Docket #0024 Date Filed: 12/21/2020

No. 20-cv-3408-G

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

IN RE HIGHLAND CAPITAL MANAGEMENT, L.P.,
Debtor.

UBS SECURITIES LLC AND UBS AG LONDON BRANCH,
Appellants,

v.

HIGHLAND CAPITAL MANAGEMENT, L.P.,
Appellee.

On Appeal from the United States Bankruptcy Court
for the Northern District of Texas
(No. 19-bk-34054—Hon. Stacey G. Jernigan)

APPENDIX TO APPELLANTS' OPPOSITION TO REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUND AND THE CRUSADER FUNDS' MOTION TO INTERVENE AS APPELLEES

Dated: December 21, 2020

Respectfully submitted,

/s/ Sarah Tomkowiak

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(admitted *pro hac vice*)
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Counsel for UBS Securities LLC and UBS AG London Branch

EXHIBIT 1

This stipulation (the "Stipulation") is made and entered into by and among (i) Highland Capital Management, L.P., as debtor and debtor-in-possession (the "Debtor"), (ii) Eames, Ltd., ("Eames"), (iii) the Redeemer Committee of the Highland Crusader Fund (the "Redeemer Committee"), (iv) Highland Crusader Offshore Partners, L.P., Highland Crusader Fund, L.P., Highland Crusader Fund, Ltd., and Highland Crusader Fund II, Ltd. (collectively, the "Crusader Funds" and together with the Debtor, Eames, and the Redeemer Committee, the "Parties"), (v) solely with respect to paragraphs 10 through 15 of this Stipulation, Hockney, Ltd., Strand Advisors, Inc., Highland Special Opportunities Holding Company ("SOHC"), Highland CDO Opportunity Master Fund, L.P., Highland Financial Partners, L.P. ("HFPLP" and together with SOHC, the "Contingent Parties"), Highland Credit Strategies Master Fund, L.P., and Highland Credit Opportunities CDO, L.P. (collectively, the "Highland Additional Release Parties"), and (vi) solely with respect to paragraphs 10 through 15 of this Stipulation, House Hanover, LLC, and Alvarez & Marsal CRF Management, LLC, (collectively, the "Crusader Additional Release Parties," and together with the Highland Additional Release Parties, the "Additional Release Parties"). This Stipulation provides for the allowance of general unsecured claims against the Debtor, for the Debtor and Eames to consent to the Redeemer Committee and the Crusader Funds implementing certain terms of the Arbitration Award (as defined below), and for the Debtor to take certain actions in connection with such implementation.

RECITALS

WHEREAS, on October 16, 2019 (the "Petition Date"), the Debtor filed a voluntary petition for relief under title 11 of the United States Code (the "Bankruptcy Code"). The Debtor is managing and operating its business as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code;

WHEREAS, the Debtor's chapter 11 case is pending in the Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Bankruptcy Court");

WHEREAS, the Debtor served as the investment manager for the Crusader Funds until August 4, 2016, as of which date the Redeemer Committee, as set forth in a letter and notice dated July 5, 2016, terminated the Debtor;

WHEREAS, on July 5, 2016, the Redeemer Committee commenced an arbitration against the Debtor by filing a Notice of Claim with the American Arbitration Association in which it asserted various claims arising from the Debtor's service as the investment manager for the Crusader Funds (the "Arbitration");

WHEREAS, following an evidentiary hearing during the Arbitration, the panel of arbitrators issued (a) a *Partial Final Award,* dated March 6, 2019 (the "March Award"), (b) a *Disposition of Application for Modification of Award,* dated March 14, 2019 (the "Modification Award"); and (c) a *Final Award,* dated May 9, 2019 (the "Final Award," and together with the March Award and the Modification Award, the "Arbitration Award");

WHEREAS, as of the Petition Date, the aggregate amount of the damages awarded under the Arbitration Award, including the accrual of pre-judgment interest but before applying any offsets, was $190,824,557, which amount includes the Debtor's obligation to purchase the shares of Cornerstone Healthcare Group ("Cornerstone") that are held by the Crusader Funds in exchange for the sum of (a) $48,070,407 million in cash, and (b) accrued pre-judgment interest on such amount;

WHEREAS, in addition to awarding monetary damages, the Arbitration Award also provided for, among other things, (i) the cancellation of all limited partnership interests or shares in the Crusader Funds that are held by the Debtor, Eames, and Charitable DAF Fund, L.P.

("Charitable DAF"), respectively, and (ii) the Crusader Fund to disburse the funds held in the Deferred Fee Account[1] to the Consenting Compulsory Redeemers;

WHEREAS, on April 3, 2020, the Redeemer Committee filed a proof of claim in respect of the Arbitration Award, Proof of Claim number 72 ("Claim 72");

WHEREAS, on April 6, 2020, the Crusader Funds filed a proof of claim, Proof of Claim number 81 ("Claim 81") that asserted a claim in the alternative to the Redeemer Committee Proof of Claim for at least $23,483,446 in respect of certain fees that the Crusader Funds had paid to the Debtor prior to the Debtor being terminated (the "Crusader Funds Fee Claim");

WHEREAS, the Debtor has asserted that it is entitled to certain credits or offsets with respect to the damages provided in the Arbitration Award, and that it is has certain meritorious defenses with respect to the Crusader Funds Fee Claim;

WHEREAS, the Parties have agreed to settle and resolve all claims and disputes between and among them, including Claim 72 and Claim 81, and for the Redeemer Committee and the Crusader Funds to implement certain relief granted in the Arbitration Award on the terms and conditions set forth in this Stipulation, and the Parties and the Additional Release Parties have agreed to exchange the mutual releases set forth herein:

AGREEMENT

NOW, THEREFORE, after good-faith, arms-length negotiations, in consideration of the foregoing, it is hereby stipulated and agreed that:

1. Claim 72 shall be allowed in the amount of $137,696,610 as a general unsecured claim.

[1] All capitalized terms not defined herein shall have the meanings given to such terms in (i) the Arbitration Award and (ii) the Joint Plan of Distribution of the Crusader Funds, and the Scheme of Arrangement between Highland Crusader Fund II, Ltd. and its Scheme Creditors (together, the "Crusader Plan").

2. Claim 81 shall be allowed in the amount of $50,000 as a general unsecured claim.

3. The Debtor and Eames each consent to the Crusader Funds, on or after the date an order of the Bankruptcy Court approving this Stipulation pursuant to Federal Rule of Bankruptcy Procedure 9019 and section 363 of the Bankruptcy Code becomes a final and non-appealable order (the "Stipulation Effective Date"), cancelling or extinguishing all of the limited partnership interests and shares in the Crusader Funds held by each of them respectively (collectively, the "Cancelled Highland and Eames Interests"), as provided for in the Arbitration Award. Each of the Debtor and Eames represents solely for itself that (a) it has the authority to consent to the cancellation or extinguishment of the Cancelled Highland and Eames Interests that it holds, and (b) upon the occurrence of the Stipulation Effective Date, no other actions by or on behalf of it are necessary for such cancellation or extinguishment. Each of the Debtor and Eames agrees that it will not object to the Crusader Funds, on or after the Stipulation Effective Date, cancelling or extinguishing the limited partnership interests or shares in the Crusader Funds held by Charitable DAF (the "Cancelled DAF Interests," and together with the Cancelled Highland and Eames Interests, the "Cancelled LP Interests"). Each of the Debtor and Eames acknowledges that the cancellation or extinguishment of the Cancelled LP Interests is intended to implement Sections F.a.v and F.a.x.2 of the Final Award.[2]

4. The Parties acknowledge that the limited partnership interests or shares in the Crusader Funds held by the following entities and individuals shall not be extinguished pursuant to this Stipulation: Highland Capital Management Multi-Strategy Insurance Dedicated Fund, L.P.; Highland Capital Management Services; Highland 401(k) Plan; Highland 401(k) Plan Retirement Plan and Trust; Highland 401(k) Plan Retirement Plan and Trust II; James Dondero;

[2] *See also* March Award §§ III(H)(25), VII(C)(2).

and Mark Okada (collectively, the "Retained LP Interests").

5. Each of the Debtor and Eames acknowledges and agrees that (a) the Crusader Funds have reserved (i) distributions that, absent the Arbitration Award, would have been payable in respect of the Cancelled LP Interests, (ii) funds in respect of Deferred Fees and the Deferred Fee Account that, absent the Debtor's termination as investment manager for the Crusader Funds and the Arbitration Award, may have been payable to the Debtor in accordance with the Crusader Plan and (iii) certain other monies as to which the Debtor and Eames may have had an interest in the absence of this Stipulation (the reserved distributions and funds described in subparagraphs (i), (ii) and (iii), collectively, the "Reserved Distributions"); (b) the Crusader Funds, after the Stipulation Effective Date, intend to distribute in accordance with the Crusader Plan to the applicable holders of limited partnership interests or shares in the Crusader Funds the Reserved Distributions, and that the Debtor, Eames, and Charitable DAF shall not receive any part of such distribution; and (c) after giving effect to the cancellation or extinguishment of the Cancelled LP Interests, none of the Debtor, Eames, or Charitable DAF shall receive any further distributions, payments or fees from the Crusader Funds, including without limitation the Reserved Distributions, on account of any of the Cancelled LP Interests or any other role or position of the Debtor with respect to the Crusader Funds (including but not limited to its role as the investment manager for the Crusader Funds until August 4, 2016). The Debtor acknowledges and agrees that, beginning as of the Stipulation Effective Date, it will not receive any payments from the Crusader Funds in respect of any Deferred Fees, Distribution Fees, or Management Fees. Without limiting the foregoing, the Parties acknowledge and agree that the funds described in the first sentence of this paragraph include monies held in reserve with respect to the Reserved Distributions, the Deferred Fee Account, any Deferred Fees currently accrued or that might have

accrued in the future, any Distribution Fees, and any Management Fees.

6. The Debtor represents that, to its actual knowledge and subject to paragraph 4 above, it does not control any fund, or hold any equity interest in any entity, that holds a claim against the Crusader Funds or the Redeemer Committee (including any claims in respect of the Cornerstone shares held by the Crusader Funds, but excluding, with respect to the Crusader Funds, the right to receive distributions with respect to the Retained LP Interests).

7. On the Stipulation Effective Date, the Amended and Restated Shareholders Agreement, substantially in the form attached as Exhibit A, which shall have been executed by all parties thereto, shall be jointly released by the Parties from escrow and become effective (as executed, the "Cornerstone Shareholders Agreement"). In the event that such fully executed agreement is not released from escrow on the Stipulation Effective Date for any reason other than the Redeemer Committee or the Crusader Funds not authorizing such agreement's release from escrow, then this Stipulation shall be of no force and effect, and this Stipulation (including the agreements and settlements incorporated herein) may not be used by any Party for any purpose.

8. Except as otherwise provided in a plan of reorganization proposed by the Debtor and or other entities and agreed to by the Redeemer Committee, the Debtor shall, in good faith, use commercially reasonable efforts to monetize all shares of capital stock of Cornerstone held by the Debtor, any funds that the Debtor manages, and the Crusader Funds (collectively, the "Cornerstone Shares"), in accordance with the schedule attached hereto as Exhibit B (the "Schedule"), in order to maximize, to the extent possible under the circumstances, the proceeds of such monetization to each such entity. [redacted]

[redacted]

9. The Debtor shall instruct the claims agent in the Debtor's chapter 11 case to adjust the claims register in accordance with this Stipulation.

10. On the Stipulation Effective Date, the following releases shall take effect:

A. To the maximum extent permitted by applicable law, the Debtor, and each Highland Additional Release Party, irrevocably releases, acquits, exonerates, and forever discharges (i) the Redeemer Committee, each of the Crusader Funds, and each of the Crusader Additional Release Parties, and (ii) with respect to each such person set forth in (i) above, such person's predecessors, successors, assigns and affiliates (whether by operation of law or otherwise), and each of their respective present and former members, officers, directors, employees, managers, financial advisors, attorneys, accountants, investment bankers, consultants, professionals, advisors, shareholders, principals, partners, employees, subsidiaries, divisions, management companies, and other representatives, in each case acting in such capacity, from all manner of actions, whether in law, in equity, or statutory, and whether presently known or unknown, matured or contingent, liquidated or unliquidated, including any claims, defenses, and affirmative defenses which were or could have been asserted

[redacted]

with respect to: (a) the Crusader Funds, including but not limited to any claims, defenses, and affirmative defenses which were or could have been brought, or which otherwise concern or are related to: (i) the Arbitration, (ii) the Debtor's service as investment manager or General Partner for the Crusader Funds, (iii) Alvarez & Marsal CRF Management, LLC's service as replacement manager of the Crusader Funds, (iv) House Hanover, LLC, as General Partner of the Crusader Funds, (v) the Cancelled LP Interests, and (vi) any distributions or payments with respect to the Deferred Fee Account, Deferred Fees, Management Fees, Distribution Fees, or Reserved Distributions, and (b) the alleged fraudulent transfers and all other claims asserted by UBS Securities LLC and UBS AG, London Branch (collectively, "UBS") in *UBS Securities LLC, et al v. Highland Capital Mgmt., L.P., et al*, No. 650097-2009 (N.Y. Sup. Ct.) or by UBS in the Debtor's chapter 11 case (collectively, the "UBS Claims"), including but not limited to claims that the Debtor or any Additional Highland Release Party could assert for contribution, indemnity or joint tortfeasor liability in connection with the UBS Claims; provided, however, that such release shall not apply with respect to the obligations of the Redeemer Committee, each of the Crusader Funds, or each of the Crusader Additional Release Parties pursuant to this Stipulation, including Exhibit B hereto, and the Cornerstone Shareholders Agreement.

B. To the maximum extent permitted by applicable law, the Redeemer Committee, each of the Crusader Funds, and each Crusader Additional Release Party irrevocably releases, acquits, exonerates, and forever discharges (i) the Debtor, Eames, and each Highland Additional Release Party, and (ii) with respect to each such person set forth in (i) above, such person's predecessors, successors, assigns and affiliates (whether by operation of law or otherwise), and each of their respective present and former members, officers, directors, employees, managers, financial advisors, attorneys, accountants, investment bankers, consultants, professionals, advisors, shareholders, principals, partners, employees, subsidiaries, divisions, management companies, and other representatives, in each case acting in such capacity, from all manner of actions, whether in law, in equity, or statutory, and whether presently known or unknown, matured or contingent, liquidated or unliquidated, including any claims, defenses, and affirmative defenses which were or could have been asserted with respect to: (a) the Crusader Funds, including but not limited to any claims, defenses, and affirmative defenses which were or could have been brought, or which otherwise concern or are related to: (i) the Arbitration, (ii) the Debtor's service as investment manager or General Partner for the Crusader Funds, (iii) the Cancelled LP Interests, and (iv) any distributions or payments with respect to the Deferred Fee Account, Deferred Fees, Management Fees, Distribution Fees, or Reserved Distributions, and (b) the alleged fraudulent transfers and all other claims

asserted by UBS Securities LLC and UBS AG, London Branch (collectively, "UBS") in *UBS Securities LLC, et al v. Highland Capital Mgmt., L.P., et al*, No. 650097-2009 (N.Y. Sup. Ct.) or by UBS in the Debtor's chapter 11 case (collectively, the "UBS Claims"), including but not limited to claims that the Redeemer Committee, the Crusader Funds, or any Additional Crusader Release Party could assert for contribution, indemnity or joint tortfeasor liability in connection with the UBS Claims; provided, however, that (I) such release shall not apply with respect to the obligations of the Debtor, Eames, or each of the Highland Additional Release Parties under this Stipulation, including Exhibit B hereto, the allowance of or distributions in respect of Claim 72 and Claim 81, and the Cornerstone Shareholders Agreement; (II) notwithstanding anything to the contrary herein, neither James Dondero nor Mark Okada, nor any entities owned or controlled by either of them, other than the Debtor, Eames, and any Highland Additional Release Party solely with respect to such entities and not as to any capacity in which James Dondero or Mark Okada had an interest in or served with respect to such entities, is released from any claims, including without limitation any claims arising from obligations owed to the Debtor; and provided further, and solely for the avoidance of doubt, that none of the releases set forth herein shall impair the right or ability of the applicable holders of Claim 72 or Claim 81 to receive distributions of any kind from the Debtor's estate in satisfaction of such respective claims in the amounts and on such terms as are provided for herein; and (III) in the event any of the Highland Additional Release Parties fails to execute this Stipulation, this Release is null, void and of no legal effect as to that non-signing Highland Additional Release Party.

11. At present, certain of the Parties are engaged in one or more of the following pending lawsuits and actions: (a) *Redeemer Committee of the Highland Crusader Fund v. Highland Capital Management, L.P.*, Chancery Court, Delaware, C.A. No. 12533-VCG (the "Delaware Action"); (b) *Redeemer Committee of the Highland Crusader Fund and Highland Capital Management, L.P.*, Supreme Court of Bermuda, Civil Jurisdiction, Case No. 01-16-0002-6927 ("Bermuda Action No. 1"); (c) *Highland Capital Management, L.P. and Redeemer Committee of the Highland Crusader Fund*, Supreme Court of Bermuda, Civil Jurisdiction (Commercial Court), 2017: No. 308 ("Bermuda Action No. 2"); and (d) *Redeemer Committee of the Highland Crusader Fund and Highland Capital Management, L.P.*, Grand Court of Cayman

Islands, Financial Services Division, Cause No. 153 of 2019 (CRJ) (the "Grand Cayman Action" and together with the Delaware Action and Bermuda Action No. 1, the "Redeemer Actions"). The Parties agree that (1) as of the Stipulation Effective Date, the Redeemer Committee and each of the Crusader Funds covenants not to prosecute, and shall refrain from prosecuting, any of the Redeemer Actions against the Debtor, Eames, or any of the Highland Additional Release Parties, and (2) as soon as reasonably practicable after the Stipulation Effective Date, the Debtor shall cause Bermuda Action No. 2 to be dismissed with prejudice.

12. This Stipulation, together with the Cornerstone Shareholders Agreement and the Schedule, contains the entire agreement between and among the Parties and the Additional Release Parties as to its subject matter and supersedes and replaces any and all prior agreements and undertakings between and among the Parties and the Additional Release Parties relating thereto.

13. This Stipulation may not be modified other than by a signed writing executed by the Parties; provided, however, that paragraphs 10 through 15 may not be modified other than by a signed writing that is also executed by the Additional Release Parties.

14. Each person who executes this Stipulation represents that he or she is duly authorized to do so on behalf of the respective Party or Additional Release Party and that each Party or Additional Release Party has full knowledge and has consented to this Stipulation, provided, however, that (a) the effectiveness of the Debtor's execution of this Stipulation shall be subject to entry of an order of the Bankruptcy Court approving this Stipulation and authorizing the Debtor's execution thereof, and (b) the Redeemer Committee represents and warrants to the Debtor, Eames, and each of the Highland Additional Release Parties that, in conformity with the Redeemer Committee's corporate governance documents, at least the minimum number of

members of the Redeemer Committee have executed this Stipulation to cause it to be legally binding on the Redeemer Committee.

15. The Debtor shall use commercially reasonable efforts to cause each of the Contingent Parties to execute this Stipulation not later than the date on which the Bankruptcy Court enters an order confirming a plan of reorganization or liquidation. Notwithstanding the foregoing, the Parties acknowledge and agree that the failure of either or both of the Contingent Parties to execute this Stipulation shall not affect (a) the rights, obligations, or duties of any of the Parties or (b) the enforceability of this Stipulation.

16. Not later than September 23, 2020, the Debtor shall file with the Bankruptcy Court a motion for an order approving this Stipulation, which motion shall be in form and substance satisfactory to the Crusader Funds and the Redeemer Committee, pursuant to Federal Rule of Bankruptcy Procedure 9019 and section 363 of the Bankruptcy Code.

17. This Stipulation 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 or Additional Release Party upon the Stipulation Effective Date.

18. This Stipulation will be exclusively governed by and construed and enforced in accordance with the laws of the State of New York, without regard to its conflicts of law principles, and all claims relating to or arising out of this Stipulation, or the breach thereof, whether sounding in contract, tort, or otherwise, will likewise be governed by the laws of the State of New York, excluding New York's conflicts of law principles. The Bankruptcy Court will retain exclusive jurisdiction over all disputes relating to this Stipulation.

[Remainder of page intentionally left blank]

In witness whereof, the parties hereto, intending to be legally bound, have executed this Stipulation as of the day and year set forth below:

Dated: HIGHLAND CAPITAL MANAGEMENT, L.P.

By: _____
Name:
Title:

REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUND

Dated: Grosvenor Capital Management, L.P.

By: _____
Name: Eric Felton, designated Representative of Grosvenor Capital Management, L.P.

Dated: Grosvenor Capital Management, L.P.

By: _____
Name: Tom Rowland, designated Representative of Grosvenor Capital Management, L.P.

Dated: Grosvenor Capital Management, L.P.

By: _____
Name: Burke Montgomery, designated Representative of Grosvenor Capital Management, L.P.

Dated: Grosvenor Capital Management, L.P.

By: _____
Name: Brian Zambie, designated Representative of Grosvenor Capital Management, L.P.

In witness whereof, the parties hereto, intending to be legally bound, have executed this Stipulation as of the day and year set forth below:

Dated: HIGHLAND CAPITAL MANAGEMENT, L.P.

By: _____
Name:
Title:

REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUND

Dated: Grosvenor Capital Management, L.P.

By: /s/ Eric Felton
Name: Eric Felton, designated Representative of Grosvenor Capital Management, L.P.

Dated: Grosvenor Capital Management, L.P.

By: /s/ Tom Rowland
Name: Tom Rowland, designated Representative of Grosvenor Capital Management, L.P.

Dated: Grosvenor Capital Management, L.P.

By: /s/ Burke Montgomery
Name: Burke Montgomery, designated Representative of Grosvenor Capital Management, L.P.

Dated: Grosvenor Capital Management, L.P.

By: /s/ Brian Zambie
Name: Brian Zambie, designated Representative of Grosvenor Capital Management, L.P.

Dated:

Concord Management, LLC

By: /s/ Brant Behr
Name: Brant Behr, designated Representative of Concord Management, LLC

Dated:

Baylor University

By: /s/ David Morehead
Name: David Morehead, designated Representative of Baylor University

Dated:

Seattle Fund SPC

By: /s/ Stuart Robertson
Name: Stuart Robertson, designated Representative of Seattle Fund SPC

Dated:

Man Solutions Limited

By: /s/ Michael Buerer
Name: Michael Buerer, designated Representative of Man Solutions Limited

Dated:

Army and Air Force Exchange Service

By: /s/ James Jordan
Name: James Jordan, designated Representative of Army and Air Force Exchange Service

Dated: HIGHLAND CRUSADER OFFSHORE PARTNERS, L.P.

By: House Hanover, Its General Partner

By: /s/ Mark S. DiSalvo
Name: Mark S. DiSalvo
Title: Authorized Signatory

Dated: HIGHLAND CRUSADER FUND, L.P.

By: House Hanover, Its General Partner

By: /s/ Mark S. DiSalvo
Name: Mark S. DiSalvo
Title: Authorized Signatory

Dated: HIGHLAND CRUSADER FUND, LTD.

By: /s/ Mark S. DiSalvo
Name: Mark S. DiSalvo
Title: Authorized Signatory

Dated: HIGHLAND CRUSADER FUND II, LTD.

By: /s/ Mark S. DiSalvo
Name: Mark S. DiSalvo
Title: Authorized Signatory

Dated: HOUSE HANOVER, LLC

By: /s/ Mark S. DiSalvo
Name: Mark S. DiSalvo
Title: Authorized Signatory

Dated: ALVAREZ & MARSAL CRF MANAGEMENT, LLC

By: /s/ Steven Varner
Name: Steven Varner
Title: Managing Director

Dated:

EAME

By: _____
Name: Abali Hoilett
Title: Authorised Signatory of the Director MaplesFS Directors Limited

Dated:

HOCI

By: _____
Name:
Title: Authorised Signatory of the Director MaplesFS Directors Limited

Dated:

STRAND ADVISORS, INC.

By: _____
Name:
Title:

Dated:

HIGHLAND SPECIAL OPPORTUNITIES HOLDING COMPANY

By: _____
Name:
Title:

Dated:

HIGHLAND CDO OPPORTUNITY MASTER FUND, L.P.

By: _____
Name:
Title:

Dated:

HIGHLAND FINANCIAL PARTNERS, L.P.

By: _____
Name:
Title:

Dated:

HIGHLAND CREDIT STRATEGIES MASTER FUND, L.P.

By: _____
Name:
Title:

Dated: EAMES, LTD.

By: _____
Name:
Title:

Dated: HOCKNEY, LTD.

By: _____
Name:
Title:

Dated: STRAND ADVISORS, INC.

By: _____
Name:
Title:

Dated: HIGHLAND SPECIAL OPPORTUNITIES HOLDING COMPANY

By: _____
Name:
Title:

Dated: HIGHLAND CDO OPPORTUNITY MASTER FUND, L.P.

By: _____
Name:
Title:

Dated: HIGHLAND FINANCIAL PARTNERS, L.P.

By: _____
Name:
Title:

Dated: HIGHLAND CREDIT STRATEGIES MASTER FUND, L.P.

By: _____
Name:
Title:

Dated: HIGHLAND CREDIT OPPORTUNITIES CDO, L.P.

By: _____
Name:
Title:

EXHIBIT A

CORNERSTONE HEALTHCARE GROUP HOLDING, INC.

AMENDED & RESTATED STOCKHOLDERS' AGREEMENT

[●], 2020

TABLE OF CONTENTS

AMENDED & RESTATED STOCKHOLDERS' AGREEMENT

THIS AMENDED & RESTATED STOCKHOLDERS' AGREEMENT (the "***Agreement***") is made as of the [●] day of [●], 2020 by and among (i) Cornerstone Healthcare Group Holding, Inc., a Delaware corporation (the "***Company***"), (ii) certain holders of the Company's common stock (the "***Common Stock***") (each of which is referred to herein as a "***Stockholder***" and collectively as the "***Stockholders***"), and (iii) Highland Capital Management, L.P., a Delaware limited partnership ("***HCMLP***"). HCMLP (if and to the extent it is or becomes a Stockholder) and the Stockholders that are affiliates of HCMLP, including any investment funds controlled by or under common control with, or managed directly or indirectly by, HCMLP are collectively referred to herein as "***Highland Capital***" and are set forth on Schedule A, as it may be updated from time to time. Individual Stockholders that are part of the Highland Capital group of Stockholders are sometimes referred to as a "***Highland Capital Stockholders***." Any Stockholders other than Highland Capital Stockholders are collectively referred to herein as the "***Remaining Stockholders***" and are set forth on Schedule B, as it may be updated from time to time. All references in this Agreement to "***Crusader***" shall mean and include, as the case may be, (x) Highland Crusader Holding Corp., (y) any of its successors or assigns and (y) any purchaser or transferee of any Securities that at any time were held by Highland Crusader Holding Corp. (*i.e.,* any purchaser or transferee of Securities from Highland Crusader Holding Corp. and any subsequent purchasers or transferees of any such Securities).

RECITALS:

WHEREAS, the Company, the Stockholders and HCMLP are parties to that certain Stockholders' Agreement of the Company, dated as of March 24, 2010 (as the same may have been amended, modified or supplemented in accordance with its terms, the "***First Stockholders' Agreement***").

WHEREAS, the Stockholders hold shares of Common Stock of the Company, and the Stockholders, the Company and HCMLP desire to enter into this Agreement to (i) provide certain rights to, and impose certain restrictions on, the Stockholders and HCMLP with respect to the Common Stock held by them and (ii) amend and modify certain provisions in the First Stockholders' Agreement.

AGREEMENT:

NOW, **THEREFORE**, in consideration of the foregoing premises, the mutual promises and covenants set forth herein, and certain other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

TRANSFER RESTRICTIONS; RIGHT OF FIRST REFUSAL

Section 1.1 Restrictions on Transfer.

(a) Generally. During the term of this Agreement, all of the Common Stock and any other equity securities (collectively, "***Securities***") now owned or hereafter acquired by

any Stockholder shall be subject to the terms and conditions of this Agreement. No transfer, whether voluntary or involuntary, of the Securities shall be valid unless it is made pursuant to the terms and conditions of this Agreement; and, accordingly, any proposed transfer not made in compliance with the requirements of this Agreement shall be null and void ab initio, shall not be recorded on the books of the Company or its transfer agent, and shall not be recognized by the Company.

(b) Permitted Transfers. Notwithstanding the foregoing, the first refusal rights and co-sale rights of the Company and Highland Capital, as set forth below in this Article I, shall not apply to (i) any transfer of Securities by a Stockholder to any such Stockholder's spouse, parents, siblings (by blood, marriage or adoption) or lineal descendants (by blood, marriage or adoption); (ii) any transfer of Securities by a Stockholder to a trust, partnership, corporation, limited liability company or other similar entity owned exclusively by such Stockholder and/or such Stockholder's spouse, parents, siblings (by blood, marriage or adoption) or lineal descendants (by blood, marriage or adoption) for the benefit of such Stockholder or such Stockholder's spouse, parents, siblings or lineal descendants; (iii) any transfer of Securities by a Stockholder, or upon a Stockholder's death to the executors, administrators, testamentary trustees, legatees or beneficiaries of such Stockholder; (iv) any transfer of Securities by a Stockholder to any person who controls, is controlled by or is under common control with such Stockholder (within the meaning of the Securities Act of 1933, as amended (the "***Securities Act***")); (v) any transfer of Securities by a Stockholder pursuant to a bona fide loan transaction which creates a mere security interest in the Securities; (vi) the Securities held Crusader; *provided*, *however*, that in each such case, each transferee, pledgee, donee, heir or distributee shall, as a condition precedent to such transfer, become a party to this Agreement by executing an Adoption Agreement substantially in the form attached as Annex A and shall have all of the rights and obligations set forth hereunder, and all interests in any trust, partnership, corporation, limited liability company or other similar entity to which any Securities are transferred shall themselves be deemed Securities and shall be subject to all of the provisions hereof. Such transferred Securities shall remain "***Securities***" hereunder, and such transferee shall be treated as a "***Stockholder***" for the purposes of this Agreement. Any purported transfers made in violation of this Section 1.1(b) shall be void.

(c) Company Repurchase or Public Offering. The provisions of this Agreement shall not apply to the sale of any Securities (i) to the public pursuant to a registration statement filed with, and declared effective by, the Securities and Exchange Commission (the "***SEC***") under the Securities Act or (ii) to the Company.

(d) Prohibited Transferees. Notwithstanding any other provision of this Agreement to the contrary, no Remaining Stockholder shall transfer any Target Shares to (a) any entity which, in the good faith and reasonable determination of the Company's Board of Directors, directly competes with the Company or (b) any customer, distributor or supplier of the Company, if the Company's Board of Directors should determine in good faith and reasonably that such transfer would result in such customer, distributor or supplier receiving information that would place the Company at a material competitive disadvantage with respect to such customer, distributor or supplier.

Section 1.2 Right of First Refusal.

(a) Grant of Right of First Refusal. Subject to the terms hereof, the Company and, to the extent such right is waived by the Company, HCMLP, on behalf of itself and Highland Capital (and, as provided below, each ROFR Participant) are each hereby granted a right of first refusal with respect to any proposed disposition of any Securities held by any Remaining Stockholder (except for a permitted transfer of the Securities under Section 1.1(b) hereof), in the following order of priority:

(i) The Company shall have the first right to purchase any Target Shares (as defined below). In the event the Company elects not to exercise first refusal rights with respect to all or any portion of such Target Shares, the Company agrees to waive such rights with respect to such portion of Target Shares in favor of Highland Capital's first refusal rights under this Agreement.

(ii) If the Company waives its first refusal rights pursuant to Section 1.2(a)(i), Highland Capital shall have the next right to purchase any remaining Target Shares. HCMLP, in its sole discretion, shall have the right to assign and apportion the rights of first refusal hereby granted among itself and investment funds comprising Highland Capital, which need not be Stockholders or parties to this Agreement at that time, in any proportion it deems suitable (the actual participants, including any individuals or entities assigned such rights, each being a "***Highland ROFR Participant***" and, together with the Company, each a "***ROFR Participant***"); *provided* that each such Highland ROFR Participant is an "***accredited investor***" within the meaning of Rule 501 of Regulation D of the Securities Act; and provided further that any Highland ROFR Participant that is not then a party to this Agreement shall be required to become a party to this Agreement by executing an executing an Adoption Agreement in the form attached hereto as Exhibit A. In the event that HCMLP does not specify an allocation for ROFR Participants, then each Highland Capital Stockholder shall have the right to purchase up to that number of remaining Target Shares equal to the product of (A) the number of remaining Target Shares multiplied by (B) a fraction, (x) the numerator of which shall be the number of shares of Common Stock owned by such Highland Capital Stockholder (assuming full conversion and exercise of all convertible and exercisable securities into Common Stock held by such Highland Capital. Stockholder) and (y) the denominator of which shall be the number of shares of Common Stock owned by all of the Highland Capital Stockholders (assuming full conversion and exercise of all convertible and exercisable securities into Common Stock).

(iii) In the event that HCMLP (or the Highland ROFR Participants as its designated assignee(s)) elects not to exercise first refusal rights with respect to all or any portion of such Target Shares, Highland Capital agrees to waive such rights with respect to such portion.

(b) Notice of Intended Disposition. In the event a Remaining Stockholder desires to accept a written, bona fide third-party offer for the transfer of any or all of the Securities held by such Remaining Stockholder (in such capacity such Remaining Stockholder shall be referred to as a "***Selling Stockholder***" and the shares subject to such offer to be referred to as the "***Target Shares***"), the Selling Stockholder shall promptly deliver to the Company and HCMLP written notice of the intended disposition ("***Disposition Notice***") and the basic terms and conditions thereof, including the identity of the proposed purchaser.

(c) Exercise of First Refusal Right. The Company shall, for a period of thirty (30) days following receipt of the Disposition Notice, have the right to purchase all or any portion of the Target Shares:

(i) The Company's right shall be exercisable by written notice (the "***Exercise Notice***") delivered to the Selling Stockholder and HCMLP prior to the expiration of the thirty (30) day exercise period. If such right is exercised with respect to all the Target Shares specified in the Disposition Notice, then the Company shall effect the purchase of such Target Shares, including payment of the purchase price, not more than five (5) business days after the delivery of the Exercise Notice. At such time, the Selling Stockholder shall deliver to the Company the certificates representing the Target Shares to be purchased, each certificate to be properly endorsed for transfer.

(ii) Alternatively, if the Company exercises such rights with respect to only a portion of the Target Shares specified in the Disposition Notice, the Company shall notify HCMLP of its intent to purchase only a portion of the Target Shares within the thirty (30) day exercise period above defined. The Company's purchase of such Target Shares shall be consummated at the time of HCMLP's exercise of its purchase rights in accordance with Section 1.2(e) hereof, if such rights are exercised. In the event HCMLP does not elect to purchase any of the remaining Target Shares, the Company's purchase of that portion of the Target Shares that it desires to purchase shall be consummated not more than five (5) business days after the date of expiration of HCMLP's first refusal right. The purchasing party under this Section 1.2 is referred to herein as the "***ROFR Purchaser***."

(iii) Should the purchase price specified in the Disposition Notice be payable in property other than cash or evidences of indebtedness, the ROFR Purchaser shall have the right to pay the purchase price in the form of cash equal in amount to the value of such property. It the Selling Stockholder and the ROFR Purchaser cannot agree on such cash value within fifteen (15) days after receipt of the Disposition Notice (or, in the event HCMLP is the ROFR Purchaser, within fifteen (15) days after the Company's waiver of its first refusal rights hereunder, the valuation shall be determined by the Company's Board of Directors (the "***Board***") in its good faith discretion. The closing shall then be held on the later of (A) the fifth business day following the delivery of the Exercise Notice, or (B) the fifth business day after such cash valuation shall have been made.

(d) Non-Exercise of Right by the Company. In the event the Exercise Notice is not given to the Selling Stockholder and HCMLP within thirty (30) days following the date of the Company's receipt of the Disposition Notice, the Company shall be deemed to have waived its right of first refusal with respect to such proposed disposition.

(e) Exercise of Right by HCMLP. Subject to the rights of the Company, for a period ending on the earlier of (a) sixty (60) days following receipt of the Disposition Notice or (b) thirty (30) days following receipt of written notice of the Company's election either to waive its right of first refusal or to purchase only a portion of the Target Shares, HCMLP (and/or its designee(s) as provided in Section 1.2(a)(a)(ii)) shall have the right to purchase all, or any portion of the remaining balance after the Company's purchase, of the Target Shares, upon the terms and conditions specified in the Disposition Notice. The Highland ROFR Participants shall

exercise this right of first refusal in the same manner and subject to the same rights and conditions as the Company, as more specifically set forth in Section 1.2(c) above.

(f) Non-Exercise of Right by HCMLP: Subsequent Sales, Void Transfers. In the event an Exercise Notice with respect to all of the Target Shares is not given to the Selling Stockholder by the Company and/or HCMLP within sixty (60) days following the date of receipt of the Disposition Notice, the Selling Stockholder shall have a period of sixty (60) days thereafter in which to sell the portion of the Target Shares that the ROFR Participants have not elected to purchase upon terms and conditions (including the purchase price and the form of consideration therefor) no more favorable to the third-party transferee than those specified in the Disposition Notice; *provided*, *however*, that the Selling Stockholder must first offer the Target Shares for co-sale pursuant to Section 1.3 hereof. Any transfer in violation of this Section 1.2 shall be void. Such transferred Securities shall remain "***Securities***" hereunder, and such transferee shall be treated as a "***Stockholder***" for the purposes of this Agreement, in the capacity of Highland Capital or a Remaining Stockholder, as applicable. In the event the Selling Stockholder does not notify the Company or consummate the sale or disposition of the Target Shares within such sixty (60) day period, HCMLP's and the Company's first refusal rights shall continue to be applicable to any subsequent disposition of the Target Shares by the Selling Stockholder until such right lapses or terminates in accordance with Section 6.1 hereof.

(g) Violation of First Refusal Right. If any Selling Stockholder becomes obligated to sell any Target Shares to the Company or HCMLP (and/or its designee(s) as provided in Section 1.2(a)(ii)) under this Agreement and fails to deliver such Target Shares in accordance with the terms of this Agreement, the Company and/or HCMLP (and/or its designee(s) as provided in Section 1.2(a)(ii)) may, at its option, in addition to all other remedies it may have, send to such Selling Stockholder the purchase price for such Target Shares as is herein specified and transfer to the name of the Company or HCMLP (and/or its designee(s) as provided in Section 1.2(a)(ii)) (or request that the Company effect such transfer in the name of HCMLP (and/or its designee(s) as provided in Section 1.2(a)(ii)) on the Company's books the certificate or certificates representing the Target Shares to be sold. Such Selling Stockholder shall also reimburse HCMLP and each ROFR Participant for any and all reasonable and documented out-of-pocket fees and expenses, including reasonable legal fees and expenses, incurred pursuant to the exercise or the attempted exercise of the ROFR Participants' rights under this Section 1.3.

(h) Application of Co-Sale Right. Notwithstanding anything to the contrary in this Section 1.2 Target Shares may be sold to a third party transferee (other than the Company or Highland Capital) if and only if the Selling Stockholder first complies with the co-sale procedures set forth in Section 1.3, and some or all of the Target Shares remain available for sale following the application of Section 1.3.

Section 1.3 Co-Sale Rights.

(a) Notice of Offer. The provisions of Section 1.2(b) requiring the Selling Stockholder to give notice of any intended transfer of the Securities are incorporated in this Section 1.3.

(b) Grant of Co-Sale Rights.

(i) If (i) any such proposed disposition of Target Shares is being made by the Selling Stockholder and (ii) the rights of first refusal of the Company and HCMLP have been waived or have lapsed, in full or in part with respect to such proposed disposition, the Co-Sale Participant (as defined herein) shall have the right, exercisable upon written notice to the Selling Stockholder within thirty (30) days after receipt of the Disposition Notice, to participate in such sale of the Target Shares on the same terms and conditions as those set forth in the Disposition Notice. As used herein, "***Co-Sale Participant***" shall mean (x) in the event Highland Capital holds or otherwise controls a majority of the issued and outstanding shares of Common Stock of the Company, the Highland Capital entities designated by HCMLP as provided below, or (y) in the event Highland Capital does not hold or otherwise control a majority of the issued and outstanding shares of Common Stock of the Company, each non-Selling Stockholder. To the extent any Co-Sale Participant exercises such right of participation, the number of shares of Target Shares that the Selling Stockholder may sell in the transaction shall be correspondingly reduced. The right of participation of the Co-Sale Participants shall be subject to the terms and conditions set forth in this Section 1.3.

(ii) Each Co-Sale Participant may sell all or any part of a number of shares of the capital stock of the Company held by such Co-Sale Participant equal to the product obtained by multiplying (i) the aggregate number of Target Shares covered by the Disposition Notice that neither the Company nor Highland Capital have elected to purchase pursuant to Section 1.2 by (ii) a fraction, the numerator of which is the number of shares of Common Stock of the Company at the time owned by such Co-Sale Participant (assuming for the purposes of this calculation that all shares held by Highland Capital are held by HCMLP) and the denominator of which is the combined number of shares of Common Stock of the Company at the time deemed owned by the Selling Stockholder and all of the Co-Sale Participants that desire to exercise their rights of co-sale. Notwithstanding the foregoing, HCMLP, in its sole discretion, shall have the right to assign and apportion the rights of first refusal hereby granted among itself and investment funds comprising Highland Capital, which need not be Stockholders or parties to this Agreement at that time, in any proportion it deems suitable; *provided* that each such Highland Capital Co-Sale Participant is an "***accredited investor***" within the meaning of Rule 501 of Regulation D of the Securities Act; and provided further that any Highland Capital Co-Sale Participant that is not then a party to this Agreement shall be required to become a party to this Agreement by executing an Adoption Agreement in the form attached hereto as Exhibit A.

(iii) Each Co-Sale Participant may effect its participation in the sale by delivering to the Selling Stockholder for transfer to the purchase offeror one or more certificates, properly endorsed for transfer, which represent the number of shares of Common Stock that it elects to sell pursuant to this Section 1.3(h).

(c) Payment of Proceeds. The stock certificates that the Co-Sale Participants deliver to the Selling Stockholder pursuant to Section 1.3(b) shall be transferred by the Selling Stockholder to the purchase offeror in consummation of the sale of the Common Stock pursuant to the terms and conditions specified in the notice to the Company and HCMLP (and, if applicable, the Remaining Stockholders) pursuant to Section 1.2(b), and the Selling Stockholder shall promptly thereafter remit to the Co-Sale Participants that portion of the sale proceeds to

which the Investors are entitled by reason of their participation in such sale. To the extent that any prospective purchaser or purchasers refuses to purchase shares or other securities from an Co-Sale Participant exercising its rights of co-sale hereunder, the Selling Stockholder shall not sell to such prospective purchaser or purchasers any Securities unless and until, simultaneously with such sale, the Selling Stockholder purchases such shares or other securities from such Co-Sale Participant for the same consideration and on the same terms and conditions as the proposed transfer described in the Disposition Notice.

(d) Non-exercise. The exercise or non-exercise of the rights of the Co-Sale Participants hereunder to participate in one or more sales of Common Stock made by the Selling Stockholder shall not adversely affect their rights to participate in subsequent Common Stock sales by any Selling Stockholder.

(e) Violation of Co-Sale Right. If any Selling Stockholder purports to sell any Target Shares in contravention of this Section 1.3 (a "***Prohibited Transfer***"), each Co-Sale Participant may, in addition to such remedies as may be available by law, in equity or hereunder, require Selling Stockholder to purchase from such Co-Sale Participant the type and number of Securities that such Co-Sale Participant would have been entitled to sell under Section 1.3(b)(ii) had the Prohibited Transfer been effected pursuant to and in compliance with the terms of Section 1.3. The sale will be made on the same terms and subject to the same conditions as would have applied had the Selling Stockholder not made the Prohibited Transfer, except that the sale (including, without limitation, the delivery of the purchase price) must be made within ninety (90) days after the Co-Sale Participant learns of the Prohibited Transfer. Such Selling Stockholder shall also reimburse HCMLP and each Co-Sale Participant for any and all reasonable and documented out-of-pocket fees and expenses, including reasonable legal fees and expenses, incurred pursuant to the exercise or the attempted exercise of the Co-Sale Participants' rights under this Section 1.3.

Section 1.4 Market Stand-Off Agreement.

(a) In connection with any underwritten public offering by the Company of its equity securities pursuant to an effective registration statement filed under the Securities Act, including the first bona fide firm commitment underwritten public offering of the Company's Common Stock registered under the Securities Act on Form S-1 or Form SB-2 (or any successor form designated by the SEC) (the "***Initial Public Offering***"), the Remaining Stockholders (each, an "***Owner***") shall not (i) lend, offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, or otherwise transfer or dispose of, directly or indirectly, any securities of the Company, including (without limitation) shares of Common Stock or any securities convertible into or exercisable or exchangeable for Common Stock (whether now owned or hereafter acquired) or (ii) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of any securities of the Company, including (without limitation) shares of Common Stock or any securities convertible into or exercisable or exchangeable for Common Stock (whether now owned or hereafter acquired), whether any such transaction described in clause (i) or (ii) above is to be settled by delivery of securities, in cash or otherwise without the prior written consent of the Company or its underwriters; *provided* that all executive officers, directors and greater than 5% stockholders (including, if applicable, HCMLP

and Highland Capital) are subject to similar restrictions. Such restriction (the "***Market Stand-Off***") shall be in effect for such period of time from and after the effective date of the final prospectus for the offering as may be requested by the Company or such underwriters. In no event, however, shall such period exceed one hundred eighty (180) days (the "***Lock-Up Period***"), and the Market Stand-Off shall in no event be applicable to any underwritten public offering effected more than two (2) years after the effective date of the Company's initial public offering.

(b) Any new, substituted or additional securities which are by reason of any recapitalization or reorganization distributed with respect to the Common Stock to be registered shall be immediately subject to the Market Stand-Off, to the same extent the Common Stock is at such time covered by such provisions.

(c) In order to enforce the Market Stand-Off, the Company may impose stop-transfer instructions with respect to the Common Stock until the end of the applicable stand-off period.

ARTICLE II

RIGHTS OF FIRST OFFER

Section 2.1 **Grant of Right of First Offer**. Each time the Company proposes to offer (i) any shares of, or securities convertible into or exercisable for any shares of, any class of its capital stock ("***equity securities***"), or (ii) any debt securities (collectively, the "***First Offer Securities***"), the Company shall first offer to Highland Capital the right and opportunity (but not the obligation) to purchase the First Offer Securities proposed to be issued in such offering in accordance with the provisions of this Article IV. HCMLP, in its sole discretion, shall have the right to assign and apportion the rights of first refusal hereby granted among itself and investment funds comprising Highland Capital, which need not be parties to this Agreement at that time (the actual participants, including any individuals or entities assigned such rights, each being a "***Purchaser***"); *provided* that each such Purchaser is an "***accredited investor***" within the meaning of Rule 501 of Regulation D of the Securities Act; and *provided further* that any such Purchaser that is not then a party to this Agreement shall be required to become a party to this Agreement by executing an Adoption Agreement in the form attached hereto as Exhibit A.

Section 2.2 **Procedure for Exercise**. The Company shall deliver notice (the "***Offer Notice"***) to HCMLP stating (a) the number and description of the First Offer Securities to be offered in the applicable offering and (b) the price and terms, if any, upon which it proposes to offer such First Offer Securities. Within 30 days after giving of the Offer Notice, the Purchasers may elect to purchase, at the price and on the terms specified in the Offer Notice, such First Offer Securities, in the amounts designated by HCMLP. The Purchasers shall exercise the rights under this section by paying the purchase price for the First Offer Securities elected to be purchased in cash or by wire transfer of immediately available funds. As promptly as practicable on or after the purchase date, the Company shall issue and deliver to the Purchasers a certificate or certificates for the number of full shares or amount, whichever is applicable, of First Offer Securities.

Section 2.3 **Excluded Issuances**. The rights of first offer set forth in this section shall not be applicable to the following (collectively, the "***Excluded Issuances***"): (A) in the case of equity securities, (i) the issuance of shares of capital stock (or any cash-settled "phantom units" or similar equity-linked or equity-based incentive plans or agreement structures, the value of which is based on the Company's Common Stock (collectively, "***phantom units***")) of the Company issued or issuable solely for compensatory purposes, to directors, officers, employees or consultants of the Company, whether directly (as Common Stock, options or phantom units) or pursuant to an equity incentive plan or agreement or a restricted stock plan or agreement, in each case approved by the Board; (ii) the issuance of shares of capital stock of the Company in connection with stock splits, stock dividends, recapitalizations or the like; (iii) the issuance of shares of capital stock in connection with a bona fide business acquisition or license of technology of or by the Company, whether by license, merger, consolidation, sale of assets, sale or exchange of stock or otherwise that are not issued primarily for equity financing purposes, in each case as approved by the Board; (iv) the issuance of shares of capital stock of the Company in connection with corporate partnering transactions, business relationships and similar transactions that are not issued primarily for equity financing purposes, in each case as approved by the Board; or (v) the issuance of shares of capital stock to financial institutions in connection with bona fide Commercial Debt (as defined below) arrangements (including issuances, extensions, renewals, modifications and waivers), in each case approved by the Company's Board of Directors; and (B) in the case of debt securities, shall not be deemed to include debt issued to NexBank, SSB and other banks, commercial finance lenders, insurance companies, leasing or equipment financing institutions or other lending institutions regularly engaged in the business of lending money (excluding venture capital, private equity, investment banking or similar institutions which sometimes engage in lending activities but which are primarily engaged in investments in equity securities), which is for money borrowed, or purchase or leasing of equipment in the case of lease or other equipment financing, whether or not secured, and in any such instance is not primarily for equity financing purposes ("***Commercial Debt***"), in each such case approved by the Board of Directors of the Company,

Section 2.4 **Sale to Third Parties**. The Company shall, after complying with its obligations under Section 2.1, be free at any time prior to 90 days after the date of the Offer Notice, to offer and sell to any third party or parties the remainder of such First Offer Securities proposed to be issued by the Company at a price and on payment terms no less favorable to the Company than those specified in the Offer Notice. However, if such third party sale or sales are not consummated within such 90-day period, or if the terms of any such proposed sale are modified in a manner more favorable to the proposed purchaser (whether with respect to price or any other term) than offered to HCMLP pursuant to Section 2.1, the Company shall not sell such First Offer Securities as shall not have been purchased within such period without again complying with Section 2.1 hereof.

ARTICLE III

REGISTRATION RIGHTS

Section 3.1 **Definitions**. For purposes of this Article III.

(a) "***Certificate of Incorporation***" shall mean the Company's Certificate of Incorporation as in effect as of the date hereof and as amended and restated from time to time.

(b) "***Change in Control***" shall mean (A) the acquisition of the Company by means of any transaction or series of related transactions (including, without limitation, any stock purchase transaction, merger, consolidation or other form of reorganization in which outstanding shares of the Company are exchanged for securities or other consideration issued, or caused to be issued, by the acquiring entity or its subsidiary, but excluding (i) any transaction effected for the purpose of changing the Company's jurisdiction of incorporation and (ii) the sale by the Company of shares of its capital stock to investors in bona fide equity financing transactions), unless securities representing more than fifty percent (50%) of the total combined voting power of the voting securities of the surviving or acquiring entity or its direct or indirect parent entity are immediately thereafter beneficially owned, directly or indirectly and in substantially the same proportion, by the Company's stockholders of record as constituted immediately prior to such transaction or series of related transactions and (B) a sale of all or substantially all of the assets of the Company in a single transaction or series of related transactions. In no event shall any public offering of the Company's securities be deemed to constitute a Change in Control.

(c) "***Exchange Act***" shall mean the Securities Exchange Act of 1934, as amended.

(d) "***Form S-3***" shall mean such form under the Securities Act as in effect on the date hereof or any registration forms under the Securities Act subsequently adopted by the SEC that permit inclusion or incorporation of substantial information by reference to other documents filed by the Company with the SEC.

(e) "***Holder***" shall mean any person owning or having the right to acquire Registrable Securities or any assignee thereof in accordance with Section 3.13 hereof.

(f) The terms "***register***," "***registered***" and "***registration***" refer to a registration effected by preparing and filing a registration statement or similar document in compliance with the Securities Act, and the declaration or ordering of effectiveness of such registration statement or document.

(g) "***Registrable Securities***" shall mean, only with respect to equity securities held by Highland Capital, the Common Stock and any shares of Common Stock of the Company issued as (or issuable upon the conversion or exercise of any warrant, right or other security which is issued as) a dividend or other distribution with respect to, or in exchange for or in replacement of such shares; excluding in all cases, however, any Registrable Securities sold by a Holder in a transaction in which his rights under this Article III are not assigned.

(h) The number of shares of "***Registrable Securities then outstanding***" shall be equal to the number of shares of Common Stock then issued and outstanding which are, and the number of shares of Common Stock then issuable pursuant to then exercisable or convertible securities which are, Registrable Securities.

(i) "***Rule 144***" means Rule 144 as promulgated by the SEC under the Securities Act, as such Rule may be amended from time to time, or any similar successor rule that may be promulgated by the SEC.

(j) "***Rule 145***" means Rule 145 as promulgated by the SEC under the Securities Act, as such Rule may be amended from time to time, or any similar successor rule that may be promulgated by the SEC.

Section 3.2 Request for Registration.

(a) At any time, HCMLP, on behalf of Highland Capital, may request that the Company effect a registration under the Securities Act of all or any part of the Registrable Securities held by Highland Capital (each, a "***Demand Registration***"), subject to the terms and conditions of this Agreement. Any request (a "***Registration Request***") for a Demand Registration shall specify (A) the approximate number of shares of Registrable Securities requested to be registered and (B) the intended method of distribution of such shares. Within twenty (20) days of the receipt of the Registration Request, the Company will use its best efforts to effect as soon as practicable (and in any event within ninety (90) days of the date such request is given) the registration under the Securities Act requested and will include in such registration all shares of Registrable Securities that holders of Registrable Securities request the Company to include in such registration by written notice given to the Company within twenty (20) days after the Company's sends such notice (subject to underwriter cut-backs as provided in this Agreement).

(b) Without the prior written consent of HCMLP, the Company will not include in any Demand Registration any securities other than (a) Registrable Securities, (b) shares of stock pursuant to Section 3.3 hereof, and (c) securities to be registered for offering and sale on behalf of the Company. If the managing underwriter(s) advise the Company in writing that in their opinion the number of shares of Registrable Securities and, if permitted hereunder, other securities in such offering, exceeds the number of shares of Registrable Securities and other securities, if any, which can be sold in an orderly manner in such offering within a price range acceptable to the holders of a majority of the shares of Registrable Securities held by Holders initially requesting registration, the Company will include in such registration, prior to the inclusion of any securities which are not shares of Registrable Securities, the number of shares of Registrable Securities requested to be included that in the opinion of such underwriters can be sold in an orderly manner within the price range acceptable to the Holders of a majority of the shares of Registrable Securities initially requesting registration, subject to the following order of priority: (A) first, the securities requested to be included therein by the Holders, pro rata among the holders thereof on the basis of the number of shares of Registrable Securities such holders requested to be included in such registration or apportioned among them in any other manner in which HCMLP determines to be appropriate in its sole discretion; (B) second, the securities requested to be included therein by the Company; and (C) third, among persons not contractually entitled to registration rights under this Agreement.

(c) If HCMLP indicates that the Holders on whose behalf it is initiating the Registration Request hereunder (the "***Initiating Holders***") intend to distribute the Registrable Securities covered by their request by means of an underwriting, they shall so advise the Company as a part of their request made pursuant to Section 3.2 and the Company shall include

such information in the written notice referred to in Section 3.2. The underwriter will be selected by HCMLP and shall be reasonably acceptable to the Board, which approval shall not be unreasonably withheld, conditioned or delayed. All Holders proposing to distribute their securities through such underwriting shall (together with the Company as provided in Section 3.4(e)) enter into an underwriting agreement in customary form with the underwriter or underwriters selected for such underwriting.

(d) Notwithstanding the foregoing, if the Company shall furnish to HCMLP a certificate signed by the President of the Company stating that in the good faith judgment of the Board of Directors of the Company it would be seriously detrimental to the Company and its stockholders for such registration statement to be filed and it is, therefore, essential to defer the filing of such registration statement, the Company shall have the right to defer taking action with respect to such filing for a period of not more than one hundred twenty (120) days after receipt of the request of the Initiating Holders; *provided*, *however*, that the Company may not utilize this right more than once in any twelve (12) month period.

(e) In addition, the Company shall not be obligated to effect, or to take any action to effect, any registration pursuant to this Section 3.2:

(i) after the Company has effected three (3) Demand Registrations pursuant to this Section 3.2 and such registrations have been declared or ordered effective;

(ii) during the period starting with the date sixty (60) days prior to the Company's good faith estimate of the date of filing of, and ending on a date one hundred eighty (180) days after the effective date of, a registration subject to Section 3.3 or Section 3.11 hereof, provided that the Company is actively employing its commercially reasonable efforts to cause such registration statement to become effective; *provided*, *however*, that the Company may not utilize this right more than once in any twelve-month period;

(iii) if the Initiating Holders propose to dispose of shares of Registrable Securities that may be immediately registered on Form S-3 pursuant to a request made pursuant to Section 3.11 below; or

(iv) in any particular jurisdiction in which the Company would be required to qualify to do business or to execute a general consent to service of process in effecting such registration, qualification or compliance unless the Company is already subject to service in such jurisdiction and except as may be required by the Securities Act.

Section 3.3 Company Registration.

(a) If, but without any obligation to do so, the Company proposes to register (including for this purpose a registration initiated by the Company for itself or for the Holders or stockholders other than the Holders) any of its stock or other securities under the Securities Act in connection with the public offering of such securities solely for cash (other than a registration relating solely to employee benefit plans, or a registration relating solely to a SEC Rule 145 transaction, or a registration on any registration form which does not permit secondary sales or does not include substantially the same information as would be required to be included in a registration statement covering the Registrable Securities) the Company shall, at such time,

promptly give each Holder written notice of such registration. Upon the written request of HCMLP given within fifteen (15) days after delivery of such notice by the Company, the Company shall cause to be registered under the Securities Act all of the Registrable Securities that HCMLP has requested to be registered on behalf of Highland Capital.

(b) If a registration subject to Section 3.3 relates to an underwritten public offering of equity securities and the managing underwriters advise the Company that in their opinion the number of securities requested to be included in such registration exceeds the number that can be sold in an orderly manner in such offering within a price range acceptable to the Holders initially requesting such registration, the Company will include in such registration (i) first, the Registrable Securities requested to be included in such registration by Highland Capital, allocated pro rata among the holders thereof on the basis of the total number of shares of Registrable Securities such Holder requested to be included in such registration or apportioned among them in any other manner in which HCMLP determines to be appropriate in its sole discretion; (ii) second, the securities requested to be included therein by the Company if the Company has initiated the registration; and (iii) third, among persons not contractually entitled to registration rights under this Agreement. Notwithstanding the foregoing, the amount of Registrable Securities of Highland Capital included in the offering shall not be reduced below thirty percent (30%) of the total amount of securities included in such offering. In connection with any offering involving an underwriting of shares of the Company's capital stock, the Company shall not be required to include any of the Holders' securities in such underwriting unless they accept the terms of the underwriting as agreed upon between the Company and the underwriters selected by it (or by other persons entitled to select the underwriters). All Holders proposing to distribute their securities through such underwriting shall (together with the Company as provided in Section 3.4(e)) enter into an underwriting agreement in customary form with the underwriter or underwriters selected for such underwriting.

Section 3.4 Obligations of the Company. Whenever required under this Article III to effect the registration of any Registrable Securities, the Company shall, as expeditiously as reasonably possible:

(a) Prepare and file with the SEC a registration statement with respect to such Registrable Securities and use its commercially reasonable efforts to cause such registration statement to become effective within sixty (60) days of a request for registration pursuant to Section 3.2 and Section 3.11 and such registration statement shall remain effective until the earlier to occur of (i) one-hundred-eighty (180) days after the date such registration statement was declared effective or (ii) until the distribution contemplated in such registration statement has been completed; *provided*, *however*, that such one-hundred-eighty (180) day period shall be extended for a period of time equal to the period the Holder refrains from selling any securities included in such registration at the request of an underwriter of Common Stock (or other securities) of the Company.

(b) Prepare and file with the SEC such amendments and supplements to such registration statement and the prospectus used in connection with such registration statement as may be necessary to comply with the provisions of the Securities Act with respect to the disposition of all securities covered by such registration statement.

(c) Furnish to the Holders such numbers of copies of a prospectus, including a preliminary prospectus, in conformity with the requirements of the Securities Act, and such other documents as they may reasonably request in order to facilitate the disposition of Registrable Securities owned by them.

(d) Use its best efforts to register and qualify the securities covered by such registration statement under such other securities or blue sky laws of such jurisdictions as shall be reasonably requested by the Holders; *provided* that the Company shall not be required in connection therewith or as a condition thereto to qualify to do business or to file a general consent to service of process in any such states or jurisdictions.

(e) In the event of any underwritten public offering, enter into and perform its obligations under an underwriting agreement, in usual and customary form, with the managing underwriter of such offering. Each Holder participating in such underwriting shall also enter into and perform its obligations under such an agreement.

(f) Notify each Holder of Registrable Securities covered by such registration statement at any time when a prospectus relating thereto is required to be delivered under the Securities Act of the happening of any event as a result of which the prospectus included in such registration statement, as then in effect, includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein of misleading in the light of the circumstances then existing.

(g) Cause all such Registrable Securities registered pursuant hereunder to be listed on each securities exchange or nationally recognized quotation system on which similar securities issued by the Company are then listed.

(h) Provide a transfer agent and registrar for all Registrable Securities registered pursuant hereunder and a CUSIP number for all such Registrable Securities not later than the effective date of such registration.

(i) Use its best efforts to cause to be furnished, at the request of at least a majority of the Holders participating in the registration, on the date that such Registrable Securities are delivered to the underwriters for sale, if such securities are being sold through underwriters, or, if such securities are not being sold through underwriters, on the date that the registration statement with respect to such securities becomes effective, (i) an opinion, dated such date, of the counsel representing the Company for purposes of such registration, in form and substance as is customarily given to underwriters in an underwritten public offering, addressed to the underwriters, if any, and (ii) a letter dated such date, from the independent certified public accountants of the Company, in form and substance as is customarily given by independent certified public accountants to underwriters in connection with an underwritten public offering, addressed to the underwriters, if any.

(j) Make available for inspection by each Holder of Registrable Securities, any underwriter and any attorney, accountant, or other agent retained by such Holder or underwriter, all financial and other records, pertinent corporate documents and properties of the Company and cause the Company's officers, directors, and employees to supply all information

reasonably requested by such Holder, underwriter, attorney, accountant, or agent in connection with such registration statement.

Section 3.5 Furnish Information. It shall be a condition precedent to the obligations of the Company to take any action pursuant to this Article III with respect to the Registrable Securities of any selling Holder that such Holder shall furnish to the Company such information regarding such Holder, the Registrable Securities held by such Holder, and the intended method of disposition of such securities as shall be required by the Company or the managing underwriters, if any, to effect the registration of such Holder's Registrable Securities.

Section 3.6 Expenses of Demand Registration. All expenses, other than underwriting discounts and commissions, incurred in connection with registrations, filings or qualifications pursuant to Section 3.2(a), including (without limitation) all registration, filing and qualification fees, printers' and accounting fees, fees and disbursements of counsel for the Company and the reasonable fees and disbursements of counsel for the selling Holders shall be borne by the Company, including, without limitation, all such expenses incurred with respect to a registration request subsequently withdrawn by the Holders, regardless of whether such withdrawal was a result of a material adverse change in the condition (financial or otherwise), business or prospects of the Company from that known to the Holders at the time of the request or otherwise.

Section 3.7 Expenses of Company Registration. All expenses, other than underwriting discounts and commissions relating to Registrable Securities, incurred in connection with registrations, filings or qualifications pursuant to Section 3.3 for each Holder, including (without limitation) all registration, filing and qualification fees, printers' and accounting fees, fees and disbursements of counsel for the Company and the reasonable fees and disbursements of counsel for the selling Holders shall be borne by the Company.

Section 3.8 Delay of Registration. No Holder shall have any right to obtain or seek an injunction restraining or otherwise delaying any such registration as the result of any controversy that might arise with respect to the interpretation or implementation of this Article III.

Section 3.9 Indemnification. In the event any Registrable Securities are included in a registration statement under this Article III:

(a) To the extent permitted by law, the Company will indemnify and hold harmless each Holder, the partners, members, officers, and directors of each Holder (including HCMLP), any underwriter (as defined in the Securities Act) for such Holder and each person, if any, who controls such Holder or underwriter within the meaning of the Securities Act or the Exchange Act, against any losses, claims, damages, or liabilities (joint or several) to which they may become subject under the Securities Act, the Exchange Act or other federal or state law, insofar as such losses, claims, damages, or liabilities (or actions in respect thereto) arise out of or are based upon any of the following statements, omissions or violations (each, a "***Violation***"): (i) any untrue statement or alleged untrue statement of a material fact contained in such registration statement, including any preliminary prospectus or final prospectus contained therein or any amendments or supplements thereto, (ii) the omission or alleged omission to state therein a material fact required to be stated therein, or necessary to make the statements therein not misleading, or (iii) any violation or alleged violation by the Company of the Securities Act, the

Exchange Act, any state securities taw or any rule or regulation promulgated under the Securities Act, the Exchange Act or any state securities law; and the Company will pay to each such Holder, underwriter or controlling person, as incurred, any legal or other expenses reasonably incurred by them in connection with investigating or defending any such loss, claim, damage, liability, or action; *provided*, *however*, that the indemnity agreement contained in this Section 3.9(a) shall not apply to amounts paid in settlement of any such loss, claim, damage, liability, or action if such settlement is effected without the consent of the Company (which consent shall not be unreasonably withheld, conditioned or delayed), nor shall the Company be liable in any such case for any such loss, claim, damage, liability, or action to the extent that it arises out of or is based upon a Violation which occurs in reliance upon and in conformity with written information furnished by any such Holder, underwriter or controlling person expressly for use in connection with such registration.

(b) To the extent permitted by law, each selling Holder will indemnify and hold harmless the Company, each of its directors, each of its officers who has signed the registration statement, each person, if any, who controls the Company within the meaning of the Securities Act, any underwriter, any other Holder selling securities in such registration statement and any controlling person of any such underwriter or other Holder, against any losses, claims, damages, or liabilities (joint or several) to which any of the foregoing persons may become subject, under the Securities Act, the Exchange Act or other federal or state law, insofar as such losses, claims, damages, or liabilities (or actions in respect thereto) arise out of or are based upon any Violation, in each case to the extent (and only to the extent) that such Violation occurs in reliance upon and in conformity with written information furnished by such Holder expressly for use in connection with such registration; and each such Holder will pay, as incurred, any legal or other expenses reasonably incurred by any person intended to be indemnified pursuant to this Section 3.9(b), in connection with investigating or defending any such loss, claim, damage, liability, or action; *provided*, *however*, that the indemnity agreement contained in this Section 3.9(b), shall not apply to amounts paid in settlement of any such loss, claim, damage, liability or action if such settlement is effected without the consent of the Holder (which consent shall not be unreasonably withheld, conditioned or delayed); *provided*, *however*, that in no event shall any indemnity under this Section 3.9(b) exceed the net proceeds from the offering received by such Holder.

(c) Promptly after receipt by an indemnified party under this Section 3.9 of notice of the commencement of any action (including any governmental action), such indemnified party will, if a claim in respect thereof is to be made against any indemnifying party under this Section 3.9, deliver to the indemnifying party a written notice of the commencement thereof and the indemnifying party shall have the right to participate in, and, to the extent the indemnifying party so desires, jointly with any other indemnifying party similarly noticed, to assume the defense thereof with counsel mutually satisfactory to the parties; *provided*, *however*, that an indemnified party (together with all other indemnified parties which may be represented without conflict by one counsel) shall have the right to retain separate counsel, with the fees and expenses to be paid by the indemnifying party, if representation of such indemnified party by the counsel retained by the indemnifying party would be inappropriate due to actual or potential differing interests between such indemnified party and any other party represented by such counsel in such proceeding. The failure to deliver written notice to the indemnifying party within a reasonable time of the commencement of any such action, if materially prejudicial to its ability

to defend such action, shall relieve such indemnifying party of any liability to the indemnified party under this Section 3.9, but the omission so to deliver written notice to the indemnifying party will not relieve it of any liability that it may have to any indemnified party otherwise than under this Section 3.9.

(d) If the indemnification provided for in this Section 3.9 is held by a court of competent jurisdiction to be unavailable to an indemnified party with respect to any loss, liability, claim, damage, or expense referred to therein, then the indemnifying party, in lieu of indemnifying such indemnified party hereunder, shall contribute to the amount paid or payable by such indemnified party as a result of such loss, liability, claim, damage, or expense in such proportion as is appropriate to reflect the relative fault of the indemnifying party on the one hand and of the indemnified party on the other hand in connection with the statements or omissions that resulted in such loss, liability, claim, damage, or expense as well as any other relevant equitable considerations; *provided*, *however*, that in no event shall any contribution under this Section 3.9 exceed the net proceeds from the offering received by such Holder. The relative fault of the indemnifying party and of the indemnified party shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission to state a material fact relates to information supplied by the indemnifying party or by the indemnified party and the parties' relative intent, knowledge, access to information, and opportunity to correct or prevent such statement or omission.

(e) Notwithstanding the foregoing, to the extent that the provisions on indemnification and contribution contained in the underwriting agreement entered into in connection with the underwritten public offering are in conflict with the foregoing provisions, the provisions in the underwriting agreement shall control as to any Investor that is a party thereto.

(f) The obligations of the Company and Holders under this Section 3.9 shall survive the completion of any offering of Registrable Securities in a registration statement under this Article III, and otherwise. No indemnifying party, in the defense of any such claim or litigation, shall, except with the consent of each other indemnified party, consent to entry of any judgment or enter into any settlement that does not include as an unconditional term thereof the giving by the claimant or plaintiff to such indemnified party of a release from all liability in respect to such claim or litigation.

Section 3.10 Reports Under Securities Exchange Act. With a view to making available to the Holders the benefits of Rule 144 and any other rule or regulation of the SEC that may at any time permit a Holder to sell securities of the Company to the public without registration or pursuant to a registration on Form S-3, the Company agrees to:

(a) make and keep public information available, as those terms are understood and defined in Rule 144, at all times after the effective date of the first registration statement filed by the Company for the offering of its securities to the general public;

(b) take such action, including the voluntary registration of its Common Stock under Section 5.12 of the Exchange Act, as is necessary to enable the Holders to utilize Form S-3 for the sale of their Registrable Securities, such action to be taken as soon as practicable after the

end of the fiscal year in which the first registration statement filed by the Company for the offering of its securities to the general public is declared effective;

(c) file with the SEC in a timely manner all reports and other documents required of the Company under the Securities Act and the Exchange Act; and

(d) furnish to any Holder, so long as the Holder owns any Registrable Securities, forthwith upon request from such Holder (i) a written statement by the Company that it has complied with the reporting requirements of Rule 144 (at any time after 90 days after the effective date of the first registration statement filed by the Company), the Securities Act and the Exchange Act (at any time after it has become subject to such reporting requirements), or that it qualifies as a registrant whose securities may be resold pursuant to Form S-3 (at any time after it so qualifies), (ii) a copy of the most recent annual or quarterly report of the Company and such other reports and documents so filed by the Company, and (iii) such other information as may be reasonably requested in availing any Holder of any rule or regulation of the SEC which permits the selling of any such securities without registration or pursuant to Form S-3.

Section 3.11 Form S-3 Registrations. In the event that the Company shall receive from HCMLP on behalf of the Holders of at least 10% of the Registrable Securities then outstanding a written request that the Company effect a registration on Form S-3, and any related qualification or compliance with respect to all or a part of the Registrable Securities owned by such Holder or Holders, the Company will:

(a) promptly give written notice of the proposed registration, and any related qualification or compliance, to all other Holders; and

(b) use its commercially reasonable efforts to, as soon as practicable, effect such registration and all such qualifications and compliances as may be so requested and as would permit or facilitate the sale and distribution of all or such portion of such Holder's or Holders' Registrable Securities as are specified in such request, together with all or such portion of the Registrable Securities of any other Holder or Holders joining in such request as are specified in a written request given within fifteen (15) days after receipt of such written notice from the Company; *provided*, *however*, that the Company shall not be obligated to effect any such registration, qualification or compliance, pursuant to this Section 3.11:

(i) if Form S-3 is not available for such offering by the Holders;

(ii) if the Holders, together with the holders of any other securities of the Company entitled to inclusion in such Form S-3, propose to sell Registrable Securities at an aggregate price to the public (net of underwriting discounts and commissions) of less than $500,000;

(iii) if the Company shall furnish to Holders requesting a registration statement pursuant to this Section 3.11 a certificate signed by the President of the Company stating that in the good faith judgment of the Board of Directors it would be seriously detrimental to the Company and its stockholders for such registration statement to be filed and it is, therefore, essential to defer the filing of such registration statement, the Company shall have the right to defer taking action with respect to such filing for a period of not more than one-hundred-

twenty (120) days after receipt of the request of the Initiating Holders; *provided*, *however*, that the Company may not utilize this right more than once in any twelve (12) month period;

(iv) in any particular jurisdiction in which the Company would be required to qualify to do business or to execute a general consent to service of process in effecting such registration, qualification or compliance;

(v) if the Company has, within the twelve (12) month period preceding the date of such request, already effected one (1) registration on Form S-3 for the Holders pursuant to this Section 3.11; or

(vi) during the period starting with the date sixty (60) days prior to the Company's good faith estimate of the date of filing of, and ending on a date one-hundred-eighty (180) days after the effective date of, any registration statement pertaining to a public offering of securities for the Company's account; *provided*, *however*, that the Company is actively employing its commercially reasonable efforts to cause such registration statement to be effective.

(c) Subject to the foregoing, the Company shall file a registration statement covering the Registrable Securities and other securities so requested to be registered as soon as practicable after receipt of the request or requests of the Holders. All expenses incurred in connection with a registration requested pursuant to this Section 3.11, including, without limitation, all registration, filing, qualification, printer's and accounting fees and the reasonable fees and disbursements of counsel for the selling Holder or Holders and counsel for the Company, shall be borne by the Company. Registrations effected pursuant to this Section 3.11 shall not be counted as demands for registration or registrations effected pursuant to Section 3.2 or Section 3.3, respectively.

(d) If the Holders initiating a registration pursuant to this Section 3.11 intend to distribute the Registrable Securities covered by their request by means of an underwriting, they shall so advise the Company as a part of their request made pursuant to this Section 3.11 and the Company shall include such information in the written notice referred to in Section 3.11(a). The underwriter will be selected by HCMLP and shall be reasonably acceptable to the Company, which approval shall not be unreasonably withheld or delayed. In such event, the right of any Holder to include such Holder's Registrable Securities in such registration shall be conditioned upon such Holder's participation in such underwriting and the inclusion of such Holder's Registrable Securities in the underwriting (unless otherwise mutually agreed by a majority in interest of the Initiating Holders and such Holder) to the extent provided herein. All Holders proposing to distribute their securities through such underwriting shall (together with the Company as provided in Section 3.4(e)) enter into an underwriting agreement in customary form with the underwriter or underwriters selected for such underwriting. Notwithstanding any other provision of this Section 3.11, if the underwriter advises the Initiating Holders in writing that marketing factors require a limitation of the number of shares to be underwritten, then the Company shall so advise all Holders of Registrable Securities which would otherwise be underwritten pursuant hereto, and the number of shares of Registrable Securities that may be included in the underwriting shall be allocated in the following order of priority: (A) first, the Registrable Securities requested to be included in such registration by the Holders, allocated pro

rata among the holders thereof on the basis of the total number of shares of Registrable Securities such Holder requested to be included in such registration or apportioned among them in any other manner in which HCMLP determines to be appropriate in its sole discretion; (B) second, the securities requested to be included therein by the Company; and (C) third, among persons not contractually entitled to registration rights under this Agreement.

Section 3.12 Expenses of Form 5-3 Registration. All expenses, other than underwriting discounts and commissions, incurred in connection with registrations, filings or qualifications pursuant to Section 3.11, including (without limitation) all registration, filing and qualification fees, printers' and accounting fees, fees and disbursements of counsel for the Company and the reasonable fees and disbursements of counsel for the selling Holders shall be borne by the Company; including, without limitation, all such expenses incurred with respect to a registration request subsequently withdrawn by the Holders, regardless of whether such withdrawal was a result of a material adverse change in the condition (financial or otherwise), business or prospects of the Company from that known to the Holders at the time of the request or otherwise.

Section 3.13 Assignment of Registration Rights. Subject to the prior consent of HCMLP, the rights to cause the Company to register Registrable Securities pursuant to this Article III may be assigned (but only with all related obligations) by a Holder to a transferee or assignee of such securities that (i) is a subsidiary, parent, member, partner, limited partner, retired partner, grantor or shareholder of a Holder, and (ii) an affiliate of HCMLP, including any investment funds controlled by or under common control with, or managed directly or indirectly by, HCMLP, which will continue to qualify as Highland Capital after such transfer; *provided* that: (a) the Company is, within a reasonable time after such transfer, furnished with written notice of the name and address of such transferee or assignee and the securities with respect to which such registration rights are being assigned; (b) such transferee or assignee agrees in writing to be bound by and subject to the terms and conditions of this Agreement, including (without limitation) the provisions of Section 1.4 below, including the execution of an Adoption Agreement in the form attached hereto as Exhibit A; and (c) such assignment shall be effective only if immediately following such transfer the further disposition of such securities by the transferee or assignee is restricted under the Securities Act. For the purposes of determining the number of shares of Registrable Securities held by a transferee or assignee, the holdings of transferees and assignees of a partnership who are partners or retired partners of such partnership (including spouses and ancestors, lineal descendants and siblings of such partners or spouses who acquire Registrable Securities by gift, will or intestate succession) shall be aggregated together and with the partnership; *provided* that all assignees and transferees who would not qualify individually for assignment of registration rights shall have a single attorney-in-fact for the purpose of exercising any rights, receiving notices or taking any action under this Article III.

Section 3.14 Limitations on Subsequent Registration Rights. From and after the date of this Agreement, the Company shall not, without the prior written consent of HCMLP (which approval may be granted or withheld in its sole discretion), enter into any agreement with any holder or prospective holder of any securities of the Company (i) to include such securities in any registration filed under Section 3.2, unless under the terms of such agreement, such holder or prospective holder may include such securities in any such registration only to the extent that the inclusion of such holder's or prospective holder's securities will not reduce the amount of the

Registrable Securities of the Holders which is included or (ii) to make a demand registration that could result in such registration statement being declared effective prior to the dates set forth in Section 3.2 or within one-hundred-eighty (180) days of the effective date of any registration effected pursuant to Section 3.2.

ARTICLE IV

VOTING AGREEMENT; BOARD OF DIRECTORS; REQUIRED VOTE

Section 4.1 Board of Directors.

(a) Composition of Board of Directors. For so long as Highland Capital owns any shares of the Company's capital stock, each Stockholder agrees that in any election of directors of the Company, each Stockholder shall vote all shares of the Company capital stock entitled to vote in the election of directors that are owned or controlled by such Stockholder (or shall consent pursuant to an action by written consent of the holders of capital stock of the Company), including all shares that each Stockholder is entitled to vote under any voting trust, voting agreement, proxy or other arrangement (collectively, "***Stock***"), to elect a Board of Directors consisting of the directors designated by HCMLP in its sole discretion. In the absence of any designation HCMLP, the director previously designated by HCMLP and then serving shall be re-elected if still eligible to serve as provided herein. This Section 4.1(a) shall not apply to Crusader.

(b) Subsidiary Governing Bodies; Committees. Unless otherwise agreed to by HCMLP or the Board of Directors, the members of the Board of Directors, as the same shall be constituted from time to time, shall also constitute the board of directors or equivalent governing body of each subsidiary of the Company. HCMLP shall have the right but not the obligation to designate at least two members of the Board of Directors elected pursuant to this Section 4.1 to serve on any duly constituted committee of the boards of directors of the Company and any subsidiaries.

(c) Obligations of the Company. The Company shall use its best efforts and shall exercise all authority under applicable law to cause to be nominated for election and cause to be elected or appointed, as the case may be, as directors of the Company, a slate of directors consisting of individuals meeting the requirements of Section 4.1(a). The Company will not, by any voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be performed hereunder by the Company, but will at all times in good faith assist in the carrying out of all of the provisions of this Agreement and in the taking of all such actions as may be necessary or appropriate in order to protect the rights of HCMLP hereunder against impairment. Each Stockholder hereby agrees to vote, cause to be voted or sign a written consent with respect to all of its shares in favor of a slate of directors consisting of individuals meeting the requirements of Section 4.1(a).

(d) Vacancies; Removal. In the event of any vacancy in the Board of Directors, each Stockholder agrees to vote all outstanding shares of Stock owned or controlled by such Stockholder and to use such Stockholder's best efforts to fill such vacancy so that the Board of Directors will be comprised of directors designated as provided in Section 4.1(a). Each

Stockholder agrees to vote all outstanding shares of Stock owned or controlled by such Stockholder for the removal of a director whenever (but only whenever) there shall be presented to the Board of Directors the written direction that such director be removed, signed by HCMLP. In such event, the Board of Directors shall solicit the vote of the Stockholders entitled to remove such director in order to effect such removal. This Section 4.1(d) shall not apply to Crusader.

Section 4.2 Required Vote.

(a) Notice of Disposition Transaction. In the event HCMLP has approved or rejected any (A) the acquisition of the Company by another entity by means of any transaction or series of related transactions (including, without limitation, any reorganization, merger or consolidation) unless the Company's stockholders of record as constituted immediately prior to such acquisition or sale will, immediately after such acquisition or sale (by virtue of securities issued as consideration for the Company's acquisition or sale or otherwise) hold at least 50% of the voting power of the surviving or acquiring entity; or (B) a sale of all or substantially all of the assets of the Company, including a sale of all or substantially all of the assets of the Company's subsidiaries, if such assets constitute substantially all of the assets of the Company and such subsidiaries taken as a whole (each, an "***Approved Sale***"), the Company shall give notice (the "***Sale Notice***") to the Stockholders stating that HCMLP has approved or rejected, as applicable, an Approved Sale. The Sale Notice also shall set forth the identity of the person or entity proposing to buy the Company, its assets or its capital stock (the "***Acquisition Offeror***") and shall summarize the basic terms of the proposed Approved Sale. Any Sale Notice may be rescinded by HCMLP by delivering written notice thereof to the Stockholders.

(b) Obligations of Stockholders. As soon as practicable after receipt of the Sale Notice, the Stockholders shall take all lawful action reasonably necessary and requested by the Company (i) in the event the Approved Sale was approved by HCMLP, to complete the Approved Sale, including without limitation (A) the voting of all capital stock of the Company held by the Stockholders in favor of the Approved Sale, (B) if so requested, the surrender to the Acquisition Offeror of certificates representing all capital stock and all instruments representing convertible securities of the Company held by the Stockholders, properly endorsed for transfer to the Acquisition Offeror against payment of the sale price for such capital stock or such convertible securities in the Approved Sale, and (C) the execution of all sale, liquidation and other agreements in the form reasonably requested (containing, among other things, reasonable and customary representations and warranties relating to the valid title to such capital stock free and clear of any liens, claims, encumbrances and restrictions of any kind (other than those arising hereunder) and such Stockholder's power, authority, and right to enter into and consummate such purchase or merger agreement without violating any other agreement); or (ii) in the event the Approved Sale was rejected by HCMLP, to reject the Approved Sale, including, without limitation, the voting of all capital stock of the Company held by the Stockholders against the Approved Sale. The Stockholders hereby agree, after having received a Sale Notice, not to exercise any dissenter's rights or other rights granted to minority stockholders under state law in connection with an Approved Sale, or otherwise take actions designed to or that reasonably would be expected to complicate, delay, reject or terminate the Approved Sale.

Section 4.3 Grant of Proxy. To ensure the performance of each Stockholder with respect to the agreements set forth in this Article IV, each Stockholder hereby appoints the

Chairman of the Board of Directors and the principal executive officer of the Company, or either of them from time to time, or their designees, as his, her or its true and lawful proxy and attorney-in-fact, with full power of substitution and resubstitution, to vote all. Stock owned or held by such Stockholder and to execute all appropriate instruments consistent with this Agreement, subject to the provisions of this Agreement, upon any matter presented to the stockholders of the Company, if and only if such Stockholder fails to vote all of such Stockholder's Stock or execute such other instruments in accordance with the provisions of this Agreement within five (5) days of the Company's or any other party's written request for such Stockholder's written consent or signature. The proxies and powers granted by each Stockholder pursuant to this Section 4.3 are coupled with an interest, are given to secure the performance of such Stockholder's commitments under this Agreement, and shall he irrevocable unless and until this Agreement terminates or expires pursuant to its terms. Such proxies shall survive the death, incompetence, disability, merger, reorganization, dissolution or winding up of such Stockholder. Each party hereto hereby revokes any and all previous proxies with respect to the Stock and shall not hereafter, unless and until this Agreement terminates or expires, purport to grant any other proxy or power of attorney with respect to any of the Stock, deposit any of the Stock into a voting trust or enter into any agreement (other than this Agreement), arrangement or understanding with any person, directly or indirectly, to vote, grant any proxy or give instructions with respect to the voting of any of the Stock, in each case, with respect to any of the matters set forth herein.

ARTICLE V

COVENANTS OF THE COMPANY

Section 5.1 Delivery of Financial Statements. The Company shall deliver the following information to HCMLP, to each Highland Capital Stockholder and to Crusader:

(a) as soon as reasonably practicable, but in any event within 90 days after the end of each fiscal year of the Company (which due date may be lengthened with respect to any fiscal year by approval of HCMLP), an audited consolidated income statement of the Company for such year, an audited consolidated balance sheet and statement of stockholders' equity of the Company as of the end of such fiscal year, and an audited consolidated statement of cash flows of the Company for such fiscal year, such audited year-end financial reports to be in reasonable detail, prepared in accordance with generally accepted accounting principles ("***GAAP***") consistently applied and setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail. Such audited financial statements shall be accompanied by a report and opinion thereon by independent public accountants of national standing selected by HCMLP.

(b) as soon as reasonably practicable, but in any event within thirty (30) days after the end of each fiscal quarter of the Company, an unaudited consolidated income statement and consolidated statement of cash flows of the Company for such fiscal quarter and an unaudited consolidated balance sheet of the Company as of the end of such fiscal quarter, prepared in accordance with GAAP, which shall each show a comparison to plan figures for such period and to the comparable period in the prior year prepared in accordance with GAAP with the exception that no notes need be attached to such statements and year end audit adjustments

need not have been made, together with a report from the Company's chief executive officer, and/or chief financial officer, summarizing the Company's consolidated financial condition and consolidated results of operation during such quarter.

(c) as soon as reasonably practicable, but in any event within twenty (20) days after the end of each calendar month, an unaudited consolidated income statement and consolidated statement of cash flows of the Company for such month and an unaudited consolidated balance sheet of the Company as of the end of such month and for the current fiscal year to date, including a comparison to plan figures for such period and to the comparable period in the prior year, prepared in accordance with GAAP consistently applied, with the exception that no notes need be attached to such statements and year end audit adjustments may not have been made, together with a report from the Company's chief executive officer, and/or chief financial officer, summarizing the Company's consolidated financial condition and consolidated results of operation during such month.

(d) an annual budget and operating plans for the Company at least thirty (30) days prior to the beginning of each fiscal year and (promptly after they are available) any subsequent substantive revisions thereto; and

(e) such relevant business and other information reasonably requested, including, without limitation, copies of relevant management reports, as HCMLP may request from time to time.

If, for any period, the Company has any subsidiary whose accounts are consolidated with those of the Company, then in respect of such period the financial statements delivered pursuant to the foregoing sections shall be the consolidated and consolidating financial statements of the Company and all such consolidated subsidiaries.

Section 5.2 Inspection. The Company will maintain true books and records of account in which full and correct entries will be made of all its business transactions pursuant to a system of accounting established and administered in accordance with GAAP consistently applied, and will set aside on its books all such proper accruals and reserves as shall be required under GAAP consistently applied. The Company shall permit HCMLP or its designee(s) to visit and inspect the Company's properties, to examine and audit its books of account and records and to discuss the Company's affairs, finances and accounts with its officers, all at such reasonable times and during normal business hours as may be requested by HCMLP.

Section 5.3 Directors and Officers Insurance.

(a) The Company shall maintain, from financially sound and reputable insurers approved by HCMLP, directors' and officers' insurance with coverage decided in accordance with policies adopted by HCMLP.

(b) The Company will indemnify the Board of Directors to the broadest extent permitted by applicable law. The Company shall enter into written indemnification agreements (in a form reasonably acceptable to HCMLP) with the directors and executive officers of the Company.

(c) in the event of a Change in Control, proper provision shall be made so that the successors and assigns of the Company assume the obligations of the Company with respect to indemnification of members of the Board of Directors as in effect immediately prior to such transaction, whether in the Company's Bylaws, Certificate of Incorporation, or elsewhere, as the case may be, and, unless otherwise affirmatively determined by the Board of Directors, for the purchase of "***tail***" D&O insurance coverage.

Section 5.4 **Additional Stockholders**. As a condition to the Company's issuance of any shares of Common Stock, or options, warrants or rights to purchase or acquire Common Stock, to any person or entity, including the issuance of certificates representing shares of Common Stock upon a transfer following compliance with the terms of this Agreement, the Company shall, as a condition to such issuance, cause such person or entity to execute an Adoption Agreement in the form attached as Exhibit A hereto in the capacity of a Remaining Stockholder or a Highland Capital Stockholder, as appropriate, confirming that such person or entity is bound by, and subject to, all the terms and provisions of this Agreement applicable to a Remaining Stockholder or a Highland Capital Stockholder, whichever is applicable to such person or entity. The addition of Stockholders as parties to the Agreement in compliance with this provision shall not be deemed an amendment.

ARTICLE VI

MISCELLANEOUS

Section 6.1 **Term; Termination**. This Agreement shall terminate upon the earliest to occur of (a) such time as the Stockholders shall no longer be the owner of any shares of capital stock of the Company; or (b) the date specified by agreement of the Company and HCMLP. Notwithstanding the foregoing, the following rights under this Agreement shall terminate as set forth herein:

(a) The rights of first refusal and co-sale set forth in Article I hereof shall terminate upon the earlier of (i) the closing of a bona fide firm commitment underwritten public offering of the Company's Common Stock registered under the Securities Act resulting in proceeds to the Company of at least $50 million (a "***Qualified IPO***"), and (ii) a Change in Control (including in the case of an asset sale or similar transaction in which Stockholders continue to hold the Company's shares, the final distribution of proceeds to the Stockholders);

(b) The rights of first offer set forth in Article II hereof shall terminate upon the earlier of (i) a Qualified IPO, and (ii) a Change in Control (including in the case of an asset sale or similar transaction in which Stockholders continue to hold the Company's shares, the final distribution of proceeds to the Stockholders);

(c) The registration rights set forth in Article III hereof shall terminate with respect to any Holder upon the earlier of (i) a Change in Control, and (ii) the date upon which all Registrable Securities held by such Holder can be sold without restriction under Rule 144(k) under the Securities Act;

(d) The voting rights and obligations set forth in Article IV hereto shall terminate upon the earlier of (i) (A) in the case of Section 4.1 the Initial Public Offering, and (B) in the case of Section 4.2, a Qualified IPO, and (ii) a Change in Control; and, *provided* that the provisions of Section 4.2 will continue after the closing of any Approved Sale to the extent necessary to enforce the provisions of Section 4.2 with respect to such Approved Sale;

(e) The information and inspection rights set forth in Section 5.1 and Section 5.2 hereto shall terminate upon the earliest of (i) the Initial Public Offering, (ii) the date upon which the Company becomes subject to the periodic reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, and (iii) a Change in Control (including in the case of an asset sale or similar transaction in which Stockholders continue to hold the Company's shares, the final distribution of proceeds to the Stockholders).

Section 6.2 Legend. Each certificate representing the Common Stock of the Company shall be endorsed with substantially the following legend, in addition to any other legend required by law, the Company's organizational documents or agreement to which the Stockholder is subject:

> "THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO THE TERMS AND CONDITIONS OF A CERTAIN STOCKHOLDERS' AGREEMENT, BY AND AMONG THE COMPANY AND CERTAIN HOLDERS OF THE COMMON STOCK OF THE COMPANY, INCLUDING SUBSTANTIAL RESTRICTIONS ON TRANSFER AND VOTING. A COPY OF SUCH AGREEMENT IS ON FILE AT THE PRINCIPAL OFFICE OF THE COMPANY. THE STOCKHOLDERS' AGREEMENT IS BINDING ON THE TRANSFEREES OF SUCH SHARES."

Section 6.3 Successors and Assigns. In addition to any restriction on transfer that may be imposed by any other agreement by which the parties hereto may be bound, this Agreement shall be binding upon the parties hereto and their respective permitted transferees, heirs, executors, administrators, successors and assigns; *provided*, *however*, that the Company shall not effect any transfer of Common Stock subject to this Agreement on its books or issue a new certificate for such Common Stock unless the transferee of such Common Stock has executed and delivered an Adoption Agreement in the form attached hereto as Exhibit A. Upon compliance with all transfer and other restrictions set forth herein and the execution and delivery of an Adoption Agreement by the transferee, such transferee shall be deemed to be a party hereto as if such transferee's signature appeared on the signature pages hereto, in the capacity of Highland Capital or a Remaining Stockholder, as the case may be, whereupon the schedules of Stockholders shall be updated accordingly. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and assigns any rights, remedies, obligations or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

Section 6.4 Governing Law. This Agreement shall be governed by and construed under the laws of the State of Texas, without giving effect to conflicts of laws principles.

Section 6.5 **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.

Section 6.6 **Titles and Subtitles**. The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

Section 6.7 **Notices**.

(a) All notices and other communications hereunder shall be in writing and shall be deemed given if delivered personally or by commercial delivery service, or mailed by registered or certified mail (return receipt requested) or sent via facsimile (with confirmation of receipt) to the parties at the address for each party set forth herein (or at such other address for a party as shall be specified by like notice):

(i) If to the Company:

Cornerstone Healthcare Group Holding, Inc.
13455 Noel Rd., Suite 1320
Dallas, TX 75240
Fax: [●]
Attn: [●]
Email: [●]

with a copy (which shall not constitute notice) to:

[●]
[●]
[●]
Fax: ([●]
Attn: [●]

(ii) If to HCMLP:

Highland Capital Management, L.P.
[●]
[●]
[●]
Fax: [●]
Attention: [●]
Email: [●]

(iii) If to a Highland Capital Stockholder, to the address set forth below such Highland Capital Stockholder's name on Schedule A hereto, with a copy (which shall not constitute notice) to HCMLP and the Company.

(iv) If to a Remaining Stockholder, at the address set forth below such Stockholder's name on Schedule B hereto, with a copy (which shall not constitute notice) to HCMLP and the Company.

(b) Notice given by personal delivery, courier service or mail shall be effective upon actual receipt. Notice given by facsimile shall be confirmed by appropriate answer back and shall be effective upon actual receipt if received during the recipient's normal business hours, or at the beginning of the recipient's next business day after receipt if not received during the recipient's normal business hours. All notices by facsimile shall be confirmed promptly after transmission in writing by certified mail or personal delivery. Any party may change any address to which notice is to be given to it by giving notice as provided above of such change of address.

(c) An electronic communication ("***Electronic Notice***") shall be deemed written notice for purposes of this Section 6.7 if sent with return receipt requested to the electronic mail address specified by the receiving party in a signed writing in a nonelectronic form. Electronic Notice shall be deemed received at the time the party sending Electronic Notice receives verification of receipt by the receiving party. Any party receiving Electronic Notice may request and shall be entitled to receive the notice on paper, in a nonelectronic form ("***Nonelectronic Notice***") which shall be sent to the requesting party within five (5) days of receipt of the written request for Nonelectronic Notice.

Section 6.8 DGCL Electronic Notice. Each party hereto generally consents to the delivery of any stockholder notice pursuant to the Delaware General Corporation Law (the "***DGCL***"), as amended or superseded from time to time, by electronic transmission (a "***DGCL Electronic Notice***") pursuant to Section 232 of the DGCL at the electronic mail address or the facsimile number set forth below such party's name on the Schedules hereto, as updated from time to time by notice to the Company, or as the books of the Company. To the extent that any DGCL Electronic Notice is returned or undeliverable for any reason, the foregoing consent shall be deemed to have been revoked until a new or corrected electronic mail address has been provided, and such attempted DGCL Electronic Notice shall be ineffective and deemed to not have been given. Each party hereto hereby agrees to promptly notify the Company of any change in such holder's electronic mail address, but failure to do so shall not affect the foregoing.

Section 6.9 Dispute Resolution.

(a) Arbitration. Notwithstanding anything contained in this Agreement to the contrary, and except for the equitable remedies provided in Section 6.9(b), in the event there is an unresolved legal dispute between the parties and/or any of their respective officers, directors, partners, employees, agents, affiliates or other representatives that involves legal rights or remedies arising from this Agreement, the parties agree to submit their dispute to binding arbitration under the authority of the Federal Arbitration Act; *provided*, *however*, that the Company or such applicable affiliate thereof may pursue a temporary restraining order and/or preliminary injunctive relief in connection with any confidentiality covenants or agreements binding on any of the parties, with related expedited discovery for the parties, in a court of law, and, thereafter, require arbitration of all issues of final relief. The Arbitration will be conducted by the American Arbitration Association, or another, mutually agreeable arbitration service. The arbitrator(s) shall be duly licensed to practice law in the State of Texas. The discovery process

shall be limited to the following: Each side shall be permitted no more than (i) two party depositions of six hours each. Each deposition is to be taken pursuant to the Texas Rules of Civil Procedure; (ii) one non-party deposition of six hours; (iii) twenty-five interrogatories; (iv) twenty-five requests for admission; (v) ten requests for production. In response, the producing party shall not be obligated to produce in excess of 5,000 total pages of documents. The total pages of documents shall include electronic documents; (vi) one request for disclosure pursuant to the Texas Rules of Civil Procedure. Any discovery not specifically provided for in this paragraph, whether to parties or non-parties, shall not be permitted. The arbitrator(s) shall be required to state in a written opinion all facts and conclusions of law relied upon to support any decision rendered. No arbitrator will have authority to render a decision that contains an outcome determinative error of state or federal law, or to fashion a cause of action or remedy not otherwise provided for under applicable state or federal law. Any dispute over whether the arbitrator(s) has failed to comply with the foregoing will be resolved by summary judgment in a court of law. In all other respects, the arbitration process will be conducted in accordance with the American Arbitration Association's dispute resolution rules or other mutually agreeable, arbitration service rules. The party initiating arbitration shall pay all arbitration costs and arbitrator's fees, subject to a final arbitration award on who should bear costs and fees. All proceedings shall be conducted in Dallas, Texas, or another mutually agreeable site. Each party shall bear its own attorneys fees, costs and expenses, including any costs of experts, witnesses and/or travel, subject to a final arbitration award on who should bear costs and fees. The duty to arbitrate described above shall survive the termination of this Agreement. Except as otherwise provided above, the parties hereby waive trial in a court of law or by jury. All other rights, remedies, statutes of limitation and defenses applicable to claims asserted in a court of law will apply in the arbitration.

(b) Equitable Relief. Each party hereto acknowledges and agrees that any breach of this Agreement would result in substantial harm to the other parties hereto for which monetary damages alone could not adequately compensate. Therefore, the parties hereto unconditionally and irrevocable agree that nay non-breaching party hereto shall be entitled to seek protective orders, injunctive relief and other remedies available at law or in equity (including, without limitation, seeking specific performance or the rescission of purchases, sales and other transfers of Securities not made in strict compliance with this Agreement).

Section 6.10 Severability. If one or more provisions of this Agreement are held to be unenforceable under applicable law, such provision shall be excluded from this Agreement and the balance of the Agreement shall be interpreted as if such provision were so excluded and shall be enforceable in accordance with its terms.

Section 6.11 Amendments and Waivers. Subject to the last sentence of this Section 6.11, 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 (i) the Company, (ii) HCMLP, (iii) the Highland Capital Stockholders holding a majority of the Shares of the Company's Capital Stock held by Highland Capital, and (iv) at any such time as Highland Capital does not hold a majority of the Shares of the Company's capital stock that are subject to this Agreement, the Stockholders holding a majority of the shares of the Company's capital stock (on an as-converted to Common Stock basis) then held by all Stockholders that are subject to this Agreement, *provided* that the

consent of the Remaining Stockholders shall not be required for any amendment or waiver if such amendment or waiver either (A) is not directly applicable to the rights of the Remaining Stockholders hereunder or (B) does not materially and adversely affect the rights of the Remaining Stockholders in a manner that is disproportionate to the effect on the rights of the other parties hereto. Notwithstanding the foregoing, any provision hereof may be waived by the waiving party on such party's own behalf, without the consent of any other party. Any amendment or waiver effected in accordance with this Section 6.11 shall be binding upon each party to this Agreement and each future party to this Agreement. Notwithstanding the foregoing, neither (i) the addition of parties hereto as a condition to such person participating in a transaction described herein, nor (ii) the addition of a party hereto as a result of such party being or becoming a Highland Capital Stockholder, shall be deemed an amendment hereto, nor shall any update to the Schedules hereto from time to time to reflect the correct holdings of or other information with respect to the parties. No provision of this Agreement that is applicable expressly to Crusader, including Section 1.1(b)(vi), Section 1.1(b)(vii), Section 1.2(d), Section 4.1(a), Section 4.1(d), Section 5.1 and this Section 6.11, shall be amended in any respect that is applicable to Crusader without the prior written consent of Crusader.

Section 6.12 Aggregation of Stock. All shares of Common Stock or other Securities of the Company held or acquired by affiliated entities or persons (including, without limitation, the Common Stock or other Securities held by Highland Capital) may be aggregated together for the purpose of determining the availability of any rights under this Agreement. For the purposes of determining the availability of any rights under this Agreement, the holdings of transferees and assignees of an individual or a partnership who are spouses, ancestors, lineal descendants or siblings of such individual or partners or retired partners of such partnership or partnerships affiliated with such transferring or assigning partnership (including spouses and ancestors, lineal descendants and siblings of such partners or spouses who acquire Common Stock by gift, will or intestate succession) shall be aggregated together with the individual or partnership, as the case may be, for the purpose of exercising any rights or taking any action under this Agreement.

Section 6.13 Entire Agreement. This Agreement (including the Schedules hereto, if any) constitutes the full and entire understanding and agreement between the parties with regard to the subject matter hereof and thereof and supersedes any and all prior agreements relating to the subject matter hereof, including without limitation the First Stockholders' Agreement. The Company and each Stockholder acknowledges and agrees that neither the Company's Certificate of Incorporation or Bylaws shall be amended to include any transfer restrictions on the Company's Securities (it being understood that any and all applicable transfer restrictions, other than those arising under the securities laws generally, shall be as set forth herein).

Section 6.14 Stock Splits, Stock Dividends, etc. In the event of any stock split, stock dividend, capitalization, reorganization, or the like, any securities issued with respect to the shares of the Company's capital stock held by the Stockholders shall become subject to the terms of this Agreement.

Section 6.15 Cumulative Remedies. In addition to the rights and remedies stated in this Agreement, each party hereto shall have all those rights and remedies allowed by applicable laws. The rights and remedies of each party are cumulative and recourse to one or more right or remedy shall not constitute a waiver of the others.

Section 6.16 Rights of Stockholders. Each of HCMLP and each Stockholder, in its sole and absolute discretion, may exercise or refrain from exercising any rights or privileges that such Stockholder may have pursuant to this Agreement, the Company's Certificate of Incorporation or Bylaws, or at law or in equity; and neither HCMLP nor such Stockholder shall incur or be subject to any liability or obligation to the Company, any other party hereto, or any other person, by reason of exercising or refraining from exercising any such rights or privileges.

Section 6.17 Further Assurance. At any time or from time to time after the date hereof, the parties agree to cooperate with each other, and at the request of any other party, to execute and deliver any further instrument or documents and take all such further action as the other party may reasonably request in order to evidence or effectuate the consummation of the transactions contemplated hereby and to otherwise carry out the intent of the parties hereunder.

Section 6.18 Joint Product. This Agreement is the joint product of the Company and the other parties hereto and each provision hereof and thereof has been subject to the mutual consultation, negotiation and agreement of the Company and the other parties hereto and shall not be construed against any party hereto.

[Signature Pages Follow]

IN WITNESS WHEREOF, the undersigned party has executed this counterpart signature page to the Amended & Restated Stockholders' Agreement as of the date first above written.

COMPANY:

CORNERSTONE HEALTHCARE GROUP HOLDING, INC.

By: _____
Name: _____
Title: _____

HCMLP:

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: Strand Advisors, Inc., its general partner

By: _____
Name: _____
Title: _____

HIGHLAND CAPITAL STOCKHOLDERS:

Highland Credit Opportunities Holding Corporation

By:_____
Name: _____
Title: _____

Highland Credit Strategies Holding Corporation

By:_____
Name: _____
Title: _____

Highland Capital Management, L.P.

By: Strand Advisors, Inc., its general partner

By:_____
Name: _____
Title: _____

REMAINING STOCKHOLDERS:

Highland Crusader Holding Corp.

By: _____
Name: Mark S. DiSalvo
Title: Authorized Signatory

SCHEDULE A

Highland Capital Stockholders
(as of [●], 2020)

Name/Address	Number of Shares
Highland Credit Opportunities Holding Corporation 13455 Noel Road, Suite 800 Dallas, Texas 75240	4,029
Highland Credit Strategies Holding Corporation 13455 Noel Road, Suite 800 Dallas, Texas 75240	8,119
Highland Capital Management, L.P. 13455 Noel Road, Suite 800 Dallas, Texas 75240	1,022
Highland Restoration Capital Partners Master, L.P. 13455 Noel Road, Suite 1300 Dallas, Texas 75240	6,655
Highland Restoration Capital Partners, L.P. 13455 Noel Road, Suite 1300 Dallas, Texas 75240	5,445
Total	**25,270**

SCHEDULE B

Remaining Stockholders
(as of [●], 2020)

Name/Address	Number of Shares
Highland Crusader Holding Corp. 800 Turnpike Street, Suite 300 North Andover, MA 01845	14,830

EXHIBIT A

Adoption Agreement

This Adoption Agreement ("***Adoption Agreement***") is executed by the undersigned (the "***Transferee***") pursuant to the terms of that certain Amended & Restated Stockholders' Agreement dated as of _____ (the ***Stockholders' Agreement***") by and among Cornerstone Healthcare Group Holding, Inc. (the "***Company***"), Highland Capital Management, L.P. and certain holders of its Common Stock. Capitalized terms used but not defined herein shall have the respective meanings ascribed to such terms in the Stockholders' Agreement.

1. Acknowledgement. Transferee acknowledges that Transferee is acquiring certain shares of the capital stock of the Company (the "***Stock***"), which shares are subject to the terms and conditions of the Stockholders' Agreement.

2. Agreement. As partial consideration for such transfer, Transferee (i) agrees that the Stock acquired by Transferee shall be bound by and subject to the terms of the Stockholders' Agreement, to the same extent and with the same rights and obligations as the person(s) from which such Stock is received and (ii) hereby agrees to become a party to the Stockholders' Agreement with the same force and effect as if Transferee were originally a party thereto in the capacity of a [Highland Capital / Remaining] Stockholder.

3. Notice. Any notice required or permitted by the Stockholders' Agreement shall be given to Transferee at the address listed beside Transferee's signature below.

4. Joinder. The spouse of the undersigned Transferee, if applicable, executes this Adoption to acknowledge its fairness and that it is in such spouse's best interests, and to bind to the terms of the Stockholders' Agreement such spouse's community interest, if any, in the Stock.

EXECUTED AND DATED this ____ day of _____, ____.

TRANSFEREE:

_____

Title: _____
Address: _____
Fax: _____

Spouse: (if applicable):

_____
Name:

Acknowledged and accepted on _____, _____.

CORNERSTONE HEALTHCARE GROUP HOLDING, INC.

By:_____
Name: _____
Title: _____

EXHIBIT B

(To Be Filed under Seal)

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

	)	**Case No. 19-34054-sgj-11**
In Re:	)	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
For the Official Committee of Unsecured Creditors:	Matthew A. Clemente SIDLEY AUSTIN, LLP One South Dearborn Chicago, IL 60603 (312) 853-7539
Recorded by:	Michael F. Edmond, Sr. UNITED STATES BANKRUPTCY COURT 1100 Commerce Street, 12th Floor Dallas, TX 75242 (214) 753-2062

Transcribed by:

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(972) 786-3063

Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

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.)

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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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CERTIFICATE OF SERVICE

I certify that this document was filed electronically through the Court's ECF system, which will notify all registered participants as identified on the Notice of Electronic Filing.

Dated: December 21, 2020

/s/ Sarah Tomkowiak
Sarah Tomkowiak