themselves or the present value of the note being higher than otherwise. There -- there's a tax benefit to all parties, as I understand it.

Q Okay. Can you describe the tax benefit to Highland from this transaction?

A Tax deferral and recharacterization.

Q And have -- can you quantify the benefit?
A No.
Q Did you ask anybody, before signing this document, what the monetary benefit would be to Highland from entering into this transaction?
A I did not.
Q Do you know what Highland's expected rate of return was from entering into this transaction?
A I do not.
Q Did you -- do you recall if you asked anybody what Highland's expected rate of return would be from entering into this transaction?
A I did not.
Q Do you recall if anybody ever told you what Highland's expected internal rate of return would be from entering into this transaction?
A I do not.
Q Have you ever entered into a transaction with a third party without knowing what the projected rate of return was?
A When I'm saying I did not know, I'm not saying that the organization didn't know, or accounting didn't know, or the tax department didn't know. I'm just saying I didn't know. And yes, organizationally, there are transactions that occur that I do not know the

present value of, but other people in the organization do.

Q Could you -- would you -- would you have authorized Highland to enter into the same participation agreement on the same terms with a third party?

A Boy. I -- I believe part of the process with the external accounting firm and our internal compliance department checks and verifies those things.

Q I'm just asking you if you could envision doing a similar transaction with a third party?

A Yes.

Q Can you identify a third party with whom Highland did a similar transaction?

A Well, you asked me, could I envision it? The answer was yes. I -- I don't have a specific example, though.

Q Based on your understanding of the tax benefits that were to inure to both Highland and Acis, as well as their ultimate beneficial owners, would those tax benefits have existed if they weren't affiliated parties? If they didn't have common ownership?

A Yes. And -- and these kind of transactions happen in the market quite often.

Q Okay.

A Because it's a -- it's a way for a startup

money management firm that has a -- a promise of fees, but needs capital for its next deal, to monetize those fees so it can do a subsequent deal. It -- it -- these kinds of structures are common among CLO managers. And these kinds of structures are common in real estate and other businesses, too.

Q Would Highland have entered into this agreement, and would you have signed this promissory note, if Acis wasn't on the other side of the transaction?

MS. DEITSCH-PEREZ: Object to the form.

THE WITNESS: Sure, if there was a business relationship or a business reason.

BY MR. MORRIS:

Q Whose idea was it to enter into this transaction?

A I believe it came from the tax accountants.

Q And who were the tax accountants?

A I -- I don't know which. It's a group. I don't know which one.

Q Is it Mark Patrick?

A I don't know.

Q What other tax accountants were there in the fall of 2016?

A There is a department of four or five. There

was another senior tax accountant named Rick Swadley, and then there were two or three other tax accountants.

Q Do you recall, when we looked at paragraph 1.1 of the participation agreement, there was a cash component and the note component, right?

A Yes.

Q Okay. And the note -- so the note was an integral part of the participation agreement, fair?

MS. DEITSCH-PEREZ: Object to the form.

BY MR. MORRIS:

Q You can answer.

A It -- it was.

Q Right. You would never have signed this promissory note on behalf of Highland if you didn't receive the promise to receive the servicing fees from Acis under the participation agreement, right?

MS. DEITSCH-PEREZ: Object to the form.

THE WITNESS: I mean, it was essentially a trade of promises, and one side wouldn't have signed it if they didn't get the promises of the other side, and vice versa.

BY MR. MORRIS:

Q Exactly. So just to be really clear, as the person who signed the participation on behalf of Acis, you would not have done that for Acis if Highland didn't

promise to give the cash payment and the note, correct?

A I believe, yes, that was the promises on the Highland side.

Q Okay. And taking it in reverse, you were also acting on behalf of Highland. And you would not have agreed to give to Acis the promissory note and that cash payment without Acis promising to give to Highland the share of the participation agreements that we saw in Schedule A, fair?

MS. DEITSCH-PEREZ: Object to the form.

THE WITNESS: I mean, yes. Those were promises on the other side, correct.

BY MR. MORRIS:

Q Okay. Can we -- if you scroll down to the bottom of the note -- I think it's the bottom. Yeah, the last -- the amortization schedule on page 6. Tell me when you're there, Mr. Dondero.

A I'm having a hard time getting it. I'm on page 5.

MS. DEITSCH-PEREZ: That's weird. Okay. Something is -- it's not you. It shows up on mine. Okay. That's really weird. On mine, you can see Exhibit A. On Jim's, you can't. There it is. Okay. Got it.

MR. MORRIS: Thanks, Deborah.

MS. DEITSCH-PEREZ: That was weird.

THE WITNESS: Okay. I see the amortization schedule.

BY MR. MORRIS:

Q Okay. So under this agreement, Highland was supposed to make a principal and interest payment of approximately $3.37 million on May 31st, 2017.

Do you see that?

A Yep.

Q Do you know if Highland made that payment?

A I don't know.

Q Do you know if Highland made any of the payments on this amortization schedule?

A I don't know.

Q Did you ever direct anybody to make any payments on this -- that are set forth on this amortization schedule?

A I was not involved.

Q Did you ever direct someone not to make any of the payments that were due under this note?

A I did not.

Q Do you know if Acis ever paid to Highland any of the servicing fees that were described on Exhibit A to the participation agreement?

A Just based on the timeline before the

injunctions, the state injunctions, the threats of the injunctions, the bankruptcy, there probably were some. But I -- I don't have an awareness of how many or what amounts.

Q Did you ever direct anybody on behalf of Acis to make any of the payments that were due under the participation agreement?

A No. I wouldn't have been responsible for administering the agreement.

Q Do you know -- did -- do you recall if you ever directed anybody not to make any of the payments on behalf of Acis under the participation agreement?

A I did not.

Q Did you ever delegate to anybody the responsibility for making the payments that were due under the participation agreement and the promissory note that we're looking at?

MS. DEITSCH-PEREZ: Object to the form.

THE WITNESS: Not specifically.

BY MR. MORRIS:

Q Would it have been Frank Waterhouse's -- withdrawn.

Are you aware that Frank Waterhouse was the chief financial officer at Highland at the time?

A Yes.

Q Were you aware that Mr. Waterhouse was also the treasurer of Acis at the time?

A I was not aware.

Q Can you think of anybody other than Mr. Waterhouse who would have been responsible for overseeing the administration of the participation agreement?

A I -- I even think he would have delegated that to somebody below his level.

Q Do you know who he delegated it to?

MS. DEITSCH-PEREZ: Object to the form.

THE WITNESS: I have no idea.

BY MR. MORRIS:

Q Acis had no employees of its own, correct?

A Post Josh leaving, I believe that's correct.

Q Okay. And Acis was able to fulfill its obligations as the CLO portfolio manager by entering into shared services and sub-advisory agreements with Highland, correct?

A Correct.

Q And Highland received a fee from Acis in exchange for those sub-advisory and shared services, correct?

A I don't know. I -- I don't know where -- when those began and ended, you know, subject to the same

bankruptcy and injunction stuff. I don't know.

Q Well, before the bankruptcy, do you recall that you signed Amended Shared Services and Sub-Advisory Agreements on behalf of Highland and Acis?

A You're testing my memory. I -- I believe that was part of the Acis case. I -- I think there were some adjustments post-Josh leaving.

Q Okay.

MR. MORRIS: Can we put up on the screen -- let's mark, as Exhibit 5, tab Number 12.

(Exhibit 5 marked for identification.)

BY MR. MORRIS:

Q And, Mr. Dondero, you'll see that this is the Fourth Amended and Restated Shared Services agreement between Acis and Highland. It is dated March 17th, 2017, and if you went to the page towards the back -- hopefully you're able to get there.

Can you confirm for me that the page ending in Bates Number 9092 has your signatures on it?

A 22. Page 22, yes.

Q Yes. Those are your signatures, right?

A Yes.

Q And so in March 2017, you personally authorized both Highland and Acis to enter into the Fourth Amended and Restated Shared Services Agreement,

correct?

A Yes.

Q And you did that because at the time, you expected Acis to continue on as the CLO manager, correct?

A I don't recall the reason.

Q You don't know why you signed this document?

A Correct.

Q Is it fair to say that you wouldn't have signed this document if you didn't believe that Acis was going to continue to serve as the portfolio manager for the CLOs?

A That's not fair.

Q I've heard and seen some allegations that the Acis brand was toxic. Have you heard that phrase before?

A Yes.

Q Now, Josh Terry had left Highland in June of 2016, correct?

A Yes.

Q And the litigation was started in the fall of 2016, correct?

A Yes.

Q And this agreement is entered into in March 2017, correct?

A Yeah. Is that the date on it? If -- if it is, I'll agree to it.

Q Yes. It's on the first page.

A Okay.

Q If you want to just -- did you have any reason to believe that the Acis brand was toxic at the -- at the time you signed this agreement?

A It was -- it was pretty --

Q Withdrawn. Withdrawn. I need to lay a foundation.

Did you ever believe that the Acis brand was toxic?

A Yes.

Q Did you -- when did you form that belief?

A The -- at -- on the onset of the litigation. The -- the litigation was -- you know, it was -- it was, like, Petrofsky litigation. It was sensationalized with a lot of claims and, you know, et cetera. But no -- no investor would want to get involved with an entity that was a shell entity that no longer had employees, but was wrapped in that kind of litigation.

Q When did -- when did the shell entity lose its employees?

A The day Josh Terry left.

Q Was he the only employee that Acis had?

A I believe so.

Q And how did you learn that the Acis brand was toxic?

A I -- I believe the firm that first coined that adjective was Goldman, when they were approached to reset or refinance the deals.

Q And when you refer to Goldman, you're referring to Goldman Sachs?

A Goldman Sachs CLO Group, yes.

Q And when did Goldman Sachs CLO Group get involved in a potential reset; do you recall?

A I -- I don't. But it would have been -- I -- I don't. It -- roughly early on after Josh left.

Q Are you aware that Goldman was negotiating with Highland concerning a potential reset of the Acis CLOs as late as October 2017?

A I -- I believe there were ongoing discussions for an extended period of time. I -- I don't know when it began and ended.

Q Were you involved in those discussions?

A I was not.

Q Do you have any personal knowledge as to whether Goldman Sachs stated that it would decline the opportunity to participate in the reset of the Acis CLOs because the Acis CLO brand was toxic?

A That's essentially what I got from the business people who were trying to do it.

Q Which business people are you're referring to?

A I can't recall who was heading up investments at that point.

Q Can you identify any person who ever told you that they had been informed by Goldman Sachs that it would not participate in the reset of the Acis CLOs because Goldman Sachs had concluded that the Acis brand was toxic?

A I can't remember. I can't remember specifically. But it would have been whoever was heading up investments, the credit team, at that point in time.

Q Did you ever -- did you -- do you recall the communication? Did you ask any questions?

A I -- I took it at face value. It made sense.

Q Did anybody explain to you why Goldman Sachs believed that the Acis brand was toxic?

A Again, I think it all hearkens back to the litigation.

Q And do you know if Goldman Sachs actually expressed the concern that the resets might constitute a fraud joint transfer?

A I've never heard that.

Q Have you ever been told that Goldman Sachs expressed the concern that transferring the CLO management agreements in the midst of the litigation might constitute a fraud joint transfer?

A I never heard that.

Q Okay. When did anybody acting on behalf of Highland or Acis ever suggest to Goldman Sachs that the resets be done with an entity other than Acis?

A My recollection is, that was the recommendation of Goldman Sachs and our internal people.

Q Did you ever see that in writing, sir?

A I don't -- I don't know. I don't recall. We don't have -- we don't have access to that stuff.

Q Well, do you recall signing a number of different agreements with a couple of different entities concerning potential resets of Acis CLOs?

A I -- I don't recall. But if we engaged investment banks to perform a service, it's logical I would've been the signatory.

Q And in fact, following Mr. Terry's arbitration, the issuance of the arbitration award in Mr. Terry -- in Mr. Terry's favor, steps were taken to replace Acis with HCLOM, LLC, correct?

A I don't recall.

Q Okay.

THE PROCEEDINGS OFFICER: I'm sorry to interject, but can we take a short break pretty soon, sir?

MR. MORRIS: Yeah, sure. We can take a break. It's 12:40 Central, I think. Why don't we just take a 10-minute break and come back at 12:50 Central?

THE PROCEEDINGS OFFICER: Great. Thank you, sir. I'm taking us off the record.

(Off the record.)

THE PROCEEDINGS OFFICER: Back on the record at 12:57 p.m., Central Time.

BY MR. MORRIS:

Q All right. Mr. Dondero, are you ready to proceed?

A I am.

Q Can you hear me okay?

A Yep.

Q Okay. Going back to Goldman Sachs for a moment, did you ever see anything in writing from Goldman Sachs on the topic of Acis's alleged toxicity?

A Not that I recall.

Q And as you sit here right now, you can't recall the person who told you that Goldman Sachs stated that the Acis brand was toxic; is that fair?

A I -- it was either -- it was either -- I -- I

just don't remember. It would've been whoever was running credit. It would've been, you know, Trey Parker or Jon Poglitsch. It would've been one of those two people, I believe.

Q Okay. Other than Goldman Sachs, did you ever hear of any other person or any entity using the phrase "toxic" to describe Acis following Mr. Terry's departure?

A I -- I'm trying to -- I -- I think we -- it was generally accepted as -- as true on its face by everybody. And I -- I believe it was the opinion of every other investment banker we talked to, also. But I -- I don't -- I don't have a specific recollection. That is my general -- my general memories.

Q Did you personally ever hear an investment banker describe Acis as toxic?

A I didn't have the conversations with the investment banks.

Q Okay. Did you ever see anything in writing from any investment bank that suggested Acis was toxic?

A I wasn't involved in those communications.

Q Can I ask a question? Can you identify any investment bank other than Goldman Sachs that you recall learning had described Acis as toxic?

A Again, consistent with what I just said,

whoever else we would've been talking to besides Goldman.

Q Okay. So this is Exhibit 5. This was the shared services agreement. Do you recall that at the same time, you also signed an Amended and Restated Sub-Advisory Agreement between Highland and Acis?

A I -- I don't -- I don't recall specifically, but I do remember the shared services agreement was amended.

Q Okay.

MR. MORRIS: Let's take this down. And let's mark tab 13 as Exhibit 6.

MS. DEITSCH-PEREZ: Hang on. I don't see -- is there supposed to be a little yellow sticker on that ,electronically? There wasn't one.

MR. MORRIS: Yeah. There was one on the upper left corner, the first page.

THE WITNESS: On the front page.

MS. DEITSCH-PEREZ: Oh, okay. It's just not on my screen.

THE WITNESS: Okay. We're just not on the last page. Only on the front page. So it was --

MS. DEITSCH-PEREZ: Okay. The last.

THE PROCEEDINGS OFFICER: See what it was. Thank you.

(Exhibit 6 marked for identification.)

BY MR. MORRIS:

Q Okay. So up on the screen, you have the Third Amended and Restated Sub-Advisory Agreement between Acis and Highland, which is also dated March 17, 2017.

Do you see that?

A Yes.

Q And if we scroll down, I think to the -- let's see. The page with -- it's 15 of 21, ending in Bates Number 7798.

Can you just confirm those are your signatures?

A Yes.

Q Okay. So do you recall that from the day you signed these two agreements on March 17th, 2017, beginning on that date, Highland provided shared services and sub-advisory services in accordance with those agreements until some point in the Acis bankruptcy?

A I -- I believe so. I have no reason to think it didn't.

Q Okay. And as we discussed earlier, at some point during the Acis bankruptcy, Mr. Phelan gets appointed as the Chapter 11 trustee for Acis, correct?

A Yes.

Q And do you recall that sometime after that, Highland is replaced by Brigade as the service provider to Acis?

A Yeah. I -- I believe that's true.

Q And to the best of your recollection, did Highland provide to Acis shared services and sub-advisory services from the date of this agreement until the date that Brigade took over?

A I really want to -- I want to be careful here not to just say yes to that. Brigade did the portfolio management, I believe, or provided the RIA for Josh to be involved in the portfolio management, I guess. Or -- or anyway -- but I'm not -- I'm not sure if they took over the other services and the shared services or if Highland kept doing those or not. I -- I just want to be careful, but I -- but the asset management or portfolio management by Highland did cease when Brigade took over. But I -- I don't know if -- the shared services agreement in its entirety.

Q Let me -- I appreciate the distinction, and never trying to trick you. Let me try and ask it in a more palatable way. From the time that the shared -- withdrawn.

From the time you signed the Amended and Restated Shared Services and Sub-Advisory Agreements,

Highland provided services (indiscernible - audio disruption) until an orderly transition was effectuated, by which those services were provided to Acis by some third party; is that fair?

A I -- it -- yeah. It's my belief we -- we adhered to and honored the contract.

Q Okay. I want to go back in time. So the -- these agreements are signed in March of 2017. And while these agreements are being prepared and signed and executed and administered, Mr. Terry's arbitration is going forward.

Do you remember that in the early part of 2017?

A I -- I don't recall.

Q Did you testify in the arbitration?

A I believe so.

Q Okay. And do you remember who else testified on the Highland side in connection with the arbitration?

A Thomas Surgent. Mark Okada. I -- I don't recall who else.

Q Do you remember if Isaac did?

A I -- I wasn't there for every day. I -- I don't have a specific recollection.

Q Okay. Do you recall, at some point in October, the panel issued the award in favor of Mr.

Terry?

A I -- I remember it, but it was against a very limited number of entities.

Q Right. Highland was one of them, right?

A No. I thought it was just Acis.

Q Okay.

MR. MORRIS: Let's take that document down. Let's mark, as Exhibit 7, tab Number 4.

(Exhibit 7 marked for identification.)

BY MR. MORRIS:

Q Yeah. You could be right about that. And do you see, up on the screen, there's a document that's been marked as Exhibit 7? It's dated October 20th, 2017, and the cover page discloses that it has attached the final award executed by the arbitrator.

Do you see that?

A Yes.

Q Okay. Did you ever read the final award that was issued by the panel in the Josh Terry arbitration?

A I did not.

Q To this day, you've never read it?

A Correct.

Q Can we go to the third page of the document, which is -- no, I apologize. It's page 3 of the document, which is page 4 of 28.

A Yes.

Q No. Apologies. Page 3 of 28. The panel was -- it was a panel of three that administered the arbitration; is that right?

A Yes.

Q And they were all retired, at least to the best of your knowledge, correct?

A Yes.

Q Do you know how they were selected?

A I do not.

Q Do you know if Highland had any role in the selection of the three arbitrators in the Josh Terry arbitration panel?

A I have no idea.

Q Is it fair to say that Highland had a fair opportunity to present its case?

MS. DEITSCH-PEREZ: Object to the form.

THE WITNESS: I -- I don't want to -- I don't know. I don't want to comment on that.

BY MR. MORRIS:

Q Was Highland precluded from offering into evidence any evidence that it wanted to offer?

MS. DEITSCH-PEREZ: Object to the form.

THE WITNESS: I don't know.

BY MR. MORRIS:

Q Did anybody ever contend that all or any member of the panel was biased in favor of Mr. Terry?

MS. DEITSCH-PEREZ: Object to the form.

THE WITNESS: I -- I don't have any awareness.

BY MR. MORRIS:

Q Did anybody ever suggest that any member of the panel was biased against you or Highland?

MS. DEITSCH-PEREZ: Object to the form.

THE WITNESS: I don't have any awareness.

BY MR. MORRIS:

Q Okay. It was a pretty lengthy hearing, wasn't it?

MS. DEITSCH-PEREZ: Object to the form.

THE WITNESS: I -- I don't know. I don't know what lengthy is in an arbitration or arbitration panels.

BY MR. MORRIS:

Q All right. If we go to the next page, you'll see that at the top, it refers to hearing dates in September. It's listed there. It's 10 hearing days.

Do you see that?

A Yes.

Q And so were you aware that, you know, for a number of days in September 2017, this arbitration with

Mr. Terry was being litigated in Dallas?

A Yes, I was aware.

Q Okay. Are you aware of any of the findings of the panel?

A The -- my -- my recollection is that it was -- that the entities with any balance sheet or -- or any substance were all struck and that the only entity that it was awarded against was Acis.

Q What do you mean when you refer to the balance sheet?

A No. I'm just saying all the -- let me say it differently. Myself, Okada, Highland were all removed from the culpability list, and it was just Acis that received the negative award or -- or just -- it -- it was just a finding against Acis. That's my recollection.

Q And are you familiar with the findings?

A No. That was my recollection. That's how it was -- that -- my recollection of how it was explained to me.

Q Okay. Let's go down to page 21 of the document. Let's see. This is the -- it's page 22 of 28 on the PDF.

A Yes.

Q All right. So this is the panel's findings

and conclusions. Do you see that?

A Yes.

Q And it states, among other things in that first paragraph, quote, "To the extent the findings and conclusions differ from any of the party's position, that is the result of these arbitrators' determinations as to the credibility, relevance, burden of proof, consideration, and the weighing of the evidence, both oral and written."

Do you see that?

A Yes.

Q I just want to cover a few of these. Looking down at Number 5, were you aware that the panel found and determined, quote, "Highland's termination of Terry's employment was not, in fact," quote, "for cause"? Highland's stated, quote, "for cause termination of Terry's employment was, in fact, pretextual and for the purpose of denying Terry benefits of employment, payable at his termination and as a basis for the forfeiture of the value of Terry's limited partnership interest in Acis"?

Have I read that fairly?

MS. DEITSCH-PEREZ: Object to the form.

THE WITNESS: That's what it says. It says what it says.

BY MR. MORRIS:

Q And is this the first time that you're learning that the panel made that finding?

A No. I -- I knew -- I knew that. We didn't agree with that, but I knew that's what they had found.

Q Okay. And is it fair to say that you don't agree with any of the panel's findings here in this section of the document?

A I didn't say that.

Q All right. Let's just go through a few more. Number 6 on the next page says, quote, "Acis and Acis GP knowingly and willingly invoked Highland's false pretense of," quote, "for cause termination to deny Terry the value of his 25 percent limited partnership interest."

Did you know of that finding before I read it just now?

A No. I -- I - 6 kind of dovetails into 5. They're one and the same, really.

Q Okay. And were you aware that that finding had been made back in 2017?

A Yes.

Q I know you said that you didn't read the award. Did anybody describe the award for you at the time it was rendered?

A I mean, just -- just what I've really said so far, that they -- I know they gave him an award against Acis, but it wasn't against other related entities. And they knew Acis was a partnership without assets.

Q Who knew Acis was a partnership without assets?

A The -- the arbitration panel.

Q What did -- what's your understanding of how the arbitration panel learned that Acis was without assets?

A That was part of the presentation. I -- my recollection is, the reason why Josh Terry tried to tie in a bunch of other entities was because he knew Acis had no assets, and Acis was allowed -- permitted bona fide, reconstituted after he left. So he sought to add Highland, myself, Okada, and other entities in, which were ultimately all stricken.

And again, my recollection -- you know, arbitration is supposed to be for all purposes, including, the way my lawyers described it, including collections, you know? So you know, the -- the lawyers thought it was highly inappropriate to file Acis for involuntary, and my lawyers thought it was highly inappropriate for Jernigan to remove it from arbitration.

Q And your lawyers had an opportunity to appeal her decision to the District Court, correct?

A I believe, yes. And I believe they -- I -- I believe they sought all remedies that they felt were possible.

Q And the District Court agreed with Judge Jernigan that it was appropriate to file the involuntary petition under the circumstances, correct?

A I -- I don't -- I don't remember.

MS. DEITSCH-PEREZ: I don't think we've run into a problem yet, but as we go forward, if Mr. Morris asks you questions that relate to Highland's privilege, Highland has waived it. If he ever tries to ask you about communications between you and your lawyer personally, those are not waived. But just --

THE WITNESS: Okay.

MS. DEITSCH-PEREZ: -- as he asks the questions, think about whether he is asking you Highland, or you, Mr. Dondero.

THE WITNESS: Sure.

BY MR. MORRIS:

Q Did Acis ever have any assets?

A Nothing meaningful. I -- I don't believe ever more than working capital or a million bucks or something.

Q Was the promissory note that you signed on behalf of Highland pursuant, to which you paid -- you agreed to pay Acis over $13 million when you had the cash component, was that an asset of Acis's?

A Yeah. You know what? Let me -- let me not -- other than the promises both ways regarding the promissory note, there weren't significant other assets at Acis. And -- and how exactly the note or promises to pay were accounted for, I -- I don't know.

Q Well, you made a statement that the panel knew, and Josh knew, and everybody knew that Acis had no assets. And I'm just asking you what I think is a fairly simple question.

From your perspective, was the note an asset of Acis's?

MS. DEITSCH-PEREZ: Asked and answered.

THE WITNESS: Yeah. You know, let me answer that by setting a context for a second. I think his judgment was only $8 million, but I think the amount that he sought in arbitration was hundreds of millions of dollars. And relative to hundreds of millions of dollars, there was no meaningful assets, even if you include the notes and a million dollars of other stuff. And so in that context, he was trying to include a whole bunch of other defendants, who were ultimately dropped

or ultimately found to be not involved. That -- that's my recollection.

BY MR. MORRIS:

Q Okay. I'm just asking you --

MR. MORRIS: I'm going to move to strike --

BY MR. MORRIS:

Q And just ask, simply from your perspective as Highlands president and as the majority owner of Acis, did you understand, prior to the issuance of the arbitration award, that the note that we looked at earlier was an asset of Acis?

MS. DEITSCH-PEREZ: Object to form.

THE WITNESS: I believe the note would have been properly accounted for on both parties books. I -- I don't know how it was accounted for.

BY MR. MORRIS:

Q You're a CPA, sir, right?

A Yes.

Q And wouldn't it -- wouldn't you have expected, as a CPA, that the note would have been carried as an asset on Acis's balance sheet, with a corresponding liability for the amounts that were due under the participation agreement?

MS. DEITSCH-PEREZ: Object to the form.

THE WITNESS: Again, they're -- they're promises to pay, and this was -- was a -- a tax-driven structure. You know, the -- the note itself stands on its own, and promises to pay stand on their own. They're -- they're not -- if -- if they were directly tied, it wouldn't pass muster as a tax transaction.

BY MR. MORRIS:

Q So on behalf of Highland -- so I just want to make sure I understand your testimony correctly. On behalf of Highland, you knowingly signed a promissory note for the benefit of Acis.

And it's your understanding that Highland would have the absolute obligation to pay whether or not Acis performed under the participation agreement? Do I have that right?

A Yeah. I mean, absolutely. That's the basis for the -- the transaction. And when you were asking me all the questions of why the amounts don't equal exactly, et cetera, it -- it's for a present value, handicapping the value at risk, handicapping the likelihood, et cetera. And that's why the numbers don't match. But -- but the -- the notes very much -- the note very much stands on its own, regardless of the promises to pay.

Q So even if even if Acis breaches and doesn't

pay Highland a penny, Highland still must pay the face amount of the note? That's your --

A Yeah. I mean, absolutely. I mean, I'm sure there's legal consequences for the failure to pay, as promised, the fees. But the note says what it says, and it stands on its own.

Q Are you at all familiar with the concept that if one party materially breaches their obligation, the other party to the contract is relieved of performing? Is that news to you?

A Yeah. I'm -- I'm not a lawyer. It's -- the right to offset directly or indirectly is -- we deal with it at the bank sometimes. But that's not a -- that -- that's not an ironclad or only remedy under a certain -- again, I'm not a lawyer, but it -- I -- I don't -- I don't believe that it works like that.

Q Okay. About two weeks after the panel entered this award that we're looking at, you signed an Assignment and Transfer Agreement on behalf of both Highland and Acis, correct?

A You asking me to agree with the dates? Or I --

Q Do you recall that? Do you recall that just after the Terry arbitration award was issued, you signed an agreement on behalf of Highland and Acis called a --

an Assignment and Transfer Agreement? Do you recall that?

A Yes.

MR. MORRIS: Okay. So let's put up on the screen Exhibit 8, which is tab Number 5.

(Exhibit 8 marked for identification.)

BY MR. MORRIS:

Q All right. Do you see this is a document that's called Assignment and Transfer Agreement? It's dated as of November 3rd, 2017?

A Yes.

Q And it's between and among three entities. Do you see, it's Acis, Highland, and HCLOM? HCLOM Limited?

A Yep.

Q Okay. And if we could go down to, I think, the last page, can you confirm that you signed this document on behalf of both Highland and Acis?

A Yes.

Q Okay. And do you recognize the signature under HCLOM Limited?

A No.

Q Have you ever heard the name John Cullinane?

MS. DEITSCH-PEREZ: Is that how you -- are you sure that's how you pronounce it, John?

THE WITNESS: Are you talking about

Kinoyer (phonetic) that still works at Highland? No.

BY MR. MORRIS:

Q No.

A Okay.

Q It's spelled C-U-L-L-I-N-A-N-E. I'm told it's pronounced Cullinane, but it could certainly be pronounced some other way.

A I -- I don't have a -- a recollection at this point.

Q Did you ever hear of Summit Management Limited?

A I -- I can't recall as I sit here right now.

Q Do you know why an entity called Summit Management Limited is signing this agreement on behalf of HCLOM?

A I do not.

Q Did you ever -- so you don't recall anybody by the name of John Cullinane, do you?

A I -- I do not, at this moment.

MR. MORRIS: Deborah, if you're familiar with another pronunciation, can you share that with me?

MS. DEITSCH-PEREZ: I've heard it as Cullinane.

BY MR. MORRIS:

Q Does that cause you to change your answer, Mr.

Dondero?

A No. It doesn't jar my memory.

Q Okay. I'm just going to ask you a few questions. Given what you've just said, I take it that you have no recollection of ever meeting John Cullinane or anybody acting on behalf of Summit Management or HCLOM Limited, correct?

A Not today.

Q Okay. And you don't recall, as you sit here today, ever speaking with Mr. Cullinane, the person who signed this document on behalf of Summit Management and HCLOM Limited, correct?

A Not today, no.

Q And as you sit here today, you don't recall ever exchanging any e-mails with that person, correct?

A I do not.

Q Do you have any recollection of ever communicating with him in any manner prior to today?

A I do not.

Q Do you know if there was somebody at Highland who was responsible for communicating with Mr. Cullinane or anybody acting on behalf of HCLOM Limited in connection with this particular agreement?

A My general recollection is, the vast majority of contact with any Cayman-related entities was handled

by the internal lawyers, the setup and administration by the -- the setup and governance by the internal lawyers. The accounting or administration would subsequently get handed off to the accountants. But the -- the setup and the governance, and governance being approvals or actions, would be done by the internal lawyers.

Q Can you identify any internal lawyer who was responsible for handling this particular agreement?

A It would've been Surgent or somebody on his team. It would've been Surgent or Kinoyer, or there was a woman -- a -- a woman lawyer that worked for us for a number of years who was a big part of that group, too. I can't remember her name. But it was the three of them that typically handled the corporate formation and formation, governance, and stuff.

Q Do you know if this agreement was negotiated in any way with HCLOM Limited?

A I was not involved.

Q Do you know why HCLOM Limited signed this agreement?

MS. DEITSCH-PEREZ: Object to the form.

BY MR. MORRIS:

Q Withdraw the question.

Since you've never spoken with Mr. Cullinane, did you ever speak with anybody who was authorized to

act on behalf of HCLOM Limited in connection with this agreement, prior to the time it was executed?

A I did not.

Q Did anybody ever share with you anything that anybody ever said, who was authorized to act on behalf of HCLOM Limited, with respect to this document before you signed it?

A Not that I recall.

Q Okay. We can go back to the top of the document and again, you know, to the extent -- we urge you to take your time and do so.

Do you recall this document before?

A No.

Q Do you recall if you read it before you signed it?

A No.

Q You don't recall if you read it, or you're pretty sure you didn't?

A I don't recall if I read it.

Q Again, take your time and look at the document to the extent you think it would be helpful, but my question is kind of a simple one.

Do you have an understanding of what the purpose of the document was? From Acis's and Highland's perspective, the entities on behalf -- on whose behalf

you signed it?

MS. DEITSCH-PEREZ: Object to the form.

THE WITNESS: It's replacing ACIS as portfolio manager. It's, I think, captured in that succession, paragraph Number 1.

BY MR. MORRIS:

Q So is it your understanding that you signed this document for the purpose of having HCLOM Limited succeed Acis as portfolio manager?

A It says what it says, but that's what it appears to say to me.

Q Okay. And at the time you signed this, was it your expectation that Highland would continue to receive the servicing fees that were set forth in the participation agreement, in exchange for the payments that were due under the note?

MS. DEITSCH-PEREZ: Object to the form.

THE WITNESS: I -- I didn't have a particular opinion regarding that at the time of this. Not that I can recall.

BY MR. MORRIS:

Q When you bound Highland to this agreement, what -- did you expect Highland to receive a benefit? And again, you can take your time to read the document.

A I don't recall.

Q As you sit here today, can you identify any benefit that Highland was expected to receive when it signed this document?

MS. DEITSCH-PEREZ: Object to the form.

THE WITNESS: The question was any benefit that Highland receives?

BY MR. MORRIS:

Q Yeah. Let me restate it. When you signed this document, what benefit, if any, did you expect Highland to receive?

MS. DEITSCH-PEREZ: Object to the form.

THE WITNESS: I mean, Highland is not a party to this, right? Are you -- are you talking about HCLOM Limited or --

BY MR. MORRIS:

Q Highland is a party to this agreement.

A Wait a minute. Yeah, there it is. But I'm trying to see where they're referenced in here. Again, I'm not a lawyer, but what it appears to say is the -- the appointment of a HCLOM as portfolio manager, replacing Acis.

But then it's reciting that the assignment of the -- and transfer of the promissory note and the obligations of the stabilization payments or promises is part of the transfer. That's -- that's what it looks

like it's saying to me. But again, it's -- I'm not a lawyer. I didn't draft it. That's -- I probably even shouldn't be giving my interpretation, but that's -- that's about all I can say about it.

Q Okay. But other than reading it right now and sharing your interpretation of it, do you have any recollection as to why you signed this document on behalf of Acis and Highland?

A What's the date on this thing?

Q November 3rd. That's 10 days or two weeks after the Terry arbitration award?

A I don't know. I don't know if it was part of the formal transfer process that -- I -- I don't know. I have -- I have no idea. I don't want to speculate.

Q I appreciate that. And you can't, you know, other than reading the document and interpreting it as you sit here right now -- withdrawn. No commentary.

Do you have any recollection, at the time you signed the document, of what benefit you expected Highland to receive from entering into this agreement?

MS. DEITSCH-PEREZ: Object to the form.

THE WITNESS: The extent that the CLO platform were to refinance, reset, or grow in the future, Highland would benefit either directly or indirectly with sub-advisor fees or management fees

directly. I -- I mean, that's -- it looks like it's laying the groundwork for that, but --

BY MR. MORRIS:

Q And if you look at Sections 3(B) and (C), which I know I have up on my screen, wasn't it intended that Highland would receive the servicer fees regardless of whether Acis or HCLOM Limited served as portfolio manager of the CLOs?

MS. DEITSCH-PEREZ: Object to the form.

THE WITNESS: I'm sorry. Repeat the question, please?

BY MR. MORRIS:

Q Sure. If you look at Section 3(B) and 3(C), wasn't those -- wasn't -- aren't those sections intended to give assurance to Highland that it would continue to receive its servicer fees, regardless of whether Acis or HCLOM, Limited, was serving as the CLO portfolio manager?

MS. DEITSCH-PEREZ: Object to the form.

THE WITNESS: See, I don't -- I don't want to provide an interpretation, but it -- it -- again, I'm not a lawyer. But it looks like it -- it's just trying to make sure the promises and the obligations of Acis transfer to the new entity.

BY MR. MORRIS:

Q Okay. Do you know if Highland ever actually received any benefit from entering into this agreement? I want to take it out from the theoretical and what was expected to -- what actually happened.

As the, you know, co-founder and president of Highland until January 20th -- until January 2020, do you know if Highland ever received any benefit from entering into this agreement?

A What I said, the part that perplexes me, I -- I don't know early on what payments were or weren't received. But all payments that Highland got or didn't get, Highland knew 100 percent of when they settled with Josh Terry. The settlement of Josh Terry would've been negligent if it didn't incorporate this.

Q Okay. So let me ask another question, then. Can you -- as you sit here today, can you identify any -- anything of value that HCLOM Ltd. ever provided to Highland, pursuant to this agreement? Forget about Acis.

A I believe there were shared services fees, if nothing else, away from -- away from the Acis agreement.

Q Do you believe that HCLOM Ltd. had a shared services agreement with Highland at any time?

A I -- I don't know. Just -- but typically, the asset management agreement comes along with a shared

services agreement for the accounting and the other things.

Q Do you know if HCLOM Ltd., ever signed a management agreement?

A I -- I don't know between what typically happens and then what got clogged and derailed or detoured in the Acis parade of state actions, injunctions, bankruptcy, and then halted in the Highland bankruptcy, I don't know what amounts were actually paid or stayed or not.

And I wouldn't be in a position to know, but you guys have all the numbers and all the documentations. You guys would know. We were just doing everything when we could and when we were allowed to honor the agreement and the path of getting towards the agreements.

Q All right. So this agreement is signed on November 3rd, 2017, and you are in control of Highland until January 2020.

And my question is really simple: Do you have any knowledge of anything of value HCLOM Limited gave to Highland during the period, November 3rd, 2017, through the time you relinquished control of Highland in January 2020?

MS. DEITSCH-PEREZ: Object to the form.

THE WITNESS: Yeah. I mean, for -- again, just to state it, there were other things going on besides being in control of Highland. There was the Acis injunctions and the Acis things going on. I don't know the particulars regarding what amounts went back and forth. I -- I don't know the answer.

BY MR. MORRIS:

Q Do you know -- do you have any knowledge that HCLOM Limited, ever paid one penny to Highland in the history of the world?

A I -- I wouldn't be in a position to know whether it was a penny or a hundred million.

Q Okay. Is it fair to say that you have no personal knowledge that HCLOM Limited ever gave anything to Highland -- anything of value to Highland, pursuant to this agreement?

MS. DEITSCH-PEREZ: Object to the form.

THE WITNESS: Same answer. I'm not in a position to know whether they received a hundred million or a penny.

BY MR. MORRIS:

Q Or zero, right?

A Or zero. I don't know.

Q Thank you. And now I just want to take it beyond this agreement. Same question, though: Are you

aware of anything of value that HCLOM Limited, ever gave to Highland for any reason?

MS. DEITSCH-PEREZ: Object to the form.

THE WITNESS: I -- I don't have an awareness.

BY MR. MORRIS:

Q Okay. I appreciate that. Do you know if HCLOM Limited had any obligations under this agreement? I don't want to go through that same process again.

At the time that you signed this agreement, did you have any understanding that HCLOM, Limited, was undertaking any obligations or duties to Highland or Acis?

A I think it says, in the beginning there, it's essentially taking on the obligation to the CLOs, right?

Q And that's the --

A (Indiscernible - simultaneous speech) manager.

Q Okay. Do you know -- sorry.

A No, that's -- so sorry. So -- but as manager, the CLO, then, there are fees and sub-advisor fees and administrative fees that flow off of that, right? Anyway.

Q Okay. Do you know if HCLOM Limited ever had any employees?

A No. I -- I believe it wasn't an RIA, either.

And I -- I think that's why there had to be an establishment of the LLC version of the (indiscernible - audio disruption).

Q Did you just use the acronym RIA?

A Yes.

Q And does that stand for? Registered Investment Advisor?

A Yes.

Q And is it your understanding that HCLOM Ltd. never became a registered investment advisor?

A I don't know that for sure, but I'm just saying, typically, it is the domestic entities that we have that are registered. And it's typically domestic entities that have the employees.

Q Do you know if a foreign entity is able, under U.S. law, to be a registered investment advisor?

A I -- I don't know the answer to that.

Q Okay. But you would agree that, to the best of your knowledge, HCLOM Ltd. never became an RIA, correct?

MS. DEITSCH-PEREZ: Object to the form.

THE WITNESS: I don't know that for sure.

BY MR. MORRIS:

Q I understand that you don't know it for sure, but you have no knowledge, as you sit here today, that

HCLOM Limited ever became a registered investment advisor, correct?

MS. DEITSCH-PEREZ: Object to the form.

THE WITNESS: I -- I do not know.

BY MR. MORRIS:

Q Thank you. Do you know if HCLOM Limited ever entered into a shared services agreement with Highland?

A I don't know.

Q Do you know if HCLOM Limited ever entered a shared services agreement with anybody?

A I don't know.

Q Do you know if HCLOM Limited ever entered into a sub-advisory agreement with Highland?

A I don't know.

Q Do you know if HCLOM Limited ever entered into a sub-advisory agreement with anybody?

A I -- I don't know what the relationship was with the LLC domestic version. I don't know whether it was a sub-advisory or a transfer. I don't know.

Q Okay. If we go back to the first page of the agreement, there's some recitals there.

A Yes. Yep.

Q Okay. The third one down says, "HCM -- " and HCM is the defined term for Highland that we've been using. It says, "HCM has notified Acis that HCM is

unwilling to continue to provide support personnel and other critical services to Acis with respect to the CLOs." And it's defined -- that's defined as the notification.

Do you see that?

A What -- what page is that on? I'm sorry.

MS. DEITSCH-PEREZ: Yeah. I'm --

MR. MORRIS: It's the first page. It's the very first page.

MS. DEITSCH-PEREZ: What document are you -- what document are you asking him to look at?

MR. MORRIS: I'm still on the -- I'm still on Exhibit 8, the Assignment and Transfer Agreement.

MS. DEITSCH-PEREZ: Okay.

MR. MORRIS: And I'm looking at the third whereas clause, under the recital of the first page.

THE WITNESS: Yes. Yep. Yep. Yep. "Whereas Highland is notified." Yep.

MR. MORRIS: Okay. So you're with me now?

THE WITNESS: Yes.

BY MR. MORRIS:

Q Okay. Mr. Dondero, do you have any personal knowledge concerning the notification, as that term is

defined in the third whereas clause?

A Well, do I have any awareness of it, or do I -- what was the --

Q Personal knowledge. Yeah. Do you know anything about that personally?

A No. Not -- no.

Q Okay. Do you know who and -- who notified -- who gave the notification to Acis on behalf of Highland?

A No, I do not.

Q Do you know who received the notification from Highland on behalf of Acis?

A No, I do not.

Q Do you know why Highland was unwilling to continue to provide support personnel and other critical services to Acis with respect to the CLOs?

A I don't know. I'm guessing -- no, I don't want to guess. It -- not viable, no employees, toxic. But I don't -- but I don't know.

Q Did the arbitration award -- did the issuance of the arbitration award have anything to do with the entry into this agreement?

A Not as far as I know.

Q Did the issuance of the arbitration award have any impact on the perceived toxicity of Acis?

A I don't know. I don't remember.

Q Did Acis have the financial wherewithal to satisfy the award that was granted to Mr. Terry? Withdrawn. Let me ask a slightly different question.

Do you recall whether Acis had the financial wherewithal to satisfy the arbitration award that was issued to Mr. Terry on the day it was rendered? On October 20th, 2017?

A I don't know.

Q Do you recall if Acis's inability to satisfy that award was a factor in the decision to enter into this agreement?

A No, I -- I don't know.

Q Did you ever consider loaning Acis money so that it could satisfy the award that was rendered in Mr. Terry's favor?

A No.

Q You did cause Highland to loan money to affiliates from time to time, correct?

A Yes.

Q In fact, you caused Highland to loan money to Acis from time to time, correct?

A Yes.

Q Do you know how much money Acis would have needed in order to be able to satisfy Mr. Terry's arbitration award?

A Roughly. Roughly, but not specifically.

Q Did the entry into this agreement leave Acis -- withdrawn.

Did the entry into this agreement have any impact on Ace's ability to satisfy Mr. Terry's arbitration award?

A I don't know.

Q Do you understand that by entering into this agreement, Acis was both losing the benefit of the payments under the note, but being relieved of the obligation to share servicing fees pursuant to the participation agreement?

MS. DEITSCH-PEREZ: Object to the form.

THE WITNESS: No.

BY MR. MORRIS:

Q Is it your understanding that this agreement is neutral to Acis?

MS. DEITSCH-PEREZ: Object to the form.

THE WITNESS: I -- I don't have an opinion.

BY MR. MORRIS:

Q Now, you have no view as to the impact of this agreement on Acis?

A I do not.

Q You did sign this agreement on behalf of Acis,

right?

A Yes.

Q Did you expect Acis to receive a benefit from signing this agreement when you signed it on its behalf?

A Well, it -- it was more driven out of necessity.

Q Okay. But did you expect Acis to receive any benefit from signing this agreement?

A It was more out of necessity that Highland wasn't providing the service anymore for Acis to continue to function.

Q And who made that decision on behalf of Highland?

A I don't know.

Q Was it anybody other than you?

A It wasn't me.

Q Did you ever ask anybody who authorized Highland to notify Acis that Highland was no longer willing to provide services?

A Like I said, this whole -- the whole relationship with Josh Terry was being administered by legal, so it would've been someone in the legal department.

Q Did you have any interest at all as to how these issues were being managed?

A Yes, but I trusted the legal department.
Q Do you know why you signed this document?
A Yes.
Q Why did you sign this document?
A Because I was an authorized signatory, and this was the administration of the agreements recommended by the legal department.
Q And who in the legal department recommended that you sign this?
A Going back to -- it would've been Tom Surgent and his group.
Q Did Scott Ellington play any role in advising you with respect to this document?
A Not that I recall. Again, he was the overall general counsel. The legal, and particularly the Josh Terry relationship and litigation, was handled by Thomas Surgent and his group. It was Thomas Surgent who impressed or didn't impress the -- the JAMS panel.
Q And what's your basis for that?
A He was the lawyer that testified on behalf of Highland.
Q You testified, too, didn't you?
A Yeah, but not regarding legal claims and -- and for cause, not for cause, et cetera. That was all Thomas Surgent.

Q Okay. So I'd have to ask Mr. Surgent what the purpose of the agreement was; is that fair?

A I -- I would start there.

Q Okay. Can you share with me any advice that Mr. Surgeon gave to you before you signed this document?

A Not that I recall.

Q Can you share with me any advice you received from anybody before you put pen to paper on this document on behalf of Highland and Acis?

A Nope. Not that I recall at this point.

Q Can you tell me who was authorized on behalf of Highland to notify Acis that Highland was no longer willing to perform services?

A I don't know.

Q Was anybody other than you authorized to act on behalf of Highland in terms of giving notice of termination of services?

A Yes.

Q Who was authorized to do that without your authority?

A Again, this was all being administered by legal with some support from accounting and some support from tax. But it was all administered by the legal department.

Q Well, I appreciate that. I'm just asking you

if you can recall who you authorized in the fall of 2017 to terminate shared services agreements without your prior knowledge and approval?

MS. DEITSCH-PEREZ: Object to the form.

THE WITNESS: Yeah. Again, I -- I point you back to Thomas and his group.

BY MR. MORRIS:

Q Okay. So Thomas had the authority, without obtaining your knowledge or approval -- withdrawn.

Thomas had the authority, without obtaining your prior approval, to terminate intercompany service agreements. Is that your testimony?

A Yeah. I mean, he is administering the -- the documents in a way that's permissible, that he believes is the best way to effectuate an outcome or strategy. It's -- it's well within his realm.

Q Okay. I'm not talking about the administration of a document. I'm talking about the termination of a document.

Is it your testimony --

A Yes.

Q -- your --

A Yeah. That's -- well, that's exactly what I'm saying. He is just using -- there's -- there's an overall partnership agreement. There's a strategy of

replacing a toxic advisor. There's a strategy in terms of getting there. That's all within his realm of responsibility and authority, including canceling the -- the service agreement with Acis.

Q Do you know that he did that?

A It -- it was him and his team. It wasn't -- it wasn't me. I wasn't that deeply involved in this.

Q Did anybody ever tell you anything about the notification, as defined in the third whereas clause? Did anybody ever tell you before you signed this document that the notification had been given?

A I can't recall specifically at this time. I -- I can't -- I'm not -- I'm not saying someone did mention it, but I can't remember specifically or remember who.

Q Do you know if anybody ever gave written notice of termination of the shared services and sub-advisory agreements that we looked at earlier?

A I don't know, but -- I don't know, but that -- that stuff tends to move in tandem. But I don't know.

Q Okay. Let's look at the --

A I'm -- I'm no longer on the screen. Can you guys see me on the screen? I can't see myself anymore.

THE PROCEEDINGS OFFICER: Yeah, I was just about to mention your screen is --

MR. MORRIS: Frozen.

THE PROCEEDINGS OFFICER: Let me take us off the record for just a moment, if that's all right.

MR. MORRIS: Yes, please.

THE PROCEEDINGS OFFICER: Okay. Taking us off the record.

(Off the record.)

THE PROCEEDINGS OFFICER: We are now back on record. Sorry.

BY MR. MORRIS:

Q Okay. Back on the record. Mr. Dondero, would you agree with me that the substance of the next whereas clause says that, as a result of the notification as defined, Acis has to identify a successor portfolio manager?

A I'm sorry. So "Whereas Acis has determined the effect of the notification"? Is that the paragraph?

Q Yes, sir.

A Yes.

Q Okay. And in the -- in the next whereas clause, it says, "HCLOM, a qualified successor manager." Do you see that?

A Yes.

Q Okay. Do you have an understanding of what it means to be a qualified successor manager?

A No. It's defined, the indenture to CLOs, but I -- I don't know it off the top of my head.

Q Would being a registered investment advisor be one of the attributes of a qualified successor manager?

A Not necessarily.

Q Do you believe that an entity could serve as the portfolio manager of CLOs without being a registered investment advisor?

A I think Siri has been doing it for quite a while. Yes.

Q You do?

A Yes. Unless it specifically says it in the CLO indenture, there are managers out there that aren't registered investment advisors.

Q Do you know -- I'm sorry. I didn't mean --

A No. I was just saying, at least there used to be.

Q Did you ever check the indenture to see what the qualifications were to be a qualified successor manager for purposes of the Acis CLOs?

MS. DEITSCH-PEREZ: Object to the form.

THE WITNESS: I did not.

BY MR. MORRIS:

Q Do you know if HCLOM Limited was, in fact, a qualified successor manager?

MS. DEITSCH-PEREZ: Object to the form.

THE WITNESS: I do not know.

BY MR. MORRIS:

Q Did you know, at the time you signed this agreement, whether HCLOM Limited was a qualified successor manager?

A I believed, as presented to me by staff that I trusted, everything was accurate when I signed it.

Q Okay. But nobody told you that HCLOM Limited was a qualified successor manager, correct? You just believed that?

A I -- I didn't focus on it. I didn't have specific knowledge.

Q Okay. Would you have signed this agreement on Highland's behalf if you knew that HCLOM Limited was not qualified to be a successor manager?

MS. DEITSCH-PEREZ: Object to the form.

THE WITNESS: If I had thought anything was inaccurate, I wouldn't have signed it. And I would have asked for it to be corrected.

BY MR. MORRIS:

Q Do you see, in the same clause, it then says that HCLOM "irrevocably commits to be appointed as successor manager, in consideration of Acis assigning to it the note"?

A Yes.

Q And is that your understanding of what the deal was? That HCLOM Limited would become the successor manager, and Acis would transfer the note to HCLOM?

MS. DEITSCH-PEREZ: Object to the form.

THE WITNESS: I mean, it says what it says. I -- I'm reading it for the first time.

BY MR. MORRIS:

Q But you don't have a recollection as to -- you don't have a recollection as to whether or not that was the substance of the transaction that's embodied in this document; is that fair?

A Other than it says what it says.

Q Okay. Do you know if HCLOM Limited was ever appointed as successor manager?

A I don't know.

Q Do you know if HCLOM Limited ever took any steps to become the successor manager?

A I -- I believe we took steps to do everything we said we were going to do and were only -- only stopped or paused or derailed based on injunctions, state actions, threat of injunctions, the Acis bankruptcy, or the Highland bankruptcy. But I -- I believe we moved in good faith on all the documents that we signed.

Q Would you agree with me that HCLOM, LLC, is not a party to this particular agreement?

A It doesn't appear to be. It doesn't appear to be.

Q When you talk about the steps that were taken to create a successor to Acis, do you know whether those steps involved HCLOM Limited or HCLOM, LLC?

MS. DEITSCH-PEREZ: Object to the form.

THE WITNESS: Yeah, I don't -- I don't know specifically.

BY MR. MORRIS:

Q Did either one ever become the successor manager?

A I -- I don't -- Jernigan's injunction, I think, prevented a lot of things from happening, but I don't know if -- I thought Acis 6 took a different path. I just remember that vaguely, but I -- I don't know if that was enough to make these different entities applicable. I -- I don't know the answer.

Q Do you know if the decision was made prior to the filing of the Acis bankruptcy that HCLOM, LLC, and not HCLOM Limited would be established for the purpose of serving as the successor portfolio manager?

A I don't know.

Q And I apologize if I asked you this, but you

have no knowledge that HCLOM Limited ever became the successor manager, correct?

MS. DEITSCH-PEREZ: Object to the form.

THE WITNESS: I -- I don't know.

BY MR. MORRIS:

Q Okay. You wouldn't have signed this agreement on Highland's behalf if you knew HCLOM Limited was not qualified to become a successor manager, fair?

MS. DEITSCH-PEREZ: Object to the form.

THE WITNESS: I -- I think I answered that. If there were any errors or anything I thought was erroneous or inconsistent, I would've not signed it and asked it to be corrected and as accurate as possible.

BY MR. MORRIS:

Q Did you take any affirmative steps to make sure that this agreement reflected the facts that existed at that time?

A No. I -- I trusted -- I trusted internal counsel.

Q Did you ask internal counsel any questions about this document before you signed it?

MS. DEITSCH-PEREZ: Object to the form. I think that's actually the third time.

THE WITNESS: Yeah. No. No, I did not.

BY MR. MORRIS:

Q You're familiar with the phrase "quid pro quo," fair?

A Yes.

Q Okay. What is your understanding of that term?

A That it was part of a -- an action was part of a -- a trade or a barter.

Q When you signed this agreement, did you understand that the quid pro quo was that HCLOM Limited would step into Acis's shoes and share the portion of the servicing fees that was to remit to Highland under the participation agreement, in exchange for the stream of revenue that was contemplated under the Highland note?

MS. DEITSCH-PEREZ: Object to the form.

THE WITNESS: Yeah. I didn't have an understanding that -- I didn't have an understanding of that, or I didn't have an understanding that this changed the previously negotiated note arrangement.

BY MR. MORRIS:

Q I didn't mean to suggest that it did. In fact, was it your understanding that this agreement was intended to simply let HCLOM Limited step into the shoes of Acis?

A That was my general understanding.

Q Do you know who's managing this litigation today on behalf of HCLOM Limited? Who is the person -- not counsel, but who other than counsel is managing this on behalf of HCLOM Limited?

THE PROCEEDINGS OFFICER: Oh, I think we might have lost --

THE WITNESS: Nope.

BY MR. MORRIS:

Q Do you know, Mr. Dondero?

A No. I don't know. Can we take a break soon and have an idea of how much longer you think you got?

Q Sure. Just a couple more questions. So today, as you sit here today, you don't know who's managing this litigation on behalf of HCLOM Limited, correct?

A I do not.

Q Did you ever ask anybody?

A No.

Q Do you have any understanding who the officers of HCLOM Limited are today?

A No.

Q Do you have any understanding as to who owns HCLOM Limited today?

A No.

Q Do you have any understanding as to who is authorized to act on behalf of HCLOM Limited today?

A No, I do not.

MR. MORRIS: Okay. I'm happy to take a break now, if you'd like. If I had to guess, I would say 90 minutes. So it's 3:19.

MS. DEITSCH-PEREZ: 90 -- hold on. 90 minutes would be four and a half hours. I thought you had committed that this would be no more than four.

MR. MORRIS: Deborah, if you want to cut me off, you are free to cut me off. If I take four and a half hours instead of four, you're free to do that. I will note you took a 20-minute break before instead of a 10-minute break, but I think that would --

MS. DEITSCH-PEREZ: No, no. John, I'm not I'm not talking about actual hours on the clock. I'm looking at the -- on the record. I don't think that counts --

MR. MORRIS: Deborah, if you want to cut him off after four hours, you can do that, and I will reserve my rights. That's all. I'm giving you an estimate of --

MS. DEITSCH-PEREZ: I'm just reminding you of your promise, John.

MR. MORRIS: Okay. And it's not a

promise. It's an estimate, and you should know that better than anybody.

MS. DEITSCH-PEREZ: No, no. Actually, this time, because of the schedule --

MR. MORRIS: Let's take a break.

THE PROCEEDINGS OFFICER: Okay. I'm going to take us off the record.

(Off the record.)

THE PROCEEDINGS OFFICER: We are back on the record at 2:35 p.m., Central Time.

MR. MORRIS: Great.

BY MR. MORRIS:

Q So, Mr. Dondero, this Assignment and Transfer Agreement that's entered into among HCLOM Limited, Acis, and Highland is signed early November 2017, right?

A Yes.

Q And at around the same time, work is being done to either reset or refinance the Acis CLOs, right?

A I believe so.

Q Okay. And you were involved in that process, were you not?

A I was not.

Q No? What is a reset?

A A -- a reset is where you exchange and reprice the liabilities, assuming you still have enough equity

to do so, or you resize the deal accordingly.

Q Is that different than refinancing?

A I'm sorry. What?

Q Is that different than a refinancing for this purpose?

A Is that different than a refinancing? Essentially -- essentially, it's one and the same.

Q Okay.

A A reset -- reset is a slightly easier version.

Q Okay. And at this time that the resets and the refinancings are being contemplated, you understood that the -- that one piece of that was that Acis would be replaced as the CLO portfolio manager, correct?

A Yes.

Q Okay. And if Acis were to be replaced as the CLO portfolio manager, did you understand that Acis would no longer have the right to receive the management fees or the servicing fees that we discussed earlier?

A Yes, when the -- when the resets or the refis were complete.

Q And the entity that would receive the management or servicing fees that we discussed, that would be the successor to Acis? The successor portfolio manager, right?

A Yes.

Q Okay. Do you know who decided to pursue the resets on behalf of the Acis CLOs in late 2017?

A Some combination of the senior investment professionals and the legal staff. The deals themselves had paid down a significant amount, and the Acis brand was toxic. So the effort to refire reset involved, you know, resetting the interest rates, releveraging as much as possible, and moving away from the Acis brand.

Q Did you play any role in the decision to reset the Acis CLOs?

A I was aware of it. You know, I signed things that were put in front of me, authorized the plan that the lawyers and the investment people had to make it happen, but I -- I wasn't involved in the details.

Q But do you know who made the decision? Who gave the instruction to the team to pursue the resetting of the Acis CLOs?

A I -- I think, on their own -- on their own, the investment professionals knew that it was necessary and needed to happen. And then, you know, the adjusting and how to operate within the Acis L.P. agreement and the CLO agreement was the counsel of the legal guys on how best to do it.

Q But do you know who said, I authorize and instruct you to pursue the resetting of the Acis CLOs?

Do you know?

A I -- I think the thing I keep dancing around; I'll say explicitly. It wasn't me. From a top-down basis, it was the business people knowing and realizing it needed to happen as responsible portfolio managers. And then you had the input of and counsel of the legal folks how to do it, and then you had input from the marketplace saying that the Acis name was toxic and non-marketable. It wasn't -- it wasn't top-down genius from my desk. It was obvious, normal course of business for the investment professionals.

Q I appreciate that those are the reasons that supported the decision. I'm asking you if you know, and if you don't, that's fine.

But do you know who made the decision to do this? Who was -- withdrawn.

Do you have any understanding as to who was authorized to make the decision, on behalf of Acis, to reset the Acis CLOs?

A In -- in the CLO management agreements, it's the CLO manager who has the ability to reset and refinance the CLOs.

Q Do you know, as you sit here today, who the CLO manager was?

A It depends on different points in time, right?

I mean, there was Acis when Josh Terry was on board. There was Acis when Josh Terry was out. And then there's the intention to move it to the ALCM LTD or LLC that happened or didn't happen or partially happened, you know, along the way.

Q Right. I'm talking about a very specific moment in time, November 2017. It's just after Josh Terry obtained his arbitration award. It's at the same time that you signed this Assignment and Transfer Agreement on behalf of HCLOM Limited. You signed it on behalf of Highland and Acis, rather.

And the question is really pretty simple: At that moment in time, do you know who was authorized to have Acis reset the CLOs?

A I don't know specifically.

Q Is there a list of people from whom you believe would have had the authority to cause Acis to reset the CLOs, or you just don't have -- you can't name anybody?

A It's the same answer I've been giving, I think, for half an hour now.

Q I'm asking for specific names. You haven't given me one name, sir. I apologize. I don't mean to interrupt, and I don't want to be contentious.

I'm just asking you if you can identify a

human being who you believe, in November 2017, had the authority to direct Acis to reset the CLOs?

A I -- I've given the names before. I'll give them again. On the investment side, it was Trey Parker or John Poglitsch. I don't remember who was in charge and -- or who was delegated to working on the CLOs, but those were the senior investment people. They reported to Mark Okada. I don't know if he was involved or not, but I've given those names at least once before, if not twice.

On the legal side, it was the people reporting to Thomas Surgent. And I've given these names at least once or twice before. It was Tim Cornyn (phonetic), and then there was a woman that no longer works for us who was a very good corporate lawyer, and she handled a lot of the document formation, company formation, company administration, et cetera. But she was a little bit more junior than Tim Cornyn and Thomas Surgeon.

And they -- they would've been -- they would've been among those five people, six people orchestrating the resets or the refis of the CLOs, which, again, is obvious on its face as they deliver, and their cost of debt is too high. It wasn't a brilliant -- brilliant observation from the top down of me ordering anybody to do anything.

Q Were any of the people that you just named ever an officer or employee of Acis?

A I don't know.

Q Do you know what the source of authority would've been for them to engage in the conduct we're talking about? And that is directing Acis to reset the CLOs.

What would the source of authority have been?

A I mean, there's multiple sources. If it was Okada, I think he would've been an officer of Acis somewhere. If it was the investment people, the investment people on some sub-advisory or -- or sub-management agreement would've been responsible for the portfolio and administering the structure, which would include refinancing, whatever.

So I believe they would've felt they had adequate authority, and then I think the lawyers could do what was in the best interest of the investors that got materially harmed and damaged by enduring its injunction. And the investors who would've benefited from a reset, it was their responsibility, if not a fiduciary responsibility, to do what was in their best interest.

Q But you had absolutely nothing to do with the approval of this, right?

A Like I've said, I'm the signator. There aren't a lot of signators around here, so I probably sign a hundred things a week. And I -- I rely on -- especially on an administrative or legal side, I -- I rely on counsel.

Q Okay. Do you recall that Mizuho was engaged to serve as agent in connection with the resetting and refinancing the Acis CLOs in November 2017?

A I remember their name. I -- I thought they were going to be in conjunction with Goldman. I thought they were going to be party of the underwriting syndicate. That's my recollection. But maybe they were looking at it from an administrative agent standpoint.

MR. MORRIS: All right. Let's mark, as Exhibit 9, what we have, Andrea, as tab 14.

(Exhibit 9 marked for identification.)

BY MR. MORRIS:

Q You will see this is a letter agreement between Mizuho and HCLOM, LLC. It's dated November 15th. And if we could just scroll down to the end, Mr. Dondero, let me see if I can find the exact page number. 12 of 19.

Is that your signature, sir?

A Yes.

Q Okay. And again, if we go back to the top --

don't want to step on your toes at all. If you could just take a -- maybe a look at the beginning and tell me if you recall ever reading this document before?

A I do not.

Q Okay. Do you recall ever signing an agreement with Mizuho that related to the Acis CLOs?

A Okay. This is refreshing me on an issue that was an issue in terms of the refis or the resets. I think, on the refis, you needed to be compliant with the new --

Q The risk retention rules?

A Yeah, the new risk retention rules. I think, on a reset, you didn't need to, but on a refi, you did. But it looks like there -- this transaction -- yeah. "Engages the Placement Agent to act as sole financial arranger." So it looks like Mizuho was in competition with Goldman to be placement agent in terms of refinancing the restructures.

Q Okay. And you signed this agreement on behalf of HCLOM, LLC, correct?

A I'm getting there. C Level Management, LLC. Correct.

Q Okay. And if you go back to the first paragraph, HCLOM, LLC, is defined as the company. You take a look and confirm that for me?

A LLC is defined as -- I'm sorry, what?

Q As the company. So in the first paragraph, you'll see a reference to HCLOM, LLC, and then there's a definition of the company. And I just want to make sure we're on the same page with that.

A Doesn't -- it -- it's not a defined term in that first paragraph. It just says, "the Company," right?

MS. DEITSCH-PEREZ: You have to go on to the next --

THE WITNESS: Oh, okay.

MS. DEITSCH-PEREZ: Yeah, there.

THE WITNESS: Highland C Level -- okay. I got it.

All right. So the company in the header is the company in the first paragraph, I guess, is what you're asking, which is LLC?

BY MR. MORRIS:

Q Right. So HCLOM, LLC, is defined in this agreement as the company, fair?

A Yes.

Q Okay. Now, if you turn the page, we'll go down to the page to Section 2, Engagement of the Placement Agent. Would you agree with me that the first sentence essentially says that the co-issuers and HCLOM,

LLC, engage Mizuho to act as the sole financial arranger and placement agent for the transactions and offerings described in the document?

A Yes.

Q Okay. Do you know where HCLOM, LLC, got the authority to engage Mizuho for this purpose?

A I do not.

Q Do you know why HCLOM Limited wasn't designated as the company for purposes of serving in this capacity in connection with the resets?

A I do not.

Q Does this document -- is it fair to say that under this document, if these transactions had occurred, then HCLOM, LLC would've served as Acis's successor manager?

A I -- I don't want to make a legal interpretation.

Q I don't want you to make a legal interpretation, either. I'm asking for facts. Was it your understanding, when you signed this document, that HCLOM, LLC was going to serve as Acis's successor manager of the CLOs?

A I'm struggling with the word "successor." I think this engagement letter says that the LLC will be the manager of whatever CLOs fall out of this

engagement.

Q And Acis would no longer be the manager, correct?

A Depending upon how the deals were handled or --

Q And HCLOM Limited was not going to play any role in the transactions and offerings described in this document, correct?

MS. DEITSCH-PEREZ: Object to the form.

THE WITNESS: I don't know.

BY MR. MORRIS:

Q Well, you can take your time and review the document if you'd like.

A Well, I don't see their name mentioned here, but I -- it would be -- I don't see their name mentioned here. I would like to leave it at that. I -- I don't know -- I -- it's too much for me to say they would have no involvement.

Q Okay. So I'm going to ask two questions, then. As you review this document, you don't see any reference to HCLOM, LTD, correct?

A I do not.

Q And based on your recollection, you have no personal knowledge that HCLOM, LTD was ever going to play a role -- withdrawn.

Based on your recollection, you have no knowledge that HCLOM, LTD was going to play a role in the transactions that are described in this document, fair?

MS. DEITSCH-PEREZ: Object to the form.

THE WITNESS: I -- I don't have awareness.

BY MR. MORRIS:

Q Okay. Do you know why HCLOM, LLC was a signatory to this agreement rather than HCLOM, LTD?

A I do not.

Q Did you ever ask anybody why HCLOM, LTD wasn't signing this document instead of HCLOM, LLC?

A I do not.

Q Do you know if HCLOM, LLC ever succeeded Acis as the portfolio manager of the Acis CLOs?

A I -- like I said, I don't know how much that process was interrupted by the various other legal things that were going on.

Q But looking at this document, does that refresh your recollection that in November 2017, the expectation was that HCLOM, LLC would serve as the successor portfolio manager to Acis?

A That's what this document says, but I don't want to -- I don't want to extrapolate from that.

Q Okay. But you would agree with me that that's what this document says, fair?

MS. DEITSCH-PEREZ: Object to the form.

BY MR. MORRIS:

Q You can answer.

A Again, it says what it says, that the LLC would be the collateral manager.

Q Do you have any recollection of ever signing any document, other than the transfer agreement we looked at before, that contemplated that HCLOM, LTD would serve as Acis's successor portfolio manager?

A Not as I sit here today.

Q Okay. Let's go to page 3 and look at Section 3C. Do you see, in 3C, HCLOM, LLC represented, warranted, and agreed that it would, quote, "Act as collateral manager for the co-issuers"?

A (No audible response).

Q I'm just looking at C. We're only at one.

A Yeah. I see that.

Q Okay. And did you understand, at the time that you signed this document, that HCLOM, LLC was making this representation?

A I -- I don't remember.

Q When you signed the document, did you intend that Mizuho would rely on the representations and

warranties in the document?

A I -- I didn't focus on them, but I do think people rely on reps and warranties.

Q Do you know what happened with respect to the transactions and the resets described in this document after it was executed?

A Other than what I've spoken to generally, I mean, I think it was derailed by legal actions. I'm not sure much happened at all.

Q Okay. Going to try and speed this up a bit.

MR. MORRIS: Let's take that down, and let's put up -- let's mark, as the next exhibit, tab 7.

(Exhibit 10 marked for identification.)

BY MR. MORRIS:

Q Okay. And you'll see, Mr. Dondero, this is a document entitled Standard Custodial Terms for Highland CLO Management, LLC, dated as of January 19th, 2018, by and between HCLOM, LLC and U.S. Bank National Association.

Do you see that?

A Yes.

Q And if we go down towards the bottom, I think we'll find the signature page. And if you can go to 26 of 29, that's your signature, correct?

A Yes.

Q Okay. And do you recall signing an agreement with U.S. Bank in January 2018 on behalf of HCLOM, LLC?

A No.

Q Do you know, looking at the document, if this was part of the contemplated reset of the Acis CLOs?

A I don't know. Was this ever executed or -- by their side or --

Q Yeah. We can go back --

A Okay.

Q -- to the bottom if you want.

A I just -- I saw my signature. I didn't see theirs, but --

Q Okay. Take your time.

MS. DEITSCH-PEREZ: Following page.

THE WITNESS: The following page. Okay. Uh-huh. Okay.

BY MR. MORRIS:

Q So do you have any recollection of this document?

A No.

Q Do you have any recollection of entering into an agreement with U.S. Bank in January 2018 on behalf of HCLOM, LLC?

A No.

Q Do you know what role the custodian would play

in the resetting of the Acis CLOs?

A Every deal needs a custodial bank. So on refis -- on resets, you don't typically change, I don't think. But on refinancings, you typically have a new custodial bank.

Q And the custodial bank plays a different role than the placement agent that Mizuho was going to play, fair?

A Correct.

Q Okay. Do you know why you signed this document at this time?

A I -- I assumed it was something that was necessary as part of engaging Mizuho or Goldman, that they wanted to know we had a custodial bank on board.

Q And is this consistent expectation that HCLOM, LLC was going to serve as Acis's successor as the portfolio manager of the Acis CLOs?

A I -- I think this is just setting up a relationship with a custodial bank. I'm not sure it's -- I think it's meant to be consistent with the entities in the agreements with Mizuho or Goldman, but it's not -- in and of itself, it's not a commentary on Acis versus something else.

Q Do you recall if there was -- do you recall any discussion in late 2017, early 2018, concerning

whether HCLOM, LTD or HCLOM, LLC could or would serve as the successor portfolio manager to Acis?

A No.

Q Okay.

MR. MORRIS: Let's take that document down. Let's put up on the screen the next exhibit, which is tab 8.

(Exhibit 11 marked for identification.)

BY MR. MORRIS:

Q Okay. So this is just a one-page agreement. If we go to the second page, you'll see your signatures on behalf of Highland and Acis.

And then if we go to the last page, you'll see Mr. Kulani's (phonetic) name again on behalf of Summit, the director of HCLOM Limited; do you see that?

A Yes.

Q Okay. Have you seen this document before? Withdrawn.

Obviously, you did. You signed it, right? That's your signature. Those are your --

A Yes.

Q -- signatures we looked at?

A That is my signature.

Q Okay. Do you remember ever -- do you remember seeing this document before?

A No.

Q Do you recall if you signed -- if you read it before you signed it?

A I do not remember reading it.

Q Do you recall discussing it with anybody at any time?

A I do not.

Q Do you know what an -- what the purpose of the document is, now that you're looking at it?

A Again, it appears -- it appears to highlight the issue of risk retention rules that I -- I think influence how these transactions could be reset or refinanced, and I think also probably have something to do with the suitability or lack of suitability in -- on the part of Acis. I -- I --

Q So could -- I'm sorry?

A No. I was just going to say, I -- I don't remember the interplay of the issue. But it's something we'll get refreshed on, I guess --

Q Yeah.

A -- before -- before the trial. But there -- there was something to do with -- there was something to do with risk retention, and risk retention requires capital and requires new investment. And again, I -- I can't remember exactly, but I think it had something to

do with the suitability, or lack thereof, of Acis on an ongoing basis.

Q Well, the second paragraph refers to the transfer agreement that we looked at earlier, right?

A Yes.

Q Okay. And the third paragraph describes certain obligations on the part of both Acis and HCLOM Limited, fair?

A Yep.

Q Okay. And you have no reason to believe that paragraph 3 is incorrect in any way, right?

A I -- I didn't when I signed it. I don't as I'm looking at it now, either.

Q Okay. Great. So the next paragraph says that both Highland and HCLOM acknowledge a number of things. And the first one is that they intend to reset the CLOs, fair?

A Yes.

Q B says that each reset has to comply with the U.S. risk retention rules, fair?

A Yes.

Q C says that to comply with the U.S. risk retention rules in connection with the resets, "Each applicable CLO issuer will appoint Highland CLO Management, LLC, a Delaware limited liability company,

as the collateral manager of such CLO"; is that right?

A Yes.

Q Okay. And then it continues, and D, "Therefore, none of the notices have been nor will be delivered pursuant to Section 1 of the transfer agreement, and none of the appointments have been nor will be made pursuant to Section 2 of the transfer agreement."

Have I read that?

A Yes.

Q So is it fair to interpret this as saying there's a cause and effect here? That because Highland CLO Management, LLC, is being appointed pursuant to the U.S. risk retention rules, that the notices and appointments set forth in Sections 1 and 2 of the transfer agreement won't occur?

MS. DEITSCH-PEREZ: Object to the form.

THE WITNESS: Are those notices referring to notices to Limited? Is that what they're referring to?

BY MR. MORRIS:

Q You can look up above and see, in the third paragraph, what they referred to. You know what? Let's take it in pieces. Let's look at that third paragraph.

Did you understand that, pursuant to the

transfer agreement, Acis was required to promptly provide notice to the controlling class of each CLO?

A Yes, I see that.

Q And did you understand that as part of the transfer agreement, that was an obligation on Acis's part?

A I -- I don't specifically have awareness of that.

Q Okay. Are you aware of Acis ever promptly providing notice to the controlling class of each CLO, as that phrase is used in this paragraph?

MS. DEITSCH-PEREZ: Object to the form.

THE WITNESS: I -- I have no awareness whether they did or didn't or had an obligation.

BY MR. MORRIS:

Q Okay. The next sentence is -- says -- sentence that says that, after the delivery of the notices, "Each of Acis and HCLOM was required to promptly pursue an appointment for each CLO."

Do you see that?

A Yes.

Q Do you know if that ever happened? Did Acis and HCLOM ever promptly pursue an appointment for each CLO?

A I don't know.

Q Okay. So now, going back to D, is it fair to say that the word "therefore" signifies that there's an effect that flows from C? And to be specific, is it fair to say that HCLOM, LLC, is going to be appointed as the collateral manager, and as a result, the notices and appointments contemplated by Sections 1 and 2 of the transfer agreement are not going to happen?

MS. DEITSCH-PEREZ: Object to the form.

THE WITNESS: Yeah. This is a legal document. I don't want to give a legal interpretation. You know, as a layperson, it appears to be a --

BY MR. MORRIS:

Q All right. So let me try it this way, then, because I'm certainly not looking for a legal conclusion. You signed this document on behalf of both Acis and Highland, correct?

A Right.

Q And you didn't read the document, correct?

A I did not read the document I was signing.

Q And you don't recall discussing the substance of this document with anybody prior to the time you signed it, fair?

A I did not. I do not.

Q Okay. Do you see, in the very last portion, it says, you know, taking the beginning, "Each of HCM

and HCLOM hereby waive any breach of Sections 1 or 2 of the transfer agreement as applicable"? Do you see that?

A Yes.

Q Did you know when you signed this document that you were waiving breaches of the transfer agreement on behalf of Highland?

A I mean, this looks like document cleanup or clarification in the movement towards LLC from LTD. I did -- I did not have specific awareness that we were waiving a breach, but it -- it also doesn't strike me as material.

Q Okay. I'll move -- it's interesting that you don't want to play lawyer unless you do, right? Like, materiality is a legal conclusion; would you agree?

A Well, the materiality is a financial concept, you know? That's -- I -- I mean materiality in a financial way.

Q Okay. I appreciate that. Do you know what, if anything, Highland received in exchange for the waiver set forth in (indiscernible - audio disruption)?

A I -- I do not specifically.

Q Did you ever ask anybody why Highland was waiving breaches of the transfer agreement?

A I did not.

Q Did anybody ever explain to you what breaches

occurred of the transfer agreement?

A No.

Q Did anybody ever explain to you what benefit there would be to Highland by waiving the breaches of the transfer agreement?

A No.

MR. MORRIS: All right. Why don't we take a five-minute break? I'll just have a few minutes more. I just want to look at my notes.

THE PROCEEDINGS OFFICER: Sure. Taking us off the record.

(Off the record.)

THE PROCEEDINGS OFFICER: Back on record at 3:25 p.m., Central Time.

BY MR. MORRIS:

Q Okay. Just a couple of questions, Mr. Dondero. Do you believe that Highland's objection to the claim -- to the scheduled claim that encompasses the note should be overruled? Do you think the Court should overrule Highland's objection?

MS. DEITSCH-PEREZ: Object to the form.

THE WITNESS: I think it should be paid.

BY MR. MORRIS:

Q Okay. And why do you think it should be paid, in your own words?

A It's -- it's a bona fide note. It had a tax angle to it. It's separate and distinct from when -- whether any of the fees are paid or not. In some ways, it's not unlike the note's case, where you guys argued that it was a bona fide note, you know, in and of itself, separate and distinct from anything else. Yeah. I mean, I don't know. That -- that's in a nutshell. I mean, again, it was -- it was done in good faith. It was a bona fide note.

But again, more importantly, Josh Terry had a $2 million claim when he left. He wrote me an eight-page heartfelt, handwritten note that he considered me like a father, and even though he only deserved a million or two, he should get paid four for having built the organization. He got awarded eight in the arbitration. He took out 15 initially, as much as 25 million out of Acis, all out of the hides of the investors. You guys gave him another 30 from the Highland estate. You know, he's -- he's parlayed a couple million bucks into 60 or 70, and he's suing me separately for another 75 million.

And when you guys settled with Acis and Josh Terry, you were 100 percent aware of the note, all the details around it, and that it was due, et cetera. And to the extent that Highland didn't get paid fees it

might have, or could have, or should have that aren't directly related, but you want to make the argument are directly related, you, in essence, considered those or should have considered those in the Josh Terry, you know, unjust enrichment train.

Q Anything else?

A I'm sorry. You asked for my own words. Sorry if I rambled too long. That's it. No, that's all I got.

Q Okay. When you say that it's separate and distinct, are you saying the obligations under the note are separate and distinct from the obligations under the transfer agreement?

A That's our -- yes. It's separate and distinct from whether or not a penny of fees got paid or no fees got paid or whatever. Again, it was all something that was well known to Siri and the estate when you threw tens of millions of dollars at Josh Terry.

Q Okay. Anything else to add?

A That's it at the moment. Thank you.

MR. MORRIS: Okay. Thank you very much for your time, Mr. Dondero. Good to see you. Be well.

THE WITNESS: You, too. See you.

MR. MORRIS: Take care, folks. Bye now.

THE PROCEEDINGS OFFICER: There's

actually a couple questions that I need to ask before we go off the record, Mr. Morris.

MR. MORRIS: Okay.

THE PROCEEDINGS OFFICER: So the certified transcript is included in your order. I just wanted to confirm you wanted to be getting the transcript.

MR. MORRIS: Yes, please.

THE PROCEEDINGS OFFICER: Okay. And I also wanted to confirm there was an expedite date for tomorrow, November 5th, 2024.

MR. MORRIS: Didn't quite need it that fast. I don't -- if you want to do that, that's fine because I don't mean to take money away from you. If you would be happier waiting until Friday, that would be okay, too. So I'll leave it to you. I'll take it tomorrow and pay for tomorrow if that's, you know, the deal, and that's what you want to do.

If you'd prefer a slightly more leisurely pace, you know, Thursday or Friday would be fine, too, okay?

THE PROCEEDINGS OFFICER: Okay. Perfect. So --

MS. DEITSCH-PEREZ: My two sense would be, if you don't need it expedited, John, don't order it

expedited. Don't --

MR. MORRIS: Please --

MS. DEITSCH-PEREZ: -- take money out of the estate to pay for the expedited.

MR. MORRIS: Please don't tell me what to do. Thank you.

THE PROCEEDINGS OFFICER: So would the 8th work all right for you, then, sir?

MR. MORRIS: Yeah, that would be great.

THE PROCEEDINGS OFFICER: Okay. Perfect. Thank you.

MR. MORRIS: Thank you.

THE PROCEEDINGS OFFICER: And I'm sorry.

Oh, and I -- Ms. Deborah, I'm so sorry. I don't want to mispronounce your last name. Would you like to purchase a copy of the transcript, ma'am?

MS. DEITSCH-PEREZ: Don't I get one, representing the witness?

THE PROCEEDINGS OFFICER: From what --

MR. MORRIS: You know, that -- that's taking money out of his pocket, but you do what you want. I'll be sending you the transcript, and Mr. Dondero needs to read it.

MS. DEITSCH-PEREZ: I'll take a -- I mean, I'll take -- I don't need it expedited. I'll take

a condensed.

THE PROCEEDINGS OFFICER: Okay.

MS. DEITSCH-PEREZ: But send me whatever I'm entitled to as counsel for the witness.

THE PROCEEDINGS OFFICER: Okay.

MR. MORRIS: All right, Kindel. Thanks so much. Anything else?

THE PROCEEDINGS OFFICER: Thank you. I think that's all that I need.

Thank you so much, everybody.

MR. MORRIS: All right.

(Proceeding concluded at 3:31 p.m., CT)

(Read and sign waived.)

* * * * *

CERTIFICATE OF PROCEEDINGS OFFICER

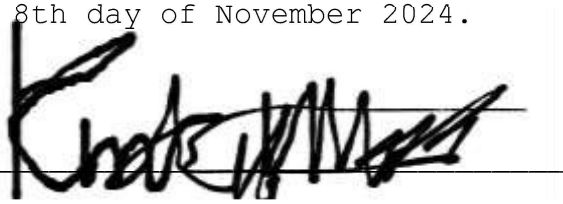
I, Kindel McDermott, CDR-3527, hereby certify:

That the foregoing proceedings were taken before me at the time and place therein set forth;

That the proceedings were recorded by me and thereafter formatted into a full, true, and correct transcript of same;

I further certify that I am neither counsel for nor related to any parties to said action, nor in any way interested in the outcome thereof.

DATED this 8th day of November 2024.



Kindel McDermott, CDR-3527
Proceedings Officer
Commission No.: 20234044059
Commission Expiration: November 21, 2027

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Exhibit 50

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	)Chapter 11
	)
HIGHLAND CAPITAL MANAGEMENT, L.P.	)Case No. 19-34054-sgj11
	)
Reorganized Debtor.	)

ORAL AND VIDEOTAPED DEPOSITION
DAVID KLOS
SEPTEMBER 25, 2024

ORAL AND VIDEOTAPED DEPOSITION OF DAVID KLOS, produced as a witness at the instance of the Highland CLO Management, LTD. and duly sworn, was taken in the above-styled and numbered cause on the 25th day of September, 2024, from 9:28 a.m. to 2:47 p.m., before Katharene McCulley, Certified Shorthand Reporter in and for the State of Texas, reported by computerized stenotype machine at the offices of Stinson, LLP, 2200 Ross Avenue, Suite 2900, Dallas, Texas 75201, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto.

APPEARANCES

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ALSO PRESENT: Miranda Glover - Videographer

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PROCEEDINGS

VIDEOGRAPHER: We are on the record for the videotaped deposition of David Klos. In the matter of Highland Capital Management, LP, filed in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division. Today is September 25th, 2024. The time is 9:27 a.m. We are located at Stinson, LLP, 2200 Ross Avenue in Dallas, Texas. The videographer is Miranda Glover. The certified shorthand reporter is Katharene McCulley, both representing Veritext Legal Solutions.

Will counsel state their appearances.

MR. AIGEN: Michael Aigen from Stinson representing Highland CLO Management, Ltd.

MR. MORRIS: And John Morris, Pachulski Stang Ziehl & Jones. I am counsel to Highland Capital Management, LP, and I'm here to represent the witness today, David Klos.

DAVID KLOS,

having been first duly sworn, testified as follows:

DIRECT EXAMINATION

Q (By Mr. Aigen) Can you state your full name, please?

A David Kelly Klos.

Q Good morning, Mr. Klos. You've been deposed

before; is that correct?

A Yes.

Q Approximately, how many times?

A A few, approximately five, plus or minus.

Q Is it fair to say that you understand the process and what's going to happen today?

A Yeah, I think generally.

Q Okay. I won't go through all of the rules and the procedure today, but a few sort of ground rules, as you just did, you understand that you need to answer the questions audibly rather than with a shake or nod of the head, correct?

A I understand. I'll -- I'll try to -- I'll try to do that.

Q And I will do my best to make my questions as clear as possible, but that will not happen sometimes. And if you don't understand a question, I would ask that you let me know that you don't understand a question; is that fair?

A That's fair.

Q Okay. And if you don't tell me that you don't understand the question, I'm going to presume that you understand the question; is that fair?

A That's fair.

Q Okay. Can you tell me, generally, how you

prepared for today's deposition?

A It's a little bit broad because of -- I was part of, you know, helping work through document production, discussing with our 30(b)(6) witness, so it's hard to say how much of that bleeds into my own preparation. It's certainly a component. But, I'd -- I'd say I had several calls with -- with counsel in the lead up to this. And -- and again, some of that is kind of preparing me and some of it is more just generally, you know, getting an understanding of -- of where we are.

Q Okay. And by "counsel," are you referring to Mr. Morris?

A Yes.

Q Okay. Anyone else?

A No.

Q Okay. And by 30(b)(6) witness, you're referring to Mr. Seery?

A Yes.

Q Okay. So, other than Mr. Serry and Mr. Morris, is there anyone else that you talked to to prepare for today's deposition?

A We had several conference calls with other members of the Highland team, in addition to Mr. Serry and Mr. Morris.

Q Okay. Who would that be?
A That would be some combination, maybe not necessarily every call, but some combination of Tim Cournoyer, Matthew Gray and Thomas Surgent.
Q Not Kristin Hendrix?
A I don't believe so.
Q Did you review any documents to prepare for your deposition today?
A Yes.
Q Generally, tell me what documents you reviewed.
A Generally, I would say the -- the purchase and sale agreement from October of 2016, excuse me, the assignment -- I'm going to butcher the name of the agreement, but the assignment and transfer from early November. The -- I think it's the acknowledgment and waiver from January, and the -- the two forbearance agreements from approximately May of 2018 and May of 2019.
Q Okay. Other than agreements, did you review any e-mails --
A Yes.
Q -- in your preparation?
A Yes, I did.
Q Tell me about the e-mails that you reviewed in preparation for the deposition.

MR. MORRIS: Objection to the form of the question.

A I reviewed primarily my own in-box from -- from that time period. When I say "that time period," from call it middle part of 2016 up until really middle part of 2018, primarily. And -- and also, I think as part of our production, there were some other e-mails that were circulated that I had a chance to review.

Q (By Mr. Aigen) And what were those e-mails?

A I don't remember specifically.

Q Generally.

A E-mails that were part of our production that seemed in some way or another pertinent to -- to the -- to this matter.

Q And what topics were they related to within this matter?

A I -- I can't think of any specifically.

Q Okay. Other than e-mails and the agreements that you referenced earlier, do you remember any other types of documents that you looked at in preparation for the deposition?

A Yes, I -- I'm -- I'm sure I looked at other -- other documents that were part of our production. So, maybe CLO documents, formation documents that -- things of that nature, kind of -- those types of things.

Q Okay. Did you look at any pleadings or discovery in preparation for the deposition?

MR. MORRIS: Objection to the form of the question.

A Yes.

Q (By Mr. Aigen) All right. Tell me what you reviewed with respect to pleadings or discovery.

A I'm not sure I understand what you mean by "pleadings" and "discovery." Could you just be more specific?

Q Well, did you review any legal pleadings in preparation for today's deposition, filings in this case or the bankruptcy?

A Yes.

Q Tell me which pleadings you remember reviewing.

A I would have reviewed -- sorry, can you ask the question again?

Q Let me -- I might be a little more specific to help. For instance, there was an objection that Highland filed to the claim at issue in this case, and then there was a response by HCLOM. Are those documents that you reviewed in preparation?

A I think I reviewed those documents some time ago. I -- I don't know that I'm really sharp on those. I certainly, I think, skimmed those, but I don't -- I

don't know that I have a facile, you know, feel for every -- every word in the document.

Q Any other pleadings that you remember reading in preparation for the deposition other than those?

A I reviewed my own deposition testimony in the Acis -- I think it's Acis versus Dondero matter. I reviewed trial testimony that I'd given, I think, back in 2018. Frankly, I don't recall who the exact parties were to that, but I reviewed those -- those -- those transcripts.

Q Okay. And the deposition you're referring to, that's one that was in the last couple of months?

A I believe it was March -- March, April, February, that -- that time range of '24.

Q Switching topics here a little bit. I just want to go over background very quickly. Where do you currently work?

A Highland Capital Management, LP.

Q Okay. And if I refer to that entity as "Highland" or "Highland Capital" throughout this deposition, you'll know what I'm talking about?

A Yeah. I'll assume if you refer to "Highland" or "Highland Capital," that you're referring to HCMLP or Highland Capital Management, LP. I'll use those interchangeably.

Q Okay. Thank you. Okay. What is your current position there?

A I'm the CFO and COO.

Q And generally, what are your duties and responsibilities as CFO and COO?

A It's -- it's a broad set of responsibilities, but -- but, generally, I have oversight over the accounting function for the -- the entities that are part of what I'll colloquially refer to as the bankruptcy estate. I oversee an accountant that is the internal fund accountant for the funds that we manage.

And then kind of from an operational perspective, just managing certain members of the team and dealing with what I'd call kind of routine operational issues, like, you know, contracts with some of our vendors that -- that we have, and then being -- being a -- a resource for Jim Seery, our -- our CEO.

Q And my next question was going to be, who do you report to as CFO and COO?

A Jim Seery.

Q When did you first start at Highlands?

A March of 2009.

Q Okay. And what was your position at that point?

A Senior valuation analyst.

Q And we'll move forward to sort of the relevant time period here. So, in let's say in October 2016, what was your position then?

A I'm actually not certain. I was either assistant controller or controller.

Q Okay. Is it fair to say at one point you were assistant controller and at some point you became controller at Highlands?

A That's fair.

Q Okay. Can you generally tell me what your duties were as assistant controller and controller to the extent that they differed?

A I -- I would -- I'd characterize those roles as functionally the same. My job didn't change all that much between those two roles. But, at that time, I reported to Frank Waterhouse, who was the -- the then CFO, and similarly, have a focus on the -- the corporate accounting entities, accounting for Highland Capital Management, LP, and certain other entities. I believe, at that time, I was also the -- at that point the head of valuation, so I had a small valuation department that -- that ran up to me.

Q And I think I probably misheard you. When you described Frank Waterhouse, did you say CEO or CFO?

A CFO.

Q Okay. I'm just making sure. I think I misheard. And at some point after October 2016, did your position at Highland eventually change?

A Well, notwithstanding the assistant controller, controller distinction, it -- it next changed in approximately April of 2020 when I became the chief accounting officer.

Q Okay. And how did your duties and responsibilities change at that point?

A That was a larger shift. That was really taking over the fund accounting responsibilities for both the -- what I'll refer to as the institutional funds as well as the retail funds, the 1940 Act registered funds. And taking over oversight of the operations team, maybe another department or two that I'm missing. And that was a -- a shift away from the corporate team. I was still loosely involved. I'd still attend calls occasionally, but my responsibilities shifted, and I wasn't as involved in what I'll refer to as the corporate accounting group.

Q Okay. And at some point in time Highland filed for bankruptcy; is that correct?

A Yes.

Q Do you know the approximate date of that?

A October 15th or 16th of 2019.

Q So, I just want to talk a little bit about the time period, let's say from October 2016 until the filing of the bankruptcy.

A You said '16. Did you mean --

Q Yeah.

A Oh, oh, okay, October of '16 until the filing?

Q Yeah, until the bankruptcy. Just during that time period, can you tell me did you report to Mr. Waterhouse directly during that whole time period?

A Yes.

Q Okay. And during that time period, approximately, how many people reported to you?

A Directly or indirectly?

Q Directly.

A Directly, I believe two, two or three.

Q Who were those two or three people?

A I think it was probably three. But, at -- at -- it would have been Kristin Hendrix, Sean Fox, maybe for part of it, but maybe not the whole -- the whole part. I'm just not sure. And then somebody from the valuation team. I think we might have had a few different bodies in that role. And so, I'm -- I'm not certain who it would have been at that time, but let's just call did a valuation person.

Q Okay. And who is Jim Dondero?

A Jim Dondero is the -- is -- is many things, but he is --

Q Let me rephrase that. During that time period, what was he with respect to Highlands?

A At that time, he was -- I believe he was the president of -- of -- of Highland, and -- and he was the -- the sole owner of Highland's general partner.

Q And that's Strand?

A Yeah, Strand Advisors, Inc., I believe.

Q Okay. Was he also CEO of Highland during that time period?

A I'm not sure.

Q Okay. But, you generally knew him as the president during that time period?

A I don't know that I even knew him as the president, he's -- he was -- he was -- he was the big boss.

Q And I know you told me before that you reported directly to Mr. Waterhouse during that time period. I want to just ask you generally about conversations with Mr. Dondero during that time period. So, did you report directly to Mr. Dondero at all during that time period?

A No.

Q Okay. Fair to say that you had conversations with Mr. Dondero during that time period?

A Fair.

Q Okay. At a high level, tell me what would generally be the reasons that you would talk to Mr. Dondero if you didn't directly report to him?

A The most frequent reason I would talk to Mr. Dondero was with respect to the Highland Select account, which was frequently experiencing margin calls and liquidity issues. So, part of my duties at that time, which I didn't -- didn't delve into earlier, were monitoring that -- that select portfolio. And you know, to the extent that there were margin calls or other events that would require updating Mr. Dondero, I would -- I would make those updates to him directly.

Q How often would you say you talked to Mr. Dondero in this timeframe?

MR. MORRIS: Objection to the form of the question.

A Very hard to say, because it wasn't -- it wasn't a standing weekly meeting or something like that, so I might talk to him, you know, eight times in a week, and then I might not talk to him for three weeks kind of -- kind of thing.

Q (By Mr. Aigen) And you worked in the same office; is that correct?

A That's correct.

Q Changing topics a little bit here. Are you familiar with a company called Acis Capital Management, LP?

A Yes.

Q Okay. And if I refer to that as "Acis," will that work for you?

A That will be fine.

Q Can you tell me what Acis is?

MR. MORRIS: Objection to the form of the question.

A Acis is a -- well, I don't know what it is right now, but --

MR. MORRIS: That's my objection.

Q (By Mr. Aigen) Intentionally vague question.

A Could you just restate that for me?

Q Let's start to the beginning, then. Do you know approximately when Acis was formed?

A Approximately, 2010 or 2011.

Q Do you know why it was formed?

A My understanding is that it was set up really as a compensation vehicle for Josh Terry.

Q Why was a compensation vehicle needed for Josh Terry?

A I don't know.

Q And who is Josh Terry?

A Josh Terry is a former Highland employee. He was -- had various roles, but he was the -- the -- I think of him as the head of structured products for a time, that's Highland's CLO business.

Q Okay.

A And he was a senior -- senior employee, and I believe at some point he was a partner at Highland as well.

Q Okay. And -- and I apologize, but you are the first person I'm deposing in this case, so you have to go through some background questions. You used the term "CLO" before. Can you explain what a CLO is?

A Sure. CLO stands for Collateralized Loan Obligation. It's a investment vehicle where the CLO borrows a significant amount of money. And that borrowing is divided up into several tranches. It uses that money to invest in loans, hence, the name collateralized loan obligation.

And the -- the idea behind a CLO is that those -- those loans that are purchased, are going to be accruing more interest than the -- than the debt that has been borrowed. And -- and as a result, overtime, the -- the debt holders will all be paid back and then there will be a healthy return to the residual equity holders, who also put up money at the outset of the

deal.

Q Okay. What connection, if any, did -- did Acis have with the CLO industry?

A So, Acis was a -- was the -- the named CLO manager. Again, I'm not sure if that's the exact -- might be the portfolio manager, collateral manager, something along those lines. So, Acis would serve as the -- as the manager of those CLOs, making recommendations and purchasing loans on behalf of those CLOs.

Q Okay. And when I originally asked about Acis, I believe the term you used was it was -- it was set up as a compensation vehicle. Can you tell me about how it either turned from a compensation vehicle into a CLO manager or how those two sort of acted together?

A Sure. So, Highland Cap -- Highland, Highland Capital Management, LP, had previously issued CLOs pre-financial crisis. Post financial crisis, it's my understanding that the -- the market for new CLOs was slow to recover. Obviously, this was an area that was hit hard by the crisis. And so, post crisis, new CLOs were going to be launched under the -- the Acis brand. And so, Acis's mandate was to launch new CLOs, and -- and it -- it did that starting around 2013, really with its -- with its first one.

That being said, Acis didn't have employees of its own. So it -- it was really the people of Highland that were providing the services to the CLOs, but there were -- there were contracts in place between Acis and Highland to compensate Highland for the services it was providing with respect to those CLOs.

Q Between the time Acis was formed, and I believe you said 2010, 2011 period, and when it started managing CLOs in 2013, did it do anything?

A It -- yes, it -- there was a CLO that wasn't actually launched by Acis, but it was basically -- I'll be imprecise here. It was essentially acquired by Acis. It was a CLO called Hewett's Island that had been previously managed by another CLO manager. So, Acis stepped in to the management shoes of -- as the portfolio manager for that CLO, and then it launched its first -- Acis launched its first CLO in 2013.

Q When Acis was first formed, are you aware of who owned it?

A Generally, yes.

Q Who?

A I would refer to the limited partnership agreement from that time, but I believe the founding partner group was -- was the Dugaboy Investment Trust, Mark Okada, in his individual capacity, and Josh Terry.

Q Do you know whether the ownership of Acis ever changed?
A I believe it did.
Q Okay. And at some point Acis was in bankruptcy; is that correct?
A Yes.
Q Okay. For now I just want to talk about pre-bankruptcy.
A Sure.
Q So, prior to the bankruptcy, can you tell me if you have any knowledge of how the ownership structure of Acis changed?
A The only change I'm aware of -- and I don't honestly know the -- whether it was effective or exactly what happened in the -- in the time period. But, after Josh Terry terminated at Highland, the -- he -- he was dropped as -- from the founding partner group of Acis. So, you know, the -- the ownership of Acis became just Dugaboy -- the Dugaboy Investment Trust and -- and Mark Okada.
Q Okay. And prior to the Acis bankruptcy, you're not aware of any other changes to the Acis ownership structure; is that correct?
A None that I can think of.
Q What's your understanding as to who controlled

Acis prior to the Acis bankruptcy?

A Jim Dondero.

Q And what was his connection to Acis?

A He was -- I'm not -- I'm not -- I'm not certain from a legal perspective.

Q Do you know whether he had any formal relationship or connection to Acis?

A I -- I believe he did. I -- I believe he was an officer of Acis's general partner.

Q And my next question was going to be, do you know who any of the officers of Acis were prior to the bankruptcy?

A Prior to the bankruptcy, I know there were officers of the general partner. I know Jim Dondero was one of those. I believe Frank Waterhouse was another. After that, I'm not sure.

Q Okay. To your understanding, though, that from the formation of Acis, at least until the Acis bankruptcy, that Acis was controlled by Mr. Dondero; is that correct?

A Yes.

Q Is there anyone else that controlled Acis, other than Mr. Dondero during that time period?

A I would -- I think you could argue that in some ways Josh Terry controlled from the standpoint that he

was the portfolio manager of various Acis deals. I mean, ultimately, the buck stopped with Jim Dondero, but he did -- Josh Terry exercised I -- I suppose a modicum of control.

Q Was he an officer of Acis?

A I believe he was, but I'm not certain.

Q Okay.

A Don't know.

Q And you said -- I apologize if I'm misquoting you here. But, that it was set up as a compensation vehicle for Mr. Terry. Is that unusual to have a whole entity set up as a compensation vehicle for one individual in Highlands?

A No, not entirely.

Q Okay. Can you just give me a little context as to why a compensation vehicle was set up for Mr. Terry?

MR. MORRIS: Objection to the form of the question.

A I believe it was set up to effectively incentivize him to -- to grow the CLO business and -- and launch new CLOs. So, there was -- there -- there would be a relationship between his ability to get CLOs launched and how much he would get paid, you know, via -- via his partnership interest.

Q (By Mr. Aigen) Okay. Narrow down the timeframe

here a little bit. I just want to talk about the -- I guess what we would say the relevant time period to this case, starting October 2016, let's say until the Highland bankruptcy in 2019. What was Highland's relationship with Acis?

MR. MORRIS: Objection to the form of the question. You can answer.

A As a -- Highland was a contractual counter-party to shared services and sub-advisory agreements. Highland made one or more loans to Acis during that time period. And Highland had a, you know, relationship via the participation agreement and note from October of 2016.

Q (By Mr. Aigen) Okay. Did Highland ever have any ownership interest in Acis?

A No.

Q Okay. And two of the agreements you mentioned before, a shared service agreement and a sub-advisory agreement, let's talk about the shared services agreement first. Can you tell me just generally what the purpose of the shared service agreement was between Highland and Acis?

A Yes. Generally, shared services agreement is for provision of back and middle office services. So, that's things like accounting, tax, IT, kind of behind

the scenes type -- type roles that are, you know, nevertheless integral to -- to an investment advisor.

Q And then the sub-advisory agreement, what's the purpose of the sub-advisory agreement between Highland and Acis?

A So, that is for the provision of what I would colloquially refer to as front office services, so investment advice.

Q And you mentioned before -- sorry. When I asked you about the relationship, you mentioned that it was a lender and then you also mentioned the note that we're going to discuss today that's at issue here. And we'll get into the note that's at issue in this litigation. But, other than that note, are you aware of any other loans or lending relationship between Highland and Acis?

A I'm -- I'm certain that Highland loaned Acis funds in April of 2017.

Q And that was pursuant to a written note; is that correct?

A I'm not certain, but I believe it was a promissory note.

Q Other than that promissory note, are you aware of any other loans, other than that note and the one at issue in this case?

A None that I can think of off the top of my head, but not precluding the possibility that one could have existed.

Q And I don't need to get into details on it. But, do you know generally why the loan was made from Highland to Acis in April of 2017?

A Yes, it was made to Acis to enable Acis to be able to effectively seed or provide equity capital to launch a CLO that was called -- again, I'm going -- I'm going to butcher the name, but Acis 2017-7.

Q Okay. And is that generally referred to as Acis 7?

A Yes.

Q And did Acis ever have any employees?

A No. Let me clarify that. It -- it may have nominally had dual employees like that technically were a dual employee of Acis and Highland. But, in terms of who paid their paycheck, it was always Highland.

Q And were these employees of Highland that did work for Acis? Was that work done through the two agreements you discussed before, the shared services agreement and the sub-advisory agreement?

A Sorry. Can you just repeat that again? I just -- I kind of missed it.

Q So, Highland was providing employees to do work

for Acis; is that correct?

A Yes.

Q And I assume at least some of those employees were doing that work as part of the shared services agreement and the sub-advisory agreement; is that correct?

MR. MORRIS: Objection to the form of the question.

A Yes. But, with the qualifier that -- I don't know how many people at Highland even knew of the existence of shared services and sub-advisory, so people were doing what their direct report asked them to do. So, I don't know that people were caught up in the distinction of is this a Highland thing or is this an Acis thing. They're -- people are just doing their jobs.

Q (By Mr. Aigen) Fair enough. Do you have an understanding as to whether all the work that Highland employees were doing for Acis, was that pursuant to those two agreements or was there work outside of those two agreements?

A I -- I just don't know.

Q Okay. Approximately, how many employees of Highland did work for Acis?

MR. MORRIS: Objection to the form of the

question.

A I don't know that I could answer that. It's -- it's too -- it's -- it's too squishy. When you say "work for Acis," it's -- I think under the broadest definition, it could be a huge number. And on a very narrow definition, it could be a small number.

Q (By Mr. Aigen) Okay. Let's start with a narrow definition, or I'll try to narrow or define it a bit. How many employees of Highland did what you would term significant work for Acis?

MR. MORRIS: Objection to the form of the question.

A Could you clarify time period?

Q (By Mr. Aigen) And I'll be able to rephrase that. Again, I'm -- I'm talking about -- let's talk about the -- the -- the period from October 2016 on to the Highland bankruptcy. Can you tell me who the -- what Highland employees did the most work for Acis?

A The -- the type of employees that did the most work were the -- the credit research team at Highland, which I would guess was somewhere between -- I'm setting a wide goal post here, but probably between five and 20 people. The structured products team, which is a smaller team consisting of, call it, two to four people, that was really the thrust of the investment side of the

equation.

On the back office side, you could have as many as -- you could probably argue as many as 30 or 40 people spending some time. I don't think you would have people spending the majority of their time, maybe some of the operations people that are just closing, settling loans. But, it would really -- it would be -- it's a really hard question to answer on the back office side, because -- because they're -- they're providing services to a large number of entities in the complex and this is one of many.

Q Okay. Would you say Mr. Terry did the majority of his work with respect to Acis during this time period?

A I would say probably the majority, not -- not the entirety.

Q Yeah. Is there anyone else at Highland that you think during that time period was spending the majority of their time with respect to Acis work?

A I would say Hunter Covitz, and then I don't recall the exact time period when -- when people would come and go. But, there were -- there was at least one other person at various times in that structured products group that was in my opinion probably mostly focused on Acis.

Q And that structured product team that you said there were two to four people in, does that include Mr. Covitz an Mr. Terry?

A Yes.

Q And who else had worked on that team?

A I don't know the -- the exact time period. It's hard to remember when people were coming and going, but there was -- there was an individual named Alexey Dronov who worked on that team.

Q Can you spell the last name?

A It's D -- excuse me, D R O N O V, I believe, Russian. And then there was an individual named Neil Desai, D E S A I. Those are the two that stand out to me. Oh, you know, there was another individual named David Owens.

Q Can you generally explain how Acis made money?

A Acis made money pursuant to -- again, using the term loosely, management agreements with -- with the CLOs, so it would provide the advisory services to the CLO and collect a fee pursuant to portfolio management agreements and the indentures of the applicable CLOs.

Q Okay. Other than collecting management fees from CLOs, did Acis make any money in any other way that you're aware of?

A It -- Acis also managed -- it -- it generated

most of its revenue via CLOs. It was also the manager of a small hedge fund. It was also the manager of a -- a separate account, at least one separate account, where the strategy was -- was basically trading CLO paper -- third-party CLO paper for -- for an investor who -- that was the mandate.

Q Do you have an approximate amount or percentage as to what the revenue for Acis was for these non-CLO type businesses?

A Certainly less than half. I would -- hard to say, it's going to ebb and flow with time a little bit, but I would -- I would venture to guess probably somewhere in the 10 to 25 percent range.

Q And I'll narrow down the timeframe as needed. But, generally, how much money did -- how much revenue did Acis make a year?

A I need you to narrow down the time period, because it was -- that was a changing number.

Q Okay. You said it started -- well, when did it start bringing in revenue, 2013?

A No, it started earning revenue in, I believe, 2011. It might have been 2010 with that -- with that Hewett's Island CLO.

Q Between 2010 and 2016, just generally at a high level, can you tell me how much revenue Acis was making?

A It would have ramped from somewhere in the hundred thousand or hundreds of thousands range, all the way up to 2016, north of $10 million. I don't know that that -- I don't know that that was a straight stair-step, but that's -- that's where it ended up. And it would have been more than 10 -- more than 10, less than 20.

Q Okay. Narrowing down the time period a little, let's talk again from what I'll call sort of the relevant time period for today, from October 2016 until the Acis bankruptcy in January of 2018. Roughly, what revenues was Acis bringing in during that time period?

A Sorry. Can you give me the start?

Q And just to put it into context, we'll get into the relevant agreements that you talked about earlier. But, you're aware that one of the issues in this case are a promissory note that was entered into October of 2016. Does that sound right?

A Yes.

Q So, I'm using that as sort of the start to the relevant timeframe today.

A Okay.

Q So, around that timeframe, October 2016 to the Acis bankruptcy, can you tell me what sort of revenues Acis was making?

A I don't know with specificity. But, in that timeframe, it would have been -- I would -- I believe it was somewhere in the 10 to $15 million range, annualized.

Q Do you have any understanding as to when that money came into Acis? Was it then -- what was done with it? Was it distributed to owners, used for expenses?

MR. MORRIS: Objection to the form of the question.

A From October of '16 to 2018, the -- the three main uses of funds that it received would have been paying Highland -- Highland Capital Management, LP, sub-advisory fees, paying Highland Capital Management, LP, shared services fees, and making payments pursuant to the -- I'll call it the participation agreement from October of 2016. There would have been other uses, but those would be -- I -- I would expect that those would be the three biggest buckets.

Q (By Mr. Aigen) And I don't think I asked you this. But, generally, what was your role with respect to Acis in, let's say, the October '16 through 2018 timeframe?

MR. MORRIS: Objection to the form of the question.

A So, at that time -- again, whether I was the

assistant controller or the controller, notwithstanding, there were a number of affiliate advisors that my group did the accounting for. So, my group, being Kristin Hendrix, who reported directly to me, and then, you know, more of a junior accountant and an AP person. And those individuals would, you know, support us -- a large swath of different entities, Acis being one of those, and that -- that group, you know, rolled up to me who rolled up to Frank. And so, you know, I would be involved in, you know, basically overseeing Kristin and her team's work and closing -- you know, closing financials and -- and doing the accounting for those entities tease.

Q (By Mr. Aigen) And at some point Acis was filed into bankruptcy; is that correct?

A That's correct. You know, the mechanics of how it was filed, but Acis was -- was in bankruptcy at some point, yes.

Q Do you know why it was put into bankruptcy?

A I believe there was an involuntary, you know, petition by Mr. Terry in late January of 2018.

Q Did you have any knowledge that Acis would be filed into bankruptcy prior to the actual filing?

A No.

Q It's not anything that you discussed with

anyone prior to the bankruptcy?

A Not that I remember.

Q So, you just discussed with me sort of your role with respect to Acis. Once Acis was filed into bankruptcy, is it fair to say that your role changed with respect to Acis?

A In some ways, yes, and in some ways, no.

Q During that period, once Acis was in bankruptcy, can you generally describe for me what role you had, if any, with respect to Acis?

A Well, for one, I was -- I was, I guess, called on to assist in the preparation of things like SOFAs and schedules and -- basically, I had a lot more touch points with legal than I've had previously had. So, when there were questions, I -- I don't know that I necessarily had a great picture of what was going on. But, when -- but, I was getting a lot more, you know, questions and giving more assistance to our legal department, who was coming to me with -- with -- with questions, that would have been I'd say the biggest change.

Q And in October of 2019, Highland filed for bankruptcy; is that correct?

A Yes.

Q Okay. So, I want to generally just ask you

about the time period. After the Highland bankruptcy, can you just tell me generally what work you did with respect to Acis?

A With respect to Acis, after 2019, after Highland filed?

Q Uh-huh.

A I didn't do any work for Acis. Acis was under different control.

Q If I said "for Acis," I apologize. I meant related to Acis.

A Related to Acis, okay. Related to Acis, I -- I don't really remember. I'm -- I'm sure I might have gotten inquiries from legal from time to time, but fairly minimal.

Q Okay.

MR. MORRIS: What's that airport out there?

MR. AIGEN: Love.

THE WITNESS: Love Field.

A And I should -- should clarify that I've been -- I was called as a witness in a 30(b)(6) witness in the Acis versus -- I think it's Acis versus Dondero, litigation that seems to be going on. And so, again, that seems to be a touch point that comes up from time to time. The specifics of which I -- it's just too much

of a blur.

Q (By Mr. Aigen) Okay. And let me -- so, you did some work with respect to the Acis verse Dondero lawsuit that you just talked about, and you've done some work related to the claims at issue today.

A Yes.

Q Related -- and that relates to Acis to some degree; is that correct?

A Yes.

Q Other than that, since the Highland bankruptcy, do you have any recollection of doing any other work related to Acis?

A The only other thing I can think of off the top of my head, and maybe I've done other things, but it would be kind of ministerial type work. I know there have been -- there have been exceptionally minor questions that have come up in one capacity or another that -- I couldn't get -- I couldn't tell you the specifics, other than that they're not consequential.

Q A couple of follow-up questions on the -- the two agreements we talked about before, the shared service agreement and the sub-advisory agreement. Let's start with the shared services agreement. Were you involved at all with the negotiation or execution of that agreement?

A I -- well --

MR. MORRIS: Objection to the form of the question.

A That -- the shared services agreement had several amendments. So, which -- which agreement are we talking about?

Q (By Mr. Aigen) The original one.

A I -- I don't recall having any involvement in that one.

Q Do you recall having any involvement with any of the amendments or restatements of the shared services agreement?

A Not significant involvement. I might have -- I might have reviewed them prior to execution, but certainly not involved in the negotiation or the terms.

Q Who would have been involved with that, with respect to the original shared services agreement?

MR. MORRIS: Objection to the form of the question.

A I -- I have no personal knowledge, but I would assume it would be some combination of Mr. Dondero, Mr. Terry and Mr. Okada.

Q (By Mr. Aigen) Okay. And what about for the restatements or amendments of that agreement, same people?

A Same answer. And again, I don't have any specific recollection or -- of that.

Q Okay. Okay. And with respect to the sub-advisory agreement, did you have any role with respect to the negotiation of that agreement?

A Same answer.

Q Okay. And were the same people involved with that one?

A Yes, I -- I assume. Again, I don't -- I don't know, but I -- I assume so.

(Exhibit 1 marked.)

MR. AIGEN: We can cover that up. It will just get confusing later.

Q (By Mr. Aigen) I've handed you what's been marked as Exhibit 1. You can flip through that. And my first question is going to be hopefully an easy one, just do you recognize this document?

A I believe so.

Q Okay. Can you identify this document for the record, please?

A This -- this appears to be the Agreement for Purchase and Sale of CLO Participation Interests, whereby, you know, Acis sold a stream of fees in exchange for cash on the note.

Q Okay. And is this the agreement you referred

to before when you said you were going to sort of mess up the name?

A I don't know, maybe, maybe.

Q That's all right. If you turn to -- toward the back, I guess the second to the last page, there's a couple of signatures on that. Do you recognize those signatures?

A Just so we're clear, I'm at the bottom. I'm on R018138?

Q Correct.

A Okay. Yeah, I recognize those signatures.

Q Whose signatures are those?

A That's Jim Dondero's.

Q Okay. And when I asked you if you recognized this, it sounded like you weren't completely sure, and I -- so, I just want to pin this down. Was this one of the agreements that you reviewed in preparation for the deposition?

A Yes.

Q Okay. And I know you didn't read through this word for word. But, is there some reason you might be hesitant about whether this is the same document?

A No, no particular reason.

Q Okay. If you look at the top of the first -- well, actually let me ask you a different question. It

does have this rather cumbersome name here. Do you have a certain term or a certain name for this document that you usually use? I want to make sure we are using the same terminology here.

A I would probably most often refer to this as the participation agreement.

Q I will try to use that term. Is it your understanding that the participation agreement was entered on or about October 7th, 2017?

A Yes.

Q Okay. And are you familiar with this agreement?

A Generally familiar.

Q Okay. And I know you said you reviewed it in preparation for this deposition. Had you seen it before that?

A Yes.

Q Okay. Would you have seen it on or about October 7th, 2016 or in that timeframe?

A Yes. Yeah, on or around that time.

Q Or, you're familiar with this document in 2016 and 2017?

A Generally, yeah.

Q Okay. And I know you touched on this, so I apologize for asking again. But, what was the purpose

of this document?

A So, this -- this document -- the purpose of it was for Acis to take effectively a portion of their revenue and give it to Highland, for lack of a better word. And in consideration, Acis was going to receive up front cash as well as a note.

Q And how much was the up front cash? And let me -- I don't want to make this a guessing game for you. Let's point -- go to Page 2 and look at the bottom, that may help a little bit. And let me ask you --

A Yep. Yes. So, the up-front cash for -- for all of the -- for all of the religious folks out there, sorry, but the -- the original up front cash was 666,655.

Q And the note you referenced before, was that in the 12,666,446 amount referenced right below that?

A Yes, that's -- that's the -- the original face of the note. Should have known we'd been -- we'd -- we'd be here later with all those sixes.

Q Do you have any understanding as to who negotiated this agreement?

MR. MORRIS: Objection to the form of the question.

A I -- I don't know whether this was really negotiated in the first place.

Q (By Mr. Aigen) Okay. Can you -- let's take a step back then. Can you give me the context as to how this agreement was entered into? Whose idea it was?

MR. MORRIS: Objection to the form of the question.

A I believe the idea for this agreement originated with an individual named Mark Patrick, who was a tax -- tax attorney. This was a transaction that I think he had been kicking for awhile. And you know, I think he was the main -- main driver in terms of being able to sell Jim Dondero on the benefits of entering into the transaction.

Q (By Mr. Aigen) Do you recall whether you had any conversations with Mr. Patrick at or around the time this agreement was entered into?

A I'm sure I did.

Q Okay. So, if I ask you what your basis was, that it was Mr. Patrick who came up with this idea, it would be through firsthand experience you had in conversations with Mr. Patrick?

A Firsthand experience as well as, you know, review of some of our document production.

Q If the agreement was entered into -- the date on it is October 7th, 2016. Do you have any idea how long before that, the idea for this agreement first came

up?

A I think the idea for this agreement was probably first quarter of 2016, not certain, but --

Q Okay. So, during that time period, I want to talk a little bit about the idea when it first came up, which I know you're not certain, but let's say first quarter of 2016 until the time the agreement was entered into, can you tell me generally who worked on the preparation of this agreement?

MR. MORRIS: Objection to the form of the question.

A I don't know how much work was done from -- first of all, I don't know when the idea popped into someone's head, so it's hard to put a start date on that. But, in terms of the -- what I would call the -- the -- the harder work or the -- the work to bring it to fruition, it would have been in the August -- maybe as early as August, September and early October timeframe would have been the lion share of the work.

Q (By Mr. Aigen) And who was working on it at that time period?

A Mainly, Mark Patrick, outside counsel, which I believe was Hunton & Williams, and I don't know the extent to which the Highland legal team might have been involved in drafting. They may have, I'm not certain.

And then I would have been involved from the standpoint of kind of putting together some of the numbers in the back.

Q You say "in the back," are you referring to Schedule A?

A No, no, and thank you for clarifying that.

Q Let me ask you a different question, maybe get into this. What work did you do related to this agreement prior to it be being entered into?

A So, yes -- so -- so, I had an understanding that -- of the basic mechanic transaction, which was going to be a portion of the fees in exchange for cash and a note. So, that the main exercise that -- that I did was reach out to -- I think it was Hunter Covitz. I'm not certain, but I believe it was Hunter Covitz, with respect to a projection of the fees that would be coming off of the various Acis CLOs over a discreet period of time. And then compiling that information and, you know, assessing how much -- how much cash we were expecting to come in during that time on those fees.

Q Okay. This agreement where -- to use your words, it was an exchange of fees in exchange for a note, is that a structure type of agreement that Highland had done with other companies prior to this

timeframe?

A Hard -- hard to answer. The notion of seller financing, which is effectively what this -- what this was, was certainly something I had seen from time to time. I don't know if I'd seen it exactly like this. But, the idea of, you know, cash -- cash plus a note in exchange for something, I'd seen that before.

Q Let me narrow it down a little bit. You said that the purpose of this was more Mark Patrick was doing it for some sort of tax reason; is that correct?

A That's my understanding.

Q If I narrow down the previous question to have you seen another situation where Highland for tax reasons created a similar structure, did that happen?

A Yes.

Q At a high level, tell me about that.

A There was a similar -- a very similar transaction to -- to this one. I don't know the time period. It was -- that was a long time ago, maybe 2012, 2013, 2014-ish, where similar -- similar structure but with Highland as the seller, and with an entity owner -- I'm not sure if it was owned or controlled, but an entity related to Mark Okada as the buyer.

Q Do you remember the name of that entity?

A I'm not certain.

Q Did you do any work related to that transaction?

A Similar. Getting a -- getting a fee projection from the CLO team and putting it into a spreadsheet.

Q This was also related to a CLO?

A Many CLOs, but these were CLOs that were managed by Highland.

Q And I don't really need to get into that transaction. But, can you just tell me what happened with it? Was the note eventually paid off or --

A Yeah, that -- that transaction was -- I don't know how to put it other than it kind of went the way that it was expected to go, which Highland -- Highland earned fees, turn the fees over, Okada had -- or Okada's entity had notes that it needed to pay, paid the notes with interest and, you know, everyone moved on.

Q Okay. Do you know approximately when everyone moved -- what year we're talking about?

A I'm not sure.

Q After October 2016?

A No, no, before, that transaction was -- was prior to this one.

Q Okay. You mentioned Hunton Williams before. Do you remember which lawyers there provided tax advice related to this transaction?

A The one that I recall specifically was Alex McGeoch. I don't know how to say his last name.

Q Do you know how to spell it?

A McGeoch, I think it's M C capital G E O C H.

Q We'll refer to him as "Alex" for purposes of today.

A Sounds good.

MR. MORRIS: You can find it on page --

MR. AIGEN: Oh, yeah, that's right.

MR. MORRIS: -- ending in Bates No. 18134, it's capital M, lower case C, capital G, E O C H.

Q (By Mr. Aigen) And for the record, the witness spelled it correctly.

A Get a lollipop.

Q Are you aware of any other lawyers, other than Alex, that provided tax advice on this transaction?

A Not specifically, but I'm sure he had help on that transaction.

Q Did you have conversations with any of the Hunton lawyers related to this transaction?

A I may have, but I'm not certain.

Q Okay. You have no recollection of any conversations with Hunton lawyers regarding this transaction?

A Not specifically, no.

Q Okay. Would Mr. Patrick have conferred with the tax lawyers at Hunton regarding this transaction?

A Yes, I think he would have been the primary point of contact.

Q Okay. Anyone else at Highland that you can think of that would have been talking with the Hunton lawyers?

A It's speculation, but potentially someone from the legal team at Highland, you know, looking at the document.

Q Okay. I was going to make an -- an assumption, but let me just ask the question. Are you -- do you consider yourself to be an expert on taxes?

A No, no, no, I don't.

Q All right. I recognize that you're not telling me you're expert on taxes. But, at a high level, do you have an understanding as to what the potential tax benefits were that they were trying to get as a result of this transaction?

A Yes, I have a general understanding.

Q Okay. Give me your general understanding as to what the tax benefits were that the parties were trying to achieve from this transaction.

A So, the -- the tax benefits wouldn't accrue to the parties themselves, because the parties themselves

are pass-throughs, but it would -- it would accrue to their -- you know, someone up the ownership chain. But, the -- the -- the transaction was really a ordinary to capital gain treatment, and so basically turning fees that are ordinary income taxed at the -- at the ordinary rate, which at the time would have been, I think, high 30s percent, not certain if that's exactly right. And converting that to capital gain treatment, which at the time would have been low 20s percent.

Q Okay. And do you happen to have any understanding as to how it converted ordinary to capital gains?

A A very general understanding.

Q Give me your high level general understanding.

A So, basically turning -- turning the fee stream into almost a capital asset that can be bought or sold. And so, the -- with the sale of proceeds, not really having any basis in the -- like tax basis in the -- in the fees, but being able to sell a future fee stream for a dollar amount. And then as you receive the proceeds from that sale, treating it as a capital asset that will get capital gain treatment for tax purposes.

Q Okay. Did you specifically at that time have an understanding that this would provide a better tax treatment, or were you relying on other people to

provide those sort of conclusions?

A That's what I -- that's what I heard, that's what I understood. I don't know that I independently knew that, but that's -- that's certainly my -- was my understanding at the time.

Q Okay. And when you mentioned before that the tax benefit would flow to the owners, were we talking about -- well, let me take a step back.

Who are the parties to this Exhibit 1 participation agreement?

A The parties are Acis Capital Management, LP, as seller, and Highland Capital Management, LP, as purchaser.

Q Okay. So, when you stated before that the tax benefits would flow to the owners, were you talking about the owners of Acis, Highland or both?

A This was targeted for the owners of Acis.

Q Okay. Let me try to get the other side out of the way then. Are you aware of any tax benefits that were intended to Highland or its owners as a result of the transactional in Exhibit 1?

A Not specifically, no.

Q Okay. So, with respect to the benefits to Acis or the intended benefits as a result of this agreement, it's fair to say that that tax benefit was supposed to

go to Acis's owners, not Acis itself?

A Maybe splitting hairs a little bit. The -- the -- the capital gain would be recorded at -- at Acis Capital Management and then passed through to its owners.

Q Okay. And at the time this was entered into, who do you believe the owners were of Acis that would be potentially receiving this tax benefit?

A It would have been Dugaboy and Okada. And I should clarify, I believe that was the intent. I don't know if that's actually what happened, but I -- I believe that was the intent.

Q Well, let's close out on that then. Are you aware of whether any of these intended tax benefits were actually received?

A I believe they were with respect to tax year 2016. After that point, I -- I don't know.

Q Is there any particular reason why you knew for 2016 but not after that period?

A Yes.

Q Why?

A Because I've -- I've had a chance to review the tax return for Acis for 2016 and see that they took the treatment that I expected them to take. And then after that point, for 2017 and 2018, I just don't have access

to that information.

Q When did you review these tax documents?

A At some point in preparation for either producing materials or my own deposition, however you want to --

Q Within the last six months?

A Yes.

Q Okay. Do you know whether those tax documents were produced in this case?

A I believe they were.

Q Okay. Do you know why you didn't review the '17 and '18 tax returns?

A Because Highland wasn't in control of Acis anymore.

Q Do you know whether those tax documents exist?

A I don't know. I presume they do.

Q Prior to Exhibit 1 being entered into, can you tell me who you had conversations with about the potential tax benefits related to the agreement?

A I don't have a specific recollection. My -- my assumption would -- would have been that it would have been Mark Patrick and Frank.

Q Okay. You don't remember having any conversations with Dondero about tax benefits with respect to this transaction prior to it being entered

into?

A Not specifically, it's possible that I did, but I don't -- I don't have a recollection.

Q And when I asked those questions, I was asking about prior to the agreement. Let me just ask to sort of finish that line of questioning. After the agreement when Exhibit 1 was entered into, did you have any discussions with anyone about the intended tax benefits of this transaction?

A And what's the time period?

Q Let's go from 2016 until Highland stopped having any control of Acis.

A So, to put a finer point on that, Highland didn't have any control over Acis at some point in 2018, middle -- middle part of 2018. I'm sure -- actually, I'm not sure. I -- it's -- it's very possible that I would have had discussions with people that were part of the Acis, Terry litigation team, people from our -- our -- Highland's internal legal and litigation team, very possible. I don't have a specific recollection of it, though.

Q Okay. Have you ever had any conversations about the tax benefits of this transaction with Mr. Dondero?

A It's possible, but I don't have a recollection.

Q Okay. When I asked you who you talked to about the tax benefits, you told me Mr. Patrick and Mr. Waterhouse. So, at a high level, can you generally tell me what conversation you had with them about the tax benefits of this transaction?

A No, because I don't remember the specifics of that -- that conversation or those conversations. I just -- and I don't know that I had them, but I presume that I did.

Q Okay. Well, why do you presume that you did?

A Well, for -- for one, with -- with Mr. Patrick, that -- there certainly would have been a conversation in order to, you know, model the cash flows with -- you know, requesting the cash flows from Hunter Covitz. So, someone would have had to have told me to do that. And then Frank was my boss at the time, so I'm -- I'm certain I would have at the very least kept him in the loop on something like that, or -- or alternatively, just it would have come up in natural discussion.

Q Prior to the agreement being entered into, do you know whether you had any conversations with anyone about whether -- in order for the tax benefits to be obtained, the payments on the note needed to be de-linked from the payments of the fees?

A Not a specific recollection.

Q And you say not specific, so following up on that, generally, do you remember discussing that with anyone prior to the transaction?

A I -- I always -- my impression was always that they were -- that they were linked. This is a very circular transaction happening over a three-year period where money was going to slosh from one side to the other, back to the other and so forth. And at the end, there wasn't really going to be anything -- there -- there's -- the pie has not been made bigger or smaller from this transaction, but there have been created tax benefits. So, I -- I -- I think I had that understanding.

Q And I know you used the word "linked" after I did, but I want to make sure we're kind of using the same terminology. When you say that your understanding was that the payments would be linked, what do you mean by that?

A That the consideration for the fees was -- was the note, and the consideration for the note was the fees. So, if, you know, Acis had obligation to turnover the fees, Highland -- and if -- and if that was -- and if that was completed, then Highland would be paying on the note. And so, they were -- I don't know how to use a word other than "linked." They were always linked in

my mind.

It's just a -- it's just a timing issue, really, because you have -- you have one that's paying four times a year versus another that's paying one time a year. And other than that, it's really just money kind of switching bank accounts.

Q Okay. So, prior to the transaction being entered -- entered into, you never had any conversations with anyone about the fact that the payments needed to be de-linked in order to get the tax incentives or advantages; is that correct?

A I -- I don't have any recollection of that.

Q Okay. And I asked you about prior to the agreement. Since the agreement was entered into, are you -- did you ever have any conversations with anyone about the idea that the payments needed to be de-linked in order to obtain tax advantages?

A It's possible, but I don't remember.

Q Okay. You stated before that you had an understanding that the payments were linked; is that correct?

A Yes.

Q Okay. Other than the words in the agreement, is that understanding coming from anywhere else?

A I -- I suppose intuition or just -- it's kind

of -- it's kind of obvious on its face that no one entered into this if they didn't have certainty that the other party is going to perform.

Q So, you never had any conversations with anyone about whether the payments needed to be linked or de-linked in order to obtain tax advantages?

A I don't have a specific recollection.

Q And again, just to follow-up, you said "specific." Generally, do you remember having any conversations on that topic?

A I -- I don't -- no, I don't recall any. But -- but, I wouldn't foreclose on the possibility that I did, you know.

Q And I know you're not a tax expert. But, sitting here today, do you have an understanding as to whether the payments needed to be linked or de-linked in order to obtain a tax advantage?

A I don't have a, I suppose, an expert opinion. I have, again, an intuition that they don't -- or that they -- that they don't need to be.

Q That's your --

A I -- I might have said that -- that wrong. I -- I -- I should stop talking.

Q Let -- let me try to rephrase that.

A Yeah.

Q Is it your understanding that the payments did not need to be de-linked in order to obtain the intended tax advantages of this plan?

A Sorry, I -- that was like a triple negative. I --

Q Sorry. Is it your understanding that the payments did not need to be linked in order to obtain the tax advantages that were intended by this plan?

A I don't know that I had a specific understanding of the -- the tax treatment.

Q And that's all I'm trying to get at is whether you have any understanding on that, do you?

MR. MORRIS: Objection to the form of the question.

Q (By Mr. Aigen) Let me rephrase. Let me rephrase. At the time the transaction was entered into, do you believe that you had an understanding as to whether the payments needed to be linked or de-linked to achieve the tax advantages?

A I'm not sure.

Q Okay. Sitting here today, do you have an understanding as to whether the payments needed to be linked or de-linked to achieve the tax advantages?

A Yeah, I don't know that I have a great understanding.

Q Okay. And again, you said not "a great understanding," do you have any understanding?

A We're -- we're -- we're kind of splitting hairs, I -- I -- no.

Q Okay. And I don't want to get into conversations you had with counsel here today. But, other than conversations with counsel, do you remember having any conversations with anyone about whether the payments needed to be de-linked or linked in order to obtain tax advantages?

A I don't think so.

Q Okay. If Mr. Waterhouse testified yesterday that he was involved with discussions with Mr. Dondero about the de-linking or linking topic, would you have any reason to agree or disagree that those conversations occurred?

A I don't have any personal knowledge to know whether they did or did not.

Q Okay. Fair to say, you weren't involved in any of those discussions; is that correct?

A Most likely, but it's possible. I -- I don't know.

Q You can finish. Sorry.

A No, that was it.

Q And you don't remember anyone telling you about

any conversations that Mr. Dondero had with respect to whether payments needed to be linked or de-linked; is that correct?

A No, no specific recollection.

Q And I know you touched on this, but going back to the agreement, what's your understanding as to what obligations Acis had under the agreement?

A My basic understanding -- and then I would certainly, you know, refer back to the document, that's -- that's going to be the -- the -- the real answer. But, my understanding was that in a very general sense, they had the obligation to turnover the fees as they were -- as described in the agreement. So, when they received fees, you -- you turnover whatever you're supposed to turnover.

Q Okay. And when you say "fees," what type of fees are you talking about?

A Management fee -- management fees, I think they're referred to as servicing fees. I'm kind of using those interchangeably, but fee revenue that's being earned from the subject CLOs.

Q Yeah.

A And a portion of it -- it wasn't the entire -- the entire fee but a portion of each of those fees.

Q And the -- the portion that was supposed to be

turned over is reflected on Schedule A; is that correct?

A Yes.

Q Okay. And again, this is just a terminology question. I have seen fees referred to as servicing fees and management fees, which term do you like to use?

A I -- I use them interchangeably.

Q Okay. And at a high level, what obligations did Highland have under the participation agreement?

A I'm not certain, aside from whatever is in the document.

Q Okay. Is it your understanding that Highland had to make payments under the agreement?

A I -- I'm -- I'm not certain if that's -- I know that the note is a -- is its own document, so I'm not sure -- I'm not sure.

Q Okay. If we turn to the purchase price, the paragraph we looked at before in Section 1.1 that describes an initial payment and the note; do you see that in there?

A We're looking at Section 1.1?

Q Correct.

A Yep, I see that.

Q Okay. Other than the payment and the note referenced in here, are you -- do you have an understanding that Highland had any other obligations

under this agreement?

A None specifically, but I refer back to the document.

Q Okay. Is it your understanding that Acis performed all of its obligation under the participation agreement?

MR. MORRIS: Objection to the form of the question.

A No, that's not my understanding.

Q (By Mr. Aigen) Okay. So, there are certain things that you believe Acis was required to do under the participation agreement, but it did not do; is that correct?

A That's correct.

Q Okay. We'll get into that in a second. But, let me ask about Highlands. Do you believe that Highland was required to do anything under this agreement that it didn't do?

A I'm not sure.

Q Okay. Tell me, generally, what was Acis required to do under this agreement that it did not do?

MR. MORRIS: Objection to the form of the question.

A Like I said, the -- the document should speak for itself, and I wouldn't -- I wouldn't venture to say

that this is an all encompassing list. But, the -- the fact -- the fact of the matter is Acis turned over the fees from end of 2016 until end of 2017. And then after that point, it didn't, notwithstanding that there were -- there were fees, you know, in 2018 and 2019, the -- the fee stream I believe went to August of 2019.

Q (By Mr. Aigen) And when you say "fees," you're talking about the management or servicing fees we referenced before?

A The portion -- yeah, the portion that they were to turnover.

Q What's your understanding as to what management or servicing fees Acis received but didn't turnover to Highland as required by the agreement?

A Everything after November 1st, 2017, 1st or 2nd.

Q When you say "November 1st, 2017," you're talking about fees that were received by Acis after November 1st, 2017; is that correct?

A Can you just clarify that?

Q Well, let me ask you. When you said "November 1st, 2017," what are you referring to?

A What I'm referring to is on November 1st, 2017 Acis received fees from various CLOs. And I don't know if it was the same day, maybe the next day, turned over

those fees pursuant to the participation agreement. That -- that did not happen -- that did not happen again after that point, with the limited exception of there was a -- there was -- there were funds sent in January of 2018 that were then sent back to Acis.

Q Going back to November 1st, so, on November 1st, the fees that Acis received were sent to Highland, that was the last date they did that properly?

A Correct, the portion of the fees, yeah.

Q And tell me about the January 2018 fees that were sent back to Acis.

A So, there was a -- there was a -- it's a little bit confusing, because there's a number of CLOs -- it's always confusing, of course. There were a number of CLOs that were subject to this agreement. Most of them paid -- they all paid quarterly. Most of them paid on the 1st of February, May, August, November. There was one of the CLOs that paid on a certain -- slightly different cycle, and that one paid in -- in -- I believe it was the 18th. I could be off by a day or two -- of January, April, July, October.

So, there were fees received in January of 2018 by Acis. Acis then swept all of its cash over to Highland, save for two small wires that went out to a third-party. And then, you know, approximately a week

later, Highland sent all of that money back.

Q Why?

A As directed by legal.

Q Do you know why?

A No, I don't know.

Q Okay. So, sitting here now, you have no idea why those fees were sent back?

A I could speculate.

Q What's your speculation?

A I would -- I would speculate that, for lack of a better term, things were heating up in the Terry litigation, and the optics of sending all the money to Highland was viewed negatively. And there would have been, you know, a push to send those funds back to Acis. But, that's -- again, that's total speculation.

Q Do you know the approximate amount of those fees that were sent back?

A It was between 600 and 650,000.

Q Okay. And I -- I apologize, I think you gave me the date. But, you said starting on November 2017 -- well, on November 2 -- November 1st, 2017, Acis still properly performed and sent those fees; is that correct, that was the last date?

MR. MORRIS: Objection to the form of the question.

A Yeah. Yes, with the caveat that it could have been the 1st or the 2nd, but it -- it -- but, it -- it did on one of those dates.

Q (By Mr. Aigen) So, starting after that date, what was the time period that Acis received fees but did not send them to Highland as they were supposed to do under the agreement?

A Everything after that date.

Q Do you know when it received fees up until that it did not send to Highland that it was supposed to?

A So, certainly, January of 2018, and then I don't know the specifics around the timing of when it eventually got fees for -- you know, through the end of 2019.

Q So, is it fair to say that the fees that Acis was supposed to send to Highland but did not were in the 2018, 2019 timeframe?

A Yes.

Q And just to sort of put a cap on that, are there any fees that Acis received in 2020 or after that it was supposed to send to Highland under the agreement?

A No. And -- and just to put a finer point on 20 -- 2019, it would have stopped in August of 2019.

Q Why did it stop in August of 2019?

A That was just the -- looked to the agreement,

that was the period in which the fees were going to be sent.

Q Do you know the approximate amount of the fees that Acis received in '18 and '19 that it did not send to Highland that it was required to under the agreement?

A Not off the top of my head.

Q We're talking about more then a million dollars?

A Yeah, yes.

Q More than 10 million?

A No.

Q More than five million?

A Don't know.

Q Okay. Are those amounts reflected in documents that you've seen?

A If I can -- probably more than five, I'm not certain.

Q Okay. Is that amount reflected in documents that you've reviewed?

A Yes.

Q Okay. Reviewed in preparation for this deposition?

A Yes.

Q Was that in spreadsheets produced by Highland?

A That was in trustee reports that I -- that I

reviewed in preparation.

Q When you say "trustee reports," what is a trustee report?

A Yeah, sorry. So, each of the CLOs has a -- has its own trustee, and they -- those trustees produce reports every time there's a payment made out of the CLOs. And so, it describes the fees, among other things, that are -- that are being paid out on each of the payment dates. And so, you know, I've had a chance to review those trustee reports, and I know that they're part of the production.

Q Okay. To get to the total, whatever it is, between five and $10 million, was that a number you saw in one document, or did you have to add up all of the different numbers from the different trustee reports?

A I had to add them up.

Q It's fair to say, then, that you haven't seen one document that has the total number of the amount of fees that were received by Acis and not sent to Highland; is that fair to say?

A No, I don't believe so.

Q Okay. And again, not trying to trick you, just trying to see if I'm missing any documents. So, is it fair to say that all of the money that Acis received that it did not send to Highland under the agreement

were received after Acis was placed into bankruptcy?

MR. MORRIS: I'm sorry, can I have that question read back?

MR. AIGEN: Let me rephrase it.

Q (By Mr. Aigen) Was there any money that Acis received that it did not send to Highland under this agreement that it received prior to the Acis bankruptcy?

A Yes.

Q Tell me about that money.

A That was the -- the January -- the -- the January amount that we were discussing before, and it -- it sent it, but then it sent it back.

Q Okay.

A But, sorry, I need to be much more clear on that. Acis sent it to Highland and then Highland sent it back.

Q Okay. Was it sent from Acis to Highland prior to the Acis bankruptcy?

A Yes.

Q So, the Acis bankruptcy was at the end of January of 2018; is that correct?

A That's correct.

Q Okay. And do you know whether that money was received in 2018 or prior to 2018 for -- from Acis?

A In 2018.

Q Okay. So, Acis received it in 20 -- in January of 2018 and sent it to Highland in 2018 in January; is that correct?

A Yes.

Q Okay. And is it your understanding that Highland then sent it back to Acis prior to the bankruptcy in January of 2018?

A Yes.

Q Okay. Do you know who would have been involved in the decision to send it back?

MR. MORRIS: Objection to the form of the question.

A I -- I don't know with 100 percent certainty, but I would certainly -- I would strongly speculate that it would have been Scott Ellington and Isaac Leventon.

Q (By Mr. Aigen) Okay. Are you aware of any money that was received by Acis where they didn't send the fees to Highland under this agreement prior to the Acis bankruptcy?

A Other than the January of '18?

Q Well, but that agreement Acis did send it to Highland, it was just returned; is that correct?

A Yes, that's correct.

Q Okay. So, let me ask, are you aware of any money that Acis received where it didn't send the fees

to Highland prior to the Acis bankruptcy?

A No, but with the caveat that Highland sent some of it back.

Q Fair enough. Did you have any involvement at all in -- well, let me rephrase that.

Do you have any idea why Acis did not make payments to Highland under the participation agreement after its bankruptcy?

A I don't -- I don't know.

Q You've never entered into discussions with anyone about that?

A I may have. I don't -- I'm not sure.

Q Okay. Do you have any understanding as to whether Acis was prevented from sending those fees as a result of something in the bankruptcy?

A I -- I don't know.

Q Okay.

A Sorry, if I could interrupt. Could I get a bathroom break the next few minutes or find a natural stopping point.

Q Yeah, yeah, let's take one now. Anytime you need a break, let me know.

VIDEOGRAPHER: We're off the record at 10:57.

(Break taken.)

VIDEOGRAPHER: We are back on the record at 11:07.

Q (By Mr. Aigen) Mr. Klos, before the break, we were talking about fees received by Acis after its bankruptcy that it did not send to Highland. Do you remember that?

A Yes, generally.

Q I have some follow-up questions about those. I think I might have already asked this, and I apologize. But, do you know why Acis did not forward those fees to Highland?

MR. MORRIS: Objection to the form of the question.

A I don't know specifically, but I'm -- I'm under the understanding that Highland and Acis and Josh Terry have been in lengthy protracted litigation for along time. So, I would -- I would surmise that that has something to do with it.

Q (By Mr. Aigen) Okay. Did you ever have any conversations with anyone about why Acis didn't send the -- the payments owed to Highland under the agreement after its bankruptcy?

A Not that I can specifically remember.

Q Generally?

A No, not generally.

Q Okay. Do you know whether Highland made any demands for those payments that Acis received after the bankruptcy but didn't send to Highland?

A I don't know.

Q Did you do any work related to money that came into Acis but they didn't send, such as trying to figure out how much it was or anything like that?

A Not that I can remember.

Q Are you aware as to whether those fees that weren't sent were subject to the litigation and the Acis bankruptcy between Acis and Highland?

A I don't know.

Q Okay. Did you have any involvement with that -- well, bad question, because you said you don't know.

Are you aware as to whether there were any settlement agreements with respect to the payments that Acis received but didn't forward to Highland under the participation agreement?

A I'm not sure.

Q Okay. Are you aware that there was a settlement between Acis and Highland in the bankruptcy?

A Yes.

Q Okay. At a high level, can you tell me if you had any role with respect to that settlement?

A No role that I can -- can remember.

Q Do you have any understanding as to whether the payments we're talking about are part of that settlement in any way?

A Don't remember.

Q Are you aware of any conversations that anyone had with respect to the payments that Acis received after the bankruptcy that it didn't send to Highland under the agreement?

A No specific awareness.

Q General?

A Just that I'm -- I'm certain there were negotiations between Highland and Acis principals about the terms of the agreement. I don't know the nature of those, but I -- I assume that those happened.

Q And you weren't part of any of those discussions?

A No, I wasn't.

Q Okay. Do you know the approximate total amount of fees that Highland did receive from Acis under the participation agreement?

A Yeah, I could probably do the math, be, you know, around six million, plus or minus.

Q And that would have been in the time period from October 7th, 2016 until November 1st, 2017?

A Correct.
Q Okay.
A 1st or 2nd, I just don't know if it was paid on that day.
Q Approximately, when are those payments made? Are we talking annually, quarterly?
A Quarterly.
Q So, if the agreement was entered into October 7th, 2016, do you know when the quarterly payments would have been made?
A Yes. So, there would have been one approximately October 18th of 2016. There would have a payment approximately November 1st or 2nd of 2016. And then there would have been payments throughout '17, so that would have been January of '17, February of '17, April of '17, May of '17, July of '17, August of '17, October of '17 and November of '17.
Q What dictated when those payments were made?
A That was when they were paid by the CLOs. They're -- they're quarterly -- it's a quarterly waterfall to use the general term.
Q And although they're quarterly, they're not receiving them quarterly, because they were receiving -- "they" meaning Acis, was receiving payments from different times from the different CLOs; is that fair to

say?

MR. MORRIS: Objection to the form.

A So, as I was explaining, there's -- there's I think five CLOs at issue. One of those pays quarterly on the 18th of January, April, July, October. The other four pay on 1st of February, May, August, November. So, that's just the timing of when those -- those -- those deals paid. And you know, they pay on a business day. So, if the 1st falls on a weekend, it's the following business day. That -- that -- that's why I'm hedging a little bit on the specific date.

Q (By Mr. Aigen) Fair enough. And I know we touched on this before, but the participation agreement, in general, is this something that you would have seen at or about the time it was executed in October of 2016?

A I don't have a specific recollection, but I -- I assume that I would have.

Q Okay. Would the terms of this effected your job responsibilities?

MR. MORRIS: Objection to the form of the question.

Q (By Mr. Aigen) In other words, why -- why would you have seen it at the time it was being entered into?

A Would have seen it in -- you know, maybe for other reasons, but certainly in conjunction with the

accounting at the Highland and the Acis entities.

Q Okay. So, you testified that you may have seen it at the time it was entered into, and obviously, you've reviewed it recently as part of this litigation. Do you know whether it was a document that you would have reviewed in the middle?

MR. MORRIS: Objection to the form of the question.

Q (By Mr. Aigen) For instance, an agreement was entered into in October of 2016. So, between 2016 and let's say 2019, was there any reason you would have gone and had to review this document?

MR. MORRIS: Objection to the form of the question.

A I don't have a specific recollection, but I assume that I would have looked at it around the time of the Acis bankruptcy. It's possible that I would have looked at it at certain intervening periods, but I don't have a specific recollection.

Q (By Mr. Aigen) Okay. Fair enough. Can you take a look at, starting on Page 6 of the agreement, it's Section 3.6, Acknowledgments of the Purchaser, and it goes on to Page 7.

A Okay.

Q And I'll give you a second just to read that

paragraph as it's kind of long, so I won't bother reading it into the record.

A Okay. (Witness complies.) Sorry, I'm not --

Q You don't have to read it out loud.

A I'm not going to be like referring back to Section 1.5.

Q If I ask you --

A It might be more timely to just ask -- ask the question and I'll try to --

Q Okay. Are you familiar with provision 3.6 in this agreement?

A Generally, familiar, I'm sure I've read it at some point in the fast.

Q At a high level, what's your understanding of what the -- what the purpose of Section 3.6 is with respect to this agreement?

A It looks like its acknowledgment to the purchaser. Outside of that, I would just let the document speak for itself.

Q Okay. Have you ever had any conversations with anyone about what Section 3.6 means?

A It's possible, probable that I've discussed this with counsel or Jim Seery.

Q Do you remember any conversations with Mr. Seery about Section 3.6?

A Not independent of Mr. Morris.

Q And I assume you don't want to tell me about those conversations with Mr. Morris?

MR. MORRIS: I'm going to direct him not to tell whether he wants to or not.

Q (By Mr. Aigen) Other than conversations where Mr. Morris was present, do you remember ever having any other conversations with anyone about Section 3.6?

A No, not that I can remember.

Q Were you familiar with Section 3.6 prior to let's say the Highland bankruptcy?

A I don't know.

Q Okay. You don't remember having any conversations about it prior to the Highland bankruptcy?

A No, I don't remember.

Q Okay. And it says acknowledgment of the purchaser, the purchaser is Highland; is that correct?

A Yes, that's correct.

Q Okay. And I don't really want to spend a lot of time going into detail on this, but under subsection A, it says, should the seller's right with respect to the servicer fees be terminated. Do you see that?

A Yes, I see that.

Q Do you know whether the servicer fees were ever terminated?

A Caveat that I don't know what's -- except what's provided in Section 1.5, just don't know what that -- is in reference to. But, I -- I don't -- I'm sorry to do this, but can you ask the question again?

Q Okay. With respect to that clause, which reads: Except as provided in Section 1.5, should the -- shall the seller's rights with respect to the servicer fees be terminated.

So, my question is just, do you know whether the servicer fees were actually terminated at any point in time?

A I don't -- I don't know. I don't believe that they -- that they were. Although, it's possible that some of them might have been terminated through the -- through the wind down of the CLOs themselves.

Q Do you have any idea what the purpose of this Section 3.6 is with respect to this agreement?

A Not -- not beyond the -- the text of the -- of the paragraph.

Q Okay. Do you understand the text of this paragraph to be saying that if the servicer fees are not made from Acis to Highland, then Highland still has to make payments under the note, except for certain exceptions that are set forth here?

MR. MORRIS: Objection to the form of the

question.

A Yeah, I just don't know. To me, that's -- that's for the -- the legal eagles.

Q (By Mr. Aigen) Fair enough. If you go a few lines down -- well, to be exact, seven lines down on Page 7, there's a parenthetical, and I'll just read that into the record. It says: Other than a result of the seller reaching its covenants under this agreement or as a result of fraud or by willful misconduct of the seller.

Do you see that?

A I see that.

Q Did you ever have any discussions with anyone about that part of this agreement?

A Yeah, I think I've had discussions with counsel.

Q Mr. Morris?

A Yes.

Q Okay. Have you ever had any conversations with anyone other than Mr. Morris about that provision?

A Possibly, but never not in the presence of Mr. Morris.

Q Okay. Do you have any understanding as to whether seller breached its covenants under this agreement or there was fraud or willful misconduct as

referenced in this parenthetical?

MR. MORRIS: Objection to the form of the question.

A So, in terms of making a conclusion about fraud or willful misconduct, you know, I think that's just a function of -- it's more of a legal conclusion. I don't know that I could -- I don't know if I could make that conclusion. But, I think -- you know, it's possible the seller breached its covenants in terms of not turning over its fees, and it's possible that there's fraud or willful misconduct of the seller.

Q (By Mr. Aigen) Okay. And because you said it's possible, I just have some follow-ups. Do you have an understanding, sitting here today, that the seller breached its covenants with respect to this agreement?

A Not other than just in the general sense that I -- I know that Acis didn't turnover funds from 2018 to 2019. And it's possible there could be other covenants breached, but that's the -- that's the one that sticks out in my mind.

Q Did you have any conversations with anyone other than Mr. Morris about whether not turning over those payments was a breach of covenants?

A Outside of conversations with Mr. Morris, no, I -- I don't believe so.

Q Okay. And you never had any conversations with anyone about what potentially would be a breach of these covenants before the Highland bankruptcy?

MR. MORRIS: Objection to the form of the question.

A Before the Highland bankruptcy, no, I don't believe I would have had any of those conversations. Although, I suppose it's possible in connection with the Acis bankruptcy, but I -- I have no recollection.

Q (By Mr. Aigen) Okay. It references fraud or willful misconduct of the seller. Sitting here today, do you have any understanding as to whether there was any fraud or willful misconduct of the seller as referenced in this document?

A Again, there's -- it calls for a legal conclusion that I don't know that I can -- I can make. But, you know, I -- I -- I do believe that there were assets taken out of Acis that were -- that were -- that were Acis assets, and, you know, effectively sent -- sent to other parties.

Q Can you give me a little more detail on that? What assets you're talking about and what timeframe?

A So, the main -- the main assets being the -- the note that we're talking about here. I'll call it the participation note. Hopefully, everyone knows what

that -- what that means. There was an indirect interest that Acis had in 2017-7, which was actually -- you know, we talked about -- we touched on it earlier. That was the money that Acis borrowed from Highland to make that investment. And so, that asset was -- was taken out of Acis in the November, December 2017 time period.

And then there was a portfolio management agreement that was -- that was moved under a new advisor, again, in the November -- I believe in the November 2017 timeframe. Could have been December, but I believe it was November.

Q Okay. Do you have an understanding as to whether these actions that you've just described would be considered fraud under this agreement?

A Not specifically. Again, that's kind of not my conclusion to make, but -- so, no.

Q Are you aware of whether anyone made any false misrepresentations to anyone with respect to this agreement?

A Not that I can think of right now.

Q And more specifically, let's talk about Mr. Dondero. Do you know whether Mr. Dondero made any misrepresentations to anyone about this agreement?

MR. MORRIS: Objection to the form of the question.

A It -- it's -- it's just too broad. I just -- I don't know.

Q (By Mr. Aigen) Okay. And it has the term "willful misconduct." Let me ask you, do you have any understanding as to what "willful misconduct" means?

A Hard to define it without using the words. But, it's a -- in my very lay -- lay terms, non -- non-lawyer terms, you know, an intentionally bad act.

Q Have you ever had any discussions with anyone about willful misconduct and what that means under this agreement?

A I'm sure I have.

Q Anyone other than lawyers, other than Mr. Morris?

A No, not that I can think of. And I -- and I should -- I started answering that question before you said about this agreement. I -- I think it's probably the same answer more generally, but anyways continue.

Q Sitting here today, are you aware of any misrepresentations that anyone made with respect to any of the issues in this case?

MR. MORRIS: Objection to the form of the question.

A I think there have been conflicting representations.

Q (By Mr. Aigen) And what are you referring to there?

A I -- I think that some of the positions that were taken in the Acis bankruptcy and maybe in the Acis and Dondero saga are contradictory to some of the positions in this case.

Q Okay. At a high level, can you tell me what you're referring to?

A Interrogatories and deposition or trial transcripts.

Q What were the topics that you're talking about?

A The participation agreement.

Q And what specifically about it?

A That they were paired all -- all intended to wash and -- and very much linked.

Q Okay. Other than the linking issue that we already discussed, were there any other areas that you've seen someone make what you call misrepresentations about issues related to this case?

A Not that I can specifically think of off the top of my head.

Q Okay. And just, I guess, go back to what we were talking about, I -- I believe I asked you, did you have any conversations with anyone about whether the payment terms were linked or de-linked and you said no;

is that fair to say?

A There's -- there's none that I can remember.

Q Okay. But, then, you -- is it fair to say that you saw some pleadings or litigation documents that reference that topic?

MR. MORRIS: Objection to the form of the question.

A Yes.

Q (By Mr. Aigen) Okay. What were you referring to before? What -- what sort of documents? Where did you see this?

A Trial or deposition transcripts.

Q Okay. Other than trial or deposition testimony, is it fair to say that you don't know of any other conversations that anyone had about whether the payments needed to be linked or de-linked?

A Conversations, no, and I -- and I should have -- I should have added the interrogatories. I mentioned that before, but, conversations, I -- I don't know.

Q Okay. And all of the documents you've seen were related to litigation; is that correct?

A I believe so, but not 100 percent certain.

Q In other words, you testified before that you didn't have any conversations with anyone about whether

the payments needed to be linked or de-linked. So, let me just ask this question: Have you ever seen any documents about the topic about whether the payments need to be linked or de-linked?

A I believe I have.

Q What documents did you see?

A Deposition transcripts, trial transcripts, interrogatories.

Q All documents related to litigation; is that fair to say?

A Yeah, to the best of my knowledge.

Q Okay. No documents from the 2016, '17, '18 timeframe; is that fair to say?

A I -- I don't know.

Q When you say "I don't know," is that because you don't know if there are documents other than the litigation documents that discussed it, or you don't know the timeframe of the litigation documents?

A That's a mouthful. The -- could you -- I was a little confused by the question. So, if you could ask again, that would be great.

Q Let me go back to the other question. Other than documents related to -- or that were part of litigation, have you seen any documents that ever discussed or referenced the topic of whether the

payments needed to be linked or de-linked to get tax advantages?

A None that come to mind.

Q Take a look at Section 1.5 of that agreement. And it talks about -- well, it starts off, in the event that any governmental entity commences a formal regulatory proceeding against seller, and then it goes on. Let me just first ask you. Are you -- are you familiar with Section 1.5?

A Again, I'm sure I've read it at some point in the past. Familiar, I don't know.

Q My question is simply, do you have any understanding as to whether 1.5 was triggered because a government entity commenced a formal regulatory proceeding against seller as described in this?

A Yeah -- sorry, I shouldn't say "yeah." To my knowledge, that -- that hasn't -- that hasn't or didn't occur, but I'm -- I'm not certain.

Q Okay. And you've never had any conversations with Mr. Dondero about the participation agreement; is that correct?

MR. MORRIS: Objection to the form of the question?

A It's -- it's very possible I have. I -- none that I remember. Thank you.

(Exhibit 2 marked.)

Q (By Mr. Aigen) Okay. Okay. I've just handed you a document that's been marked as Exhibit 2. It's Bates labeled HCLOM8535, and is titled, Promissory Note.

My first question is, simply, do you recognize this document?

A Yes.

Q Okay. Can you identify it for the record?

A It's a promissory note between Highland Capital Management as maker and Acis Capital Management as payee.

Q Okay. And does this appear to be the note that we've talked about today that is referenced in the participation agreement?

A It -- it does.

Q Okay. And if you turn to the second to last page, there's a signature there on 8539. And my question is simply going to be, do you recognize that signature?

A 8539, yes.

Q Okay. Whose signature is that?

A Jim Dondero's.

Q Okay. What role, if any, did you have with respect to the preparation of this promissory note?

A So, this was a note that was attached to the

purchase and sale agreement. And to the best of my recollection, my involvement would have been probably -- I don't have a specific recollection, but would have been doing the math on this amortization schedule, basically, how much interest would have accrued between October 7th of 2016 and May 31st of 2017, and so on and so forth. And -- and preparing the schedule and giving it to someone to put it as Exhibit A.

Q Okay. Do you remember doing anything else with respect to the preparation of this promissory note?

A Not that I remember.

Q Do you know who specifically drafted this promissory note?

A No.

Q Okay. Do you know whether it was negotiated in any way?

A No.

Q Do you know if Hunton & Williams was involved in the preparation of this note?

A I don't know. If I would speculate, I would speculate probably, but not certain.

Q And why was this promissory note entered into, if you know?

A It was entered into in connection with the purchase and sale agreement as part of the consideration

for the -- for the fees.

Q And how do you know that?

A I know that probably for a number of reasons, but one reason being that it's the note that's referred to in the agreement.

Q And if it's easier to refer to the end of this document, you can. I just want to generally ask you, what payments do you understand were made pursuant to the promissory note?

A There was one payment -- one cash payment made on May 31st of 2017. Again, I'll hedge a little bit, maybe it was the day before kind of thing, but -- and that would have been for the full amount of the principal as well as the interest. So, 3,125,000 in principal, $245,694 of interest. I'm not sure if that was made as one payment or two payments, but those two amounts would have been paid to Acis.

Q Okay. Did you have any role with respect to that payment being made?

A Probably.

Q What role would that have been?

A I was part of -- I guess, you could call it the treasury cycle. So, it's possible that I might have approved that payment, or I might have clicked the button to, you know, send the funds from one place to

the other. And certainly would have been aware of it from a -- I guess more from a budgeting and forecasting perspective that the payment was coming and would be made. Because, again, at that time, everything was -- was happening according to Hoyle.

Q Do you have a recollection as to who specifically would have approved that payment?

A No specific recollection. But, it -- that would either have been a Dondero or -- or Frank, or just as simple as someone like me or someone like Kristin flagging for Frank that, oh, this -- this payment is going to be -- is going to be due on this date. And then -- but, again, who -- who actually gave the thumbs up, I have no recollection of.

Q Okay. Sitting here today, are you aware of any typos or anything that was wrong about this document?

A No.

Q Okay.

A I hope not.

Q You didn't draft it, though?

A The document, no.

Q Okay.

A To be clear, I -- I most likely did draft Exhibit A, if you -- if you want to call that --

Q And there's no mistakes in Exhibit A?

A If you want to call that -- that -- that drafting.

Q Okay. You are not aware of any mistakes in Exhibit A?

A I'm not aware of any.

Q Okay. On the first page, you can see there's a section toward the bottom that says, conditions precedent. Do you see that?

A I see that.

Q Okay. And I will read the sentence under that into the record. It says: This note shall not become effective and payee shall have no obligation to make the advance hereunder until payee has received each of the following in form and substance acceptable to payee.

Do you see that?

A I see that.

Q Okay. Are you familiar with that clause? Is that something you've read before?

A I'm sure I read it before.

Q Okay. What's the purpose of that clause?

MR. MORRIS: Objection to the form of the question.

A Sorry, I got to --

Q (By Mr. Aigen) Let me ask maybe a background question before that. Do you know who that's referring

to when it says "payee"?

A That's what -- that's what I was just actually looking to. So, payee is Acis Capital Management, LP.

Q Okay. And your understanding that that's referring to payee, is that just coming from reading the first paragraph of the agreement or something else?

A From the first paragraph of the agreement, I -- I know that to be true as well, so...

Q Okay.

A (Witness reviews document.) Oh, sorry.

Q Okay.

A I was done.

Q Have you ever had any conversations with anyone about that clause that I just read to you?

A None that I can specifically remember.

Q Okay. What advance by payee is this referring to?

MR. MORRIS: Objection to the form of the question.

A I'm not sure what it's referring to.

Q (By Mr. Aigen) Okay. Are you aware of any advances contemplated by the promissory note by payee?

MR. MORRIS: Objection to the form of the question.

A I -- I don't know.

Q (By Mr. Aigen) Is it possible the payee should say payor and it's talking about the payment under the note?

MR. MORRIS: Objection to the form of the question.

A I have -- I have no idea.

Q (By Mr. Aigen) Okay. So, you have no reason to believe the advance it's talking about here under conditions precedent is a payment that was supposed to be made under the participation agreement; is that fair to say?

A I have -- I have no idea.

Q And in paragraph B, right under that, if you can take a second and read through that. Well, I'll give you my question before. At the very end of it, there's a reference to initial advance. And similarly, I'm just going to ask you if you have any understanding to what initial advance that's talking about?

A Yeah, I'm not sure what that's referring to.

MR. MORRIS: I'm sorry, where were you, Michael?

MR. AIGEN: Right here, John (indicating.)

MR. MORRIS: Oh, okay, thank you.

Q (By Mr. Aigen) You have no reason to believe that that initial advance refers to the $665,000 payment

that we discussed earlier under the participation agreement?

A I don't know, but I don't know that the 666,000 appears anywhere in this document.

Q Okay. Fair to say that as part of your responsibilities, you've read lots of promissory notes?

A That's -- that's an understatement.

Q Is it unusual for there to be a term in a promissory note like this that you don't understand?

A I -- I don't know.

MR. MORRIS: Objection to the form of the question.

Q (By Mr. Aigen) Okay. So, does it surprise you that they're using terms in this promissory note, like advance, and you don't know what it's referring to?

A I don't know if it's surprising. Most of the promissory notes I've seen have been drafted by legal, and 99 percent of it is -- doesn't affect me. So, I don't -- I don't know that I'm focused on every, you know, word and comma.

Q On the second page, it refers to events of default. Do you see that?

A I see that.

Q Do you have a general understanding as to what the purpose of this section is?

A Generally to, I suppose, reflect the parties' agreement of which events constitute an event of default.

Q Would you agree that this section contemplates what happens if the maker, meaning Highland, defaults; is that correct?

A It appears to be.

Q Okay. And there's nothing in here that contemplates what would happen if payee, meaning Acis, defaults; is that correct?

A I don't -- I don't see anything in this section.

Q And would you agree that that's because the payee or Acis has no obligations under this note?

A I -- I don't know what obligations it has under the note.

Q Okay. If you could turn to the remedy section on the next page, and I'll let you read as much as you need to in that section, but I'll give you my question ahead of time. About six lines down, it starts with subsection A, and it refers to -- it says, terminate payee's commitment to make any advances under the note.

MR. MORRIS: I apologize, where are you, Michael?

MR. AIGEN: Here you go.

MR. MORRIS: What page?

MR. AIGEN: Under remedies -- three, four, five -- six lines down, under remedies on --

MR. MORRIS: Ah, okay.

Q (By Mr. Aigen) So, again, my question is just going to be, do you know what this is referring to when it says, advances under this note?

A Same answer. I'm not sure what "advances under this note" is referring to.

Q And payee is not making any under advances under this note; is that correct?

A Yeah, it's terminate payees commitment to make any advances under this note.

Q But, only payor is making advances under this note; is that correct?

MR. MORRIS: Objection to the form of the question.

A I don't know who payor is.

Q (By Mr. Aigen) Oh, I apologize. Maker.

A Correct, there's -- I -- I don't see "maker" referred to in this section.

Q Okay.

A I -- actually, there's -- there's an instance of it, but it seems to apply to something else.

Q What are you referring to, just so I know?

A I'm just -- I'm looking for the word "maker".
Q Oh, okay.
A And I'm seeing it under part D and I'm seeing it in the next paragraph.
Q Okay.
A But, doesn't seem to apply to the part A.
Q But, the advance it's talking about in this section is talking about a potential advance by payee, meaning Acis; is that correct?
MR. MORRIS: Objection to the form of the question.
A Yes, it's -- Acis is -- Acis is payee -- yeah, could you -- could you repeat it one more time?
Q (By Mr. Aigen) Okay. When it's talking about, within subsection A, advances under the note, it's talking about advances made by payee, correct?
A That's -- that's correct, that's how I read it.
Q And since we don't know about any advances by payee under this note, is it possible that that was supposed to refer to maker instead of payee?
MR. MORRIS: Objection to the form of the question.
A I have no idea.
Q (By Mr. Aigen) You never had any discussions with anyone as to what advances this was referring to?

A I don't believe so.

Q Okay. Do you have an understanding as to whether Acis failed to comply with any provisions of this promissory note?

MR. MORRIS: Objection to the form of the question.

A I don't know. And I'm frankly not certain what obligations Acis had under this promissory note, so it's hard to speculate as to what they could have not performed.

Q (By Mr. Aigen) Good answer. Let me ask you that then. Are you aware of any obligations that Acis has under the promissory note?

A Not other than what's in the four corners of the document.

Q Okay. Are you aware of any references in this note to the participation agreement?

A Not other than what's in the document.

Q Okay. So, if we go outside of the document, let me ask you, did you ever have any conversations with anyone about the promissory note being linked to the participation agreement?

MR. MORRIS: Objection, asked and answered.

A It would be -- it would be the same answer, I

don't recall specific conversations.

Q (By Mr. Aigen) Okay. Have you ever seen any memos or writings that discuss the potential tax advantages of the structure of these transactions?

A I don't know. It's possible.

Q Okay. When we talked about before that there was potential tax advantages of this transaction, what's your basis for that? If you don't remember seeing documents, was it from conversation?

MR. MORRIS: Objection, asked and answered.

A A combination of conversations and documents.

Q (By Mr. Aigen) Okay. As best as you can, can you tell me what documents might have informed you about anything related to tax advantages related to this transaction?

A Like I said, I don't remember specific documents, but it's possible that I read a memo at some point or I saw a memo. So, it's -- it's possible that it was documents. As I said before, there was a similar transaction that Highland had done in recent years. So, I was generally aware of the mechanics of the transaction and how -- how the benefits would be conveyed to seller, so that -- that was, I suppose, my basis.

MR. AIGEN: Okay. I am going to switch topics now. Do we want to do lunch break or keep going for a little bit?

MR. MORRIS: You know, I have a got a call at 12:30 --

MR. AIGEN: You want to go until --

MR. MORRIS: So, I'd like to keep going if we can.

THE WITNESS: Can I do a real quick bathroom, like a two minute?

MR. AIGEN: Of course. Let's go off the record.

VIDEOGRAPHER: We're off the record at 11:47.

(Break taken.)

VIDEOGRAPHER: We're back on the record at 11:51.

Q (By Mr. Aigen) All right. Mr. Klos, changing topics a little bit. Are you familiar with an entity called Highland CLO Management, LTD?

A Yes.

Q Okay. I heard people refer it as HCLOM or H C L O M. Is there a certain way you refer to it?

A I usually refer to it as HCLOM, LTD.

Q Okay. And there's another HCLOM entity called

HCLOM, LLC; is that correct?

A Correct. And it's, you know, spelled out the same way, Highland CLO Management, LLC.

Q Yes. Purpose of this, I'm going to refer to it as either HCLOM or H C L O M, and I'm only referring to the LTD for now. I will ask some separate questions later about LLC, and I will be specific about that at that point --

A Perfect.

Q -- if that works.

Okay. Approximately, when was HCLOM formed?

A October 27th, 2017.

Q Why was it formed?

MR. MORRIS: Objection to the form of the question.

A I don't have any personal knowledge, but I believe that it was formed to take assignment of the -- the note that we've been discussing, the participation note, as I've been describing it.

Q (By Mr. Aigen) Okay. And you said you don't have any personal knowledge. So, what would be your basis for believing it to be the purpose was to take assignment?

A I don't think it's ever done anything else other than that.

Q Have you ever had any conversations with anyone about the purpose of HCLOM being formed?

A No, I'm sure I discussed with counsel, but nothing -- nothing outside of that.

Q Okay. Were you involved in any way with HCLOM's formation?

A No.

Q Okay. Do you know who would have been involved with its creation?

MR. MORRIS: Objection to the form of the question.

A I -- I believe -- when you say involved in, there's -- I don't know who -- I think who would have directed that versus who would have coordinated with counsel to -- to form it are probably two different answers, if you could clarify.

Q (By Mr. Aigen) Okay. Let's start with, who directed it, the idea of forming HCLOM?

MR. MORRIS: Objection to the form of the question.

A So, no -- no personal knowledge, but I -- I believe that to be either or both Jim Dondero or Scott Ellington.

Q (By Mr. Aigen) Okay. And do you have any idea who would have done the work to actually set it up and

create it?

A I -- I think that would have been a combination of JP Sevilla, possibly Helen Kim, who was a paralegal, and possibly others, but those would be the -- the two I would expect.

Q Okay.

A And they would have been asking counsel, but -- so there would have been outside counsel used to help form it. I don't recall who that was.

Q Do you know whether it was set up as a U.S. or a foreign entity?

A It was set up as a Cayman entity.

Q Do you have any understanding as to why it was set up as a Cayman entity?

A No personal knowledge. I -- I believe it was set up as a Cayman entity, most likely to obfuscate ultimate ownership.

Q Why do you believe that?

A That seems to be consistent with everything else that happened over that time period.

Q With respect to other entities that were being set up as --

A With respect -- with respect -- I'm sorry to -- I'm sorry to step on you. With respect to other entities that were formed at that time and other

assignments and transfers that occurred over that time, the formation of the -- the trust above the entity that's called Neutra, there seemed to be a significant number of steps taken to obfuscate ownership.

Q Okay. And again, I don't want to put words in your mouth, so I'm going to unfortunately be a little repetitive. Again, what was -- what did you say was the purpose or reason that they were creating HCLOM?

A So, I don't know or have personal knowledge, but it -- it seems to me that the purpose was to take receipt of this note.

Q And that's the note we previously talked about?

A Yes, the -- the participation note (indicating). Sorry for the parentheses.

Q And other than counsel here, you've never had any conversations about why HCLOM was set up that you remember?

A Not -- not other than with -- with counsel present.

Q And what -- what did HCLOM do?

MR. MORRIS: Objection to the form of the question.

A I don't believe HCLOM has ever done anything from a -- from an operational standpoint. I'm sure it's -- there -- there have been, you know, corporate --

corporate actions and signatures on documents, but I -- I don't believe it's ever done anything.

Q Okay. Are you aware of any revenue that HCLOM has ever made?

A No.

Q Are you aware of any expenses that HCLOM has ever paid?

A There are likely expenses that have been incurred that were paid by Highland.

Q Did HCLOM ever have any employees?

A No, not that I'm aware. I have no idea in the last couple of years.

Q Fair enough. What relationship, if any, did Highland have with HCLOM?

A Relationship is a little broad, but I'll -- I'll do my best. So, it -- it Highland employees formed the entity or worked with counsel to form the entity, Highland paid for whatever set up expenses were incurred as part of that. And then Highland has had indirect ownership in the entity at various points in time, economic ownership. And then it's also had voting control over the entity at various points in time.

Q Did Highland enter into any written agreements with HCLOM?

MR. MORRIS: Objection to the form of the

question.

A The -- I believe it's -- I'm not certain. It might be an exhibit, but I -- I believe it's a party to the assignment and transfer agreement from November 3rd of 2017. Beyond that, I'm -- I'm not thinking of any, it's possible it could be.

Q (By Mr. Aigen) You're not aware of any shared service agreements or advisory agreements or any similar written agreements between Highland and HCLOM?

A Correct.

Q Do you know who the officers were of HCLOM at any time?

A The officers I don't know if I know the full slate, but it was a very similar officer list to the Highland officer list. So I believe it was Mr. Dondero, Frank Waterhouse, I believe Scott Ellington, may be one or two more, but I'm not certain.

Q Okay. Are you aware of any change in the officers of HCLOM at any time?

A I believe there was a period where there were officers, so there were officers that were put on a slate.

Q Was that just at the beginning when it was first formed?

A It was a little after -- after it was formed, I

think it was in early '18.

Q But there were no officers and then no officers, and then different officers, it was just no officers and then the officers you talked about?

A I believe that's right. I guess I -- I would refer to our production because I'm not totally facile, but that's my -- that's my basic understanding.

Q As far as you know, Mr. Dondero was the only president of HCLOM; is that correct?

A I don't know if he was the president of HCLOM. I believe he was on the officer slate, I don't know what his corporate title was or officer title.

Q Are you aware of who the directors were of HCLOM at any time?

A Yes.

Q Who?

A I might get this flipped, but I believe there was -- there was a period where there was an individual named John Cullinane, and then the firm he works for is -- I'm going to get the name wrong, it's Summit, I think it's Summit Investment Management, it has Summit in the name. So at one point it was Summit and then at one point it was Cullinane, I forget if those are flipped. And I believe there was a second director added at some point whose name escapes me.

Q Okay. So Summit, an entity, was the actual director, is that fair to say?
A I believe that's correct for some period of time.
Q Okay. Have you ever had any conversations with John Cullinane?
A I think I talked to him once.
Q Anything about the events related to this case?
A No.
Q When HCLOM was first formed, do you have an understanding as to who owned it?
A Can you clarify now or then?
Q When it was first formed?
A Oh, I don't -- I don't know.
MR. MORRIS: I'm sorry, I think you guys may be talking past each other.
Q (By Mr. Aigen) My question is, when HCLOM was first created, do you have an understanding as to who the owners were of HCLOM?
A No. I -- and to be a little bit more specific, I -- I don't know that I knew that HCLOM was formed when it was formed.
Q Okay. Do you have any understanding as to who the owners of HCLOM were at any time?
MR. MORRIS: May I help?

MR. AIGEN: Sure.

MR. MORRIS: I think -- I think he may be confused as to the time line for which you're asking about his knowledge, as opposed to the time line of ownership. Those are two different things.

MR. AIGEN: Okay.

Q (By Mr. Aigen) I'm not asking when you learned things. I'm just asking generally, let's start with who the owners were of HCLOM. So --

MR. MORRIS: Does that help?

THE WITNESS: That does help because you're exactly right.

Q (By Mr. Aigen) Yeah. So tell me who the owners were of HCLOM at any period that you knew who the owners were?

A Sure. So, the -- when the entity was formed, there was an initial share that was directed by Highland under -- it was like Maples Service Corp., I might have that entity name wrong, but it was basically just a single issued share. And then when ownership was actually divvied out, I suppose, to an actual entity, it was transferred to an entity called Neutra, LTD, which is another Cayman entity.

And -- and I should clarify, as part of that, that was when the -- called the AB structure was

set up where there was an economic owner. And then there was a voting owner. And so, Highland Capital Management had the -- the vote. And the ownership of the entity itself ran up to Neutra.

MR. MORRIS: That's N E U T R A.

THE WITNESS: Correct, sorry.

A (Continuing) And I'm not sure, I don't recall off the top of my head whether that was 99 percent economic ownership or if it was 100 percent.

Q (By Mr. Aigen) For Neutra?

A For Neutra, yeah.

Q And that ownership structure you just talked about, did that change at some point that you're aware of?

A Not that I could think of; however, there were other changes in ownership further up the chain.

Q What are you referring to there?

A So Neutra was owned by an entity called Pollock, LTD.

Q How do you spell that?

A Like Jackson Pollock. And Pollock transferred its interest in Neutra to an entity domiciled in the British Virgin Islands called Highland CLO Assets Holdings Limited, I believe.

Q Okay. Other than the ownership change higher

up that you talked about, are you aware of any other ownership change with HCLOM after the ownership structure you just discussed with me?

A At some point there was a trust placed between two of the entities in the structure, I don't recall the name of that trust.

Q Do you know which two entities?

A Between which two entities? I believe it was between Neutra and Highland CLO Assets Holdings Limited, but I'm not 100 percent certain on that.

Q And how is Neutra --

A Sorry, there was one other change that I recall which was at some point in 2022 or 2023 Highland, I don't recall the mechanics of how it lost its voting shares, but its voting shares were -- were no longer.

Q And was that part of the Highland bankruptcy?

A Generally, yeah.

Q After Highland lost its voting shares in 2022 or '23, did Highland have any sort of interest at all in HCLOM?

MR. MORRIS: Objection to the form of the question.

A I struggle with "interest." I mean, we -- we, Highland, have -- have, you know, funds that are reserved for the claim. So in that sense we have a --

we have skin in the game with respect to HCLOM, but other than that I can't think of anything.

Q (By Mr. Aigen) That makes sense. Let me reask that and say after this 2022-23 time where Highland lost its voting shares, did it retain any economic interest or ownership interest or control interest in HCLOM?

A No, I don't believe so.

Q The Neutra entity you talked about, does that have any relationship to Jim at all?

MR. MORRIS: Objection to the form of the question.

A Jim Dondero.

Q (By Mr. Aigen) Yes. Sorry.

A Sorry, yes.

Q How is Jim Dondero related to Neutra?

A It's possible that there are other ways, but as I understand it, he's the lifetime beneficiary of Dugaboy Investment Trust, which is the 75 percent owner of Highland CLO Assets Holdings Limited, which is the sole owner of Neutra LTD.

Q And you talked about the ownership structure, how it was -- there's initial share that was directed to Highland, is that correct, initially?

A Initial share of directed to Maples.

Q Oh, Maples.

A Yeah.
Q And then at some point it was -- Neutra was brought in; is that correct?
A (Witness nods head.)
Q Do you know approximately when that was?
A I think early February 2018.
Q Do you know why that was?
A It seems like -- again, I don't have personal knowledge of this, but the -- the only conclusion that I can reach from having prepared is that it was done to, you know, purposely move assets away from Highland and further out of the reach of Josh Terry.
Q And why do you believe that?
A Because I can't think of any other logical explanation for it.
Q How would moving it to Neutra affect Josh Terry?
A Moving it to Neutra puts it away from Highland. And given that Highland -- that Josh was involved in litigation with Highland, it seems like that was probably like an extra step removed from -- from Highland.
Q When it went to Neutra, did it come from Highland or did it come from Maples?
A I think legally speaking it came from Maples,

but at the direction of Highland.

Q So prior going to Neutra, was Maples the sole owner of HCLOM?

MR. MORRIS: Objection to the form of the --

A I don't know legally, yeah, not my bailiwick.

Q (By Mr. Aigen) Okay. After it got transferred from Maples and Neutra came in, what affect did that have on Highlands' ownership of HCLOM?

A Sorry, could you do that again.

Q Well, let me try to rephrase it. Describe for me Highlands ownership interest in HCLOM, if any, after Neutra was involved?

A So, prior to Neutra being transferred to what I'll call the BVI entity, Highland was indirectly the sole economic owner of HCLOM. And then after that transfer, it either had no or -- I believe it had no economic interest, or maybe small.

Q And the transfer you're referring there is the transfer to Highland CLO Asset Holdings Limited?

A Correct.

Q And so --

A And -- and I should clarify to, the voting interest is consistent throughout, but that's a -- that's a noneconomic.

Q Okay. Is it fair to say that once there was this transfer to Highlands CLO Asset Holdings Limited, Highland no longer held a economic interest in HCLOM?

A That's a mouthful, but I think that's correct.

Q And when approximately did that occur?

A That transfer to -- you're talking about the transfer to the BVI entity?

Q To Highland CLO Asset Holdings Limited, that the BVI entity?

A Yes, yes, that happened December 20th, 2017.

Q 2017?

A Yes.

Q Okay. I may have some of this mixed up because I thought that occurred after Neutra was involved, but then I thought you told me Neutra came in in February of 2018.

A So Highland controlling the share through Maples issues shares in February to Neutra. So it's a little -- it's a little wonky in terms of the order.

Q But at that point Highland didn't have a economic interest, is that correct, when it issued it to Maples?

A I don't know from a legal standpoint it formed the entity. I don't know the status when it's under that Maple kind of placeholder, for lack of a better

term.

Q Fair enough. During this whole 2017, '18 period, all these little transactions you talked about, during that time period, were you involved in these ownership change transactions at all?

A No.

Q Okay. Do you know who generally would have been handling there?

MR. MORRIS: Objection to the form of the question.

A Again, I don't have a personal knowledge, but the team that I understood to be working on that consisted of mainly JP Sevilla, Isaac Leventon, and likely a couple of others, but I don't know.

Q (By Mr. Aigen) Were these changes in ownership interest in HCLOM that you just talked about something you were aware of at the time or just something you dealt with and learned about later?

A Learned about later.

Q Okay. Approximately, when did you learn or what were the -- what was the context?

A Middle of January 2018.

Q Of 2018. And that was a result of the Acis bankruptcy?

A No.

Q What was the context that you learned and had to deal with this stuff?

A I don't have a super fresh recollection of it, but I -- I remember having some, I guess, kind of getting wind of the fact that there were transfers that had happened towards the end of the year. And being the accountant who's trying to close the books for year end, I had conversation with Isaac about, hey, what -- I've heard there are some -- there have been some transfers, can I get the documentation for that. And then I think he followed up within a couple of days. I don't know if he provided all the documentation of those transfers, but he provided certainly a great deal.

Q Okay. And I may be missing all these dates, but is it accurate to say that Highland hasn't had an economic interest in HCLOM since December 20, 2017?

MR. MORRIS: Objection -- withdrawn.

A I'm not sure. And the reason I say that is because of the -- the -- the Maples piece.

Q (By Mr. Aigen) Okay. And you're not sure if Highland retained some sort of economic ownership through the Maples piece, is that the issue?

A Correct, because Highland was issuing -- Highland created it, Highland set it up, it's being basically held -- I'm using the wrong term, but

effectively held in escrow for however Highland wants to direct it. So, that's what's giving me some pause.

Q Okay. Sitting here today, are you aware of any economic interest that Highland had in HCLOM after the December 20th, 2017 transaction we talked about?

A With the same caveat, yeah, I think certainly post February of 2018, no.

Q Okay. And you talked about in the 2022-23 time frame, Highland lost its voting shares in HCLOM; is that correct?

A Sometime in the '22-23 -- I think it's '22, but I'm not sure.

Q Can you give me the context about what you're referring to there?

A Well, I don't remember the specifics of -- of how it was mechanically done, but it was -- I think it was untenable for Highland to be the voting -- the voting interest in HCLOM with no economic interest and all the litigation going back and forth with Highland and Dondero. So again, I don't recall the mechanics, but mechanically it was -- it was made such that the -- the vote would effectively go back to either Dondero or some designee that he had.

Q Okay. Who set up that transaction?

A I think that was done amongst counsel, outside

counsel and --

Q For who?

A I'm not -- I'm not sure.

Q Do you know if it was Dondero side doing this or Highland side doing this?

MR. MORRIS: Objection to the form of the question.

A It would have been Highland's, you know, internal counsel working with outside counsel to help effectuate that. And I believe there was coordination at the time with the Dondero side about who would you like to be put into this role. And so maybe -- maybe overstepping to say it was one-sided because I think there was conversation, but I think it's fair to say that Highland was driving that process.

Q (By Mr. Aigen) Okay. And I think originally you used the word that they lost their voting rights, is it fair to say that this was an agreement between Highland side and Jim side, or was one side forcing the other side to do it?

A I just don't even recall the mechanics of it to get into that specificity.

Q And was this an agreement that was approved by the bankruptcy court?

A I don't know if it was done via an agreement.

Q Have you ever seen an agreement papering up that transaction?

A Probably, but I don't -- I don't even know if it was an agreement. And then I don't -- whatever it was, whether it was an agreement or something else, I'm sure I've seen it, I'm sure it came across my e-mail at some point --

Q Okay.

A -- but I don't have a specific recollection.

Q Let me just ask, other than counsel -- other than conversations with counsel, have you had any conversations with anyone about this --

A Not that I can remember.

Q -- don't want to use the term transaction, it might be a transaction, but this time where Highland loss it's voting rights in HCLOM?

A Not that I can remember, but I'm sure I had conversations.

Q Who do you think they would have been with?

A Most likely with Tim Cournoyer from our legal team.

Q Was there a time within Highland, we're talking about after the bankruptcy, where there was some confusion as to whether Highland still held a economic interest in HCLOM?

A Could you ask it -- could you ask it again, I missed the beginning?

Q Was there some time period where Highland, I'm talking about in the bankruptcy, that there was some confusion about whether Highland held a economic ownership in HCLOM?

MR. MORRIS: Objection to the form of the question.

A I think there was -- there were -- there were periods of confusion.

Q (By Mr. Aigen) Okay. And tell me about that?

A Well, the -- the piece that I am most familiar with is that there was a -- the paralegal at the Highland team who was -- had the impossible task of keeping track of entities in the Highland structure --

Q Is that Helen?

A Yes.

Q Helen Kim?

A Helen Kim. And so, she would -- she would keep track of those entities, and she -- she was fantastic at her job, she was very, very good. But, she -- she would keep track of the entities and periodically send out lists of -- of those entities, which, you know, would be used by other people in the organization for various purposes. And there's definitely some confusion in some

of those spreadsheets with respect to who actually owns this thing and, you know, from -- from that -- that time period of 2018, 2019.

Q Okay. Was there some point in time where you remember people at Highland realizing, oh, we don't actually have a economic interest in HCLOM when they originally thought they did?

A I -- I couldn't tell you the specific time or remember a specific time, but at some point came to that understanding.

Q Okay. Do you know what year was that?

A Probably -- probably 2021.

Q And tell me about that, were you involved in any of these conversations?

A Possible, but I don't remember.

Q How do you know that this sort of, for lack of better words, revelation came that people at Highland learned that they did not have a economic interest in HCLOM when they originally thought they might have?

A I think -- I think it most likely came about around the time of post-confirmation, sometime between post-confirmation and call it end of '21 or early '22 where the -- the focus shifted to, all right, let's -- let's work through and bang through all of the schedules and any -- any loose-end claims that are -- that are out

there. And so I -- I suspect that as part of that process, you know, in digging into the scheduled claims and the other proof of claims that were out there, people really dug in and got a really better understanding.

Q Do you have any idea who was the one who discovered that Highland did not have this ownership interest in HCLOM?

A No.

Q Do you know when you learned that?

A No.

Q Okay. Do you have any understanding as to what -- I know you don't know the person, but what someone reviewed or saw that led Highland to the conclusion that it did not have an economic interest in HCLOM?

A No personal knowledge, but I -- but I assume one or more people reviewed the corporate docs and the share registers, and things of that nature to determine that -- precisely what had happened and when it had happened, but I don't know when that occurred.

MR. MORRIS: Finish up in just three minutes?

MR. AIGEN: Yeah.

MR. MORRIS: It's 12:22.

Q (By Mr. Aigen) What are the significance of the Class A shares of HCLOM?

MR. MORRIS: Objection to the form of the question.

A I don't know which shares are the Class A shares.

Q (By Mr. Aigen) Is it your understanding that there are Class A and Class B shares?

A I'm not -- I'm sure there's two classes, I'm just not sure what they are.

Q And is it your understanding that one is voting interest and one is non-voting?

A Generally, one is voting, one is economic, as I would probably phrase it.

Q Okay. And we've gone through all the different owners, the economic owners of HCLOM, is there any other changes or anything that you know about that you didn't tell me about them with respect to that?

A None that I can remember.

Q Okay. Maybe we can do this in two minutes, but can you tell me generally who had the controlling interest in HCLOM when it was formed and how that changed, if it did?

A I don't know how to define "controlling interest."

Q Okay. Well, let's say who had an interest in HCLOM separate and apart from the economic interest?

MR. MORRIS: Objection to the form of the question.

A I'm not certain, but I believe it would have been Highland Capital Management LP via the voting shares. I'm not certain if it held those, but I -- I think it most likely did.

Q (By Mr. Aigen) Okay. Well, we talked about before how in either 2022 or '23 Highland lost its voting shares in HCLOM?

A Yes, and I should have clarified, I think that's directly, but maybe it was indirectly.

Q If it was indirectly, do you know who it would have been through, what entity?

A No.

Q Prior to this loss of its voting shares, do you know anyone else other than Highland or its entity that may have held its voting shares in that would have held the voting shares in HCLOM?

A I suppose maybe Maples during that period before the -- I think it's an A/B structure -- before that A/B structure was set up, so maybe, maybe during that time period, but I couldn't make that conclusion. Afterwards, I can't think of any.

MR. AIGEN: Okay. Now is a good time to take a lunch break.

VIDEOGRAPHER: We're off the record at 12:24.

(Break taken.)

VIDEOGRAPHER: We are back on the record at 1:22.

Q (By Mr. Aigen) Prior to the break, I just want to finish this topic up, we were talking a little bit about the fact that at some point people at Highland thought that it had a economic ownership interest in HCLOM and then it turned out that they learned that they didn't, do you remember that?

A Generally.

Q I think I asked you, but I don't remember, do you remember the approximate date where people at Highland realized that they had made is this mistake?

A No.

Q Okay. Do you know how it was discovered?

A No.

Q Okay. Do you know who would know that?

A I don't know.

Q Okay. To put it into context, at that time period, again, I know you don't know exactly when, was it your understanding at that time, did you have also

hold this erroneous belief that Highland had an ownership interest in HCLOM?

A I am not sure. I'm not sure when I came to my current understanding.

Q And that's -- I was asking the prior questions about Highlands and now I'm just seeing if I got any difference answer so I'm asking about you. So, do you remember a time period when you realized you had a mistaken belief about Highland having a economic interest in HCLOM?

MR. MORRIS: Hey, Frank, still has that belief, he's your 30(b)(6) witness.

A I'm not sure. I'm not sure.

Q (By Mr. Aigen) Is it accurate to say sitting here today that Highland does not have a economic ownership interest in HCLOM?

A Yes, that's correct.

Q Okay. Do you know who currently owns a economic interest in HCLOM?

A Well, Dubaboy -- Dugaboy Investment Trust and Mark Okada through the structure.

Q And do you know who has the controlling or voting interest we talked about before?

MR. MORRIS: Are you asking today?

MR. AIGEN: Yes.

A I'm -- I'm not certain, but it -- I believe it's a person or entity that -- that was designated.

Q (By Mr. Aigen) Okay. And are you familiar with a similarly named entity called Highland CLO Management LLC?

A Am I familiar?

Q Yeah, have you ever heard of it?

A Yeah, I've heard of it.

Q If I referred to it as HCLOM LLC, will that work for today?

A That would be great.

Q Okay. And what is HCLOM LLC?

A HCLOM LLC is -- well, I don't know what it is today. I don't -- I don't believe it is today, but when it was formed, it was intended to be the -- the Highland risk retention vehicle. So new CLO's that would have been launched after its formation would have been managed by Highland CLO Management LLC.

Any Acis deals that were going to be reset or refinanced were going to be reset under Highland CLO Management LLC or HCLOM LLC. And it was effectively going to be a mirror of a similar structure that existed under Acis previously, with a very similar sounding name Acis CLO Management LLC.

Q You used a term "risk retention vehicle" in

referring to HCLOM LLC, but then you used the term manager, is that -- are those different terms?

A Yes.

Q What's the difference between HCLOM LLC being a risk retention vehicle and HCLOM LLC being a manager?

A So, there was a -- there was a expected regime change around the time that went to managers of CLO's having more skin in the game and actually putting up their own capital in -- in CLO's that they launched. And so, prior to that point, and I'll get my dates wrong a little bit, but, you know, prior to the 2015, 2016 time period, there wasn't a requirement for managers to have skin in the game. There was a series of regulation, which I'm not familiar with enough to speak eloquently about it, but that was coming through at that time that required managers to have some skin in the game. And so, there were structures put in place by CLO managers like Highland or like an Acis to ensure their compliance with risk retention when that regime became effective. But then ultimately, that -- the rules around risk retention ultimately got reversed I believe in 2018.

Q Okay.

A And then I think the second part was about the -- the portfolio manager role and that's -- that's

just the very basic role of being the manager for the CLO's, making investment decisions on behalf of the CLO's and earning a fee.

Q Okay. So an entity can be a manager of the CLO or it could be the risk retention vehicle or it could be both; is that fair to say?

A I think that's fair to say. I'm not -- I'm not 100 percent certain. Risk retention vehicle, I don't -- I don't exactly know what that means the way you're using it, but so I should qualify it that way.

Q And I was just trying to use the term you were using.

So approximately when was HCLOM LLC formed?

A I believe it was formed in early October of 2017.

Q And do you have an understanding as to who owned it when it was formed?

A I don't -- I don't recall.

Q Okay. Or who owned it later?

A I don't recall.

Q Or do you know its officers were, its directors at any point in time?

A I'm not sure that it had directors, it may have. In terms of officers, I think it was the same slate as the Highland slate, but I'm not -- I'm not

certain.

Q Did it have any employees?

A No.

Q Okay. Whose idea was it to create this entity?

A I don't know.

Q What role, if any, did you have with respect to creating this entity?

A None.

Q Okay. What role did you have, if any, with respect to this entity at all?

A I -- I think ultimately the accounting for -- when we say that entity, it's one entity out of a structure of probably six or seven entities. So the accounting for probably not all, but for some of those entities would have fallen under my -- under my group.

Q And what are the other entities, I don't mean the names, but what -- when you say that group, are you talking about HCLOM related entities or something different?

A HCLOM LLC related entities.

Q Okay. That being the case, to the best you can, can you tell me the names of these other entities or just describe how they're related?

A I may get the names slightly wrong, but there was Highland CLO Intermediate Holdings 1, Highland

Intermediate Holdings 2, Highland CLO Management LP, and I believe one or two more that are escaping me.

Q Okay. And just so I have this right, was HCLOM LLC formed to be the risk retention vehicle or the manager of Acis CLO's or both?

A It was meant to be the -- the manager of CLO's launched perspectively. And it was going to be fulfilling that role in a risk retention compliant way.

Q Was there any specific reason that HCLOM, the other entity, couldn't do that and the HCLOM LLC needed to be created?

A Well, HCLOM LLC was created before HCLOM LTD.

And as to the rest of the question, can you ask it again?

Q Okay. And we're kind of getting something we're going to get into, but is it your understanding that at some point an agreement was entered where it was contemplated that HCLOM would replace Acis as manager?

A I believe that's contemplated in the assignment agreement.

Q So given that that was contemplated, why was there this other entity created, HCLOM LLC, that also appears to have been contemplated to be the manager of Acis CLO's?

A I -- I don't think it was created with that

purpose in mind.

Q Okay. Explain how I'm incorrect or what was the purpose?

A Well, I -- I think the purpose was to take the note. The purpose of HCLOM LLC seems to have been done with good intentions of actually being the successor manager and perspective manager for new CLO's in a way that would have been risk retention compliant. And so, it took a series of steps to make that happen. And I'm not aware of any of those steps being taken at HCLOM LTD. Whether it could have taken those steps, I don't know.

Q Do you have any understanding as to whether there was anything preventing HCLOM LTD from becoming the manager like HCLOM LLC was intended to be?

A I'm not certain one way or the other.

Q But it's your understanding or your belief that these two separate entities were created so one could take the note and the other one could manage; is that correct?

MR. MORRIS: Objection to the form of the question.

A The two entities were formed it seems like -- it seems to me that the HCLOM LLC entity was formed to be the manager perspectively. And there -- there

doesn't seem to be a good reason for HCLOM LTD to be formed other than to take the assignment of the note.

Q (By Mr. Aigen) Okay. And let me -- I'm probably assuming answers to my question which isn't a good idea, so let me just ask generally, why were there two different HCLOM entities formed?

MR. MORRIS: Objection to the form.

A I don't have personal knowledge into that, but -- but again, it -- it seems to me like one was formed to take the note and the other was formed to have a valid business purpose.

Q (By Mr. Aigen) And what's the basis for that belief?

A For one, lack of evidence to the contrary. And then No. 2 would be, all the actions that HCLOM LLC actually, you know, did undertake through Highland. Because again, there were no employees, but there were -- there were things at -- things like engaging bankers to launch new CLO's, having written shared services and sub-advisory agreements with Highland, and actually taking the reset of Acis 2014-3 all the way to the finish line with respect to -- with respect to that reset under HCLOM LLC.

Q Okay. Did you ever have any discussions with anyone about the reasons why two HCLOM entities were

created?

A Not that I can remember.

Q Is it correct that you were characterizing this as your speculation why they were created and you don't have firsthand knowledge as to why two different HCLOM entities were created?

A I think that's fair.

Q Okay. So you said -- you gave me two different reasons, one was the lack of evidence to the contrary and one were the actions that LLC took. The second one I think is easier to start with. The actions that HCLOM LLC took, is it fair that what you were referring to, it took actions that would allow it to become a manager of CLO's, is that what you're referring to?

A Yes.

Q Are you referring to anything else other than HCLOM LLC taking actions that would allow it to become a manager?

A Not that I can think of.

Q And then the other one, lack of evidence to the contrary. What are you referring to when you say that there's a lack of evidence to contrary?

A Just that this is more with respect HCLOM LTD -- sorry, for the LLC's and LTDs -- I -- I haven't seen any evidence of HCLOM LTD really doing anything.

Q Okay. Can you give me some examples of what you haven't seen evidence of actions that it took?

A It's kind of phrased in the negative, so can I put it in terms of the --

Q You can compare it to the other entity.

A So some of the things that HCLOM LLC did were -- well, first of all, before HCLOM LLC was even a thing, new issued CLO's as well as resets were contemplated to be under Acis CLO Management LLC because it already had a risk retention compliant structure and it actually launched a CLO within that structure. So I guess that's a starting point.

But at some time it seems in early October, there's a decision made to continue all the activities that were planned for H- -- Acis CLO Management at Highland CLO Management LLC. And so in terms of engaging with a bank to organize and launch new CLO's, as well as resets of existing CLO's, that's all being contemplated to occur at HCLOM LLC. And so there are engagement letters either negotiated or signed at that time. There is written shared services and sub-advisory agreements entered into, I don't remember the specific timing of those, but it did occur.

And when it came to actually taking these to the finish line, which was, as best as I can tell,

ongoing throughout October, November, December into January, that was entirely done through really the CLO team that's leading that charge, but on behalf of Highland CLO Management LLC.

Q And do you have any personal knowledge as to why HCLOM LTD did not take any of those actions?

A No personal knowledge.

Q Have you ever had any discussions with anyone about why HCLOM LTD did not take those actions?

A Other than rank speculation with counsel, no.

Q The fact that HCLOM LTD did not take those actions, is that something that you were aware of back when all this was happening, or just something that you learned recently as part of all this litigation?

A More recently as part of the litigation.

Q Were you aware that there were two different HCLOM entities in the 2017 time frame, 2017, 2018?

A I'm not sure. I think -- I think by 2018 I was.

Q So back when you were aware in 2018, what was your understanding as to why there were two HCLOM entities?

A I have no recollection.

Q Are you aware of anything that would -- would have prevented HCLOM LTD from becoming the manager and

taking all these actions that HCLOM LLC did?

A Not that I can articulate, but I believe there probably were some, but I'm not sure specifically what.

Q So one difference between the entities is that the LLC is a US entities and LTD is a foreign entity; is that correct?

A Yes, that's right.

Q Do you know if that was one of the differences that may have stopped LTD from being able to take these steps?

A It may have been, but I don't know.

Q Sitting here today, can you identify any hurdles or anything that would have prevented HCLOM LTD to take these steps to become the manager?

A I can't identify any. It doesn't preclude that there could be, but I couldn't identify.

Q I understand. And to sort of paraphrase your words, your speculation is that HCLOM LTD was created to take the note, is that a fair description of how you testified?

A It seems that way based on -- I can't come up with another conclusion.

Q Okay. And when you say "to take the note" what do you mean?

A To take assignment of the note.

Q Okay. Have you ever had any conversations with anyone other than counsel about the fact that HCLOM LTD may have been created for the purposes of taking the note?

A I don't -- I don't think so.

Q Okay. Is it your belief that HCLOM LTD was not created to become the successor manager for the Asic CLOs?

A I'm not sure if I perfectly understand the question, but I can answer in the sense that I haven't seen evidence that it was created for that purpose, other than the actual assignment agreement.

Q Okay. At the time of the assignment, you were aware that other assignment agreement was entered into; is that correct?

A I became aware at some point, I'm not sure when.

Q At that point in time, did you have a belief that HCLOM LTD was being created to take over the management of the Acis CLOs?

A I don't know. I don't know when I found out, so --

Q And that's what I'm just trying to pin down a little bit, at some point between then and now, you formed the belief that HCLOM LTD was formed to take the

note and not to manage the CLO's; is that correct?

A Yeah, at some point.

Q Approximately, when did you form that belief; sometime recently in the bankruptcy or back in the day when you -- prior to the bankruptcy?

A Recently, in the last six months.

Q Okay. And what did you see or who did you talk to that led you to that conclusion?

MR. MORRIS: Objection, asked and answered about four times.

A Yes.

MR. MORRIS: You can answer.

A So, through review of documents and preparation for this deposition.

Q (By Mr. Aigen) Okay. But is there any information you saw in preparation that led to you to this conclusion that you didn't have access to back in 2017 and 2018?

A I'm not sure what I had access to in 2017 and 2018.

Q Well, was there any newly discovered information that you discovered in preparation that led you to this belief?

A I'm not sure if I knew or if I could have known, but being able to see the time line of when

entities were formed, when like, for example, an engagement letter, I wouldn't have -- in the moment, is it possible that I could have known that Highland was -- or Highland CLO Management LLC was signing up with Mizuho to be the banker, possibly. But, until spending the time to look at what happened and when it happened, it didn't really paint as clear -- that's when I got more clarity to the picture.

Q So did you see anything in 2017 or 2018 that would have led you to believe that HCLOM LLC was the entity that was attempting to become the manager?

A Yes, I -- I think I would have seen -- I would have been on e-mail communications at some point between October and January where I'm seeing that HCLOM LLC is going to be the successor manager, is going to be the manager to these reset CLOs. I'm certain I would have been on e-mails to that effect.

Q Did you ever say to anyone, well, why isn't HCLOM LTD doing this instead of HCLOM LLC?

A I don't know.

Q Do you remember having any discussions with anyone about the fact that it was supposed to be HCLOM LTD, but instead it looked to be HCLOM LLC that was doing it back in 2017 or '18?

A I don't remember any.

Q Okay. So is there any specific reason that you now have this opinion that something nefarious was going on with trying to take the note, but you didn't hold that opinion back in 2017 and '18?

MR. MORRIS: Objection to the form of the question.

A I don't think I had a basis in 2017, 2018 to be able to make that kind of a conclusion. Whereas, I feel like I do now.

Q (By Mr. Aigen) And can you point me to any specific information that you have now that allows you to make the conclusion that you did not have back in 2017 or '18?

MR. MORRIS: Objection, asked and answered.

A Just the -- the documents that I've had a chance to review in preparation for the deposition.

Q (By Mr. Aigen) But were there any specific documents that you reviewed that helped you reach that conclusion that you did not have access to back in '17 and '18?

MR. MORRIS: Objection to the form of the question?

A I don't know what I had access to in 2017 or '18, that's the hard part.

Q (By Mr. Aigen) Are HCLOM LLC and HCLOM LTD connected in any way, do they have any common ownership or does one own the other?

A That's a little broad. You know, ultimately they're -- they were controlled by Dondero. But in terms of a economic ownership of one owning the other, no.

(Exhibit 3 marked.)

Q (By Mr. Aigen) Okay. I've just -- I've just handed you what's been marked as Exhibit 3. This is a document entitled Assignment and Transfer Agreement and it is Bates labeled -- from other litigation, it's Bates labeled Acis 50 through 55.

A Okay.

Q And my simple question is just going to start with, do you recognize needs this document?

A Yes.

Q Okay. Can you identify this document for the record?

A It's the Assignment and Transfer Agreement by in between Acis Capital Management LP, Highland Capital Management LP, and Highland CLO Management LTD.

Q And is this the assignment agreement we've generally talked about throughout this deposition?

A Yes.

Q Do you prefer a shorter name for this, assignment and/or transfer agreement?

A How about the November transfer agreement.

Q Okay. There are times throughout this deposition where you uses the term "assignment," fair to say this is the document you were talking about?

A Not necessarily. In some cases, yes, but there might be some other instances where I was referring to something else.

Q Okay. There's no other document you know of where the note that we talked about was being transferred to another company, is there; this is the only assignment of that note?

A Correct.

Q Okay. Did you have any role with respect to the preparation of this document?

A I had no role with respect to the preparation of this document. I don't believe I did, but I'll clarify, I think I had some surreptitious involvement because I know that I was asked at this time, you know, how -- with money sloshing back and forth, who was ahead, who was behind. And I know I was asked at this time who's ahead and who's behind, and how much are they behind. And it was, well, Acis is behind by $3 million. And then lo and below, there's $3 million of expense

support, so in that sense, if you want call that being involved then.

Q Is that something you actually remember or you just know that happened because you've being reviewing documents for the deposition?

A I vaguely remember it, but I think there's an e-mail to that effect of just asking me where we stand.

Q Do you have any idea who was responsible for drafting this document?

A Not specifically.

Q Generally?

A It -- it would have been some combination of JP Sevilla, Isaac, Tim Cournoyer, maybe others, but I would expect that one -- one of those would have been involved in the drafting.

Q And those were all internal Highland lawyers that you just named?

A That's correct. And I don't know to what extent that they used outside counsel, but they may have.

Q Other than what you just told me about, who was behind and how much, do you remember having any conversations with anyone about Exhibit 3 prior to it being drafted?

A No.

Q Okay. What's your understanding as to who the parties are to this agreement?

A Per -- per the document, Highland CLO Management LTD, Acis Capital Management LP, and Highland Capital Management LP are the parties.

Q And do you have an understanding as to what the purpose of this document was?

A Yeah, basic understanding.

Q Can you tell me that understanding, please?

A So, the -- the purpose is to -- I guess to put it in more lay terms, is to have HCLOM undertake to be the successor manager and remit fees over to Highland and effectively step into Acis's shoes. And also step into Acis's shoes with respect to receipt of principal interest payments on the note. With the -- with the added quirk that there's this concept of expense support where HCLOM is agreeing to -- is agreeing to do the things that it talks about in paragraph 4.

Q You referred to that as a "quirk", I'm just curious why you used that language?

A Just because this wouldn't be something that I would -- that would be customary, I suppose, in a assignment and transfer agreement based on my experience.

Q Do you know why clause 4, Expense Support, was

include in this agreement?

A Yeah, I believe it was included because Highland was ahead by about three million at that time, and that was -- I don't know this for a fact, but I strongly suspect that this was to somewhat inoculate against the defense that, you know, material asset value is being stripped out of Acis.

Q Okay. And that's why they were three million ahead, that's why the number in this add up to three million, the two million plus the one million?

A That's correct.

Q Have you ever had any conversations with anyone other than counsel about the purpose or intent of this expense support clause?

A I'm sure I had conversations with Isaac back in 2018 or 2019, but I don't -- I don't remember the nature of those.

Q Prior to this agreement being entered into, do you remember having any conversations with anyone about why this agreement was being used?

A I'm sorry, prior to when?

Q The agreement being entered into.

A No.

Q Okay. After it was entered into, did you have any conversations with anyone other than counsel about

why this agreement was being used?

A Not that I can think of.

Q Have you ever had any conversations with Mr. Dondero about this agreement?

A I don't believe so.

Q Have you ever had any conversations with Mr. Waterhouse about this agreement?

A Not that I can remember, but very possible.

Q None that you remember?

A None that I remember specifically.

Q Any conversations with Mr. Serry about this document outside the presence of counsel?

A None that I can think of.

Q What's your understanding as to what responsibilities Acis had under this agreement, if any?

A I'm not sure that I really have an understanding other than just what's contained in the document.

Q Okay. And what understanding do you have, if any, as to what Highland's responsibilities were under this agreement?

A Same answer.

Q Okay. And what's your understanding, if any, as to what HCLOM's responsibilities were under this agreement?

A Same answer.
Q And just so we have the record, can you give me that answer?
A Sure, I'm I'll probably butcher it, but the HCLOM responsibilities?
Q Yes.
A Let's see. Looks like HCLOM -- yeah, caveating that the whole agreement applies, HCLOM is going to -- it -- really the -- the big two are, as I see it, is Section 3.C where it's undertaking to remit servicer fees. And then section 4 where it's offering to pay expense support to Acis. There may be other things in here, but those are the two that stick out.
Q With respect to 3.C, remitting servicer fees, do you believe that HCLOM failed to remit any servicer fees that it was supposed to remit to Highland?
A I don't believe HCLOM received any servicer fees.
Q Is it fair to say, then, that it's not your belief that HCLOM failed to comply with section 3.C?
MR. MORRIS: Objection to the form of the question.
A Yeah, I would -- I'd say 3.C looks almost inapplicable just from the standpoint of what is -- what is envisioned to happen never happened.

Q (By Mr. Aigen) And then Section 4 that you mentioned before, the offer to pay expense support, did HCLOM fail to do anything with respect to Section 4 that it was supposed to do under this agreement?

A I believe it may have. I -- I know Acis made demands from time to time with respect to expenses.

And I should go back to Section 2 as well, that's another undertaking of HCLOM where it says it will promptly pursue successor manager appointment. So, you know, again, I'd rely on the whole document, not just the parts I cherrypicked, but clearly there's an undertaking envisioned in Section 2.

Q Okay. I just want to finish up what you said about Section 4, do you have any specific recollection about demands that Acis may have made that implicated Section 4 here?

A No -- no recollection, but I believe I've seen that as part of the preparation.

Q What sort of demands; for reimbursement?

A Correct.

Q Do you know roughly what sort of money we're talking about?

A I don't remember.

Q Do you remember when approximately?

A No, not specifically.

Q Okay. And then Section 2, you mentioned that it talks about probably pursuing to get appointed as manager; is that correct?

A Pursue successor manager appointment.

Q Okay. And it's your understanding that HCLOM did not promptly pursue successor management appointment, is that correct, is that understanding?

A That's correct.

Q Okay. And tell me why not?

MR. MORRIS: Objection to the form of the question.

Q (By Mr. Aigen) Actually, what do they not do that leads you to the belief that they did not seek successor manager appointment?

A I'm not sure what steps would have been involved in that pursuit, but I don't believe they did anything. So whatever they had to do, they didn't do.

Q So when you say they don't believe they did anything, do you have firsthand knowledge or personal knowledge as to what they did or didn't do with respect to becoming manager?

A No personal knowledge, I just haven't seen any -- in my preparation, I haven't seen any evidence of them having done something.

Q Okay. So sitting here today, you have no

firsthand knowledge as to whether HCLOM took any steps to become successor manager; is that fair to say?

A Well, I -- I -- I think I have a basis to say that they didn't from having done the work that I've done to prepare. But, I -- I suppose I couldn't foreclose that possibility entirely. Just, I don't know what I haven't seen, I guess.

Q Let me ask you, what have you seen that would support the conclusion that HCLOM did not pursue successor manager appointment?

A It's kind of proving a negative. It's -- it's the fact that I haven't seen anything.

Q Fair enough. So there's nothing specific we can point to that you've seen that would lead to the conclusion that HCLOM did not seek appointment as successor manager?

MR. MORRIS: You have.

A Well, the -- let me -- one thing I've seen is the things that HCLOM LLC did during that time. So seeing these things, these entities formed at approximately the same time, LLC's first, and seeing all the things LLC did do effectively at the same time HCLOM LTD, I think it's theoretically, should have been doing and not seeing any evidence of LTD doing anything, leads me to believe that they didn't do anything.

Q (By Mr. Aigen) Okay. Let me ask you about just a couple of the recitals on the first --

A You know, and actually --

Q Oh, sorry.

A -- another document that -- that comes to my mind is the acknowledgment and waiver from January where again, it's the parties acknowledging -- the parties being, I believe, HCLOM LTD and Highland Capital Management LP -- that HCLOM LTD is never going to be the successor manager and it's going to be this company called LLC.

Q We'll get to that. Turn to the first page because I have a couple of quick questions. There's fourth recital that says or starts, Whereas, Acis has determined that the effective notification is that it cannot fulfill its duties of the portfolio manager of the CLO's, do you see that "whereas" clause?

A I do.

Q Do you have any reason to disagree or agree with that "whereas" clause?

A So I'm not aware -- I'm not aware of the notification. I've seen this document, but I don't have any knowledge of that notification having actually occurred.

And then, on -- as far as the -- the beef

of it, has Acis has determined that it cannot fulfill its duties as portfolio manager, I think that's undermined a little bit by the fact that it continued to fulfill its duties as portfolio manager from this point forward, you know, into 2018 until it lost control of the CLO's.

Q And why did it continue to act as manager after the -- this agreement was entered into?

MR. MORRIS: Objection to the form of the question.

A It was -- Acis was still the manager of the CLO's.

Q (By Mr. Aigen) I apologize if I asked this before, but do you have an understanding as to whether Acis failed to do anything that it was supposed to do under the assignment transfer agreement?

A I don't believe that Acis promptly provided the controlling class with notice requesting appointment of HCLOM. It may have, but I don't believe it did.

Q Why do you not believe it did --

MR. MORRIS: Hold on let him finish.

A Well, I was going to move on to the next thing. I don't believe Acis pursued -- in Section 2, I don't believe Acis pursued successor manager appointment of HCLOM as described in the agreement.

I think that Acis certainly didn't remit servicer fees after the end of -- after the date of this agreement with -- you know, with the -- I guess you could -- you could split hairs on the January payment where they sent it, but then Highland sends it back and then it's probably all under the same control. But then certainly didn't send anymore fees after the bankruptcy, after, you know, January of 2018, after that point.

So, it's -- those are the things that jump out, there may be others.

Q (By Mr. Aigen) What do you believe that HCLOM could have done to become successor manager that it did not do?

A I -- I just don't know. I -- I don't know what the steps involved in that with any level of detail.

Q Do you know if the ability of HCLOM to be successor manager was affected by Acis's bankruptcy or the temporary restraining order being entered?

A I don't know if it was affected, but by that -- but by the time Acis was put into bankruptcy, everything was under LLC anyways.

Q What do you mean by that?

A Every -- all resets, new issued CLOs were contemplated to be under HCLOM LLC, you know, well prior to the bankruptcy.

Q And I think you said it was all done, but then you said something about contemplated. So let me ask you, when were these resets issued with HCLOM LLC with respect to the Acis bankruptcy?

A Sorry, you got to do that again.

Q Let me ask it easier maybe. When were these resets completed with HCLOM LLC that you referred to?

MR. MORRIS: Objection to the form of the question.

A None were completed. One was, you know, at the altar in late January, and that was going to be under HCLOM LLC.

Q (By Mr. Aigen) And how do you know it was going to be under LLC and not LTD?

A Because the entities were formed, cash was funded, bank accounts were set up, agreements were entered into. It was -- it was ready to price.

Q And at that point in time, did you have any discussions with anyone about why it was being done through LLC not LTD?

A Not that I remember.

Q Okay. But you were aware that it was contemplated that is it would be through LTD, is that correct, at that time?

MR. MORRIS: Objection to the form of the

question.

A I don't know -- I don't know what I knew at the time. I think people were charging forward with there's going to be a new Acis reset under LLC, and that's what people were working towards.

Q (By Mr. Aigen) Changing topics a little bit here. You're aware that there was litigation between Highland and Acis; is that correct?

A Generally speaking, yes.

Q And you're aware at some point they reached a settlement; is that fair to say?

A Yes.

Q And just so I can determine how much we get into this, what -- what knowledge do you have related to the litigation between Acis and Highland that lead to the settlement?

MR. MORRIS: Objection to the form of the question.

A I really need you to be more specific, it's too broad.

Q (By Mr. Aigen) Do you have an understanding of any of the claims asserted by Acis against Highland?

A Very rough understanding.

Q Give your me rough understanding?

A Really that Highland was, you know, involved in

an effort to deprive Josh Terry of his arbitration award that he had received from Acis. And that, you know, Highland took steps to deprive him of that -- that award. Beyond that, I don't really -- couldn't go into the specifics.

Q And is it your understanding that one of these efforts included the transfer of the note as part of Exhibit 3?

A I'm not sure exactly.

Q And I guess that's what I wanted to get into, do you have any knowledge related to what role the note and the transfer had with respect to the litigation between Acis and Highland?

MR. MORRIS: Objection to the form of the question.

A I think it was a part of it, but I don't know how big of a part or how big of an issue, if it was a small issue, a big issue, an almost nothing issue.

Q (By Mr. Aigen) Okay. You're aware that within that litigation, Highland never took the position that the note was unenforceable, right?

A I'm not sure if I'm facile with the exact position that Highland took.

Q But is that consistent with your understanding?

MR. MORRIS: Objection to the form of the

question.

A I'm not sure.

Q (By Mr. Aigen) You just don't know?

A Yeah, I'm not sure.

Q Okay. Are you aware of anything, any new evidence that was discovered that would have led Highland to change its position with respect to the enforceability of the note?

MR. MORRIS: Objection to the form of the question.

A You said new information?

Q (By Mr. Aigen) Or any information?

A Yeah, I mean, I think it wasn't until doing the deeper dive into the scheduled claims and other miscellaneous proof of claims that -- I don't think it was until that point.

Q And what do you mean by that?

A I just don't know that anyone had looked at it with that amount of specificity.

Q When you say looked at it with respect to the scheduled claims, are you referring to the claims in the Highland bankruptcy related to the note?

A Yes.

Q Okay. And it's your understanding that the schedule originally listed the payee under the note as

someone other than HCLOM; is that correct?

A Yes, the original schedules, yes.

Q And do you remember who the payee was under the original schedules?

A I believe it was scheduled as Highland CLO -- Highland CLO Hold Co, I think, I'm not certain on that, but I think that was the entity that was list.

Q And at some point it was discovered that that was a mistake and it was amended, and HCLOM was listed at the payee; is that correct?

A I don't have personal knowledge of that, but I believe that to be correct, yea.

Q Okay. Do you have any knowledge as to how that error was made or why it was -- or how it was discovered?

A No personal knowledge or recollection. I -- I know that there was a -- a schedule of the note -- note amortization schedule that had at the top Highland -- I think it was Highland CLO Holdings Limited at the top of it. So total speculation, but I think whoever was probably putting together the schedules, saw that, picked up that entity, maybe there was like a text limitation in the software or whatever, again total speculation. And so, they started shortened "Holdings" to "Hold Co," but again that's just a total -- that's a

total guess.

Q Is there any connection between the Highland CLO entity that you mentioned and the Highland CLO Hold Co?

A I don't believe Highland CLO Hold Co is a thing.

Q Oh, okay. Sitting here today, you have no reason to believe it's an actual entity?

A I haven't seen it, I'm not aware.

Q Have you ever had any -- well, you testified that this is sort of your assumptions on what happened, have you ever had any conversations with anyone other than counsel on how that mistake was made or how it was discovered?

A No. Not that I can remember.

Q And that was two question, let me get into the second one. Do you have any knowledge as to how that mistake was discovered?

A Oh, how that was discovered? No.

Q When did you first find out about this mistake, was it after or before the amended schedule was filed?

A Oh, I think -- I think after, quite a bit after.

Q So you weren't involved in filing of the amended schedules?

A No.
Q Who would have been? Other than lawyers?
A Yeah, I'm -- I'm sure lawyers, possibly DSI the financial advisor, possibly internal people at Highland, Highland legal team.
Q And sitting here today, you don't know who discovered that mistake?
A No.
Q Did you ever have any conversations with Mr. Serry about whether Highland would be liable on the note? That's of counsel.
A I don't believe so outside of with counsel.
Q Okay. Are you aware of whether Mr. Serry testified in the Acis bankruptcy that Highland would be liable on the note?
MR. MORRIS: Objection to the form of the question.
A I don't have a specific recollection of that.
Q (By Mr. Aigen) Generally?
A I -- I -- I believe he may have testified to that effect.
Q Do you believe that's still Highland's position today that it is liable on that note?
A I don't believe Highland's position is that we're liable on the note, no.

Q So what changed between Mr. Serry testifying to that and the position currently today?

MR. MORRIS: Objection to the form of the question.

A I'm not sure and don't have personal knowledge, but I believe he was under the impression that HCLOM was owned 100 percent by Highland, so it was -- the whole thing was kind of moot.

Q (By Mr. Aigen) Did you ever have any conversations with anyone about that?

A I'm sure it's come up with Mr. Serry and with counsel at times, but I couldn't pinpoint anything for you.

Q Have you ever seen anything in writing about Mr. Serry's mistaken belief that HCLOM was owned by Highland?

A Not that I can recall.

Q Okay. Are you aware of anything that Mr. Serry may have learned sometime in between telling the Acis bankruptcy court that Highland would be liable on the note and today where Highland is taking the position that it is not liable on the note?

A Not specifically, but you know, I think he's had a chance to review many of the same documents that I've had a chance to review just as part of my

preparation and I'm sure his preparation.

Q Okay. And what is it that you believe that he would have learned that led to that change?

MR. MORRIS: Objection to the form of the question.

A Well, for starters, that Highland CLO Management isn't a wholly owned subsidiary of Highland, but also just the more granularity around the transfers and the transactions that occurred between, you know, call it November -- October, October, November of 2017 and early part of 2018.

And to be clear, I don't -- I don't know when he became aware of those things, if that was through this production or earlier, I -- you'd have to ask him.

Q (By Mr. Aigen) And -- and those things we're referring to, I believe, as what you earlier testified about the LLC vs. LTD difference, is that what you're referring to?

A Among other things.

Q Okay. And again, I don't like to put words in your mouth, but you had some information back in 2017 and '18, but you came to the conclusion sometime as part of the litigation going on that LTD was never actually trying to become the successor manager; is that correct?

A I'm not sure what information I had access to in 2017, 2018.

Q Again, I already asked you that part, I'm trying to ask something new here. Did you come to that conclusion from your review of documents or did someone bring that conclusion to you and you said, oh, yes I agree?

MR. MORRIS: Objection to the form of the question.

A I think I've reached that conclusion independently. If other people agree with that, you know, possible. I don't know who brought it to who, but I think I could have reached that conclusion independently and I think I probably did, but I'm not sure.

Q (By Mr. Aigen) And that sitting here today, you can't tell me whether you independently reached that conclusion or someone brought it to you; is that fair to say?

A I don't know. I don't know.

Q Just don't remember?

A Don't remember.

Q Do you remember discussing the conclusion with anyone other than counsel?

A Not specifically.

Q Okay. Take a look at some those other agreements that you've referenced throughout today.

MR. AIGEN: Let's mark these two. They go chronologically. Thank you.

(Exhibit 4 and Exhibit 5 marked.)

Q (By Mr. Aigen) Okay. I've just handed you two documents that may or may not be related, we'll figure that out, Exhibit 4 and Exhibit 5. Exhibit 4 is titled Payment Cancellation Agreement and it's Bates labeled HCLOM8893. And document five -- or Exhibit 5 is titled Forbearance Agreement and it's Bates labeled HCLOM9462.

Can you -- are you familiar with these two documents?

A Generally, I've seen them both.

Q Okay. They are dated 2017, 2018, do you believe you saw them back in that time period or is it just something you've seen recently?

A Sorry, I'm thrown off because I think there's a typo in the -- in the date. So, I believe this payment cancellation agreement -- so first of all, I don't believe this was ever executed so this was a draft. But I believe this was drafted around early May of 2018, not '17, so I think that's probably a typo.

Q Okay. Let's just start with Exhibit 4, the Payment Cancellation Agreement that as you indicated is

unsigned, and you've never seen assigned version of that, correct?

A No.

Q Do you know generally why this agreement was being drafted?

A Yes. Generally, this was, you know, post Acis bankruptcy April -- April, May, you know, I think the -- I think the view at the time was the whole -- the whole participation transaction, both legs, both the -- both the note and the servicer fees should just completely go away and disappear. So, you know, cancel the future payments on the note. Cancel the future -- any obligations that anybody has to remit servicer fees, and -- and everyone just walks away.

Q Okay. Do you have any personal knowledge of that?

A I believe so, but not that I recall very specifically. I know that I was on e-mail communications at the time and I was talking to Isaac and Stephanie, Isaac Leventon, Stephanie Vitiello, you know, about this concept around that time.

Q You've seen specific e-mails where the purpose of the Payment Cancellation Agreement being to make the other agreements go away was actually discussed?

A I'm not certain, I don't have --

Q Okay. We'll ask the easier question. Do you have any specific recollection of conversation about the purpose of the Payment Cancellation Agreement to make the other agreements go away?

A No specific recollection.

Q Generally?

A No, just that there were conversations.

Q Okay. And you -- who -- who would you have had those conversations with?

MR. MORRIS: Objection to the form of the question.

A Either Isaac Leventon or Stephanie Vitiello; probably Isaac, but I'm not sure.

Q (By Mr. Aigen) And you believe there are also e-mails on the purpose of the Payment Cancellation Agreement being to have the other agreements go away; is that correct?

A I don't know if there's e-mails on the -- on the purpose, there may be, but I'm not -- I'm not sure.

Q Do you know why the Payment Cancellation Agreement was never entered into?

A I believe it was stopped by Scott Ellington.

Q Why do you believe that?

A Based on review of e-mails from that time period.

Q Okay. And these were e-mails that were produced in this case?

A As far as I know.

Q What do you remember seeing in an e-mail that led you to the belief that Scott Ellington stopped this from going forward?

A I believe there was an e-mail, I forget who it was from, I believe it from Isaac to Scott saying, Scott, here's the Payment Cancellation Agreement. We're -- FYI, we're going to get this executed. And Scott may be replying something to the effect of, let's talk about this, or something like, let's take it offline. And then the Payment Cancellation Agreement is no more.

Q Other than that e-mail you just talked about, is there any other reason to believe that Mr. Ellington stopped the Payment Cancellation Agreement from happening?

A None that I can think of.

Q Okay. Do you know why Mr. Ellington or anyone else stopped the Payment Cancellation Agreement from being executed?

A No.

Q It's nothing you've ever discussed with anyone?

A (Shakes head.)

Q The other agreement --

A Sorry, sorry, for the nonverbal.

Q Exhibit 5, that's the Forbearance Agreement, similar questions about that one. Do you know why that was entered into?

A I think that one was at my request. So, this was going to be the -- you know, the note was going to be cancelled, there was a payment that was going to be coming up on May 31st, 2018. And so, I think I was thinking about this in the context of Highland's situation, you know, we should have some sort of a forbearance in place. If it's not going to be cancelled, the parties should at least agree nothing is going to happen under this. So, I don't know if I suggested forbearance, but the idea there needs to be something to reflect that Highland is not making this payment on May 31st of 2018. So that was, I think, put back into Stephanie's and Isaac's lap, and you know this document was born.

Q Did someone tell you prior to you coming up with that idea that they were not going to make the payment on 5-31-2018?

A I -- I don't know if someone told me. I -- could you ask the question again, I'm sorry?

Q Yeah, so, you came up with this idea based on

the fact --

A If I could -- I don't necessarily agree with the premise of the question. I don't know that I came up with the idea of this agreement. I just knew that there was something that needed to be done, and so I certainly communicated that to Issac and Stephanie.

Q Is it fair to say that something needed to be done because a payment due date was coming up, but it was your belief that the payment was not going to be made?

A Yes.

Q Why did you believe the payment was not going to be made?

A Well, I -- I knew that Highland hadn't received any servicer fees in the last five months, so I -- I don't know for certain, but I assume at that time I would have, in my head, thought, all right, this whole -- this whole transaction is just unwinding. So, I think that would be the main basis.

Q Okay. Did you have any conversations with anyone prior to this agreement being entered into about whether Highland is going to make the upcoming note payment?

A I -- I don't know. I may have, not that I specifically remember. But, it would have been -- it

would have been -- it would have been obvious to me or to Frank, my boss, that Highland would not be making this payment.

Q Why would it be obvious, because the servicer payment weren't being made?

A Correct.

Q And that's -- sorry?

A In addition, I -- frankly, sitting here today, I don't know what Highland's liquidity situation was. Highland may not have even had the money to make that payment. I'm not saying that was the situation, but it's very possible.

Q Well, sitting here today, is one of the reasons that you believe that Highland wouldn't make the payment because of Highland's liquidity decision, or was it because of the servicer fees, or both?

A I think probably the servicer fees would be the -- would be the main thing, but I'm just -- what I'm saying is, there may been other -- there may have been other things, I'm just speculating.

Q So you came to a conclusion on your own that Highland wouldn't make the next note payment because it hadn't been receiving the servicer fees; is that correct?

A I don't know that I came to that conclusion on

my own. I may have, I may have not.

Q Okay. But do you have a specific remem- -- recollection of coming to that conclusion prior to the Forbearance Agreement being executed?

A No.

Q Okay. And I guess what I'm getting at, is it possible someone just said draft the Forbearance Agreement, or do you have a specific recollection that you realized that the payment was not going to be made, so we had to do something?

A I don't have a recollection one way or the other. So we're all in the same office, I'm sure I had conversations with Isaac, with Stephanie, with people on my accounting team, with Frank, I just don't remember what conversations and when and with who.

Q Fair enough. So sitting here today, do you have any recollection as to whether you believed that Highland wasn't going to make the next note payment because it hadn't received servicer fees at that time period?

A I think I could safely say that I believed that Highland wasn't going to make the payment, just period, full stop. The because, I -- I'm not as certain on that.

Q Okay. Do you have a recollection that Highland

was not going to make the fees or you're just saying that because a forbearance agreement was entered into so it must be the case?

MR. MORRIS: Objection asked and answered about five times already, but you can answer.

A Yeah, I -- I -- I knew that it wasn't going to be, I don't know how else I can frame it, but I -- I was certain it wouldn't be paid at that time.

Q (By Mr. Aigen) And I guess I -- I don't -- why were you certain it wouldn't be paid, did anyone else tell you that?

A I -- I don't know.

Q Okay. Is it fair to say that you don't remember whether you came up with that conclusion yourself or someone else told you?

MR. MORRIS: Objection asked and answered.

A I think that's fair.

Q (By Mr. Aigen) Fair to say you certainly don't remember any discussions prior to the Forbearance Agreement with anyone about whether Highland would make the next payment?

A Not that I can remember.

MR. AIGEN: Let's mark this one 6. Thank you.

(Exhibit 6 marked.)

Q (By Mr. Aigen) I've handed you what's been marked as Exhibit 6, labeled HCLOM9466 and this document is titled Amended and Restated Forbearance Agreement, do you see this?

A I see it.

Q Okay. Did you have any role with respect to the preparation of this document?

A Exceptionally limited.

Q And what would your role have been?

A I don't have a recollection, but from having reviewed e-mails, I -- I believe I sent an e-mail to Kirsten Hendricks sometime -- let's call it, sometime between April and May of 2019, saying here's a copy of the amended and restated -- here's a copy of the Forbearance Agreement from last year which I can only surmise was my way of telling her, hey, you -- you deal with legal this year because I don't see any other e-mails about it, at least e-mails from me, so I think I had her take it and run with it.

Q And was -- this agreement was entered into because another payment was coming up on the note; is that fair to say?

A Yeah, yeah, well, I think it's -- it's -- there's another payment -- you know, there's another scheduled payment under the original schedule. And then

there's also the previous year where I think we'd extended it out for a year, so I don't know which of those reasons trumps the other, but those are the two reasons that I can think of.

Q Do you know why those payments weren't going to be made at this time and this agreement was needed?

A Same -- same reason, Highland hasn't gotten anything at this point in 18 months or 17 months whatever.

Q But you never had any conversation with anyone about that; is that fair to say?

A Not that I can specifically remember.

Q Do you know who would have made the decision at the time of Exhibit 6 to not make the payment on the note?

A No, I'm not sure. You know, I think ultimately if that payment was going to be made, that would have been a decision that would have had to come from Mr. Dondero. I don't know if that conversation ever took place or not, but it would have had to come from him.

Q But you don't know whose decision it was to not make the payment; is that correct?

A No, not specifically.

Q And same question with respect to Exhibit 5 and

the payment that was contemplated in there, do you have any idea as to who would have made the decision to not make the payment at issue in that Forbearance Agreement?

MR. MORRIS: Objection to the form of the question.

A No personal knowledge. But again, kind of in the inverse, the decision to make the payment would have come from Frank or Jim, and if from Frank, from Frank via Jim.

Q (By Mr. Aigen) But you have no personal knowledge on that?

A Correct.

MR. AIGEN: Let's mark this one.

(Exhibit 7 marked.)

Q (By Mr. Aigen) All right. I just handed you what is Exhibit 7, HCLOM13277 and this document is called Acknowledgement and Waiver. Do you recognize this document?

A Yes, I've seen it.

Q Okay. Is this a document that you've only seen in preparation for this litigation deposition or was this a document that you saw back in the day?

MR. MORRIS: Objection to the form of the question.

A I believe that -- I believe that I'm aware of

this through the -- the preparation for this deposition and this litigation. It's possible that I was aware of it beforehand, but I don't -- I don't think I was, I may have been, but I don't think so.

Q (By Mr. Aigen) Did you have any role with respect to this document's preparation?

A No, I don't believe so.

Q Do you have any understanding as to what the purpose of this document was?

A You know, again, none other than what's in the four corners of the agreement.

Q Okay. You don't -- you've never had any discussions with anyone about this document or what's contained in it other than with counsel?

A Correct.

Q So this -- is it your understanding that this document contemplates using HCLOM LLC instead of HCLOM LTD as the successor manager?

A I'm not sure, but at least in looking at you know item C of the one, two, three, fourth paragraph, it talks about that in connection with each reset, Each applicable CLO issuer will appoint Highland CLO Management LLC a Delaware Limited Liability Company as the collateral manager, so it appears that this is contemplating LLC as the manager.

Q And in subparagraph C, it says, in order to comply with the US Risk Retention Rules, those are the regulations and rules you talked about earlier with me?

A Yes.

Q Do you know whether there was something about HCLOM LTD that made it necessary to use HCLOM LLC with respect to the US Risk Retention Rules?

A Not that I could articulate.

Q At the end of this it talks about, none of the appointments have been made nor will be made pursuant to Section 2 of the transfer agreement, do you see that?

A Yes.

Q Is that anything that you're aware of in the 2018 time frame?

A I don't think so. Again, I'm not -- I'm not sure when I became aware of this agreement, so yeah, so I'm not sure.

Q Well, what about the idea that Highland CLO LTD would not be made successor manager or seek appointment, is that something you're aware of in the 2018 time frame or just something you became aware of --

A I'm pretty sure I would have been aware of that because I would have seen e-mail traffic about moving forward resets with HCLOM LLC at that time. So independent of this document, I think I would have that

understanding.

MR. AIGEN: And hopefully the last one.

(Exhibit 8 marked.)

Q (By Mr. Aigen) Okay. I've handed you what's been marked Exhibit 8. It is labeled Agreement and it's Bates labeled HCLOM --

MR. MORRIS: Creative.

Q (By Mr. Aigen) -- 13413. Do you know who came up with the name "Agreement"?

A No, no, I don't.

MR. MORRIS: I did.

Q (By Mr. Aigen) Are you familiar with this document?

A Generally, again, I've seen it.

Q Is it just something you've seen in preparation for this litigation or something that you saw back in 2018?

A I think I saw this in real time.

Q Okay. What was the purpose of this document, if you know?

A I don't know or recall with certainty, but I could -- I could speculate.

Q What do you think it was for?

A I think the purpose of this agreement was likely to make sure that Highland was getting credit for

expenses that it was paying on Acis's behalf. And netting those payments off of future -- any sort of future obligations that Highland would have to Acis or to anybody.

Q Do you know why that would have been needed and why they would have to paper it up into a document like this?

A Not sure.

Q You don't remember having any conversations about anyone about this agreement?

A I don't remember having any, I'm sure I did.

Q Was there anything unusual about putting an agreement like this in writing as opposed to what Highland usually does?

A Hard to say. It's not -- it's not completely unheard of. I'd say more often than not these types of expenses would just -- there would just be an invoice or something, and the other side would reimburse the other. But I'm sure there were probably instances over the year where some things were papered up a little more formally like this.

Q Sitting here today, do you know why there was a need to create this and make it more formal?

A I don't know, I don't -- nor do I have a recollection, but my assumption again is that there was

a known specter of litigation with -- with Terry involving Acis, so probably better to have a more formalized record of -- of this type of thing.

Q Do you have any idea who at Highland would have been involved in drafting this or coming up with the idea of this?

A I think Tim Cournoyer drafted this one.

Q Why do you think that?

A Because I'm pretty sure I've seen an e-mail to that effect.

MR. AIGEN: Why don't we take a break and I hopefully I can wrap this up.

MR. MORRIS: Great.

VIDEOGRAPHER: We're off the record at 2:39.

(Break taken.)

VIDEOGRAPHER: We are back on the record at 2:46.

MR. AIGEN: I have no more questions, thank you for your time, Mr. Klos.

MR. MORRIS: It was less than a half an hour, good call.

VIDEOGRAPHER: We are off the record at 2:47.

(Proceedings concluded at 2:47 p.m.)

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	)Chapter 11
	)
HIGHLAND CAPITAL MANAGEMENT, L.P.	)Case No. 19-34054-sgj11
	)
Reorganized Debtor.	)

REPORTER'S CERTIFICATE
ORAL AND VIDEOTAPED DEPOSITION OF DAVID KLOS
SEPTEMBER 25, 2024

I, Katharene McCulley, Certified Shorthand Reporter in and for the State of Texas, hereby certify pursuant to the Rules and/or agreement of the parties present on the following:

That the witness, DAVID KLOS, was duly sworn and that the transcript of the deposition is a true record of the testimony given by the witness;

That $_____ is the charge for the record of the testimony given by the witness after said witness was duly sworn by me.

I further certify that pursuant to FRCP Rule 30(f)(1) that the signature of the deponent:

_____ was requested by the deponent or a party before the completion of the deposition and is to be returned within 30 days from date of receipt of the

transcript. If returned, the attached Changes and Signature Page contains any changes and the reasons therefor;

__xx_____ was not requested by the deponent or a party before the completion of the deposition.

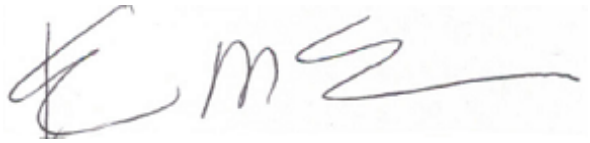
That the original deposition transcript, or a copy thereof together with copies of all exhibits, for safekeeping and use at trial, was delivered to the attorney or party who asked the first question appearing in the transcript, pursuant to Rule 30(f) of the Texas Rules of Federal Court.

That pursuant to information given to the deposition officer at the time said testimony was taken, the following includes all parties of record:

Michael Aigen (3h59m)
Attorney for Highland Capital Management, Ltd.
John Morris (0h0m)
Attorney for Highland Capital Management, LP

I further certify that I am neither counsel for, related to, nor employed by any of the parties in the action in which this proceeding was taken, and further that I am not financially or otherwise interested in the outcome of this action.

Certified to by me on this 2nd day of October, 2024.



Katharene McCulley, CSR
Texas CSR 3206
Expiration: 10/31/2024
Firm No. 571
Veritext Legal Solutions
300 Throckmorton Street
Suite 1600
Fort Worth, Texas 76102
P: 800-336-4000

Highland Capital Management Llp v.

David Klos (#6908328)

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David Klos Date

Highland Capital Management Llp v.

David Klos (#6908328)

ACKNOWLEDGEMENT OF DEPONENT

I, David Klos, do hereby declare that I have read the foregoing transcript, I have made any corrections, additions, or changes I deemed necessary as noted above to be appended hereto, and that the same is a true, correct and complete transcript of the testimony given by me.

_____ _____

David Klos Date

*If notary is required

SUBSCRIBED AND SWORN TO BEFORE ME THIS

_____ DAY OF _____, 20___.

_____

NOTARY PUBLIC

[actions - agreements]

c

[calls - chronologically]

[completion - conversations]

[separate - skin]

Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

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VERITEXT LEGAL SOLUTIONS

COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted

fashion to authenticated parties who are permitted to access the material. Our data is hosted in a Tier 4 SSAE 16 certified facility.

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Exhibit 51

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	
	§	
HIGHLAND CAPITAL	§	
MANAGEMENT, L.P.,	§	Chapter 11
	§	Case No. 19-34054 (sgj)
Reorganized Debtor.	§	
	§	
	§	
	§	

REMOTE ORAL DEPOSITION OF
JAMES P. SEERY, JR., INDIVIDUALLY
AND AS CORPORATE REPRESENTATIVE OF
HIGHLAND CAPITAL MANAGEMENT, L.P.
NOVEMBER 13, 2024
VIA VERITEXT VIRTUAL

REMOTE ORAL DEPOSITION OF JAMES P. SEERY, JR., INDIVIDUALLY, AND AS CORPORATE REPRESENTATIVE OF HIGHLAND CAPITAL MANAGEMENT, L.P., produced as a witness at the instance of Highland CLO Management, Ltd., and duly sworn, was taken in the above-styled and numbered cause on the 13th of November 2024, from 9:42 a.m. to 1:06 p.m. EST, before Jennifer Quick Davenport, CSR in and for the State of Texas, reported by machine shorthand, at the offices of Pachulski Stang Ziehl & Jones LLP, 780 Third Avenue, 34th Floor, in the City of New York, County of New York, State of New York, pursuant to Notice and the Federal Rules of Civil Procedure.

A P P E A R A N C E S

FOR HIGHLAND CAPITAL MANAGEMENT, L.P.
AND THE WITNESS:
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ALSO PRESENT:
Patricia Tomasky

I N D E X

P R O C E E D I N G S

THE REPORTER: Going on the record at 9:43 a.m. Eastern time. My name is Jennifer Davenport, Texas Certified Shorthand Reporter Number 1863. I am reporting the deposition remotely from Dallas, Texas. The witness is located in New York, New York.

Will all counsel please state their appearances for the record.

MR. AIGEN: Michael Aigen from Stinson representing Highland CLO Management, Ltd., and I am here with my partner Deborah Deitch-Perez and my paralegal Tricia Tomasky.

MR. MORRIS: And this is John Morris, Pachulski Stang Ziehl & Jones, for Highland Capital Management, LP, and I'm here with my colleague Hayley Winograd.

JAMES P. SEERY, JR.,

having been first duly sworn or affirmed, testified as follows:

EXAMINATION

BY MR. AIGEN:

Q. Can you please state your full name for the record?

A. James P. Seery, Jr.

Q. Good morning, Mr. Seery. You've been deposed several times; is that fair to say?

A. Yes.

Q. Okay. So you're familiar with the process today; is that fair to say?

A. Yes.

Q. All I'll point out is please let me know if you don't understand any of my questions, and I'll gladly rephrase them, and I'll try to do my best to make them as clear as possible. If that doesn't happen and you don't understand it, just let me know.

Does that work for you?

A. That works. Thank you.

Q. And you understand that you are designated as a corporate representative for today's deposition?

A. Yes. For Highland Capital Management, LP.

Q. And you've seen the deposition notice; is that fair to say?

A. Yes.

Q. Okay. And are you prepared to testify on all the topics in the deposition notice?

A. Yes.

Q. Okay. And we don't actually have to pull it up or do anything with it now yet, but for the record, I want to mark the deposition notice as Exhibit 1.

And we'll send it to you after, Jennifer, so we can do it.

(Exhibit No. 1 marked.)

Q. (By Mr. Aigen) We'll move on from that.

Can you just tell me generally, Mr. Seery, how you prepared for today's deposition.

A. Lots of review with counsel and some of my team with respect to the questions in the deposition notice, both document review and oral discussion.

Q. When you say "members of your team," can you tell me who you're referring to?

A. Generally, it would be Tim Cournoyer, David Klos, Matt Gray, and Thomas Surgent.

Q. And did you also review documents in preparation for today's deposition?

A. Yes.

Q. Can you tell me generally what documents you reviewed in preparation for today's deposition?

A. The dozens and dozens of documents related to the questions that are on the -- the deposition notice.

Q. How long approximately did you prepare for today's deposition?

A. It's hard to discern between work around the objection, fully understanding the mediation, and the

deposition prep. But it's -- it's hundreds of hours.

Q. Okay. Are you familiar with an entity called Highland CLO Management, Ltd.?

A. Yes.

Q. Okay. And for today's deposition, I will either refer to that as what we've been referring to it in prior depositions as HCLOM or HCLOM Limited.

Would that work for you?

A. Yes.

Q. And I know there are entities with specific names. For instance, there's another entity that we'll talk about later called Highland CLO Management, LLC.

Are you familiar with that entity?

A. Yes.

Q. When I'm referring to other entities other than Ltd., I'll try to be specific about which entity and use the full name or add LLC at the end.

Will that work for you?

Why don't we -- I assume Mr. Morris has it in front of you. Can we take out the document that's called -- actually, the Agreement for Purchase and Sale of CLO Participation. And if we have that hard copy, we won't need to put it on the screen.

MR. MORRIS: I do have a hard copy. It's

Bates-numbered R018126 through 139. That's just the version that I think was marked in the Klos deposition.

MR. AIGEN: Perfect.

MR. MORRIS: I'm putting it in front of the witness.

Q. (By Mr. Aigen) If we could put that in front of you, Mr. Seery.

And my first question simply is going to be are you familiar with this agreement?

A. Yes.

Q. Can you identify it for the record?

A. This is an agreement captioned as an Agreement for Purchase and Sale of Participation -- CLO Participation Interest between Acis Capital Management, LP, and Highland Capital Management, LP, dated as of October 7th, 2016.

Q. And at a high level, can you just tell me how you are aware of this document?

MR. MORRIS: Objection to the form of the question.

A. It's one of the documents referred to in the deposition notice, and at some point even before that notice, I became aware of this transaction and its connection to Highland, or HCLOM Limited.

Q. When would you have generally first become aware of this agreement?

A. I believe it would have been in the winter of 2021, early winter 2022, in that range.

Q. And what was going on that you became aware of this exhibit?

A. At that point, Highland had gone effective under its plan in August of 2021, and we were completing or continuing the process of monetizing assets, objecting to claims, cleaning up the register. And as we started to do that, I believe that's when I began to understand this document, its connection to HCLOM Limited, and its scheduled claim.

Q. And I don't know if I made this clear before, but let's make sure that we have on the record that this document is being marked as Exhibit 2.

MR. AIGEN: And we'll send it to you after, Jennifer.

(Exhibit No. 2 marked.)

Q. (By Mr. Aigen) Mr. Seery, do you know who prepared Exhibit 2?

A. I believe it was prepared by Hunton & Williams and Mark Patrick.

Q. And what's your basis for believing it was prepared by Hunton & Williams and Mr. Patrick?

A. The -- I've seen emails that describe Mr. Patrick's participation and his communications with Hunton & Williams.

Q. Other than reviewing communications, did you have any conversations with anyone about who prepared this document?

A. With my team in preparation, yes.

Q. Okay. And based on those conversations, it's your understanding that this was created by Hunton Williams and Mr. Patrick?

A. Yes.

Q. And what was Mr. Patrick's role at Highland Capital at the time that this was created?

A. Mr. Patrick is a lawyer, and he -- but he's not in the legal department. He -- or was not in the legal department. He ran what was known as the tax group.

Q. And do you know whether there was a reason that someone from the tax group was involved in preparing this document?

A. Yes.

Q. And what was that?

A. The transaction's completely tax driven.

Q. And you weren't involved with the preparation or creation of this document, correct?

A. No. In 2016, I had no involvement with Highland whatsoever.

Q. And so obviously a lot of the things related to this document you don't have firsthand knowledge of you got from talking to other people or reviewing documents; is that fair to say?

A. Yes, from the Highland business records and the preparation sessions, yes.

Q. And so, for instance, when you said that this was prepared for tax reasons, I'm just going to ask you how do you know that? Where did you learn that?

A. I learned that from my team. I learned it from the document. I learned it from prior testimony in the Acis case.

Q. And can you give me a little more details on what were the specific tax reasons on why this was created?

A. This document was created for the sole purpose of converting ordinary income at Acis, which Acis was a pass-through limited partnership. The two partners were Dugaboy and Mark Okada, and rather than have ordinary income go to those individuals from servicing fees on CLOs managed by Acis, they came up with a scheme to try to convert that income to capital treatment income by washing it through Highland. And

the delta between capital treatment and ordinary treatment at the time was about 20 percent taxes.

Q. And you mentioned in that answer that this related to the income of Acis. Was it also created for the purpose of doing anything with the income on the Highland side, or was it just on the Acis side?

A. It had nothing to do with income on the Highland side.

Q. And how do you know that?

A. It's in the document.

Q. In this document, Exhibit 2?

A. This document, as well as the testimony around this document and this transaction.

Q. Okay. What testimony are you referring to? Are you referring to testimony from the Acis matter or from this matter?

A. From Acis matters.

Q. Matters. Okay.

And can you give me a little more detail? On whose testimony are you referring to when you say that the tax reasons for creating this were discussed in the Acis matter?

A. They include Mr. Dondero's, Mr. Klos's, I believe, and then additional testimony from Mr. Dondero as well as documents.

Q. You used the word "scheme" when talking about this. I just have a couple questions about that.

Is it Highland's position that there was anything either unlawful or illegal about attempting to use this transaction for tax reasons?

A. I'm not a tax specialist, but I have some facility with tax, so I don't -- but I don't know whether this was actually illegal or a very aggressive way to -- to skirt the line.

Q. Has anyone ever indicated to you that it did, in your words, skirt the line for tax reasons?

A. No. But anybody reading it and then seeing that testimony would see exactly what it was.

Q. What do you mean?

A. The structure of the transaction was designed to ostensibly transfer income from one entity to a supposedly unrelated entity, and that was simply untrue.

Q. And what are the supposedly unrelated entities you're referring to?

A. Highland and Acis.

Q. And it's your understanding that this tax treatment that they were trying to get would only work if the entities were unrelated, but your belief is that they were related; is that correct?

A. That's correct.

Q. And what's the basis for your brief that they needed to be unrelated for purposes of this tax transaction?

A. The opinion that Hunton & Williams gave as well as the representations that Dondero gave.

Q. And what are you referring to when you say Mr. Dondero's representations?

A. He gave representations as the representative of Acis to Hunton & Williams to support the opinion.

Q. And you believe that those representations were untrue?

A. I'd have to look at the representations. They certainly did not disclose the whole truth.

Q. And what do you mean by that?

A. They may have been technically true, but they did not disclose the whole truth.

Q. Okay. And the representation we're talking about is the connection between Acis and Highland; is that correct?

A. Yes.

Q. Okay. Are you referring to any other representations other than that when you talk about the representations being untrue related to the tax treatment?

A. The ownership and economic benefit of Highland and who had it at the time.

Q. Of Highland or -- is that what you -- is that what you said?

A. That's what I said.

Q. Okay. And what do you mean by that? What was untrue about that?

A. Highland was controlled 100 percent by Dondero at the time of this transaction.

Q. And how did that make one of the -- excuse me.

A. And the economic -- and the economics flowed to Dondero and Okada.

Q. I apologize for interrupting you.

How did -- how does that fact make the representations that you mentioned before untrue?

A. I believe, in order for this scheme to potentially work, you had to have a separation of ownership.

Q. And what's your basis for believing that?

A. The opinion.

Q. The Hunton opinion?

A. Correct.

Q. And under this agreement, is it your understanding that Acis was agreeing to pay 50 percent

of its CLO servicer fees to Highland?

A. Not -- that's not what this agreement does, no.

Q. Again, I don't like to put words in your mouth. Let me ask you how this agreement was supposed to work.

A. This agreement purports to be a participation, and it purports to give Highland a participation interest in Acis's fees that have yet to be earned.

Q. And what percent of the fees is it supposed to give Highland?

A. It depended on the CLO.

Q. What was the range of those fees?

A. One-half to three-fifths.

Q. What obligations, if any, do you understand Highland to have had under this participation agreement?

A. There's a -- there's a myriad of obligations that Highland has as well as Acis has.

Q. Tell me what obligations you believe Highland had under this agreement.

A. I'd have to look at the document to remember the specifics, but there were notices and actions that Highland was to take with respect to its side of the

agreement.

Q. And what -- what obligations did Acis have under this participation agreement?

A. Again, I don't recall specifically each of them. I'd have to look at the agreement. But it had a number of notice obligations with respect to this agreement.

Q. For Highland, you said there were notices and actions they had to take.

Generally, what type of actions did Highland have to take under the participation agreement?

A. I'd have to look at each provision. I don't remember off the top of my head. Acis had actions as well.

Q. Is Highland taking the position in this case that Acis failed to perform, in any way, under this participation agreement?

A. Yes.

Q. Okay. What did Acis do or fail to do that was a failure to perform under the participation agreement?

A. Acis willfully withheld the payment of the participation interest from Highland, among other things.

Q. Since you said "among other things," what else did Acis do other than withholding the participation fees that was later performed under the agreement?

A. I'd have to look at it line by line, but Acis never did anything to advise the -- the CLOs of this agreement. In fact, the agreement was designated to be kept confidential, and they never did anything with respect to assuring that those interests would continue to flow to Highland.

In fact, later on, it took very specific steps to assure that they would not flow to Highland.

Q. And what do you mean by that?

A. Acis was involved in a transaction -- in a number of transactions which basically led to the Acis bankruptcy and the inability of Highland to get the fees it was supposed to get under this agreement.

Q. What did Acis specifically do to prevent Highland from receiving its fees that you were just talking about?

A. Number one, it didn't pay them over. So among other things, it just failed simply to pay them over.

Number two, it participated in a fraud to strip Acis from -- of its own assets and prevent

Highland from getting those fees, which led directly to the Acis involuntary and the conversion -- or the order for relief in that case.

Q. Anything else?

A. There's probably a number of other things that I just don't remember off the top of my head right now.

Q. Okay. So the first thing you said is they stopped making the fees. I understand that.

And then, number two, you said that they entered into a fraud to stop this from happening.

Can you tell me what specific steps or actions they took as part of that?

A. What Acis took?

Q. Yes.

A. Literally, dozens.

Q. Well, tell me what they did.

A. Among other things, Acis participated -- first, Acis didn't pay over the fees.

Then Acis participated in stripping its own assets from itself and disbursing them to other Highland and Dondero-related entities.

Acis consented to the stripping of those assets and, indeed, effectively removing -- or attempting to remove itself from its management of its

own CLOs.

Q. Anything else?

A. I'm sure there's a number of others. I'd have to go through the agreement and each of the subsequent transactions to delineate those for you.

Q. Well, is Highland contending that these failures to perform under the participation agreement by Acis should be attributed to HCLOM in this matter?

A. I think they're all one, but I don't know that they need to be attributed to HCLOM. They can be.

But they also -- Acis's failure, in and of itself, is a failure under the agreement.

Q. Okay. And so that's what I'm getting at here. I don't want to burden with you with reading the entire purchase agreement.

But as the corporate rep, I just want to know what Highland is contending Acis did that was a failure to comply with this agreement.

Other than what you just described for me, are there any other actions? And if you need to go through the agreement and take a minute to do that, that's fine. But if you think you've covered it all, that's fine too.

A. I doubt I've covered it all, so we can look

at it. It's a participation agreement as well. Even though it says Purchase and Sale, there's nothing bought or sold under this agreement.

Q. What do you mean by that?

A. It's a participation agreement. There's no asset that's bought or sold under this agreement. There's no true sale of anything.

Q. And if you could, take a minute and go through the agreement in front of you, and let me know what else Acis failed to do other than what you've already testified to that you believe is a failure to comply with this agreement. I would appreciate that.

A. It's going to take a little bit.

Q. Okay.

THE WITNESS: Can I mark on this, just -- just make a little note?

MR. MORRIS: Just describe it as you see it if there's something because I would prefer you not to write on it.

THE WITNESS: Okay.

A. This is just a misrepresentation, 1.3.

Q. (By Mr. Aigen) How is that a misrepresentation?

A. This is not an arm's-length transaction.

Q. And that's because the parties are related,

in your understanding?

A. They're not related. They're controlled by the same person. It's signed by the same guy for both sides.

Q. Okay.

A. 1.4 runs away from it being any kind of assignment or sale because it's not permitted under the PMA.

Q. What do you mean by that?

A. This transaction is not permitted under the portfolio management agreement.

Q. Which portfolio management agreement are you referring to?

A. The Acis portfolio management agreements, all of them.

Q. And how is it prohibited by those agreements?

A. They do not allow the portfolio manager to assign or transfer any of its rights or responsibilities. The right to receive fees is a right.

Each of the parties will use commercially reasonable efforts to obtain such consent or approval. Nothing was done.

They didn't provide Highland with the benefits of the agreement because they stopped paying.

That's 1.4 still.

2.3, they didn't get the authority that they needed to -- to do this transaction.

2.4, it recognizes that they didn't get it, that they never went and got it.

2.5 recognizes that they are not allowed to do this transaction, but they didn't go get that consent.

4.1, the covenants, did not -- did not adhere to the covenant.

Q. And they didn't do that by not making the payments; is that your understanding?

A. That's correct as well as the promises up at the top.

Q. What are you referring to when you say that?

A. The ones I -- the ones I referred to previously as we were walking through this.

Same section.

Oh, in the 3.5 and 6, alleviating the purchaser or Highland from its acknowledgments when the actions that end up resulting in the failure of payment are as a result of a breach by the seller of its covenants or fraud or by willful misconduct by the seller. Acis did each of those things.

On a quick review, that's the ones I see

right now.

Q. Okay. And when you said Acis engaged in each of those things, you're referring to fraud and willful misconduct; is that correct?

A. Fraud or willful. It's not willful misconduct. It's fraud or -- it's fraud or willful misconduct, not fraud and willful.

Q. Okay. When you refer to fraud or willful misconduct, are you referring to all of the acts you just talked about before or anything different from that?

A. There may be additional, but it's any breach or as a result of fraud or misconduct -- willful misconduct.

Q. And we got into this because I asked you to identify the failures to comply with the contracts. Let me ask you a separate but related question.

Can you identify any instances of fraud or willful misconduct that you're referring to that's separate and apart from all the failures to comply that you just told me about, or is it the same thing?

A. No. They're different things.

So breaching the covenant, even if it was done in good faith, would still alleviate any obligations of the purchaser.

So if Highland -- if Acis just doesn't perform, doesn't breach its covenant because it doesn't want to do something or it can't do something, it would alleviate the obligations of Highland.

The willful misconduct or fraud are the other acts which involve stripping Acis and leading to ultimately the bankruptcy of Acis.

Q. You just went through, in response to my question, about how Acis failed to perform in the agreement.

Different but related question. Did Highland fail to perform under this agreement in any way?

A. I don't know. Highland would have had to work with Acis, I think, to give any consents and notices or perhaps would have had to. I'd have to look at that.

And I don't believe that Highland failed to make any payments under the agreement until after Acis failed to pay, but I'd have to check that.

Q. And let me get into that a little bit.

You talked about failure of Acis to send payments under this agreement to Highland; is that correct?

A. Yes.

Q. What is the total amount of money or fees that Acis was supposed to send to Highland that it didn't?

A. I don't have it at the top of my head. But we can look at the back.

That Acis was supposed to send to Highland, you'd have to look at the numbers and then multiply them by the amount of the CLOs. I don't have that at the top of my head.

But I would assume it's going to be in the -- somewhere in the 5 to 10 million dollar range.

Q. And you say "assume." Is that a calculation that anyone at Highland has done, to your knowledge?

A. Sure.

Q. Who would have done that calculation?

A. Dave Klos would have -- would be -- if he hasn't done it, would be able to do it.

We know how much these CLOs all paid during that time period because they continued to pay and perform as everyone expected them to, and the money wasn't paid over to Highland.

Q. This 5 to 10 million in fees that was not turned over, were these fees obtained by Acis prior to or after the Acis bankruptcy?

A. Some were obtained prior to the Acis

bankruptcy. Some were obtained after the Acis bankruptcy.

Q. And you -- do you have any sort of breakdown of that by percent or dollar amount?

A. I don't, but the bankruptcy filing, either the involuntary or the order for leave, wouldn't have any impact on whether those fees were received and whether it's had the obligation to turn them over.

Q. Would it have an effect, though, on who was controlling Acis?

A. Sure.

Q. Do you know whether any fees were received by Acis and not turned over to Highland during the time period that Acis was controlled by Mr. Dondero?

A. Yes.

Q. And what's the volume or amount of those fees?

A. The fees that would have been received by Acis during January -- from January -- or let's say December, I think, from December 2017 until the order for relief in April of 2018.

Q. And the Acis bankruptcy was on or about January 30th, 2018; is that right?

A. The involuntary was filed on that date. The Acis order for relief didn't come until April.

Q. And --

A. Mr. Dondero controlled Acis from the time of the involuntary until the order for relief.

Q. And up until that time period, what's the volume of fees that were received by Acis but not turned over during the time period where it was controlled by Mr. Dondero?

A. I've seen it. I just don't have the number at the -- you mean from the start of the agreement until --

Q. Well, let's start with the start of the agreement until the filing of the bankruptcy. Do you know that?

A. There were amounts paid on both sides of the transaction, so as they -- as Highland received cash flows under the -- from -- with respect to the servicer fees, it rinsed those and paid them back under the note under a delayed basis to Acis.

Q. And up until the Acis bankruptcy was filed, were the fees that were received by Acis turned over to Highland under the participation agreement?

A. Not all of them, no.

Q. When you say "not all of them," what percentage or what amounts were not?

A. The payments in December 2017, January, and I

believe through -- through the time of the -- nothing was paid after -- I believe it was November of '17, and so anything after that, all the way from -- through the -- the filing of the involuntary through the order for relief and all the way till the end of the Acis case, nothing had been turned over.

Q. For the time period between the filing of the bankruptcy and the order of relief, is it your understanding that Mr. Dondero was controlling Acis?

A. Yes. The debtor -- it's not a -- it's not a -- there's no order for relief, so the company still controls. It's called the gap period. You're probably slightly familiar with it.

Q. And during that time period, there were fees that were received by Acis that were not turned over to Highland; is that correct?

A. I believe so, yes.

Q. Okay. Do you have an understanding as to whether anything resulting from the bankruptcy would have prevented Acis from being allowed to turn over those fees to Highland in the time period after the bankruptcy was filed before the order of relief?

A. I don't think anything would have.

Q. Is that anything you've ever discussed with anyone?

A. I don't recall discussing it. I'd have to go back and look at -- I don't think it -- I don't think it was affected by any of the orders in the case, any of the TROs. It wouldn't have been affected by certainly by the involuntary filing because other contracts were being paid by Acis and obligations, and it would typically operate in the ordinary course during the gap period.

And there would be nothing even post an order for relief that would prohibit the payment of fees in the ordinary course.

Q. The participation agreement we're looking at, I believe you mentioned before that the parties to it were Acis and Highland; is that correct?

A. Let me take a look. That's -- I believe that's the case, yes. That's right, yes.

Q. Okay. Other than what you've already described to me, can you point to any other failures to comply with this agreement by either Highland or Acis?

A. To the best of my recollection, that -- right now, that's the -- those are the ones I can see off this agreement. I'd have to think about whether there was others. I don't have any in the top of my head.

Q. And we'll get into it a little later in this

deposition, but at some point, HCLOM entered into agreement and, for lack of a better word, stepped into the shoes of Acis as part of this agreement.

Is that fair to say?

A. No, that's not fair to say.

Q. Okay. Well, how would you describe it? We'll use your words.

A. HCLOM doesn't have anything to do with this particular agreement.

Q. Okay.

A. It didn't do anything under this agreement and didn't step into anybody's shoes.

Q. Okay. Fair to say, then --

A. HCLOM Limited. Limited.

Q. I'm sorry. What was that?

THE REPORTER: I'm sorry. I didn't hear that.

A. HCLOM Limited. I'm sorry. L-T-D.

Q. (By Mr. Aigen) Is it fair to say, then, that HCLOM Limited didn't fail to comply with the participation agreement in any way?

A. I don't think -- yeah, I think -- I don't think it's fair because I don't think it's a -- I don't think it's an equivalent thing to say. HCLOM Limited is not a party to this agreement.

Q. Let me ask what might be a better question.
A. If the Acis audit was assigning some obligation to HCLOM Limited or anybody at Acis thought they were doing that, HCLOM Limited certainly didn't do anything under this agreement.
Q. Did HCLOM Limited ever have any obligations under this agreement?
A. I don't believe it did, no.
Q. Okay. Were any obligations of Acis or Highland under this agreement ever transferred to HCLOM?
MR. MORRIS: Objection to the form of the question.
A. I don't -- unless there's a document I haven't seen, I don't know of HCLOM Limited becoming a party or an assignee of this agreement.
Q. (By Mr. Aigen) Take a look at 3.6 in the purchase agreement. This is kind of a long paragraph. I won't make you read it into the record, but if you can take a second and read that, and it's the section titled Acknowledgements of the Purchaser.
A. This is in the participation agreement, 3.6?
Q. Correct. And like I said, the title of that section should be Acknowledgments of the Purchaser.
Do you see it?

A. Yes, uh-huh.

Q. If you can, take a second and just read that. I won't make you read it into the record, though.

A. Okay.

Q. Do you understand this section to be stating that the seller may enforce the note referenced in it even if the participation interests weren't paid in full or in part?

A. No.

MR. MORRIS: Objection to the form of the question.

A. No, that's not what it says.

Q. (By Mr. Aigen) Why do you disagree with that statement?

MR. MORRIS: Objection to the form of the question.

A. It's just not the words in the agreement.

Q. (By Mr. Aigen) You don't believe that, in effect, that's what that section is saying?

A. Not that I don't believe it. That's not what it says.

Q. Okay.

A. It's just --

Q. So what does this section say about whether the seller may enforce the note even if the

participation agreements are not paid in full or part?

MR. MORRIS: Objection to the form of the question.

A. It says several different things.

Q. (By Mr. Aigen) Okay. So under Section 3.6, if the participation interests are not paid in full or in part, do you believe that the seller may still enforce the note?

MR. MORRIS: Objection to the form of the question. To the extent all of these questions call for legal conclusions, the document speaks for itself.

A. The answer is I do not believe it says that. I think it says exactly the opposite of that.

Q. (By Mr. Aigen) What do you believe it says?

MR. MORRIS: Same objection.

A. Again, I know what it says. So Section (a) says that if the fees are terminated -- terminated, meaning the seller doesn't get them -- then the purchaser still has to pay under the note.

Section (b) says that if -- the seller may still exercise its rights under the note, even if the participations are not paid by the CLO trustees for any reason. So if the trustees don't pay Acis, then Acis doesn't have to pay Highland except if that failure to pay results from seller, Acis, breaching

its covenants under the agreement or as a result of fraud or willful misconduct by Acis.

And Section (c) says that purchasers have the opportunity to consult with counsel. That's blatantly untrue.

The next sentence similarly says that -- and both following sentences, that the purchaser has certain risks, but not if the breaching of the covenants to the agreement or willful or fraud are the reasons that seller is not getting -- purchaser is not getting paid.

Q. Have you ever had any discussions with anyone about this clause in the agreement?

A. Yes.

Q. Other than counsel, have you had any discussions with anyone about this clause?

A. My team, as part of the prep with counsel. There may have been some discussions when counsel wasn't there but all in connection with either preparing the original objection or in connection with this litigation.

Q. Fair to say you never had any conversations with Mr. Dondero about this provision?

A. I've never discussed anything related to this agreement as I didn't know that this agreement existed

before there was a TRO against Mr. Dondero talking to me, which came after he threatened me.

MR. AIGEN: Objection to the nonresponsive part.

Q. (By Mr. Aigen) Have you ever had any -- do you know whether anyone -- do you know -- excuse me. Let me rephrase this.

Do you know whether anyone had any conversations with Mr. Dondero about this provision in the purchase agreement?

A. I don't know.

Q. Do you know whether anyone had any conversations with Mr. Dondero about this agreement in general?

A. I believe -- I don't know if anyone on my team did. I believe Mr. Patrick must have.

Q. Why do you believe that?

A. He was doing this agreement for Mr. Dondero's benefit. So maybe not the specifics of it, but he must have talked to him at some point. Somebody got him to sign it.

Q. You don't have any personal knowledge? Pardon me.

A. No.

Q. And did anyone ever tell you that Mr. Dondero

and Mr. Patrick had any conversations about this agreement?

A. Not that I recall, no.

Q. Let's switch to the Promissory Note.

MR. AIGEN: John, I assume you have a copy of that that you can provide to Mr. Seery, and when we get a chance, we can mark the Promissory Note as Exhibit 3.

MR. MORRIS: So the Promissory Note that I'm giving him was previously marked as Klos Exhibit 2. It ends in Bates number 8535 through 8540.

(Exhibit No. 3 marked.)

Q. (By Mr. Aigen) Mr. Seery, if you could, take a look at that.

And my first question is going to just simply be do you recognize this document?

A. Yes, I've seen a copy of this.

Q. And can you identify this for the record?

A. This is the note that accompanies the participation agreement.

Q. And when did you first become aware of this agreement?

A. I knew there was a note, and it was reflected as an obligation of Highland on Highland's books and records, so sometime in the -- I think the summer of

2020, and it was a subject of dispute with Acis and Mr. Terry.

Q. You obviously were not involved with the preparation of this document.

Is that fair to say?

A. That's fair, yes.

Q. And who are the parties to this note?

A. The maker of the note is Highland, and the recipient of the note was Acis.

Q. Do you have an understanding as to why this note was entered into?

A. Yes.

Q. And can you tell me why?

A. This was supposed to reflect the cash that -- flows that Highland would pay to Acis in exchange for the cash flows that Acis was paying over to Highland.

Q. And you said -- you said "supposed to reflect."

Is it your understanding that it did not actually reflect that?

A. It's very poorly done, so I'm not sure exactly what it reflects.

Q. Why do you mean -- what do you mean when you say it was "poorly done"?

A. While it references the CLO participation

agreement, it also talks about advances. It's poorly drafted in a number of places that have provisions that don't make any sense, and its definitions are wrong, so it's just not well done.

Q. Do you know who drafted this promissory note?

A. I don't.

Q. Okay. Do you know whether it was someone at Highlands?

A. I don't know who drafted it.

Q. Did you make any effort, as part of your preparation for today, to determine who drafted this note?

A. I don't recall specifically. I'd have to guess who drafted it. I believe, as I said, the CLO participation agreement was drafted by Hunton & Williams, and I assume that this one was. But rather than assume, I just don't know the answer.

Q. Did you ask anyone, in preparation for this deposition, if they knew who drafted this?

A. I may have. I don't recall specifically. So if I did, I would tell you.

Q. And -- well, let's go to Exhibit A at the end of the document.

Can you tell me what Exhibit A reflects with respect to this note?

A. This purports to be the note amortization schedule.

Q. And what payments, if any, were actually made under this note?

A. The payment on 5-31-17, I believe, was made, and that's it.

Q. And how much was that payment?

A. $3.37 million.

Q. I just want to go through a couple of items in this note, some of which you mentioned earlier with respect to its drafting, and my question is just going to be if you have any understanding to what it's referring to.

So let's start with, on the first page of the note, do you see toward the bottom there's a section Conditions Precedent?

A. Yes.

Q. And the first paragraph in there reads, and I'll read this into the record, "This note shall not become effective and payee shall have no obligation to make the advance hereunder until payee has received each of the following in form and substance acceptable to payee."

Did I read that correctly?

A. Yes.

Q. Do you have any idea who payee refers to in that clause?

A. Payee refers to Acis.

Q. Do you have an idea as to what advances, with respect to Acis, this is talking about?

A. There were never any advances with respect to Acis.

Q. When you say "There were never any advances," are you saying that there were no advances contemplated by this note or no advances made?

A. No advance was made, so payee never loaned or made an advance of money to Highland, maker, under the note.

Q. And I guess my question is what advance is this even referring to in the Conditions Precedent section? What advance is contemplated by payee?

MR. MORRIS: Objection to the form of the question.

A. I don't believe there ever was an advance, and the note just doesn't fit the transaction.

Q. (By Mr. Aigen) And let me ask you, when you said this wasn't drafted well, is this what you mean as an example of it, that it's talking about an advance by the payee under the note?

A. That's one of the -- one of the problems with

the note, yes.

Q. Sitting here today, do you have any idea what specific advance that's even referring to in that section under Conditions Precedent?

A. It's -- I know what it's supposed to refer to. It's supposed to refer to an advance under a promissory note, which would typically be a loan of money, and this was not one.

Q. But that would typically be an advance made by the payor under a promissory note; is that correct?

A. Yeah, the -- no. The -- no. The payee makes the advance. The bank makes the advance. This was -- this was a loan of future cash flows. There's no advance here. All right? The CLO participations are not an advance.

The payee, right, which is typically the bank, gives you money, and the maker signs the note. So the payee makes an advance, but the -- that's not what happened here.

Q. Under this agreement, Acis is the payee; is that correct?

A. Yeah. So Acis would be -- if this was the real note that fit the transaction and it was the bank, Acis would be the payee. Acis would have made the loan to the maker.

Q. So you think the -- well, is the -- the advance it's referring to here just a mistake to be included in this document, or is it referring to some advance that was supposed to be made?

MR. MORRIS: Objection to the form of the question.

A. I think it refers to a typical transaction and sets it up as if it is an advance of money, and it is not.

Q. (By Mr. Aigen) But there was no advance of money contemplated by Acis as part of these transactions; is that correct?

MR. MORRIS: Objection to the form of the question.

A. I can only tell you what the document says and what the transaction and the CLO participation says, and it's a participation. And this tail on the CLO participation dog doesn't make sense.

Q. (By Mr. Aigen) Do you have any -- do you believe that this term "advance" in this section was referring to the money that was supposed to be transferred from Acis to Highland under the participation agreement?

MR. MORRIS: Objection to the form of the question.

A. Are you asking what I think?

Q. (By Mr. Aigen) Well, as the representative for Highland, what do you believe?

A. I think they were trying to make a transaction look like it was legitimate when it wasn't. Trying to make it look like one party loaned the other party a bunch of money so if you just saw the note, you'd think that there was $12.6 million that was transferred from Acis to Highland and Highland was going to pay it back to Acis. And that is not what happened.

Q. Did you ever have any conversations with anyone about what "advance" was referring to in this section?

A. Yes.

Q. Who did you discuss this with?

A. With my team in preparation. I asked them whether any advance had ever been made, and the answer was no.

Q. Okay. Who did you discuss this with?

A. David Klos.

Q. Anyone else?

A. No. He would be the person responsible for accounting for us.

Q. So Mr. Klos would have a better understanding

as to what advance this is referring to in this note than you; is that fair to say?

MR. MORRIS: Objection to the form of the question.

A. No, I don't -- yeah, I don't think that's fair to say. He told me there was no advance made.

Q. (By Mr. Aigen) I know there -- there was no advance made. But I'm just trying to figure out what advance this is even referring to.

Do you have an understanding as to what advance this document was even referring to when it used the term "advance"?

A. I think I gave you the answer, which is that there was no advance, and so it's just another obvious problem with the note.

Q. But do you believe when it says "advance," it was intended to refer to the contemplated payments by Acis under the participation agreement?

A. It would have to be all of the payments under the participation agreement because it's a $12.6 million -- purports to be a $12.6 million note.

Q. Yes. But I'm asking for your understanding and whether you believe, when this document uses the term "advance" in that section, was it intended to refer to the contemplated payments under the

participation agreement?

MR. MORRIS: Objection to the form of the question.

A. Yeah. I just don't think it fits, so I don't know what -- you know, if it was going to -- if it was going to do that, it would have had to be all of the payments under the participation, but it doesn't fit the transaction.

Q. (By Mr. Aigen) Why not?

A. Because that's not how --

MR. MORRIS: Objection, asked and answered.

A. That's just not how a participation agreement works. You don't have a note.

Q. (By Mr. Aigen) Has anyone ever told you that when the term "advance" was used in this provision, that it was referring to the contemplated fees paid by Acis under the participation agreement?

A. No.

Q. And in Subpart (b), if you could, take a look at that, and I'll just give you my question beforehand. If you could, take a look at that, and at the end of that clause, it refers to "initial advance," so if you could, take a look at that paragraph.

My question is going to be whether you have an understanding as to what initial advance that is referring to.

A. Yeah. Again, I know there is no initial advance that Acis made to Highland, and so the reference to an initial advance doesn't make any sense. It's consistent with my prior testimony that that's not how participation agreements are done.

Q. Okay. Fair to say, in the beginning of this, when you said that this was a poorly drafted note, this would be an example of what you were talking about?

A. You've hit two of many.

Q. Do you believe that that "initial advance" in this document can refer to the first payment under this note?

MR. MORRIS: Objection to the form of the question.

A. I think you're confused. The payment under the note is by the maker. The initial advance is supposed to be by the payee. There is no initial advance.

So any payment under the note is a payment by the maker --

Q. And do you believe --

A. -- advances the loan.

Q. Right.

And do you believe that the initial advance here could be referring to the $665,000 payment under the participation agreement?

MR. MORRIS: Objection to the form of the question.

A. Which $665,000?

Q. (By Mr. Aigen) Do you know whether, under the participation agreement, there was an original -- an initial advance of $665,655?

A. There just simply was not.

MR. MORRIS: Can I -- can I put this in front of him?

MR. AIGEN: Yes. Of course, of course.

MR. MORRIS: I'm putting in front of the witness the document that you marked as Seery Exhibit 2, and I'm turning to the second page, Section 1.1.

A. Yeah, that's not an advance. That's a -- that's a payment by the purchaser, not by the lender.

Q. (By Mr. Aigen) And I'm not trying to trick you, Mr. Seery. I'm just trying to make sure we're on the same page.

You do not believe that the reference of

"initial advance" in the promissory note refers to that payment; is that correct?

A. It cannot possibly by the wording of the sentence.

Q. And why not?

A. Because it talks about the obligation of the payee, defined incorrectly as Highland, won't be -- the whole thing doesn't kick off until they've made the advances and the initial advance under the note.

And it's not -- this is -- that's not an advance under the note. That's a -- that's a -- I don't know what they call it, but it's -- what do they call it? A -- the cash purchase price, that's part of the -- the payment made by Highland to Acis, so it doesn't have anything to do with this.

Q. Is this another example of the way that this note was poorly drafted, in your understanding?

A. I think so, yeah.

Q. And take a look on the next page. There's an Events of Default section.

Do you see that?

A. Yes.

Q. And what's the purpose of this section generally?

MR. MORRIS: Objection to the form of the

question.

A. You know, in a typical note, which this seems to be modeled off of, it just sets up the events of default, which would allow the lender, who had advanced the principal, to accelerate and demand all payments under the note immediately.

But, again, because this is not a sale or a purchase of anything -- this is a participation -- you don't have notes with participation agreements. They don't exist.

Q. (By Mr. Aigen) Did they exist in this case?

A. In this case, yes. And the idea is to make this look like something it's not.

Q. And I understand that you said they don't exist.

But is it fair to say, then, what you mean is they don't typically exist, but they did do it in that manner in this case?

A. They did it in that manner in this case for some reason. I've seen hundreds of participation agreements, and they don't have notes.

Q. And what is your understanding as to why it was done in this case with a note when in most cases it's not?

A. They wanted to make this case look like a

sale to a third party of a true interest even though that's not what they were doing.

Q. And that was in order to obtain the tax benefit; is that correct?

A. Correct. The only reason for the transaction.

Q. And how do you know that that was why they structured it with a note when it's not usually structured with a note in situations like this?

A. Just from the documents and my experience with participation agreements.

Q. And what I'm getting at is it based on anything other than your review of the documents in this case and your personal experience?

A. Well, and then knowing what the sole purpose of the transaction was from the testimony that I've seen in both the Acis -- in the Acis case.

Q. Other than the testimony that you have reviewed, the documents you reviewed, and your experience, is that understanding based on anything else?

A. I don't -- I can't think of anything else off the top of my head. That's a pretty fulsome.

Q. And I don't mean to trick you.

But is it based on any conversations that

you had with anyone at Highland that we haven't discussed yet?

A. Well, I don't know if the team knew it at the time, but the team knows it now, so I can't separate the temporal nature of it as to what the purpose of the transaction was, sure.

Q. And let me get into that.

When you say the team knows it now and they might have known it then, who are we referring to? Mr. Klos?

A. Primarily Mr. Klos, but he wasn't --

Q. Anybody else?

A. -- part of the transaction, so it would have been learning it just by being in accounting.

Q. Can you tell me about any specific conversations you had with Mr. Klos about whether he understood why a note was being used in this situation when it's not typically used?

A. Oh, I don't -- I don't know that he had a particular view on the note, and if he had experience with participation agreements before, I don't know.

Q. And all I'm trying to get at is I was trying to ask you for your basis for it, and you said it was based on, in part, possibly conversations with the team, and that included Mr. Klos.

So I just want to get at whether you and Mr. Klos had any conversations about that topic that you remember, sitting here today?

A. Those would only be in connection with preparing for the deposition and the objection in the deposition, but I don't have a specific recollection of him saying that he knew anything about the structure of this with the note and why it was done.

Q. Do you believe that there was anything illegal done by putting together the transaction in this manner rather than the way that they are usually done?

MR. MORRIS: Objection to the form of the question.

A. I don't know that it was necessarily illegal, if you mean a breach of the law. It was a breach of the PMA certainly, the portfolio management agreement, and it was designed to give it more of a patina of an actual third-party transaction so it could be equated with the transfer of servicing rights under mortgage agreements and mortgage pools that are the -- what Hunton & Williams tried to analogize to in its opinion letter.

Q. The Events of Default section, if you see right under the heading, it says, "Maker shall be in

default under this note," and then it goes on to list several items there.

Who is it referring to when it says "maker"?

A. The maker is defined as Highland.

Q. Would you agree, then, that this Events of Default section is describing the potential events of default by Highland and not the payee?

MR. MORRIS: Objection to the form of the question. The document speaks for itself.

A. Yeah, I believe -- I believe that's correct.

Q. (By Mr. Aigen) Do you have an understanding as to whether anything in this agreement contemplates any potential events of default by the payee as opposed to the maker?

A. Off the top of my head, I don't know. Typically, there wouldn't be in a note.

Q. So sitting here today, are you aware of any obligations that the payee had under this note?

A. Yeah. The way the note is structured, it had an obligation to make an advance, and it did not do that.

Q. And what advance was the payee obligated to make under this agreement?

A. The way this note is structured, it seems to

say that the payee is going to loan Highland $12.6 million and Highland is going to pay it back on a deferred basis.

Q. Are you taking the position that the payee defaulted on this note by not making an advance of $12.6 million to Highland?

A. I am taking the position that the note doesn't reflect the transaction and it's a complete failure of consideration in the transaction, sure.

Q. So it's your position that under this note, the payee was supposed to make a payment to Highland of $12.6 million?

A. That's the way this note is structured.

Q. Okay. And that's your position here?

A. That's what it says.

Q. Did Highland ever make a demand to Acis for the $12.6 million that you're claiming that it was owed under this note?

A. I don't believe that Highland ever made a demand for anything under this note ever.

Q. Within the Highland bankruptcy, can you tell me why Highland didn't make a demand for $12.6 million that you claim is owed to it under this note?

A. Well, there would be a few reasons. But first and foremost, during the Highland bankruptcy and

during the time we were litigating with Josh Terry, I was under the impression and belief that this was an advance that had been made, and Highland actually owed Acis $12.6 million until it was transferred to a Highland subsidiary, and then it owed itself the money. And if Terry got the note back, there might have been defenses, but we hadn't gotten into those yet, but there was certainly a risk that we owed the money.

It would have been hard to make a demand for $12.6 million against Acis because Acis had already gone through a bankruptcy and Highland didn't file a proof of claim for this money or for anything under any of these agreements.

Q. At the beginning of that, you said that you believed that Acis had actually made the $12.6 million payment to Highland; is that correct?

A. I didn't reference the 12.6, but -- I don't think. But it was an amount under it. I thought there was 9 1/2 million dollars owed under the note to somebody.

MR. MORRIS: I think you-all are talking past each other a bit, just FYI.

Q. (By Mr. Aigen) Let me ask you this way.

Do you believe that the payee under this

note had any specific obligations?

A. Payee under -- the way the note's structured, it doesn't have obligations continuing.

The way it's written is that it's given value to Highland, and it's given it in the form of something worth $12.6 million. And our position is it did not do that.

Q. Does the payee have any obligations under this note?

A. Again, the structure of the note presumes that the payee has given the maker, Highland, 12.6 million of value, and Highland didn't get that.

Q. Does the payee have any obligations under this note?

MR. MORRIS: Objection, asked and answered twice.

A. I just repeat the same answer. That's -- that's what it's structured as. That's what it says.

Q. (By Mr. Aigen) Well, you keep saying it presumes something, and I'm not really sure what that means.

A. Because it says "for value received."

Q. Okay. You understand what an obligation under a contract is, correct?

A. Yes.

Q. Okay. Did the payee have any obligations under this note?

MR. MORRIS: Objection, asked and answered three times.

A. It has -- it has an obligation to make the advance of the value received that's referenced. And if it has not done that, then the premise of the note, which is an obligation of the payee, falls apart.

Q. (By Mr. Aigen) Have you ever had any discussions with anyone about what that initial advance -- actually, let me ask a different question.

Did Acis fail to perform any of its obligations under this note?

MR. MORRIS: Objection, asked and answered.

A. It never made the contemplated advance, and even if you tie the note to the participation agreement, it failed to make the continuing advances that were considered.

So even if you consider the advances to be the transfers under the note -- under the participation agreement, it refers to an initial transfer. And then it says the full transfer, basically, to make the transfer.

It didn't do those things.

Q. So it's your -- it's Highland's position that the failure to make the contemplated advance by Acis was a failure to perform under the promissory note. Is that fair to say?

A. There was no advance made, so there's a complete failure of the premise behind the note.

Q. Okay. I'm simply asking whether Highland believed that Acis failed to perform any obligations under the note.

MR. MORRIS: Objection, asked and answered about five times.

A. Yeah, it failed to make an advance.

Q. (By Mr. Aigen) And how much was the advance that Acis was required to make under this note that it failed to make?

A. Again, the way it's structured is it would be the whole $12.6 million. That's what it says. That doesn't really work well, but that's what it says.

Q. Where in this document do you see something that says that Acis had an obligation to make that amount of payment to Highland?

A. "For value received." What that means to me --

Q. Can you show me in the agreement? I just want to look at -- I just want --

A. Yeah, the first -- the first three words, "for value received."

So what that means to me is, for example, when I go to a bank and they're going to loan me a million dollars and I sign a note before they've given me the money that says for value received, they're going to give me a million dollars, and I sign it and they walk out of the room and they never give me the million dollars, I don't owe them a million dollars.

Q. Even if you signed that note, you don't believe that you do?

A. Absolutely. Oh, 100 percent. They didn't give me what they were supposed to give me. For value received, it was not received.

Q. And how do you know what the value is supposed to be that Acis was supposed to send over?

A. Because they reference the amount that's owed under it, $12.6 million plus interest at 3 point -- 3 percent. If I don't get something, I'm not -- if I don't get the full value, I'm not paying them back.

Q. Now, the term under Conditions Precedent says "initial advance."

Do you know whether that's referring to the entire amount or some portion of it?

A. Well, it's -- first, it says, under

Conditions Precedent, "the advance," and then it goes through (a), (b), and (c), and it mentions the initial advance.

So if you had, for example, a million dollar note that was to be made in 10 installments, and they gave me the -- and it says a million and they only gave me the first installment of 100,000, I wouldn't owe them a million.

They just didn't make the additional advances. They made the initial advance of a 100,000, but they left the room, and they said, Nah, we're not giving it to you. Thanks for the million.

I would not owe the million. It says they're giving me that much, and they don't. This one says that.

Q. So under this agreement, do you believe that Highland could have sued Acis and compelled it to make that payment to Highland?

MR. MORRIS: Objection to the form of the question.

A. I don't -- I don't know. I don't think so because I don't think that was what this was all meant to do.

It would have been -- I mean, it would have been Jim Dondero suing himself to make the

advance to himself.

Q. (By Mr. Aigen) Well, let me ask you this.

This initial advance that it's referring to, do you believe that to be a condition under this agreement or an obligation by Acis under this agreement?

MR. MORRIS: Objection to the form of the question.

A. It says it's a condition precedent, and it purports to be -- I mean, that would -- the initial advance has to be by Acis.

Q. (By Mr. Aigen) Would you agree with me, though, that under this agreement, the advances contemplated by Acis were conditions precedent and not obligations by Acis?

MR. MORRIS: Objection to the form of the question.

A. The note presupposes it's an obligation. Just by signing a note -- signing a note does not mean that you owe someone money. You have to have the consideration given.

If I give you a note and you've given me nothing and I think we can all stipulate that's true, I don't owe you anything. You have to give me the consideration, and this one contemplates -- that's

what it says.

Q. (By Mr. Aigen) Yeah. But is the initial advances contemplated by the payee, are these obligations under the note or conditions precedent under the note?

MR. MORRIS: Objection to the form of the question.

A. The way it says is the condition precedent to making the advance, the 12.6 million of value or the value received, the payee doesn't have to make the advance if these other things aren't done.

Paragraph (b) is a dog's breakfast of words. It really is. I mean, read it. It's kind of --

Q. (By Mr. Aigen) I understand. I understand. If it was more straightforward, I may not have any questions for you today.

So my question is simply does Highland contend that there is contractual obligation under this note for Acis to make payments to Highland?

MR. MORRIS: Objection to the form of the question.

A. Highland contends there's a complete failure of consideration, among other -- among other defenses to this claim, and that this note is just further

evidence of the structure and failure of this transaction to go forward as contemplated.

Q. (By Mr. Aigen) I understand that. And I appreciate you telling me that you believe it to be a lack of consideration, and this is just a separate question.

Is Highland contending that the failure to pay money by Acis to Highland was a failure to perform its obligations under this note?

A. The note and the participation agreement are one integrated transaction.

So if you look at it stand alone, which is what you've sort of been asking me, it doesn't make a lot of sense.

When you look at it as an integrated transaction, yes, the failure of Acis to do what it was supposed to do is a breach of the agreement, and it relieves Highland of whatever theoretical obligation it may have had to make any payments under this note or under the participation agreement.

Q. So Highland is taking the position that Acis had an obligation under this note to make the payments to Highland?

MR. MORRIS: Objection, asked and answered.

A. That's not what I said. I said they were an integrated transaction, and they don't -- it doesn't make sense to stand alone.

But if you look at it stand alone, per your question, Highland would not have to pay anything back to Acis under this note because Highland didn't get the value received.

Q. (By Mr. Aigen) Does this document reference the participation agreement in any way?

A. It does, yes.

Q. Show me where this document references the participation agreement.

A. There may be more than one place, but certainly in Paragraph (b) of the condition precedent.

MR. AIGEN: We've been going about an hour and a half. Do you want to take a quick break?

MR. MORRIS: Sure.

MR. AIGEN: Five minutes?

MR. MORRIS: Great.

MR. AIGEN: Let's go off the record.

THE REPORTER: Off the record at 11:04 a.m.

(Recess 11:04-11:14.)

THE REPORTER: Back on the record at 11:14.

Q. (By Mr. Aigen) Mr. Seery, we talked about before a little bit the intended tax reasons for entering into these transactions.

Do you remember that?

A. Yes.

Q. Do you have any understanding whether it was the intent of the parties to delink the note payment obligations and the participation agreements for tax reasons?

A. No. I have an understanding that, at least from what I see on the evidence and both the structure of the transaction and the way it was treated, was that they were inexplicably intertwined and linked.

Q. And I believe your answer is that they were linked. I'm asking a slightly different question.

Do you have any idea whether the intent of the transactions were to delink them for tax reasons?

A. I don't believe that was the case, no. If they were trying to do that, because I think they were structuring a lot of things that were -- they were trying to make it look like a true sale, and it was not. If that was the intent, it's completely fraudulent because that's not -- that's not what this transaction was.

Q. Okay. It's your understanding that the payments were linked, in other words; is that correct?

A. The agreement -- these two agreements are one agreement. Yes, yes. That's what the documents say and that's how they work.

Q. Okay. Have you ever had any conversations with anyone about possibly the intent of this being to delink the documents -- or payments for tax reasons?

A. Conversations, no.

Q. Have you ever reviewed any documents that touched on the topic of whether the payments were intended to be delinked for tax reasons?

A. The -- both the -- I think you asked me about documents?

Q. Well, I previously asked you if you had any conversations with anyone, and you said no, so now I'm just asking a similar question of have you reviewed any documents that touched on the topic of whether the payments were intended to be delinked for tax reasons?

A. Sure. The documents are really clear that they are inextricably linked and intertwined with each other.

Q. Okay. When you refer to the documents, you're referring to the actual contracts we've reviewed; is that correct?

A. Yeah. And I'd have to go back and check the subsequently delivered opinion as well, but it's all an integrated transaction; that's for sure.

Q. Other than the actual contracts at issue and the opinion letter, have you seen any documents or correspondence that reflect on the issue about whether there was an intent to delink the payments for tax reasons?

A. Not that I recall. Not now, no.

Q. Do you know what Mr. Klos's role with respect to these -- the preparation of these agreements and the transactions were?

MR. MORRIS: Objection to the form of the question.

A. I don't believe he had a role in preparing these documents, at least not that I recall.

Q. (By Mr. Aigen) Do you know if he had a role --

MR. MORRIS: Michael, when you refer to "these documents," you're just talking about the participation agreement and the note, right?

MR. AIGEN: Yes. I apologize. Yes.

Q. (By Mr. Aigen) And that question was directed at the creation or -- of these documents.

Do you know whether Mr. Klos had any role

with respect to the performance contemplated under these documents?

MR. MORRIS: Objection to the form of the question.

A. He -- he's -- at the time, he's probably controller, I think, and so he's -- as directed, he's responsible for assuring that whatever payments are supposed to be made get made after he gets directed to make them. He doesn't control any of the entities. He's not a named officer of either of the entities. He does what the officers of the entities tell him to do.

Q. (By Mr. Aigen) Do you know whether Mr. Surgent had any role with respect to the preparation of these agreements?

A. I don't believe he did, not that I recall.

Q. And do you know what Mr. Surgent's position was at the time these documents were created?

A. He was chief compliance officer.

Q. And when you say you don't believe he had a role, what's your basis for that?

A. I don't recall him being involved in the preparation of these documents in either -- as I recall, the discussions we've had or the documents I've reviewed. I just don't, off the top of my head,

remember anything with him involved.

Q. Do you know whether Mr. Surgent had any role at all with respect to the transactions contemplated in these documents?

A. I don't recall that he did. I don't know.

Q. Have you ever had any discussions about any of these documents with Mr. Surgent?

A. He's been involved in some of the prep sessions that we've had in preparing for this deposition, and I'm sure that obviously the transaction has come up. I don't recall specifically talking about one of these documents with him.

Q. And you have no recollection as to whether Mr. Surgent indicated that he had any role with respect to these transactions?

A. I don't recall him ever saying that he was involved, and I don't recall seeing anything where he was directly involved with the preparation of these documents.

Q. Do you know whether Mr. Surgent would have known about these transactions at the time they were entered into?

MR. MORRIS: Objection to the form of the question.

A. He may have known about them. I don't -- I

don't know whether he did or not at the time.

Q. (By Mr. Aigen) When you say "may have known," is that just based on sort of speculation based on what his role was at Highland?

A. Just speculation based on what his role is. I don't -- I don't have a specific recollection of him on any of the correspondence or any of the documents related to this transaction.

Q. Did Mr. Surgent ever tell you that he believed that there was anything improper about these transactions?

MR. MORRIS: Objection to the form of the question.

A. I don't recall having that conversation with him, no.

Q. (By Mr. Aigen) Did you ever ask him?

MR. MORRIS: Objection to the form of the question.

A. Not that I recall. I can read the docs and see what happened myself.

Q. (By Mr. Aigen) Have you ever seen any indication that Mr. Surgent said anything to anyone at the time that these transactions were being entered into that something was improper about them?

MR. MORRIS: Objection to the form of the

question.

A. Not that I recall seeing, no.

Q. (By Mr. Aigen) Have you ever seen any correspondence from anyone indicating that they thought there was something improper about these transactions at the time they were entered into?

A. Not any correspondence. I don't believe I have, no.

Q. Okay. And you said "not any correspondence." Have you seen any indication, even outside of correspondence, that someone believed that these transactions were improper in some sort of way at the time they were entered into?

A. I haven't seen any of those. They weren't disclosed to third parties, so I don't know that anyone reviewed them other than Hunton & Williams.

Q. Have you ever talked to anyone at Hunton & Williams about these transactions?

A. No.

Q. Do you know whether anyone on your team has talked to anyone at Hunton & Williams about these transactions?

A. Not that I recall.

Q. Do you believe Hunton & Williams did anything improper with respect to these transactions?

A. That's a good question. I don't -- I don't know. I'm not a tax expert.

But they clearly know by the drafting of the document that it's not permitted under the PMA. And whether that's improper, the portfolio manager wants to do it, the recipient wants to do it, they're controlled by the same entity.

And then they were given representations and advised of certain things with respect to the ownership of the company and control of the companies that they ran with. Whether they knew that was wrong or not, I don't know the answer.

Q. When did you first become aware that something was improper about these transactions?

MR. MORRIS: Objection to the form of the question.

A. Yeah, I don't -- I don't know that they're necessarily improper.

I do know from reading the document and reading the PMA that it wasn't permitted.

I do know that the participation agreement is not a true sale participation agreement. It is more akin to a lease or a loan.

So I didn't really learn about the transaction until late '21. Just wasn't aware of it.

Nobody had advised me of it.

Q. (By Mr. Aigen) And you said late 2021.

Just generally, at a high level, can you tell me what occurred that you became aware of this?

A. We started looking at the -- this is posteffective date.

Started looking at continuing the monetization plan, effectuating asset sales, and cleaning up the claims register by continuing objections to claims and looking at what was on the register to clean it out and satisfy all of the claims.

Q. And who on your team or who at Highland first discovered that there was some issue with these transactions?

A. Well, you say discovered the issue. I learned at that point -- and I don't recall specifically when -- that there wasn't any advance under a note, that it was connected to a participation agreement that had failed, and that there really wasn't any consideration for Highland to have any obligation to HCLOM Limited.

And around that time, I also learned that HCLOM Limited wasn't owned by Highland.

Q. And how did you learn that? When I say

that -- bad question. Let's start with the first part you talked about, about that there wasn't an advance or any consideration.

How did you learn that part?

A. As -- I don't recall specifically, but we started looking at, Okay. What is this obligation? We owed it to ourselves. Let's clean it up.

Then it was, What do you mean we don't owe it to ourselves? Oh, actually, we don't own that entity? How is that possible? Well, what did we get for this money?

And then started looking, What is it related to? Oh, there's a CLO participation. Did we get those things? No.

Okay. We started unwrapping it.

So it was a combination of me and counsel and my team.

Q. When you say your team, you're referring to Mr. Klos and the people that work for him?

A. Mr. Klos, Mr. Cournoyer, Mr. Surgent, Mr. Gray. I don't know if Mr. Gray was involved in that particular part at that point. But, yeah -- well, whomever is on the current team.

Q. Was -- do you remember whether someone specific on the team discovered all of this, or was it

just sort of a group effort and they brought it to your attention?

A. I think they probably sent me documents, and we started peeling it back. And as soon as someone told me we don't own the entity, well, then, what's the obligation for?

Q. This is in late 2021?

A. I believe so, yes.

Q. And you've referred to your team several times. I'm just -- when you say that, are you referring also to Mr. Surgent?

A. Yes.

Q. And was Mr. Surgent involved in your deposition prep?

A. Sometimes, yes.

Q. Approximately how much time did Mr. Surgent spend with you in preparation for this deposition?

A. I don't know. I'm going to say a couple to a few hours.

Q. And during that time period, he never indicated whether he had any role with respect to these transactions?

MR. MORRIS: Again, we're just talking about the transaction that's embodied by Exhibits 2 and 3, correct?

MR. AIGEN: Correct.

A. Yeah. These were in the prep sessions with counsel and with the other members I told you about before. I don't recall him specifically talking about whether he had a role in these transactions.

Q. (By Mr. Aigen) Okay. And as Mr. Morris indicated, that question was referring to these two agreements. We'll get to it later.

But you're aware that there is an assignment and transfer? Do you know what document I'm referring to? Let me ask it a different way.

Was Mr. Surgent -- did Mr. Surgent ever indicate to you that he had involvement in any way with respect to any of the issues involved in this matter?

A. I believe he's on some of the correspondence related to the stripping of Acis. And I don't recall him being specifically involved in any particular aspect of the transaction, but when you go through it, maybe we'll get there.

Q. But you never had any discussions with him about whether he had any role in any of the transactions at issue in this lawsuit?

A. Oh, he definitely had a role in the issues involved in this lawsuit.

Q. What role was that? And I don't mean his role while working for you. I'm talking about the role while these transactions were first entered into and during that time frame.

A. Yeah, when -- he's definitely on correspondence and around certain transactions that were involved in stripping Acis at the direction of Dondero and Ellington.

Q. What would Mr. Surgent's role have been with respect to the transactions at issue in this matter?

A. He doesn't have a specific role that anybody could say, Oh, he drafted that document or this document. I don't see him in that -- I have not seen him in that capacity. But he knew what was going on.

Q. And how do you know that?

A. He's on the emails. At least he's on the emails. I don't know what he actually knew. But I think everybody knew what was going on that was in -- taking direction from Ellington and Dondero.

Q. Do you know whether Mr. Surgent objected to anything that was going on with respect to the transactions in this matter?

A. I don't know, no.

Q. Let's switch topics a little bit here, and I just want to talk a little bit about the actual

entities here, starting off with Highland CLO Management, Ltd., who we've been referring to as HCLOM or HCLOM Limited.

You're familiar with that entity?

A. Yes.

Q. When did you first become familiar with this entity?

MR. MORRIS: Objection to the form of the question.

A. I don't recall exactly. It may have -- it may have been as early as early summer of 2020, when we filed an objection to the Acis Josh Terry claim.

Q. (By Mr. Aigen) Do you know why HCLOM Limited was created?

A. Yes.

Q. Why was it created?

A. To essentially strip assets out of Acis and hide them in the Cayman Islands.

Q. Did anyone ever tell you that?

A. Yeah, essentially. That's -- yeah, I think so, yes.

Q. Who?

A. Mr. Cournoyer.

Q. Anyone else?

A. No, not tell me it, but it's obvious from the

transactions.

Q. And I'm just trying to get at what discussions you had in prep.

A. I wasn't around when they were doing this stuff.

Q. And did anyone that was around when they were doing this have discussions about why this entity was created other than Mr. Cournoyer?

A. Cournoyer. And I wasn't around, so these are -- these are prep discussions that I mentioned with him, not related to when the transactions were going on. It's obvious that everybody knew exactly what was going on very clearly by the documents and the emails and the correspondence.

MR. MORRIS: Michael, before you go on, I just want to make it really clear that I am not objecting at all to any questions about conversations that Mr. Seery had with his team even if I was present in connection with the preparation for depositions as long as it relates to facts and the diligence that he did in order to satisfy himself in order to prepare as a 30(b)(6) witness.

If -- you know, if any question goes to legal advice or anything like that, obviously, I'm going to object.

But I didn't want there to be any perception that I'm waiving the privilege for any purpose. I'm just allowing him to testify to what I think is responsible under the law, and that is the work he did to educate himself in order to answer questions as Highland's representative.

Q. (By Mr. Aigen) What is the basis for your belief that HCLOM was created so that Highland could essentially strip the assets out of Acis?

A. There's -- there's many bases.

Q. Tell me what they are.

A. I'm sorry?

Q. Tell me what they are.

A. Well, some of them include the timing of the formation of HCLOM -- HCLOH, which is H-C-L-O-H, and HCF advisor. The fact that they were formed in the Cayman Islands with purposefully confusing names.

The timing related to the Josh Terry arbitration hearings and then subsequently his award.

The complete lack of need for these entities. They were wholly unneeded by Highland, Acis, or The Highland Group, and any statements to the contrary are purposefully false.

The -- the emails and work of Isaac Leventon laying out on a memo exactly what the reason

for this was.

Q. So you've told me the timing, the lack of need, the emails related to Isaac. Are there any other bases for your belief that this entity was created to strip the assets out of Acis?

MR. MORRIS: That's not a complete list of what Mr. Seery said, but if you just want to ask him if there were any other reasons, that would be fine.

A. Yeah. Like, I gave you more than that there.

But the hastiness; how they were hidden in the Caymans; the fact that there were already entities that could do every one of these things; the fact that it had already been set up for months before to do these transactions in other entities; the litany, you know, the Leventon stuff; the meeting in Dondero's office; the subsequent, you know, comedy of lies during the Acis testimony by Dondero and Ellington; the Leventon statements in court to Judge Jernigan during the Acis case; the subsequent interrogatories in other Acis proceedings.

It goes on and on and on.

Q. You mentioned a meeting in Dondero's office. I don't think that's something that you talked about today. Can you tell me what you're referring to

there?

A. There was a meeting in Dondero's office on November 3rd, 2017.

Q. And how do you know about this meeting?

A. Emails and Outlook.

Q. And what was discussed at that meeting which led you to believe that this entity was being created in order to strip assets out of Acis?

A. Well, that's subsequent to the October 20, 2017 award for Josh Terry. During that -- and that's a Friday, 2020 -- or 2017.

During that time period, the Highland machine starts to scramble to strip out the assets, with a whole bunch of entities getting set up and trying to push them through.

And then Leventon has correspondence with outside counsel Jamie Welton asking him, How do we hold this up? What's going to be the timing of Acis confirming the award?

He gets a response from Welton. Welton calls Terry's counsel, tries to flim-flam him by -- by doing a whole bunch of strange stuff about how they should have a cooling off period. Meanwhile, these entities are getting set up.

And then Isaac sets up a meeting, Isaac

Leventon, with Dondero through Dondero's assistant. They get a time. Need to get it early.

They then have a memo that Isaac prepares. He doesn't email it to anybody, but he puts it on his own separate drive.

He then goes to the meeting, and the meeting lays out what they've got to do.

Q. And what's your basis for discussing, let's say, what Isaac -- the things you told me that Mr. Leventon just did, what's your basis for knowing that?

A. I think I described it.

Q. What's your basis for -- how did you learn that?

A. Emails.

Q. Okay. So you're only referring to emails when you tell me this? You're not referring to deposition testimony or witness testimony someone gave?

A. No, no. Those -- the meeting, which is what you asked about, was all led up to by emails, Outlook scheduling of the meeting, and the memo that Leventon prepared.

Q. And your understanding of what happened at the meeting, is that based on conversations you had

with anyone or just from reading emails and documents about the meeting?

A. Emails and documents.

I wasn't there.

Q. Well, I didn't know if you talked to someone about what happened in the meeting, for instance, or did you read testimony about what happened in that meeting or anything like that?

A. Yeah, I don't know that -- I don't know that I've seen any testimony on it.

Q. Okay.

A. I don't think Isaac Leventon -- I don't think that Josh Terry knew about it.

Q. Was this meeting discussed at any of the -- let me move on.

A. It may be in some of the testimony. I'd have to go back and check.

Q. But sitting here today, your recollection of it is coming from documents that you've seen?

A. I think so. He may have known about the meeting, but he didn't know about the memo, at least not that we've seen that I recall.

Q. So how would the creation of HCLOM Limited been part of a scheme to strip assets out of Acis?

A. You create the entity, and then you try to

transfer the assets.

Q. And what is the basis for your belief that the creation of this entity was used as part of the scheme to strip Acis of its assets?

MR. MORRIS: Objection, asked and answered.

A. Yeah, I think I gave quite a bit of detail on that. I can do it again.

So it's set up hastily in the Cayman Islands. It's set up with -- there's no business reason for that.

It's set up in confusing names. There's no business reason for that.

Ownership of the entity is hidden. There's no reason for that.

The timing of it. The transfer of these various assets all being done simultaneously without any business reason.

And then you see -- you actually see the fruits of that in the meeting we just -- the memos and emails and that meeting we just discussed.

Q. (By Mr. Aigen) Do you have an understanding as to whose idea it was to create HCLOM?

A. Yeah.

Q. Who?

A. I guess -- I know who did it. JP Sevilla.

Q. And what specifically did Mr. Sevilla do with respect to the creation of HCLOM?

A. He's a Highland employee. He's an assistant general counsel. He contacted Maples, which does work for Highland, and said, I got to get you to create these three entities really quickly.

Q. Do you have an understanding as to why he was asking Maples to do that?

A. Because he wanted to create these entities in the Cayman Islands.

Q. Let me ask hopefully a better question.

Do you know whether it was his idea or someone asked him to do it?

A. I don't recall whether there's a -- I don't recall whether there's some way to know whether he was the genesis of the idea or his boss, Scott Ellington, told him to do it or Ellington's boss, Jim Dondero, told him to do it. I just don't -- I don't recall seeing something specifically like that.

Q. Fair to say that you do not know who the genesis of the idea was to create HCLOM as part of the plan to strip Acis of assets?

A. I don't -- I don't think that's fair. I think something's different. It clearly comes from

JP Sevilla.

Q. The actual acts of creating the entity come from JP; is that correct?

A. No. Those come from Maples. The initiation, the catalyst to reach out to Highland's normal Cayman counsel and say, Hey, create these three entities in a hurry, that comes from JP Sevilla.

Q. But you don't know whether someone asked him to do it or it was his idea; is that fair to say?

A. I don't recall seeing anything that would tell me that.

Q. Do you know whether Mr. Surgent was involved in that in any way?

A. He's not on those initial emails, no.

Q. Would Mr. Surgent typically be involved in the creation of entities like that?

MR. MORRIS: Objection to the form of the question.

A. My understanding is no.

Q. (By Mr. Aigen) Why not?

A. The creation of the Cayman entities was typically done by Sevilla, sometimes Cournoyer working for him, and the direct contacts in the Caymans were Ellington, Sevilla, and Katie Irving.

Q. When HCLOM was first formed, do you know who

owned it?

A. Yes.

Q. Who owned HCLOM when it was first formed?

A. HCLOM, when it was first formed, was owned by Highland through Maples holding the sole share.

Q. And did that change at some point?

A. It did, yes.

Q. And can you tell me generally how the ownership structure of HCLOM changed at some point after its original formation?

A. So HCLOM -- I've got to remember the dates -- I don't remember the dates. Hold on.

But HCLOM's structure eventually got shifted to a Class A and a Class B structure. And so what that means is one party held the vote and one party held the economics. The funny thing was both parties rolled up to Highland.

But when they did this, when we finally got around to doing it because they got delayed, Neutra, which is another Cayman entity, was owned by -- I believe was owned by BVI. I may be -- I may be messing that up -- which is another entity created for this purpose, which was the first time Highland had ever used a BVI entity. So just another way to hide it.

Q. Do you know why it was structured with the Class A and Class B shares?

A. There's no good reason that anybody could come up with.

Q. Do you know why Neutra became involved in the ownership of HCLOM?

A. From the documents and what I can tell, it's part of the effort to hide it and obfuscate the ownership of the various entities in the Cayman Islands.

Q. And what did you see or review that led you to that conclusion?

A. Well, during the Acis -- just the structure of it first.

But then during the -- because there's no -- there's no thing going on in HCLOM. So there's no limited. There's no reason that it -- and there's never going to be anything going on in HCLOM Limited. And there's no reason to have an A and B class structure, where one rolls up to Neutra, which is owned 100 percent by Pollack, which is owned 100 percent by Highland, and then Highland owning the same thing, but then you transfer to Neutra to kind of hide the economic ownership, but there's nothing going to happen there.

And then that didn't happen. And then they went to court, and Scott Ellington testified falsely, in my opinion, that, Oh, I can't reveal the ownership of Cayman entities even if I'm the one who owns them. I'm the general counsel of the entity, and then -- and then they transferred it, and he's an officer of this entity of HCLOM that doesn't do anything.

Q. Okay. After Neutra got involved -- and we're getting into this because I'm asking you about the change in ownership structure of HCLOM and I understand it changed over time.

So first -- not first, but at some point it had this A-B structure and then Neutra became involved?

A. First -- no. First it was Maples.

Q. Yeah. Maples, and then it changed to the A-B structure?

A. It's Maples, which doesn't own anything. It's a designee of Highland. Highland's paying Maples.

Then, ultimately, Sevilla tells him to set up an A-B structure, with Highland owning the A and Neutra owning the B. Neutra is just a shell, doesn't do anything either. Highland is not a shell.

But that's a way to hide the economic ultimate beneficial owners and control people and the entity.

Q. And Highland had the A, and Neutra had the B. Which one was the voting? Which one was economic?

A. Highland had the voting, and the economic was Neutra.

Q. And at some point after that, did the ownership of HCLOM change?

A. Not until 2023, I think. The ownership -- late '22, early '23, the ownership of -- I think it was '23 -- Neutra changed, and Pollack transferred Neutra to BVI, another shell entity that doesn't do anything, and BVI has an A-B structure.

Q. And what was the reason for that in 2022, '23?

A. To hide it -- no, that was -- that was earlier. That was in -- the Neutra transaction was in '18, so the transfer of Neutra to BVI was in -- I'm sorry -- December of '17. This was even before it came out of Maples.

Q. And then you said in 2022 and '23, there was another ownership change in HCLOM; is that correct?

A. Yeah, because ultimately Neutra was getting wound down, and the shares, both A and B, were

distributed up to Okada and Dugaboy.

Q. This is similar to what I asked you or we've just talked about, so I apologize if it's similar, but I'm trying to change it a little bit, and I just want to concentrate on what Highland's connection was to HCLOM throughout this time period.

So at the time when HCLOM was formed, what was Highland's interest in HCLOM?

A. 100 percent. It directed Maples and it -- it was the only entity directing Maples to do anything.

Q. And at some point that changed; is that correct?

A. In -- Sevilla thought it happened earlier, but they had screwed it up, and it didn't happen until February 7th, 2018.

Q. And that's when the A-B structure was used that you talked about before?

A. Yes.

Q. When you say Sevilla messed up and thought it was earlier, what are you talking about there?

A. You can see in the correspondence, he said, I clearly told you guys to do this, and it didn't get done. I don't know if it was his mess-up or Maples's mess-up.

Q. At the time that this structure was put in,

how did Highland's interest in HCLOM change?

A. It then owned the A shares, not -- indirectly being the beneficial owner of all the shares, because there was only one share when it was sitting in Maples.

Q. It had the voting share?

A. It would be on -- I think it was one, but it would be on the register.

Q. At that point in time, did Highland have any ownership interest, indirect or directly, in HCLOM?

A. Which point in time?

Q. When this A-B plan was implemented.

A. February 7th, 2018?

Q. Is that when the A-B plan was implemented? Then, yes.

A. Yeah. Then Highland has the A.

Q. But at that point in time, was Highland's only interest, directly or indirectly, the ownership of the A shares?

A. Yeah, 100 percent of the A shares, which is 100 percent voting control.

Q. And who held the B shares at that point?

A. Neutra.

Q. And did Highland have any ownership interest at all in Neutra?

A. Not at that point because Neutra had been owned by Pollack. Pollack transferred Neutra to BVI in December of 2017.

Q. And that's what I'm getting at.

So at that point -- you just described for me Highland's interest in HCLOM. At some point later, did Highland's interest in HCLOM change?

A. Later. I'm sorry. Later than when?

Q. You just described for me that Highland had -- its only interest in HCLOM was through the Class A shares; is that correct?

A. In February 7th, 2018, yes.

Q. At any point after that, did Highland's ownership in or interest in HCLOM change at all?

A. Its ownership interest changed in -- I think it's '22, when Neutra was getting wound up, and we were -- had been working through to wind up Acis 7.

But there was also the imposition -- and I think it's around HCLOM, but it could be around Neutra -- of a trust to further hide the ownership interest of Dondero and Okada and BVI in March of 2018.

And this was a move to hide that transfer and shell game, if you will, from Acis because Highland would have otherwise had to disclose the

beneficial owners, being Dugaboy and Okada, on its ADV.

Q. The events you're just talking about now, March of 2018, did that change Highland's ownership in HCLOM in any way?

A. Not its ownership but control because it was the trustee, and that would allow them on the ADV to hide the true beneficial owners.

Q. Is it fair to say, then, that since the A-B structure was created, since that time period, Highland had never held an economic ownership interest in HCLOM?

A. Yeah, I think -- I think that's -- I think that's fair, yeah.

Q. And at some point in time within the Highland bankruptcy --

A. It held a 1 percent interest. It held a 1 percent -- it was like a 99 and 1, so it did have an economic interest, yeah.

Q. And where would that 1 come from? From its Class A share?

A. It may have had it either embedded in the Class A or it had some kind of interest in the agreement from the Class Bs. So it's in the original document.

Q. Within the Highland bankruptcy, was there a point in time where Highland erroneously believed that it owned HCLOM?

A. Throughout the -- throughout the period from at least when I got -- at least my knowledge was that Highland owned HCLOM. Frankly, I think -- I think I thought Highland owned Neutra as well through that period, and that may have been related to the trust structure. I don't recall. But this was -- I was getting my information from the Highland team.

And through that period till what I described before as the winter of '21 is when we started looking at the objection, and then I started to uncover the stuff.

Q. So prior to this period in 2021, Highland believed it owned HCLOM, but sometime in late 2021, they figured out that wasn't correct.

Is that fair to say?

A. I think when you say "Highland," certainly the independent directors, you know, myself, Russell Nelms, and -- and John Dubel, as well as our outside counsel believed that. I don't know -- this is what we got from internal counsel telling us.

So I don't know whether they actually -- I don't know whether they knew the truth. My

supposition now is the guys who fed us that information absolutely knew the truth.

Q. What was the reason that you and the independent directors believed that HCLOM was owned by Highland during that time period?

A. The structure of these transactions and the dealings with Acis, which is where this came about related to the note, was really directed by Leventon and Ellington in terms of giving us information. They were the fact providers to both us, ourselves, and to our counsel.

Q. Did anyone specifically tell the independent directors or their counsel that HCLOM was owned by Highland during this time period?

A. I'm sure that I was told that. I can't recall the specific person or time, but that's who I got my information from around these transactions. The only people responsible for the Leventon -- the Terry and Acis litigation and bankruptcy were Leventon and Ellington.

Q. And so this sort of mistaken belief about who owned HCLOM, do you believe that you were provided this information from documents that had this mistake, or do you believe that you were told this by someone, to the extent you remember?

A. There are documents that show this. I don't recall whether I had seen them before prep. But I -- my belief is I was told this, but I may have also been in -- I might have been given a supporting document to show it as well.

Q. And what documents are you referring to when you say there are documents that show the mistake of Highland's owning HCLOM?

A. Well, certainly the whole A-B structure was unclear to me because it didn't make us -- any economic or business sense. It's not akin to Mark Zuckerberg keeping A shares in Facebook and wanting to control a vote when there's public equity. When related parties own both sides, it doesn't make any sense.

So that would have led me to believe that it was owned by Highland. Obviously, the names would have led me to believe it's owned by Highland.

And then there's a -- there was a register. And at some point, and I don't know if I just saw it in prep or in -- in -- before this, but Highland's financials and the register kept by Helen Kim showed HCLOM being owned by Highland.

Q. You don't remember when you first saw that?

A. I can't -- I can't distinguish between right

now. Something might pop up in my memory to say, Oh, that's -- that's clear. I just don't -- I don't know.

I've certainly seen a ton more documents now that we've been working on the objection and the prep than I would have seen -- you know, if somebody told me that, I wouldn't necessarily say, Okay. Show me the document to prove it. I wouldn't assume that they'd be lying.

Q. Fair enough.

Putting aside what you've seen in documents, do you have any recollection of someone ever telling you that HCLOM was owned by Highland?

MR. MORRIS: I'm sorry. Can you repeat that question?

Q. (By Mr. Aigen) Putting aside the documents -- I just want to talk about conversations here -- do you remember a specific conversation where someone told you, mistakenly, that HCLOM was owned by Highland?

A. Not specifically, but we had a number of discussions, both pre-COVID and then calls post-COVID around the Terry claims and the Terry -- the objections that we were going to prepare to his claims.

And it would be surprising to me that

it -- if it didn't come up because it became one of our defenses. It was, as the Brits might say, a little bit cheeky of a defense. Hey, you didn't sue the right guy, but we own the guy. But, otherwise, it would have been a lot of defense.

Now I know that nobody told me about the participation agreement or how this note came to be or anything about the transaction, what it was, until I discovered it, you know, post the effective date.

Q. And when I asked that question, I might have made it a little too narrow because I asked if anyone told you. Let me just broaden that a little bit.

Are you aware of any conversations where someone told any of the outside directors or your law firm, mistakenly, that HCLOM was owned by Highland during that time period?

A. Again, well, I took it as the "royal you." So I -- we were -- when we had the meetings there, it wasn't just me. It was me and Russ and John and the legal team, you know, walking through the defenses to each of the claims that we objected to, and I don't have a -- I just can't pull that out as to who would have said that.

But it just would have come up because -- so it's surprising to me if it wouldn't. I just don't

have a specific recollection of it.

Q. Fair to say that you were under the mistaken belief at that time period that HCLOM was owned by Highland; is that fair to say?

A. That HCLOM was -- because HCLOM did -- Highland did own, it turns out, the A shares, but Highland owned all of them, A and B, and had complete control of it.

Q. At some point, you became aware of this mistake; is that fair to say?

A. Yeah. I think I just described it. I don't know exactly when that was, but as we were going through the objections and cleaning up the register and the claims, then it became clear to me that, Wait a second. We don't own that entity. This was in late '21, after the effective date, I believe.

Q. When you say it became clear to you, was it someone said to you, Oh, look, they're not owned by Highland, or someone gave you the documents, and then you figured it out on your own?

A. I would have, I think -- I don't know, but I think it would be the -- I don't recall. I think it would be the former, and then I would say, Okay. Give me the docs. How does this work?

Q. And do you remember who would have brought it

to your attention that someone figured out that HCLOM wasn't actually owned by Highland?

A. I don't recall specifically. It would have been somebody on our -- my current team, the current team at Highland that I've mentioned before.

Q. That would be Mr. Klos?

A. One of those -- one of those people, I assume. It could have -- maybe they had told outside counsel or they had told one of our financial advisors, but it would have been in that context.

Q. Do you have any recollection as to what someone saw or reviewed or talked to that led them to this conclusion?

A. I don't. It could be a number of different things now that I've seen these different registers, different documents, different financials.

Q. Switching topics to a similar topic, you're -- are you familiar with an entity called Highland CLO Management, LLC?

A. Yes, I am.

Q. And I'll try to refer to that one as HCLOM LLC to distinguish it from HCLOM, if that works for you?

A. Yes, that's fine.

Q. Okay. Do you know why HCLOM LLC was formed?

A. Yes, I do.

Q. Why?

A. Again, it was formed to remove the Acis 1 to 7 assets from Acis, but unlike HCLOM Ltd., HCLOM LLC was actually set up to do that and take resets or refinancings of those transactions, and it was fully designed to function in that way so they could actually do these things.

Q. And taking a step back, you had no role in the formation of either HCLOM LLC or HCLOM Limited; is that correct?

A. No, I was -- despite all the mess, I had nothing to do with the mess that either Acis or Highland found itself in or where it is today.

Q. And you talked about, in response to my question, that there were certain aspects of the LLC that allowed it to take part in the resets that weren't the case for Ltd., so I just want to ask you what was different about LLC that it allowed it to take part in the resets that Ltd. could not do?

A. The way you phrased it, I'm not sure if this is -- are you asking me, like, why do I -- why would LLC be able to do these things, or what is the evidence that LLC could do these things rather than Ltd., which had no business purpose whatsoever?

Q. Correct.

What I'm asking is -- I asked why LLC was formed, and I believe you said -- I don't like to put words in the witness's mouth -- but it was able to do things with respect to the reset that Ltd. could not do.

Is that a fair description of your testimony?

A. Not really. Ltd. had no connection to this stuff and wasn't going to be used for that purpose.

LLC was set up specifically to do this, so it's -- it will be a little bit of a long answer. I'll try to abbreviate it.

But LL -- Acis CLO Management, LLC, was set up and did do the new Acis 7 in the beginning of 2017.

And then the market really was coming to where repricings and refinancings could make sense, so resetting some CLOs could make sense.

You could do that easily in Acis -- ACLOM LLC; Acis CLO Management, LLC -- I'll call that ACLOM LLC -- but then it would be in Acis. So part of stripping Acis meant you had to strip the ownership of certain assets out of -- and basically ACLOM out of Acis.

Separate from that, though, post the commencement of the arbitration, Acis -- HCLOM LLC was formed as a Delaware limited liability company called a series management -- series LLC, specifically to deal with the risk retention issues that come about at the end of the -- the beginning of -- I forget -- the beginning of '17. The initial order came out and then a rule, and then it took a while to implement, and then it was only around for -- until the beginning of '18.

HCLOM LLC was specifically set up to do that. And how do you know that? Because you look at the formation and timing, which was either November or December of '17. But even before -- when you look at the LLC agreement, it has a very detailed purpose.

Unlike what you typically see in a certificate of incorporation, both ACLOM LLC and HCLOM LLC, which was just modeled exactly on ACLOM LLC, say what it's going to do. It's going to be the manager of resets for Highland and Acis transactions.

And the financing around Harborfest, which was going on around the same time, in late '17, the OM from -- for that transaction removed ACLOM LLC when you look at the black lines from Dechert and specifically shows we're going to change the name.

We're not going to call it -- it ALF. We're going to call it HCLOF, Highland CLO Funding. We're going to change the entity from ACLOM LLC to HCLOM LLC.

And there's a series of revisions to those documents to make it really clear that now the new manager is going to be this entity that has a specific purpose to do this in his documents, and then it's going to go forward and do this.

And then it enters into agreements, because like every other entity in this empire, there are no employees anywhere except at Highland. And so nobody can actually do anything without an agreement with Highland.

So it enters into shared services and sub-advisory agreements. And it actually might have done those -- I don't remember if it did it directly with Highland or it had one of the other entities in between that. I'd just have to -- I'd have to see the docs. But it very much specifically sets up to do these things.

And then when you go to retain a bank to go do one of these things, you put in the name of the manager, and that's going to be HCLOM LLC.

So when Guggenheim had been retained in 2017, that was ACLOM LLC. And when Mizuho was

retained in 2000 -- actually, I'm sorry. Guggenheim was retained in late '16, December '16, I believe.

But when they retained Mizuho in '17, it's HCLOM LLC. And all the docs and all the transactions are set up to be done that way. And they actually go and start to do the reset of Acis 3 in HCLOM LLC because it's ready to go.

That's at least a smattering. I'm sorry I went on so long, but that's a smattering of the evidence that makes it really clear what this asset would do and could do.

Q. And, again, I may be putting words in your mouth, and I apologize. I thought you said one of the reasons that the LLC entity was created because it was able to be involved in this resets while the Ltd. entity could not. So let me ask you a question to just kind of pin that down.

Is there something about HCLOM LLC that would have allowed it to become the manager where HCLOM Ltd. could not be the manager?

A. Yeah. I thought I -- I thought I gave you a bunch of that.

But it's clear in its purpose of its formation. It's clear in the contracts that it entered into that --

Q. Let me interrupt, and I apologize. I apologize.

I'm not asking what is the evidence that HCLOM LLC was going to do it or could do it. Let me ask you is there anything specifically about HCLOM Ltd. that would have indicated to you that it could not do all those things?

A. It never entered into any agreement that would enable it to do any of these things. It didn't have any employees. It didn't have any bank account. It didn't have any shared service arrangement. It didn't have any sub-advisory agreement. It didn't have any of the wherewithal that you need under a portfolio management agreement to do anything.

Q. Is there anything that would have prevented HCLOM Ltd. from doing all those things, that you know of?

A. You mean, if it wasn't just a part of fraud to steal assets?

If it was legit, you could have done -- you could have maybe done a lot of the stuff that you did with other entities, and it would be highly unusual to have this foreign entity. I think it would be legal, I guess, if you could -- I guess you could register it to advise a domestic -- domestic

investors. I think so.

But you would have had to do a lot, and it didn't do anything.

Q. And I guess let me ask you that.

At the time these entities were set up, one difference between LLC and Ltd. was LLC was a domestic company and Ltd. was a foreign entity; is that correct?

A. That is a difference, yes.

Q. Is there anything about that difference that you know of that would have prevented Ltd. from being able to become the manager of the CLOs?

A. It would have been unusual, but I don't know that there's -- there's a specific. I haven't seen any -- it may be out there. I haven't seen a domestic CL -- a U.S. domestic CLO that's managed by a foreign entity that I recall. But it may have been able to do it if -- if it was set up to do it.

But, again, because it didn't do any of those things and because you had the thing already set up to do all those things, it's pretty clear what each was for.

Q. So if the -- well, the LLC was created to become the manager of the CLOs; is that correct?

A. Yes.

Q. And then what was the Ltd. created for, then?

MR. MORRIS: You froze for just one second.

Q. (By Mr. Aigen) Why was HCLOM Ltd. created, then?

MR. MORRIS: Objection, asked and answered.

A. Yeah, to strip the assets out of Acis and hide them offshore.

Q. (By Mr. Aigen) So it's your belief that the Ltd. was -- entity was created to take the assets of Acis and the LLC entity was created to become the manager of the CLOs.

Is that fair to say?

A. Certain of the assets, yes. If -- LLC was clearly created to become the new manager of the CLOs. It would be reset in a Highland entity. Of course, once that happened, Acis would no longer get any servicing fees because the manager would be a Highland entity.

And ACLOM LLC was stripped out of Acis to keep it from getting management fees related to Acis 7.

Q. And who formed or incorporated HCLOM LLC?

A. The guy in the legal department who did the

filing was Tim Cournoyer. The guy who signed the formation document, the guy who signed the LLC agreement for its members was -- on both sides was Dondero.

Q. And did you ever have any discussions with anyone about why HCLOM LLC was formed?

A. Yes.

Q. Who?

A. My team, in preparing for this, you know, objection and deposition.

Q. And what did Mr. Cournoyer tell you about why HCLOM LLC was formed?

A. It exactly dovetails what I just said before. It's really clear in its purpose in Section 2.4 of its LLC agreement.

And then you can see that, as I said, in the engagement letters, the engagement letter with Mizuho, the attempted engagement letter with Goldman, and the OM for -- or PPM for HCLOF, formerly ALF.

Q. Did anyone on your team indicate to you at all why HCLOM Ltd. was not used to become the manager?

A. I think now -- I don't know if they knew it at the time. I think they know now and have all concluded that it was to hide this asset, right -- or it wasn't really an asset. It was a note connected to

the participation agreement -- because ultimately the whole thing was going to go away. And that was Dondero's testimony as well.

So whether they knew it at the time or they learned it from looking at the documents and reading his testimony, I don't -- I can't tell the difference of when they learned it.

Q. And who owned HCLOM LLC when it was first formed?

A. It's owned by two entities. And because it was going to be a capitalized manager-owned affiliate of Highland, it's owned partially by -- I forget the two entities' names off the top of my head. But it's two intermediate cos. One of them is, I think, called, like, Highland CLO Holdings Intermediate 1, and the other one is Highland CLO Holdings, LP.

Holdings LP, I forget if that's 85/15 HCLOF and Highland and Highland through HCF Advisor and Highland owns HCF Advisor through Pollack indirectly, and then -- but it might be 50 -- it might be 50.1 and 49.9 on that -- on the Holdings entity.

Q. In which direction, 51?

A. To the Highland side.

Q. Highland side.

A. Because the way that the series were

stripped, set up, the partners in the LLC or the members could strip certain parts of the economics and the fees from each other, and so that was one of the ways to do that.

And, for example, in ACLOM LLC, the way to get that asset out of Acis, which was both control of the entity and $3.1 million of subnotes, was really just to transfer the ownership upstairs so that it would roll up to one of these other entities.

Q. And when I asked this question, I asked about the ownership at the time that HCLOM LLC was formed.

A. That's what I was giving you.

Q. Did the ownership of HCLOM LLC change at some point in time after its formation?

A. I don't think so. I don't -- I don't think it did.

Q. Okay. Is it your belief that the ownership structure you've testified to is still the ownership structure of HCLOM LLC today?

MR. MORRIS: Objection to the form of the question.

A. It -- I don't believe it changed. I don't know whether the entity is still around. I just don't recall off the top of my head because it didn't do anything. It did -- it did Acis 3 reset, got it all

the way to the goal line, and then it got pulled because even Mizuho didn't want to close that transaction after the bankruptcy.

Q. (By Mr. Aigen) Are you talking about the Acis bankruptcy or the Highland bankruptcy?

A. The Acis bankruptcy.

Q. And what happened that Mizuho didn't want to do the transaction at that point?

A. They ended up unwinding the transaction after it had funded. I don't know if they completely funded, but they certainly had everything sold.

And then, you know, and the Highland side had funded. Dondero had borrowed the money from Nearwater to do the transaction. It was set to go.

Q. And why did the bankruptcy put a halt to it?

A. Because -- I don't know exactly, but effective -- it appears to me that effectively people said, Wait a second. This is an Acis CLO that's now in bankruptcy that you're resetting in a Highland entity. That doesn't feel good.

Q. Did you have any -- did you have any discussions with anyone about this?

A. I have, but I don't recall exactly what -- what people would say the reason is. It's just -- it's not popping into my head. I apologize.

Q. You don't remember anyone specific that you had discussions with about the effect of the Acis bankruptcy on the resets?

A. It's definitely been part of our prep. And it's clear that Acis was all the way to the line, and got it -- that reset for Acis 3 was done. And, you know, everybody knew -- and I mean everybody -- that HCLOM LLC was going to be the manager and to the point where, you know, funding was actually advanced, borrowed money, and then it got unwound.

So I think everything was sold. I don't know if it completely funded, but it got unwound. And I just don't remember the exact dates --

Q. Just for background, you --

A. -- around the bankruptcy.

Q. You and I have both mentioned, I believe, Mizuho a few times. Can you just explain what Mizuho was and what its role is with respect to potential resets?

A. Yeah. Mizuho was one of the banks. It was hired to do -- I forget exactly what was in their letter, but they were going to reset a number of the Acis CLOs. And what they would do is go out and sell the debt, and the manager would do its piece of the preferred notes.

Q. And you testified before, I believe, that as a result of the bankruptcy, Mizuho had made a decision or stated it shouldn't go forward; is that correct?

A. Yeah, I don't -- I don't recall that specifically. That may not be correct.

It was unwound, and there was no order that prevented it from being unwound. I might be just supposing that, you know, a prudent banker would say, Maybe this isn't a transaction I should go forward with. Certainly, you would have to go back out to every noteholder and say, Oh, by the way, every note -- potential note purchaser.

Q. Let me ask you are you aware of any conversations with anyone at Mizuho about potentially stopping the process as a result of the bankruptcy?

A. Not that I recall seeing, no. I'd have to -- I'd have to go back and look.

Q. Were there any contracts that you're aware of between HCLOM Ltd. and HCLOM LLC?

A. No, there were none.

Q. And how do you know that?

A. We've looked for everything for -- so we haven't -- if it's existed -- if it existed, it would be a really great hiding by somebody who formed Ltd. in a secret way, although there was a lot of stuff

hidden about all this stuff, so in some parallel universe, maybe there's -- there's something. But, no, it's not in any of Highland's systems.

Q. But fair to say that your team investigated whether there are any contracts or agreements between LLC and Ltd.; is that fair to say?

A. Yeah. We haven't found any.

MR. AIGEN: Let's mark -- I'm sure you have this one, John, the Assignment and Transfer Agreement.

MR. MORRIS: Yes, sir. I think it was marked as Klos Exhibit 3. It ends in Bates Number 2801 through 06.

Q. (By Mr. Aigen) Mr. Seery, I'll give you a couple seconds to look at this. My first question --

A. Can we take a two-minute break?

MR. AIGEN: Sure.

THE WITNESS: I only need two minutes.

(Recess 12:23-12:29.)

THE REPORTER: Back on the record at 12:29.

(Exhibit No. 4 marked.)

Q. (By Mr. Aigen) Mr. Seery, you've been handed a copy of what's been marked Exhibit 4.

And, again, my question is just simply

going to be can you identify this document?

A. Yep.

Q. What is this document?

A. This document purports to be an Assignment and Transfer Agreement between three parties: Acis Capital Management, LP; Highland HCM, LP; and HCLOM Limited from November 3, 2017.

Q. And when was the first time you became aware of this agreement?

A. I don't think I knew about this agreement personally until after the effective date. Again, sort of December 2020 -- '21. I knew that this note had ended up with HCLOM, but I don't remember knowing anything about this agreement before that.

Q. Do you have any recollection as to how you would have remembered that the note got moved at some point without seeing or knowing of this agreement?

A. We just -- I knew that it was in HCLOM, and that was one of our defenses to Terry's claims. But I don't recall ever seeing this agreement or how the note supposedly ended up there, in the entity that, you know, again, I thought I owned.

But it would have been part of the prep that I did with the Highland legal team in 2020, which was -- yeah, as I said, that legal team on this stuff

was Ellington and Leventon, some -- some Katie Irving.

Q. And I think we might have touched on this earlier a little bit, but there were schedules filed, and then there were amended schedules filed that changed the name of the payee on this note.

Do you remember that?

A. I don't think we talked about it at all.

Q. Okay. I thought we did. I apologize.

But are you aware of what I'm referring to, that the schedules were amended to change the name of the entity?

A. Yeah. I think you just described it incorrectly in what you just asked me. But the entity name on the schedules was changed, yes.

Q. And it was changed to HCLOM Limited; is that correct?

A. Yeah. And I think it was changed from an entity called Highland CLO Holdings, which is not an entity that's ever existed in the Highland world, but every one of the names is very similar.

Q. And do you have any understanding as to why it was incorrectly listed on the first schedule?

MR. MORRIS: Objection to the form of the question.

A. I don't know. I wasn't involved in the preparation of the schedules. I just assumed that somebody got it wrong in legal or accounting.

Q. (By Mr. Aigen) Are you having any discussions with anyone about how that mistake was made?

A. No.

Q. At some point in time, that mistake was figured out, and it was changed to HCLOM Ltd.; is that correct?

A. That's correct, yes.

Q. Do you know what occurred that led Highland to learn about this and change it in the amended schedules?

A. Again, it was 2020, so we're just moving through the case. And I don't recall specifically who gave me a revised schedule. It was that and one other claim was amended at that time, or one other claim on the schedules was amended at that time, and so it was just a sort of routine change that, Oh, the name was wrong. Okay. Next.

Q. When Highland was under the erroneous belief that it owned HCLOM Ltd., did it ever make any challenges to the enforcement of this note?

A. Did it make any challenges?

MR. MORRIS: Objection to the form of the question.

A. So when Highland, under the control of the independent board during the Highland bankruptcy, nobody was seeking to enforce this note because we thought it was because we controlled the entity. But there was no challenge to enforcement because no one was saying, Hey, you don't own the note. We own it. Nobody tried. There was no effort by anyone to try to get any money under the note. And I assume we're referring to the note that we were looking at earlier.

Q. (By Mr. Aigen) Yes.

So prior to that time, was there any investigation done by Highland or the independent directors as to whether there were any defenses to this note?

A. Well, we did file an objection to Terry's claim. Terry claimed that it was a straight note and that money was owed under it, 9 1/2 million. And we objected saying, you know, Not our problem because, you know, you sued the wrong guy.

Q. What did you mean by that?

A. What's that?

Q. What do you mean by that, that they sued the wrong guy?

A. Because Highland -- Highland didn't have the note as Highland. Highland -- meaning HCMLP -- it wasn't transferred to HCMLP in the stripping of Acis. It was transferred to HCLOM. So Terry sued the wrong guy.

Q. And when Terry --

A. They got the wrong guy.

Q. Sorry.

And that was the only defense that Highland made to Terry's seeking enforcement of the note at that time; is that correct?

I don't think that's correct. I think there were other, you know, sort of a litany of defenses put in there about whether it was a fraudulent transfer or anything. Like, you -- sort of all of the defenses were pretty perfunctory is my recollection from the objection.

Q. Highland wasn't raising the prior material breach or the lack of consideration defenses in that proceeding it's raising in this proceeding; is that correct?

A. Yeah. I didn't even -- like I said earlier, I didn't know about the underlying transaction and hadn't been given that information from, you know, the Highland legal team of Ellington, Leventon and a

little bit of Sevilla, who obviously would have known about this stuff.

Q. Had you known about that information, would you have raised those defenses with respect to Terry trying to enforce the note?

A. Would have -- would have changed completely how we dealt with Terry's claim, yes.

Q. In what way?

A. Well, we would have said we don't owe anything under the note. The transaction failed. The underlying transaction failed completely for lack of consideration and that even if there was a transfer to an entity that we owned, that transaction had no value. So the note was worthless. It didn't have -- it wasn't an asset that Acis could claim they owed because they never gave any money to Highland under the note or under the -- under the participation agreement.

Q. So when you were litigating with Terry -- sorry. When Highland was litigating with Terry and these defenses or consideration of prior material breach were not raised, was it because Highland didn't know about these defenses at this point, or was it because it wasn't relevant because you believe that Highland owned HCLOM Limited?

MR. MORRIS: Objection to the form of the question.

A. Yeah, just to be clear, the outside counsel and directors and advisors didn't know about it.

Clearly, Dondero, Leventon, and Ellington knew about it. They just didn't close it. They hid it.

Q. (By Mr. Aigen) Why do you believe that those three knew about it?

A. All of the documents I've seen, everything we've been talking about this morning, it's clearly known, and Dondero filed an objection to the Terry claim. You ought to read it. He doesn't mention any of this stuff. He doesn't say, Ah, you don't owe anything under that note. But he had previously testified that nothing was under -- owed under the note. Yeah, I'll send you working.

Q. The meeting you talked about before with Ellington and Leventon and Dondero after the Terry --

A. Oh, oh, I'm sorry. Go ahead.

Q. -- after the Terry judgment, there was a meeting that you talked about before that you said you learned about from reading these emails.

A. Correct.

Q. And you said there was a memo that Isaac

wrote related to what happened at this meeting.

Were these all documents that were produced in this litigation, or is this documents that came up in the Acis litigation?

A. That is a memo he wrote before the meeting and brings to the meeting.

Q. And where have you seen this memo?

A. We've produced it in this litigation.

Q. And you reviewed it in your preparation for today's deposition?

A. Correct.

Q. Okay. And this was produced in this litigation?

A. Yes.

Q. And what was in this memo that led you to the conclusion that this was some sort of scheme to strip Acis of its assets?

A. I think I've said it, but I'll go back through.

So the timing of everything is that --

MR. MORRIS: He's just asking about the memo.

A. Yeah. So the memo comes out of Leventon's emails with Jamie Welton, outside counsel, specifically asking how long is it going to take Terry

to be able to get a court to confirm his arbitration award and then start to execute on Acis's assets and business.

And he gets those answers, and he puts them into a memo with the things that have to be done to strip Acis, and he put -- does it in bullet point form.

And then he -- and he produces that memo on a private drive only available to him. He doesn't email it to anybody.

But wonders of modern technology, you can see that he printed it out right before the meeting that he was eagerly trying to set up with Dondero through Dondero's assistant.

And then there's a meeting, but that's -- that's the memo. So I don't know what happened in the meeting. I wasn't there.

Q. (By Mr. Aigen) How do you know when this document was printed out?

A. There's data you can see when it was printed. I haven't looked at it specifically, but you can see the emails before. You can see when he's preparing it. You can see the Welton email. Then you can see the setup of the meeting, trying to push it earlier in the day.

Q. And who was this memo to?

A. It's just -- I don't -- you guys have it. It has bullet points on it. It's on a memo like a -- like a law firm guy would write --

Q. Is it an email, or is it a memo?

A. Oh, no. It's a page with bullet points. I call it a memo. You might just call it a document with a -- with a heading that says something like Acis Terry claim at the top, something along those lines, and then bullet points of all the things you've got to get done.

Q. And Isaac's name is not on this memo; is that correct?

A. I don't believe it is, no. Typically, when I just type something up, I don't put my name on it.

Q. And that's what I'm getting at.

How do you know it was created by Isaac?

A. You can see that in the -- in the document when he preps it. You can see the emails that are where he's lifted it off because his -- his name is on those, and then you can see where we got it, which was his -- one of his drives on his -- his system.

Q. Okay. And are the documents that show all that, were those produced in this litigation?

MR. MORRIS: Yes.

A. Yeah, I believe they were.

MR. AIGEN: And, John, I don't know if I've seen those. Obviously, you've produced lots of documents, millions. You don't have to give me an answer now, but we'd request that you just point us to the document showing that sort of --

MR. MORRIS: The bullet points that Mr. Seery is referring to were one of the supplemental productions that we made within the last six or eight weeks, so that's a very, very limited universe with respect to the Leventon-Welton email exchange that is the basis for that document. I don't -- I don't have that off the top of my head.

MR. AIGEN: I have seen that. I'm talking about, it sounds like, are there separate documents that show sort of the technological issues here of saving and printing and all that stuff? Is that a separate document that was produced?

MR. MORRIS: There are, yes.

MR. AIGEN: If those documents were produced, I would ask that the document showing that be identified. But we can talk about that offline.

THE WITNESS: Yeah. I'm quite sure that the correspondence between Leventon and Dondero scheduling the meeting were produced, and I believe

the data showing that when the document was produced was shown, and then that actually led to an amended discovery request from you guys. So you've been aware of it for a while.

Q. (By Mr. Aigen) Going back to -- what did we call it? -- Exhibit 4, the Assignment and Transfer --

A. Yep.

Q. -- let me ask you generally.

Is it fair to say that Highland is taking the position that HCLOM Ltd. failed to comply with its obligations under this agreement?

A. Yeah, both the predicate to the agreement and any obligations under the agreement, yes.

Q. And just so I know, what do you mean when you say "the predicate to the agreement"?

A. The recitals.

Q. Okay. So let's start with that.

With respect to the recitals, you're -- are you saying that the recitals here are inaccurate with respect to HCLOM Ltd.?

A. With respect to a lot of things, yes.

Q. Okay. So, generally, tell me what HCLOM Ltd. did that Highland is claiming was a failure to abide by its obligations under this agreement.

A. Starting with the recitals, on just the HCLOM

piece, just HCLOM, not the other failures between Highland and Acis, HCLOM, a qualified successor manager, it's simply not.

Q. And what do you mean by that?

A. It's just not a successor manager. It has no ability at this time to do anything, and it's irrevocably committing to be a successor manager it claims in a whereas, where it does absolutely nothing.

Q. Well, at the time this agreement was entered into, was there anything preventing from -- HCLOM Ltd. from taking the steps to become a manager?

A. It never did any of those things, so it --

Q. And I understand that.

MR. MORRIS: Let him finish.

Q. (By Mr. Aigen) I have a different question.

A. Yeah. I'm saying when someone commits to do something, one would think that they either have the ability to do the thing or they have started to do the thing or they will start to do the thing. And since they have done nothing, it's -- it completely fails.

And whether they just were incompetent, whether that was part of a giant lie, I don't know the answer to that.

They did not do that. So if you're saying that -- you know, if I commit to jump seven

feet in the high jump, it's sort of a worthless commitment. I could do a lot of things, but I'm not going to ever get there.

Q. Not without practice.

A. No. Even with practice, it will never happen. And this was never going to happen for the reasons we've talked about.

Q. And you broke that into ability to do something and willingness to do something.

So what I'm asking you is, at the time this agreement was entered into, did HCLOM Ltd. have the ability to do the steps required to become the successor manager if it chose to do so?

MR. MORRIS: Objection to the form of the question.

A. And I think the answer to that is no.

Q. (By Mr. Aigen) And why not?

A. Because it was singularly owned at that point one share by Maples. It didn't have any organizational documents to speak of other than having been formed. It didn't have officers. It was simply designed to sit there and hide stuff. It didn't do anything in those -- in that frame and even -- even get an A-B structure until -- until February 7th, 2018.

Q. HCLOM Ltd. never had officers; is that correct?

A. It didn't --

MR. MORRIS: Objection to the form of the question.

A. -- until February 2017. Then it gets really ugly, so we'll...

Q. (By Mr. Aigen) Was there any legal obstacles to HCLOM Ltd. becoming the successor manager at the time this agreement was entered into, that you're aware of?

MR. MORRIS: Objection to the form of the question.

A. I think it would have -- I don't think Maples would have done it as the shareholder. I think you would have had to have moved it to an entity that could then do these things.

So -- so I don't know if it's a legal requirement or a practical requirement. It's sort of like my high jump example. There's no -- there's no physical limitations to me being able to do it, but there are -- meaning from a physics standpoint, but there are physical limitations of me being able to do it.

Q. (By Mr. Aigen) Are you just speculating as

to whether Maples will do it, or do you have any actual firsthand knowledge on that?

A. They're a -- they're a law firm with -- holding a single share, and I've never seen them do anything but be a law firm.

Q. Are you aware of any legal obstacle to HCLOM Ltd. becoming the successor manager with Maples holding a single share?

A. Yeah. Again, I don't -- I don't know the answer to that. With an offshore entity doing that, it would subject them to a lot more regulation than offshore entities typically do. And, again, I've never seen one, but, you know, in the metaphysical world, perhaps.

Q. You've never had any discussions with anyone about whether HCLOM Ltd. was legally able to become the successor manager at the time it entered into this agreement?

A. I have. I don't think there's any great answer as to what they would have to do. I don't think there's a direct prohibition that says that a Cayman entity couldn't legally do this. It's just all the things it would have to do to become not only legal but practical and be able to assume the obligations under the PMAs, the portfolio management

agreements.

Q. And what is it about the PMAs that would have prevented Ltd. from becoming the manager, if anything?

A. The manager has to be a registered investment adviser. The manager has to be qualified and have the financial and operational wherewithal to be the manager of the investment product.

Q. And do you know if there was any legal obstacle to Ltd. becoming an investment advisor?

A. Again, I don't know, so I just don't really know the answer. I think a foreign entity could be one, but you just don't see it for domestic assets very often. Typically, I think we've done them as a relying advisor for foreign assets.

Q. We went off course a little bit here. I started asking you about the recitals, and you gave me that answer.

Let me ask you again. Generally, outside of the recitals, what obligations did HCLOM Ltd. have under the Assignment and Transfer Agreement that it failed to do?

MR. MORRIS: Objection to the form of the question.

A. So in Number 1, Succession, I think that's similar to what we just talked about, appointment of

HCLOM as a portfolio manager. Acis would have had to do a ton of stuff that -- HCLOM would have had to do a ton of stuff in order to be that that it never even attempted to do.

And it says it's going to do it promptly, not in some, you know, far-off date in the future.

Number 2, again, it's going to promptly pursue the successor manager appointment. It never did any of that. It never did one iota of anything to do any of that.

Number 3, with respect to HCLOM, I don't think HCLOM ever got any servicer fees.

I don't think 3(d), HCLOM ever signed a joinder to the note purchase agreement. At least I haven't seen it. I think that note purchase agreement is -- there's no such -- is that the -- is that the CLO? Is that the participation agreement?

Q. (By Mr. Aigen) The purchase agreement is defined as purchase agreement in the end of the first paragraph, and the term note is, so I guess you could combine those two.

A. Where?

Q. Do you see, at the end of the first paragraph, there's a definition. Something is defined as note, and something is defined as purchase

agreement. And then in the paragraph you're referring to, it combines those terms.

MR. MORRIS: The first whereas clause?

MR. AIGEN: No, no. At the end of -- before the whereas clause. You see it has purchase agreement and note defined.

MR. MORRIS: There is --

Q. (By Mr. Aigen) My point is you were asking if note purchase agreement is defined. It looks like note is a defined term, and purchase agreement is a --

A. It shows you the full integration of the -- of the CLO. It's not a purchase agreement. It's a participation agreement, and it shows you the integration of the purchasing -- the participation agreement and the note again. It's kind of hard to separate that stuff.

Thanks, Mike.

Q. And you've said several times that it should be a participation agreement, not a purchase agreement, and I know you touched on this, but what is the difference, in your mind?

A. So a purchase agreement, whether you are transferring, you know, 100 percent of something or 30 percent of something, it transfers all right, title, and interest to that thing.

And so when I think of a purchase agreement or a participation agreement structured as a true sale, it transfers all of the -- all of the right, title, and interest to the thing.

That's not what they were doing here. They were carving out a piece of the servicing fees and giving somebody a participation for a limited amount of time to exchange cash flows for the sole reason of converting ordinary income to capital treatment.

And so it doesn't transfer all right, title, and interest. When you look at that CLO participation agreement, it doesn't have any of the things a normal participation agreement that's structured as a true sale participation agreement has.

Q. I believe you testified before you do not believe that HCLOM ever received any servicer fees; is that correct?

A. I think that's correct, yeah. I think Acis always got them.

Q. Sitting here today, do you have any personal knowledge as to why HCLOM Ltd. did not take any steps to become the successor manager?

A. I wasn't -- you mean personal knowledge, where I was in the room or I was around? No. I

only -- my knowledge is from doing the work, prepping for the objection, prepping for, you know, this, you know, deposition and the documents I have read and the conversations with my team that I've had.

Q. And the documents we've already discussed.

Is there someone on your team that told you that HCLOM Ltd. did not take any steps to become the successor manager?

A. I think the answer is everybody on the team agrees with that. I don't know that we -- I had a specific discussion because they've all been involved in doing the work. And you can see whether any of those steps were conducted.

Q. Was anyone on your team involved with the steps to become successor manager when it was happening, or is it all things they learned after the fact when they were working for you?

A. You can't be involved in steps that didn't happen.

Q. Well, there were steps by HCLOM LLC; is that correct?

A. Oh, there were -- not only steps, they did everything to get there, and I testified to this. They did -- they went out and reset the Acis -- Acis 3 and didn't close it.

Q. And who from your team was involved with that?

A. Cournoyer on the -- on the legal documents and the agreements back and forth. I don't know if anyone else in finance or accounting was involved in the finance side of it. I don't know whether Surgent was, but it had advised -- you know, it would have had investors, so I think he would have been involved at least in some part of it, maybe only the retention of Mizuho. I don't know that, though.

And -- anybody else? I think -- I think that's it. Those would have been the guys. There would have been -- the other guys weren't on -- are not on my team, but, you know, there were other people involved in creating that CLO and hiring Mizuho and going out and I assume -- well, both helping get the HCLOF part done, working with Dondero to borrow the money from Nearwater. There was just -- there were a lot of people.

MR. AIGEN: Jennifer, can you tell me what my time is? I know I have a 3 1/2 hour time limit.

THE REPORTER: Can we go off just for one second?

MR. AIGEN: Sure. Go off.

(Recess 12:57-1:05.)

THE REPORTER: Back on the record at 1:05.

MR. MORRIS: So do you want to start a little bit earlier, then, Michael?

MR. AIGEN: Yeah.

Let me just put on the record first that I have no further questions in this deposition.

John, do you have anything?

MR. MORRIS: No.

MR. AIGEN: Okay. So why don't we go off the record for this deposition.

THE REPORTER: Off the record at 1:05.

(Deposition concluded at 1:05 p.m.)

CHANGES AND SIGNATURE

WITNESS NAME: JAMES P. SEERY, JR. NOVEMBER 13, 2024

PAGE	LINE	CHANGE	REASON

Job No. TX7022352

I, JAMES P. SEERY, JR., have read the foregoing deposition and hereby affix my signature that same is true and correct, except as noted above.

_____

JAMES P. SEERY, JR.

THE STATE OF _____)

COUNTY OF _____)

Before me, _____, on this day personally appeared JAMES P. SEERY, JR., known to me (or proved to me under oath or through _____) (description of identity card or other document) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this _____ day of _____, 2024.

_____

NOTARY PUBLIC IN AND FOR

THE STATE OF _____

My commission expires: _____

STATE OF TEXAS)
COUNTY OF DALLAS)

I, Jennifer Quick Davenport, Certified Shorthand Reporter, in and for the State of Texas, certify that the foregoing deposition of JAMES P. SEERY, JR. was reported stenographically by me at the time and place indicated, said witness having been placed under oath by me; and that the deposition is a true record of the testimony given by the witness.

I further certify that I am neither counsel for nor related to any party in this cause and am not financially interested in its outcome.

Given under my hand on this the 20th day of November, 2024

Jennifer Quick Davenport
Texas CSR No. 1683
Expiration: 10-31-25
Firm Registration No. 571
Dickman Davenport - A Veritext Company
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817-336-3042
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Time used by each party:
Mr. Aigen - 2:58
Mr. Morris - 0:00

John A. Morris - jmorris@pszjlaw.com

November 20, 2024

RE: In Re: Highland Capital Management, L.P. v.

DEPOSITION OF: James P. Seery , Jr. (# 7022352)

The above-referenced witness transcript is available for read and sign.

Within the applicable timeframe, the witness should read the testimony to verify its accuracy. If there are any changes, the witness should note those on the attached Errata Sheet.

The witness should sign and notarize the attached Errata pages and return to Veritext at errata-tx@veritext.com.

According to applicable rules or agreements, if the witness fails to do so within the time allotted, a certified copy of the transcript may be used as if signed.

Yours,

Veritext Legal Solutions

[4 - acknowledgements]

[company - correct]

[definition - document]

[email - existed]

i

[manager - monetization]

Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

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Exhibit 52

Hilary Term
[2023] UKPC 7
Privy Council Appeal No 0087 of 2020

JUDGMENT

HEB Enterprises Ltd and another (Respondents) *v* Bernice Richards (as Personal Representative of the Estate of Anthony Richards, Deceased) (Appellant) (Cayman Islands)

From the Court of Appeal of the Cayman Islands

before

Lord Reed
Lord Hodge
Lord Lloyd-Jones
Lord Briggs
Lord Kitchin

JUDGMENT GIVEN ON
21 February 2023

Heard on 17 November 2022

Appellant
Jack Watson
(Instructed by KSG Attorneys at Law (Cayman Islands))

Respondent
Hector Robinson KC
(Instructed by Mourant Ozannes (Cayman Islands))

LORD KITCHIN:

1. This appeal concerns long term agreements for the sale of two lots of land within a commercial development in George Town, Grand Cayman. Each agreement provided for the payment, at the outset, of a deposit and then for the balance of the principal to be paid over 20 years by monthly instalments together with interest. As will be seen, it was also agreed that these payments would begin once the buyer had taken possession of the relevant lot.

2. After many years, during which the buyer had in fact enjoyed possession of the lots and the use of them for his commercial purposes, he repudiated the agreements, following which the sellers treated themselves as discharged from the further performance of their obligations under the agreements. The question is whether the buyer then became entitled to recover from the sellers, not just the payments of principal (as to which there is no dispute) but also all the interest payments he had made while enjoying the right to occupy the lots and use them for his own purposes. The buyer contended there had been a total failure of the basis on which those interest payments were made and so, subject to certain exceptions, he was entitled to an order for their return.

3. The Court of Appeal held that there had been a total failure of consideration but the buyer was not entitled to recover the interest payments he had made because he had enjoyed a real benefit in the form of the right to possession, and that the value of that possession, which the Court of Appeal referred to as mesne profits, had to be accounted for as part of the restitutionary adjustment which fell to be made on the failure of the agreements. The issue on this further appeal is whether the Court of Appeal approached the issues before it correctly and, so far as it did not, whether this has affected the overall conclusion to which it came.

The background

4. In the 1990s Mr Henry Bodden and his wife, acting through HEB Enterprises Ltd ("HEB"), a company of which Mr Bodden was director and principal, embarked on the development of a new shopping complex in George Town, Grand Cayman. The complex was called Caymanian Village and it was developed in two phases. It comprised, in total, 22 shops, each with its own title. Mr Bodden was the original owner of each of shops and it was always intended that HEB would act as his agent in connection with their sale. The Board will refer to Mr Bodden and HEB as "the Sellers".

5. Caymanian Village took the form of a strata development. The properties in such a development are self-contained but share common areas. A corporation is established to manage the development and to ensure that all the appropriate supervisory and administrative work is carried out and that the necessary services are provided. The owners or occupiers of the shops then make an appropriate contribution to the costs and charges that are incurred by the corporation in so doing. These contributions are called “strata fees”.

6. Mr Anthony Richards expressed interest in acquiring a number of the shops in Caymanian Village and the dispute giving rise to these proceedings relates to two of those he ultimately agreed to buy, referred to as “Lot 10” and “Lot 11”. Mr Richards has since died and his estate is represented in this appeal by his widow, Mrs Bernice Richards. For convenience, the Board will refer to Mr Richards and now Mrs Richards, the personal representative of his estate, as “the Buyer”.

7. In very broad terms it was agreed that the Buyer would acquire each of the lots at what were described as pre-construction prices and on pre-construction terms. He would pay a small deposit at the outset and the balance of the purchase price in instalments over 20 years with interest of 12% per annum. Title to each lot would pass to the Buyer once the final payment for that lot had been made.

Lot 10

8. More specifically, in or around December 1994, the Buyer made an agreement with the Sellers to purchase Lot 10. The purchase price was CI$ 120,000. A deposit of CI$ 3,000 was payable at the outset and the balance of CI$ 117,000 was payable over 20 years, with interest at 12% per annum, by monthly instalments of CI$ 1,290.

9. Many of the important terms of the agreement to purchase Lot 10 are set out in a written contract dated 28 December 1994 but they did not represent the entire agreement between the parties. In particular, the written contract did not specify the date upon which the payment of the monthly instalments was to begin. It was agreed, however, by clause 4, that title would pass from the Sellers to the Buyer on payment of the final instalment and all outstanding interest. This was referred to as “closing”.

10. Clause 5 provided that vacant possession of Lot 10 would be given by the Sellers to the Buyer on closing unless the Sellers gave their “express consent in writing to earlier possession and subject to such terms as shall then be agreed”.

11. Clause 6, headed "DEFAULT", addressed the consequences of a failure by the Buyer (referred to in this clause as the "Purchaser") to complete the agreement in the manner provided for and the rights conferred on the Sellers (referred to in this clause as the "Vendor") by such a failure:

> "If the Purchaser fails to complete this Agreement at the times and as provided for in paragraph 3 hereof (in respect of which time shall be of the essence) the Vendor may at it's [sic] option rescind this Agreement by written notice to the Purchaser and forfeit and keep absolutely as liquidated damages the deposit hereof and all or any interest accrued thereon and may in addition keep absolutely out of any further sum paid by the Purchaser such amount as is sufficient to compensate the Vendor for any work done to the Strata Lot by the Vendor at the request of the Purchaser which involves a deviation from or amendment to the basic plan for the Strata Lots or any substitution requested by the Purchaser in respect of the fixtures and fittings installed in the Strata Lot and no further rights of action shall arise in respect thereof nor shall any party hereto have any further rights, demands, actions, claims or damages the one against the other and the Vendor may resell the Strata Lot and keep the full sale price absolutely."

12. Despite the terms of clause 5, the parties had in mind from the outset that the Buyer would take possession of the lot once the building work had been finished and it was ready for occupation, and they agreed that payment of the instalments of principal and interest would begin at that time.

13. The Buyer made the initial deposit payment for the purchase of Lot 10 and he entered into possession, by agreement, on 1 August 1995, having undertaken to pay the relevant strata fees.

14. The Buyer was also provided with detailed interest work sheets showing the amortised payments of interest and principal on the lot from the date of possession to the date of closing. If matters had proceeded in the manner contemplated by the entire agreement between the parties, the final instalment of principal and interest would have fallen due on 1 July 2015.

Lot 11

15. On 11 July 1997 the Buyer made a similar agreement to purchase Lot 11. The purchase price was CI$ 150,000. A deposit of CI$ 7,500 was payable at the outset and the balance of CI$ 142,500 was payable over 20 years, with interest at 12% per annum, by monthly instalments of CI$ 1,321.30.

16. Once again, it was agreed by the Sellers that title would pass to the Buyer on making the final payment. Clauses 4, 5 and 6 of the written contract were in essentially the same terms as those summarised and set out at paras 9 to 11 above.

17. The Buyer made the initial payment required in respect of the agreement to buy Lot 11. After the construction of the shop, he entered into possession, by agreement, on 14 December 1997, having once again undertaken to pay the relevant strata fees. The Buyer was also provided with a detailed interest worksheet showing the amortised payments of principal and interest on the lot from the date of possession to the date of closing, just as he had been for his purchase of Lot 10.

18. In the case of Lot 11, if matters had proceeded in the manner contemplated by the entire agreement between the parties, the final instalment of principal and interest would have fallen due on 30 November 2017.

Repudiation and "rescission"

19. Unfortunately, the Buyer was unable to meet his obligations under the payment schedule of either agreement. Discussions between the parties took place on a number of occasions over the years but to no avail. As recorded by the Court of Appeal, the Buyer from time to time made promises to pay the arrears and benefitted from the repeated forbearance of the Sellers to enforce their rights. In February 2015 the Buyer ceased making any payments in respect of Lot 10. He made some further payments in respect of Lot 11 but was still in arrears when in April 2016 he sent a cheque to the Sellers in the sum of CI$ 1,321 indicating that this was "for all" he "could afford".

20. The Sellers had by this time run out patience, however, and returned this cheque together with a printed email, dated 18 April 2016, which stated (using the original text):

> "It would appear that you do not fully grasp the concept of breach of contract. Your after-the-fact payment, even if it were accepted (which is being sent back to you) still leaves you in breach/default of both our sales agreements.

> Accordingly, we are NOT accepting any further payments on either unit #10 (which you have stopped payments on and are fourteen months behind) or #11 in which you habitually pay months late). Therefore, I will post a check back to you if you make future default payments. The attached check has been mailed back to National House Bakery today."

21. On 28 April 2016, Samson & McGrath, attorneys by then acting for the Buyer, replied that it was clear that the Sellers had invoked clause 6 and had, in the terminology of that clause, "rescinded" each contract by giving the appropriate written notice. They continued that the Buyer was now entitled to the return of all monies paid by him in respect of Lot 10 and Lot 11, subject in each case to the deposits which had been paid and which the Sellers were entitled to keep (together with any interest that had accrued on those deposits). They then proceeded to detail, in tabular form, the payments made by the Buyer and which it was claimed were now due to repaid to him, namely:

Unit #10 payments due over 240 months	$309,184.80
Less payments unpaid	($6,252)
Total	$302,932.80
Unit #11 payments due over 240 months	$317,112
Less payments unpaid	($25,977)
Total	$291,135

22. The Buyer's attorneys maintained that the total sum due to him on rescission was therefore CI$ 594,067.80 (subject to verification and minor correction). They said

that it was possible that the Sellers had rescinded the contracts under the mistaken belief that they were entitled to retain all the monies that had been paid over by the Buyer, and they urged the Sellers to take legal advice. They also indicated that the Buyer might be open to a compromise but subject to that would pursue the payment of the sums to which he was in their view entitled. Finally, they said that the Buyer would need a reasonable period of time to vacate the lots.

23. In the event and as found at trial, the Buyer had by that time made payments of the principal due in respect of Lot 10 and Lot 11 of, respectively, CI$ 110,747.47 and CI$ 96,156.35, and corresponding interest payments of CI$ 191,996.17 and CI$ 194,530.39.

The proceedings

24. On 24 May 2016, the Buyer issued an originating summons seeking a declaration that the agreements had been rescinded by the Sellers' email of 18 April 2016. By a consent order dated 10 February 2017, it was directed that the claim should proceed as if brought by writ. On 29 March 2017, the Buyer filed a statement of claim setting out his claim in more detail. He sought recovery of all the payments of principal and interest he had made and an account of all sums due and owing under clause 6 of the written contracts.

25. On 21 April 2017, the Sellers filed a defence and counterclaim asserting that the Buyer's persistent failures to perform his obligations amounted to a fundamental breach and repudiation of each of the agreements which, on acceptance, discharged them of all further obligations; and that they were entitled to treat the agreements as at an end and, in respect of the breaches of each agreement, were entitled to damages to compensate them for the losses they had suffered. They sought, among other things, payment of interest on instalments due up to the date of termination, strata fees outstanding at the date of termination, strata fees due up to the date of surrender of possession, mesne profits amounting to the commercial rent payable on the shops from the termination date to the date of surrender of possession and, for the avoidance of doubt, orders for possession.

The judgment at trial

26. The action came on for trial before Williams J, in the Grand Court of the Cayman Islands, on 7 February 2018 and it lasted two days. On one important issue between the parties, the Buyer conceded that his breaches of the agreements were repudiatory.

27. Williams J gave judgment on 2 August 2018 and by his order made on 10 August 2018 awarded the Buyer CI$ 593,430.37 on his claim and the Sellers CI$ 135,869.29 on the counterclaim, with the latter figure to be set off against the former. He held that the Buyer was entitled to the return of all of the principal and interest he had paid to the Sellers, less the deposits and any interest on those deposits. He also found that the Sellers were entitled to set off against the sums payable to the Buyer the outstanding strata fees (and interest) in the agreed sum of CI$ 58,297.30 and mesne profits for the period from 19 April 2016 until 30 November 2017 at a rate of CIS$ 4,000 per month for both lots. There was some doubt about the appropriate end date for the mesne profits, as the Court of Appeal later pointed out at para 20 of its judgment. But there was no confusion about the start date, this being the day after the Sellers had, by their email, accepted the Buyer's repudiation of the contracts.

28. In arriving at these conclusions, the judge reasoned that the parties had, in clause 6, addressed the consequence of a repudiatory default by the Buyer. In particular, clause 6, in referring to rescission, meant the exercise of the option to terminate the contract for breach. It provided for the forfeiture by the Buyer of his deposit; the right of the Sellers to resell the property and to retain the full resale price; and the right of the Sellers to retain from the payments made to them compensation for any work done to the relevant lot at the request of the Buyer. But it also prevented the Sellers from claiming damages to compensate them for any other losses they might have suffered as a result of the Buyer's repudiation.

Appeal to the Court of Appeal

29. On appeal, the Sellers argued that the Buyer had enjoyed possession of the lots for nearly 20 years and yet, on the judge's analysis, was entitled to the return of almost everything he had paid. They maintained this was a remarkable and unjust result. The judge ought to have found that the Buyer had repudiated the contracts; that their email accepting the repudiation had not referred to clause 6 and so that clause did not apply; and that the outcome of the repudiation therefore depended on the application of the common law.

30. The Sellers continued that a distinction should be made between, on the one hand, the return of the principal to reflect the failure of any passing of title to Lot 10 or Lot 11 and, on the other hand, the non-return of any interest payments to reflect the use of the shops that the Buyer had enjoyed over the better part of the 20 year instalment programme.

31. The Court of Appeal was persuaded as to the broad merits of the Sellers' submissions and allowed their appeal. Sir Bernard Rix JA, with whom John Martin KC, JA and Sir Alan Moses JA agreed, explained, at para 24, that an argument explored at the hearing was that the failure of the contracts required the application of restitutionary principles. On this approach, the Buyer had to give credit for the enrichment he had received, in the form of possession of the lots, by reference (if not to the interest payable over the period of his possession) to the mesne profits value of that possession.

32. The Court of Appeal acknowledged that one difficulty in the path of the Sellers was the concession at trial that a counterclaim for mesne profits in the form of damages had been abandoned and that, by further concession, the Sellers were only seeking a restitutionary credit up to the value of the interest involved (some CI$ 380,000) and not a larger sum of mesne profits over the period. Nevertheless, the application of general restitutionary principles allowed for a working out of the appropriate amount of any unjust enrichment, as opposed to a counterclaim for damages for breach of contract.

33. There followed a detailed consideration of the submissions advanced by the parties and of a number of authorities, and the Board intends no disrespect for the depth of that analysis by not relating it here. For present purposes it is sufficient to focus on the Court of Appeal's conclusion, at paras 49 to 63, that a full recovery of all the payments in restitution was not compatible with a situation where in the meantime the Buyer had enjoyed a real benefit under each agreement. That incompatibility could be accommodated under the modern law of unjust enrichment. A buyer of land who paid in advance for the later transfer of a title which was never completed could recover the price paid though, in a case such as the present, not the deposit. However, a buyer who had enjoyed possession should not be entitled to recover more than would eliminate any unjust enrichment of the seller. Equally, the Court of Appeal continued, there was no reason why, with the aim of avoiding unjust enrichment on the part of the seller, the buyer should be left unjustly enriched by his possession. As for how that possession was to be valued, there was a well-known way of carrying this out in the absence of a contract, and that was in the form of mesne profits of which the judge in this case had evidence.

34. The next question was whether such a solution was compatible with the parties' contracts. The Court of Appeal was satisfied that clause 6 did not exclude the effect of the principles of restitution. There was express provision for the forfeiture of the deposit and for the retention of sufficient moneys to compensate the Sellers for work done at the Buyer's request. On the other hand, there was no express provision for the return to the Buyer of part payments other than the deposit. This left room for the

application of the general law. Here it was common ground, at least for the purposes of the appeal to the Court of Appeal, that clause 6 did not stand in the way of the Buyer's right to recover what the law permitted by way of restitution. The issue was what that extended to, but it was certainly not to a figure which failed to take account of the value to the Buyer of possession.

35. The Court of Appeal decided that the structure of the transactions and their basis was that the Buyer would obtain possession in return for the price payable with interest over 20 years, at the end of which there would be a closing and passing of title. The court rejected the Buyer's submission that anything less than a full recovery of his payments of principal and interest would give a windfall to the Sellers. To the contrary, the lots had always belonged to the Sellers. The only windfall was that sought by the Buyer, namely that he be permitted to retain the benefit of his possession of the lots for nearly 20 years without any payment, save for the strata fees.

36. The Court of Appeal therefore allowed the Sellers' appeal to the following extent: there fell to be deducted from the sum awarded on the Buyer's claim mesne profits during the period of his possession of the lots, and these mesne profits were to be valued at a figure which, in light of the Sellers' concession, would be limited to the amount of interest paid by the Buyer over that period.

The appeal to the Board

37. Upon this further appeal the Buyer contends first, that the Grand Court and the Court of Appeal were right to recognise that, following the termination of the contracts between the parties, he was entitled to the return of his payments of principal and interest. Secondly, the Court of Appeal was wrong to hold that any award should be discounted to reflect the Buyer's possession of the lots.

38. More specifically, the Buyer contends that no deduction is permitted under the law of unjust enrichment or by reference to the parties' agreements. He argues that the Court of Appeal fell into error in failing properly to apply the legal principles underpinning any claim of unjust enrichment and instead in seeking to engineer a solution which it considered to be fair. As for the written contracts, clause 6 operated as a contractual allocation of risk. On termination, this clause conferred a contractual entitlement to the return of principal and interest without deduction, save as expressly provided for in the clause itself. Alternatively, the clause provided a contractual identification of the basis for the payment of principal and interest such that a restitutionary remedy remained available save as provided under the clause. Put another way, clause 6 provided a clear indicator that in the event of his failure to

complete, consideration in respect of the principal and interest would have failed and so they both ought to be refunded.

39. The Buyer accepts that, absent clause 6, his right to any award would have been subject to the Sellers' rights to sue for damages for his failure to complete the contracts or to seek counter restitution in respect of his occupation of the properties, so far as that was available. As it is, however, the structure of the parties' bargain means that the right to obtain damages is expressly limited to the retention of the deposit and of sums to compensate the Sellers for works carried out, and the Sellers have the right to keep the proceeds of sale of the properties. The parties in this way agreed a contractual limit on liability and a contractual means of ensuring that both parties were compensated in the event of a default.

40. The Sellers do not resist repayment of the instalments of principal but say the claim for return of the instalments of interest on the outstanding principal is misconceived. There was no failure of consideration or basis for these payments of interest because the Buyer was allowed to take possession of the lots, and this possession allowed him to use them and enjoy the commercial benefit of having them, whilst paying the purchase price in instalments, with interest, over a prolonged period. The payment of interest was directly referable to the Buyer's possession. Accordingly, the Court of Appeal arrived at the right conclusion but for rather different and not wholly correct reasons.

41. The resolution of these rival submissions depends, first, upon the identification and interpretation of the entire agreement between the parties in relation to each of the lots, and the correct analysis of the consequences of the repudiation of the agreements by the Buyer. It depends, secondly, on whether the basis for the agreements has failed.

The entire agreements and the right to possession

42. It is convenient to begin with the terms of the agreements themselves. The Board has related the substance of the important terms of the agreements, so far as they were set out in writing, at paras 8 to 18 above. But it is also necessary to say a little more about the basis for the Board's view, expressed at para 12 above, that these terms do not constitute the entire agreement between the parties in relation to each lot.

43. Clause 5 of each written contract provides that vacant possession of the lot will be given on closing unless the vendor gives earlier consent in writing and subject to such terms as shall be agreed. Nevertheless, the Court of Appeal held, and the Board agrees, that the whole arrangement between the parties only makes sense on the basis that the Buyer would take possession once he had paid the deposit and agreed to pay the strata fees and that this was in the contemplation of the parties at the outset. Here the Court of Appeal was right to find that the written contracts, although not themselves providing for vacant possession, contemplate that it will be given.

44. The structure of each of the agreements supports this conclusion. In particular, clause 3(b) of the written contracts did not specify the dates from which the 20 year periods were to run or when they were to end. It was agreed, however, that the periods would start to run with possession. As the Court of Appeal recorded, and the Board has mentioned, the Buyer entered into possession of Lot 10 on 1 August 1995, that is to say, almost nine months after the date of the contract; and he entered into possession of Lot 11 on 14 December 1997, some five months after the date of the contract. The Buyer was from each of these dates required to pay the relevant strata fees and the 20 year period for the payment of the monthly instalments began to run. It was also entirely understandable that the Buyer was thereupon presented with the worksheets setting out amortised payments of principal and interest on each lot from the date of possession to completion. The payments, as recorded on the sheets, differed slightly from those set out in the written contracts but it has not been suggested that these details should affect the outcome of this appeal.

45. The agreement as to the payment of interest is also important. The deposit was payable on making the contract but the balance of the purchase price was payable by monthly instalments over 20 years with interest at 12% per annum. As the Court of Appeal recognised, at para 59, the addition of interest meant the Buyer would pay and the Sellers would receive the equivalent of the full (and not time depreciated) payment of the balance of the price at the time of possession. But so too, the Buyer would have the right to take possession of the lots and enjoy their value over the two decades that he would be making the payments. Further, he would do so without paying rent. Possession by the Buyer was therefore a fundamental aspect of his agreement to make the scheduled payments, including interest at 12%, over such an extended period of time. For their part, the Sellers would be protected by their reservation of title until completion took place and the final payments had been made.

46. In light of all of these matters, the Board is satisfied that the Court of Appeal was entitled and right to find, at para 59, that clause 5 contemplates that possession will be given and similarly, at para 60, that the clause provides for a collateral exercise in fulfilment of what the written contracts already envisage. The Buyer's possession

was a part and parcel of the transactions; indeed, so much so that there was never any separate written consent for the Buyer to take possession, and the Buyer's agreement to pay the strata fees was not even recorded in writing. In this way and although the price would be paid in instalments over 20 years, the addition of interest meant that the Buyer would ultimately pay and the Sellers would receive the equivalent of full payment of the price as at the time of possession.

47. In summary, the entire agreement in relation to each lot is properly to be understood in this way:

(i) The parties agreed for a long postponed transfer of title (that is to say ownership) on full payment of an agreed price by instalments.

(ii) Once the shop had been built and was ready for occupation, the Buyer would have the right to occupy it and to have the full enjoyment of it, rent free, including the right to use it for the purpose of his business. The Sellers would at the same time have what was, commercially and in substance, the full enjoyment of the price.

(iii) These reciprocal rights were achieved by giving possession to the Buyer and by giving to the Sellers (a) the deposit; (b) instalments of the price as they were paid (from which they could derive an income in the form of interest); and (c) interest on the instalments not yet paid from time to time. The aggregate amounted to full enjoyment of the price from the date of possession.

Repudiation and discharge

48. The Board turns now to the repudiation of the agreements by the Buyer. As we have seen, in these circumstances, clause 6 of the contracts, invoked by the Sellers, purports to confer upon them a right to "rescind" the agreement by giving written notice to the Buyer. It is important to understand that any rescission of this kind is very different from rescission *ab initio* such as may arise in cases of fraud or mistake. As the trial judge recognised, the true effect of the step taken by the Sellers was to accept the repudiation by the Buyer as a discharge of the primary obligations of both parties, and to substitute for them a secondary obligation by the Buyer to compensate the Sellers for the losses they had suffered as a result of that repudiation, subject to the effect of any term of the agreement which restricted or excluded any remedy for breach, or provided any further remedy.

49. Here the Buyer contends that there was no term or condition of the agreements that he would, in the event of his default, forfeit his payments of principal or interest and so, the Sellers having accepted his repudiation, he is entitled to recover, if not his deposit, at least the payments of principal and the payments of interest he has made, subject of course to any permissible cross-claim by the Seller for breach of the agreements. He maintains that there is nothing in clause 6 which restricts or precludes that recovery. By contrast, the clause permits the retention by the Sellers of the deposit and any interest which has accrued on the deposit, and any further sum which is sufficient to compensate the Sellers for any work done at his request to Lot 10 or Lot 11 which deviates from the basic plan for the lot, and it also permits the Sellers to resell the lot and to keep the full sale price. But it precludes the Sellers from pursuing any other claim against him as a defaulting buyer.

50. The Board has come to the firm conclusion that this argument of the Buyer must be rejected. Subject to the further but related argument that there has been a total failure of basis for the payments of interest upon the outstanding principal (to which the Board will come), the Board is wholly unpersuaded that, as a matter of interpretation, the Buyer is entitled to the return of these payments of interest on his repudiation of the agreements. The Buyer's argument founders because he has had the benefit of the right to occupy the shops and use them for his business purposes for the many years since their construction, and to do so rent free. It would have made no sense for the parties to agree that he would have that benefit and yet, on his default, towards the end of the instalment period and as the date for closure drew close, have the right to recover all the payments of interest that he had made. Subject again to any total failure of basis, the normal rule applies and payments of interest made by the Buyer under the agreements before the date of discharge are irrecoverable.

Failure of basis?

51. These considerations also provide the foundation for the answer to the next question, namely whether, as the Buyer contends, this is a case in which it was envisaged that title to the lots would be transferred in exchange for all of these payments. The Buyer's argument proceeds in the following way. There has been a failure to transfer title which amounts to a total failure of the basis for the payments. It is important, the Buyer continues, that the court should not be distracted by the fact that he has derived a benefit under each agreement, unless it constituted the basis for the transaction, and here it did not. The only basis for the transaction was the transfer of title and that has not taken place. The Buyer was therefore entitled to recover all the payments he had made by way of principal and interest.

52. A number of other arguments are advanced in support of this aspect of the Buyer's case. It is submitted, first, that there is nothing in the written terms which allows the interest payments to be seen as a form of occupational rent. Here reliance is placed on the terms of the written contracts which provide for vacant possession on closing. It is also submitted that if the Buyer had never entered into occupation of the lots, precisely the same amount of interest would have been payable under clause 3. So, it cannot be said that possession was the basis for the payments of interest. To the contrary, there was express consideration for the Buyer's occupation of the lots namely the payment of insurance and strata fees, but nothing was said about interest.

53. The Buyer points, secondly, to the lack of any relationship between interest and rent. The requirement to pay interest is a feature of the overall price, the balance that remains to be paid and the actual and anticipated interest rates at the time of the written contract. By contrast, rent is usually priced evenly or, in cases the subject of rent review, will increase.

54. These are all powerful points but, in the Board's view, they tend to assume what they are said to establish. In particular, for the reasons the Board has already summarised, the written contract does not represent the entire agreement between the parties in respect of either lot. It was always understood and agreed as part of the complete agreement in respect of each lot that, when the shop had been built and was ready for occupation, the Buyer would take possession, subject in each case to the payment of the strata fees and the deposit. The Buyer would then begin to pay the instalments of the price and interest on the reducing unpaid balance in accordance with the schedule. That is precisely what happened.

55. Next, the Board does not accept that the basis for the interest payments was unrelated to the possession that the Buyer enjoyed. To the contrary, the basis for the interest payments included the right to possession for the duration of each agreement. The payments did not start until the Buyer took possession and the Buyer was entitled to retain possession so long as he continued to pay the strata fees and the instalments of principal and interest. In the result the Buyer was able to enjoy the use of the lots for business purposes for very many years, and to do so rent free.

56. It is true that the same amount of interest would have been payable even if the Buyer had chosen not to enjoy his right to take possession of the lots or had decided not to use them for his business. That would have been a matter for him. In the Board's opinion that does not assist him, however, because he was entitled to take possession of the lots and to use them for his business, and that is what he did. Nevertheless, he invites the Board to hold that this benefit formed no part of the basis for the payments with the result that, in this case and on his default, they must all be

returned. But the Board is firmly of the view that this is not a realistic approach to the respective benefits the parties secured from their agreement, or to the entirety of the basis for them.

57. The commerciality of this conclusion is not affected by what the Buyer calls the arbitrary and unreal relationship between interest and occupational rent. The Board recognises that the right to possession may not be the only basis for the interest payments. Indeed, there is a respectable argument that their basis also includes the Buyer's right and obligation to pay the principal in instalments over the same extended period. But that is nothing to the point if the right to possession, enjoyed by the Buyer, forms a material part of the basis for the interest payments, and the Board is satisfied that it does. As the Board has foreshadowed, it would indeed have made no sense for the parties to agree terms for payment of the price in instalments over 20 years at a significant rate of interest if the Buyer did not have the right to take possession for that time and to use the premises for his business purposes. Nor would it have made sense for the Sellers to have agreed an arrangement under which the Buyer could take possession and yet, many years later, on his repudiation of the agreement, recover all the payments he had made.

58. The Buyer has accepted before the Board that a failure of basis must be total and that if even a part of the benefit which formed the basis for the payments has been conferred, no action will lie for the return of those payments. As Lord Porter explained in *Fibrosa Spolka Akcyjna v Fairbairn Lawson Combe Barbour Ltd* [1943] AC 32, 77, money had and received to the claimant's use can be recovered where the basis (there referred to as consideration) has wholly failed. So too, if a divisible part of the contract has wholly failed and part of the consideration can be attributed to that part, that portion of the money so paid can be recovered: see for example, *Barnes v Eastenders Cash & Carry plc* [2015] AC 1, para 114. On the other hand, a partial failure of consideration for a particular payment gives rise to no claim for recovery of part of what has been paid.

59. In the opinion of the Board, these principles are fatal to this aspect of the appeal. In the particular circumstances of this case, the basis for the interest payments has not wholly failed and the Court of Appeal was wrong to hold otherwise. Part of the basis for the interest payments may have been for the Buyer to obtain ownership of the lots by paying the purchase price in instalments over many years; but another and important part of the basis for these payments was to obtain the right to take possession of each of the lots and to use them for his business in the years to closing.

60. In reaching this conclusion the Board has taken careful account of a number of decisions involving hire purchase agreements to which the Buyer has referred. They

include *Rowland v Divall* [1923] 2 KB 500; *Karflex Ltd v Poole* [1933] 2 KB 251; *Warman v Southern Counties Car Finance Corporation LD* [1949] 2 KB 576; and a further case involving a conditional sale agreement: *Barber v NWS Bank Plc* [1996] 1 WLR 641. Reliance was also placed on *Rover International Ltd v Cannon Film Sales Ltd* [1989] 1 WLR 912 concerning a joint venture concerning the dubbing and distribution of films in Italy. The circumstances of each of these disputes were very different from those the subject of this appeal but all of them may be said to support a proposition which the Board would readily accept, namely that a failure of basis may be established notwithstanding the receipt of a benefit. The question in any case is not whether the party claiming a total failure of consideration has received any benefit under the agreement but whether that party has received any part of the benefit for which he bargained and which therefore forms the basis of the agreement.

61. Of more direct relevance to the issues now before the Board is the approach taken to long term agreements for the purchase of land by instalments in Victoria, Australia. Here the Board has been referred to the commentary in *Voumard, The Sale of Land*, 6th ed, 2009, an important treatise in Australia. It is explained, at para 12.280, that, at least in Victoria, Australia, where a vendor elects to rescind a contract on the ground of the buyer's default and the buyer has been in possession under the terms of the contract, the buyer is still entitled, upon adjustment of rights with the vendor, to be credited with the instalments of principal that he has paid, but he is not entitled to be credited with the instalments of interest that he has paid on the principal. The basis for that view is that consideration for the payment of the principal is the conveyance or transfer of the land and that once the vendor, in rescinding the contract, deprives the buyer of the right to the transfer, the consideration for the payment of the principal has wholly failed, and the buyer is therefore entitled to the return of the principal as money had and received to his use.

62. It is recognised in *Voumard* that the soundness of this analysis has been questioned in various articles in the Australian Law Journal (for example, an article by H. Walker, *'Rescission of contracts for sale of land'* (1934) 7(10) Australian Law Journal 366). Mr Walker argues in that article that as the buyer has had possession of the land under the contract, it cannot be said there has been a total failure of consideration for which he contracted. In other words, the contract is an entire contract for the use and occupation for a specified period and a transfer of the freehold at the end of that period in return for a principal sum with interest. The force of this view is acknowledged in *Voumard* but it is suggested that, correctly understood, the consideration is not entire but divisible and that the contract is, from the point of view of failure of consideration or basis, properly regarded as a main contract for the transfer of the freehold in return for the principal sum, and a subsidiary contract under which the buyer is entitled to enjoy possession of the land pending execution of the

transfer, in consideration of the payment of interest on the balance of the principal which remains unpaid.

63. It is not necessary for present purposes (nor would it be appropriate) to attempt to resolve the different views expressed by these authors as to the position under the law of Victoria, Australia. The important point is the recognition that, in the context of an agreement for the purchase of land over a long period, such as that with which the Board is now concerned, a right to enjoy possession of the land before title is transferred may provide at least part of the basis for an obligation to pay interest on the principal that remains outstanding from time to time.

64. The identification of the basis for the agreement in any particular case is therefore of the utmost importance. All will depend on the circumstances of the case and the nature and terms of the entire agreement in issue. The Board has carried out that exercise in the context of the agreements in relation to Lot 10 and Lot 11 and has reached the firm conclusion for the reasons given earlier in this judgment that at least a part of the basis for the entire agreement in relation to each of these lots was the right to enter into possession and occupation, on the completion of the construction, whilst the instalments of principal were being paid. That conclusion is not in any way undermined by a different conclusion reached in relation to other agreements made in different circumstances.

65. The Board must now consider the implications of clause 6 on the claim in respect of these interest payments. The Buyer submits that where a contract makes provision for the recovery of sums on termination, those provisions will govern the parties' entitlements. Here, clause 6 envisages the Buyer will be entitled to recover all payments made under the contract other than the sums expressly referred to, and so the Buyer is entitled to recover the interest payments on the outstanding principal.

66. The Board does not accept these submissions. Clause 6 does not confer on the defaulting Buyer a contractual right to the return of the interest payments he has made prior to the termination of the contract. Nor does the clause provide that in the event of the Buyer's default, the basis for the interest payments would have totally failed.

67. Accordingly, the Buyer's claim for the return of the interest payments can only be advanced on the ground that, having regard to the entire agreement in relation to each lot and all the circumstances, the basis for the obligation to make these payments has failed and that the interest therefore ought to be refunded together with the principal. But that claim suffers from the further flaw the Board has already identified,

namely that the whole basis for the requirement to pay the interest has not failed because the Buyer enjoyed the right to possession of each lot until he repudiated the agreements.

68. In reaching this conclusion the Board has given careful consideration to the decision of the Board in *Mayson v Clouet* [1924] AC 980. That case involved a contract for the sale of land with a deposit to be paid immediately, two instalments of the price to be paid on particular dates and the balance to be paid within 10 days of the production of a certificate that the construction of certain buildings on the land had been completed. The contract provided that if the buyer failed to comply with his obligations, his deposit might be forfeited and the land resold. The deposit was duly paid, as were the first two instalments of the price. But the buyer failed to pay the balance of the price at the stipulated time and failed to complete despite being served with a certificate of completion and fitness for occupation, and despite a final extension of time. The vendor rescinded the contract. The Board held the contract distinguished between the deposit and the instalments and provided for a forfeiture of the deposit only. It followed that the deposit had been forfeited, but the instalments were recoverable.

69. The Buyer contends that, just as in *Mayson*, clause 6 confers upon him a right to recover all the payments made under the agreement (including the interest payments) other than the sums expressly referred to; that if the parties had intended that the deposit and the interest payments were to be forfeited, the contract would have said so; and that the interest payments made by the Buyer on the outstanding principal were refundable on rescission is reinforced by the fact that the clause does consider the position of the interest on the deposit, making it clear that both the deposit and the interest on the deposit were non-refundable.

70. The Board is unable to accept these submissions or that the decision in *Mayson* can bear the weight the Buyer seeks to place upon it. Indeed Lord Dunedin, giving the judgment of the Judicial Committee, made clear ([1924] AC 980, 985) that the answer to the question of whether the instalments of principal and interest are in any particular case repayable must always depend on the terms of the particular contract and the circumstances in which it is made. In *Mayson* the contract distinguished between the deposit and the instalments and provided for the forfeiture of the deposit only, but there was no question of the buyer taking possession before the final payment had been made. Indeed, the balance of the price was to be paid within 10 days of the production of a certificate that certain buildings had been completed.

71. The circumstances giving rise to the dispute and appeal presently before the Board are very different because the agreements contemplated that the Buyer would

continue to make payments of interest on the outstanding part of the purchase price for many years after taking possession. The Board is satisfied that this is a case in which it is appropriate to regard the entire agreement as comprising a contract for the transfer of the title to the lots in return for the payment of the principal and a further and closely related contract under which the Buyer was, on completion of construction, entitled to take possession of the lot at least in part on the basis of the payment of interest on the balance of the purchase price which remained outstanding at any time.

Conclusion

72. For all of these reasons, which differ from those given by the Court of Appeal, the Board is of the view that the Buyer was not entitled to the return of the interest paid on the outstanding principal. The Board will therefore humbly advise His Majesty that this appeal should be dismissed.