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

In re: HIGHLAND CAPITAL MANAGEMENT, L.P., Debtor.	§ § § § § §	Bankruptcy Case No. 19-34054-sgj-11
HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P. and NEXPOINT ADVISORS, L.P., Appellants, v. HIGHLAND CAPITAL MANAGEMENT, L.P., Appellee.	§ § § § § § § § § § §	Civ. Act. No. 3:21-cv-00538-N

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HIGHLAND GLOBAL ALLOCATION FUND, HIGHLAND INCOME FUND, NEXPOINT CAPITAL, INC., and NEXPOINT STRATEGIC OPPORTUNITIES FUND, Appellants, v. HIGHLAND CAPITAL MANAGEMENT, L.P., Appellee.	§	Civ. Act. No. 3:21-cv-00539-N
JAMES DONDERO, Appellant, v. HIGHLAND CAPITAL MANAGEMENT, L.P., Appellee.	§	Civ. Act. No. 3:21-cv-00546-L
GET GOOD TRUST and THE DUGABOY INVESTMENT TRUST, Appellants, v. HIGHLAND CAPITAL MANAGEMENT, L.P., Appellee.	§	Civ. Act. No. 3:21-cv-00550-L

APPENDIX IN SUPPORT OF DEBTOR'S OMNIBUS RESPONSE TO MOTIONS FOR STAY PENDING APPEAL OF THE CONFIRMATION ORDER

The above-captioned debtor and debtor-in-possession (the "Debtor") hereby files this appendix in support of *Debtor's Omnibus Response to Motions for Stay Pending Appeal of the Confirmation Order* (the "Response").[1]

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[1] All capitalized terms used but not defined herein have the meanings given to them in the Response.

	Dondero, Adv. Proc. No. 20-03190-sgj, D.I. 59 (Bankr. N.D. Tex. Jan. 11, 2021)
12	Summary of Dondero Entity Litigation
13	*Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (with Technical Modifications)*, Ex. R, Form of Claimant Trust Agreement [D.I. 1811-2]
14	*Plaintiff Highland Capital Management, L.P.'S Verified Original Complaint for Declaratory and Injunctive Relief* Adv. Proc. No. 21-03000-sgj [D.I. 1])
15	*Servicing Agreement*, dated December 20, 2007, by and among Greenbriar CLO, Ltd. and Highland Capital Management, L.P. [D.I. 1822-31]
16	*Notice of Debtor's Amended Operating Protocols*, Ex. A [D.I. 466] Debtor's Amended Witness and Exhibit List With Respect to Evidentiary Hearing to be Held on December 16, 2020 [D.I. 1579-2]
17	*Supplemental Certification of Patrick M. Leatham with Respect to the Tabulation of Votes on the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [D.I. 1887]
18	Transcript February 3, 2021

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Respectfully submitted,

Dated: April 16, 2021.

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APPENDIX 1

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

In re: HIGHLAND CAPITAL MANAGEMENT, L.P., Debtor.	§	Bankruptcy Case No. 19-34054
HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P. and NEXPOINT ADVISORS, L.P., Appellants, v. HIGHLAND CAPITAL MANAGEMENT, L.P., Appellee.	§	Civ. Act. No. 3:21-cv-00538-N

BRIEF IN SUPPORT OF APPELLANTS' MOTION FOR STAY PENDING APPEAL

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TO THE HONORABLE DAVID C. GODBEY, U.S. DISTRICT JUDGE:

COME NOW Highland Capital Management Fund Advisors, L.P. and NexPoint Advisors, L.P. (the "Movants" or "Appellants"), creditors and parties-in-interest in the above styled and numbered bankruptcy case (the "Bankruptcy Case") of Highland Capital Management, L.P. (the "Debtor"), and file this their brief in support of their *Motion for Stay Pending Appeal* (the "Motion"), respectfully stating as follows:

I. SUMMARY[1]

1. The Bankruptcy Court, by entering the Confirmation Order and confirming the Plan, made two fundamental errors as a matter of law. First, the Plan violates the Absolute Priority Rule by providing property and a potential recovery to equity holders even though unsecured creditors rejected the Plan. Second, the Plan contains exculpation and injunction provisions directly foreclosed and prohibited by binding precedent from the Fifth Circuit and from this Court. This second issue, which the Bankruptcy Court agreed raised a serious legal question for purposes of a stay pending appeal, is of particular importance to the Appellants, who are subject to the Plan's permanent injunctions even during the pendency of this Appeal.

2. Thus, on the first element of a stay pending appeal, the Appellants will demonstrate that they have a likelihood of success on the merits of their Appeal. As for the second element, the Appellants will suffer irreparable injury absent a stay of the Confirmation Order. If the Plan becomes effective, the Debtor will argue that any appeal will be equitably moot, and the Appellants' right to have an Article III judge review the appropriateness of the Confirmation Order may be lost. More particularly, if the Plan's permanent injunctions prevent the Appellants from exercising their lawful and contractual rights, then they will suffer

[1] Capitalized terms used in this Summary are defined below.

irreparable injury as a matter of law, especially because the Plan exculpates the Debtor from various forms of potential liability that the prompt exercise of those rights may prevent.

3. On the third element, a stay pending appeal will not substantially harm the Debtor. The Plan provides for no exit financing, no capital infusion, and no sale of property. The Plan does not provide the Debtor with anything that it does not have at present to manage its estate and monetize its assets. The Plan, while labeled a "reorganization" plan, is in reality a "liquidation" plan, and whether the Debtor liquidates in Chapter 11 during the pendency of an appeal, or outside of Chapter 11, will not materially prejudice or harm its plans.

4. On the fourth element, the public interest will best be served by staying the Confirmation Order. Thousands of innocent investors, whose investments the Debtor manages and who the Appellants advise, have had their rights impaired by the Plan and are enjoined from exercising their solemn contractual rights. Potential claims they hold against the Debtor's management and others are simultaneously judicially extinguished through the Plan's impermissible exculpation provisions. And, the public interest cannot be served by permitting a Plan that clearly violates express Fifth Circuit precedent, as well as precedent from this Court, to become effective. Respect for the law, precedent, and the judiciary is as important, if not more so, than the discrete issues involved with the Plan.

II. BACKGROUND[2]

5. On February 22, 2021, the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, the Honorable Stacey G.C. Jernigan presiding, entered its *Order (i) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (ii) Granting Related Relief* [docket no. 1943] (the

[2] Contemporaneously with the filing of the Motion and this brief, the Movants are filing their *Appendix in Support of Appellants' Motion for Stay Pending Appeal* (the "Appendix"). Citations to the Appendix shall be notated as follows: Appx. #.

"Confirmation Order").[3] By the Confirmation Order, and over the Movants' objections, the Bankruptcy Court confirmed the *Debtor's Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* [Bankr. Dkt. No. 1808[4]], as further modified (the "Plan").[5]

6. The Movants advise and manage various funds and investment vehicles including, of relevance to the Bankruptcy Case, various publicly traded retail funds.[6] The Movants are registered as investment advisors under the Investment Advisors Act of 1940.[7] The Movants have fiduciary duties to the funds and other investment vehicles they advise and manage. Three of these retail funds managed by the Advisors are Highland Income Fund, NexPoint Strategic Opportunities Fund, and NexPoint Capital, Inc.[8] In turn, these funds have invested approximately $140 million in various collateralized loan obligations ("CLOs") managed by the Debtor pursuant to portfolio management agreements (the "Portfolio Management Agreements").[9]

7. Under most of the Portfolio Management Agreements, defined "cause" is required to remove the Debtor as manager of the CLOs,[10] but in a handful such removal is also possible without cause.[11] Under at least three of the Portfolio Management Agreements, these funds have the right to remove the Debtor as the manager of the CLOs, because these funds hold the requisite percentage of shares under the agreements to remove the CLO manager.[12] There are

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3 Appx. 1.
4 The Bankruptcy Court also attached a copy of the Plan to the Confirmation Order at Dkt. No. 1943. That is the copy that is included in the Appendix at Appx. 92.
5 Appx. 92.
6 Appx. 686 (beginning on line 10).
7 *See* Appx. 686 (beginning on line 17).
8 *See* Appx. 686 (beginning on line 20).
9 Appx. 689 (beginning on line 1).
10 Appx. 1233, 1259, 1299.
11 *E.g.*, Appx. 1297 (subparagraph (e)).
12 Appx. 1217; *see also*, *e.g.*, Appx. 1297.

various other CLOs where the funds do not hold the requisite percentage of shares to remove the Debtor as manager unilaterally, but are able to vote their shares to remove the Debtor as manager if other preference shareholders join in such removal and, collectively, the contractual threshold of voting preference shares for removal is met. Thus, should the Debtor, as manager, be acting inappropriately or against the wishes and interests of the funds, the funds have the contractual ability to protect themselves by removing the Debtor as the manager of their investments.

8. The Movants filed their notice of appeal of the Confirmation Order on March 1, 2021.[13] Various other creditors and parties-in-interest filed separate notices of appeal, and it is expected that the appeals will be consolidated.

9. On February 28, 2021, the Movants filed a motion with the Bankruptcy Court to stay the Confirmation Order pending appeal [Bankr. Dkt. No. 1955]. Various other parties filed separate motions to stay pending appeal, or joined in the Movants' motion. The Bankruptcy Court held a hearing on the motions for stay pending appeal on March 19, 2021. The Bankruptcy Court orally denied the motions, giving its oral findings of fact and conclusions of law, as supplemented by two orders denying the motions.[14] This Motion now follows.

III. ARGUMENTS AND AUTHORITIES

A. STANDARD FOR A STAY PENDING APPEAL

10. Bankruptcy Rule 8007 allows a bankruptcy court, in the first instance, to stay a judgment in order to maintain the status quo pending appeal. FED. R. BANKR. P. 8007(a)(1)(A). If denied, the appellant may then seek relief from the District Court. FED. R. BANKR. P. 8007(b). As discussed in the Motion, the Movants have satisfied the requirements for seeking such relief in this Court.

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13 Appx. 957.
14 Appx. 1134, 1323, 1326.

11. In determining whether to grant a discretionary stay pending appeal under Bankruptcy Rule 8007, courts consider the following criteria:

(1) the likelihood that the movant will prevail on the merits of the appeal;

(2) whether the movant will suffer irreparable injury if the stay is denied;

(3) whether other parties would suffer substantial harm if the stay is granted; and

(4) whether the public interest will be served by granting the stay.

In re First S. Sav. Ass'n, 820 F.2d 700, 709 (5th Cir. 1987); *In re Tex. Equip. Co.*, 283 B.R. 222, 226-27 (Bankr. N.D. Tex. 2002). The first two elements are the most critical. *Saldana v. Saldana*, 2015 WL 502145, at *2 (N.D. Tex. Aug. 25, 2015).

12. The fundamental purpose of a stay pending appeal, especially with respect to an order of an Article I court, is aptly summarized as follows:

> Without a stay, it is extremely unlikely that Appellants will ever be able to have meaningful appellate review of the rulings of the Bankruptcy Court, a non-Article III court, and in any event, a lower court. The ability to review decisions of the lower courts is the guarantee of accountability in our judicial system. In other words, no single judge or court can violate the Constitution and laws of the United States, or the rules that govern court proceedings, with impunity, because nearly all decisions are subject to appellate review. . . Thus, the ability to appeal a lower court ruling is a substantial and important right.

In re Adelphia Commc'ns. Corp., 361 B.R. 337, 342 (S.D.N.Y. 2007).

B. THERE IS A LIKELIHOOD OF SUCCESS ON THE MERITS

i. Legal Standard.

13. With respect to the first element, the likelihood of success on the merits:

> the Fifth Circuit has explained that the movant need not always show a 'probability' of success on the merits; instead, the movant need only present a substantial case on the merits when a serious legal question is involved and show that the balance of the equities weighs heavily in favor of granting the stay. When the issue appealed is mostly a factual question over which the bankruptcy court has broad discretion, such discretion is unlikely to be overturned on appeal. Thus, with respect to questions of fact, the movant usually fails to satisfy the first

> element. With respect to questions of law, however, especially questions involving the application of law, or when the law has not been definitively addressed by a higher court, the movant more easily satisfies the first element.

In re Tex. Equip. Co., 283 B.R. at 227 (internal citations and quotations omitted); *accord In re First S. Sav. Assoc.*, 820 F.2d at 704 ("the movant need only present a substantial case on the merits when a serious legal question is involved").

14. When considering the confirmation of a Chapter 11 plan, the Bankruptcy Court's findings of fact are reviewed for clear error, while its conclusions of law are reviewed *de novo*. *See In re Tex. Grand Prairie Hotel Realty LLC*, 710 F.3d 324, 326 n.1 (5th Cir. 2013). Here, the Movants challenge the Bankruptcy Court's rulings on issues of law. Therefore, the Movants "more easily satisf[y] the first element." *In re Tex. Equip. Co.*, 283 B.R. at 227.

ii. Absolute Priority Rule.

15. Class 8, a class of unsecured creditors, rejected the plan.[15] That means that the Plan could have only been confirmed under the cramdown provisions of section 1129(b) of the Bankruptcy Code. *See* 11 U.S.C. §§ 1129(b)(1); 1129(a)(8). In order to be confirmed, the Plan must be "fair and equitable" with respect to Class 8. A plan is "fair and equitable" with respect to Class 8 if:

> (i) the plan provides that each holder of a claim of such class receive or retain on account of such claim property of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or
>
> (ii) the holder of any claim or interest that is junior to the claims of such class will not receive or retain under the plan on account of such junior claim or interest any property.

11 U.S.C. § 1129(b)(2)(B).

[15] Appx. 943 – 949. One of the Movants, NexPoint Advisors, L.P., is a partial assignee of four Class 8 Claims. Appx. 1123 – 1133.

16. The Plan estimates a recovery to Class 8 creditors of 71% over time.[16] As such, subsection (i) above does not apply because Class 8 will not be paid in full. That means that the only way the Plan could be confirmed is under subsection (ii), also known as the Absolute Priority Rule. This Rule is simple: if the class rejects the Plan and is not paid in full under the Plan, then the holder of any junior interest; *i.e.* equity interest, cannot "receive or retain . . . any property" on account of its junior interest.

17. Here, the Plan violates the Absolute Priority Rule as a matter of law. This is because the Plan gives the holders of limited partnership interests in the Debtor contingent interests in the Claimant Trust.[17] There can be no question that the contingent trust interests the Plan gives to holders of equity interests is "property" within the meaning of the Absolute Priority Rule. The Debtor admitted this during closing arguments: "These are contingent interests. They are property. No doubt they are property."[18] The Debtor's Chief Executive Officer and Chief Restructuring Officer, who prepared and authorized the Plan for the Debtor, testified that the contingent interests are, in his belief, inchoate property interests.[19] Moreover, that witness confirmed that these contingent interests may have some value in the future.[20] As a matter of law, an interest in a trust, even one subject to a contingency that may never happen, is "property." *See In re Edmonds*, 273 B.R. 527, 529 (Bankr. E.D. Mich. 2000).

18. That is the beginning and end of the inquiry: the Absolute Priority Rule prohibits equity from receiving or retaining any "property" under the Plan, and that is precisely what they are receiving under the Plan. It does not matter that that property is subject to a contingency that

16 Appx. 41 (*See* Confirmation Order at p. 41).
17 Appx. 120 (Plan at p. 23 – 24).
18 Appx. 876 (Feb. 3 Confirmation Hearing Transcript at 242:19-20).
19 Appx. 516 (Feb. 2 Confirmation Hearing Transcript at 177:10 – 178:21).
20 Appx. 517 (Feb. 2 Confirmation Hearing Transcript at 178:22-25).

is only triggered if and when unsecured creditors are paid in full, or that the property has little to no value, or that the contingency may never occur: "property" is being received under the Plan.

19. The Debtor argued, and the Bankruptcy Court agreed, that these contingent interests may have no value and would only vest and be paid if unsecured creditors are paid in full, thus preserving the priority scheme of the Bankruptcy Code.[21] As for the argument regarding value, the United States Supreme Court has squarely rejected any such argument:

> Respondents further argue that the absolute priority rule has no application in this case, where the property which the junior interest holders wish to retain has no value to the senior unsecured creditors. In such a case, respondents argue, the creditors are deprived of nothing if such a so-called interest continues in the possession of the reorganized debtor. . . We join with the overwhelming consensus of authority which has rejected this 'no value' theory. . . Whether the value is present or prospective, for dividends or only for purposes of control a retained equity interest is a property interest. . . And while the Code itself does not define what 'property' means as the term is used in § 1129(b), the relevant legislative history suggests that Congress' meaning was quite broad. Property includes both tangible and intangible property.

Norwest Bank Worthington v. Ahlers, 485 U.S. 197, 207-08 (1988) (internal quotations and citations omitted). Thus, it does not matter that the "property" may be prospective, or that it may be intangible, or that it may have no value. All that matters is that "property," which is intended to be read broadly, is retained or received under the Plan. There can be no question that it is.

20. The Debtor and the Bankruptcy Court relied on *In re Introgen Therapeutics*, 429 B.R. 570 (Bankr. W.D. Tex. 2010) for the proposition that, so long as the contingent interests are not paid unless and until all unsecured claims are paid in full, the Absolute Priority Rule is not violated and is, in fact, preserved. As is the case here, the plan in *Introgen* provided that equity interests, which were retained, would only be paid if and when unsecured creditors were paid in full. This opinion was wrongly decided. First, it directly contradicts the language of the Bankruptcy Code, which implicates the Absolute Priority if *any* "property" is being retained or

[21] Appx. 45 (Confirmation Order p. 45).

received. Second, this opinion looked to the present value of what was being retained, something directly foreclosed by the Supreme Court's opinion in *Norwest Bank Worthington v. Ahlers* quoted above. Third, this opinion fails to take into account the Supreme Court's opinion in *Bank of Am. Nat'l Trust & Sav. Ass'n v. 203 N. Lasalle P'ship*, 526 U.S. 434 (1999). The Supreme Court equated the exclusive opportunity to bid on new equity under a plan as itself "property" that was being granted or retained in violation of the Rule: "[t]his opportunity should, first of all, be treated as an item of property in its own right." *Id.* at 455. If an exclusive "opportunity" is "property" for purposes of the Absolute Priority Rule, then the "opportunity" to perhaps share in a future recovery, however remote, is also "property."

21. The Bankruptcy Court misapplied the Absolute Priority Rule such that the Rule is vindicated so long as equity holders are not actually paid anything unless and until unsecured creditors are first paid in full. But that is neither the language nor the operation of the Rule. The Rule prohibits the receipt or retention of any property under the Plan, and it cannot be denied that equity holders receive or retain *some* property under the Plan, even if that property is contingent and of dubious value. The Movants therefore submit that they have presented "a substantial case on the merits when a serious legal question is involved." *In re Tex. Equip. Co.*, 283 B.R. at 227. Moreover, with respect to the Bankruptcy Court's conclusion that the Absolute Priority Rule is not violated because equity would not be paid anything unless and until all unsecured creditors are paid in full, and notwithstanding the holding of *In re Introgen Therapeutics* supporting that conclusion, neither the Supreme Court nor the Fifth Circuit has addressed this argument. Thus, because this issue has not been "definitively addressed by a higher court," the Movants have "more easily" satisfied this element. *See id*.

iii. Exculpation and Injunction Provisions.

22. The Plan contains a broad exculpation provision exculpating from certain liabilities not only the Debtor but also its professionals and third parties:

> Subject in all respects to ARTICLE XII.D of this Plan, to the maximum extent permitted by applicable law, no Exculpated Party will have or incur, and each Exculpated Party is hereby exculpated from, any claim, obligation, suit, judgment, damage, demand, debt, right, Cause of Action, remedy, loss, and liability for conduct occurring on or after the Petition Date in connection with or arising out of (i) the filing and administration of the Chapter 11 Case; (ii) the negotiation and pursuit of the Disclosure Statement, the Plan, or the solicitation of votes for, or confirmation of, the Plan; (iii) the funding or consummation of the Plan (including the Plan Supplement) or any related agreements, instruments, or other documents, the solicitation of votes on the Plan, the offer, issuance, and Plan Distribution of any securities issued or to be issued pursuant to the Plan, including the Claimant Trust Interests, whether or not such Plan Distributions occur following the Effective Date; (iv) the implementation of the Plan; and (v) any negotiations, transactions, and documentation in connection with the foregoing clauses (i)-(iv); *provided*, *however*, the foregoing will not apply to (a) any acts or omissions of an Exculpated Party arising out of or related to acts or omissions that constitute bad faith, fraud, gross negligence, criminal misconduct, or willful misconduct or (b) Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. This exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, any other applicable law or rules, or any other provisions of this Plan, including ARTICLE IV.C.2, protecting such Exculpated Parties from liability.[22]

"Exculpated Parties," in turn, means, collectively:

> (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Independent Directors, (v) the Committee, (vi) the members of the Committee (in their official capacities), (vii) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (viii) the CEO/CRO; and (ix) the Related Persons of each of the parties listed in (iv) through (viii).[23]

23. The Fifth Circuit has held that exculpation provisions designed to absolve parties other than the debtor and the creditors' committee of any negligent conduct that occurred during the course of the bankruptcy are *per se* inappropriate. *In re Pacific Lumber Co.*, 584 F.3d 229,

[22] Appx. 144 (Plan at 47-48).
[23] Appx. 106 (Plan at 9).

253 (5th Cir. 2009). Indeed, Fifth Circuit authorities broadly "foreclose non-consensual non-debtor releases and permanent injunctions." *Id.* at 252 (citing authorities); *see also In re Dropbox, Inc. v. Thru, Inc. (In re Thru, Inc.)*, Civil Action No. 3:17-CV-1958-G, 2018 WL 5113124 at *22-23, 2018 U.S. Dist. LEXIS 179769 at *62-64 (N.D. Tex. Oct. 19, 2018). This is because, in part, the Bankruptcy Code makes clear that a discharge discharges the debts of only the debtor and not of any other person or party. *See* 11 U.S.C. § 524(e). Exculpating, or judicially releasing, a person from potential liability to another is exactly the type of "non-consensual non-debtor releases" prohibited by *Pacific Lumber*.

24. That should be the beginning and the end of the inquiry: under *Pacific Lumber*, the exculpation of any party other than the Debtor and the members of the creditor's committee is *per se* impermissible. Here, the Plan exculpates the Debtor's employees and managers, as well as its bankruptcy professionals. The Plan also exculpates the Debtor's general partner, Strand—a non-debtor entity—and the directors of Strand. The Plan also exculpates all of their "Related Persons," with certain exceptions not applicable here. And, unlike the extremely narrow and limited exculpation permitted by *Pacific Lumber*, here the Plan exculpates various persons and entities not only for actions they may have taken in the bankruptcy case itself, but also for business decisions and for any matters that arise after confirmation of the Plan ("the implementation of the Plan"). It is the equivalent of a bankruptcy court exculpating General Motors from liability not only for selling a defective car during its bankruptcy case, in which case the consumer would at least have an administrative claim against the estate, but also for a defective car made and sold after the bankruptcy was over.

25. Indeed, this Court, in *In re Thru, Inc.*, struck down a similar exculpation clause to the one in the Plan approved by the same bankruptcy judge as here, even though the clause in

Thru Inc. was significantly narrower than the present one. 2018 WL 5113124 at *22-23, 2018 U.S. Dist. LEXIS 179769 at *62-64. The exculpation clause in that case provided as follows:

> Neither the Debtor nor any of its present officers, directors, employees, agents, advisors, or affiliates, nor any of its Professionals (collectively, the "Exculpated Persons"), shall have or incur any liability to any Entity for any act taken or omission made in good faith in connection with or related to formulating, negotiating, implementing, confirming or consummating the Plan, the Disclosure Statement or any Plan Document. The Exculpated Persons shall have no liability to the Debtor, any Creditor, Interest holder, any other party in interest in the Chapter 11 Case or any other Entity for actions taken or not taken under the Plan, in connection herewith or with respect thereto, or arising out of their administration of the Plan or the property to be distributed under the Plan, in good faith, including failure to obtain Confirmation or to satisfy any condition or conditions, or refusal to waive any condition or conditions, to the occurrence of the Effective Date, and in all respects such Exculpated Persons shall be entitled to rely upon the advice of counsel with respect to their duties and responsibilities under the Plan.

2018 WL 5113124 at *22, 2018 U.S. Dist. LEXIS 179769 at *62-64.

26. This Court concluded that "it was clearly erroneous for the bankruptcy court to approve" this provision under *Pacific Lumber* because the provision "bars the debtor's creditors from pursuing causes of actions against a number of non-debtor third parties, if those causes of action relate to the creditors' claims against the debtor." *Id*. Because this Court has already concluded that confirmation of a plan containing a virtually identical exculpation provision constituted an error as a matter of law under *Pacific Lumber*, the Movants have demonstrated a likelihood of success on the merits of their appeal regarding the Plan's exculpation provisions.

27. The issue is similar with respect to the Plan's sweeping, permanent injunction. The first such injunction provides that:

> Upon entry of the Confirmation Order, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, from taking any actions to interfere with the implementation or consummation of the Plan.[24]

28. As with exculpations, the Fifth Circuit in *Pacific Lumber* broadly foreclosed non-

[24] Appx. 147 (Plan at 50-51).

consensual "permanent injunctions." *In re Pacific Lumber Co.*, 584 F.3d at 252-53. This injunction also suffers from being both fatally overbroad and vague: what does any action to "interfere" with the "implementation or consummation" of the Plan mean? Are the Movants enjoined from advising their clients to exercise their contractual remedies against the Debtor, such as by removing investments managed by the Debtor or removing the Debtor as portfolio manager? That is what the Debtor testified to at the confirmation hearing, among other things.[25] As summarized by the Fifth Circuit with respect to the vagueness and breadth of an injunction:

> 'Vagueness' is a question of notice, *i.e.*, procedural due process, and 'broadness' is a matter of substantive law. [A]n injunction is overly vague if it fails to satisfy the specificity requirements set out in Rule 65(d)(1), and it is overbroad if it is not narrowly tailored to remedy the specific action which gives rise to the order as determined by the substantive law at issue. . . The Supreme Court has repeatedly emphasized that the specificity provisions of Rule 65(d) are no mere technical requirements. The Rule was designed to prevent uncertainty and confusion on the part of those faced with injunctive orders, and to avoid the possible founding of a contempt citation on a decree too vague to be understood.

Scott v. Schedler, 826 F.3d 207, 211-12 (5th Cir. 2016) (internal citations and quotations omitted).

29. The Movants and others should not be subjected to potential contempt actions and citations when the Plan fails to define with any reasonable specificity what it means to "interfere" with the "implementation or consummation" of the Plan.

30. More troubling is the so-called "gatekeeper" injunction, which requires the Movants, among others, to seek leave from the Bankruptcy Court and to demonstrate a "colorable" claim before they may take any action against various non-debtor parties, including for post-confirmation matters. This permanent injunction provides as follows:

> no Enjoined Party may commence or pursue a claim or cause of action of any kind against any Protected Party that arose or arises from or is related to the Chapter 11 Case, the negotiation of the Plan, the administration of the Plan or

[25] Appx. 537 (Confirmation Transcript (Feb. 2) 198:12-25).

property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, the administration of the Claimant Trust or the Litigation Sub-Trust, or the transactions in furtherance of the foregoing without the Bankruptcy Court (i) first determining, after notice and a hearing, that such claim or cause of action represents a colorable claim of any kind, including, but not limited to, negligence, bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Protected Party and (ii) specifically authorizing such Enjoined Party to bring such claim or cause of action against any such Protected Party; provided, however, the foregoing will not apply to a claim or cause of action against Strand or against any Employee other than with respect to actions taken, respectively, by Strand or by such Employee from the date of appointment of the Independent Directors through the Effective Date. The Bankruptcy Court will have sole and exclusive jurisdiction to determine whether a claim or cause of action is colorable and, only to the extent legally permissible and as provided for in ARTICLE XI, shall have jurisdiction to adjudicate the underlying colorable claim or cause of action.[26]

31. "Enjoined Party" includes the Movants.[27] "Protected Parties" is defined as:

(i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Reorganized Debtor, (v) the Independent Directors, (vi) the Committee, (vii) the members of the Committee (in their official capacities), (viii) the Claimant Trust, (ix) the Claimant Trustee, (x) the Litigation Sub-Trust, (xi) the Litigation Trustee, (xii) the members of the Claimant Trust Oversight Committee (in their official capacities), (xiii) New GP LLC, (xiv) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (xv) the CEO/CRO; and (xvi) the Related Persons of each of the parties listed in (iv) through (xv).[28]

32. Like exculpation, this is exactly the type of permanent injunction that effectuates a non-consensual release of a non-debtor party prohibited by *Pacific Lumber*. *In re Pacific Lumber Co.*, 584 F.3d at 252-53. Nor is this injunction appropriate because it purportedly provides a safety-valve in the nature of seeking leave from the Bankruptcy Court. Why should a party with a claim have to seek leave from any court before bringing its claim? Why should a party have to prove, *a priori*, that its claim is colorable before it can bring that claim? Most importantly, why should the party have to do so before the Bankruptcy Court which, after

[26] Appx. 147 (Plan at 50-51).
[27] Appx. 105 (Plan at 8).
[28] Appx. 110 (Plan at 13).

confirmation, will have very narrow jurisdiction?

33. The question of the Bankruptcy Court's postconfirmation jurisdiction demonstrates the impropriety of this injunction. Jurisdiction, of course, cannot be judicially created nor created by agreement. "After a debtor's reorganization plan has been confirmed, the debtor's estate, and thus bankruptcy jurisdiction, ceases to exist, other than for matters pertaining to the implementation or execution of the plan." *In re Craig's Stores of Tex. Inc.*, 266 F.3d 388, 390 (5th Cir. 2001). The Bankruptcy Court will have no jurisdiction to determine whether an action is "colorable," especially with respect to actions that arise after confirmation ("the wind down of the business of the Debtor or Reorganized Debtor"). Yet, even though the Bankruptcy Court will have no jurisdiction to determine whether an action is "colorable," the person wishing to bring the action will be subject to the injunction anyway.

34. Thus, the "safety valve" is illusory. And, if the Bankruptcy Court attempts to take jurisdiction and determines that the action is not "colorable," now the person has been denied his day in court and has been denied his due process because an Article I court, without even Article I jurisdiction, has effectively decided the person's claims or cause of action without trial, without jury, and without appeal. Or, the person must risk contempt and other serious consequences by proceeding with his claim anyway, under the belief and argument that the gatekeeper injunction is ultimately unenforceable. This is of particular relevance and concern to the Movants and to the funds they advise and manage, who have Constitutionally protected contractual rights against the Debtor that they are now effectively permanently enjoined from enforcing.

35. All of these exculpation and injunction provisions effectuate precisely what *Pacific Lumber* forecloses: a non-consensual release, whether expressly or effectively through an injunction, or a claim held by a non-debtor against a non-debtor. Even the Bankruptcy Court

agreed that this was a "serious legal issue" for purposes of a stay pending appeal.[29] In fact, the Bankruptcy Court stated its belief that the Fifth Circuit would "extend the holding of *Pacific Lumber*" with respect to the proper scope of an exculpation provision.[30] But then that is precisely the point: if the holdings and limitations of *Pacific Lumber* must be extended in order for the Plan's exculpation provision to be permissible, then the Movants have demonstrated a likelihood of success on the merits of this issue *per se*, for this admits that the exculpation provision is impermissible under the current state of the law. At a minimum, the Movants have shown a substantial case on the merits and the balance of equities weighs heavily in favor of a stay. *See In re First S. Savings*, 820 F.2d at 704; *In re Dernick*, No. 18-32417, 2019 WL 236999, at *3 (Bankr. S.D. Tex. Jan. 16, 2019); *In re Tex. Equipment Co.*, 283 B.R. at 227. "A serious legal question exists when legal issues have far-reaching effects, involve significant public concerns, or have a broad impact on federal/state relations." *In re Dernick*, 2019 WL 236999, at *3; *see In re Westwood Plaza Apartments, Ltd.*, 150 B.R. 163, 168 (Bankr. E.D. Tex. 1993).

C. MOVANTS WILL SUFFER IRREPARABLE INJURY WITHOUT A STAY

36. The focus of the second element is whether, absent a stay pending appeal, the Movants may suffer irreparable injury in the form of effectively being denied appellate review due to mootness or similar considerations. *See In re Tex. Equip. Co.*, 283 B.R. at 228. In this respect, it is important to distinguish the *confirmation* of a plan from the *effectiveness* of a plan, for the Plan becomes operative only when it is declared to be effective once all conditions precedent are satisfied.[31] As of the filing of this Motion, the Plan has yet to become effective; thus, the relief requested in this Motion cannot be argued to be moot. Second, it is important to

[29] Appx. 1204 (lines 4 – 8).
[30] Appx. 1203 (lines 8 – 24).
[31] Appx. 142 (Article VIII of the Plan governing effectiveness of the Plan).

note that, under the Plan, the Debtor has assumed the CLO Portfolio Management Agreements, by which it manages well over $1 billion in other people's money.[32] The law is clear that, upon the assumption of an executory contract, the Debtor assumes and accepts all obligations and burdens going forward, and the rights of the contract counterparty going forward are fully preserved. *See In re Nat'l Gypsum Co.*, 208 F.3d 498, 506 (5th Cir. 2000); *In re Rigg*, 198 B.R. 681, 685 (Bankr. N.D. Tex. 1996).

37. Most importantly, as argued above with respect to the Plan's exculpation and injunction provisions, the Movants are subject to the Plan's permanent injunctions that prevent them from taking actions or from advising or causing their clients to take actions, including the removal of the Debtor as CLO manager under the Portfolio Management Agreements which the Debtor has otherwise assumed and must, therefore, live with. Being enjoined from doing what one otherwise has the lawful right to do is irreparable injury as a matter of law. *See, generally, Associated Press v. Otter*, 682 F.3d 821, 826 (9th Cir. 2012); *Cooper v. U.S. Postal. Serv.*, 246 F.R.D. 415, 418 (D. Conn. 2007). While these cases arise in the context of the First Amendment, their principles should extend to the exercise of all lawful rights being enjoined but, even if not, the Movants' First Amendment rights are enjoined by the Plan because they are prohibited from advising their clients to take various actions against the Debtor, including to terminate the Debtor's CLO management rights.

38. This is especially the case because the Debtor has stated that it intends to liquidate and wind down the CLOs in approximately two years.[33] During that time, if the Movants dispute how the Debtor is doing so, or believe they have claims against the Debtor for how it is doing so, or wish to advise or cause their clients to take action against the Debtor on account of the same,

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[32] Appx. 47 (Confirmation Order pp. 47-48); Appx. 68 (Confirmation Order pp. 68-69).

[33] Appx. 451, line 5 ("We anticipate that we'll be able to monetize the assets in two years."); Appx. 521, line 5 (same).

they will be prohibited by the Plan from doing so and the Debtor will be exculpated. Thus, absent a stay pending appeal, by the time that the Movants may ultimately prevail on their Appeal, various rights will effectively have been lost for good, and potential injuries caused during the interim may be impossible to remedy.

39. The other important issue for irreparable injury is the prospect of equitable mootness, which is an appellate doctrine that may foreclose appellate review of a substantially consummated Chapter 11 plan notwithstanding the merits of the appeal, because it may be effectively too late to "unscramble the eggs." *See, e.g., In re Blast Energy Services, Inc.*, 593 F.3d 418, 424 (5th Cir. 2010). Indeed, the Fifth Circuit in *Pacific Lumber*, recognized the potential issues with denying a stay of a confirmation order pending appeal:

> Although the exigencies of the case appeared to demand prompt action, simply denying a stay seems to have been, and often will be, too simplistic a response. A plan may be designed to take effect, as it was here, after a lapse of sufficient time to initiate appellate review. A supersedeas bond may be tailored to the scope of the appeal. An appeal may be expedited. As with all facets of bankruptcy practice, myriad possibilities exist. Thus, substantial legal issues can and ought to be preserved for review.

584 F.3d at 243.

40. Case law confirms that the threat of equitable mootness can constitute irreparable injury when a confirmation order is being appealed. *See, e.g., In re Westwood Plaza Apartments*, 150 B.R. at 169 (factor tilted in favor of granting stay); *In re Thru, Inc.*, 2018 WL 5113124, at *12 (equitable mootness more likely if no stay has been obtained and plan has been substantially consummated); *see also In re Best Products Co.*, 177 B.R. 791 (S.D.N.Y. 1995) (dismissing appeal of confirmation order as moot where appellant failed to seek stay of confirmation order and plan had been consummated); *but see SR Constr. Inc. v. Hall Palm Springs, LLC*, 2020 U.S. Dist. LEXIS 224334, *7 (N.D. Tex. Dec. 1, 2020) ("the risk of mooting a bankruptcy appeal,

standing alone, does not constitute irreparable harm warranting a stay" (emphasis added)). And the threat of equitable mootness necessarily gives rise to irreparable injury because, even though one does not have the right to prevail on appeal, one has the right to appeal a confirmation order, especially when one considers the fact that an Article III court must be able to review the actions of an Article I court. *See, generally,* 28 U.S.C. § 158 (providing for appeal as of right for final orders).

D. NO SUBSTANTIAL HARM TO DEBTOR OR OTHER PARTIES

41. A stay pending appeal is also justified under the third prong because neither the Debtor, nor any of the Debtor's creditors, will be substantially harmed by a stay of the Confirmation Order pending appeal. Courts have found substantial harm to other parties if the stay would cause a significant delay in the administration of the estate or a delay in the distribution to creditors under the plan. *In re Dernick*, 2019 WL 236999, at *4. Here, a stay will not lead to any harm, much less substantial harm, to the Debtor or other creditors. This is because the Debtor can continue doing exactly what it would do under the Plan: (i) the CEO/CRO is still in charge and the members of the creditors committee will be on the trust oversight board, with the addition of one additional member; (ii) the CEO/CRO can continue administering the estate the same as he is doing now; (iii) the CEO/CRO can continue managing affirmative litigation the same as he is doing now; (iv) the CEO/CRO can continue managing the CLOs and funds that the Debtor manages the same as he is doing now; (v) there is no exit financing under the Plan; (vi) there are no asset sales or compromises under the Plan that cannot be effectuated without the Plan; and (vii) there is no new money or new value being contributed under the Plan.[34]

[34] Appx. 524 (Confirmation Transcript (Feb. 2, 2001) 185:3-188:5).

42. As the Debtor's CEO/CRO confirmed, "post-confirmation, you are basically going to continue managing the CLOs and funds and trying to monetize assets for creditors the same as you are today."[35] And, as the CEO/CRO confirmed, he does not "need anything in the plan that [he] does [not] have today to keep managing" the "Funds and the CLOs."[36] Instead, as the CEO/CRO confirmed, the only difference is that he would not be willing to serve as the post-confirmation trustee without the Plan's channeling Injunction, and that the reorganized debtor would be unable to obtain directors and officers insurance.[37] But that is precisely the point: a Plan should not have as its principal purpose the entry of an injunction limiting the ability of parties to exercise their rights for matters arising *after* confirmation and assumption.

43. The Court should also take into account that 27 Class 8 creditors rejected the Plan, while only 17 accepted the Plan.[38] It is the unsecured creditors who would be the only ones potentially prejudiced if the Plan is stayed, as that may delay their recoveries. But Class 8 overwhelmingly rejected the Plan. While 16 Class 7 convenience class creditors accepted the Plan, the total cost to pay those creditors is approximately $10 million.[39] The Debtor has more than sufficient cash on hand to pay these creditors with an interim distribution if it so wished. The five subordinated creditors accepting the Plan do not matter, since they are not projected to receive anything under the Plan, and if they do receive anything, it will be years into the future after extensive litigation. As for the Class 2 Frontier Secured Claim, the Debtor has many options to treat this secured claim with adequate protection and other payments that it can do without need for the Plan.

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35 Appx. 527 (Confirmation Hearing Transcript (February 2, 2021) at 188:2-5).
36 *Id.* (Confirmation Hearing Transcript (February 2, 2021) at 188:23-189:2).
37 Appx. 507 (Confirmation Hearing Transcript (February 2, 2021) at 168:6-18).
38 Appx. 946.
39 Appx. 951.

E. THE PUBLIC INTEREST IS SERVED BY A STAY PENDING APPEAL

44. Because the Plan's exculpation and injunction provisions impermissibly infringe upon the contractual, legal and due process rights of parties in interest in the bankruptcy case, including such interests and rights *after* the Debtor exists bankruptcy, a stay pending appeal of the Plan will serve the public interest. The rights of thousands of innocent investors who have invested in the CLOs or funds that the Debtor manages, totaling well over $1 billion, are at issue. A stay will ensure that non-debtor parties are held accountable for their post-petition and post-confirmation conduct, while preserving the rights and remedies of parties in interest under applicable non-bankruptcy law. The interests of these many innocent, third party investors must be taken into account, and their interests are not served by a plan that may effectively and permanently prevent them from exercising legitimate contractual and statutory rights, just because the Debtor wants to wind-down and liquidate its affairs. The public has a strong interest in ensuring that securities laws are complied with, including the Investment Advisers Act of 1940. The Plan's Exculpation Provision and Injunction threaten to substantially vitiate these laws and effectively relieve the Debtor from its obligations and duties (and potential liabilities) thereunder.

45. Additionally, the public interest is best served by requiring respect for judicial precedent, here *Pacific Lumber*. While the Bankruptcy Court believes that the Fifth Circuit will revisit its *Pacific Lumber* holdings and will expand *Pacific Lumber*, at present *Pacific Lumber* is the law and the Bankruptcy Court is as bound as anyone else to abide by the law. A Plan that clearly and directly violates *Pacific Lumber*, as well as this Court's precedent in *In re Thru*, should not be permitted to become effective unless and until the Fifth Circuit actually does revisit its precedent. Otherwise, under that precedent, that Plan is illegal, and the public interest

demands that an illegal plan not be given effect in the hope that, eventually, appellate review will be avoided under the doctrine of equitable mootness.

F. SECURITY FOR STAY PENDING APPEAL

46. The Court may, but need not, condition a stay pending appeal on a bond or other security being posted. As one Court has summarized:

> The purpose of a supersedeas bond is to preserve the status quo while protecting the non-appealing party's rights pending appeal. The bond secures the prevailing party against any loss sustained as a result of being forced to forgo execution on a judgment during the course of an ineffectual appeal. In deciding how best to secure the non-appealing party from loss, the court applies general equitable principles.

In re Tex. Equip. Co., 283 B.R. at 229.

47. Normally, the amount of any bond should be the amount of the judgment being stayed. The Movants are aware of one bankruptcy court concluding that, when the order being stayed is a confirmation order, the amount of the bond should be the entire amount of debt subject to the plan. *See In re Scotia Dev. LLC*, 2008 Bankr. LEXIS 5127 *32-*33 (Bankr. S.D. Tex. 2008). Here, however, the Plan does not propose to pay any claims any time soon, except for administrative claims and Class 7 convenience claims, both of which can be satisfied by the amount of cash the Debtor is presently holding. Thus, an analogy to *Scotia Dev. LLC* is not warranted, and applying its reasoning here would lead to a punitive result that would actually better the returns to creditors, meaning that it would do far more than preserve the status quo and protect against harm resulting from the stay pending appeal itself. Moreover, the risk in *Scotia Dev. LLC* was that the debtor's business would collapse from a lack of funding that the confirmed plan provided for. *See id*. at *25 ("the continued viability and operation of the debtors must be protected. All parties agree that some extraordinary program is required to allow these

debtors to survive more than even ten days. Without additional cash, both Scopac and Palco would have to shut down immediately"). No such considerations are present here.

48. Instead, the Movants respectfully submit that any such conclusion would be punitive and would not be warranted by the facts. *See, e.g., In re Gleasman*, 111 B.R. 595, 604 (Bankr. W.D. Tex. 1990) ("The purpose of a bond, after all, is to protect Franklin against any loss, not to confer a windfall. The property itself is not going anywhere"). As discussed above, the Plan does not give the Debtor anything it does not have now. No new funds are coming in, no exit financing is involved, and no asset sale is provided for in the Plan. Rather, the Debtor will simply continue doing under the Plan what it is doing now: it will manage its assets, funds, and the CLOs, and will continue monetizing its assets and managing litigation the same as now. Whatever the value of the assets being administered is today will be the same under the Plan as without the Plan. No new funds and no exit financing is involved. Nothing in the Plan gives the Debtor tools to administer its estate that it lacks at present, and nothing in the Plan will increase the value of assets available for creditors. Thus, there will be no harm to the Debtor or to the estate.

49. The only conceivable harm is from a delay in certain payments to certain creditors and minor added administrative expenses for having to file reports and pleadings with the Bankruptcy Court. If the Plan is affirmed, then those creditors would not have the use of those funds for a period of time. Here, the Debtor believes that it will distribute approximately $60 million to Class 7 and Class 8 creditors within one year of the Plan being confirmed.[40] As unsecured creditors, these creditors would be entitled to interest at the federal rate of post-judgment interest. *See In re Thru Inc.*, 2017 Bankr. LEXIS 1902 at *28-29. That rate is at present less than 1% and is unlikely to rise past that amount during the period of any stay. Thus,

[40] Appx. 951.

the interest that any creditor may be able to claim for any delay in payment is less than 1%, or less than $600,000.00. With respect to increased administrative costs for having to file reports and pleadings with the Bankruptcy Court, the Movants estimate that it cannot reasonably cost the Debtor more than $150,000.00 per month to have to continue filing reports and pleadings with the Bankruptcy Court that it would no longer have to do under its Plan.

50. The Bankruptcy Court has certified this Appeal for a direct appeal to the Fifth Circuit [Bankr. Dkt. No. 2034], and the Movants filed their petition for direct appeal with the Fifth Circuit on March 31, 2021. If the Fifth Circuit grants a direct appeal, the Movants submit that the Fifth Circuit will rule within sixteen (16) months while, if this Court will decide the Appeal, the Movants believe that this Court will decide the Appeal within twelve (12) months.

51. The Movants therefore submit that a bond or security of no more than $3 million is sufficient to protect the Debtor and its estate from any harm resulting from the delay in the effectiveness of the Plan.

IV. CONCLUSION

WHEREFORE, premises considered, the Movants request that the Court enter an Order: (i) staying the effectiveness of the Confirmation Order pending appeal through the Fifth Circuit; and (ii) granting such other relief as is just and proper.

RESPECTFULLY SUBMITTED this 1st day of April, 2021.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on this the 1st day of April, 2021, true and correct copies of this document, with any exhibits attached thereto, were served on the recipients listed below via email, and on April 2, 2021, true and correct copies of this document, with any exhibits attached thereto, were served on the recipients listed below via first class U.S. mail, postage prepaid:

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APPENDIX 2

The following constitutes the ruling of the court and has the force and effect therein described.

Signed February 22, 2021

United States Bankruptcy Judge

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

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

ORDER (I) CONFIRMING THE FIFTH AMENDED PLAN OF REORGANIZATION OF HIGHLAND CAPITAL MANAGEMENT, L.P. (AS MODIFIED) AND (II) GRANTING RELATED RELIEF

The Bankruptcy Court[2] having:

a. entered, on November 24, 2020, the *Order (A) Approving the Adequacy of the Disclosure Statement, (B) Scheduling A Hearing to Confirm the Fifth Amended Plan of Reorganization (C) Establishing Deadline for Filing Objections to Confirmation of Plan, (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures, and (E) Approving Form and Manner of Notice* [Docket No. 1476] (the "Disclosure Statement Order"), pursuant to which the Bankruptcy Court approved the adequacy of the *Disclosure Statement Relating to the Fifth*

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

[2] Capitalized terms used but not otherwise defined herein have the meanings given to them in the Plan (as defined below). The rules of interpretation set forth in Article I of the Plan apply to this Confirmation Order.

Amended Plan of Reorganization of Highland Capital Management, L.P. [Docket No. 1473] (the "Disclosure Statement") under section 1125 of the Bankruptcy Code and authorized solicitation of the Disclosure Statement;

b. set January 5, 2021, at 5:00 p.m. prevailing Central Time (the "Objection Deadline"), as the deadline for filing objections to confirmation of the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* (*As Modified*) [Docket No. 1808] (as amended, supplemented or modified, the "Plan");

c. set January 5, 2021, at 5:00 p.m. prevailing Central Time, as the deadline for voting on the Plan (the "Voting Deadline") in accordance with the Disclosure Statement Order;

d. initially set January 13, 2021, at 9:30 a.m. prevailing Central Time, as the date and time to commence the hearing to consider confirmation of the Plan pursuant to Bankruptcy Rules 3017 and 3018, sections 1126, 1128, and 1129 of the Bankruptcy Code, and the Disclosure Statement Order, which hearing was continued to January 26, 2021, at 9:30 a.m. prevailing Central Time and further continued to February 2, 2021;

e. reviewed: (i) the Plan; (ii) the Disclosure Statement; and (iii) *Notice of (I) Entry of Order Approving Disclosure Statement; (II) Hearing to Confirm; and (III) Related Important Dates* (the "Confirmation Hearing Notice"), the form of which is attached as Exhibit 1-B to the Disclosure Statement Order;

f. reviewed: (i) the *Debtor's Notice of Filing of Plan Supplement for the Third Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1389] filed November 13, 2020; (ii) *Debtor's Notice of Filing of Plan Supplement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1606] filed on December 18, 2020; (iii) the *Debtor's Notice of Filing of Plan Supplement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1656] filed on January 4, 2021; (iv) *Notice of Filing Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (with Technical Modifications)t* dated January 22, 2021 [Docket No. 1811]; and (v) *Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland of Highland Capital Management, L.P. (As Modified)* on February 1, 2021 [Docket No. 1875]; (collectively, the documents listed in (i) through (v) of this paragraph, the "Plan Supplements");

g. reviewed: (i) the *Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, if Any, and (III) Related Procedures in Connection Therewith* filed on December 30, 2020 [Docket No. 1648]; (ii) the *Second Notice of (I) Executory Contracts and*

Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, if Any, and (III) Related Procedures in Connection Therewith filed on January 11, 2021 [Docket No.1719]; (iii) the *Third Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, if Any, and (III) Related Procedures in Connection Therewith* filed on January 15, 2021 [Docket No. 1749]; (iv) the *Notice of Withdrawal of Certain Executory Contracts and Unexpired Leases from List of Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan* [Docket No. 1791]; (v) the *Fourth Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan (II) Cure Amounts, if Any, and (III) Released Procedures in Connection Therewith* filed on January 27, 2021 [Docket No. 1847]; (vi) the *Notice of Hearing on Agreed Motion to (I) Assume Nonresidential Real Property Lease with Crescent TC Investors, L.P. Upon Confirmation of Plan and (II) Extend Assumption Deadline* filed on January 28, 2021 [Docket No. 1857]; and (vii) the *Fifth Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan (II) Cure Amounts, if Any, and (III) Released Procedures in Connection Therewith* filed on February 1, 2021 [Docket No. 1873] (collectively, the documents referred to in (i) to (vii) are referred to as "List of Assumed Contracts");

h. reviewed: (i) the *Debtor's Memorandum of Law in Support of Confirmation of the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1814] (the "Confirmation Brief"); (ii) the *Debtor's Omnibus Reply to Objections to Confirmation of the Fifth Amended Chapter 11 Plan of Reorganization of Highland Capital Management*; [Docket No. 1807]; and (iii) the *Certification of Patrick M. Leathem With Respect to the Tabulation of Votes on the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1772] and *Supplemental Certification of Patrick M. Leathem With Respect to the Tabulation of Votes on the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1887] filed on February 3, 2021 (together, the "Voting Certifications").

i. reviewed: (i) the *Notice of Affidavit of Publication* dated December 3, 2020 [Docket No. 1505]; (ii) the *Certificate of Service* dated December 23, 2020 [Docket No. 1630]; (iii) the *Supplemental Certificate of Service* dated December 24, 2020 [Docket No. 1637]; (iv) the *Second Supplemental Certificate of Service* dated December 31, 2020 [Docket No. 1653]; (v) the *Certificate of Service* dated December 23, 2020 [Docket No. 1627]; (vi) the *Certificate of Service* dated January 6, 2021 [Docket No. 1696]; (vii) the *Certificate of Service* dated January 7, 2021 [Docket No. 1699]; (viii) the *Certificate of Service* dated January 7, 2021 [Docket No 1700]; (ix) the *Certificate of Service* dated January 15, 2021 [Docket No. 1761]; (x) the *Certificate of Service* dated January 19, 2021 [Docket No. 1775]; (xi) the

Certificate of Service dated January 20, 2021 [Docket No. 1787]; (xii) the *Certificate of Service* dated January 26, 2021[Docket No. 1844]; (xiii) the *Certificate of Service* dated January 27, 2021 [Docket No. 1854]; (xiv) the *Certificate of Service* dated February 1, 2021 [Docket No. 1879]; (xv) the *Certificates of Service* dated February 3, 2021 [Docket No. 1891 and 1893]; and (xvi) the *Certificates of Service* dated February 5, 2021 [Docket Nos. 1906, 1907, 1908 and 1909] (collectively, the "Affidavits of Service and Publication");

j. reviewed all filed[3] pleadings, exhibits, statements, and comments regarding approval of the Disclosure Statement and confirmation of the Plan, including all objections, statements, and reservations of rights;

k. conducted a hearing to consider confirmation of the Plan, which commenced on February 2, 2021, at 9:30 a.m. prevailing Central Time and concluded on February 3, 2021, and issued its oral ruling on February 8, 2021 (collectively, the "Confirmation Hearing);

l. heard the statements and arguments made by counsel in respect of confirmation of the Plan and having considered the record of this Chapter 11 Case and taken judicial notice of all papers and pleadings filed in this Chapter 11 Case; and

m. considered all oral representations, testimony, documents, filings, and other evidence regarding confirmation of the Plan, including (a) all of the exhibits admitted into evidence;[4] (b) the sworn testimony of (i) James P. Seery, Jr., the Debtor's Chief Executive Officer and Chief Restructuring Officer and a member of the Board of Directors of Strand Advisors, Inc. ("Strand"), the Debtor's general partner; (ii) John S. Dubel, a member of the Board of Strand; (iii) Marc Tauber, a Vice President at Aon Financial Services; and (iv) Robert Jason Post, the Chief Compliance Officer of NexPoint Advisors, LP (collectively, the "Witnesses"); (c) the credibility of the Witnesses; and (d) the Voting Certifications.

NOW, THEREFORE, after due deliberation thereon and good cause appearing therefor, the Bankruptcy Court hereby makes and issues the following findings of fact and conclusions of law:

[3] Unless otherwise indicated, use of the term "filed" herein refers also to the service of the applicable document filed on the docket in this Chapter 11 Case, as applicable.

[4] The Court admitted the following exhibits into evidence: (a) all of the Debtor's exhibits lodged at Docket No. 1822 (except TTTTT, which was withdrawn by the Debtor); (b) all of the Debtor's exhibits lodged at Docket No. 1866; (c) all of the Debtor's exhibits lodged at Docket No. 1877; (d) all of the Debtor's exhibits lodged at Docket No. 1895; and (e) Exhibits 6-12 and 15-17 offered by Mr. James Dondero and lodged at Docket No. 1874.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. **Findings of Fact and Conclusions of Law.** The findings and conclusions set forth herein, together with the findings of fact and conclusions of law set forth in the record during the Confirmation Hearing, constitute the Bankruptcy Court's findings of fact and conclusions of law pursuant to Federal Rule of Civil Procedure 52, made applicable to this proceeding pursuant to Bankruptcy Rules 7052 and 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent that any of the following conclusions of law constitute findings of fact, they are adopted as such.

2. **Introduction and Summary of the Plan.** Prior to addressing the specific requirements under the Bankruptcy Code and Bankruptcy Rules with respect to the confirmation of the Plan, the Bankruptcy Court believes it would be useful to first provide the following background of the Debtor's Chapter 11 Case, the parties involved therewith, and some of the major events that have transpired culminating in the filing and solicitation of the Plan of this very unusual case. Before the Bankruptcy Court is the *Debtor's Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.*, filed on November 24, 2020, as modified on January 22, 2021 and again on February 1, 2021. The parties have repeatedly referred to the Plan as an "asset monetization plan" because it involves the orderly wind-down of the Debtor's estate, including the sale of assets and certain of its funds over time, with the Reorganized Debtor continuing to manage certain other funds, subject to the oversight of the Claimant Trust Oversight Board. The Plan provides for a Claimant Trust to, among other things, manage and monetize the Claimant Trust Assets for the benefit of the Debtor's economic stakeholders. The Claimant Trustee is responsible

for this process, among other duties specified in the Plan's Claimant Trust Agreement. There is also anticipated to be a Litigation Sub-trust established for the purpose of pursuing certain avoidance or other causes of action for the benefit of the Debtor's economic constituents.

3. **Confirmation Requirements Satisfied.** The Plan is supported by the Committee and all claimants with Convenience Claims (*i.e.*, general unsecured claims under $1 million) who voted in Class 7. Claimants with Class 8 General Unsecured Claims, however, voted to reject the Plan because, although the Plan was accepted by 99.8% of the amount of Claims in that class, only 17 claimants voted to accept the Plan while 27 claimants voted to reject the Plan. As a result of such votes, and because Mr. Dondero and the Dondero Related Entities (as defined below) objected to the Plan on a variety of grounds primarily relating to the Plan's release, exculpation and injunction provisions, the Bankruptcy Court heard two full days of evidence on February 2 and 3, 2021, and considered testimony from five witnesses and thousands of pages of documentary evidence in determining whether the Plan satisfies the confirmation standards required under the Bankruptcy Code. The Bankruptcy Court finds and concludes that the Plan meets all of the relevant requirements of sections 1123, 1124, and 1129, and other applicable provisions of the Bankruptcy Code, as more fully set forth below with respect to each of the applicable confirmation requirements.

4. **Not Your Garden Variety Debtor**. The Debtor's case is not a garden variety chapter 11 case. The Debtor is a multibillion-dollar global investment adviser registered with the SEC, pursuant to the Investment Advisers Act of 1940. It was founded in 1993 by James Dondero and Mark Okada. Mark Okada resigned from his role with Highland prior to the

bankruptcy case being filed on October 16, 2019 (the "Petition Date"). Mr. Dondero controlled the Debtor as of the Petition Date but agreed to relinquish control of it on or about January 9, 2020, pursuant to an agreement reached with the Committee, as described below. Although Mr. Dondero remained with the Debtor as an unpaid employee/portfolio manager after January 9, 2020, his employment with the Debtor terminated on October 9, 2020. Mr. Dondero continues to work for and/or control numerous non-debtor entities in the complex Highland enterprise.

5. **The Debtor**. The Debtor is headquartered in Dallas, Texas. As of the Petition Date, the Debtor employed approximately 76 employees. The Debtor is privately-owned: (a) 99.5% by the Hunter Mountain Investment Trust; (b) 0.1866% by The Dugaboy Investment Trust, a trust created to manage the assets of Mr. Dondero and his family; (c) 0.0627% by Mark Okada, personally and through family trusts; and (d) 0.25% by Strand, the Debtor's general partner.

6. **The Highland Enterprise.** Pursuant to various contractual arrangements, the Debtor provides money management and advisory services for billions of dollars of assets, including collateralized loan obligation vehicles ("CLOs"), and other investments. Some of these assets are managed by the Debtor pursuant to shared services agreements with certain affiliated entities, including other affiliated registered investment advisors. In fact, there are approximately 2,000 entities in the byzantine complex of entities under the Highland umbrella. None of these affiliated entities filed for chapter 11 protection. Most, but not all, of these entities are not subsidiaries (direct or indirect) of the Debtor. Many of the Debtor's affiliated companies are

offshore entities, organized in jurisdictions such as the Cayman Islands and Guernsey. *See* Disclosure Statement, at 17-18.

7. **Debtor's Operational History.** The Debtor's primary means of generating revenue has historically been from fees collected for the management and advisory services provided to funds that it manages, plus fees generated for services provided to its affiliates. For additional liquidity, the Debtor, prior to the Petition Date, would sell liquid securities in the ordinary course, primarily through a brokerage account at Jefferies, LLC. The Debtor would also, from time to time, sell assets at non-Debtor subsidiaries and cause those proceeds to be distributed to the Debtor in the ordinary course of business. The Debtor's current Chief Executive Officer, James P. Seery, Jr., credibly testified at the Confirmation Hearing that the Debtor was "run at a deficit for a long time and then would sell assets or defer employee compensation to cover its deficits." The Bankruptcy Court cannot help but wonder if that was necessitated because of enormous litigation fees and expenses incurred by the Debtor due to its culture of litigation—as further addressed below.

8. **Not Your Garden Variety Creditor's Committee**. The Debtor and this chapter 11 case are not garden variety for so many reasons. One of the most obvious standouts in this case is the creditor constituency. The Debtor did not file for bankruptcy because of any of the typical reasons that large companies file chapter 11. For example, the Debtor did not have a large, asset-based secured lender with whom it was in default; it only had relatively insignificant secured indebtedness owing to Jeffries, with whom it had a brokerage account, and one other entity, Frontier State Bank. The Debtor also did not have problems with its trade vendors or landlords.

The Debtor also did not suffer any type of catastrophic business calamity. In fact, the Debtor filed for Chapter 11 protection six months before the onset of the COVID-19 pandemic. Rather, the Debtor filed for Chapter 11 protection due to a myriad of massive, unrelated, business litigation claims that it faced—many of which had finally become liquidated (or were about to become liquidated) after a decade or more of contentious litigation in multiple forums all over the world. The Committee in this case has referred to the Debtor—under its former chief executive, Mr. Dondero—as a "serial litigator." The Bankruptcy Court agrees with that description. By way of example, the members of the Committee (and their history of litigation with the Debtor and others in the Highland complex) are as follows:

a. **The Redeemer Committee of the Highland Crusader Fund (the "Redeemer Committee").** This Committee member obtained an arbitration award against the Debtor in the amount of $190,824,557, inclusive of interest, approximately five months before the Petition Date, from a panel of the American Arbitration Association. It was on the verge of having that award confirmed by the Delaware Chancery Court immediately prior to the Petition Date, after years of disputes that started in late 2008 (and included legal proceedings in Bermuda). This creditor's claim was settled during this Chapter 11 Case in the amount of approximately $137,696,610 (subject to other adjustments and details not relevant for this purpose).

b. **Acis Capital Management, L.P., and Acis Capital Management GP, LLC ("Acis").** Acis was formerly in the Highland complex of companies, but was not affiliated with Highland as of the Petition Date. This Committee member and its now-owner, Joshua Terry, were involved in litigation with the Debtor dating back to 2016. Acis was forced by Mr. Terry (who was a former Highland portfolio manager) into an involuntary chapter 11 bankruptcy in the Bankruptcy Court for the Northern District of Texas, Dallas Division before the Bankruptcy Court in 2018, after Mr. Terry obtained an approximately $8 million arbitration award and judgment against Acis. Mr. Terry ultimately was awarded the equity ownership of Acis by the Bankruptcy Court in the Acis bankruptcy case. Acis subsequently asserted a multi-million dollar claim against Highland in the Bankruptcy Court for Highland's alleged denuding of Acis to defraud its creditors—primarily Mr. Terry. The litigation involving Acis and Mr. Terry dates back to mid-2016 and has

continued on with numerous appeals of Bankruptcy Court orders, including one appeal still pending at the Fifth Circuit Court of Appeals. There was also litigation involving Mr. Terry and Acis in the Royal Court of the Island of Guernsey and in a state court in New York. The Acis claim was settled during this Chapter 11 Case, in Bankruptcy Court-ordered mediation, for approximately $23 million (subject to other details not relevant for this purpose), and is the subject of an appeal being pursued by Mr. Dondero.

c. **UBS Securities LLC and UBS AG London Branch ("UBS").** UBS is a Committee member that filed a proof of claim in the amount of $1,039,957,799.40 in this Chapter 11 Case. The UBS Claim was based on a judgment that UBS received from a New York state court in 2020. The underlying decision was issued in November 2019, after a multi-week bench trial (which had occurred many months earlier) on a breach of contract claim against non-Debtor entities in the Highland complex. The UBS litigation related to activities that occurred in 2008 and 2009. The litigation involving UBS and Highland and affiliates was pending for more than a decade (there having been numerous interlocutory appeals during its history). The Debtor and UBS recently announced an agreement in principle for a settlement of the UBS claim (which came a few months after Bankruptcy Court-ordered mediation) which will be subject to a 9019 motion to be filed with the Bankruptcy Court on a future date.

d. **Meta-E Discovery ("Meta-E").** Meta-E is a Committee member that is a vendor who happened to supply litigation and discovery-related services to the Debtor over the years. It had unpaid invoices on the Petition Date of more than $779,000.

It is fair to say that the members of the Committee in this case all have wills of steel. They fought hard before and during this Chapter 11 Case. The members of the Committee, all of whom have volunteered to serve on the Claimant Trust Oversight Board post-confirmation, are highly sophisticated and have had highly sophisticated professionals representing them. They have represented their constituency in this case as fiduciaries extremely well.

9. **Other Key Creditor Constituents.** In addition to the Committee members who were all embroiled in years of litigation with Debtor and its affiliates in various ways, the Debtor has been in litigation with Patrick Daugherty, a former limited partner and employee of the Debtor, for many years in both Delaware and Texas state courts. Mr. Daugherty filed an amended

proof of claim in this Chapter 11 Case for $40,710,819.42 relating to alleged breaches of employment-related agreements and for defamation arising from a 2017 press release posted by the Debtor. The Debtor and Mr. Daugherty recently announced a settlement of Mr. Daugherty's claim pursuant to which he will receive $750,000 in cash on the Effective Date of the Plan, an $8.25 million general unsecured claim, and a $2.75 million subordinated claim (subject to other details not relevant for this purpose). Additionally, entities collectively known as "HarbourVest" invested more than $70 million with an entity in the Highland complex and asserted a $300 million proof of claim against the Debtor in this case, alleging, among other things, fraud and RICO violations. HarbourVest's claim was settled during the bankruptcy case for a $45 million general unsecured claim and a $35 million subordinated claim, and that settlement is also being appealed by a Dondero Entity.

10. **Other Claims Asserted.** Other than the Claims just described, most of the other Claims in this Chapter 11 Case are Claims asserted against the Debtor by: (a) entities in the Highland complex—most of which entities the Bankruptcy Court finds to be controlled by Mr. Dondero; (b) employees who contend that are entitled to large bonuses or other types of deferred compensation; and (c) numerous law firms that worked for the Debtor prior to the Petition Date and had outstanding amounts due for their prepetition services.

11. **Not Your Garden Variety Post-Petition Corporate Governance Structure**. Yet another reason this is not your garden variety chapter 11 case is its post-petition corporate governance structure. Immediately from its appointment, the Committee's relationship with the Debtor was contentious at best. First, the Committee moved for a change of venue from

Delaware to Dallas. Second, the Committee (and later, the United States Trustee) expressed its then-desire for the appointment of a chapter 11 trustee due to its concerns over and distrust of Mr. Dondero, his numerous conflicts of interest, and his history of alleged mismanagement (and perhaps worse).

12. **Post-Petition Corporate Governance Settlement with Committee.** After spending many weeks under the threat of the potential appointment of a trustee, the Debtor and Committee engaged in substantial and lengthy negotiations resulting in a corporate governance settlement approved by the Bankruptcy Court on January 9, 2020.[5] As a result of this settlement, among other things, Mr. Dondero relinquished control of the Debtor and resigned his positions as an officer or director of the Debtor and its general partner, Strand. As noted above, Mr. Dondero agreed to this settlement pursuant a stipulation he executed,[6] and he also agreed not to cause any Related Entity (as defined in the Settlement Motion) to terminate any agreements with the Debtor. The January 9 Order also (a) required that the Bankruptcy Court serve as "gatekeeper" prior to the commencement of any litigation against the three independent board members appointed to oversee and lead the Debtor's restructuring in lieu of Mr. Dondero and (b) provided for the exculpation of those board members by limiting claims subject to the "gatekeeper" provision to those alleging willful misconduct and gross negligence.

[5] This order is hereinafter referred to as the "January 9 Order" and was entered by the Court on January 9, 2020 [Docket No. 339] pursuant to the *Motion of the Debtor to Approve Settlement with Official Committee of Unsecured Creditors Regarding the Governance of the Debtor and Procedures for Operation in the Ordinary Course* [Docket No. 281] (the "Settlement Motion").

[6] *See Stipulation in Support of Motion of the Debtor for Approval of Settlement With the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in Ordinary Course* [Docket No. 338] (the "Stipulation").

13. **Appointment of Independent Directors.** As part of the Bankruptcy Court-approved settlement, three eminently qualified independent directors were chosen to lead Highland through its Chapter 11 Case. They are: James P. Seery, Jr., John S. Dubel (each chosen by the Committee), and Retired Bankruptcy Judge Russell Nelms. These three individuals are each technically independent directors of Strand (Mr. Dondero had previously been the sole director of Strand and, thus, the sole person in ultimate control of the Debtor). The three independent board members' resumes are in evidence. The Bankruptcy Court later approved Mr. Seery's appointment as the Debtor's Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative. Suffice it to say that this settlement and the appointment of the independent directors changed the entire trajectory of the case and saved the Debtor from the appointment of a trustee. The Bankruptcy Court and the Committee each trusted the independent directors. They were the right solution at the right time. Because of the unique character of the Debtor's business, the Bankruptcy Court believed the appointment of three qualified independent directors was a far better outcome for creditors than the appointment of a conventional chapter 11 trustee. Each of the independent directors brought unique qualities to the table. Mr. Seery, in particular, knew and had vast experience at prominent firms with high-yield and distressed investing similar to the Debtor's business. Mr. Dubel had 40 years of experience restructuring large complex businesses and serving on boards in this context. And Retired Judge Nelms had not only vast bankruptcy experience but seemed particularly well-suited to help the Debtor maneuver through conflicts and ethical quandaries. By way of comparison, in the chapter 11 case of Acis, the former affiliate of Highland that the Bankruptcy Court presided over and which company was

much smaller in size and scope than Highland (managing only 5-6 CLOs), the creditors elected a chapter 11 trustee who was not on the normal trustee rotation panel in this district but, rather, was a nationally known bankruptcy attorney with more than 45 years of large chapter 11 experience. While the Acis chapter 11 trustee performed valiantly, he was sued by entities in the Highland complex shortly after he was appointed (which the Bankruptcy Court had to address). The Acis trustee was also unable to persuade the Debtor and its affiliates to agree to any actions taken in the case, and he finally obtained confirmation of Acis' chapter 11 plan over the objections of the Debtor and its affiliates on his fourth attempt (which confirmation was promptly appealed).

14. **Conditions Required by Independent Directors.** Given the experiences in Acis and the Debtor's culture of constant litigation, it was not as easy to get such highly qualified persons to serve as independent board members and, later, as the Debtor's Chief Executive Officer, as it would be in an ordinary chapter 11 case. The independent board members were stepping into a morass of problems. Naturally, they were worried about getting sued no matter how defensible their efforts—given the litigation culture that enveloped Highland historically. Based on the record of this Case and the proceedings in the Acis chapter 11 case, it seemed as though everything always ended in litigation at Highland. The Bankruptcy Court heard credible testimony that none of the independent directors would have taken on the role of independent director without (1) an adequate directors and officers' ("D&O") insurance policy protecting them; (2) indemnification from Strand that would be guaranteed by the Debtor; (3) exculpation for mere negligence claims; and (4) a gatekeeper provision prohibiting the commencement of litigation against the independent directors without the Bankruptcy Court's prior authority. This gatekeeper provision was also

included in the Bankruptcy Court's order authorizing the appointment of Mr. Seery as the Debtor's Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative entered on July 16, 2020.[7] The gatekeeper provisions in both the January 9 Order and July 16 Order are precisely analogous to what bankruptcy trustees have pursuant to the so-called "Barton Doctrine" (first articulated in an old Supreme Court case captioned *Barton v. Barbour,* 104 U.S. 126 (1881)). The Bankruptcy Court approved all of these protections in the January 9 Order and the July 16 Order, and no one appealed either of those orders. As noted above, Mr. Dondero signed the Stipulation that led to the settlement that was approved by the January 9 Order. The Bankruptcy Court finds that, like the Committee, the independent board members have been resilient and unwavering in their efforts to get the enormous problems in this case solved. They seem to have at all times negotiated hard and in good faith, which culminated in the proposal of the Plan currently before the Bankruptcy Court. As noted previously, they completely changed the trajectory of this case.

15. **Not Your Garden Variety Mediators.** And still another reason why this was not your garden variety case was the mediation effort. In the summer of 2020, roughly nine months into the chapter 11 case, the Bankruptcy Court ordered mediation among the Debtor, Acis, UBS, the Redeemer Committee, and Mr. Dondero. The Bankruptcy Court selected co-mediators because mediation among these parties seemed like such a Herculean task—especially during COVID-19 where people could not all be in the same room. Those co-mediators were: Retired

[7] *See Order Approving the Debtor's Motion Under Bankruptcy Code Sections 105(a) and 363(b) Authorizing Retention of James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative Nunc Pro Tunc to March 15, 2020* [Docket No. 854] entered on July 16, 2020 (the "July 16 Order")

Bankruptcy Judge Alan Gropper from the Southern District of New York, who had a distinguished career presiding over complex chapter 11 cases, and Ms. Sylvia Mayer, who likewise has had a distinguished career, first as a partner at a preeminent law firm working on complex chapter 11 cases, and subsequently as a mediator and arbitrator in Houston, Texas. As noted earlier, the Redeemer Committee and Acis claims were settled during the mediation—which seemed nothing short of a miracle to the Bankruptcy Court—and the UBS claim was settled several months later and the Bankruptcy Court believes the ground work for that ultimate settlement was laid, or at least helped, through the mediation. And, as earlier noted, other significant claims have been settled during this case, including those of HarbourVest (who asserted a $300 million claim) and Patrick Daugherty (who asserted a $40 million claim). The Bankruptcy Court cannot stress strongly enough that the resolution of these enormous claims—and the acceptance by all of these creditors of the Plan that is now before the Bankruptcy Court—seems nothing short of a miracle. It was more than a year in the making.

16. **Not Your Garden Variety Plan Objectors (That Is, Those That Remain)**. Finally, a word about the current, remaining objectors to the Plan before the Bankruptcy Court. Once again, the Bankruptcy Court will use the phrase "not your garden variety", which phrase applies to this case for many reasons. Originally, there were over a dozen objections filed to the Plan. The Debtor then made certain amendments or modifications to the Plan to address some of these objections, none of which require further solicitation of the Plan for reasons set forth in more detail below. The only objectors to the Plan left at the time of the Confirmation Hearing

were Mr. Dondero [Docket No. 1661] and entities that the Bankruptcy Court finds are owned and/or controlled by him and that filed the following objections:

a. *Objection to Confirmation of the Debtor's Fifth Amended Plan of Reorganization* (filed by Get Good Trust and The Dugaboy Investment Trust) [Docket No. 1667];

b. *Objection to Confirmation of Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (filed by Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrate Fund, Highland Opportunistic Credit Fund, Highland Small-Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund)* [Docket No. 1670];

c. A *Joinder to the Objection filed at 1670 by: NexPoint Real Estate Finance Inc., NexPoint Real Estate Capital, LLC, NexPoint Residential Trust, Inc., NexPoint Hospitality Trust, NexPoint Real Estate Partners, LLC, NexPoint Multifamily Capital Trust, Inc., VineBrook Homes Trust, Inc., NexPoint Real Estate Advisors, L.P., NexPoint Real Estate Advisors II, L.P., NexPoint Real Estate Advisors III, L.P., NexPoint Real Estate Advisors IV, L.P., NexPoint Real Estate Advisors V, L.P., NexPoint Real Estate Advisors VI, L.P., NexPoint Real Estate Advisors VII, L.P., NexPoint Real Estate Advisors VIII, L.P., and any funds advised by the foregoing* [Docket No. 1677];

d. *NexPoint Real Estate Partners LLC's Objection to Debtor's Fifth Amended Plan of Reorganization (filed by NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC)* [Docket No. 1673]; and

e. *NexBank's Objection to Debtor's Fifth Amended Plan of Reorganization (filed by NexBank Title, Inc., NexBank Securities, Inc., NexBank Capital, Inc., and NexBank)* [Docket No. 1676]. The entities referred to in (i) through (v) of this paragraph are hereinafter referred to as the "Dondero Related Entities").

17. **Questionability of Good Faith as to Outstanding Confirmation Objections.** Mr. Dondero and the Dondero Related Entities technically have standing to object to the Plan, but the remoteness of their economic interests is noteworthy, and the Bankruptcy Court

questions the good faith of Mr. Dondero's and the Dondero Related Entities' objections. In fact, the Bankruptcy Court has good reason to believe that these parties are not objecting to protect economic interests they have in the Debtor but to be disruptors. Mr. Dondero wants his company back. This is understandable, but it is not a good faith basis to lob objections to the Plan. As detailed below, the Bankruptcy Court has slowed down plan confirmation multiple times and urged the parties to talk to Mr. Dondero in an attempt to arrive at what the parties have repeatedly referred to as a "grand bargain," the ultimate goal to resolve the Debtor's restructuring. The Debtor and the Committee represent that they have communicated with Mr. Dondero regarding a grand bargain settlement, and the Bankruptcy Court believes that they have.

18. **Remote Interest of Outstanding Confirmation Objectors.** To be specific about the remoteness of Mr. Dondero's and the Dondero Related Entities' interests, the Bankruptcy Court will address them each separately. First, Mr. Dondero has a pending objection to the Plan. Mr. Dondero's only economic interest with regard to the Debtor is an unliquidated indemnification claim (and, based on everything the Bankruptcy Court has heard, his indemnification claims would be highly questionable at this juncture). Mr. Dondero owns no equity in the Debtor directly. Mr. Dondero owns the Debtor's general partner, Strand, which in turn owns a quarter percent of the total equity in the Debtor. Second, a joint objection has been filed by The Dugaboy Trust ("Dugaboy") and the Get Good Trust ("Get Good"). The Dugaboy Trust was created to manage the assets of Mr. Dondero and his family and owns a 0.1866% limited partnership interest in the Debtor. *See* Disclosure Statement at 7, n.3. The Bankruptcy Court is not clear what economic interest the Get Good Trust has, but it likewise seems to be related to Mr. Dondero. Get Good

filed three proofs of claim relating to a pending federal tax audit of the Debtor's 2008 return, which the Debtor believes arise from Get Good's equity security interests and are subject to subordination as set forth in its Confirmation Brief. Dugaboy filed three claims against the Debtor: (a) an administrative claim relating to the Debtor's alleged postpetition management of Multi-Strat Credit Fund, L.P., (b) a prepetition claim against a subsidiary of the Debtor for which it seeks to pierce the corporate veil, each of which the Debtor maintains are frivolous in the Confirmation Brief, and (c) a claim arising from its equity security interest in the Debtor, which the Debtor asserts should be subordinated. Another group of objectors that has joined together in one objection is what the Bankruptcy Court will refer to as the "Highland Advisors and Funds." *See* Docket No. 1863. The Bankruptcy Court understands they assert disputed administrative expense claims against the estate that were filed shortly before the Confirmation Hearing on January 23, 2021 [Docket No. 1826], and during the Confirmation Hearing on February 3, 2021 [Docket No. 1888]. At the Confirmation Hearing, Mr. Post testified on behalf of the Highland Advisors and Funds that the Funds have independent board members that run the Funds, but the Bankruptcy Court was not convinced of their independence from Mr. Dondero because none of the so-called independent board members have ever testified before the Bankruptcy Court and all have been engaged with the Highland complex for many years. Notably, the Court questions Mr. Post's credibility because, after more than 12 years of service, he abruptly resigned from the Debtor in October 2020 at the exact same time that Mr. Dondero resigned at the Board of Directors' request, and he is currently employed by Mr. Dondero. Moreover, Dustin Norris, a witness in a prior proceeding (whose testimony was made part of the record at the Confirmation Hearing), recently

testified on behalf of the Highland Advisors and Funds in another proceeding that Mr. Dondero owned and/or controlled these entities. Finally, various NexBank entities objected to the Plan. The Bankruptcy Court does not believe they have liquidated claims against the Debtor. Mr. Dondero appears to be in control of these entities as well.

19. **Background Regarding Dondero Objecting Parties.** To be clear, the Bankruptcy Court has allowed all these objectors to fully present arguments and evidence in opposition to confirmation, even though their economic interests in the Debtor appear to be extremely remote and the Bankruptcy Court questions their good faith. Specifically, the Bankruptcy Court considers them all to be marching pursuant to the orders of Mr. Dondero. In the recent past, Mr. Dondero has been subject to a temporary restraining order and preliminary injunction by the Bankruptcy Court for interfering with Mr. Seery's management of the Debtor in specific ways that were supported by evidence. Around the time that this all came to light and the Bankruptcy Court began setting hearings on the alleged interference, Mr. Dondero's company phone, which he had been asked to turn in to Highland, mysteriously went missing. The Bankruptcy Court merely mentions this in this context as one of many reasons that the Bankruptcy Court has to question the good faith of Mr. Dondero and his affiliates in raising objections to confirmation of the Plan.

20. **Other Confirmation Objections.** Other than the objections filed by Mr. Dondero and the Dondero Related Entities, the only other pending objection to the Plan is the *United States Trustee's Limited Objection to Confirmation of Debtor's Fifth Amended Plan of Reorganization* [Docket No. 1671], which objected to the Plan's exculpation, injunction, and

Debtor release provisions. In juxtaposition, to these pending objections, the Bankruptcy Court notes that the Debtor resolved the following objections to the Plan:

a. *CLO Holdco, Ltd.'s Joinder to Objection to Confirmation of Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. and Supplemental Objections to Plan Confirmation* [Docket No. 1675]. This Objection has been resolved pursuant to mutually agreed language by the parties set forth in paragraph VV of the Confirmation Order;

b. *Objection of Dallas County, City of Allen, Allen ISD, City of Richardson, and Kaufman County to Confirmation of the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1662]. This Objection has been resolved pursuant to mutually agreed language by the parties set forth in paragraph QQ of the Confirmation Order;

c. *Senior Employees' Limited Objection to Debtor's Fifth Amended Plan of Reorganization (filed by Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon)* [Docket No. 1669]. This Objection has been resolved pursuant to mutually agreed language by the parties set forth in paragraph 82 and paragraphs RR and SS of the Confirmation Order;

d. *Limited Objection of Jack Yang and Brad Borud to Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1666] and the amended joinder filed by Davis Deadman, Paul Kauffman and Todd Travers [Docket No. 1679]. This Objection and the amended joinder were resolved by agreement of the parties pursuant to modifications to the Plan filed by the Debtor;

e. *United States' (IRS) Limited Objection to Debtor's Fifth Amended Plan of Reorganization* [Docket No. 1668]. This Objection has been resolved pursuant to mutually agreed language by the parties set forth in paragraphs TT and UU of the Confirmation Order; and

f. *Patrick Hagaman Daugherty's Objection to Confirmation of Fifth Amended Plan of Reorganization* [Docket No. 1678]. This objection was resolved by the parties pursuant to the settlement of Mr. Daugherty's claim announced on the record of the Confirmation Hearing.

21. **Capitalized Terms.** Capitalized terms used herein, but not defined herein, shall have the respective meanings attributed to such terms in the Plan and the Disclosure Statement, as applicable.

22. **Jurisdiction and Venue.** The Bankruptcy Court has jurisdiction over the Debtor's Chapter 11 Case pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of this proceeding and this Chapter 11 Case is proper in this district and in the Bankruptcy Court pursuant to 28 U.S.C. §§ 1408 and 1409.

23. **Chapter 11 Petition.** On the Petition Date, the Debtor commenced a voluntary case under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware, which case was transferred to the Bankruptcy Court on December 19, 2019. The Debtor continues to operate its business and manage its property as debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in this Chapter 11 Case. The Office of the United States Trustee appointed the Committee on October 29, 2019.

24. **Judicial Notice.** The Bankruptcy Court takes judicial notice of the docket in this Chapter 11 Case maintained by the clerk of the Bankruptcy Court and the court-appointed claims agent, Kurtzman Carson Consultants LLC ("KCC"), including, without limitation, all pleadings, notices, and other documents filed, all orders entered, and all evidence and arguments made, proffered or adduced at the hearings held before the Bankruptcy Court during this Chapter 11 Case, including, without limitation, the hearing to consider the adequacy of the Disclosure Statement and the Confirmation Hearing, as well as all pleadings, notices, and other documents filed, all orders entered, and all evidence and arguments made, proffered, or adduced at hearings held before the Bankruptcy Court or the District Court for the Northern District of Texas in

connection with an adversary proceeding or appellate proceeding, respectively, related to this Chapter 11 Case.

25. **Plan Supplement Documents.** Prior to the Confirmation Hearing, the Debtor filed each of the Plan Supplements. The Plan Supplements contain, among other documents, the Retained Causes of Action, the Claimant Trust Agreement, the Litigation Sub-Trust Agreement, the Senior Employee Stipulation, the Related Entity List, the Schedule of Employees, the Reorganized Limited Partnership Agreement, supplements to the Liquidation Analysis/Financial Projections, the Schedule of Contracts and Leases to be Assumed, and the other Plan Documents set forth therein (collectively, the "Plan Supplement Documents").

26. **Retained Causes of Action Adequately Preserved.** The Bankruptcy Court finds that the list of Retained Causes of Action included in the Plan Supplements sufficiently describes all potential Retained Causes of Action, provides all persons with adequate notice of any Causes of Action regardless of whether any specific claim to be brought in the future is listed therein or whether any specific potential defendant or other party is listed therein, and satisfies applicable law in all respects to preserve all of the Retained Causes of Action. The definition of the Causes of Action and Schedule of Retained Causes of Action, and their inclusion in the Plan, specifically and unequivocally preserve the Causes of Action for the benefit of the Reorganized Debtor, the Claimant Trust, or the Litigation Sub-Trust, as applicable.

27. **Plan Modifications Are Non-Material.** In addition to the Plan Supplements, the Debtor made certain non-material modifications to the Plan, which are reflected in (i) the *Redline of Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.*

(as Modified) filed on January 22, 2021 [Docket No. 1809], and (ii) Exhibit B to the *Debtor's Notice of Filing of Plan Supplement to Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* filed on February 1, 2021 [Docket No. 1875] (collectively, the "Plan Modifications"). Section 1127(a) of the Bankruptcy Code provides that a plan proponent may modify its plan at any time before confirmation so long as such modified plan meets the requirements of sections 1122 and 1123 of the Bankruptcy Code. None of the modifications set forth in the Plan Supplements or the Plan Modifications require any further solicitation pursuant to sections 1125, 1126, or 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, because, among other things, they do not materially adversely change the treatment of the claims of any creditors or interest holders who have not accepted, in writing, such supplements and modifications. Among other things, there were changes to the projections that the Debtor filed shortly before the Confirmation Hearing (which included projected distributions to creditors and a comparison of projected distributions under the Plan to potential distributions under a hypothetical chapter 7 liquidation). The Plan Supplements and Plan Modifications did not mislead or prejudice any creditors or interest holders nor do they require that Holders of Claims or Equity Interests be afforded an opportunity to change previously cast votes to accept or reject the Plan. Specifically, the Amended Liquidation Analysis/Financial Projections filed on February 1, 2021 [Docket No. 1875] do not constitute any material adverse change to the treatment of any creditors or interest holders but, rather, simply update the estimated distributions based on Claims that were settled in the interim and provide updated financial data. The filing and notice of the Plan Supplements and Plan Modifications were appropriate and complied with the requirements of

section 1127(a) of the Bankruptcy Code and the Bankruptcy Rules, and no other solicitation or disclosure or further notice is or shall be required. The Plan Supplements and Plan Modifications each became part of the Plan pursuant section 1127(a) of the Bankruptcy Code. The Debtor or Reorganized Debtor, as applicable, is authorized to modify the Plan or Plan Supplement Documents following entry of this Confirmation Order in a manner consistent with section 1127(b) of the Bankruptcy Code, the Plan, and, if applicable, the terms of the applicable Plan Supplement Document.

28. **Notice of Transmittal, Mailing and Publication of Materials.** As is evidenced by the Voting Certifications and the Affidavits of Service and Publication, the transmittal and service of the Plan, the Disclosure Statement, Ballots, and Confirmation Hearing Notice were adequate and sufficient under the circumstances, and all parties required to be given notice of the Confirmation Hearing (including the deadline for filing and serving objections to the confirmation of the Plan) have been given due, proper, timely, and adequate notice in accordance with the Disclosure Statement Order and in compliance with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and applicable non-bankruptcy law, and such parties have had an opportunity to appear and be heard with respect thereto. No other or further notice is required. The publication of the Confirmation Hearing Notice, as set forth in the *Notice of Affidavit of Publication* dated December 3, 2020 [Docket No. 1505], complied with the Disclosure Statement Order.

29. **Voting.** The Bankruptcy Court has reviewed and considered the Voting Certifications. The procedures by which the Ballots for acceptance or rejection of the Plan were

distributed and tabulated, including the tabulation as subsequently amended to reflect the settlement of certain Claims to be Allowed in Class 7, were fairly and properly conducted and complied with the Disclosure Statement Order, the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules.

30. **Bankruptcy Rule 3016(a).** In accordance with Bankruptcy Rule 3016(a), the Plan is dated and identifies the Debtor as the proponent of the Plan.

31. **Plan Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(1)).** As set forth below, the Plan complies with all of the applicable provisions of the Bankruptcy Code, thereby satisfying section 1129(a)(1) of the Bankruptcy Code.

32. **Proper Classification (11 U.S.C. §§ 1122, 1123(a)(1)).** Section 1122 of the Bankruptcy Code provides that a plan may place a claim or interest in a particular class only if such claim or interest is substantially similar to the other claims or interest of such class. The Claims and Equity Interests placed in each Class are substantially similar to other Claims and Equity Interests, as the case may be, in each such Class. Valid business, factual, and legal reasons exist for separately classifying the various Classes of Claims and Equity Interests created under the Plan, and such Classes do not unfairly discriminate between Holders of Claims and Equity Interests.

33. **Classification of Secured Claims.** Class 1 (Jefferies Secured Claim) and Class 2 (Frontier Secured Claim) each constitute separate secured claims held by Jefferies LLC and Frontier State Bank, respectively, and it is proper and consistent with section 1122 of the Bankruptcy Code to separately classify the claims of these secured creditors. Class 3 (Other

Secured Claims) consists of other secured claims (to the extent any exist) against the Debtor, are not substantially similar to the Secured Claims in Class 1 or Class 2, and are also properly separately classified.

34. **Classification of Priority Claims.** Class 4 (Priority Non-Tax Claims) consists of Claims entitled to priority under section 507(a), other than Priority Tax Claims, and are properly separately classified from non-priority unsecured claims. Class 5 (Retained Employee Claims) consists of the potential claims of employees who may be retained by the Debtor on the Effective Date, which claims will be Reinstated under the Plan, are not substantially similar to other Claims against the Debtor, and are properly classified.

35. **Classification of Unsecured Claims.** Class 6 (PTO Claims) consists solely of the claims of the Debtor's employees for unpaid paid time off in excess of the $13,650 statutory cap amount under sections 507(a)(4) and (a)(5) of the Bankruptcy Code and are dissimilar from other unsecured claims in Class 7 and Class 8. Class 7 (Convenience Claims) allows holders of eligible and liquidated Claims (below a certain threshold dollar amount) to receive a cash payout of the lesser of 85% of the Allowed amount of the creditor's Claim or such holder's *pro rata* share of the Convenience Claims Cash Pool. Class 7 (Convenience Claims) are provided for administrative convenience purposes in order to allow creditors, most of whom are either trade creditors or holders of professional claims, to receive treatment provided under Class 7 in lieu of the treatment of Class 8 (General Unsecured Claims). The Plan also provides for reciprocal "opt out" mechanisms to allow holders of Class 7 Claims to elect to receive the treatment for Class 8 Claims. Class 8 creditors primarily constitute the litigation claims of the Debtor. Class 8 Creditors

will receive Claimant Trust Interests which will be satisfied pursuant to the terms of the Plan. Class 8 also contains an "opt out" mechanism to allow holders of liquidated Class 8 Claims at or below a $1 million threshold to elect to receive the treatment of Class 7 Convenience Claims. The Claims in Class 7 (primarily trade and professional Claims against the Debtor) are not substantially similar to the Claims in Class 8 (primarily the litigation Claims against the Debtor), and are appropriately separately classified. Valid business reasons also exist to classify creditors in Class 7 separately from creditors in Class 8. Class 7 creditors largely consist of liquidated trade or service providers to the Debtor. In addition, the Claims of Class 7 creditors are small relative to the large litigation claims in Class 8. Furthermore, the Class 8 Claims were overwhelmingly unliquidated when the Plan was filed. The nature of the Class 7 Claims as being largely liquidated created an expectation of expedited payment relative to the largely unliquidated Claims in Class 8, which consists in large part of parties who have been engaged in years, and in some cases over a decade of litigation with the Debtor. Separate classification of Class 7 and Class 8 creditors was the subject of substantial arm's-length negotiations between the Debtor and the Committee to appropriately reflect these relative differences.

36. **Classification of Equity Interests.** The Plan properly separately classifies the Equity Interests in Class 10 (Class B/C Limited Partnership Interests) from the Equity Interests in Class 11 (Class A Limited Partnership Interests) because they represent different types of equity security interests in the Debtor and different payment priorities.

37. **Elimination of Vacant Classes.** Section III.C of the Plan provides for the elimination of Classes that do not have at least one holder of a Claim or Equity Interest that is

Allowed in an amount greater than zero for purposes of voting to accept or reject the Plan, and are disregarded for purposes of determining whether the Plan satisfies section 1129(a)(8) of the Bankruptcy Code with respect to such Class. The purpose of this provision is to provide that a Class that does not have voting members shall not be included in the tabulation of whether that Class has accepted or rejected the Plan. Pursuant to the Voting Certifications, the only voting Class of Claims or Equity Interests that did not have any members is Class 5 (Retained Employees). As noted above, Class 5 does not have any voting members because any potential Claims in Class 5 would not arise, except on account of any current employees of the Debtor who may be employed as of the Effective Date, which is currently unknown. Thus, the elimination of vacant Classes provided in Article III.C of the Plan does not violate section 1122 of the Bankruptcy Code. Class 5 is properly disregarded for purposes of determining whether or not the Plan has been accepted under Bankruptcy Code section 1129(a)(8) because there are no members in that Class. However, the Plan properly provides for the treatment of any Claims that may potentially become members of Class 5 as of the Effective Date in accordance with the terms of the Plan. The Plan therefore satisfies section 1122 of the Bankruptcy Code.

38. **Classification of Claims and Designation of Non-Classified Claims (11 U.S.C. §§ 1122, 1123(a)(1)).** Section 1123(a)(1) of the Bankruptcy Code requires that the Plan specify the classification of claims and equity security interests pursuant to section 1122 of the Bankruptcy Code, other than claims specified in sections 507(a)(2), 507(a)(3), or 507(a)(8) of the Bankruptcy Code. In addition to Administrative Claims, Professional Fee Claims, and Priority Tax Claims, each of which need not be classified pursuant to section 1123(a)(1) of the Bankruptcy

Code, the Plan designates eleven (11) Classes of Claims and Equity Interests. The Plan satisfies sections 1122 and 1123(a)(1) of the Bankruptcy Code.

39. **Specification of Unimpaired Classes (11 U.S.C. § 1123(a)(2)).** Article III of the Plan specifies that each of Class 1 (Jefferies Secured Claim), Class 3 (Other Secured Claims), Class 4 (Priority Non-Tax Claims), Class 5 (Retained Employee Claims), and Class 6 (PTO Claims) are Unimpaired under the Plan. Thus, the requirement of section 1123(a)(2) of the Bankruptcy Code is satisfied.

40. **Specification of Treatment of Impaired Classes (11 U.S.C. § 1123(a)(3)).** Article III of the Plan designates each of Class 2 (Frontier Secured Claim), Class 7 (Convenience Claims), Class 8 (General Unsecured Claims), Class 9 (Subordinated Claims), Class 10 (Class B/C Limited Partnership Interests), and Class 11 (Class A Limited Partnership Interests) as Impaired and specifies the treatment of Claims and Equity Interests in such Classes. Thus, the requirement of section 1123(a)(3) of the Bankruptcy Code is satisfied.

41. **No Discrimination (11 U.S.C. § 1123(a)(4)).** The Plan provides for the same treatment by the Plan proponent for each Claim or Equity Interest in each respective Class unless the Holder of a particular Claim or Equity Interest has agreed to a less favorable treatment of such Claim or Equity Interest. The Plan satisfies this requirement because Holders of Allowed Claims or Equity Interests in each Class will receive the same rights and treatment as other Holders of Allowed Claims or Equity Interests within such holder's respective class, subject only to the voluntary "opt out" options afforded to members of Class 7 and Class 8 in accordance with the terms of the Plan. Thus, the requirement of section 1123(a)(4) of the Bankruptcy Code is satisfied.

42. **Implementation of the Plan (11 U.S.C. § 1123(a)(5)).** Article IV of the Plan sets forth the means for implementation of the Plan which includes, but is not limited to, the establishment of: (i) the Claimant Trust; (ii) the Litigation Sub-Trust; (iii) the Reorganized Debtor; and (iv) New GP LLC, in the manner set forth in the Plan Documents, the forms of which are included in the Plan Supplements.

a. **The Claimant Trust.** The Claimant Trust Agreement provides for the management of the Claimant Trust, as well as the Reorganized Debtor with the Claimant Trust serving as the managing member of New GP LLC (a wholly-owned subsidiary of the Claimant Trust that will manage the Reorganized Debtor as its general partner). The Claimant Trust, the Claimant Trustee, the management and monetization of the Claimant Trust Assets, and the management of the Reorganized Debtor (through the Claimant Trust's role as managing member of New GP LLC) and the Litigation Sub-Trust will all be managed and overseen by the Claimant Trust Oversight Committee. Additionally, the Plan provides for the transfer to the Claimant Trust of all of the Debtor's rights, title, and interest in and to all of the Claimant Trust Assets in accordance with section 1141 of the Bankruptcy Code and for the Claimant Trust Assets to automatically vest in the Claimant Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Claimant Trust Interests and the Claimant Trust Expenses, as provided for in the Claimant Trust Agreement. The Claimant Trust will administer the Claimant Trust Assets as provided under the Plan and the Claimant Trust Agreement contained in the Plan Supplements.

b. **The Litigation Sub-Trust.** The Plan and the Litigation Sub-Trust Agreement provide for the transfer to the Litigation Sub-Trust all of the Claimant Trust's rights, title, and interest in and to all of the Estate Claims (as transferred to the Claimant Trust by the Debtor) in accordance with section 1141 of the Bankruptcy Code and for the Estate Claims to automatically vest in the Litigation Sub-Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Litigation Sub-Trust Interests and the Litigation Sub-Trust Expenses, as provided for in the Litigation Sub-Trust Agreement. The Litigation Trustee is charged with investigating, pursuing, and otherwise resolving any Estate Claims (including those with respect to which the Committee has standing to pursue prior to the Effective Date pursuant to the January 9 Order) pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan, regardless of whether any litigation with respect to any Estate Claim was commenced by the Debtor or the Committee prior to the Effective Date.

c. **The Reorganized Debtor**. The Reorganized Debtor will administer the Reorganized Debtor Assets, which includes managing the wind down of the Managed Funds.

The precise terms governing the execution of these restructuring transactions are set forth in greater detail in the applicable definitive documents included in the Plan Supplements, including the Claimant Trust Agreement, the Litigation Sub-Trust Agreement, and the Schedule of Retained Causes of Action. The Plan, together with the documents and forms of agreement included in the Plan Supplements, provides a detailed blueprint for the transactions contemplated by the Plan. The Plan's various mechanisms provide for the Debtor's continued management of its business as it seeks to liquidate the Debtor's assets, wind down its affairs, and pay the Claims of the Debtor's creditors. Upon full payment of Allowed Claims, plus interest as provided in the Plan, any residual value would then flow to the holders of Class 10 (Class B/C Limited Partnership Interests), and Class 11 (Class A Limited Partnership Interests). Finally, Mr. Seery testified that the Debtor engaged in substantial and arm's length negotiations with the Committee regarding the Debtor's post-Effective Date corporate governance, as reflected in the Plan. Mr. Seery testified that he believes the selection of the Claimant Trustee, Litigation Trustee, and members of the Claimant Trust Oversight Board are in the best interests of the Debtor's economic constituents. Thus, the requirements of section 1123(a)(5) of the Bankruptcy Code are satisfied.

43. **Non-Voting Equity Securities (11 U.S.C. § 1123(a)(6)).** The Debtor is not a corporation and the charter documents filed in the Plan Supplements otherwise comply with section 1123(a)(6) of the Bankruptcy Code. Therefore, the requirement of section 1123(a)(6) of the Bankruptcy Code is satisfied.

44. **Selection of Officers and Directors (11 U.S.C. § 1123(a)(7)).** Article IV of the Plan provides for the Claimant Trust to be governed and administered by the Claimant Trustee. The Claimant Trust, the management of the Reorganized Debtor, and the management and monetization of the Claimant Trust Assets and the Litigation Sub-Trust will be managed by the Claimant Trust Oversight Board. The Claimant Trust Oversight Board will consist of: (1) Eric Felton, as representative of the Redeemer Committee; (2) Joshua Terry, as representative of Acis; (3) Elizabeth Kozlowski, as representative of UBS; (4) Paul McVoy, as representative of Meta-E Discovery; and (5) David Pauker. Four of the members of the Claimant Trust Oversight Committee are the holders of several of the largest Claims against the Debtor and/or are current members of the Committee. Each of these creditors has actively participated in the Debtor's case, both through their fiduciary roles as Committee members and in their individual capacities as creditors. They are therefore intimately familiar with the Debtor, its business, and assets. The fifth member of the Claimant Trustee Oversight Board, David Pauker, is a disinterested restructuring advisor and turnaround manager with more than 25 years of experience advising public and private companies and their investors, and he has substantial experience overseeing, advising or investigating troubled companies in the financial services industry and has advised or managed such companies on behalf of boards or directors, court-appointed trustees, examiners and special masters, government agencies, and private investor parties. The members of the Claimant Trust Oversight Board will serve without compensation, except for Mr. Pauker, who will receive payment of $250,000 for his first year of service, and $150,000 for subsequent years.

45. **Selection of Trustees.** The Plan Supplements disclose that Mr. Seery will serve as the Claimant Trustee and Marc Kirschner will serve as the Litigation Trustee. As noted above, Mr. Seery has served as an Independent Board member since January 2020, and as the Chief Executive Officer and Chief Restructuring Officer since July 2020, and he has extensive management and restructuring experience, as evidenced from his curriculum vitae which is part of the record. The evidence shows that Mr. Seery is intimately familiar with the Debtor's organizational structure, business, and assets, as well as how Claims will be treated under the Plan. Accordingly, it is reasonable and in the Estate's best interests to continue Mr. Seery's employment post-emergence as the Claimant Trustee. Mr. Seery, upon consultation with the Committee, testified that he intends to employ approximately 10 of the Debtor's employees to enable him to manage the Debtor's business until the Claimant Trust effectively monetizes its remaining assets, instead of hiring a sub-servicer to accomplish those tasks. Mr. Seery testified that he believes that the Debtor's post-confirmation business can most efficiently and cost-effectively be supported by a sub-set of the Debtor's current employees, who will be managed internally. Mr. Seery shall initially be paid $150,000 per month for services rendered after the Effective Date as Claimant Trustee; however, Mr. Seery's long-term salary as Claimant Trustee and the terms of any bonuses and severance are subject to further negotiation by Mr. Seery and the Claimant Trust Oversight Board within forty-five (45) days after the Effective Date. The Bankruptcy Court has also reviewed Mr. Kirschner's curriculum vitae. Mr. Kirschner has been practicing law since 1967 and has substantial experience in bankruptcy litigation matters, particularly with respect to his prior experience as a litigation trustee for several litigation trusts, as set forth on the record of the

Confirmation Hearing and in the Confirmation Brief. Mr. Kirschner shall be paid $40,000 per month for the first three months and $20,000 per month thereafter, plus a success fee related to litigation recoveries. The Committee and the Debtor had arm's lengths negotiations regarding the post-Effective Date corporate governance structure of the Reorganized Debtor and believe that the selection of the Claimant Trustee, the Litigation Trustee, and the Claimant Trust Oversight Committee are in the best interests of the Debtor's economic stakeholders. Section 1123(a)(7) of the Bankruptcy Code is satisfied.

46. **Debtor's Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(2)).** Pursuant to section 1129(a)(2) of the Bankruptcy Code, the Debtor has complied with the applicable provisions of the Bankruptcy Code, including sections 1122, 1123, 1124, 1125, and 1126 of the Bankruptcy Code, the Bankruptcy Rules, and the Disclosure Statement Order governing notice, disclosure, and solicitation in connection with the Plan, the Disclosure Statement, the Plan Supplements, and all other matters considered by the Bankruptcy Court in connection with this Chapter 11 Case.

47. **Debtor's Solicitation Complied with Bankruptcy Code and Disclosure Statement Order.** Before the Debtor solicited votes on the Plan, the Bankruptcy Court entered the Disclosure Statement Order. In accordance with the Disclosure Statement Order and evidenced by the Affidavits of Service and Publication, the Debtor appropriately served (i) the Solicitation Packages (as defined in the Disclosure Statement Order) on the Holders of Claims in Classes 2, 7, 8 and 9 and Holders of Equity Interests in Classes 10 and 11 who were entitled to vote on the Plan; and (ii) the Notice of Nonvoting Status (as defined in the Disclosure Statement Order) and the

Confirmation Hearing Notice to the Holders of Claims in Classes 1, 3, 4, 5 and 6, who were not entitled to vote on the Plan pursuant to the Disclosure Statement Order. The Disclosure Statement Order approved the contents of the Solicitation Packages provided to Holders of Claims and Equity Interests entitled to vote on the Plan, the notices provided to parties not entitled to vote on the Plan, and the deadlines for voting on and objecting to the Plan. The Debtor and KCC each complied with the content and delivery requirements of the Disclosure Statement Order, thereby satisfying sections 1125(a) and (b) of the Bankruptcy Code, as evidenced by the Affidavits of Service and Publication. The Debtor also satisfied section 1125(c) of the Bankruptcy Code, which provides that the same disclosure statement must be transmitted to each holder of a claim or interest in a particular class. The Debtor caused the same Disclosure Statement to be transmitted to all holders of Claims and Equity Interests entitled to vote on the Plan. The Debtor has complied in all respects with the solicitation requirements of section 1125 of the Bankruptcy Code and the Disclosure Statement Order. The Bankruptcy Court rejects the arguments of the Mr. Dondero and certain Dondero Related Entities that the changes made to certain assumptions and projections from the Liquidation Analysis annexed as Exhibit C to the Disclosure Statement (the "Liquidation Analysis") to the Amended Liquidation Analysis/Financial Projections require resolicitation of the Plan. The Bankruptcy Court heard credible testimony from Mr. Seery regarding the changes to the Liquidation Analysis as reflected in the Amended Liquidation Analysis/Financial Projections. Based on the record, including the testimony of Mr. Seery, the Bankruptcy Court finds that the changes between the Liquidation Analysis and the Amended Liquidation Analysis/Financial Projections do not constitute materially adverse change to the treatment of Claims or Equity

Interests. Instead, the changes served to update the projected distributions based on Claims that were settled after the approval of the Disclosure Statement and to otherwise incorporate more recent financial data. Such changes were entirely foreseeable given the large amount of unliquidated Claims at the time the Disclosure Statement was approved and the nature of the Debtor's assets. The Bankruptcy Court therefore finds that holders of Claims and Equity Interests were not misled or prejudiced by the Amended Liquidation Analysis/Financial Projections and the Plan does not need to be resolicited.

48. **Plan Proposed in Good Faith and Not by Means Forbidden by Law (11 U.S.C. § 1129(a)(3)).** The Debtor has proposed the Plan in good faith and not by any means forbidden by law, thereby satisfying section 1129(a)(3) of the Bankruptcy Code. In determining that the Plan has been proposed in good faith, the Bankruptcy Court has examined the totality of the circumstances surrounding the filing of this Chapter 11 Case, the Plan itself, and the extensive, unrebutted testimony of Mr. Seery in which he described the process leading to Plan's formulation. Based on the totality of the circumstances and Mr. Seery's testimony, the Bankruptcy Court finds that the Plan is the result of extensive arm's-length negotiations among the Debtor, the Committee, and key stakeholders, and promotes the objectives and purposes of the Bankruptcy Code. Specifically, the Debtor's good faith in proposing the Plan is supported by the following facts adduced by Mr. Seery:

a. The Independent Board determined that it should consider all potential restructuring alternatives, including pursuit of a traditional restructuring and the continuation of the Debtor's business, a potential sale of the Debtor's assets in one or more transactions, an asset monetization plan similar to that described in the Plan, and a so-called "grand bargain" plan that would involve Mr. Dondero's sponsorship of a plan with a substantial equity infusion.

b. The Debtor subsequently engaged in arm's-length, good faith negotiations with the Committee over an asset monetization Plan commencing in June 2020, which negotiations occurred over the next several months.

c. Negotiations between the Debtor and the Committee were often contentious over disputes, including, but not limited to, the post-confirmation corporate governance structure and the scope of releases contemplated by the Plan.

d. While negotiations with the Committee progressed, the Independent Board engaged in discussions with Mr. Dondero regarding a potential "grand bargain" plan which contemplated a significant equity infusion by Mr. Dondero, and which Mr. Seery personally spent hundreds of hours pursuing over many months.

e. On August 3, 2020, the Bankruptcy Court entered the *Order Directing Mediation* [Docket No. 912] pursuant to which the Bankruptcy Court ordered the Debtor, the Committee, UBS, Acis, the Redeemer Committee, and Mr. Dondero into mediation. As a result of this mediation, the Debtor negotiated the settlement of the claims of Acis and Mr. Terry, which the Bankruptcy Court approved on October 28, 2020 [Docket No. 1302].

f. On August 12, 2020, the Debtor filed its *Chapter 11 Plan of* Reorganization *of Highland Capital Management, L.P.* [Docket No. 944] (the "Initial Plan") and related disclosure statement (the "Initial Disclosure Statement") which were not supported by either the Committee or Mr. Dondero. The Independent Board filed the Initial Plan and Initial Disclosure Statement in order to act as a catalyst for continued discussions with the Committee while it simultaneously worked with Mr. Dondero on the "grand bargain" plan.

g. The Bankruptcy Court conducted a contested hearing on the Initial Disclosure Statement on October 27, 2020. The Committee and other parties objected to approval of the Disclosure Statement at the Initial Disclosure Statement hearing, which was eventually continued to November 23, 2020.

h. Following the Initial Disclosure Statement hearing, the Debtor continued to negotiate with the Committee and ultimately resolved the remaining material disputes and led to the Bankruptcy Court's approval of the Disclosure Statement on November 23, 2020.

i. Even after obtaining the Bankruptcy Court's approval of the Disclosure Statement, the Debtor and the Committee continued to negotiate with Mr. Dondero and the Committee over a potential "pot plan" as an alternative to the Plan on file with the Bankruptcy Court, but such efforts were unsuccessful. This history conclusively demonstrates that the Plan is being proposed in good faith within the meaning of section 1129(a)(3).

49. **Payments for Services or Costs and Expenses (11 U.S.C. § 1129(a)(4)).** Article II.B of the Plan provides that Professionals will file all final requests for payment of Professional Fee Claims no later than 60 days after the Effective Date, thereby providing an adequate period of time for interested parties to review such claims. The procedures set forth in the Plan for the Bankruptcy Court's approval of the fees, costs, and expenses to be paid in connection with this chapter 11 Case, or in connection with the Plan and incident to this Chapter 11 Case, satisfy the objectives of and are in compliance with section 1129(a)(4) of the Bankruptcy Code.

50. **Directors, Officers, and Insiders (11 U.S.C. § 1129(a)(5)).** Article IV.B of the Plan provides for the appointment of the Claimant Trustee, Litigation Trustee, and the Claimant Trust Oversight Committee and the members thereto. For the reasons more fully explained in paragraphs 44-45 of this Confirmation Order with respect to the requirement of section 1123(a)(7) of the Bankruptcy Code, the Debtor has disclosed the nature of compensation of any insider to be employed or retained by the Reorganized Debtor, if applicable, and compensation for any such insider. The appointment of such individuals is consistent with the interests of Claims and Equity Interests and with public policy. Thus, the Plan satisfies section 1129(a)(5) of the Bankruptcy Code.

51. **No Rate Changes (11 U.S.C. § 1129(a)(6)).** The Plan does not provide for any rate change that requires regulatory approval. Section 1129(a)(6) of the Bankruptcy Code is thus not applicable.

52. **Best Interests of Creditors (11 U.S.C. § 1129(a)(7)).** The "best interests" test is satisfied as to all Impaired Classes under the Plan, as each Holder of a Claim or Equity Interest in such Impaired Classes will receive or retain property of a value, as of the Effective Date of the Plan, that is not less than the amount that such Holder would so receive or retain if the Debtor were liquidated under chapter 7 of the Bankruptcy Code. On October 15, 2020, the Debtor filed the Liquidation Analysis [Docket 1173], as prepared by the Debtor with the assistance of its advisors and which was attached as Exhibit C to the Disclosure Statement. On January 29, 2021, in advance of Mr. Seery's deposition in connection with confirmation of the Plan, the Debtor provided an updated version of the Liquidation Analysis to the then-objectors of the Plan, including Mr. Dondero and the Dondero Related Entities. On February 1, 2021, the Debtor filed the Amended Liquidation Analysis/Financial Projections. The Amended Liquidation Analysis/Financial Projections included updates to the Debtor's projected asset values, revenues, and expenses to reflect: (1) the acquisition of an interest in an entity known as "HCLOF" that the Debtor will acquire as part of its court-approved settlement with HarbourVest and that was valued at $22.5 million; (2) an increase in the value of certain of the Debtor's assets due to changes in market conditions and other factors; (3) expected revenues and expenses arising in connection with the Debtor's continued management of the CLOs pursuant to management agreements that the Debtor decided to retain; (4) increases in projected expenses for headcount (in addition to adding two or three employees to assist in the management of the CLOs, the Debtor also increased modestly the projected headcount as a result of its decision not to engage a Sub-Servicer) and professional fees; and (5) an increase in projected recoveries on notes resulting from the

acceleration of term notes owed to the Debtor by the following Dondero Related Entities: NexPoint Advisors, L.P.; Highland Capital Management Services, Inc.; and HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC). Under the Plan, as of the Confirmation Date, (a) Class 7 General Unsecured Creditors are projected to receive 85% on account of their claims; and (b) Class 8 General Unsecured Creditors are projected to receive at least approximately 71% on account of their Claims. Under a hypothetical chapter 7 liquidation, all general unsecured creditors are projected to receive approximately 55% on account of their Claims. The Bankruptcy Court finds that the distributions that Class 7 and 8 General Unsecured Creditors are projected to receive under the Plan substantially exceeds that which they would receive under a chapter 7 liquidation based on Mr. Seery's testimony, including the following credible reasons he posited, among others:

a. The nature of the Debtor's assets is complex. Certain assets relate to complicated real estate structures and private equity investments in operating businesses. Mr. Seery's extensive experience with the Debtor during the thirteen months since his appointment as an Independent Director and later Chief Executive Officer and Chief Restructuring Officer, provides him with a substantial learning curve in connection with the disposition of the Debtor's assets and are reasonably expected to result in him being able to realize tens of millions of dollars more value than would a chapter 7 trustee.

b. Assuming that a hypothetical chapter 7 trustee could even operate the Debtor's business under chapter 7 of the Bankruptcy Code and hire the necessary personnel with the relevant knowledge and experience to assist him or her in selling the Debtor's assets, a chapter 7 trustee would likely seek to dispose of the Debtor's assets in a forced sale liquidation which would generate substantially less value for the Debtor's creditors than the asset monetization plan contemplated by the Plan.

c. A chapter 7 trustee would be unlikely to retain the Debtor's existing professionals to assist in its efforts to monetize assets, resulting in delays, increased expenses, and reduced asset yields for the chapter 7 estate.

d. The chapter 7 estate would be unlikely to maximize value as compared to the asset monetization process contemplated by the Plan because potential buyers are likely to perceive a chapter 7 trustee as engaging in a quick, forced "fire sale" of assets; and

e. The Debtor's employees, who are vital to its efforts to maximum value and recoveries for stakeholders, may be unwilling to provide services to a chapter 7 trustee.

Finally, there is no evidence to support the objectors' argument that the Claimant Trust Agreement's disclaimed liability for ordinary negligence by the Claimant Trustee compared to a chapter 7 trustee's liability has any relevance to creditor recoveries in a hypothetical chapter 7 liquidation. Thus, section 1129(a)(7) of the Bankruptcy Code is satisfied.

53. **Acceptance by Certain Classes (11 U.S.C. § 1129(a)(8)).** Classes 1, 3, 4, 5 and 6 are Unimpaired under the Plan. Class 2 (Frontier Secured Claim), Class 7 (Convenience Claims), and Class 9 (Subordinated Claims) have each voted to accept the Plan in accordance with the Bankruptcy Code, thereby satisfying section 1129(a)(8) as to those Classes. However, Class 8 (General Unsecured Claims), Class 10 (Class B/C Limited Partnership Interests), and Class 11 (Class A Limited Partnership Interests) have not accepted the Plan. Accordingly, section 1129(a)(8) of the Bankruptcy Code has not been satisfied. The Plan, however, is still confirmable because it satisfies the nonconsensual confirmation provisions of section 1129(b), as set forth below.

54. **Treatment of Administrative, Priority, Priority Tax Claims, and Professional Fee Claims (11 U.S.C. § 1129(a)(9)).** The treatment of Administrative Claims, Priority Claims, and Professional Fee Claims pursuant to Article III of the Plan, and as set forth below with respect to the resolution of the objections filed by the Internal Revenue Service and

certain Texas taxing authorities satisfies the requirements of sections 1129(a)(9) of the Bankruptcy Code.

55. **Acceptance by Impaired Class (11 U.S.C. § 1129(a)(10)).** Class 2 (Frontier Secured Claims) and Class 7 (Convenience Claims) are each Impaired Classes of Claims that voted to accept the Plan, determined without including any acceptance of the Plan by any insider. Therefore, the requirement of section 1129(a)(10) of the Bankruptcy Code is satisfied.

56. **Feasibility (11 U.S.C. § 1129(a)(11)).** Article IV of the Plan provides for the implementation of the Plan through the Claimant Trust, the Litigation Sub-Trust, and the Reorganized Debtor. The Plan provides that the Claimant Trust, among other things, will monetize and distribute the Debtor's remaining assets. The Disclosure Statement, the Amended Liquidation Analysis/Financial Projections, and the other evidence presented at the Confirmation Hearing provide a reasonable probability of success that the Debtor will be able to effectuate the provisions of the Plan. The Plan contemplates the establishment of the Claimant Trust upon the Effective Date, which will monetize the Estate's assets for the benefit of creditors. Mr. Seery testified that the Class 2 Frontier Secured Claim will be paid over time pursuant to the terms of the New Frontier Note and the Reorganized Debtor will have sufficient assets to satisfy its obligations under this note. The Claims of the Holders of Class 7 Claims (as well as those Class 8 creditors who validly opted to receive the treatment of Class 7 Claims) are expected to be satisfied shortly after the Effective Date. Holders of Class 8 Claims (including any holders of Class 7 Claims who opted to receive the treatment provided to Class 8 Claims) are not guaranteed any recovery and will

periodically receive pro rata distributions as assets are monetized pursuant to the Plan and the Claimant Trust Agreement. Thus, section 1129(a)(11) of the Bankruptcy Code is satisfied.

57. **Payment of Fees (11 U.S.C. § 1129(a)(12)).** All fees payable under 28 U.S.C. § 1930 have been paid or will be paid on or before the Effective Date pursuant to Article XII.A of the Plan, thus satisfying the requirement of section 1129(a)(12) of the Bankruptcy Code. The Debtor has agreed that the Reorganized Debtor, the Claimant Trust, and the Litigation Sub-Trust shall be jointly and severally liable for payment of quarterly fees to the Office of the United States Trustee pursuant to 28 U.S.C. § 1930 through the entry of the Final Decree for the Debtor or the dismissal or conversion of the Chapter 11 Case.

58. **Retiree Benefits.** The Plan provides for the assumption of the Pension Plan (to the extent such Pension Plan provides "retiree benefits" and is governed by section 1114 of the Bankruptcy Code). Thus, the Plan complies with section 1129(a)(13) of the Bankruptcy Code, to the extent applicable.

59. **Miscellaneous Provisions (11 U.S.C. §§ 1129(a)(14)-(16)).** Sections 1129(a)(14)-(16) of the Bankruptcy Code are inapplicable as the Debtor (i) has no domestic support obligations (section 1129(a)(14)), (ii) is not an individual (section 1129(a)(15)), and (iii) is not a nonprofit corporation (section 1129(a)(16)).

60. **No Unfair Discrimination; Fair and Equitable Treatment (11 U.S.C. § 1129(b)).** The classification and treatment of Claims and Equity Interests in Classes 8, 10 and 11, which have not accepted the Plan, is proper pursuant to section 1122 of the Bankruptcy Code, does

not discriminate unfairly, and is fair and equitable pursuant to section 1129(b)(1) of the Bankruptcy Code.

a. Class 8. The Plan is fair and equitable with respect to Class 8 General Unsecured Claims. While Equity Interests in Class 10 and Class 11 will receive a contingent interest in the Claimant Trust under the Plan (the "Contingent Interests"), the Contingent Interests will not vest unless and until holders of Class 8 General Unsecured Claims and Class 9 Subordinated Claims receive distributions equal to 100% of the amount of their Allowed Claims plus interest as provided under the Plan and Claimant Trust Agreement. Accordingly, as the holders of Equity Interests that are junior to the Claims in Class 8 and Class 9 will not receive or retain under the Plan on account of such junior claim interest any property unless and until the Claims in Class 8 and Class 9 are paid in full plus applicable interest, the Plan is fair and equitable with respect to holders of Class 8 General Unsecured Claims pursuant to section 1129(b)(2)(B) of the Bankruptcy Code and the reasoning of *In re Introgen Therapuetics* 429 B.R 570 (Bankr. W.D. Tex. 2010).

b. Class 10 and Class 11. There are no Claims or Equity Interests junior to the Equity Interests in Class 10 and Class 11. Equity Interests in Class 10 and 11 will neither receive nor retain any property under the Plan unless Allowed Claims in Class 8 and Class 9 are paid in full plus applicable interest pursuant to the terms of the Plan and Claimant Trust Agreement. Thus, the Plan does not violate the absolute priority rule with respect to Classes 10 and 11 pursuant to Bankruptcy Code section 1129(b)(2)(C). The Plan does not discriminate unfairly as to Equity Interests. As noted above, separate classification of the Class B/C Partnership Interests from the Class A Partnerships Interests is appropriate because they constitute different classes of equity security interests in the Debtor, and each are appropriately separately classified and treated.

Accordingly, the Plan does not violate the absolute priority rule, does not discriminate unfairly, and is fair and equitable with respect to each Class that has rejected the Plan. Thus, the Plan satisfies the requirements of section 1129(b) of the Bankruptcy Code with respect to Classes 8, 10, and 11.

61. **Only One Plan (11 U.S.C. § 1129(c)).** The Plan is the only chapter 11 plan confirmed in this Chapter 11 Case, and the requirements of section 1129(c) of the Bankruptcy Code are therefore satisfied.

62. **Principal Purpose (11 U.S.C. § 1129(d)).** Mr. Seery testified that the principal purpose of the Plan is neither the avoidance of taxes nor the avoidance of the application of section 5 of the Securities Act of 1933, and no governmental unit has objected to the confirmation of the Plan on any such grounds. Accordingly, section 1129(d) of the Bankruptcy Code is inapplicable.

63. **Satisfaction of Confirmation Requirements.** Based upon the foregoing, the Plan satisfies the requirements for confirmation set forth in section 1129 of the Bankruptcy Code and should be confirmed.

64. **Good Faith Solicitation (11 U.S.C. § 1125(e)).** The Debtor, the Independent Directors, and the Debtor's employees, advisors, Professionals, and agents have acted in good faith within the meaning of section 1125(e) of the Bankruptcy Code and in compliance with the applicable provisions of the Bankruptcy Code and Bankruptcy Rules in connection with all of their respective activities relating to the solicitation of acceptances of the Plan and their participation in the activities described in section 1125 of the Bankruptcy Code, and they are entitled to the protections afforded by section 1125(e) of the Bankruptcy Code.

65. **Discharge (11 U.S.C. § 1141(d)(3)**). The Debtor is entitled to a discharge of debts pursuant to section 1141(d)(3)(B) of the Bankruptcy Code. Under the Plan, the Claimant Trust or Reorganized Debtor, as applicable, will continue to manage funds and conduct business

in the same manner as the Debtor did prior to Plan confirmation, which includes the management of the CLOs, Multi-Strat, Restoration Capital, the Select Fund and the Korea Fund. Although the Plan projects that it will take approximately two years to monetize the Debtor's assets for fair value, Mr. Seery testified that while the Reorganized Debtor and Claimant Trust will be monetizing their assets, there is no specified time frame by which this process must conclude. Mr. Seery's credible testimony demonstrates that the Debtor will continue to engage in business after consummation of the Plan, within the meaning of Section 1141(d)(3)(b) and that the Debtor is entitled to a discharge pursuant to section 1141(d)(1) of the Bankruptcy Code.

66. **Retention of Jurisdiction.** The Bankruptcy Court may properly retain jurisdiction over the matters set forth in Article XI of the Plan and/or section 1142 of the Bankruptcy Code to the maximum extent under applicable law.

67. **Additional Plan Provisions (11 U.S.C. § 1123(b)).** The Plan's provisions are appropriate, in the best interests of the Debtor and its Estate, and consistent with the applicable provisions of the Bankruptcy Code, Bankruptcy Rules, and Local Rules.

68. **Executory Contracts and Unexpired Leases (11 U.S.C. § 1123(b)(2)).** The Debtor has exercised reasonable business judgment with respect to the rejection of the Executory Contracts and Unexpired Leases pursuant the terms of the Plan and this Confirmation Order, and such rejections are justified and appropriate in this Chapter 11 Case. The Debtor also filed the List of Assumed Contracts, which contain notices to the applicable counterparties to the contracts set forth on Exhibit "FF" to Plan Supplement filed on February 1, 2021 [Docket No. 1875] and which exhibit sets forth the list of executory contracts and unexpired leases to be

assumed by the Debtor pursuant to the Plan (collectively, the "Assumed Contracts"). With respect to the Assumed Contracts, only one party objected to the assumption of any of the Assumed Contracts, but that objection was withdrawn.[8] Any modifications, amendments, supplements, and restatements to the Assumed Contracts that may have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the Assumed Contracts or the validity, priority, or amount of any Claims that may arise in connection therewith. Assumption of any Assumed Contract pursuant to the Plan and full payment of any applicable Cure pursuant to the Plan shall result in the full release and satisfaction of any Cures, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed Executory Contract or Unexpired Lease at any time prior to the effective date of assumption.

69. **Compromises and Settlements Under and in Connection with the Plan (11 U.S.C. § 1123(b)(3)).** All of the settlements and compromises pursuant to and in connection with the Plan, comply with the requirements of section 1123(b)(3) of the Bankruptcy Code and Bankruptcy Rule 9019.

70. **Debtor Release, Exculpation and Injunctions (11 U.S.C. § 1123(b)).** The Debtor Release, Exculpation, and Injunction provisions provided in the Plan (i) are within the jurisdiction of the Bankruptcy Court under 28 U.S.C. § 1334; (ii) are integral elements of the transactions incorporated into the Plan, and inextricably bound with the other provisions of the Plan; (iii) confer material benefit on, and are in the best interests of, the Debtor, its Estate, and its

[8] *See Notice of Withdrawal of James Dondero's Objection Debtor's Proposed Assumption of Contracts and Cure Amounts Proposed in Connection Therewith* [Docket No. 1876]

creditors; (iv) are fair, equitable, and reasonable; (v) are given and made after due notice and opportunity for hearing; (vi) satisfy the requirements of Bankruptcy Rule 9019; and (vii) are consistent with the Bankruptcy Code and other applicable law, and as set forth below.

71. **Debtor Release.** Section IX.D of the Plan provides for the Debtor's release of the Debtor's and Estate's claims against the Released Parties. Releases by a debtor are discretionary and can be provided by a debtor to persons who have provided consideration to the Debtor and its estate pursuant to section 1123(b)(3)(A) of the Bankruptcy Code. Contrary to the objections raised by Mr. Dondero and certain of the Dondero Related Entities, the Debtor Release is appropriately limited to release claims held by the Debtor and does not purport to release the claims held by the Claimant Trust, Litigation Sub-Trust, or other third parties. The Plan does not purport to release any claims held by third parties and the Bankruptcy Court finds that the Debtor Release is not a "disguised" release of any third party claims as asserted by certain objecting parties. The limited scope of the Debtor Release in the Plan was extensively negotiated with the Committee, particularly with the respect to the Debtor's conditional release of claims against employees, as identified in the Plan, and the Plan's conditions and terms of such releases. The Plan does not release (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) the rights or obligations of any current employee of the Debtor under any employment agreement or plan, (iii) the rights of the Debtor with respect to any confidentiality provisions or covenants restricting competition in favor of the Debtor under any employment agreement with a current or former employee of the Debtor, (iv) any Avoidance Actions, or (v) any Causes of Action arising from willful misconduct, criminal misconduct, actual

fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction. The Debtor Release also contains conditions to such releases as set forth in Article X.D of the Plan with respect to employees (the "Release Conditions"). Until the an employee satisfies the Release Conditions or the Release Conditions otherwise terminate, any claims against such employee will be tolled so that if the Release Conditions are not met the Litigation Trustee may pursue claims against an employee at a later date. The evidence before the Bankruptcy Court, including, but not limited to Mr. Seery's testimony, demonstrates that the Debtor is not aware of any claims against any of the Released Parties, that the Released Parties have been instrumental in assisting the Debtor's efforts toward confirmation of the Plan and that, therefore, the releases are a *quid pro quo* for the Released Parties' significant contributions to a highly complex and contentious restructuring. The Committee, whose members hold approximately $200 million in claims against the Estate, is highly sophisticated and is represented by highly sophisticated professionals, and has actively and vigorously negotiated the terms of the Debtor Release, which was the subject of significant controversy at the Initial Disclosure Statement hearing held by the Bankruptcy Court on October 27, 2020.

72. **Exculpation.** Section IX.C of the Plan provides for the exculpation of certain Exculpated Parties to the extent provided therein (the "Exculpation Provision"). As explained below, the Exculpation Provision is appropriate under the unique circumstances of this litigious Chapter 11 Case and consistent with applicable Fifth Circuit precedent. First, with respect to the Independent Directors, their agents, and their advisors, including any employees acting at

their direction, the Bankruptcy Court finds and concludes that it has already exculpated these parties for acts other than willful misconduct and gross negligence pursuant to the January 9 Order. The January 9 Order was specifically agreed to by Mr. Dondero, who was in control of the Debtor up until entry of the January 9 Order. The January 9 Order was not appealed. In addition to the appointment of the Independent Directors in an already contentious and litigious case, the January 9 Order set the standard of care for the Independent Directors and specifically exculpated them for negligence. Mr. Seery and Mr. Dubel each testified that they had input into the contents of the January 9 Order and would not have agreed to their appointment as Independent Directors if the January 9 Order did not include the protections set forth in paragraph 10 of the January 9 Order. Paragraph 10 of the January 9 Order (1) requires that parties wishing to sue the Independent Directors or their agents and advisors must first seek approval from the Bankruptcy Court before doing so; (2) sets the standard of care for the Independent Directors during the Chapter 11 Case and exculpated the Independent Directors for acts other than willful misconduct or gross negligence; (3) only permits suits against the Independent Directors to proceed for colorable claims of willful misconduct and gross negligence upon order of the Bankruptcy Court; and (4) does not expire by its terms.

73. **Existing Exculpation of Independent Directors.** The Bankruptcy Court also finds and concludes that it has already exculpated Mr. Seery acting in the capacity as Chief Executive Officer and Chief Restructuring Officer pursuant to the July 16 Order. The Bankruptcy Court concludes its previous approval of the exculpation of the Independent Directors, their agents, advisors and employees working at their direction pursuant to the January 9 Order, and the Chief

Executive Officer and Chief Restructuring Officer pursuant to the July 16 Order constitutes the law of this case and are *res judicata* pursuant to *In re Republic Supply Co. v. Shoaf*, 815 F.2d 1046 (5th Cir.1987). The January 9 Order and July 16 Order cannot be collaterally attacked based on the objectors' objection to the exculpation of the Independent Directors, their agents, and advisors, including any employees acting at their direction, as well as the Chief Executive Officer and Chief Restructuring Officer, that the Bankruptcy Court already approved pursuant to the January 9 Order and the July 16 Order.

74. **The Exculpation Provision Complies with Applicable Law.** Separate and apart from the *res judicata* effect of the January 9 Order and the July 16 Order, the Bankruptcy Court also finds and concludes that the Exculpation Provision is consistent with applicable law, including *In re Pacific Lumber Co*., 584 F.3d 229 (5th Cir. 2009), for several reasons:

a. First, the statutory basis for *Pacific Lumber*'s denial of exculpation for certain parties other than a creditors' committee and its members is that section 524(e) of the Bankruptcy Code "only releases the debtor, not co-liable third parties." *Pacific Lumber*, 253 F.3d. at 253. However, *Pacific Lumber* does not prohibit all exculpations under the Bankruptcy Code and the court in such case specifically approved the exculpations of a creditors' committee and its members on the grounds that "11 U.S.C. § 1103(c), which lists the creditors' committee's powers, implies committee members have qualified immunity for actions within the scope of their duties…. [I]f members of the committee can be sued by persons unhappy with the committee's performance during the case or unhappy with the outcome of the case, it will be extremely difficult to find members to serve on an official committee." *Pacific Lumber*, 253 F.3d at 253 (quoting Lawrence P. King, et al, Collier on Bankruptcy, ¶ 1103.05[4][b] (15th Ed. 2008]). *Pacific Lumber's* rationale for permitted exculpation of creditors' committees and their members (which was clearly policy-based and based on a creditors' committee qualified immunity flowing from their duties under section 1103(c) of the Bankruptcy Code and their disinterestedness and importance in chapter 11 cases) does not preclude exculpation to other parties in a particular chapter 11 case that perform similar roles to a creditors' committee and its members. The Independent Directors, and by extension the Chief Executive Officer and Chief Restructuring Officer, were not

part of the Debtor's enterprise prior to their appointment by the Bankruptcy Court under the January 9 Order. The Bankruptcy Court appointed the Independent Directors in lieu of a chapter 11 trustee to address what the Bankruptcy Court perceived as serious conflicts of interest and fiduciary duty concerns with the then-existing management prior to January 9, 2020, as identified by the Committee. In addition, the Bankruptcy Court finds that the Independent Directors expected to be exculpated from claims of negligence, and would likely have been unwilling to serve in contentious cases absent exculpation. The uncontroverted testimony of Mr. Seery and Mr. Dubel demonstrates that the Independent Directors would not have agreed to accept their roles without the exculpation and gatekeeper provision in the January 9 Order. Mr. Dubel also testified as to the increasing important role that independent directors are playing in complex chapter 11 restructurings and that unless independent directors could be assured of exculpation for simple negligence in contentious bankruptcy cases they would be reluctant to accept appointment in chapter 11 cases which would adversely affect the chapter 11 restructuring process. The Bankruptcy Court concludes that the Independent Directors were appointed under the January 9 Order in order to avoid the appointment of a chapter 11 trustee and are analogous to a creditors' committee rather than an incumbent board of directors. The Bankruptcy Court also concludes that if independent directors cannot be assured of exculpation for simple negligence in contentious bankruptcy cases, they may not be willing to serve in that capacity. Based upon the foregoing, the Bankruptcy Court concludes that *Pacific Lumber's* policy of exculpating creditors' committees and their members from "being sued by persons unhappy with the committee's performance during the case or unhappy with the outcome of the case" is applicable to the Independent Directors in this Chapter 11 Case.[9]

b. Second, the Bankruptcy Court also concludes that *Pacific Lumber* does not preclude the exculpation of parties if there is a showing that "costs [that] the released parties might incur defending against such suits alleging such negligence are likely to swamp either the Exculpated Parties or the reorganization." *Pacific Lumbe*r, 584 F.3d at 252. If ever there was a risk of that happening in a chapter 11 reorganization, it is this one. Mr. Seery credibly testified that Mr. Dondero stated outside the courtroom that if Mr. Dondero's pot plan does not get approved, that Mr. Dondero will "burn the place down." The Bankruptcy Court can easily expect that the proposed Exculpated Parties might expect to incur costs that could swamp them and the reorganization based on the prior litigious conduct of Mr. Dondero and his controlled entities that justify their inclusion in the Exculpation Provision.

[9] The same reasoning applies to the inclusion of Strand in the Exculpation Provision because Strand is the general partner of the Debtor through which each of the Independent Board members act.

75. **Injunction.** Section IX.D of the Plan provides for a Plan inunction to implement and enforce the Plan's release, discharge and release provisions (the "Injunction Provision"). The Injunction Provision is necessary to implement the provisions in the Plan. Mr. Seery testified that the Claimant Trustee will monetize the Debtor's assets in order to maximize their value. In order to accomplish this goal, the Claimant Trustee needs to be able to pursue this objective without the interference and harassment of Mr. Dondero and his related entities, including the Dondero Related Entities. Mr. Seery also testified that if the Claimant Trust was subject to interference by Mr. Dondero, it would take additional time to monetize the Debtor's assets and those assets could be monetized for less money to the detriment of the Debtor's creditors. The Bankruptcy Court finds and concludes that the Injunction Provision is consistent with and permissible under Bankruptcy Code sections 1123(a), 1123(a)(6), 1141(a) and (c), and 1142. The Bankruptcy Court rejects assertions by certain objecting parties that the Injunction Provision constitutes a "third-party release." The Injunction Provision is appropriate under the circumstances of this Chapter 11 Case and complies with applicable bankruptcy law. The Bankruptcy Court also concludes that the terms "implementation" and "consummation" are neither vague nor ambiguous

76. **Gatekeeper Provision**. Section IX.F of the Plan contains a provision contained in paragraph AA of this Confirmation Order and which the Debtor has referred to as a gatekeeper provision (the "Gatekeeper Provision"). The Gatekeeper Provision requires that Enjoined Parties first seek approval of the Bankruptcy Court before they may commence an action against Protected Parties. Thereafter, if the Bankruptcy Court determines that the action is

colorable, the Bankruptcy Court may, if it has jurisdiction, adjudicate the action. The Bankruptcy Court finds that the inclusion of the Gatekeeper Provision is critical to the effective and efficient administration, implementation, and consummation of the Plan. The Bankruptcy Court also concludes that the Bankruptcy Court has the statutory authority as set forth below to approve the Gatekeeper Provision.

77. **Factual Support for Gatekeeper Provision.** The facts supporting the need for the Gatekeeper Provision are as follows. As discussed earlier in this Confirmation Order, prior to the commencement of the Debtor's bankruptcy case, and while under the direction of Mr. Dondero, the Debtor had been involved in a myriad of litigation, some of which had gone on for years and, in some cases, over a decade. Substantially all of the creditors in this case are either parties who were engaged in litigation with the Debtor, parties who represented the Debtor in connection with such litigation and had not been paid, or trade creditors who provided litigation-related services to the Debtor. During the last several months, Mr. Dondero and the Dondero Related Entities have harassed the Debtor, which has resulted in further substantial, costly, and time-consuming litigation for the Debtor. Such litigation includes: (i) entry of a temporary restraining order and preliminary injunction against Mr. Dondero [Adv. Proc. No. 20-03190 Docket No. 10 and 59] because of, among other things, his harassment of Mr. Seery and employees and interference with the Debtor's business operations; (ii) a contempt motion against Mr. Dondero for violation of the temporary restraining order, which motion is still pending before the Bankruptcy Court [Adv. Proc. No. 20-03190 Docket No. 48]; (iii) a motion by Mr. Dondero's controlled investors in certain CLOs managed by the Debtor that the Bankruptcy Court referred to

as frivolous and a waste of the Bankruptcy Court's time [Docket No. 1528] which was denied by the Court [Docket No. 1605]; (iv) multiple plan confirmation objections focused on ensuring the Dondero Related Entities be able to continue their litigation against the Debtor and its successors post-confirmation [Docket Nos. 1661, 1667, 1670, 1673, 1676, 1677 and 1868]; (v) objections to the approval of the Debtor's settlements with Acis and HarbourVest and subsequent appeals of the Bankruptcy Court's order approving each of those settlements [Docket Nos. 1347 and 1870]; and (vi) a complaint and injunction sought against Mr. Dondero's affiliated entities to prevent them from violating the January 9 Order and entry of a restraining order against those entities [Adv Proc. No. 21-03000 Docket No 1] (collectively, the "Dondero Post-Petition Litigation").

78. **Findings Regarding Dondero Post-Petition Litigation.** The Bankruptcy Court finds that the Dondero Post-Petition Litigation was a result of Mr. Dondero failing to obtain creditor support for his plan proposal and consistent with his comments, as set forth in Mr. Seery's credible testimony, that if Mr. Dondero's plan proposal was not accepted, he would "burn down the place." The Bankruptcy Court concludes that without appropriate protections in place, in the form of the Gatekeeper Provision, Mr. Dondero and his related entities will likely commence litigation against the Protected Parties after the Effective Date and do so in jurisdictions other than the Bankruptcy Court in an effort to obtain a forum which Mr. Dondero perceives will be more hospitable to his claims. The Bankruptcy Court also finds, based upon Mr. Seery's testimony, that the threat of continued litigation by Mr, Dondero and his related entities after the Effective Date will impede efforts by the Claimant Trust to monetize assets for the benefit of creditors and result

in lower distributions to creditors because of costs and distraction such litigation or the threats of such litigation would cause.

79. **Necessity of Gatekeeper Provision.** The Bankruptcy Court further finds that unless the Bankruptcy Court approves the Gatekeeper Provision, the Claimant Trustee and the Claimant Trust Oversight Board will not be able to obtain D&O insurance, the absence of which will present unacceptable risks to parties currently willing to serve in such roles. The Bankruptcy Court heard testimony from Mark Tauber, a Vice President with AON Financial Services, the Debtor's insurance broker ("AON"), regarding his efforts to obtain D&O insurance. Mr. Tauber credibly testified that of all the insurance carriers that AON approached to provide D&O insurance coverage after the Effective Date, the only one willing to do so without an exclusion for claims asserted by Mr. Dondero and his affiliates otherwise requires that this Order approve the Gatekeeper Provision. Based on the foregoing, the Bankruptcy Court finds that the Gatekeeper Provision is necessary and appropriate in light of the history of the continued litigiousness of Mr. Dondero and his related entities in this Chapter 11 Case and necessary to the effective and efficient administration, implementation and consummation of the Plan and is appropriate pursuant to *Carroll v. Abide (In re Carroll*) 850 F.3d 811 (5th Cir. 2017). Approval of the Gatekeeper Provision will prevent baseless litigation designed merely to harass the post-confirmation entities charged with monetizing the Debtor's assets for the benefit of its economic constituents, will avoid abuse of the court system and preempt the use of judicial time that properly could be used to consider the meritorious claims of other litigants. Any suit against a Protected Party would effectively be a suit against the Debtor, and the Debtor may be required to indemnify the Protected

Parties under the Limited Partnership Agreement, which will remain in effect through the Effective Date, or those certain *Indemnification and Guaranty Agreements*, dated January 9, 2020, between Strand, the Debtor, and each Independent Director, following the Confirmation Date as each such agreement will be assumed pursuant to 11 U.S.C. § 365 pursuant to the Plan.

80. **Statutory Authority to Approve Gatekeeper Provision.** The Bankruptcy Court finds it has the statutory authority to approve the Gatekeeper Provision under sections 1123(a)(5), 1123(b)(6), 1141, 1142(b), and 105(a). The Gatekeeper Provision is also within the spirit of the Supreme Court's "Barton Doctrine." *Barton v. Barbour,* 104 U.S. 126 (1881). The Gatekeeper Provision is also consistent with the notion of a prefiling injunction to deter vexatious litigants, that has been approved by the Fifth Circuit in such cases as *Baum v. Blue Moon Ventures, LLC*, 513 F.3d 181, 189 (5th Cir. 2008), and *In re Carroll,* 850 F.3d 811 (5th Cir. 2017).

81. **Jurisdiction to Implement Gatekeeper Provision.** The Bankruptcy Court finds that it will have jurisdiction after the Effective Date to implement the Gatekeeper Provision as post-confirmation bankruptcy court jurisdiction has been interpreted by the Fifth Circuit under *United States Brass Corp. v. Travelers Ins. Group, Inc. (In re United States Brass Corp.)*, 301 F.3d 296 (5th Cir. 2002) and *EOP-Colonnade of Dallas Ltd. P'Ship v. Faulkner (In re Stonebridge Techs., Inc.)*, 430 F.3d 260 (5th Cir. 2005). Based upon the rationale of the Fifth Circuit in *Villegas v. Schmidt*, 788 F.3d 156, 158-59 (5th Cir. 2015), the Bankruptcy Court's jurisdiction to act as a gatekeeper does not violate *Stern v. Marshall.* The Bankruptcy Court's determination of whether

a claim is colorable, which the Bankruptcy Court has jurisdiction to determine, is distinct from whether the Bankruptcy Court would have jurisdiction to adjudicate any claim it finds colorable.

82. **Resolution of Objections of Scott Ellington and Isaac Leventon**. Each of Scott Ellington ("Mr. Ellington") and Isaac Leventon ("Mr. Leventon") (each, a "Senior Employee Claimant") has asserted certain claims for liquidated but unpaid bonus amounts for the following periods: 2016, 2017, and 2018, as set forth in Exhibit A to that certain *Senior Employees' Limited Objection to Debtor's Fifth Amended Plan of Reorganization* [Docket No. 1669] (the "Senior Employees' Objection") (for each of Mr. Ellington and Mr. Leventon, the "Liquidated Bonus Claims").

a. Mr. Ellington has asserted Liquidated Bonus Claims in the aggregate amount of $1,367,197.00, and Mr. Leventon has asserted Liquidated Bonus Claims in the aggregate amount of $598,198.00. Mr. Ellington received two Ballots[10] – a Ballot for Class 7 of the Plan and a Ballot for Class 8 of the Plan. Mr. Ellington completed and timely returned both of such Ballots, voted to reject the Plan, and elected to have his Class 8 Liquidated Bonus Claims treated under Class 7 of the Plan, subject to the objections and reservations of rights set forth in the Senior Employees' Objection. If Mr. Ellington is permitted to elect Class 7 treatment for his Liquidated Bonus Claims, then the maximum amount of his Liquidated Bonus Claims will be $1,000,000.

b. Mr. Leventon received two Ballots—a Ballot for Class 7 of the Plan and a Ballot for Class 8 of the Plan. Mr. Leventon completed and timely returned both of such Ballots and voted each such Ballots to rejected the Plan.

c. The Senior Employees' Objection, among other things, objects to the Plan on the grounds that the Debtor improperly disputes the right of Mr. Ellington to elect Class 7 treatment for his Liquidated Bonus Claims and Mr. Leventon's entitlement to receive Class 7 Convenience Class treatment for his Liquidated Bonus Claims. The Debtor contended that neither Mr. Ellington or Mr. Leventon were entitled to elect to receive Class 7 Convenience Class treatment on account of their Liquidated

[10] As defined in the Plan, "Ballot" means the forms(s) distributed to holders of Impaired Claims or Equity Interests entitled to vote on the Plan on which to indicate their acceptance or rejection of the Plan.

Bonus Claims under the terms of the Plan, the Disclosure Statement Order or applicable law.

d. The Debtor and Mr. Ellington and Mr. Leventon negotiated at arms' length in an effort to resolve all issues raised in the Senior Employee's Objection, including whether or not Mr. Ellington and Mr. Leventon were entitled to Class 7 Convenience Class treatment of their Liquidated Bonus Claims. As a result of such negotiation, the Debtor, Mr. Ellington, and Mr. Leventon have agreed to the settlement described in paragraphs 82(e) through 82(k) below and approved and effectuated pursuant to decretal paragraphs RR through SS (the "Senior Employees' Settlement").

e. Under the terms of the Senior Employees' Settlement, the Debtor has the right to elect one of two treatments of the Liquidated Bonus Claims for a Senior Employee Claimant. Under the first treatment option ("Option A"), the Liquidated Bonus Claims will be entitled to be treated in Class 7 of the Plan, and the Liquidated Bonus Claims will be entitled to receive payment in an amount equal to 70.125% of the Class 7 amount of the Liquidated Bonus Claims, subject to the Liquidated Bonus Claims becoming Allowed Claims under the terms of the Plan. Under this calculation, Mr. Ellington would be entitled to receive $701,250.00 on account of his Class 7 Convenience Class Claim when and as Allowed under the Plan, and Mr. Leventon would be entitled to receive $413,175.10 on account of his Class 7 Convenience Class Claim when and as Allowed under the Plan. If, however, any party in interest objects to the allowance of the Senior Employee Claimant's Liquidated Bonus Claims and does not prevail in such objection, then such Senior Employee Claimant will be entitled to a payment in an amount equal to 85% of his Allowed Liquidated Bonus Claims (subject, in the case of Mr. Ellington, to the cap imposed on Class 7 Claims). In addition, under Option A, each of Mr. Ellington and Mr. Leventon would retain their respective rights to assert that the Liquidated Bonus Claims are entitled to be treated as Administrative Expense Claims, as defined in Article I.B.2. of the Plan, in which case the holder of such Liquidated Bonus Claims would be entitled to payment in full of the Allowed Liquidated Bonus Claims. Under Option A, parties in interest would retain the right to object to any motion seeking payment of the Liquidated Bonus Amounts as Administrative Expenses.

f. Under the second treatment option ("Option B"), the Debtor would agree that the Senior Employee Claimant has Allowed Liquidated Bonus Claims, no longer subject to objection by any party in interest, in the amounts of the Liquidated Bonus Claims (subject, in the case of Mr. Ellington, to the cap imposed by Class 7). If the Debtor elects Option B as to a Senior Employee Claimant, then such Senior Employee Claimant would be entitled to a payment on account of his Allowed Liquidated Bonus Claims in an amount equal to 60% of the amount of the

Liquidated Bonus Claims (which, in Mr. Ellington's case, would be $600,000 and in Mr. Leventon's case, would be $358,918.80), and such payment would be the sole recovery on account of such Allowed Liquidated Bonus Claims.

g. The Debtor may, with the consent of the Committee, elect Option B with respect to a Senior Employee Claimant at any time prior to the occurrence of the Effective Date. If the Debtor does not make an election, then Option A will apply.

h. Under either Option A or Option B, Mr. Ellington and Mr. Leventon will retain all their rights with respect to all Claims other than the Liquidated Bonus Amounts, including, but not limited to, their Class 6 PTO Claims, other claims asserted as Class 8 General Unsecured Claims, the Senior Employees' claims for indemnification against the Debtor, and any other claims that they may assert constitute Administrative Expense Claims, and any other such Claims are subject to the rights of any party in interest to object to such Claims, and the Debtor reserves any all of its rights and defenses in connection therewith.

i. Subject to entry of this Confirmation Order and as set forth and announced on the record at the hearing on confirmation of the Plan and no party objecting thereto, Mr. Ellington and Mr. Leventon agreed to change the votes in their respective Ballots from rejection to acceptance of the Plan and to withdraw the Senior Employees' Objection.

j. The Senior Employees' Settlement represents a valid exercise of the Debtor's business judgment and satisfies the requirements for a compromise under Bankruptcy Rule 9019(a).

k. For the avoidance of doubt, neither Mr. Leventon nor Mr. Ellington shall be a Released Party under the Plan regardless of how the Senior Employee Claimants' Claims are to be treated hereunder.

Based upon the foregoing findings, and upon the record made before the Bankruptcy Court at the Confirmation Hearing, and good and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED AND DECREED THAT:

A. Confirmation of the Plan. The Plan is approved in its entirety and **CONFIRMED** under section 1129 of the Bankruptcy Code. The terms of the Plan, including the

Plan Supplements and Plan Modifications, are incorporated by reference into and are an integral part of this Confirmation Order.[11]

B. Findings of Fact and Conclusions of Law. The findings of fact and the conclusions of law set forth in this Confirmation Order and on the record of the Confirmation Hearing constitute findings of fact and conclusions of law in accordance with Bankruptcy Rule 7052, made applicable to this proceeding by Bankruptcy Rule 9014. All findings of fact and conclusion of law announced by the Bankruptcy Court at the Confirmation Hearing in relation to confirmation of the Plan are hereby incorporated into this Confirmation Order. To the extent that any of the following constitutes findings of fact or conclusions of law, they are adopted as such. To the extent any findings of fact or conclusions of law set forth in this Confirmation Order (including any findings of fact or conclusions of law announced by the Bankruptcy Court at the Confirmation Hearing and incorporated herein) constitutes an order of the Bankruptcy Court, and is adopted as such.

C. Objections. Any resolution or disposition of objections to confirmation of the Plan or otherwise ruled upon by the Bankruptcy Court on the record of the Confirmation Hearing is hereby incorporated by reference. All objections and all reservations of rights pertaining to confirmation of the Plan that have not been withdrawn, waived or settled are overruled on the merits, except as otherwise specifically provided in this Confirmation Order.

D. Plan Supplements and Plan Modifications. The filing with the Bankruptcy Court of the Plan Supplements and the Plan Modifications constitutes due and

[11] The Plan is attached hereto as **Exhibit A**.

sufficient notice thereof. Accordingly, pursuant to section 1127(a) of the Bankruptcy Code and Bankruptcy Rule 3019, the Plan Modifications and the Plan Supplements do not require additional disclosure under section 1125 of the Bankruptcy Code or resolicitation of votes under section 1126 of the Bankruptcy Code, nor do they require that Holders of Claims or Equity Interests be afforded an opportunity to change previously cast acceptances or rejections of the Plan. The Plan Modifications and the Plan Supplements constitute the Plan pursuant to section 1127(a) of the Bankruptcy Code. Accordingly, the Plan, as modified, is properly before the Bankruptcy Court and all votes cast with respect to the Plan prior to such modification shall be binding and shall apply with respect to the Plan.

E. Deemed Acceptance of Plan. In accordance with section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, all Holders of Claims and Equity Interests who voted to accept the Plan (or whom are conclusively presumed to accept the Plan) are deemed to have accepted the Plan as modified by the Plan Modifications. No holder of a Claim shall be permitted to change its vote as a consequence of the Plan Modifications.

F. Vesting of Assets in the Reorganized Debtor. Except as otherwise provided in the Plan or this Confirmation Order, on or after the Effective Date, all Reorganized Debtor Assets will vest in the Reorganized Debtor, free and clear of all Liens, Claims, charges or other encumbrances pursuant to section 1141(c) of the Bankruptcy Code, except with respect to such Liens, Claims, charges, and other encumbrances that are specifically preserved under the Plan upon the Effective Date. The Reorganized Debtor shall be the exclusive trustee of the Reorganized Debtor Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the

representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Reorganized Debtor Assets.

G. Effectiveness of All Actions. All actions contemplated by the Plan, including all actions in connection with the Claimant Trust Agreement, the Senior Employee Stipulation, the New GP LLC Documents, the New Frontier Note, the Reorganized Limited Partnership Agreement, the Litigation Sub-Trust Agreement, and the other Plan Documents, are authorized to be taken on, prior to, or after the Effective Date, as applicable, under this Confirmation Order, without further application to or order of the Bankruptcy Court, or further action by the directors, managers, officers or partners of the Debtor or the Reorganized Debtor and with the effect that such actions had been taken by unanimous action of such parties.

H. Restructuring Transactions. The Debtor or Reorganized Debtor, as applicable, are authorized to enter into and effectuate the Restructuring provided under the Plan, including, without limitation, the entry into and consummation of the transactions contemplated by the Claimant Trust Agreement, the Senior Employee Stipulation, the New GP LLC Documents, the New Frontier Note, the Reorganized Limited Partnership Agreement, the Litigation Sub-Trust Agreement, and the other Plan Documents, and may take any actions as may be necessary or appropriate to effect a corporate restructuring of its business or a corporate restructuring of the overall corporate structure of the Reorganized Debtor, as and to the extent provided in the Plan. Any transfers of assets or equity interests effected or any obligations incurred through the Restructuring pursuant to the Plan are hereby approved and shall not constitute fraudulent conveyances or fraudulent transfers or otherwise be subject to avoidance.

I. Preservation of Causes of Action. Unless a Cause of Action against a Holder of a Claim or an Equity Interest or other Entity is expressly waived, relinquished, released, compromised or settled in the Plan or any Final Order (including, without limitation, this Confirmation Order), such Cause of Action is expressly reserved for later adjudication by the Reorganized Debtor, the Litigation Sub-Trust, or the Claimant Trust, as applicable (including, without limitation, Causes of Action not specifically identified or of which the Debtor may presently be unaware or that may arise or exist by reason of additional facts or circumstances unknown to the Debtor at this time or facts or circumstances that may change or be different from those the Debtor now believes to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of *res judicata*, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches will apply to such Causes of Action as a consequence of the confirmation, effectiveness, or consummation of the Plan based on the Disclosure Statement, the Plan, or this Confirmation Order, except where such Causes of Action have been expressly released in the Plan or any other Final Order (including, without limitation, this Confirmation Order). In addition, the right of the Reorganized Debtor, the Claimant Trust, or the Litigation Sub-Trust to pursue or adopt any claims alleged in any lawsuit in which the Debtor is a plaintiff, defendant or an interested party, against any Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits, is expressly reserved.

J. Independent Board of Directors of Strand. The terms of the current Independent Directors shall expire on the Effective Date without the need for any further or other action by any of the Independent Directors. For avoidance of doubt, the Assumed Contracts

include the *Indemnification and Guaranty Agreement between Highland Capital Management, Strand Advisors, Inc. and James Seery*; the *Indemnification and Guaranty Agreement between Highland Capital Management, Strand Advisors, Inc. and John Dubel* and *Indemnification and Guaranty Agreement between Highland Capital Management, Strand Advisors, Inc. and Russell Nelms* and shall each remain in full force and effect notwithstanding the expiration of the terms of any Independent Directors.

K. Cancellation of Equity Interests and Issuance of New Partnership Interests. On the Effective Date, all Class A Limited Partnership Interests, including the Class A Limited Partnership Interests held by Strand, as general partner, and Class B/C Limited Partnerships in the Debtor will be deemed cancelled, and all obligations or debts owed by, or Claims against, the Debtor on account of, or based upon, such Class A Limited Partnership Interests and Class B/C Limited Partnership Interests shall be deemed as cancelled, released, and discharged, including all obligations or duties by the Debtor relating to the Equity Interests in any of the Debtor's formation documents, including the Limited Partnership Agreement. As of the Effective Date and pursuant to the Plan, new Class A Limited Partnership Interests in the Reorganized Debtor will be issued to the Claimant Trust and New GP LLC. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor, and on and following the Effective Date, the Claimant Trust will be the Reorganized Debtor's limited partner and New GP LLC will be its general partner. The Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement, which will amend and restate, in all respects, the Debtor's current Limited

Partnership Agreement. Following the Effective Date, the Reorganized Debtor will be managed consistent with the terms of the Reorganized Limited Partnership Agreement by New GP LLC. The sole managing member of New GP LLC will be the Claimant Trust, and the Claimant Trustee will be the sole officer of New GP LLC on the Effective Date.

L. Transfer of Assets to Claimant Trust. On or prior to the Effective Date, the Debtor shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Claimant Trust all of its rights, title, and interest in and to all of the Claimant Trust Assets, and in accordance with section 1141 of the Bankruptcy Code, the Claimant Trust Assets shall automatically vest in the Claimant Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Claimant Trust Interests and the Claimant Trust Expenses, as provided for in the Claimant Trust Agreement, and such transfer shall be exempt from any stamp, real estate transfer, mortgage from any stamp, transfer, reporting, sales, use, or other similar tax. Following the Effective Date, the Claimant Trust will administer the Claimant Trust Assets pursuant to the Plan and the Claimant Trust Agreement.

M. Transfer of Estate Claims to Litigation Sub-Trust. On or prior to the Effective Date, the Claimant Trust shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Litigation Sub-Trust all of the Claimant Trust's rights, title, and interest in and to all of the Estate Claims as successor in interest to the Debtor, and in accordance with section 1141 of the Bankruptcy Code, the Estate Claims shall automatically vest in the Litigation Sub-Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Litigation Sub-Trust Interests and Litigation Sub-Trust Expenses. The Litigation Trustee will

be authorized to investigate, pursue, and otherwise resolve the Estate Claims pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan, including as successor in interest to the Debtor or Committee, as applicable, in any litigation commenced prior to the Effective Date in which Estate Claims are asserted.

N. Compromise of Controversies. In consideration for the distributions and other benefits, including releases, provided under the Plan, the provisions of the Plan constitute a good faith compromise and settlement of all Claims, Equity Interests, and controversies resolved under the Plan and the entry of this Confirmation Order constitutes approval of such compromise and settlement under Bankruptcy Rule 9019.

O. Objections to Claims. The Claims Objection Deadline shall be the date that is 180 days after the Effective Date, *provided, however*, that the Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee and as otherwise provided under the Plan.

P. Assumption of Contracts and Leases. Effective as of the date of this Confirmation Order, each of the Assumed Contacts shall be assumed by the Debtor without the need for any further notice to or action, order, or approval of the Bankruptcy Court, under section 365 of the Bankruptcy Code and the payment of Cures, if any, shall be paid in accordance with the Plan. Each Assumed Contract shall include all modifications, amendments, supplements, restatements, or other agreements related thereto, and all rights related thereto, if any, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, and any other interests. Modifications, amendments, supplements, and restatements to any of the

Assumed Contracts that have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of such Assumed Contracts or the validity, priority, or amount of any Claims that may arise in connection therewith. Assumption of the Assumed Contracts pursuant to Article V.A of the Plan and full payment of any applicable Cure pursuant to the Plan shall result in the full release and satisfaction of any Cures, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition, or other bankruptcy-related defaults, arising under any Assumed Contracts.

Q. Rejection of Contracts and Leases. Unless previously assumed during the pendency of the Chapter 11 Case or pursuant to the Plan, all other Executory Contracts and Unexpired Leases are rejected as of the date of the entry of this Confirmation Order and pursuant to the terms of the Plan. To the extent that any party asserts any damages resulting from the rejection of any Executory Contract or Unexpired Lease, such claim must be filed within **thirty (30) days** following entry of this Confirmation Order, or such claim will be forever barred and disallowed against the Reorganized Debtor.

R. Assumption of Issuer Executory Contracts. On the Confirmation Date, the Debtor will assume the agreements set forth on **Exhibit B** hereto (collectively, the "Issuer Executory Contracts") pursuant to section 365 of the Bankruptcy Code and Article V of the Plan. In full and complete satisfaction of its obligation to cure outstanding defaults under section 365(b)(1) of the Bankruptcy Code, the Debtor or, as applicable, any successor manager under the

Issuer Executory Contracts (collectively, the "Portfolio Manager") will pay to the Issuers[12] a cumulative amount of $525,000 (the "Cure Amount") as follows:

a. $200,000 in cash on the date that is five business days from the Effective Date, with such payment paid directly to Schulte Roth & Zabel LLP ("SRZ") in the amount of $85,714.29, Jones Walker LLP ("JW") in the amount of $72,380.95, and Maples Group ("Maples" and collectively with SRZ and JW, the "Issuers' Counsel") in the amount of $41,904.76 as reimbursement for the attorney's fees and other legal expenses incurred by the Issuers in connection with the Debtor's bankruptcy case; and

b. $325,000 in four equal quarterly payments of $81,250.00 (each, a "Payment"), which amounts shall be paid to SRZ in the amount of $34,821.43, JW in the amount of $29,404.76, and Maples in the amount of $17,023.81 as additional reimbursement for the attorney's fees and other legal expenses incurred by the Issuers in connection with the Debtor's bankruptcy case (i) from any management fees actually paid to the Portfolio Manager under the Issuer Executory Contracts (the "Management Fees"), and (ii) on the date(s) Management Fees are required to be paid under the Issuer Executory Contracts (the "Payment Dates"), and such obligation shall be considered an irrevocable direction from the Debtor and the Bankruptcy Court to the relevant CLO Trustee to pay, on each Payment Date, the Payment to Issuers' Counsel, allocated in the proportion set forth in such agreement; *provided, however,* that (x) if the Management Fees are insufficient to make any Payment in full on a Payment Date, such shortfall, in addition to any other amounts due hereunder, shall be paid out of the Management Fees owed on the following Payment Date, and (y) nothing herein shall limit either Debtor's liability to pay the amounts set forth herein, nor the recourse of the Issuers or Issuers' Counsel to the Debtor, in the event of any failure to make any Payment.

S. Release of Issuer Claims. Effective as of the Confirmation Date, and to the maximum extent permitted by law, each Issuer on behalf of itself and each of its current and former advisors, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, successors, designees, and

[12] The "Issuers" are: Brentwood CLO, Ltd., Gleneagles CLO, Ltd., Greenbriar CLO, Ltd., Highland CLO 2018-1, Ltd., Highland Legacy Limited, Highland Loan Funding V Ltd., Highland Park CDO I, Ltd., Pam Capital Funding LP, Rockwall CDO II Ltd., Rockwall CDO Ltd., Southfork CLO Ltd., Stratford CLO Ltd., Westchester CLO, Ltd., Aberdeen Loan Funding, Ltd., Eastland CLO, Ltd., Grayson CLO, Ltd., Highland Credit Opportunities CDO Ltd., Jasper CLO, Ltd., Liberty Cayman Holdings, Ltd., Liberty CLO, Ltd., Red River CLO, Ltd., Valhalla CLO, Ltd.

assigns hereby forever, finally, fully, unconditionally, and completely releases, relieves, acquits, remises, and exonerates, and covenants never to sue, (i) the Debtor and (ii) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, the Independent Directors, the CEO/CRO, and with respect to the Persons listed in this subsection (ii), such Person's Related Persons (collectively, the "Debtor Released Parties"), for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorney's fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, statutory or otherwise, including, without limitation, any claims, defenses, and affirmative defenses, whether known or unknown, including, without limitation, those which were or could have been asserted in, in connection with, or with respect to the Bankruptcy Case (collectively, the "Issuer Released Claims").

T. Release of Debtor Claims against Issuer Released Parties. Upon entry of this Order, and to the maximum extent permitted by law, the Debtor hereby forever, finally, fully, unconditionally, and completely releases, relieves, acquits, remises, and exonerates, and covenants never to sue [(i) each Issuer and (ii) Wendy Ebanks, (iii) Yun Zheng, (iv) Laura Chisholm, (v) Mora Goddard, (vi) Stacy Bodden, (vii) Suzan Merren (viii) Scott Dakers, (ix) Samit Ghosh, (x) Inderjit Singh, (xi) Ellen Christian, (xii) Andrew Dean, (xiii) Betsy Mortel, (xiv) David Hogan, (xv) Cleveland Stewart, (xvi) Rachael Rankin, (xvii) Otelia Scott, (xviii) Martin Couch, (xx) Ferona Bartley-Davis, (xxi) Charlotte Cloete, (xxii) Christina McLean, (xxiii) Karen Ellerbe,

(xxiv) Gennie Kay Bigord, (xxv) Evert Brunekreef, (xxvii) Evan Charles Burtton (collectively, the "Issuer Released Parties"),] for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorney's fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, statutory or otherwise, including, without limitation, any claims, defenses, and affirmative defenses, whether known or unknown, which were or could have been asserted in, in connection with, or with respect to the Bankruptcy Case (collectively, the "Debtor Released Claims"); *provided, however,* that notwithstanding anything herein to the contrary, the release contained herein will apply to the Issuer Released Parties set forth in subsection (ii) above only with respect to Debtor Released Claims arising from or relating to the Issuer Executory Contracts. Notwithstanding anything in this Order to the contrary, the releases set forth in paragraphs S and T hereof will not apply with respect to the duties, rights, or obligations of the Debtor or any Issuer hereunder.

U. Authorization to Consummate. The Debtor is authorized to consummate the Plan after the entry of this Confirmation Order subject to satisfaction or waiver of the conditions precedent to the Effective Date of the Plan set forth in Article VIII.A of the Plan. The Plan shall not become effective unless and until the conditions set forth in Article VIII.A of the Plan have been satisfied, or otherwise waived pursuant to Article VIII.B of the Plan.

V. Professional Compensation. All requests for payment of Professional Fee Claims for services rendered and reimbursement of expenses incurred prior to the Effective Date

must be filed no **later than sixty (60) days after the Effective Date**. The Bankruptcy Court shall determine the Allowed amounts of such Professional Fee Claims after notice and an opportunity for hearing in accordance with the procedures established by the Bankruptcy Code and the Bankruptcy Court. The Debtor shall fund the Professional Fee Reserve as provided under the Plan. The Reorganized Debtor shall pay Professional Fee Claims in Cash in the amounts the Bankruptcy Court allows. The Debtor is authorized to pay the pre-Effective Date fees and expenses of all ordinary course professionals in the ordinary course of business without the need for further Bankruptcy Court order or approval. From and after the Effective Date, any requirement that Professionals comply with sections 327 through 331 and 1103 (if applicable) of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and the Reorganized Debtor or Claimant Trustee, as applicable, may employ and pay any Professional or Entity employed in the ordinary course of the Debtor's business without any further notice to or action, order, or approval of the Bankruptcy Court.

W. Release, Exculpation, Discharge, and Injunction Provisions. The following release, exculpation, discharge, and injunction provisions set forth in the Plan are approved and authorized in their entirety, and such provisions are effective and binding on all parties and Entities to the extent provided therein.

X. Discharge of Claims and Termination of Interests. To the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code, except as otherwise expressly provided by the Plan or this Confirmation Order, all consideration distributed under the Plan will be in exchange for, and in complete satisfaction, settlement,

discharge, and release of, all Claims and Equity Interests of any kind or nature whatsoever against the Debtor or any of its Assets or properties, and regardless of whether any property will have been distributed or retained pursuant to the Plan on account of such Claims or Equity Interests. Except as otherwise expressly provided by the Plan or this Confirmation Order, upon the Effective Date, the Debtor and its Estate will be deemed discharged and released under and to the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code from any and all Claims and Equity Interests of any kind or nature whatsoever, including, but not limited to, demands and liabilities that arose before the Confirmation Date, and all debts of the kind specified in section 502(g), 502(h), or 502(i) of the Bankruptcy Code.

Y. Exculpation. Subject in all respects to Article XII.D of the Plan, to the maximum extent permitted by applicable law, no Exculpated Party will have or incur, and each Exculpated Party is hereby exculpated from, any claim, obligation, suit, judgment, damage, demand, debt, right, Cause of Action, remedy, loss, and liability for conduct occurring on or after the Petition Date in connection with or arising out of (i) the filing and administration of the Chapter 11 Case; (ii) the negotiation and pursuit of the Disclosure Statement, the Plan, or the solicitation of votes for, or confirmation of, the Plan; (iii) the funding or consummation of the Plan (including the Plan Supplement) or any related agreements, instruments, or other documents, the solicitation of votes on the Plan, the offer, issuance, and Plan Distribution of any securities issued or to be issued pursuant to the Plan, including the Claimant Trust Interests, whether or not such Plan Distributions occur following the Effective Date; (iv) the implementation of the Plan; and (v) any negotiations, transactions, and documentation in connection with the foregoing clauses (i)-(v);

provided, however, the foregoing will not apply to (a) any acts or omissions of an Exculpated Party arising out of or related to acts or omissions that constitute bad faith, fraud, gross negligence, criminal misconduct, or willful misconduct or (b) Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. The Plan's exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, any other applicable law or rules, or any other provisions of the Plan, including Article IV.C.2 of the Plan, protecting such Exculpated Parties from liability.

Z. Releases by the Debtor. On and after the Effective Date, each Released Party is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by the Debtor and the Estate, in each case on behalf of themselves and their respective successors, assigns, and representatives, including, but not limited to, the Claimant Trust and the Litigation Sub-Trust from any and all Causes of Action, including any derivative claims, asserted on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort or otherwise, that the Debtor or the Estate would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim against, or Interest in, a Debtor or other Person. Notwithstanding anything contained herein to the contrary, the foregoing release does not release: (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) the rights or obligations of any current employee of the Debtor under any employment agreement or plan, (iii) the rights of the Debtor with respect to any confidentiality provisions or covenants restricting competition in favor of the Debtor under

any employment agreement with a current or former employee of the Debtor, (iv) any Avoidance Actions, or (v) any Causes of Action arising from willful misconduct, criminal misconduct, actual fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction.

AA. Injunction. Upon entry of this Confirmation Order, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, from taking any actions to interfere with the implementation or consummation of the Plan. Except as expressly provided in the Plan, this Confirmation Order, or a separate order of the Bankruptcy Court, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, with respect to any Claims and Equity Interests, from directly or indirectly (i) commencing, conducting, or continuing in any manner, any suit, action, or other proceeding of any kind (including any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtor or the property of the Debtor, (ii) enforcing, levying, attaching (including any prejudgment attachment), collecting, or otherwise recovering, enforcing, or attempting to recover or enforce, by any manner or means, any judgment, award, decree, or order against the Debtor or the property of the Debtor, (iii) creating, perfecting, or otherwise enforcing in any manner, any security interest, lien or encumbrance of any kind against the Debtor or the property of the Debtor, (iv) asserting any right of setoff, directly or indirectly, against any obligation due to the Debtor or against property or interests in property of the Debtor, except to the limited extent permitted under Sections 553 and 1141 of the Bankruptcy Code, and (v) acting or proceeding in any manner,

in any place whatsoever, that does not conform to or comply with the provisions of the Plan. The injunctions set forth in the Plan and this Confirmation Order shall extend to, and apply to any act of the type set forth in any of clauses (i)-(v) of the immediately preceding paragraph against any successors of the Debtor, including, but not limited to, the Reorganized Debtor, the Litigation Sub-Trust, and the Claimant Trust and their respective property and interests in property. Subject in all respects to Article XII.D of the Plan, no Enjoined Party may commence or pursue a claim or cause of action of any kind against any Protected Party that arose or arises from or is related to the Chapter 11 Case, the negotiation of the Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, the administration of the Claimant Trust or the Litigation Sub-Trust, or the transactions in furtherance of the foregoing without the Bankruptcy Court (i) first determining, after notice and a hearing, that such claim or cause of action represents a colorable claim of any kind, including, but not limited to, negligence, bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Protected Party and (ii) specifically authorizing such Enjoined Party to bring such claim or cause of action against any such Protected Party; *provided, however*, the foregoing will not apply to a claim or cause of action against Strand or against any Employee other than with respect to actions taken, respectively, by Strand or by such Employee from the date of appointment of the Independent Directors through the Effective Date. The Bankruptcy Court will have sole and exclusive jurisdiction to determine whether a claim or cause of action is colorable and, only to the extent legally permissible and as provided for in

Article XI of the Plan, shall have jurisdiction to adjudicate the underlying colorable claim or cause of action.

BB. Duration of Injunction and Stays. Unless otherwise provided in the Plan, in this Confirmation Order, or in a Final Order of the Bankruptcy Court, (i) all injunctions and stays entered during the Chapter 11 Case and in existence on the Confirmation Date, shall remain in full force and effect in accordance with their terms; and (ii) the automatic stay arising under section 362 of the Bankruptcy Code shall remain in full force and effect subject to Section 362(c) of the Bankruptcy Code, and to the extent necessary if the Debtor does not receive a discharge, the Bankruptcy Court will enter an equivalent order under Section 105.

CC. Continuance of January 9 Order and July 16 Order. Unless otherwise provided in the Plan, in this Confirmation Order, or in a Final Order of the Bankruptcy Court, each of the *Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course, entered by the Bankruptcy Court on January 9, 2020* [Docket No. 339] and *Order Approving the Debtor's Motion Under Bankruptcy Code Sections 105(a) and 363(b) Authorizing Retention of James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative Nunc Pro Tunc to March 15, 2020* [Docket No. 854] entered on July 16, 2020 shall remain in full force and effect from the Confirmation Date and following the Effective Date.

DD. No Governmental Releases. Nothing in this Confirmation Order or the Plan shall effect a release of any claim by the United States Government or any of its agencies or

any state and local authority whatsoever, including without limitation any claim arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States or any state and local authority against any party or person, nor shall anything in this Confirmation Order or the Plan enjoin the United States or any state or local authority from bringing any claim, suit, action, or other proceedings against any party or person for any liability of such persons whatever, including without limitation any claim, suit, or action arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States or any state and local authority against such persons, nor shall anything in this Confirmation Order or the Plan exculpate any party or person from any liability to the United States Government or any of its agencies or any state and local authority whatsoever, including any liabilities arising under the Internal Revenue Code, the environmental laws, or any criminal laws of the United States or any state and local authority against any party or person.

EE. Exemption from Transfer Taxes. Pursuant to section 1146(a) of the Bankruptcy Code, any transfers (whether from the Debtor to the Reorganized Debtor or to any other Person) of property under the Plan or pursuant to: (a) the issuance, distribution, transfer, or exchange of any debt, equity security, or other interest in the Debtor or the Reorganized Debtor; (b) the Restructuring transactions pursuant to the Plan; (c) the creation, modification, consolidation, termination, refinancing, and/or recording of any mortgage, deed of trust, or other security interest, or the securing of additional indebtedness by such or other means; (d) the making, assignment, or recording of any lease or sublease; or (e) the making, delivery, or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan,

including any deeds, bills of sale, assignments, or other instrument of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to the Plan, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee, regulatory filing or recording fee, or other similar tax or governmental assessment to the fullest extent contemplated by section 1146(a) of the Bankruptcy Code, and upon entry of this Confirmation Order, the appropriate state or local governmental officials or agents shall forego the collection of any such tax or governmental assessment and accept for filing and recordation of any of the foregoing instruments or other documents without the payment of any such tax, recordation fee, or governmental assessment.

FF. Cancellation of Notes, Certificates and Instruments. Except for the purpose of evidencing a right to a distribution under the Plan and except as otherwise set forth in the Plan or as otherwise provided in this Confirmation Order, on the Effective Date, all agreements, instruments, Securities and other documents evidencing any prepetition Claim or Equity Interest and any rights of any Holder in respect thereof shall be deemed cancelled, discharged, and of no force or effect. The holders of or parties to such cancelled instruments, Securities, and other documentation will have no rights arising from or related to such instruments, Securities, or other documentation or the cancellation thereof, except the rights provided for pursuant to the Plan, and the obligations of the Debtor thereunder or in any way related thereto will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the

Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person.

GG. Documents, Mortgages, and Instruments. Each federal, state, commonwealth, local, foreign, or other governmental agency is authorized to accept any and all documents, mortgages, and instruments necessary or appropriate to effectuate, implement, or consummate the Plan, including the Restructuring transactions contemplated under the Plan, and this Confirmation Order.

HH. Post-Confirmation Modifications. Subject section 1127(b) of the Bankruptcy Code and the Plan, the Debtor and the Reorganized Debtor expressly reserve their rights to revoke or withdraw, or to alter, amend, or modify materially the Plan, one or more times after Confirmation and, to the extent necessary, may initiate proceedings in the Bankruptcy Court to so alter, amend, or modify the Plan, or remedy any defect or omission, or reconcile any inconsistencies in the Plan or this Confirmation Order, in such manner as may be necessary to carry out the purposes and intent of the Plan. Any such modification or supplement shall be considered a modification of the Plan and shall be made in accordance with Article XII.B of the Plan.

II. Applicable Nonbankruptcy Law. The provisions of this Confirmation Order, the Plan and related documents, or any amendments or modifications thereto, shall apply and be enforceable notwithstanding any otherwise applicable nonbankruptcy law.

JJ. Governmental Approvals Not Required. This Confirmation Order shall constitute all approvals and consents required, if any, by the laws, rules, or regulations of any state,

federal, or other governmental authority with respect to the dissemination, implementation, or consummation of the Plan and the Disclosure Statement, any certifications, documents, instruments or agreements, and any amendments or modifications thereto, and any other acts referred to in, or contemplated by, the Plan and the Disclosure Statement.

KK. Notice of Effective Date. As soon as reasonably practicable after the Effective Date, the Reorganized Debtor shall file notice of the Effective Date and shall serve a copy of the same on all Holders of Claims and Equity Interests, and all parties who have filed with the Bankruptcy Court requests to receive notices in accordance with Bankruptcy Rules 2002 and 3020(c). Notwithstanding the above, no notice of Confirmation or Consummation or service of any kind shall be required to be mailed or made upon any Entity to whom the Debtor mailed notice of the Confirmation Hearing, but received such notice returned marked "undeliverable as addressed," "moved, left no forwarding address" or "forwarding order expired," or similar reason, unless the Debtor has been informed in writing by such Entity, or is otherwise aware, of that Entity's new address. The above-referenced notices are adequate under the particular circumstances of this Chapter 11 Case and no other or further notice is necessary.

LL. Substantial Consummation. On the Effective Date, the Plan shall be deemed to be substantially consummated under sections 1101 and 1127 of the Bankruptcy Code.

MM. Waiver of Stay. For good cause shown, the stay of this Confirmation Order provided by any Bankruptcy Rule is waived, and this Confirmation Order shall be effective and enforceable immediately upon its entry by the Bankruptcy Court.

NN. References to and Omissions of Plan Provisions. References to articles, sections, and provisions of the Plan are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan. The failure to specifically include or to refer to any particular article, section, or provision of the Plan in this Confirmation Order shall not diminish or impair the effectiveness of such article, section, or provision, it being the intent of the Bankruptcy Court that the Plan be confirmed in its entirety, except as expressly modified herein, and incorporated herein by this reference.

OO. Headings. Headings utilized herein are for convenience and reference only, and do not constitute a part of the Plan or this Confirmation Order for any other purpose.

PP. Effect of Conflict. This Confirmation Order supersedes any Bankruptcy Court order issued prior to the Confirmation Date that may be inconsistent with this Confirmation Order. If there is any inconsistency between the terms of the Plan and the terms of this Confirmation Order, the terms of this Confirmation Order govern and control. If there is any inconsistency between the terms of this Confirmation Order and the terms of a final, executed Plan Supplement Document, the terms of the final, executed Plan Supplement Document will govern and control.

QQ. Resolution of Objection of Texas Taxing Authorities. Dallas County, Kaufman County, City of Allen, Allen ISD and City of Richardson (collectively, the "Tax Authorities") assert that they are the holders of prepetition and administrative expense claims for 2019, 2020 and 2021 ad valorem real and business personal property taxes. The ad valorem property taxes for tax year 2020 shall be paid in accordance with and to the extent required under

applicable nonbankruptcy law. In the event the 2020 taxes are paid after February 1, 2021, the Tax Authorities may assert any rights and amounts they claim are owed with respect to penalties and interest that have accrued through the date of payment and the Debtor and Reorganized Debtor reserve any all rights and defenses in connection therewith.

a. The Debtor/Reorganized Debtor shall pay all amounts owed to the Tax Authorities for tax year 2021 in accordance with and to the extent required under applicable nonbankruptcy law. The Tax Authorities shall not be required to file and serve an administrative expense claim and request for payment as a condition of allowance of their administrative expense claims pursuant to 11 U.S.C. Section 503(b)(1)(D). With regard to year 2019 ad valorem property taxes, the Tax Authorities will receive payment of their prepetition claims within 30 days of the Effective Date of the Plan. The payment will include interest from the Petition Date through the Effective Date and from the Effective Date through payment in full at the state statutory rate pursuant to 11 U.S.C. Sections 506(b), 511, and 1129, if applicable, subject to all of the Debtor's and Reorganized Debtor's rights and defenses in connection therewith. Notwithstanding any other provision in the Plan, the Tax Authorities shall (i) retain the liens that secure all prepetition and postpetition amounts ultimately owed to them, if any, as well as (ii) the state law priority of those liens until the claims are paid in full.

b. The Tax Authorities' prepetition claims and their administrative expense claims shall not be discharged until such time as the amounts owed are paid in full. In the event of a default asserted by the Taxing Authorities, the Tax Authorities shall provide notice Debtor or Reorganized Debtor, as applicable, and may demand cure of any such asserted default. Subject to all of its rights and defenses, the Debtor or Reorganized Debtor shall have fifteen (15) days from the date of the notice to cure the default. If the alleged default is not cured, the Tax Authorities may exercise any of their respective rights under applicable law and pursue collection of all amounts owed pursuant to state law outside of the Bankruptcy Court, subject in all respects to the Debtor's and Reorganized Debtor's applicable rights and defenses. The Debtor/Reorganized Debtor shall be entitled to any notices of default required under applicable nonbankruptcy law and each of the Taxing Authorities, the Debtor and the Reorganized Debtor reserve any and all of their respective rights and defenses in connection therewith. The Debtor's and Reorganized Debtor's rights and defenses under Texas Law and the Bankruptcy Code with respect to this provision of the Confirmation Order, including their right to dispute or object to the Tax Authorities' Claims and liens, are fully preserved.

RR. Resolution of Objections of Scott Ellington and Isaac Leventon. Pursuant to Bankruptcy Rule 9019(a), the Senior Employees' Settlement is approved in all respects. The Debtor may, only with the consent of the Committee, elect Option B for a Senior Employee Claimant by written notice to such Senior Employee Claimant on or before the occurrence of the Effective Date. If the Debtor does not elect Option B, then Option A will govern the treatment of the Liquidated Bonus Claims.

a. Notwithstanding any language in the Plan, the Disclosure Statement, or this Confirmation Order to the contrary, if Option A applies to the Liquidated Bonus Claims of a Senior Employee Claimant, then the Liquidated Bonus Claims of such Senior Employee Claimant will receive the treatment described in paragraph 82(e) hereof, and if the Debtor timely elects Option B with respect to the Liquidated Bonus Claims of a Senior Employee Claimant, then the Liquidated Bonus Claims of such Senior Employee will receive the treatment described in paragraph 82(f) hereof.

b. The Senior Employees' Settlement is hereby approved, without prejudice to the respective rights of Mr. Ellington and Mr. Leventon to assert all their remaining Claims against the Debtor's estate, including, but not limited to, their Class 6 PTO Claims, their remaining Class 8 General Unsecured Claims, any indemnification claims, and any Administrative Expense Claims that they may assert and is without prejudice to the rights of any party in interest to object to any such Claims.

c. Pursuant to Bankruptcy Rule 3018(a), Mr. Ellington and Mr. Leventon were permitted to change their votes on the Plan. Accordingly, Mr. Ellington's votes on his Ballots in Class 7 and Class 8 of the Plan were changed from a rejection of the Plan to acceptance of the Plan, and Mr. Leventon's votes on his Ballots in Class 7 and Class 8 of the Plan were, changed from rejections of the Plan to acceptances of the Plan.

d. The Senior Employees' Objection is deemed withdrawn.

SS. No Release of Claims Against Senior Employee Claimants. For the avoidance of doubt, the Senior Employees' Settlement, as approved herein, shall not, and shall not be deemed to, release any Claims or Causes of Action held by the Debtor against either Senior

Employee Claimant nor shall either Senior Employee Claimant be, or be deemed to be, a "Released Party" under the Plan.

TT. Resolution of Objection of Internal Revenue Service. Notwithstanding any other provision or term of the Plan or Confirmation Order, the following Default Provision shall control as to the United States of America, Internal Revenue Service ("IRS") and all of its claims, including any administrative claim (the "IRS Claim"):

(a) Notwithstanding any other provision in the Plan, if the Debtor, the Reorganized Debtor, or any successor in interest fails to pay when due any payment required to be made on federal taxes, the IRS Claim, or other payment required to be made to the IRS under the terms and provisions of this Plan, the Confirmation Order, or the Internal Revenue Code (26 U.S.C.), or fails to timely file any required federal tax return, or if any other event of default as set forth in the Plan occurs, the IRS shall be entitled to give the Debtor, the Reorganized Debtor and/or any successor in interest and their counsel of record, by United States Certified Mail, written notice of the failure and/or default with demand that it be cured, and if the failure and/or default is not cured within 14 days of the date of said notice and demand, then the following shall apply to the IRS:

(1) The administrative collection powers and the rights of the IRS shall be reinstated as they existed prior to the filing of the bankruptcy petition, including, but not limited to, the assessment of taxes, the filing of a notice of Federal tax lien and the powers of levy, seizure, and collection as provided under the Internal Revenue Code;

(2) The automatic stay of 11 U.S.C. § 362 and any injunction of the Plan or in the Confirmation Order shall, with regard to the IRS only, lift or terminate without further notice or hearing by the Bankruptcy Court, and the entire prepetition liability owed to the IRS, together with any unpaid postpetition tax liabilities, may become due and payable immediately; and

(3) The IRS shall have the right to proceed to collect from the Debtor, the Reorganized Debtor or any successor in interest any of the prepetition tax liabilities and related penalties and interest through administrative or judicial collection procedures available under the United States Code as if no bankruptcy petition had been filed and as if no plan had been confirmed.

(b) If the IRS declares the Debtor, the Reorganized Debtor, or any successor-in-interest to be in default of the Debtor's, the Reorganized Debtor's and/ or any successor- in-interest's obligations under the Plan, then entire prepetition liability of an IRS' Allowed Claim, together with any unpaid postpetition tax liabilities shall become due and payable

immediately upon written demand to the Debtor, Reorganized Debtor and/or any successor-in-interest. Failure of the IRS to declare a failure and/or default does not constitute a waiver by the United States or its agency the IRS of the right to declare that the Debtor, Reorganized Debtor, and/or any successor in interest is in default.

(c) The IRS shall only be required to send two notices of failure and/or default, and upon the third event of a failure and/or default, the IRS shall be entitled to proceed as set out in paragraphs (1), (2), and/or (3) herein above without further notice to the Debtor, the Reorganized Debtor, or any successor in interest, or its counsel. The collection statute expiration date for all unpaid federal tax liabilities shall be extended pursuant to non-bankruptcy law.

(d) The Internal Revenue Service shall not be bound by any release provisions in the Plan that would release any liability of the responsible persons of the Debtor, the Reorganized Debtor, and/or any successor in interest to the IRS. The Internal Revenue Service may take such actions as it deems necessary to assess any liability that may be due and owing by the responsible persons of the Debtor, the Reorganized Debtor and/or any successor in interest to the Internal Revenue Service.

(e) Nothing contained in the Plan or the Confirmation Order shall be deemed to be a waiver or relinquishment of any rights, claims, causes of action, rights of setoff or recoupment, rights to appeal tax assessments, or other legal or equitable defenses that the Debtor or Reorganized Debtor have under non-bankruptcy law in connection with any claim, liability or cause of action of the United States and its agency the Internal Revenue Service.

(f) The term "any payment required to be made on federal taxes," as used herein above, is defined as: any payment or deposit required by the Internal Revenue Code to be made by the Debtor from and after the Confirmation Date, or the Reorganized Debtor and/or any successor in interest from and after the Effective Date, to the date the IRS Claim is together with interest paid in full. The term "any required tax return," as used herein above, is defined as: any tax return or report required by the Internal Revenue Code to be made by the Debtor from and after the Confirmation Date, or the Reorganized Debtor and/or any successor in interest from and after the Effective Date, to the date the IRS Claim is together with interest paid in full.

UU. IRS Proof of Claim. Notwithstanding anything in the Plan or in this Confirmation Order, until all required tax returns are filed with and processed by the IRS, the IRS's proof of claim will not be deemed fixed for purposes of Section 502 of the Bankruptcy Code and may be amended in order to reflect the IRS' assessment of the Debtor's unpaid priority and general unsecured taxes, penalties and interest.

VV. CLO Holdco, Ltd. Settlement Notwithstanding anything contained herein to the contrary, nothing in this Order is or is intended to supersede the rights and obligations of either the Debtor or CLO Holdco contained in that certain *Settlement Agreement between CLO Holdco, Ltd., and Highland Capital Management, L.P., dated January 25,2021* [Docket No. 1838-1] (the "CLOH Settlement Agreement"). In the event of any conflict between the terms of this Order and the terms of the CLOH Settlement Agreement, the terms of the CLOH Settlement Agreement will govern.

WW. Retention of Jurisdiction. The Bankruptcy Court may properly, and upon the Effective Date shall, to the maximum extent permitted under applicable law, retain jurisdiction over all matters arising out of, and related to, this Chapter 11 Case, including the matters set forth in Article XI of the Plan and section 1142 of the Bankruptcy Code.

XX. Payment of Statutory Fees; Filing of Quarterly Reports. All fees payable pursuant to 28 U.S.C. § 1930 shall be paid on or before the Effective Date. The Reorganized Debtor, the Claimant Trust, and the Litigation Sub-Trust shall be jointly and severally liable for payment of quarterly fees to the Office of the United States Trustee pursuant to 28 U.S.C. § 1930 through the entry of the Final Decree for the Debtor or the dismissal or conversion of the Chapter 11 Case. Notwithstanding anything to the contrary in the Plan, the U.S. Trustee shall not be required to file any proofs of claim with respect to quarterly fees payable pursuant to 28 U.S.C. § 1930.

YY. Dissolution of the Committee. On the Effective Date, the Committee will dissolve, and the members of the Committee and the Committee's Professionals will cease to have

any role arising from or relating to the Chapter 11 Case, except in connection with final fee applications of Professionals for services rendered prior to the Effective Date (including the right to object thereto). Notwithstanding the foregoing, any Committee member or Professional may serve following the Effective Date with respect to the Claimant Trust Oversight Board or Litigation Sub-Trust. The Professionals retained by the Committee and the members thereof will not be entitled to assert any fee claims for any services rendered to the Committee or expenses incurred in the service of the Committee after the Effective Date, except for reasonable fees for services rendered, and actual and necessary costs incurred, in connection with any applications for allowance of Professional Fees pending on the Effective Date or filed and served after the Effective Date pursuant to the Plan. Nothing in the Plan shall prohibit or limit the ability of the Debtor's or Committee's Professionals to represent either of the Trustees or to be compensated or reimbursed per the Plan, the Claimant Trust Agreement, and/or Litigation Sub-Trust in connection with such representation.

ZZ. Miscellaneous. After the Effective Date, the Debtor or Reorganized Debtor, as applicable, shall have no obligation to file with the Bankruptcy Court or serve on any parties reports that the Debtor or Reorganized Debtor, as applicable, were obligated to file under the Bankruptcy Code or a court order, including monthly operating reports (even for those periods for which a monthly operating report was not filed before the Effective Date), ordinary course professional reports, reports to any parties otherwise required under the "first" and "second" day orders entered in this Chapter 11 Case (including any cash collateral financing orders entered in this Chapter 11 Case) and monthly or quarterly reports for Professionals; *provided*, *however*, that

the Debtor or Reorganized Debtor, as applicable, will comply with the U.S. Trustee's post confirmation reporting requirements.

###END OF ORDER###

APPENDIX 3

Exhibit A

Fifth Amended Plan (as Modified)

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

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

FIFTH AMENDED PLAN OF REORGANIZATION OF HIGHLAND CAPITAL MANAGEMENT, L.P. (AS MODIFIED)

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Counsel for the Debtor and Debtor-in-Possession

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

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DEBTOR'S CHAPTER 11 PLAN OF REORGANIZATION

HIGHLAND CAPITAL MANAGEMENT, L.P., as debtor and debtor-in-possession in the above-captioned case (the "Debtor"), proposes the following chapter 11 plan of reorganization (the "Plan") for, among other things, the resolution of the outstanding Claims against, and Equity Interests in, the Debtor. Unless otherwise noted, capitalized terms used in this Plan have the meanings set forth in Article I of this Plan. The Debtor is the proponent of this Plan within the meaning of section 1129 of the Bankruptcy Code.

Reference is made to the Disclosure Statement (as such term is defined herein and distributed contemporaneously herewith) for a discussion of the Debtor's history, business, results of operations, historical financial information, projections and assets, and for a summary and analysis of this Plan and the treatment provided for herein. There also are other agreements and documents that may be Filed with the Bankruptcy Court that are referenced in this Plan or the Disclosure Statement as Exhibits and Plan Documents. All such Exhibits and Plan Documents are incorporated into and are a part of this Plan as if set forth in full herein. Subject to the other provisions of this Plan, and in accordance with the requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, the Debtor reserves the right to alter, amend, modify, revoke, or withdraw this Plan prior to the Effective Date.

If this Plan cannot be confirmed, for any reason, then subject to the terms set forth herein, this Plan may be revoked.

ARTICLE I.
RULES OF INTERPRETATION, COMPUTATION OF TIME, GOVERNING LAW AND DEFINED TERMS

A. Rules of Interpretation, Computation of Time and Governing Law

For purposes hereof: (a) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, feminine and the neuter gender; (b) any reference herein to a contract, lease, instrument, release, indenture or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document, as previously amended, modified or supplemented, if applicable, shall be substantially in that form or substantially on those terms and conditions; (c) any reference herein to an existing document or exhibit having been Filed or to be Filed shall mean that document or exhibit, as it may thereafter be amended, modified or supplemented in accordance with its terms; (d) unless otherwise specified, all references herein to "Articles," "Sections," "Exhibits" and "Plan Documents" are references to Articles, Sections, Exhibits and Plan Documents hereof or hereto; (e) unless otherwise stated, the words "herein," "hereof," "hereunder" and "hereto" refer to this Plan in its entirety rather than to a particular portion of this Plan; (f) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation hereof; (g) any reference to an Entity as a Holder of a Claim or Equity Interest includes such Entity's successors and assigns; (h) the rules of construction set

forth in section 102 of the Bankruptcy Code shall apply; (i) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be; and (j) "$" or "dollars" means Dollars in lawful currency of the United States of America. The provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed herein.

B. Defined Terms

Unless the context otherwise requires, the following terms shall have the following meanings when used in capitalized form herein:

1. "*Acis*" means collectively Acis Capital Management, L.P. and Acis Capital Management GP, LLP.

2. "*Administrative Expense Claim*" means any Claim for costs and expenses of administration of the Chapter 11 Case that is Allowed pursuant to sections 503(b), 507(a)(2), 507(b) or 1114(2) of the Bankruptcy Code, including, without limitation, (a) the actual and necessary costs and expenses incurred after the Petition Date and through the Effective Date of preserving the Estate and operating the business of the Debtor; and (b) all fees and charges assessed against the Estate pursuant to sections 1911 through 1930 of chapter 123 of title 28 of the United States Code, and that have not already been paid by the Debtor during the Chapter 11 Case and a Professional Fee Claim.

3. "*Administrative Expense Claims Bar Date*" means, with respect to any Administrative Expense Claim (other than a Professional Fee Claim) becoming due on or prior to the Effective Date, 5:00 p.m. (prevailing Central Time) on such date that is forty-five days after the Effective Date.

4. "*Administrative Expense Claims Objection Deadline*" means, with respect to any Administrative Expense Claim, the later of (a) ninety (90) days after the Effective Date and (b) sixty (60) days after the timely Filing of the applicable request for payment of such Administrative Expense Claim; *provided, however,* that the Administrative Expense Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee.

5. "*Affiliate*" of any Person means any Entity that, with respect to such Person, either (i) is an "affiliate" as defined in section 101(2) of the Bankruptcy Code, or (ii) is an "affiliate" as defined in Rule 405 of the Securities Act of 1933, or (iii) directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. For the purposes of this definition, the term "control" (including, without limitation, the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction in any respect of the management or policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

6. "*Allowed*" means, with respect to any Claim, except as otherwise provided in the Plan: (a) any Claim that is evidenced by a Proof of Claim that has been timely Filed by the Bar Date, or that is not required to be evidenced by a Filed Proof of Claim under the Bankruptcy

Code or a Final Order; (b) a Claim that is listed in the Schedules as not contingent, not unliquidated, and not disputed and for which no Proof of Claim has been timely filed; (c) a Claim Allowed pursuant to the Plan or an order of the Bankruptcy Court that is not stayed pending appeal; or (d) a Claim that is not Disputed (including for which a Proof of Claim has been timely filed in a liquidated and noncontingent amount that has not been objected to by the Claims Objection Deadline or as to which any such objection has been overruled by Final Order); *provided, however,* that with respect to a Claim described in clauses (a) and (b) above, such Claim shall be considered Allowed only if and to the extent that, with respect to such Claim, no objection to the allowance thereof has been interposed within the applicable period of time fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, or such an objection is so interposed and the Claim shall have been Allowed as set forth above.

7. "*Allowed Claim or Equity Interest*" means a Claim or an Equity Interest of the type that has been Allowed.

8. "*Assets*" means all of the rights, titles, and interest of the Debtor, Reorganized Debtor, or Claimant Trust, in and to property of whatever type or nature, including, without limitation, real, personal, mixed, intellectual, tangible, and intangible property, the Debtor's books and records, and the Causes of Action.

9. "*Available Cash*" means any Cash in excess of the amount needed for the Claimant Trust and Reorganized Debtor to maintain business operations as determined in the sole discretion of the Claimant Trustee.

10. "*Avoidance Actions*" means any and all avoidance, recovery, subordination or other actions or remedies that may be brought by and on behalf of the Debtor or its Estate under the Bankruptcy Code or applicable nonbankruptcy law, including, without limitation, actions or remedies arising under sections 502, 510, 544, 545, and 547-553 of the Bankruptcy Code or under similar state or federal statutes and common law, including fraudulent transfer laws

11. "*Ballot*" means the form(s) distributed to holders of Impaired Claims or Equity Interests entitled to vote on the Plan on which to indicate their acceptance or rejection of the Plan.

12. "*Bankruptcy Code*" means title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended from time to time and as applicable to the Chapter 11 Case.

13. "*Bankruptcy Court*" means the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, or any other court having jurisdiction over the Chapter 11 Case.

14. "*Bankruptcy Rules*" means the Federal Rules of Bankruptcy Procedure and the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, in each case as amended from time to time and as applicable to the Chapter 11 Case.

15. "*Bar Date*" means the applicable deadlines set by the Bankruptcy Court for the filing of Proofs of Claim against the Debtor as set forth in the Bar Date Order, which deadlines may be or have been extended for certain Claimants by order of the Bankruptcy Court.

16. "*Bar Date Order*" means the *Order (I) Establishing Bar Dates for Filing Proofs of Claim and (II) Approving the Form and Manner of Notice Thereof* [D.I. 488].

17. "*Business Day*" means any day, other than a Saturday, Sunday or "legal holiday" (as defined in Bankruptcy Rule 9006(a)).

18. "*Cash*" means the legal tender of the United States of America or the equivalent thereof.

19. "*Causes of Action*" means any action, claim, cross-claim, third-party claim, cause of action, controversy, demand, right, Lien, indemnity, contribution, guaranty, suit, obligation, liability, debt, damage, judgment, account, defense, remedy, offset, power, privilege, license and franchise of any kind or character whatsoever, in each case whether known, unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, foreseen or unforeseen, direct or indirect, choate or inchoate, secured or unsecured, assertable directly or derivatively (including, without limitation, under alter ego theories), whether arising before, on, or after the Petition Date, in contract or in tort, in law or in equity or pursuant to any other theory of law. For the avoidance of doubt, Cause of Action includes, without limitation,: (a) any right of setoff, counterclaim or recoupment and any claim for breach of contract or for breach of duties imposed by law or in equity; (b) the right to object to Claims or Equity Interests; (c) any claim pursuant to section 362 or chapter 5 of the Bankruptcy Code; (d) any claim or defense including fraud, mistake, duress and usury, and any other defenses set forth in section 558 of the Bankruptcy Code; (e) any claims under any state or foreign law, including, without limitation, any fraudulent transfer or similar claims; (f) the Avoidance Actions, and (g) the Estate Claims. The Causes of Action include, without limitation, the Causes of Action belonging to the Debtor's Estate listed on the schedule of Causes of Action to be filed with the Plan Supplement.

20. "*CEO/CRO*" means James P. Seery, Jr., the Debtor's chief executive officer and chief restructuring officer.

21. "*Chapter 11 Case*" means the Debtor's case under chapter 11 of the Bankruptcy Code commenced on the Petition Date in the Delaware Bankruptcy Court and transferred to the Bankruptcy Court on December 4, 2019, and styled *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj-11.

22. "*Claim*" means any "claim" against the Debtor as defined in section 101(5) of the Bankruptcy Code.

23. "*Claims Objection Deadline*" means the date that is 180 days after the Confirmation Date; *provided, however,* the Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee.

24. "*Claimant Trust*" means the trust established for the benefit of the Claimant Trust Beneficiaries on the Effective Date in accordance with the terms of this Plan and the Claimant Trust Agreement.

25. "*Claimant Trust Agreement*" means the agreement Filed in the Plan Supplement establishing and delineating the terms and conditions of the Claimant Trust.

26. "*Claimant Trust Assets*" means (i) other than the Reorganized Debtor Assets (which are expressly excluded from this definition), all other Assets of the Estate, including, but not limited to, all Causes of Action, Available Cash, any proceeds realized or received from such Assets, all rights of setoff, recoupment, and other defenses with respect, relating to, or arising from such Assets, (ii) any Assets transferred by the Reorganized Debtor to the Claimant Trust on or after the Effective Date, (iii) the limited partnership interests in the Reorganized Debtor, and (iv) the ownership interests in New GP LLC. For the avoidance of doubt, any Causes of Action that, for any reason, are not capable of being transferred to the Claimant Trust shall constitute Reorganized Debtor Assets.

27. "*Claimant Trust Beneficiaries*" means the Holders of Allowed General Unsecured Claims, Holders of Allowed Subordinated Claims, including, upon Allowance, Disputed General Unsecured Claims and Disputed Subordinated Claims that become Allowed following the Effective Date, and, only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, post-petition interest from the Petition Date at the Federal Judgment Rate in accordance with the terms and conditions set forth in the Claimant Trust Agreement and all Disputed Claims in Class 8 and Class 9 have been resolved, Holders of Allowed Class B/C Limited Partnership Interests, and Holders of Allowed Class A Limited Partnership Interests.

28. "*Claimant Trustee*" means James P. Seery, Jr., the Debtor's chief executive officer and chief restructuring officer, or such other Person identified in the Plan Supplement who will act as the trustee of the Claimant Trust in accordance with the Plan, the Confirmation Order, and Claimant Trust Agreement or any replacement trustee pursuant to (and in accordance with) the Claimant Trust Agreement. The Claimant Trustee shall be responsible for, among other things, monetizing the Estate's investment assets, resolving Claims (other than those Claims assigned to the Litigation Sub-Trust for resolution), and, as the sole officer of New GP LLC, winding down the Reorganized Debtor's business operations.

29. "*Claimant Trust Expenses*" means all reasonable legal and other reasonable professional fees, costs, and expenses incurred by the Trustees on account of administration of the Claimant Trust, including any reasonable administrative fees and expenses, reasonable attorneys' fees and expenses, reasonable insurance costs, taxes, reasonable escrow expenses, and other expenses.

30. "*Claimant Trust Interests*" means the non-transferable interests in the Claimant Trust that are issued to the Claimant Trust Beneficiaries pursuant to this Plan; *provided*, *however*, Holders of Class A Limited Partnership Interests, Class B Limited Partnership Interests, and Class C Limited Partnership Interests will not be deemed to hold Claimant Trust Interests

unless and until the Contingent Claimant Trust Interests distributed to such Holders vest in accordance with the terms of this Plan and the Claimant Trust Agreement.

31. "*Claimant Trust Oversight Committee*" means the committee of five Persons established pursuant to ARTICLE IV of this Plan to oversee the Claimant Trustee's performance of its duties and otherwise serve the functions described in this Plan and the Claimant Trust Agreement.

32. "*Class*" means a category of Holders of Claims or Equity Interests as set forth in ARTICLE III hereof pursuant to section 1122(a) of the Bankruptcy Code.

33. "*Class A Limited Partnership Interest*" means the Class A Limited Partnership Interests as defined in the Limited Partnership Agreement held by The Dugaboy Investment Trust, Mark and Pamela Okada Family Trust – Exempt Trust 2, Mark and Pamela Okada – Exempt Descendants' Trust, and Mark Kiyoshi Okada, and the General Partner Interest.

34. "*Class B Limited Partnership Interest*" means the Class B Limited Partnership Interests as defined in the Limited Partnership Agreement held by Hunter Mountain Investment Trust.

35. "*Class B/C Limited Partnership Interests*" means, collectively, the Class B Limited Partnership and Class C Limited Partnership Interests.

36. "*Class C Limited Partnership Interest*" means the Class C Limited Partnership Interests as defined in the Limited Partnership Agreement held by Hunter Mountain Investment Trust.

37. "*Committee*" means the Official Committee of Unsecured Creditors appointed by the U.S. Trustee pursuant to 11 U.S.C. § 1102(a)(1) on October 29, 2019 [D.I. 65], consisting of (i) the Redeemer Committee of Highland Crusader Fund, (ii) Meta-e Discovery, (iii) UBS, and (iv) Acis.

38. "*Confirmation Date*" means the date on which the clerk of the Bankruptcy Court enters the Confirmation Order on the docket of the Bankruptcy Court.

39. "*Confirmation Hearing*" means the hearing held by the Bankruptcy Court pursuant to section 1128 of the Bankruptcy Code to consider confirmation of this Plan, as such hearing may be adjourned or continued from time to time.

40. "*Confirmation Order*" means the order of the Bankruptcy Court confirming this Plan pursuant to section 1129 of the Bankruptcy Code.

41. *"Convenience Claim"* means any prepetition, liquidated, and unsecured Claim against the Debtor that as of the Confirmation Date is less than or equal to $1,000,000 or any General Unsecured Claim that makes the Convenience Class Election. For the avoidance of doubt, the Reduced Employee Claims will be Convenience Claims.

42. "*Convenience Claim Pool*" means the $13,150,000 in Cash that shall be available upon the Effective Date for distribution to Holders of Convenience Claims under the Plan as set forth herein. Any Cash remaining in the Convenience Claim Pool after all distributions on account of Convenience Claims have been made will be transferred to the Claimant Trust and administered as a Claimant Trust Asset.

43. "*Convenience Class Election*" means the option provided to each Holder of a General Unsecured Claim that is a liquidated Claim as of the Confirmation Date on their Ballot to elect to reduce their claim to $1,000,000 and receive the treatment provided to Convenience Claims.

44. "*Contingent Claimant Trust Interests"* means the contingent Claimant Trust Interests to be distributed to Holders of Class A Limited Partnership Interests, Holders of Class B Limited Partnership Interests, and Holders of Class C Limited Partnership Interests in accordance with this Plan, the rights of which shall not vest, and consequently convert to Claimant Trust Interests, unless and until the Claimant Trustee Files a certification that all holders of Allowed General Unsecured Claims have been paid indefeasibly in full, plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, all accrued and unpaid post-petition interest from the Petition Date at the Federal Judgment Rate and all Disputed Claims in Class 8 and Class 9 have been resolved. As set forth in the Claimant Trust Agreement, the Contingent Claimant Trust Interests distributed to the Holders of Class A Limited Partnership Interests will be subordinated to the Contingent Claimant Trust Interests distributed to the Holders of Class B/C Limited Partnership Interests.

45. "*Debtor*" means Highland Capital Management, L.P. in its capacity as debtor and debtor in possession in the Chapter 11 Case.

46. *"Delaware Bankruptcy Court"* means the United States Bankruptcy Court for the District of Delaware.

47. "*Disclosure Statement*" means that certain *Disclosure Statement for Debtor's Fifth Amended Chapter 11 Plan of Reorganization*, as amended, supplemented, or modified from time to time, which describes this Plan, including all exhibits and schedules thereto and references therein that relate to this Plan.

48. "*Disputed*" means with respect to any Claim or Equity Interest, any Claim or Equity Interest that is not yet Allowed.

49. "*Disputed Claims Reserve*" means the appropriate reserve(s) or account(s) to be established on the Initial Distribution Date and maintained by the Claimant Trustee for distributions on account of Disputed Claims that may subsequently become an Allowed Claim.

50. "*Disputed Claims Reserve Amount*" means, for purposes of determining the Disputed Claims Reserve, the Cash that would have otherwise been distributed to a Holder of a Disputed Claim at the time any distributions of Cash are made to the Holders of Allowed Claims. The amount of the Disputed Claim upon which the Disputed Claims Reserve is calculated shall be: (a) the amount set forth on either the Schedules or the filed Proof of Claim, as applicable; (b) the amount agreed to by the Holder of the Disputed Claim and the Claimant Trustee or Reorganized

Debtor, as applicable; (c) the amount ordered by the Bankruptcy Court if it enters an order disallowing, in whole or in part, a Disputed Claim; or (d) as otherwise ordered by the Bankruptcy Court, including an order estimating the Disputed Claim.

51. "*Distribution Agent*" means the Claimant Trustee, or any party designated by the Claimant Trustee to serve as distribution agent under this Plan.

52. "*Distribution Date*" means the date or dates determined by the Reorganized Debtor or the Claimant Trustee, as applicable, on or after the Initial Distribution Date upon which the Distribution Agent shall make distributions to holders of Allowed Claims and Interests entitled to receive distributions under the Plan.

53. "*Distribution Record Date*" means the date for determining which Holders of Claims and Equity Interests are eligible to receive distributions hereunder, which date shall be the Effective Date or such later date determined by the Bankruptcy Court.

54. "*Effective Date*" means the Business Day that this Plan becomes effective as provided in ARTICLE VIII hereof.

55. "*Employees*" means the employees of the Debtor set forth in the Plan Supplement.

56. "*Enjoined Parties*" means (i) all Entities who have held, hold, or may hold Claims against or Equity Interests in the Debtor (whether or not proof of such Claims or Equity Interests has been filed and whether or not such Entities vote in favor of, against or abstain from voting on the Plan or are presumed to have accepted or deemed to have rejected the Plan), (ii) James Dondero ("Dondero"), (iii) any Entity that has appeared and/or filed any motion, objection, or other pleading in this Chapter 11 Case regardless of the capacity in which such Entity appeared and any other party in interest, (iv) any Related Entity, and (v) the Related Persons of each of the foregoing.

57. "*Entity*" means any "entity" as defined in section 101(15) of the Bankruptcy Code and also includes any Person or any other entity.

58. "*Equity Interest*" means any Equity Security in the Debtor, including, without limitation, all issued, unissued, authorized or outstanding partnership interests, shares, of stock or limited company interests, the Class A Limited Partnership Interests, the Class B Limited Partnership Interests, and the Class C Limited Partnership Interests.

59. "*Equity Security*" means an "equity security" as defined in section 101(16) of the Bankruptcy Code.

60. "*Estate*" means the bankruptcy estate of the Debtor created by virtue of section 541 of the Bankruptcy Code upon the commencement of the Chapter 11 Case.

61. "*Estate Claims*" has the meaning given to it in Exhibit A to the *Notice of Final Term Sheet* [D.I. 354].

62. "*Exculpated Parties*" means, collectively, (i) the Debtor and its successors and assigns, (ii) the Employees, (iii) Strand, (iv) the Independent Directors, (v) the Committee, (vi) the members of the Committee (in their official capacities), (vii) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (viii) the CEO/CRO; and (ix) the Related Persons of each of the parties listed in (iv) through (viii); *provided, however,* that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), NexBank, SSB (and any of its subsidiaries), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term "Exculpated Party."

63. "*Executory Contract*" means a contract to which the Debtor is a party that is subject to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code.

64. "*Exhibit*" means an exhibit annexed hereto or to the Disclosure Statement (as such exhibits are amended, modified or otherwise supplemented from time to time), which are incorporated by reference herein.

65. "*Federal Judgment Rate*" means the post-judgment interest rate set forth in 28 U.S.C. § 1961 as of the Effective Date.

66. "*File*" or "*Filed*" or "*Filing*" means file, filed or filing with the Bankruptcy Court or its authorized designee in the Chapter 11 Case.

67. "*Final Order*" means an order or judgment of the Bankruptcy Court, which is in full force and effect, and as to which the time to appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing has expired and as to which no appeal, petition for *certiorari*, or other proceedings for a new trial, reargument or rehearing shall then be pending or as to which any right to appeal, petition for *certiorari*, new trial, reargument, or rehearing shall have been waived in writing in form and substance satisfactory to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, or, in the event that an appeal, writ of *certiorari*, new trial, reargument, or rehearing thereof has been sought, such order of the Bankruptcy Court shall have been determined by the highest court to which such order was appealed, or *certiorari*, new trial, reargument or rehearing shall have been denied and the time to take any further appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing shall have expired; *provided, however*, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be Filed with respect to such order shall not preclude such order from being a Final Order.

68. "*Frontier Secured Claim*" means the loan from Frontier State Bank to the Debtor in the principal amount of $7,879,688.00 made pursuant to that certain First Amended and Restated Loan Agreement, dated March 29, 2018.

69. "*General Partner Interest*" means the Class A Limited Partnership Interest held by Strand, as the Debtor's general partner.

70. "*General Unsecured Claim*" means any prepetition Claim against the Debtor that is not Secured and is not a/an: (a) Administrative Expense Claim; (b) Professional Fee Claim; (c) Priority Tax Claim; (d) Priority Non-Tax Claim; or (e) Convenience Claim.

71. "*Governmental Unit*" means a "governmental unit" as defined in section 101(27) of the Bankruptcy Code.

72. "*GUC Election*" means the option provided to each Holder of a Convenience Claim on their Ballot to elect to receive the treatment provided to General Unsecured Claims.

73. "*Holder*" means an Entity holding a Claim against, or Equity Interest in, the Debtor.

74. "*Impaired*" means, when used in reference to a Claim or Equity Interest, a Claim or Equity Interest that is impaired within the meaning of section 1124 of the Bankruptcy Code.

75. "*Independent Directors*" means John S. Dubel, James P. Seery, Jr., and Russell Nelms, the independent directors of Strand appointed on January 9, 2020, and any additional or replacement directors of Strand appointed after January 9, 2020, but prior to the Effective Date.

76. "*Initial Distribution Date*" means, subject to the "Treatment" sections in ARTICLE III hereof, the date that is on or as soon as reasonably practicable after the Effective Date, when distributions under this Plan shall commence to Holders of Allowed Claims and Equity Interests.

77. "*Insurance Policies*" means all insurance policies maintained by the Debtor as of the Petition Date.

78. "*Jefferies Secured Claim*" means any Claim in favor of Jefferies, LLC, arising under that certain Prime Brokerage Customer Agreement, dated May 24, 2013, between the Debtor and Jefferies, LLC, that is secured by the assets, if any, maintained in the prime brokerage account created by such Prime Brokerage Customer Agreement.

79. "*Lien*" means a "lien" as defined in section 101(37) of the Bankruptcy Code and, with respect to any asset, includes, without limitation, any mortgage, lien, pledge, charge, security interest or other encumbrance of any kind, or any other type of preferential arrangement that has the practical effect of creating a security interest, in respect of such asset.

80. "*Limited Partnership Agreement*" means that certain Fourth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., dated December 24, 2015, as amended.

81. "*Litigation Sub-Trust*" means the sub-trust established within the Claimant Trust or as a wholly –owned subsidiary of the Claimant Trust on the Effective Date in each case in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement and Claimant Trust Agreement. As set forth in the Litigation Sub-Trust Agreement, the Litigation Sub-Trust shall hold the Claimant Trust Assets that are Estate Claims.

82. "*Litigation Sub-Trust Agreement*" means the agreement filed in the Plan Supplement establishing and delineating the terms and conditions of the Litigation Sub-Trust.

83. "*Litigation Trustee*" means the trustee appointed by the Committee and reasonably acceptable to the Debtor who shall be responsible for investigating, litigating, and settling the Estate Claims for the benefit of the Claimant Trust in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement.

84. "*Managed Funds*" means Highland Multi-Strategy Credit Fund, L.P., Highland Restoration Capital Partners, L.P., and any other investment vehicle managed by the Debtor pursuant to an Executory Contract assumed pursuant to this Plan.

85. "*New Frontier Note*" means that promissory note to be provided to the Allowed Holders of Class 2 Claims under this Plan and any other documents or security agreements securing the obligations thereunder.

86. "*New GP LLC*" means a limited liability company incorporated in the State of Delaware pursuant to the New GP LLC Documents to serve as the general partner of the Reorganized Debtor on the Effective Date.

87. "*New GP LLC Documents*" means the charter, operating agreement, and other formational documents of New GP LLC.

88. "*Ordinary Course Professionals Order*" means that certain *Order Pursuant to Sections 105(a), 327, 328, and 330 of the Bankruptcy Code Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course* [D.I. 176].

89. "*Other Unsecured Claim*" means any Secured Claim other than the Jefferies Secured Claim and the Frontier Secured Claim.

90. "*Person*" means a "person" as defined in section 101(41) of the Bankruptcy Code and also includes any natural person, individual, corporation, company, general or limited partnership, limited liability company, unincorporated organization firm, trust, estate, business trust, association, joint stock company, joint venture, government, governmental agency, Governmental Unit or any subdivision thereof, the United States Trustee, or any other entity, whether acting in an individual, fiduciary or other capacity.

91. "Petition *Date*" means October 16, 2019.

92. "*Plan*" means this *Debtor's Fifth Amended Chapter 11 Plan of Reorganization*, including the Exhibits and the Plan Documents and all supplements, appendices,

and schedules thereto, either in its present form or as the same may be altered, amended, modified or otherwise supplemented from time to time.

93. "*Plan Distribution*" means the payment or distribution of consideration to Holders of Allowed Claims and Allowed Equity Interests under this Plan.

94. "*Plan Documents*" means any of the documents, other than this Plan, but including, without limitation, the documents to be filed with the Plan Supplement, to be executed, delivered, assumed, or performed in connection with the occurrence of the Effective Date, and as may be modified consistent with the terms hereof with the consent of the Committee.

95. "*Plan Supplement*" means the ancillary documents necessary for the implementation and effectuation of the Plan, including, without limitation, (i) the form of Claimant Trust Agreement, (ii) the forms of New GP LLC Documents, (iii) the form of Reorganized Limited Partnership Agreement, (iv) the Sub-Servicer Agreement (if applicable), (v) the identity of the initial members of the Claimant Trust Oversight Committee, (vi) the form of Litigation Sub-Trust Agreement; (vii) the schedule of retained Causes of Action; (viii) the New Frontier Note, (ix) the schedule of Employees; (x) the form of Senior Employee Stipulation,; and (xi) the schedule of Executory Contracts and Unexpired Leases to be assumed pursuant to this Plan, which, in each case, will be in form and substance reasonably acceptable to the Debtor and the Committee.

96. "*Priority Non-Tax Claim*" means a Claim entitled to priority pursuant to section 507(a) of the Bankruptcy Code, including any Claims for paid time-off entitled to priority under section 507(a)(4) of the Bankruptcy Code, other than a Priority Tax Claim or an Administrative Claim.

97. "*Pro Rata*" means the proportion that (a) the Allowed amount of a Claim or Equity Interest in a particular Class bears to (b) the aggregate Allowed amount of all Claims or Equity Interests in such Class.

98. "*Professional*" means (a) any Entity employed in the Chapter 11 Case pursuant to section 327, 328 363 or 1103 of the Bankruptcy Code or otherwise and (b) any Entity seeking compensation or reimbursement of expenses in connection with the Chapter 11 Case pursuant to sections 327, 328, 330, 331, 363, 503(b), 503(b)(4) and 1103 of the Bankruptcy Code.

99. "*Professional Fee Claim*" means a Claim under sections 328, 330(a), 331, 363, 503 or 1103 of the Bankruptcy Code, with respect to a particular Professional, for compensation for services rendered or reimbursement of costs, expenses or other charges incurred after the Petition Date and prior to and including the Effective Date.

100. "*Professional Fee Claims Bar Date*" means with respect to Professional Fee Claims, the Business Day which is sixty (60) days after the Effective Date or such other date as approved by order of the Bankruptcy Court.

101. "*Professional Fee Claims Objection Deadline*" means, with respect to any Professional Fee Claim, thirty (30) days after the timely Filing of the applicable request for payment of such Professional Fee Claim.

102. "*Professional Fee Reserve*" means the reserve established and funded by the Claimant Trustee pursuant this Plan to provide sufficient funds to satisfy in full unpaid Allowed Professional Fee Claims.

103. "*Proof of Claim*" means a written proof of Claim or Equity Interest Filed against the Debtor in the Chapter 11 Case.

104. "*Priority Tax Claim*" means any Claim of a Governmental Unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.

105. "*Protected Parties*" means, collectively, (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Reorganized Debtor, (v) the Independent Directors, (vi) the Committee, (vii) the members of the Committee (in their official capacities), (viii) the Claimant Trust, (ix) the Claimant Trustee, (x) the Litigation Sub-Trust, (xi) the Litigation Trustee, (xii) the members of the Claimant Trust Oversight Committee (in their official capacities), (xiii) New GP LLC, (xiv) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (xv) the CEO/CRO; and (xvi) the Related Persons of each of the parties listed in (iv) through (xv); *provided, however,* that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), NexBank, SSB (and any of its subsidiaries), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term "Protected Party."

106. "*PTO Claims*" means any Claim for paid time off in favor of any Debtor employee in excess of the amount that would qualify as a Priority Non-Tax Claim under section 507(a)(4) of the Bankruptcy Code.

107. "*Reduced Employee Claims*" has the meaning set forth in ARTICLE IX.D.

108. "*Reinstated*" means, with respect to any Claim or Equity Interest, (a) leaving unaltered the legal, equitable, and contractual rights to which a Claim entitles the Holder of such Claim or Equity Interest in accordance with section 1124 of the Bankruptcy Code or (b) notwithstanding any contractual provision or applicable law that entitles the Holder of such Claim or Equity Interest to demand or receive accelerated payment of such Claim or Equity Interest after the occurrence of a default: (i) curing any such default that occurred before or after the Petition Date, other than a default of a kind specified in section 365(b)(2) of the Bankruptcy Code or of a kind that section 365(b)(2) of the Bankruptcy Code expressly does not require to be cured; (ii) reinstating the maturity of such Claim or Equity Interest as such maturity existed before such default; (iii) compensating the Holder of such Claim or Equity Interest for any damages incurred as a result of any reasonable reliance by such Holder on such contractual provision or such applicable law; (iv) if such Claim or Equity Interest arises from any failure to perform a nonmonetary obligation, other than a default arising from failure to operate a non-residential real property lease subject to section 365(b)(1)(A) of the Bankruptcy Code, compensating the Holder

of such Claim or Equity Interest (other than any Debtor or an insider of any Debtor) for any actual pecuniary loss incurred by such Holder as a result of such failure; and (v) not otherwise altering the legal, equitable, or contractual rights to which such Claim entitles the Holder of such Claim.

109. "*Rejection Claim*" means any Claim for monetary damages as a result of the rejection of an executory contract or unexpired lease pursuant to the Confirmation Order.

110. "*Related Entity*" means, without duplication, (a) Dondero, (b) Mark Okada ("Okada"), (c) Grant Scott ("Scott"), (d) Hunter Covitz ("Covitz"), (e) any entity or person that was an insider of the Debtor on or before the Petition Date under Section 101(31) of the Bankruptcy Code, including, without limitation, any entity or person that was a non-statutory insider, (f) any entity that, after the Effective Date, is an insider or Affiliate of one or more of Dondero, Okada, Scott, Covitz, or any of their respective insiders or Affiliates, including, without limitation, The Dugaboy Investment Trust, (g) the Hunter Mountain Investment Trust and any of its direct or indirect parents, (h) the Charitable Donor Advised Fund, L.P., and any of its direct or indirect subsidiaries, and (i) Affiliates of the Debtor and any other Entities listed on the Related Entity List.

111. "*Related Entity List*" means that list of Entities filed with the Plan Supplement.

112. "*Related Persons*" means, with respect to any Person, such Person's predecessors, successors, assigns (whether by operation of law or otherwise), and each of their respective present, future, or former officers, directors, employees, managers, managing members, members, financial advisors, attorneys, accountants, investment bankers, consultants, professionals, advisors, shareholders, principals, partners, subsidiaries, divisions, management companies, heirs, agents, and other representatives, in each case solely in their capacity as such.

113. "*Released Parties*" means, collectively, (i) the Independent Directors; (ii) Strand (solely from the date of the appointment of the Independent Directors through the Effective Date); (iii) the CEO/CRO; (iv) the Committee; (v) the members of the Committee (in their official capacities), (vi) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case; and (vii) the Employees.

114. "*Reorganized Debtor*" means the Debtor, as reorganized pursuant to this Plan on and after the Effective Date.

115. "*Reorganized Debtor Assets*" means any limited and general partnership interests held by the Debtor, the management of the Managed Funds and those Causes of Action (including, without limitation, claims for breach of fiduciary duty), that, for any reason, are not capable of being transferred to the Claimant Trust. For the avoidance of doubt, "Reorganized Debtor Assets" includes any partnership interests or shares of Managed Funds held by the Debtor but does not include the underlying portfolio assets held by the Managed Funds.

116. "*Reorganized Limited Partnership Agreement*" means that certain Fifth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., by and among the Claimant Trust, as limited partner, and New GP LLC, as general partner, Filed with the Plan Supplement.

117. "*Restructuring*" means the restructuring of the Debtor, the principal terms of which are set forth in this Plan and the Disclosure Statement.

118. "*Retained Employee Claim*" means any Claim filed by a current employee of the Debtor who will be employed by the Reorganized Debtor upon the Effective Date.

119. "*Schedules*" means the schedules of Assets and liabilities, statements of financial affairs, lists of Holders of Claims and Equity Interests and all amendments or supplements thereto Filed by the Debtor with the Bankruptcy Court [D.I. 247].

120. "*Secured*" means, when referring to a Claim: (a) secured by a Lien on property in which the Debtor's Estate has an interest, which Lien is valid, perfected, and enforceable pursuant to applicable law or by reason of a Bankruptcy Court order, or that is subject to setoff pursuant to section 553 of the Bankruptcy Code, to the extent of the value of the creditor's interest in the interest of the Debtor's Estate in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code or (b) Allowed pursuant to the Plan as a Secured Claim.

121. "*Security*" or "*security*" means any security as such term is defined in section 101(49) of the Bankruptcy Code.

122. "*Senior Employees*" means the senior employees of the Debtor Filed in the Plan Supplement.

123. "*Senior Employee Stipulation*" means the agreements filed in the Plan Supplement between each Senior Employee and the Debtor.

124. "*Stamp or Similar Tax*" means any stamp tax, recording tax, personal property tax, conveyance fee, intangibles or similar tax, real estate transfer tax, sales tax, use tax, transaction privilege tax (including, without limitation, such taxes on prime contracting and owner-builder sales), privilege taxes (including, without limitation, privilege taxes on construction contracting with regard to speculative builders and owner builders), and other similar taxes imposed or assessed by any Governmental Unit.

125. "*Statutory Fees*" means fees payable pursuant to 28 U.S.C. § 1930.

126. "*Strand*" means Strand Advisors, Inc., the Debtor's general partner.

127. "*Sub-Servicer*" means a third-party selected by the Claimant Trustee to service or sub-service the Reorganized Debtor Assets.

128. "*Sub-Servicer Agreement*" means the agreement that may be entered into providing for the servicing of the Reorganized Debtor Assets by the Sub-Servicer.

129. "*Subordinated Claim*" means any Claim that is subordinated to the Convenience Claims and General Unsecured Claims pursuant to an order entered by the Bankruptcy Court (including any other court having jurisdiction over the Chapter 11 Case) after notice and a hearing.

130. "*Subordinated Claimant Trust Interests*" means the Claimant Trust Interests to be distributed to Holders of Allowed Subordinated Claims under the Plan, which such interests shall be subordinated in right and priority to the Claimant Trust Interests distributed to Holders of Allowed General Unsecured Claims as provided in the Claimant Trust Agreement.

131. "*Trust Distribution*" means the transfer of Cash or other property by the Claimant Trustee to the Claimant Trust Beneficiaries.

132. "*Trustees*" means, collectively, the Claimant Trustee and Litigation Trustee.

133. "*UBS*" means, collectively, UBS Securities LLC and UBS AG London Branch.

134. "*Unexpired Lease*" means a lease to which the Debtor is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

135. "*Unimpaired*" means, with respect to a Class of Claims or Equity Interests that is not impaired within the meaning of section 1124 of the Bankruptcy Code.

136. "*Voting Deadline*" means the date and time by which all Ballots to accept or reject the Plan must be received in order to be counted under the under the Order of the Bankruptcy Court approving the Disclosure Statement as containing adequate information pursuant to section 1125(a) of the Bankruptcy Code and authorizing the Debtor to solicit acceptances of the Plan.

137. "*Voting Record Date*" means November 23, 2020.

ARTICLE II.
ADMINISTRATIVE EXPENSES AND PRIORITY TAX CLAIMS

A. Administrative Expense Claims

On the later of the Effective Date or the date on which an Administrative Expense Claim becomes an Allowed Administrative Expense Claim, or, in each such case, as soon as practicable thereafter, each Holder of an Allowed Administrative Expense Claim (other than Professional Fee Claims) will receive, in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Administrative Expense Claim either (i) payment in full in Available Cash for the unpaid portion of such Allowed Administrative Expense Claim; or (ii) such other less favorable treatment as agreed to in writing by the Debtor or the Reorganized Debtor, as applicable, and such Holder; *provided, however,* that Administrative Expense Claims incurred by the Debtor in the ordinary course of business may be paid in the ordinary course of business in the discretion of the Debtor in accordance with such applicable terms and conditions relating thereto without further notice to or order of the Bankruptcy Court. All statutory fees payable under 28 U.S.C. § 1930(a) shall be paid as such fees become due.

If an Administrative Expense Claim (other than a Professional Fee Claim) is not paid by the Debtor in the ordinary course, the Holder of such Administrative Expense Claim must File, on

or before the applicable Administrative Expense Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for allowance and payment of such Administrative Expense Claim.

Objections to any Administrative Expense Claim (other than a Professional Fee Claim) must be Filed and served on the Debtor or the Reorganized Debtor, as applicable, and the party asserting such Administrative Expense Claim by the Administrative Expense Claims Objection Deadline.

B. Professional Fee Claims

Professionals or other Entities asserting a Professional Fee Claim for services rendered through the Effective Date must submit fee applications under sections 327, 328, 329,330, 331, 503(b) or 1103 of the Bankruptcy Code and, upon entry of an order of the Bankruptcy Court granting such fee applications, such Professional Fee Claim shall promptly be paid in Cash in full to the extent provided in such order.

Professionals or other Entities asserting a Professional Fee Claim for services rendered on or prior to the Effective Date must File, on or before the Professional Fee Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated as requiring such notice by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for final allowance of such Professional Fee Claim.

Objections to any Professional Fee Claim must be Filed and served on the Debtor or Reorganized Debtor, as applicable, and the party asserting the Professional Fee Claim by the Professional Fee Claim Objection Deadline. Each Holder of an Allowed Professional Fee Claim will be paid by the Debtor or the Claimant Trust, as applicable, in Cash within ten (10) Business Days of entry of the order approving such Allowed Professional Fee Claim.

On the Effective Date, the Claimant Trustee shall establish the Professional Fee Reserve. The Professional Fee Reserve shall vest in the Claimant Trust and shall be maintained by the Claimant Trustee in accordance with the Plan and Claimant Trust Agreement. The Claimant Trust shall fund the Professional Fee Reserve on the Effective Date in an estimated amount determined by the Debtor in good faith prior to the Confirmation Date and that approximates the total projected amount of unpaid Professional Fee Claims on the Effective Date. Following the payment of all Allowed Professional Fee Claims, any excess funds in the Professional Fee Reserve shall be released to the Claimant Trust to be used for other purposes consistent with the Plan and the Claimant Trust Agreement.

C. Priority Tax Claims

On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Priority Tax Claim is an Allowed Priority Tax Claim as of the Effective Date or (ii) the date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim, each Holder of an Allowed Priority Tax Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Priority Tax Claim, at the election of the Debtor: (a) Cash in an amount of a total value as of the Effective Date of the Plan equal to the amount of such Allowed

Priority Tax Claim in accordance with section 1129(a)(9)(C) of the Bankruptcy Code, or (b) if paid over time, payment of such Allowed Priority Tax Claim in accordance with section 1129(a)(9)(C) of the Bankruptcy Code; or (c) such other less favorable treatment as agreed to in writing by the Debtor and such Holder. Payment of statutory fees due pursuant to 28 U.S.C. § 1930(a)(6) will be made at all appropriate times until the entry of a final decree; *provided, however*, that the Debtor may prepay any or all such Claims at any time, without premium or penalty.

ARTICLE III.
CLASSIFICATION AND TREATMENT OF CLASSIFIED CLAIMS AND EQUITY INTERESTS

A. Summary

All Claims and Equity Interests, except Administrative Expense Claims and Priority Tax Claims, are classified in the Classes set forth below. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims, and Priority Tax Claims have not been classified.

The categories of Claims and Equity Interests listed below classify Claims and Equity Interests for all purposes including, without limitation, confirmation and distribution pursuant to the Plan and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code. The Plan deems a Claim or Equity Interest to be classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and will be deemed classified in a different Class to the extent that any remainder of such Claim or Equity Interest qualifies within the description of such different Class. A Claim or Equity Interest is in a particular Class only to the extent that any such Claim or Equity Interest is Allowed in that Class and has not been paid, released or otherwise settled (in each case, by the Debtor or any other Entity) prior to the Effective Date.

B. Summary of Classification and Treatment of Classified Claims and Equity Interests

Class	Claim	Status	Voting Rights
1	Jefferies Secured Claim	Unimpaired	Deemed to Accept
2	Frontier Secured Claim	Impaired	Entitled to Vote
3	Other Secured Claims	Unimpaired	Deemed to Accept
4	Priority Non-Tax Claim	Unimpaired	Deemed to Accept
5	Retained Employee Claim	Unimpaired	Deemed to Accept
6	PTO Claims	Unimpaired	Deemed to Accept
7	Convenience Claims	Impaired	Entitled to Vote
8	General Unsecured Claims	Impaired	Entitled to Vote
9	Subordinated Claims	Impaired	Entitled to Vote
10	Class B/C Limited Partnership Interests	Impaired	Entitled to Vote
11	Class A Limited Partnership Interests	Impaired	Entitled to Vote

C. Elimination of Vacant Classes

Any Class that, as of the commencement of the Confirmation Hearing, does not have at least one Holder of a Claim or Equity Interest that is Allowed in an amount greater than zero for voting purposes shall be considered vacant, deemed eliminated from the Plan for purposes of voting to accept or reject the Plan, and disregarded for purposes of determining whether the Plan satisfies section 1129(a)(8) of the Bankruptcy Code with respect to such Class.

D. Impaired/Voting Classes

Claims and Equity Interests in Class 2 and Class 7 through Class 11 are Impaired by the Plan, and only the Holders of Claims or Equity Interests in those Classes are entitled to vote to accept or reject the Plan.

E. Unimpaired/Non-Voting Classes

Claims in Class 1 and Class 3 through Class 6 are Unimpaired by the Plan, and such Holders are deemed to have accepted the Plan and are therefore not entitled to vote on the Plan.

F. Impaired/Non-Voting Classes

There are no Classes under the Plan that will not receive or retain any property and no Classes are deemed to reject the Plan.

G. Cramdown

If any Class of Claims or Equity Interests is deemed to reject this Plan or does not vote to accept this Plan, the Debtor may (i) seek confirmation of this Plan under section 1129(b) of the Bankruptcy Code or (ii) amend or modify this Plan in accordance with the terms hereof and the Bankruptcy Code. If a controversy arises as to whether any Claims or Equity Interests, or any class of Claims or Equity Interests, are Impaired, the Bankruptcy Court shall, after notice and a hearing, determine such controversy on or before the Confirmation Date.

H. Classification and Treatment of Claims and Equity Interests

1. *Class 1 – Jefferies Secured Claim*

- *Classification*: Class 1 consists of the Jefferies Secured Claim.
- *Treatment*: On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 1 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 1 Claim, at the election of the Debtor: (A) Cash equal to the amount of such Allowed Class 1 Claim; (B) such other less favorable treatment as to which the Debtor and the Holder of such Allowed Class 1 Claim will have agreed upon in writing; or (C) such other treatment rendering such Claim Unimpaired. Each Holder of an Allowed Class 1 Claim will retain the Liens securing its Allowed Class 1 Claim as of the Effective Date until

full and final payment of such Allowed Class 1 Claim is made as provided herein.

- *Impairment and Voting*: Class 1 is Unimpaired, and the Holders of Class 1 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 1 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

2. *Class 2 – Frontier Secured Claim*

- *Classification*: Class 2 consists of the Frontier Secured Claim.

- *Treatment*: On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 2 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 2 Claim: (A) Cash in an amount equal to all accrued but unpaid interest on the Frontier Claim through and including the Effective Date and (B) the New Frontier Note. The Holder of an Allowed Class 2 Claim will retain the Liens securing its Allowed Class 2 Claim as of the Effective Date until full and final payment of such Allowed Class 2 Claim is made as provided herein.

- *Impairment and Voting*: Class 2 is Impaired, and the Holders of Class 2 Claims are entitled to vote to accept or reject this Plan.

3. *Class 3 – Other Secured Claims*

- *Classification*: Class 3 consists of the Other Secured Claims.

- *Allowance and Treatment*: On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 3 Claim is Allowed on the Effective Date or (ii) the date on which such Class 3 Claim becomes an Allowed Class 3 Claim, each Holder of an Allowed Class 3 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 3 Claim, at the option of the Debtor, or following the Effective Date, the Reorganized Debtor or Claimant Trustee, as applicable, (i) Cash equal to such Allowed Other Secured Claim, (ii) the collateral securing its Allowed Other Secured Claim, plus postpetition interest to the extent required under Bankruptcy Code Section 506(b), or (iii) such other treatment rendering such Claim Unimpaired.

- *Impairment and Voting*: Class 3 is Unimpaired, and the Holders of Class 3 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 3 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

4. *Class 4 – Priority Non-Tax Claims*

- *Classification*: Class 4 consists of the Priority Non-Tax Claims.

- *Allowance and Treatment*: On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 4 Claim is Allowed on the Effective Date or (ii) the date on which such Class 4 Claim becomes an Allowed Class 4 Claim, each Holder of an Allowed Class 4 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 4 Claim Cash equal to the amount of such Allowed Class 4 Claim.

- *Impairment and Voting*: Class 4 is Unimpaired, and the Holders of Class 4 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 4 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

5. *Class 5 – Retained Employee Claims*

- *Classification*: Class 5 consists of the Retained Employee Claims.

- *Allowance and Treatment*: On or as soon as reasonably practicable after the Effective Date, each Allowed Class 5 Claim will be Reinstated.

- *Impairment and Voting*: Class 5 is Unimpaired, and the Holders of Class 5 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 5 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

6. *Class 6 – PTO Claims*

- *Classification*: Class 6 consists of the PTO Claims.

- *Allowance and Treatment*: On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 6 Claim is Allowed on the Effective Date or (ii) the date on which such Class 6 Claim becomes an Allowed Class 6 Claim, each Holder of an Allowed Class 6 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 6 Claim Cash equal to the amount of such Allowed Class 6 Claim.

- *Impairment and Voting*: Class 6 is Unimpaired, and the Holders of Class 6 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 6

Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

7. *Class 7 – Convenience Claims*

- *Classification*: Class 7 consists of the Convenience Claims.

- *Allowance and Treatment*: On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 7 Claim is Allowed on the Effective Date or (ii) the date on which such Class 7 Claim becomes an Allowed Class 7 Claim, each Holder of an Allowed Class 7 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Class 7 Claim (1) the treatment provided to Allowed Holders of Class 8 General Unsecured Claims if the Holder of such Class 7 Claim makes the GUC Election or (2) an amount in Cash equal to the lesser of (a) 85% of the Allowed amount of such Holder's Class 7 Claim or (b) such Holder's Pro Rata share of the Convenience Claims Cash Pool.

- *Impairment and Voting*: Class 7 is Impaired, and the Holders of Class 7 Claims are entitled to vote to accept or reject this Plan.

8. *Class 8 – General Unsecured Claims*

- *Classification*: Class 8 consists of the General Unsecured Claims.

- *Treatment*: On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 8 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Claimant Trust Interests, (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing, or (iii) the treatment provided to Allowed Holders of Class 7 Convenience Claims if the Holder of such Class 8 General Unsecured Claim is eligible and makes a valid Convenience Class Election.

  Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any General Unsecured Claim, except with respect to any General Unsecured Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting*: Class 8 is Impaired, and the Holders of Class 8 Claims are entitled to vote to accept or reject this Plan.

9. *Class 9 – Subordinated Claims*

- *Classification*: Class 9 consists of the Subordinated Claims.

  Treatment: On the Effective Date, Holders of Subordinated Claims shall receive either (i) their Pro Rata share of the Subordinated Claimant Trust Interests or, (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee may agree upon in writing.

  Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Subordinated Claim, except with respect to any Subordinated Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting*: Class 9 is Impaired, and the Holders of Class 9 Claims are entitled to vote to accept or reject this Plan.

10. *Class 10 – Class B/C Limited Partnership Interests*

- *Classification*: Class 10 consists of the Class B/C Limited Partnership Interests.

- *Treatment*: On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 10 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

  Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class B/C Limited Partnership Interest Claim, except with respect to any Class B/C Limited Partnership Interest Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting*: Class 10 is Impaired, and the Holders of Class 10 Claims are entitled to vote to accept or reject this Plan.

11. *Class 11 – Class A Limited Partnership Interests*

- *Classification*: Class 11 consists of the Class A Limited Partnership Interests.

- *Treatment*: On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 11 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

  Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class A Limited Partnership Interest, except with respect to any Class A Limited Partnership Interest Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting*: Class 11 is Impaired, and the Holders of Class 11 Claims are entitled to vote to accept or reject this Plan.

I. Special Provision Governing Unimpaired Claims

Except as otherwise provided in the Plan, nothing under the Plan will affect the Debtor's rights in respect of any Unimpaired Claims, including, without limitation, all rights in respect of legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claims.

J. Subordinated Claims

The allowance, classification, and treatment of all Claims under the Plan shall take into account and conform to the contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Upon written notice and hearing, the Debtor the Reorganized Debtor, and the Claimant Trustee reserve the right to seek entry of an order by the Bankruptcy Court to re-classify or to subordinate any Claim in accordance with any contractual, legal, or equitable subordination relating thereto, and the treatment afforded any Claim under the Plan that becomes a subordinated Claim at any time shall be modified to reflect such subordination.

ARTICLE IV.
MEANS FOR IMPLEMENTATION OF THIS PLAN

A. Summary

As discussed in the Disclosure Statement, the Plan will be implemented through (i) the Claimant Trust, (ii) the Litigation Sub-Trust, and (iii) the Reorganized Debtor.

On the Effective Date, all Class A Limited Partnership Interests, including the Class A Limited Partnership Interests held by Strand, as general partner, and Class B/C Limited Partnerships in the Debtor will be cancelled, and new Class A Limited Partnership Interests in the Reorganized Debtor will be issued to the Claimant Trust and New GP LLC – a newly-chartered limited liability company wholly-owned by the Claimant Trust. The Claimant Trust, as limited

partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor, and on and following the Effective Date, the Claimant Trust will be the Reorganized Debtor's limited partner and New GP LLC will be its general partner. The Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement, which will amend and restate, in all respects, the Debtor's current Limited Partnership Agreement. Following the Effective Date, the Reorganized Debtor will be managed consistent with the terms of the Reorganized Limited Partnership Agreement by New GP LLC. The sole managing member of New GP LLC will be the Claimant Trust, and the Claimant Trustee will be the sole officer of New GP LLC on the Effective Date.

Following the Effective Date, the Claimant Trust will administer the Claimant Trust Assets pursuant to this Plan and the Claimant Trust Agreement, and the Litigation Trustee will pursue, if applicable, the Estate Claims pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan. The Reorganized Debtor will administer the Reorganized Debtor Assets and, if needed, with the utilization of a Sub-Servicer, which administration will include, among other things, managing the wind down of the Managed Funds.

Although the Reorganized Debtor will manage the wind down of the Managed Funds, it is currently anticipated that neither the Reorganized Debtor nor the Claimant Trust will assume or assume and assign the contracts between the Debtor and certain Related Entities pursuant to which the Debtor provides shared services and sub-advisory services to those Related Entities. The Debtor believes that the continued provision of the services under such contracts will not be cost effective.

The Reorganized Debtor will distribute all proceeds from the wind down to the Claimant Trust, as its limited partner, and New GP LLC, as its general partner, in each case in accordance with the Reorganized Limited Partnership Agreement. Such proceeds, along with the proceeds of the Claimant Trust Assets, will ultimately be distributed to the Claimant Trust Beneficiaries as set forth in this Plan and the Claimant Trust Agreement.

B. The Claimant Trust[2]

1. *Creation and Governance of the Claimant Trust and Litigation Sub-Trust.*

On or prior to the Effective Date, the Debtor and the Claimant Trustee shall execute the Claimant Trust Agreement and shall take all steps necessary to establish the Claimant Trust and the Litigation Sub-Trust in accordance with the Plan in each case for the benefit of the Claimant Trust Beneficiaries. Additionally, on or prior to the Effective Date, the Debtor shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Claimant Trust all of its rights, title, and interest in and to all of the Claimant Trust Assets, and in accordance with section 1141 of the Bankruptcy Code, the Claimant Trust Assets shall automatically vest in the Claimant Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Claimant Trust Interests and the Claimant Trust Expenses, as provided for in the Claimant Trust Agreement, and

[2] In the event of a conflict between the terms of this summary and the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, the terms of the Claimant Trust Agreement or the Litigation Sub-Trust Agreement, as applicable, shall control.

such transfer shall be exempt from any stamp, real estate transfer, mortgage from any stamp, transfer, reporting, sales, use, or other similar tax.

The Claimant Trustee shall be the exclusive trustee of the Claimant Trust Assets, excluding the Estate Claims and the Litigation Trustee shall be the exclusive trustee with respect to the Estate Claims in each case for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Claimant Trust Assets. The Claimant Trustee shall also be responsible for resolving all Claims and Equity Interests in Class 8 through Class 11, under the supervision of the Claimant Trust Oversight Committee.

On the Effective Date, the Claimant Trustee and Litigation Trustee shall execute the Litigation Sub-Trust Agreement and shall take all steps necessary to establish the Litigation Sub-Trust. Upon the creation of the Litigation Sub-Trust, the Claimant Trust shall irrevocably transfer and assign to the Litigation Sub-Trust the Estate Claims. The Claimant Trust shall be governed by the Claimant Trust Agreement and administered by the Claimant Trustee. The powers, rights, and responsibilities of the Claimant Trustee shall be specified in the Claimant Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this ARTICLE IV, subject to any required reporting to the Claimant Trust Oversight Committee as may be set forth in the Claimant Trust Agreement. The Claimant Trust shall hold and distribute the Claimant Trust Assets (including the proceeds from the Estate Claims, if any) in accordance with the provisions of the Plan and the Claimant Trust Agreement; *provided* that the Claimant Trust Oversight Committee may direct the Claimant Trust to reserve Cash from distributions as necessary to fund the Claimant Trust and Litigation Sub-Trust. Other rights and duties of the Claimant Trustee and the Claimant Trust Beneficiaries shall be as set forth in the Claimant Trust Agreement. After the Effective Date, neither the Debtor nor the Reorganized Debtor shall have any interest in the Claimant Trust Assets.

The Litigation Sub-Trust shall be governed by the Litigation Sub-Trust Agreement and administered by the Litigation Trustee. The powers, rights, and responsibilities of the Litigation Trustee shall be specified in the Litigation Sub-Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this ARTICLE IV, subject to any required reporting as may be set forth in the Litigation Sub-Trust Agreement. The Litigation Sub-Trust shall investigate, prosecute, settle, or otherwise resolve the Estate Claims in accordance with the provisions of the Plan and the Litigation Sub-Trust Agreement and shall distribute the proceeds therefrom to the Claimant Trust for distribution. Other rights and duties of the Litigation Trustee shall be as set forth in the Litigation Sub-Trust Agreement.

2. *Claimant Trust Oversight Committee*

The Claimant Trust, the Claimant Trustee, the management and monetization of the Claimant Trust Assets, and the management of the Reorganized Debtor (through the Claimant Trust's role as managing member of New GP LLC) and the Litigation Sub-Trust will be overseen by the Claimant Trust Oversight Committee, subject to the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, as applicable.

The Claimant Trust Oversight Committee will initially consist of five members. Four of the five members will be representatives of the members of the Committee: (i) the Redeemer Committee of Highland Crusader Fund, (ii) UBS, (iii) Acis, and (iv) Meta-e Discovery. The fifth member will be an independent, natural Person chosen by the Committee and reasonably acceptable to the Debtor. The members of the Claimant Trust Oversight Committee may be replaced as set forth in the Claimant Trust Agreement. The identity of the members of the Claimant Trust Oversight Committee will be disclosed in the Plan Supplement.

As set forth in the Claimant Trust Agreement, in no event will any member of the Claimant Trust Oversight Committee with a Claim against the Estate be entitled to vote, opine, or otherwise be involved in any matters related to such member's Claim.

The independent member(s) of the Claimant Trust Oversight Committee may be entitled to compensation for their services as set forth in the Claimant Trust Agreement. Any member of the Claimant Trust Oversight Committee may be removed, and successor chosen, in the manner set forth in the Claimant Trust Agreement.

3. *Purpose of the Claimant Trust.*

The Claimant Trust shall be established for the purpose of (i) managing and monetizing the Claimant Trust Assets, subject to the terms of the Claimant Trust Agreement and the oversight of the Claimant Trust Oversight Committee, (ii) serving as the limited partner of, and holding the limited partnership interests in, the Reorganized Debtor, (iii) serving as the sole member and manager of New GP LLC, the Reorganized Debtor's general partner, (iv) in its capacity as the sole member and manager of New GP LLC, overseeing the management and monetization of the Reorganized Debtor Assets pursuant to the terms of the Reorganized Limited Partnership Agreement; and (v) administering the Disputed Claims Reserve and serving as Distribution Agent with respect to Disputed Claims in Class 7 or Class 8.

In its management of the Claimant Trust Assets, the Claimant Trust will also reconcile and object to the General Unsecured Claims, Subordinated Claims, Class B/C Limited Partnership Interests, and Class A Limited Partnership Interests, as provided for in this Plan and the Claimant Trust Agreement, and make Trust Distributions to the Claimant Trust Beneficiaries in accordance with Treasury Regulation section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business.

The purpose of the Reorganized Debtor is discussed at greater length in ARTICLE IV.C.

4. *Purpose of the Litigation Sub-Trust.*

The Litigation Sub-Trust shall be established for the purpose of investigating, prosecuting, settling, or otherwise resolving the Estate Claims. Any proceeds therefrom shall be distributed by the Litigation Sub-Trust to the Claimant Trust for distribution to the Claimant Trust Beneficiaries pursuant to the terms of the Claimant Trust Agreement.

5. *Claimant Trust Agreement and Litigation Sub-Trust Agreement.*

The Claimant Trust Agreement generally will provide for, among other things:

(i) the payment of the Claimant Trust Expenses;

(ii) the payment of other reasonable expenses of the Claimant Trust;

(iii) the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation;

(iv) the investment of Cash by the Claimant Trustee within certain limitations, including those specified in the Plan;

(v) the orderly monetization of the Claimant Trust Assets;

(vi) litigation of any Causes of Action, which may include the prosecution, settlement, abandonment, or dismissal of any such Causes of Action, subject to reporting and oversight by the Claimant Trust Oversight Committee;

(vii) the resolution of Claims and Equity Interests in Class 8 through Class 11, subject to reporting and oversight by the Claimant Trust Oversight Committee;

(viii) the administration of the Disputed Claims Reserve and distributions to be made therefrom; and

(ix) the management of the Reorganized Debtor, including the utilization of a Sub-Servicer, with the Claimant Trust serving as the managing member of New GP LLC.

Except as otherwise ordered by the Bankruptcy Court, the Claimant Trust Expenses shall be paid from the Claimant Trust Assets in accordance with the Plan and Claimant Trust Agreement. The Claimant Trustee may establish a reserve for the payment of Claimant Trust Expense (including, without limitation, any reserve for potential indemnification claims as authorized and provided under the Claimant Trust Agreement), and shall periodically replenish such reserve, as necessary.

In furtherance of, and consistent with the purpose of, the Claimant Trust and the Plan, the Trustees, for the benefit of the Claimant Trust, shall, subject to reporting and oversight by the Claimant Trust Oversight Committee as set forth in the Claimant Trust Agreement: (i) hold the Claimant Trust Assets for the benefit of the Claimant Trust Beneficiaries, (ii) make Distributions to the Claimant Trust Beneficiaries as provided herein and in the Claimant Trust Agreement, and (iii) have the sole power and authority to prosecute and resolve any Causes of Action and objections to Claims and Equity Interests (other than those assigned to the Litigation Sub-Trust), without approval of the Bankruptcy Court. Except as otherwise provided in the Claimant Trust Agreement, the Claimant Trustee shall be responsible for all decisions and duties with respect to the Claimant Trust and the Claimant Trust Assets; *provided, however,* that the prosecution and resolution of any Estate Claims included in the Claimant Trust Assets shall be the responsibility of the Litigation Trustee. The Litigation Sub-Trust Agreement generally will provide for, among other things:

(i) the payment of other reasonable expenses of the Litigation Sub-Trust;

(ii) the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation; and

(iii) the investigation and prosecution of Estate Claims, which may include the prosecution, settlement, abandonment, or dismissal of any such Estate Claims, subject to reporting and oversight as set forth in the Litigation Sub-Trust Agreement.

The Trustees, on behalf of the Claimant Trust and Litigation Sub-Trust, as applicable, may each employ, without further order of the Bankruptcy Court, employees and other professionals (including those previously retained by the Debtor and the Committee) to assist in carrying out the Trustees' duties hereunder and may compensate and reimburse the reasonable expenses of these professionals without further Order of the Bankruptcy Court from the Claimant Trust Assets in accordance with the Plan and the Claimant Trust Agreement.

The Claimant Trust Agreement and Litigation Sub-Trust Agreement may include reasonable and customary provisions that allow for indemnification by the Claimant Trust in favor of the Claimant Trustee, Litigation Trustee, and the Claimant Trust Oversight Committee. Any such indemnification shall be the sole responsibility of the Claimant Trust and payable solely from the Claimant Trust Assets.

6. *Compensation and Duties of Trustees.*

The salient terms of each Trustee's employment, including such Trustee's duties and compensation shall be set forth in the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, as appropriate. The Trustees shall each be entitled to reasonable compensation in an amount consistent with that of similar functionaries in similar types of bankruptcy cases.

7. *Cooperation of Debtor and Reorganized Debtor.*

To effectively investigate, prosecute, compromise and/or settle the Claims and/or Causes of Action that constitute Claimant Trust Assets (including Estate Claims), the Claimant Trustee, Litigation Trustee, and each of their professionals may require reasonable access to the Debtor's and Reorganized Debtor's documents, information, and work product relating to the Claimant Trust Assets. Accordingly, the Debtor and the Reorganized Debtor, as applicable, shall reasonably cooperate with the Claimant Trustee and Litigation Trustee, as applicable, in their prosecution of Causes of Action and in providing the Claimant Trustee and Litigation Trustee with copies of documents and information in the Debtor's possession, custody, or control on the Effective Date that either Trustee indicates relates to the Estate Claims or other Causes of Action.

The Debtor and Reorganized Debtor shall preserve all records, documents or work product (including all electronic records, documents, or work product) related to the Claims and Causes of Action, including Estate Claims, until the earlier of (a) the dissolution of the Reorganized Debtor or (b) termination of the Claimant Trust and Litigation Sub-Trust.

8. *United States Federal Income Tax Treatment of the Claimant Trust.*

Unless the IRS requires otherwise, for all United States federal income tax purposes, the parties shall treat the transfer of the Claimant Trust Assets to the Claimant Trust as: (a) a transfer

of the Claimant Trust Assets (other than the amounts set aside in the Disputed Claims Reserve, if the Claimant Trustee makes the election described in Section 7 below) directly to the applicable Claimant Trust Beneficiaries followed by (b) the transfer by the such Claimant Trust Beneficiaries to the Claimant Trust of such Claimant Trust Assets in exchange for the Claimant Trust Interests. Accordingly, the applicable Claimant Trust Beneficiaries shall be treated for United States federal income tax purposes as the grantors and owners of their respective share of the Claimant Trust Assets. The foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local income tax purposes.

9. *Tax Reporting.*

(a) The Claimant Trustee shall file tax returns for the Claimant Trust treating the Claimant Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a). The Claimant Trustee may file an election pursuant to Treasury Regulation 1.468B-9(c) to treat the Disputed Claims Reserve as a disputed ownership fund, in which case the Claimant Trustee will file federal income tax returns and pay taxes for the Disputed Claims Reserve as a separate taxable entity.

(b) The Claimant Trustee shall be responsible for payment, out of the Claimant Trust Assets, of any taxes imposed on the Claimant Trust or its assets.

(c) The Claimant Trustee shall determine the fair market value of the Claimant Trust Assets as of the Effective Date and notify the applicable Claimant Trust Beneficiaries of such valuation, and such valuation shall be used consistently for all federal income tax purposes.

(d) The Claimant Trustee shall distribute such tax information to the applicable Claimant Trust Beneficiaries as the Claimant Trustee determines is required by applicable law.

10. *Claimant Trust Assets.*

The Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Causes of Action included in the Claimant Trust Assets (except for the Estate Claims) without any further order of the Bankruptcy Court, and the Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to sell, liquidate, or otherwise monetize all Claimant Trust Assets, except as otherwise provided in this Plan or in the Claimant Trust Agreement, without any further order of the Bankruptcy Court. Notwithstanding anything herein to the contrary, the Litigation Trustee shall have the exclusive right to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Estate Claims included in the Claimant Trust Assets without any further order of the Bankruptcy Court.

From and after the Effective Date, the Trustees, in accordance with section 1123(b)(3) and (4) of the Bankruptcy Code, and on behalf of the Claimant Trust, shall each serve as a representative of the Estate with respect to any and all Claimant Trust Assets, including the Causes of Action and Estate Claims, as appropriate, and shall retain and possess the right to (a) commence, pursue, settle, compromise, or abandon, as appropriate, any and all Causes of Action in any court or other tribunal and (b) sell, liquidate, or otherwise monetize all Claimant Trust Assets.

11. *Claimant Trust Expenses.*

From and after the Effective Date, the Claimant Trust shall, in the ordinary course of business and without the necessity of any approval by the Bankruptcy Court, pay the reasonable professional fees and expenses incurred by the Claimant Trust, the Litigation Sub-Trust, and any professionals retained by such parties and entities from the Claimant Trust Assets, except as otherwise provided in the Claimant Trust Agreement.

12. *Trust Distributions to Claimant Trust Beneficiaries.*

The Claimant Trustee, in its discretion, may make Trust Distributions to the Claimant Trust Beneficiaries at any time and/or use the Claimant Trust Assets or proceeds thereof, *provided* that such Trust Distributions or use is otherwise permitted under the terms of the Plan, the Claimant Trust Agreement, and applicable law.

13. *Cash Investments.*

With the consent of the Claimant Trust Oversight Committee, the Claimant Trustee may invest Cash (including any earnings thereon or proceeds therefrom) in a manner consistent with the terms of the Claimant Trust Agreement; *provided, however,* that such investments are investments permitted to be made by a "liquidating trust" within the meaning of Treasury Regulation section 301.7701-4(d), as reflected therein, or under applicable IRS guidelines, rulings or other controlling authorities.

14. *Dissolution of the Claimant Trust and Litigation Sub-Trust.*

The Trustees and the Claimant Trust and Litigation Sub-Trust shall be discharged or dissolved, as the case may be, at such time as: (a) the Litigation Trustee determines that the pursuit of Estate Claims is not likely to yield sufficient additional proceeds to justify further pursuit of such Estate Claims, (b) the Claimant Trustee determines that the pursuit of Causes of Action (other than Estate Claims) is not likely to yield sufficient additional proceeds to justify further pursuit of such Causes of Action, (c) the Clamant Trustee determines that the pursuit of sales of other Claimant Trust Assets is not likely to yield sufficient additional proceeds to justify further pursuit of such sales of Claimant Trust Assets, (d) all objections to Disputed Claims and Equity Interests are fully resolved, (e) the Reorganized Debtor is dissolved, and (f) all Distributions required to be made by the Claimant Trustee to the Claimant Trust Beneficiaries under the Plan have been made, but in no event shall the Claimant Trust be dissolved later than three years from the Effective Date unless the Bankruptcy Court, upon motion made within the six-month period before such third anniversary (and, in the event of further extension, by order of the Bankruptcy Court, upon motion made at least six months before the end of the preceding extension), determines that a fixed period extension (not to exceed two years, together with any prior extensions, without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes) is necessary to facilitate or complete the recovery on, and liquidation of, the Claimant Trust Assets; *provided, however,* that each extension must be approved, upon a finding that the extension is necessary to facilitate or complete the recovery on, and liquidation of the Claimant Trust Assets, by the Bankruptcy Court within 6 months of the beginning of the extended term and

no extension, together with any prior extensions, shall exceed three years without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes.

Upon dissolution of the Claimant Trust, and pursuant to the Claimant Trust Agreement, any remaining Claimant Trust Assets that exceed the amounts required to be paid under the Plan will be transferred (in the sole discretion of the Claimant Trustee) in Cash or in-kind to the Holders of the Claimant Trust Interests as provided in the Claimant Trust Agreement.

C. The Reorganized Debtor

1. *Corporate Existence*

The Debtor will continue to exist after the Effective Date, with all of the powers of partnerships pursuant to the law of the State of Delaware and as set forth in the Reorganized Limited Partnership Agreement.

2. *Cancellation of Equity Interests and Release*

On the Effective Date, (i) all prepetition Equity Interests, including the Class A Limited Partnership Interests and the Class B/C Limited Partnership Interests, in the Debtor shall be canceled, and (ii) all obligations or debts owed by, or Claims against, the Debtor on account of, or based upon, the Interests shall be deemed as cancelled, released, and discharged, including all obligations or duties by the Debtor relating to the Equity Interests in any of the Debtor's formation documents, including the Limited Partnership Agreement.

3. *Issuance of New Partnership Interests*

On the Effective Date, the Debtor or the Reorganized Debtor, as applicable, will issue new Class A Limited Partnership Interests to (i) the Claimant Trust, as limited partner, and (ii) New GP LLC, as general partner, and will admit (a) the Claimant Trust as the limited partner of the Reorganized Debtor, and (b) New GP LLC as the general partner of the Reorganized Debtor. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor. Also, on the Effective Date, the Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement and receive partnership interests in the Reorganized Debtor consistent with the terms of the Reorganized Limited Partnership Agreement.

The Reorganized Limited Partnership Agreement does not provide for, and specifically disclaims, the indemnification obligations under the Limited Partnership Agreement, including any such indemnification obligations that accrued or arose or could have been brought prior to the Effective Date. Any indemnification Claims under the Limited Partnership Agreement that accrued, arose, or could have been filed prior to the Effective Date will be resolved through the Claims resolution process provided that a Claim is properly filed in accordance with the Bankruptcy Code, the Plan, or the Bar Date Order. Each of the Debtor, the Reorganized Debtor, the Claimant Trust, and the Litigation Sub-Trust reserve all rights with respect to any such indemnification Claims.

4. *Management of the Reorganized Debtor*

Subject to and consistent with the terms of the Reorganized Limited Partnership Agreement, the Reorganized Debtor shall be managed by its general partner, New GP LLC. The initial officers and employees of the Reorganized Debtor shall be selected by the Claimant Trustee. The Reorganized Debtor may, in its discretion, also utilize a Sub-Servicer in addition to or in lieu of the retention of officers and employees.

As set forth in the Reorganized Limited Partnership Agreement, New GP LLC will receive a fee for managing the Reorganized Debtor. Although New GP LLC will be a limited liability company, it will elect to be treated as a C-Corporation for tax purposes. Therefore, New GP LLC (and any taxable income attributable to it) will be subject to corporate income taxation on a standalone basis, which may reduce the return to Claimants.

5. *Vesting of Assets in the Reorganized Debtor*

Except as otherwise provided in this Plan or the Confirmation Order, on or after the Effective Date, all Reorganized Debtor Assets will vest in the Reorganized Debtor, free and clear of all Liens, Claims, charges or other encumbrances pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under this Plan upon the Effective Date.

The Reorganized Debtor shall be the exclusive trustee of the Reorganized Debtor Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Reorganized Debtor Assets.

6. *Purpose of the Reorganized Debtor*

Except as may be otherwise provided in this Plan or the Confirmation Order, the Reorganized Debtor will continue to manage the Reorganized Debtor Assets (which shall include, for the avoidance of doubt, serving as the investment manager of the Managed Funds) and may use, acquire or dispose of the Reorganized Debtor Assets and compromise or settle any Claims with respect to the Reorganized Debtor Assets without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules. The Reorganized Debtor shall oversee the resolution of Claims in Class 1 through Class 7.

Without limiting the foregoing, the Reorganized Debtor will pay the charges that it incurs after the Effective Date for Professionals' fees, disbursements, expenses or related support services (including reasonable fees relating to the preparation of Professional fee applications) in the ordinary course of business and without application or notice to, or order of, the Bankruptcy Court.

7. *Distribution of Proceeds from the Reorganized Debtor Assets; Transfer of Reorganized Debtor Assets*

Any proceeds received by the Reorganized Debtor will be distributed to the Claimant Trust, as limited partner, and New GP LLC, as general partner, in the manner set forth in the Reorganized Limited Partnership Agreement. As set forth in the Reorganized Limited Partnership Agreement,

the Reorganized Debtor may, from time to time distribute Reorganized Debtor Assets to the Claimant Trust either in Cash or in-kind, including to institute the wind-down and dissolution of the Reorganized Debtor. Any assets distributed to the Claimant Trust will be (i) deemed transferred in all respects as forth in ARTICLE IV.B.1, (ii) deemed Claimant Trust Assets, and (iii) administered as Claimant Trust Assets.

D. Company Action

Each of the Debtor, the Reorganized Debtor, and the Trustees, as applicable, may take any and all actions to execute, deliver, File or record such contracts, instruments, releases and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and implement the provisions of this Plan, the Claimant Trust Agreement, the Reorganized Limited Partnership Agreement, or the New GP LLC Documents, as applicable, in the name of and on behalf of the Debtor, the Reorganized Debtor, or the Trustees, as applicable, and in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, officers, or directors of the Debtor or the Reorganized Debtor, as applicable, or by any other Person.

Prior to, on or after the Effective Date (as appropriate), all matters provided for pursuant to this Plan that would otherwise require approval of the stockholders, partners, directors, managers, or members of the Debtor, any Related Entity, or any Affiliate thereof (as of prior to the Effective Date) will be deemed to have been so approved and will be in effect prior to, on or after the Effective Date (as appropriate) pursuant to applicable law and without any requirement of further action by the stockholders, partners, directors, managers or members of such Persons, or the need for any approvals, authorizations, actions or consents of any Person.

All matters provided for in this Plan involving the legal or corporate structure of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, and any legal or corporate action required by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, in connection with this Plan, will be deemed to have occurred and will be in full force and effect in all respects, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, partners, directors, managers, or members of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, or by any other Person. On the Effective Date, the appropriate officers of the Debtor and the Reorganized Debtor, as applicable, as well as the Trustees, are authorized to issue, execute, deliver, and consummate the transactions contemplated by, the contracts, agreements, documents, guarantees, pledges, consents, securities, certificates, resolutions and instruments contemplated by or described in this Plan in the name of and on behalf of the Debtor and the Reorganized Debtor, as well as the Trustees, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. The appropriate officer of the Debtor, the Reorganized Debtor, as well as the Trustees, will be authorized to certify or attest to any of the foregoing actions.

E. Release of Liens, Claims and Equity Interests

Except as otherwise provided in the Plan or in any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, from and after the Effective Date and concurrently with the applicable distributions made pursuant to the Plan, all Liens, Claims, Equity Interests, mortgages, deeds of trust, or other security interests against the property of the Estate will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Entity. Any Entity holding such Liens or Equity Interests extinguished pursuant to the prior sentence will, pursuant to section 1142 of the Bankruptcy Code, promptly execute and deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, such instruments of termination, release, satisfaction and/or assignment (in recordable form) as may be reasonably requested by the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable. For the avoidance of doubt, this section is in addition to, and shall not be read to limit in any respects, ARTICLE IV.C.2.

F. Cancellation of Notes, Certificates and Instruments

Except for the purpose of evidencing a right to a distribution under this Plan and except as otherwise set forth in this Plan, on the Effective Date, all agreements, instruments, Securities and other documents evidencing any prepetition Claim or Equity Interest and any rights of any Holder in respect thereof shall be deemed cancelled, discharged, and of no force or effect. The holders of or parties to such cancelled instruments, Securities, and other documentation will have no rights arising from or related to such instruments, Securities, or other documentation or the cancellation thereof, except the rights provided for pursuant to this Plan, and the obligations of the Debtor thereunder or in any way related thereto will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. For the avoidance of doubt, this section is in addition to, and shall not be read to limit in any respects, ARTICLE IV.C.2.

G. Cancellation of Existing Instruments Governing Security Interests

Upon payment or other satisfaction of an Allowed Class 1 or Allowed Class 2 Claim, or promptly thereafter, the Holder of such Allowed Class 1 or Allowed Class 2 Claim shall deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, any collateral or other property of the Debtor held by such Holder, together with any termination statements, instruments of satisfaction, or releases of all security interests with respect to its Allowed Class 1 or Allowed Class 2 Claim that may be reasonably required to terminate any related financing statements, mortgages, mechanics' or other statutory Liens, or *lis pendens*, or similar interests or documents.

H. Control Provisions

To the extent that there is any inconsistency between this Plan as it relates to the Claimant Trust, the Claimant Trust Agreement, the Reorganized Debtor, or the Reorganized Limited Partnership Agreement, this Plan shall control.

I. Treatment of Vacant Classes

Any Claim or Equity Interest in a Class considered vacant under ARTICLE III.C of this Plan shall receive no Plan Distributions.

J. Plan Documents

The documents, if any, to be Filed as part of the Plan Documents, including any documents filed with the Plan Supplement, and any amendments, restatements, supplements, or other modifications to such documents, and any consents, waivers, or other deviations under or from any such documents, shall be incorporated herein by this reference (including to the applicable definitions in ARTICLE I hereof) and fully enforceable as if stated in full herein.

The Debtor and the Committee are currently working to finalize the forms of certain of the Plan Documents to be filed with the Plan Supplement. To the extent that the Debtor and the Committee cannot agree as to the form and content of such Plan Documents, they intend to submit the issue to non-binding mediation pursuant to the *Order Directing Mediation* entered on August 3, 2020 [D.I. 912].

K. Highland Capital Management, L.P. Retirement Plan and Trust

The Highland Capital Management, L.P. Retirement Plan And Trust ("Pension Plan") is a single-employer defined benefit pension plan covered by Title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). 29 U.S.C. §§ 1301-1461. The Debtor is the contributing sponsor and, as such, the PBGC asserts that the Debtor is liable along with any members of the contributing sponsor's controlled-group within the meaning of 29 U.S.C. §§ 1301(a)(13), (14) with respect to the Pension Plan.

Upon the Effective Date, the Reorganized Debtor shall be deemed to have assumed the Pension Plan and shall comply with all applicable statutory provisions of ERISA and the Internal Revenue Code (the "IRC"), including, but not limited to, satisfying the minimum funding standards pursuant to 26 U.S.C. §§ 412, 430, and 29 U.S.C. §§ 1082, 1083; paying the PBGC premiums in accordance with 29 U.S.C. §§ 1306 and 1307; and administering the Pension Plan in accordance with its terms and the provisions of ERISA and the IRC. In the event that the Pension Plan terminates after the Plan of Reorganization Effective Date, the PBGC asserts that the Reorganized Debtor and each of its controlled group members will be responsible for the liabilities imposed by Title IV of ERISA.

Notwithstanding any provision of the Plan, the Confirmation Order, or the Bankruptcy Code (including section 1141 thereof) to the contrary, neither the Plan, the Confirmation Order, or the Bankruptcy Code shall be construed as discharging, releasing, exculpating or relieving the Debtor, the Reorganized Debtor, or any person or entity in any capacity, from any liability or responsibility, if any, with respect to the Pension Plan under any law, governmental policy, or regulatory provision. PBGC and the Pension Plan shall not be enjoined or precluded from enforcing such liability or responsibility against any person or entity as a result of any of the provisions of the Plan, the Confirmation Order, or the Bankruptcy Code. The Debtor reserves the right to contest any such liability or responsibility.

ARTICLE V.
TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

A. Assumption, Assignment, or Rejection of Executory Contracts and Unexpired Leases

Unless an Executory Contract or Unexpired Lease: (i) was previously assumed or rejected by the Debtor pursuant to this Plan on or prior to the Confirmation Date; (ii) previously expired or terminated pursuant to its own terms or by agreement of the parties thereto; (iii) is the subject of a motion to assume filed by the Debtor on or before the Confirmation Date; (iv) contains a change of control or similar provision that would be triggered by the Chapter 11 Case (unless such provision has been irrevocably waived); or (v) is specifically designated as a contract or lease to be assumed in the Plan or the Plan Supplement, on the Confirmation Date, each Executory Contract and Unexpired Lease shall be deemed rejected pursuant to section 365 of the Bankruptcy Code, without the need for any further notice to or action, order, or approval of the Bankruptcy Court, unless such Executory Contract or Unexpired Lease is listed in the Plan Supplement.

At any time on or prior to the Confirmation Date, the Debtor may (i) amend the Plan Supplement in order to add or remove a contract or lease from the list of contracts to be assumed or (ii) assign (subject to applicable law) any Executory Contract or Unexpired Lease, as determined by the Debtor in consultation with the Committee, or the Reorganized Debtor, as applicable.

The Confirmation Order will constitute an order of the Bankruptcy Court approving the above-described assumptions, rejections, and assumptions and assignments. Except as otherwise provided herein or agreed to by the Debtor and the applicable counterparty, each assumed Executory Contract or Unexpired Lease shall include all modifications, amendments, supplements, restatements, or other agreements related thereto, and all rights related thereto. Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease or the validity, priority, or amount of any Claims that may arise in connection therewith. To the extent applicable, no change of control (or similar provision) will be deemed to occur under any such Executory Contract or Unexpired Lease.

If certain, but not all, of a contract counterparty's Executory Contracts and/or Unexpired Leases are rejected pursuant to the Plan, the Confirmation Order shall be a determination that such counterparty's Executory Contracts and/or Unexpired Leases that are being assumed pursuant to the Plan are severable agreements that are not integrated with those Executory Contracts and/or Unexpired Leases that are being rejected pursuant to the Plan. Parties seeking to contest this finding with respect to their Executory Contracts and/or Unexpired Leases must file a timely objection to the Plan on the grounds that their agreements are integrated and not severable, and any such dispute shall be resolved by the Bankruptcy Court at the Confirmation Hearing (to the extent not resolved by the parties prior to the Confirmation Hearing).

Notwithstanding anything herein to the contrary, the Debtor shall assume or reject that certain real property lease with Crescent TC Investors L.P. ("Landlord") for the Debtor's headquarters located at 200/300 Crescent Ct., Suite #700, Dallas, Texas 75201 (the "Lease") in accordance with the notice to Landlord, procedures and timing required by 11 U.S.C. §365(d)(4),

as modified by that certain *Agreed Order Granting Motion to Extend Time to Assume or Reject Unexpired Nonresidential Real Property Lease* [Docket No. 1122].

B. Claims Based on Rejection of Executory Contracts or Unexpired Leases

Any Executory Contract or Unexpired Lease not assumed or rejected on or before the Confirmation Date shall be deemed rejected, pursuant to the Confirmation Order. Any Person asserting a Rejection Claim shall File a proof of claim within thirty days of the Confirmation Date. Any Rejection Claims that are not timely Filed pursuant to this Plan shall be forever disallowed and barred. If one or more Rejection Claims are timely Filed, the Claimant Trustee may File an objection to any Rejection Claim.

Rejection Claims shall be classified as General Unsecured Claims and shall be treated in accordance with ARTICLE III of this Plan.

C. Cure of Defaults for Assumed or Assigned Executory Contracts and Unexpired Leases

Any monetary amounts by which any Executory Contract or Unexpired Lease to be assumed or assigned hereunder is in default shall be satisfied, under section 365(b)(1) of the Bankruptcy Code, by the Debtor upon assumption or assignment thereof, by payment of the default amount in Cash as and when due in the ordinary course or on such other terms as the parties to such Executory Contracts may otherwise agree. The Debtor may serve a notice on the Committee and parties to Executory Contracts or Unexpired Leases to be assumed or assigned reflecting the Debtor's or Reorganized Debtor's intention to assume or assign the Executory Contract or Unexpired Lease in connection with this Plan and setting forth the proposed cure amount (if any).

If a dispute regarding (1) the amount of any payments to cure a default, (2) the ability of the Debtor, the Reorganized Debtor, or any assignee to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed or assigned or (3) any other matter pertaining to assumption or assignment, the cure payments required by section 365(b)(1) of the Bankruptcy Code will be made following the entry of a Final Order or orders resolving the dispute and approving the assumption or assignment.

Assumption or assignment of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise and full payment of any applicable cure amounts pursuant to this ARTICLE V.C shall result in the full release and satisfaction of any cure amounts, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed or assigned Executory Contract or Unexpired Lease at any time prior to the effective date of assumption or assignment. Any and all Proofs of Claim based upon Executory Contracts or Unexpired Leases that have been assumed or assigned in the Chapter 11 Case, including pursuant to the Confirmation Order, and for which any cure amounts have been fully paid pursuant to this ARTICLE V.C, shall be deemed disallowed and expunged as of the Confirmation Date without the need for any objection thereto or any further notice to or action, order, or approval of the Bankruptcy Court.

ARTICLE VI.
PROVISIONS GOVERNING DISTRIBUTIONS

A. Dates of Distributions

Except as otherwise provided in this Plan, on the Effective Date or as soon as reasonably practicable thereafter (or if a Claim is not an Allowed Claim or Equity Interest on the Effective Date, on the date that such Claim or Equity Interest becomes an Allowed Claim or Equity Interest, or as soon as reasonably practicable thereafter), each Holder of an Allowed Claim or Equity Interest against the Debtor shall receive the full amount of the distributions that this Plan provides for Allowed Claims or Allowed Equity Interests in the applicable Class and in the manner provided herein. If any payment or act under this Plan is required to be made or performed on a date that is not on a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date. If and to the extent there are Disputed Claims or Equity Interests, distributions on account of any such Disputed Claims or Equity Interests shall be made pursuant to the provisions provided in this Plan. Except as otherwise provided in this Plan, Holders of Claims and Equity Interests shall not be entitled to interest, dividends or accruals on the distributions provided for therein, regardless of whether distributions are delivered on or at any time after the Effective Date.

Upon the Effective Date, all Claims and Equity Interests against the Debtor shall be deemed fixed and adjusted pursuant to this Plan and none of the Debtor, the Reorganized Debtor, or the Claimant Trust will have liability on account of any Claims or Equity Interests except as set forth in this Plan and in the Confirmation Order. All payments and all distributions made by the Distribution Agent under this Plan shall be in full and final satisfaction, settlement and release of all Claims and Equity Interests against the Debtor and the Reorganized Debtor.

At the close of business on the Distribution Record Date, the transfer ledgers for the Claims against the Debtor and the Equity Interests in the Debtor shall be closed, and there shall be no further changes in the record holders of such Claims and Equity Interests. The Debtor, the Reorganized Debtor, the Trustees, and the Distribution Agent, and each of their respective agents, successors, and assigns shall have no obligation to recognize the transfer of any Claims against the Debtor or Equity Interests in the Debtor occurring after the Distribution Record Date and shall be entitled instead to recognize and deal for all purposes hereunder with only those record holders stated on the transfer ledgers as of the close of business on the Distribution Record Date irrespective of the number of distributions to be made under this Plan to such Persons or the date of such distributions.

B. Distribution Agent

Except as provided herein, all distributions under this Plan shall be made by the Claimant Trustee, as Distribution Agent, or by such other Entity designated by the Claimant Trustee, as a Distribution Agent on the Effective Date or thereafter. The Reorganized Debtor will be the Distribution Agent with respect to Claims in Class 1 through Class 7.

The Claimant Trustee, or such other Entity designated by the Claimant Trustee to be the Distribution Agent, shall not be required to give any bond or surety or other security for the performance of such Distribution Agent's duties unless otherwise ordered by the Bankruptcy Court.

The Distribution Agent shall be empowered to (a) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties under this Plan; (b) make all distributions contemplated hereby; (c) employ professionals to represent it with respect to its responsibilities; and (d) exercise such other powers as may be vested in the Distribution Agent by order of the Bankruptcy Court, pursuant to this Plan, or as deemed by the Distribution Agent to be necessary and proper to implement the provisions hereof.

The Distribution Agent shall not have any obligation to make a particular distribution to a specific Holder of an Allowed Claim if such Holder is also the Holder of a Disputed Claim.

C. Cash Distributions

Distributions of Cash may be made by wire transfer from a domestic bank, except that Cash payments made to foreign creditors may be made in such funds and by such means as the Distribution Agent determines are necessary or customary in a particular foreign jurisdiction.

D. Disputed Claims Reserve

On or prior to the Initial Distribution Date, the Claimant Trustee shall establish, fund and maintain the Disputed Claims Reserve(s) in the appropriate Disputed Claims Reserve Amounts on account of any Disputed Claims.

E. Distributions from the Disputed Claims Reserve

The Disputed Claims Reserve shall at all times hold Cash in an amount no less than the Disputed Claims Reserve Amount. To the extent a Disputed Claim becomes an Allowed Claim pursuant to the terms of this Plan, within 30 days of the date on which such Disputed Claim becomes an Allowed Claim pursuant to the terms of this Plan, the Claimant Trustee shall distribute from the Disputed Claims Reserve to the Holder thereof any prior distributions, in Cash, that would have been made to such Allowed Claim if it had been Allowed as of the Effective Date. For the avoidance of doubt, each Holder of a Disputed Claim that subsequently becomes an Allowed Claim will also receive its Pro Rata share of the Claimant Trust Interests. If, upon the resolution of all Disputed Claims any Cash remains in the Disputed Claims Reserve, such Cash shall be transferred to the Claimant Trust and be deemed a Claimant Trust Asset.

F. Rounding of Payments

Whenever this Plan would otherwise call for, with respect to a particular Person, payment of a fraction of a dollar, the actual payment or distribution shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars being rounded down. To the extent that Cash to be distributed under this Plan remains undistributed as a result of the aforementioned rounding, such Cash or stock shall be treated as "Unclaimed Property" under this Plan.

G. *De Minimis* Distribution

Except as to any Allowed Claim that is Unimpaired under this Plan, none of the Debtor, the Reorganized Debtor, or the Distribution Agent shall have any obligation to make any Plan Distributions with a value of less than $100, unless a written request therefor is received by the Distribution Agent from the relevant recipient at the addresses set forth in ARTICLE VI.J hereof within 120 days after the later of the (i) Effective Date and (ii) the date such Claim becomes an Allowed Claim. *De minimis* distributions for which no such request is timely received shall revert to the Claimant Trust. Upon such reversion, the relevant Allowed Claim (and any Claim on account of missed distributions) shall be automatically deemed satisfied, discharged and forever barred, notwithstanding any federal or state escheat laws to the contrary.

H. Distributions on Account of Allowed Claims

Except as otherwise agreed by the Holder of a particular Claim or as provided in this Plan, all distributions shall be made pursuant to the terms of this Plan and the Confirmation Order. Except as otherwise provided in this Plan, distributions to any Holder of an Allowed Claim shall, to the extent applicable, be allocated first to the principal amount of any such Allowed Claim, as determined for U.S. federal income tax purposes and then, to the extent the consideration exceeds such amount, to the remainder of such Claim comprising accrued but unpaid interest, if any (but solely to the extent that interest is an allowable portion of such Allowed Claim).

I. General Distribution Procedures

The Distribution Agent shall make all distributions of Cash or other property required under this Plan, unless this Plan specifically provides otherwise. All Cash and other property held by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, for ultimate distribution under this Plan shall not be subject to any claim by any Person.

J. Address for Delivery of Distributions

Distributions to Holders of Allowed Claims, to the extent provided for under this Plan, shall be made (1) at the addresses set forth in any written notices of address change delivered to the Debtor and the Distribution Agent; (2) at the address set forth on any Proofs of Claim Filed by such Holders (to the extent such Proofs of Claim are Filed in the Chapter 11 Case), (2), or (3) at the addresses in the Debtor's books and records.

If there is any conflict or discrepancy between the addresses set forth in (1) through (3) in the foregoing sentence, then (i) the address in Section (2) shall control; (ii) if (2) does not apply, the address in (1) shall control, and (iii) if (1) does not apply, the address in (3) shall control.

K. Undeliverable Distributions and Unclaimed Property

If the distribution to the Holder of any Allowed Claim is returned to the Reorganized Debtor or the Claimant Trust as undeliverable, no further distribution shall be made to such Holder, and Distribution Agent shall not have any obligation to make any further distribution to the Holder, unless and until the Distribution Agent is notified in writing of such Holder's then current address.

Any Entity that fails to claim any Cash within six months from the date upon which a distribution is first made to such Entity shall forfeit all rights to any distribution under this Plan and such Cash shall thereafter be deemed an Claimant Trust Asset in all respects and for all purposes. Entities that fail to claim Cash shall forfeit their rights thereto and shall have no claim whatsoever against the Debtor's Estate, the Reorganized Debtor, the Claimant Trust, or against any Holder of an Allowed Claim to whom distributions are made by the Distribution Agent.

L. Withholding Taxes

In connection with this Plan, to the extent applicable, the Distribution Agent shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions made pursuant to this Plan shall be subject to such withholding and reporting requirements. The Distribution Agent shall be entitled to deduct any U.S. federal, state or local withholding taxes from any Cash payments made with respect to Allowed Claims, as appropriate. As a condition to receiving any distribution under this Plan, the Distribution Agent may require that the Holder of an Allowed Claim entitled to receive a distribution pursuant to this Plan provide such Holder's taxpayer identification number and such other information and certification as may be deemed necessary for the Distribution Agent to comply with applicable tax reporting and withholding laws. If a Holder fails to comply with such a request within one year, such distribution shall be deemed an unclaimed distribution. Any amounts withheld pursuant hereto shall be deemed to have been distributed to and received by the applicable recipient for all purposes of this Plan.

M. Setoffs

The Distribution Agent may, to the extent permitted under applicable law, set off against any Allowed Claim and any distributions to be made pursuant to this Plan on account of such Allowed Claim, the claims, rights and causes of action of any nature that the Debtor, the Reorganized Debtor, or the Distribution Agent may hold against the Holder of such Allowed Claim that are not otherwise waived, released or compromised in accordance with this Plan; *provided, however*, that neither such a setoff nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtor, the Reorganized Debtor, or the Claimant Trustee of any such claims, rights and causes of action that the Debtor, the Reorganized Debtor, or Claimant Trustee possesses against such Holder. Any Holder of an Allowed Claim subject to such setoff reserves the right to challenge any such setoff in the Bankruptcy Court or any other court with jurisdiction with respect to such challenge.

N. Surrender of Cancelled Instruments or Securities

As a condition precedent to receiving any distribution pursuant to this Plan on account of an Allowed Claim evidenced by negotiable instruments, securities, or notes canceled pursuant to ARTICLE IV of this Plan, the Holder of such Claim will tender the applicable negotiable instruments, securities, or notes evidencing such Claim (or a sworn affidavit identifying the negotiable instruments, securities, or notes formerly held by such Holder and certifying that they have been lost), to the Distribution Agent unless waived in writing by the Distribution Agent.

O. Lost, Stolen, Mutilated or Destroyed Securities

In addition to any requirements under any applicable agreement and applicable law, any Holder of a Claim or Equity Interest evidenced by a security or note that has been lost, stolen, mutilated, or destroyed will, in lieu of surrendering such security or note to the extent required by this Plan, deliver to the Distribution Agent: (i) evidence reasonably satisfactory to the Distribution Agent of such loss, theft, mutilation, or destruction; and (ii) such security or indemnity as may be required by the Distribution Agent to hold such party harmless from any damages, liabilities, or costs incurred in treating such individual as a Holder of an Allowed Claim or Equity Interest. Upon compliance with ARTICLE VI.O of this Plan as determined by the Distribution Agent, by a Holder of a Claim evidenced by a security or note, such Holder will, for all purposes under this Plan, be deemed to have surrendered such security or note to the Distribution Agent.

ARTICLE VII.
PROCEDURES FOR RESOLVING CONTINGENT, UNLIQUIDATED AND DISPUTED CLAIMS

A. Filing of Proofs of Claim

Unless such Claim appeared in the Schedules and is not listed as disputed, contingent, or unliquidated, or such Claim has otherwise been Allowed or paid, each Holder of a Claim was required to file a Proof of Claim on or prior to the Bar Date.

B. Disputed Claims

Following the Effective Date, each of the Reorganized Debtor or the Claimant Trustee, as applicable, may File with the Bankruptcy Court an objection to the allowance of any Disputed Claim or Disputed Equity Interest, request the Bankruptcy Court subordinate any Claims to Subordinated Claims, or any other appropriate motion or adversary proceeding with respect to the foregoing by the Claims Objection Deadline or, at the discretion of the Reorganized Debtor or Claimant Trustee, as applicable, compromised, settled, withdrew or resolved without further order of the Bankruptcy Court, and (ii) unless otherwise provided in the Confirmation Order, the Reorganized Debtor or the Claimant Trust, as applicable, are authorized to settle, or withdraw any objections to, any Disputed Claim or Disputed Equity Interests following the Effective Date without further notice to creditors (other than the Entity holding such Disputed Claim or Disputed Equity Interest) or authorization of the Bankruptcy Court, in which event such Claim or Equity Interest shall be deemed to be an Allowed Claim or Equity Interest in the amount compromised for purposes of this Plan.

C. Procedures Regarding Disputed Claims or Disputed Equity Interests

No payment or other distribution or treatment shall be made on account of a Disputed Claim or Disputed Equity Interest unless and until such Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interests and the amount of such Allowed Claim or Equity Interest, as applicable, is determined by order of the Bankruptcy Court or by stipulation between the Reorganized Debtor or Claimant Trust, as applicable, and the Holder of the Claim or Equity Interest.

D. Allowance of Claims and Equity Interests

Following the date on which a Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interest after the Distribution Date, the Distribution Agent shall make a distribution to the Holder of such Allowed Claim or Equity Interest in accordance with the Plan.

1. *Allowance of Claims*

After the Effective Date and subject to the other provisions of this Plan, the Reorganized Debtor or the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Claim. Except as expressly provided in this Plan or in any order entered in the Chapter 11 Case prior to the Effective Date (including, without limitation, the Confirmation Order), no Claim or Equity Interest will become an Allowed Claim or Equity Interest unless and until such Claim or Equity Interest is deemed Allowed under this Plan or the Bankruptcy Code or the Bankruptcy Court has entered an order, including, without limitation, the Confirmation Order, in the Chapter 11 Case allowing such Claim or Equity Interest.

2. *Estimation*

Subject to the other provisions of this Plan, the Debtor, prior to the Effective Date, and the Reorganized Debtor or the Claimant Trustee, as applicable, after the Effective Date, may, at any time, request that the Bankruptcy Court estimate (a) any Disputed Claim or Disputed Equity Interest pursuant to applicable law and in accordance with this Plan and (b) any contingent or unliquidated Claim pursuant to applicable law, including, without limitation, section 502(c) of the Bankruptcy Code, and the Bankruptcy Court will retain jurisdiction under 28 U.S.C. §§ 157 and 1334 to estimate any Disputed Claim or Disputed Equity Interest, contingent Claim or unliquidated Claim, including during the litigation concerning any objection to any Claim or Equity Interest or during the pendency of any appeal relating to any such objection. All of the aforementioned objection, estimation and resolution procedures are cumulative and not exclusive of one another. Claims or Equity Interests may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court. The rights and objections of all parties are reserved in connection with any such estimation proceeding.

3. *Disallowance of Claims*

Any Claims or Equity Interests held by Entities from which property is recoverable under sections 542, 543, 550, or 553 of the Bankruptcy Code, or that are a transferee of a transfer avoidable under sections 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code, shall be deemed disallowed pursuant to section 502(d) of the Bankruptcy Code, and holders of such Claims or Interests may not receive any distributions on account of such Claims or Interests until such time as such Causes of Action against that Entity have been settled or a Bankruptcy Court Order with respect thereto has been entered and all sums due, if any, to the Reorganized Debtor or the Claimant Trust, as applicable, by that Entity have been turned over or paid to the Reorganized Debtor or the Claimant Trust, as applicable.

EXCEPT AS OTHERWISE PROVIDED HEREIN OR AS AGREED TO BY THE DEBTOR, REORGANIZED DEBTOR, OR CLAIMANT TRUSTEE, AS APPLICABLE,

ANY AND ALL PROOFS OF CLAIM FILED AFTER THE BAR DATE SHALL BE DEEMED DISALLOWED AND EXPUNGED AS OF THE EFFECTIVE DATE WITHOUT ANY FURTHER NOTICE TO OR ACTION, ORDER, OR APPROVAL OF THE BANKRUPTCY COURT, AND HOLDERS OF SUCH CLAIMS MAY NOT RECEIVE ANY DISTRIBUTIONS ON ACCOUNT OF SUCH CLAIMS, UNLESS SUCH LATE PROOF OF CLAIM HAS BEEN DEEMED TIMELY FILED BY A FINAL ORDER.

ARTICLE VIII.
EFFECTIVENESS OF THIS PLAN

A. Conditions Precedent to the Effective Date

The Effective Date of this Plan will be conditioned upon the satisfaction or waiver by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee with such consent not to be unreasonably withheld), pursuant to the provisions of ARTICLE VIII.B of this Plan of the following:

- This Plan and the Plan Documents, including the Claimant Trust Agreement and the Reorganized Limited Partnership Agreement, and all schedules, documents, supplements and exhibits to this Plan shall have been Filed in form and substance reasonably acceptable to the Debtor and the Committee.

- The Confirmation Order shall have become a Final Order and shall be in form and substance reasonably acceptable to the Debtor and the Committee. The Confirmation Order shall provide that, among other things, (i) the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee are authorized to take all actions necessary or appropriate to effectuate and consummate this Plan, including, without limitation, (a) entering into, implementing, effectuating, and consummating the contracts, instruments, releases, and other agreements or documents created in connection with or described in this Plan, (b) assuming the Executory Contracts and Unexpired Leases set forth in the Plan Supplement, (c) making all distributions and issuances as required under this Plan; and (d) entering into any transactions as set forth in the Plan Documents; (ii) the provisions of the Confirmation Order and this Plan are nonseverable and mutually dependent; (iii) the implementation of this Plan in accordance with its terms is authorized; (iv) pursuant to section 1146 of the Bankruptcy Code, the delivery of any deed or other instrument or transfer order, in furtherance of, or in connection with this Plan, including any deeds, bills of sale, or assignments executed in connection with any disposition or transfer of Assets contemplated under this Plan, shall not be subject to any Stamp or Similar Tax; and (v) the vesting of the Claimant Trust Assets in the Claimant Trust and the Reorganized Debtor Assets in the Reorganized Debtor, in each case as of the Effective Date free and clear of liens and claims to the fullest extent permissible under applicable law pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under this Plan upon the Effective Date.

- All documents and agreements necessary to implement this Plan, including without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust

Agreement, and the New GP LLC Documents, in each case in form and substance reasonably acceptable to the Debtor and the Committee, shall have (a) been tendered for delivery, and (b) been effected by, executed by, or otherwise deemed binding upon, all Entities party thereto and shall be in full force and effect. All conditions precedent to such documents and agreements shall have been satisfied or waived pursuant to the terms of such documents or agreements.

- All authorizations, consents, actions, documents, approvals (including any governmental approvals), certificates and agreements necessary to implement this Plan, including, without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust Agreement, and the New GP LLC Documents, shall have been obtained, effected or executed and delivered to the required parties and, to the extent required, filed with the applicable governmental units in accordance with applicable laws and any applicable waiting periods shall have expired without any action being taken or threatened by any competent authority that would restrain or prevent effectiveness or consummation of the Restructuring.

- The Debtor shall have obtained applicable directors' and officers' insurance coverage that is acceptable to each of the Debtor, the Committee, the Claimant Trust Oversight Committee, the Claimant Trustee and the Litigation Trustee.

- The Professional Fee Reserve shall be funded pursuant to this Plan in an amount determined by the Debtor in good faith.

B. Waiver of Conditions

The conditions to effectiveness of this Plan set forth in this ARTICLE VIII (other than that the Confirmation Order shall have been entered) may be waived in whole or in part by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee), without notice, leave or order of the Bankruptcy Court or any formal action other than proceeding to confirm or effectuate this Plan. The failure to satisfy or waive a condition to the Effective Date may be asserted by the Debtor regardless of the circumstances giving rise to the failure of such condition to be satisfied. The failure of the Debtor to exercise any of the foregoing rights will not be deemed a waiver of any other rights, and each right will be deemed an ongoing right that may be asserted at any time by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable.

C. Dissolution of the Committee

On the Effective Date, the Committee will dissolve, and the members of the Committee and the Committee's Professionals will cease to have any role arising from or relating to the Chapter 11 Case, except in connection with final fee applications of Professionals for services rendered prior to the Effective Date (including the right to object thereto). The Professionals retained by the Committee and the members thereof will not be entitled to assert any fee claims for any services rendered to the Committee or expenses incurred in the service of the Committee after the Effective Date, except for reasonable fees for services rendered, and actual and necessary costs incurred, in connection with any applications for allowance of Professional Fees pending on

the Effective Date or filed and served after the Effective Date pursuant to the Plan. Nothing in the Plan shall prohibit or limit the ability of the Debtor's or Committee's Professionals to represent either of the Trustees or to be compensated or reimbursed per the Plan and the Claimant Trust Agreement in connection with such representation.

ARTICLE IX.
EXCULPATION, INJUNCTION AND RELATED PROVISIONS

A. General

Notwithstanding anything contained in the Plan to the contrary, the allowance, classification and treatment of all Allowed Claims and Equity Interests and their respective distributions and treatments under the Plan shall take into account the relative priority and rights of the Claims and the Equity Interests in each Class in connection with any contractual, legal and equitable subordination rights relating thereto whether arising under general principles of equitable subordination, section 510 of the Bankruptcy Code, or otherwise.

B. Discharge of Claims

To the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code, except as otherwise expressly provided by this Plan or the Confirmation Order, all consideration distributed under this Plan will be in exchange for, and in complete satisfaction, settlement, discharge, and release of, all Claims and Equity Interests of any kind or nature whatsoever against the Debtor or any of its Assets or properties, and regardless of whether any property will have been distributed or retained pursuant to this Plan on account of such Claims or Equity Interests. Except as otherwise expressly provided by this Plan or the Confirmation Order, upon the Effective Date, the Debtor and its Estate will be deemed discharged and released under and to the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code from any and all Claims and Equity Interests of any kind or nature whatsoever, including, but not limited to, demands and liabilities that arose before the Confirmation Date, and all debts of the kind specified in section 502(g), 502(h), or 502(i) of the Bankruptcy Code.

C. Exculpation

Subject in all respects to ARTICLE XII.D of this Plan, to the maximum extent permitted by applicable law, no Exculpated Party will have or incur, and each Exculpated Party is hereby exculpated from, any claim, obligation, suit, judgment, damage, demand, debt, right, Cause of Action, remedy, loss, and liability for conduct occurring on or after the Petition Date in connection with or arising out of (i) the filing and administration of the Chapter 11 Case; (ii) the negotiation and pursuit of the Disclosure Statement, the Plan, or the solicitation of votes for, or confirmation of, the Plan; (iii) the funding or consummation of the Plan (including the Plan Supplement) or any related agreements, instruments, or other documents, the solicitation of votes on the Plan, the offer, issuance, and Plan Distribution of any securities issued or to be issued pursuant to the Plan, including the Claimant Trust Interests, whether or not such Plan Distributions occur following the Effective Date; (iv) the implementation of the Plan; and (v) any negotiations, transactions, and documentation in connection with the foregoing clauses (i)-(iv); *provided*, *however,* the foregoing

will not apply to (a) any acts or omissions of an Exculpated Party arising out of or related to acts or omissions that constitute bad faith, fraud, gross negligence, criminal misconduct, or willful misconduct or (b) Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. This exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, any other applicable law or rules, or any other provisions of this Plan, including ARTICLE IV.C.2, protecting such Exculpated Parties from liability.

D. Releases by the Debtor

On and after the Effective Date, each Released Party is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by the Debtor and the Estate, in each case on behalf of themselves and their respective successors, assigns, and representatives, including, but not limited to, the Claimant Trust and the Litigation Sub-Trust from any and all Causes of Action, including any derivative claims, asserted on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort or otherwise, that the Debtor or the Estate would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim against, or Interest in, a Debtor or other Person.

Notwithstanding anything contained herein to the contrary, the foregoing release does not release: (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) the rights or obligations of any current employee of the Debtor under any employment agreement or plan, (iii) the rights of the Debtor with respect to any confidentiality provisions or covenants restricting competition in favor of the Debtor under any employment agreement with a current or former employee of the Debtor, (iv) any Avoidance Actions, or (v) any Causes of Action arising from willful misconduct, criminal misconduct, actual fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction.

Notwithstanding anything herein to the contrary, any release provided pursuant to this ARTICLE IX.D (i) with respect to a Senior Employee, is conditioned in all respects on (a) such Senior Employee executing a Senior Employee Stipulation on or prior to the Effective Date and (b) the reduction of such Senior Employee's Allowed Claim as set forth in the Senior Employee Stipulation (such amount, the "Reduced Employee Claim"), and (ii) with respect to any Employee, including a Senior Employee, shall be deemed null and void and of no force and effect (1) if there is more than one member of the Claimant Trust Oversight Committee who does not represent entities holding a Disputed or Allowed Claim (the "Independent Members"), the Claimant Trustee and the Independent Members by majority vote determine or (2) if there is only one Independent Member, the Independent Member after discussion with the Claimant Trustee, determines (in each case after discussing with the full Claimant Trust Oversight Committee) that such Employee (regardless of whether the Employee is then currently employed by the Debtor, the Reorganized Debtor, or the Claimant Trustee):

- sues, attempts to sue, or threatens or works with or assists any entity or person to sue, attempt to sue, or threaten the Reorganized Debtor, the Claimant Trust, the Litigation

Sub-Trust, or any of their respective employees or agents, or any Released Party on or in connection with any claim or cause of action arising prior to the Effective Date,

- has taken any action that, impairs or harms the value of the Claimant Trust Assets or the Reorganized Debtor Assets, or

- (x) upon the request of the Claimant Trustee, has failed to provide reasonable assistance in good faith to the Claimant Trustee or the Reorganized Debtor with respect to (1) the monetization of the Claimant Trust Assets or Reorganized Debtor Assets, as applicable, or (2) the resolution of Claims, or (y) has taken any action that impedes or frustrates the Claimant Trustee or the Reorganized Debtor with respect to any of the foregoing.

Provided, however, that the release provided pursuant to this ARTICLE IX.D will vest and the Employee will be indefeasibly released pursuant to this ARTICLE IX.D if such Employee's release has not been deemed null and void and of no force and effect on or prior to the date that is the date of dissolution of the Claimant Trust pursuant to the Claimant Trust Agreement.

By executing the Senior Employee Stipulation embodying this release, each Senior Employee acknowledges and agrees, without limitation, to the terms of this release and the tolling agreement contained in the Senior Employee Stipulation.

The provisions of this release and the execution of a Senior Employee Stipulation will not in any way prevent or limit any Employee from (i) prosecuting its Claims, if any, against the Debtor's Estate, (ii) defending him or herself against any claims or causes of action brought against the Employee by a third party, or (iii) assisting other persons in defending themselves from any Estate Claims brought by the Litigation Trustee (but only with respect to Estate Claims brought by the Litigation Trustee and not collection or other actions brought by the Claimant Trustee).

E. Preservation of Rights of Action

1. *Maintenance of Causes of Action*

Except as otherwise provided in this Plan, after the Effective Date, the Reorganized Debtor or the Claimant Trust will retain all rights to commence, pursue, litigate or settle, as appropriate, any and all Causes of Action included in the Reorganized Debtor Assets or Claimant Trust Assets, as applicable, whether existing as of the Petition Date or thereafter arising, in any court or other tribunal including, without limitation, in an adversary proceeding Filed in the Chapter 11 Case and, as the successors in interest to the Debtor and the Estate, may, and will have the exclusive right to, enforce, sue on, settle, compromise, transfer or assign (or decline to do any of the foregoing) any or all of the Causes of Action without notice to or approval from the Bankruptcy Court.

2. *Preservation of All Causes of Action Not Expressly Settled or Released*

Unless a Cause of Action against a Holder of a Claim or an Equity Interest or other Entity is expressly waived, relinquished, released, compromised or settled in this Plan or any Final Order (including, without limitation, the Confirmation Order), such Cause of Action is expressly reserved for later adjudication by the Reorganized Debtor or Claimant Trust, as applicable (including,

without limitation, Causes of Action not specifically identified or of which the Debtor may presently be unaware or that may arise or exist by reason of additional facts or circumstances unknown to the Debtor at this time or facts or circumstances that may change or be different from those the Debtor now believes to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches will apply to such Causes of Action as a consequence of the confirmation, effectiveness, or consummation of this Plan based on the Disclosure Statement, this Plan or the Confirmation Order, except where such Causes of Action have been expressly released in this Plan or any other Final Order (including, without limitation, the Confirmation Order). In addition, the right of the Reorganized Debtor or the Claimant Trust to pursue or adopt any claims alleged in any lawsuit in which the Debtor is a plaintiff, defendant or an interested party, against any Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits, is expressly reserved.

F. Injunction

Upon entry of the Confirmation Order, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, from taking any actions to interfere with the implementation or consummation of the Plan.

Except as expressly provided in the Plan, the Confirmation Order, or a separate order of the Bankruptcy Court, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, with respect to any Claims and Equity Interests, from directly or indirectly (i) commencing, conducting, or continuing in any manner any suit, action, or other proceeding of any kind (including any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtor or the property of the Debtor, (ii) enforcing, levying, attaching (including any prejudgment attachment), collecting, or otherwise recovering, enforcing, or attempting to recover or enforce, by any manner or means, any judgment, award, decree, or order against the Debtor or the property of the Debtor, (iii) creating, perfecting, or otherwise enforcing in any manner, any security interest, lien or encumbrance of any kind against the Debtor or the property of the Debtor, (iv) asserting any right of setoff, directly or indirectly, against any obligation due to the Debtor or against property or interests in property of the Debtor, except to the limited extent permitted under Sections 553 and 1141 of the Bankruptcy Code, and (v) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan.

The injunctions set forth herein shall extend to, and apply to any act of the type set forth in any of clauses (i)-(v) of the immediately preceding paragraph against any successors of the Debtor, including, but not limited to, the Reorganized Debtor, the Litigation Sub-Trust, and the Claimant Trust and their respective property and interests in property.

Subject in all respects to ARTICLE XII.D, no Enjoined Party may commence or pursue a claim or cause of action of any kind against any Protected Party that arose or arises from or is related to the Chapter 11 Case, the negotiation of the Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, the administration of the Claimant Trust or the Litigation Sub-Trust, or the transactions in furtherance of the foregoing without the Bankruptcy Court

(i) first determining, after notice and a hearing, that such claim or cause of action represents a colorable claim of any kind, including, but not limited to, negligence, bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Protected Party and (ii) specifically authorizing such Enjoined Party to bring such claim or cause of action against any such Protected Party; *provided, however,* the foregoing will not apply to a claim or cause of action against Strand or against any Employee other than with respect to actions taken, respectively, by Strand or by such Employee from the date of appointment of the Independent Directors through the Effective Date. The Bankruptcy Court will have sole and exclusive jurisdiction to determine whether a claim or cause of action is colorable and, only to the extent legally permissible and as provided for in ARTICLE XI, shall have jurisdiction to adjudicate the underlying colorable claim or cause of action.

G. Duration of Injunctions and Stays

ARTICLE II. Unless otherwise provided in this Plan, in the Confirmation Order, or in a Final Order of the Bankruptcy Court, (i) all injunctions and stays entered during the Chapter 11 Case and in existence on the Confirmation Date shall remain in full force and effect in accordance with their terms; and (ii) the automatic stay arising under section 362 of the Bankruptcy Code shall remain in full force and effect subject to Section 362(c) of the Bankruptcy Code, and to the extent necessary if the Debtor does not receive a discharge, the Court will enter an equivalent order under Section 105.

H. Continuance of January 9 Order

Unless otherwise provided in this Plan, in the Confirmation Order, or in a Final Order of the Bankruptcy Court, the restrictions set forth in paragraphs 9 and 10 of the *Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course*, entered by the Bankruptcy Court on January 9, 2020 [D.I. 339] shall remain in full force and effect following the Effective Date.

ARTICLE X.
BINDING NATURE OF PLAN

On the Effective Date, and effective as of the Effective Date, the Plan, including, without limitation, the provisions in ARTICLE IX, will bind, and will be deemed binding upon, all Holders of Claims against and Equity Interests in the Debtor and such Holder's respective successors and assigns, to the maximum extent permitted by applicable law, notwithstanding whether or not such Holder will receive or retain any property or interest in property under the Plan. All Claims and Debts shall be fixed and adjusted pursuant to this Plan. The Plan shall also bind any taxing authority, recorder of deeds, or similar official for any county, state, Governmental Unit or parish in which any instrument related to the Plan or related to any transaction contemplated thereby is to be recorded with respect to nay taxes of the kind specified in Bankruptcy Code section 1146(a).

ARTICLE XI.
RETENTION OF JURISDICTION

Pursuant to sections 105 and 1142 of the Bankruptcy Code and notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall, after the Effective Date, retain such jurisdiction over the Chapter 11 Case and all Entities with respect to all matters related to the Chapter 11 Case, the Reorganized Debtor, the Claimant Trust, and this Plan to the maximum extent legally permissible, including, without limitation, jurisdiction to:

- allow, disallow, determine, liquidate, classify, estimate or establish the priority, secured, unsecured, or subordinated status of any Claim or Equity Interest, including, without limitation, the resolution of any request for payment of any Administrative Expense Claim and the resolution of any and all objections to the allowance or priority of any Claim or Equity Interest;

- grant or deny any applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or this Plan, for periods ending on or before the Effective Date; *provided*, *however*, that, from and after the Effective Date, the Reorganized Debtor shall pay Professionals in the ordinary course of business for any work performed after the Effective Date subject to the terms of this Plan and the Confirmation Order, and such payment shall not be subject to the approval of the Bankruptcy Court;

- resolve any matters related to the assumption, assignment or rejection of any Executory Contract or Unexpired Lease to which the Debtor is party or with respect to which the Debtor, Reorganized Debtor, or Claimant Trust may be liable and to adjudicate and, if necessary, liquidate, any Claims arising therefrom, including, without limitation, any dispute regarding whether a contract or lease is or was executory or expired;

- make any determination with respect to a claim or cause of action against a Protected Party as set forth in ARTICLE IX;

- resolve any claim or cause of action against an Exculpated Party or Protected Party arising from or related to the Chapter 11 Case, the negotiation of this Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, or the transactions in furtherance of the foregoing;

- if requested by the Reorganized Debtor or the Claimant Trustee, authorize, approve, and allow any sale, disposition, assignment or other transfer of the Reorganized Debtor Assets or Claimant Trust Assets, including any break-up compensation or expense reimbursement that may be requested by a purchaser thereof*; provided, however*, that neither the Reorganized Debtor nor the Claimant Trustee shall be required to seek such authority or approval from the Bankruptcy Court unless otherwise specifically required by this Plan or the Confirmation Order;

- if requested by the Reorganized Debtor or the Claimant Trustee, authorize, approve, and allow any borrowing or the incurrence of indebtedness, whether secured or unsecured by the Reorganized Debtor or Claimant Trust; *provided, however*, that neither the Reorganized Debtor nor the Claimant Trustee shall be required to seek such authority or approval from the Bankruptcy Court unless otherwise specifically required by this Plan or the Confirmation Order;

- resolve any issues related to any matters adjudicated in the Chapter 11 Case;

- ensure that distributions to Holders of Allowed Claims and Allowed Equity Interests are accomplished pursuant to the provisions of this Plan;

- decide or resolve any motions, adversary proceedings, contested or litigated matters and any other Causes of Action (including Estate Claims) that are pending as of the Effective Date or that may be commenced in the future, including approval of any settlements, compromises, or other resolutions as may be requested by the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee whether under Bankruptcy Rule 9019 or otherwise, and grant or deny any applications involving the Debtor that may be pending on the Effective Date or instituted by the Reorganized Debtor, the Claimant Trustee, or Litigation Trustee after the Effective Date, provided that the Reorganized Debtor, the Claimant Trustee, and the Litigation Trustee shall reserve the right to commence actions in all appropriate forums and jurisdictions;

- enter such orders as may be necessary or appropriate to implement, effectuate, or consummate the provisions of this Plan, the Plan Documents, and all other contracts, instruments, releases, and other agreements or documents adopted in connection with this Plan, the Plan Documents, or the Disclosure Statement;

- resolve any cases, controversies, suits or disputes that may arise in connection with the implementation, effectiveness, consummation, interpretation, or enforcement of this Plan or any Entity's obligations incurred in connection with this Plan;

- issue injunctions and enforce them, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Entity with implementation, effectiveness, consummation, or enforcement of this Plan, except as otherwise provided in this Plan;

- enforce the terms and conditions of this Plan and the Confirmation Order;

- resolve any cases, controversies, suits or disputes with respect to the release, exculpation, indemnification, and other provisions contained herein and enter such orders or take such others actions as may be necessary or appropriate to implement or enforce all such releases, injunctions and other provisions;

- enter and implement such orders or take such others actions as may be necessary or appropriate if the Confirmation Order is modified, stayed, reversed, revoked or vacated;

- resolve any other matters that may arise in connection with or relate to this Plan, the Disclosure Statement, the Confirmation Order, the Plan Documents, or any contract, instrument, release, indenture or other agreement or document adopted in connection with this Plan or the Disclosure Statement; and

- enter an order concluding or closing the Chapter 11 Case after the Effective Date.

ARTICLE XII.
MISCELLANEOUS PROVISIONS

A. Payment of Statutory Fees and Filing of Reports

All outstanding Statutory Fees shall be paid on the Effective Date. All such fees payable, and all such fees that become due and payable, after the Effective Date shall be paid by the Reorganized Debtor when due or as soon thereafter as practicable until the Chapter 11 Case is closed, converted, or dismissed. The Claimant Trustee shall File all quarterly reports due prior to the Effective Date when they become due, in a form reasonably acceptable to the U.S. Trustee. After the Effective Date, the Claimant Trustee shall File with the Bankruptcy Court quarterly reports when they become due, in a form reasonably acceptable to the U.S. Trustee. The Reorganized Debtor shall remain obligated to pay Statutory Fees to the Office of the U.S. Trustee until the earliest of the Debtor's case being closed, dismissed, or converted to a case under chapter 7 of the Bankruptcy Code.

B. Modification of Plan

Effective as of the date hereof and subject to the limitations and rights contained in this Plan: (a) the Debtor reserves the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules, to amend or modify this Plan prior to the entry of the Confirmation Order with the consent of the Committee, such consent not to be unreasonably withheld; and (b) after the entry of the Confirmation Order, the Debtor may, after notice and hearing and entry of an order of the Bankruptcy Court, amend or modify this Plan, in accordance with section 1127(b) of the Bankruptcy Code or remedy any defect or omission or reconcile any inconsistency in this Plan in such manner as may be necessary to carry out the purpose and intent of this Plan.

C. Revocation of Plan

The Debtor reserves the right to revoke or withdraw this Plan prior to the Confirmation Date and to File a subsequent chapter 11 plan with the consent of the Committee. If the Debtor revokes or withdraws this Plan prior to the Confirmation Date, then: (i) this Plan shall be null and void in all respects; (ii) any settlement or compromise embodied in this Plan, assumption of Executory Contracts or Unexpired Leases effected by this Plan and any document or agreement executed pursuant hereto shall be deemed null and void except as may be set forth in a separate order entered by the Bankruptcy Court; and (iii) nothing contained in this Plan shall: (a) constitute a waiver or release of any Claims by or against, or any Equity Interests in, the Debtor or any other Entity; (b) prejudice in any manner the rights of the Debtor or any other Entity; or (c) constitute an admission, acknowledgement, offer or undertaking of any sort by the Debtor or any other Entity.

D. Obligations Not Changed

Notwithstanding anything in this Plan to the contrary, nothing herein will affect or otherwise limit or release any non-Debtor Entity's (including any Exculpated Party's) duties or obligations, including any contractual and indemnification obligations, to the Debtor, the Reorganized Debtor, or any other Entity whether arising under contract, statute, or otherwise.

E. Entire Agreement

Except as otherwise described herein, this Plan supersedes all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into this Plan.

F. Closing of Chapter 11 Case

The Claimant Trustee shall, after the Effective Date and promptly after the full administration of the Chapter 11 Case, File with the Bankruptcy Court all documents required by Bankruptcy Rule 3022 and any applicable order of the Bankruptcy Court to close the Chapter 11 Case.

G. Successors and Assigns

This Plan shall be binding upon and inure to the benefit of the Debtor and its successors and assigns, including, without limitation, the Reorganized Debtor and the Claimant Trustee. The rights, benefits, and obligations of any Person or Entity named or referred to in this Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor, or assign of such Person or Entity.

H. Reservation of Rights

Except as expressly set forth herein, this Plan shall have no force or effect unless and until the Bankruptcy Court enters the Confirmation Order and the Effective Date occurs. Neither the filing of this Plan, any statement or provision contained herein, nor the taking of any action by the Debtor, the Reorganized Debtor, the Claimant Trustee, or any other Entity with respect to this Plan shall be or shall be deemed to be an admission or waiver of any rights of: (1) the Debtor, the Reorganized Debtor, or the Claimant Trustee with respect to the Holders of Claims or Equity Interests or other Entity; or (2) any Holder of a Claim or an Equity Interest or other Entity prior to the Effective Date.

Neither the exclusion or inclusion by the Debtor of any contract or lease on any exhibit, schedule, or other annex to this Plan or in the Plan Documents, nor anything contained in this Plan, will constitute an admission by the Debtor that any such contract or lease is or is not an executory contract or lease or that the Debtor, the Reorganized Debtor, the Claimant Trustee, or their respective Affiliates has any liability thereunder.

Except as explicitly provided in this Plan, nothing herein shall waive, excuse, limit, diminish, or otherwise alter any of the defenses, claims, Causes of Action, or other rights of the

Debtor, the Reorganized Debtor, or the Claimant Trustee under any executory or non-executory contract.

Nothing in this Plan will increase, augment, or add to any of the duties, obligations, responsibilities, or liabilities of the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, under any executory or non-executory contract or lease.

If there is a dispute regarding whether a contract or lease is or was executory at the time of its assumption under this Plan, the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, shall have thirty (30) days following entry of a Final Order resolving such dispute to alter their treatment of such contract.

I. Further Assurances

The Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, all Holders of Claims and Equity Interests receiving distributions hereunder, and all other Entities shall, from time to time, prepare, execute and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of this Plan or the Confirmation Order. On or before the Effective Date, the Debtor shall File with the Bankruptcy Court all agreements and other documents that may be necessary or appropriate to effectuate and further evidence the terms and conditions hereof.

J. Severability

If, prior to the Confirmation Date, any term or provision of this Plan is determined by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court will have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision will then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of this Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order will constitute a judicial determination and will provide that each term and provision of this Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

K. Service of Documents

All notices, requests, and demands to or upon the Debtor, the Reorganized Debtor, or the Claimant Trustee to be effective shall be in writing and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered addressed as follows:

If to the Claimant Trust:

Highland Claimant Trust
c/o Highland Capital Management, L.P.
300 Crescent Court, Suite 700

Dallas, Texas 75201
Attention: James P. Seery, Jr.

If to the Debtor:

Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: James P. Seery, Jr.

with copies to:

Pachulski Stang Ziehl & Jones LLP
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760
Attn: Jeffrey N. Pomerantz, Esq.
Ira D. Kharasch, Esq.
Gregory V. Demo, Esq.

If to the Reorganized Debtor:

Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: James P. Seery, Jr.
with copies to:

Pachulski Stang Ziehl & Jones LLP
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Attn: Jeffrey N. Pomerantz, Esq.
Ira D. Kharasch, Esq.
Gregory V. Demo, Esq.

L. Exemption from Certain Transfer Taxes Pursuant to Section 1146(a) of the Bankruptcy Code

To the extent permitted by applicable law, pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant hereto shall not be subject to any Stamp or Similar Tax or governmental assessment in the United States, and the Confirmation Order shall direct the appropriate federal, state or local governmental officials or agents or taxing authority to forego the collection of any such Stamp or Similar Tax or governmental assessment and to accept for filing and recordation instruments or other documents pursuant to such transfers of property without the payment of any such Stamp or Similar Tax or governmental assessment. Such exemption specifically applies, without limitation, to (i) all actions, agreements and documents necessary to

evidence and implement the provisions of and the distributions to be made under this Plan; (ii) the maintenance or creation of security or any Lien as contemplated by this Plan; and (iii) assignments, sales, or transfers executed in connection with any transaction occurring under this Plan.

M. Governing Law

Except to the extent that the Bankruptcy Code, the Bankruptcy Rules or other federal law is applicable, or to the extent that an exhibit or schedule to this Plan provides otherwise, the rights and obligations arising under this Plan shall be governed by, and construed and enforced in accordance with, the laws of Texas, without giving effect to the principles of conflicts of law of such jurisdiction; *provided, however,* that corporate governance matters relating to the Debtor, the Reorganized Debtor, New GP LLC, or the Claimant Trust, as applicable, shall be governed by the laws of the state of organization of the Debtor, the Reorganized Debtor, New GP LLC, or the Claimant Trustee, as applicable.

N. Tax Reporting and Compliance

The Debtor is hereby authorized to request an expedited determination under section 505(b) of the Bankruptcy Code of the tax liability of the Debtor is for all taxable periods ending after the Petition Date through, and including, the Effective Date.

O. Exhibits and Schedules

All exhibits and schedules to this Plan, if any, including the Exhibits and the Plan Documents, are incorporated and are a part of this Plan as if set forth in full herein.

P. Controlling Document

In the event of an inconsistency between this Plan and any other instrument or document created or executed pursuant to this Plan, or between this Plan and the Disclosure Statement, this Plan shall control. The provisions of this Plan, the Disclosure Statement, and any Plan Document, on the one hand, and of the Confirmation Order, on the other hand, shall be construed in a manner consistent with each other so as to effectuate the purposes of each; *provided, however*, that if there is determined to be any inconsistency between any provision of this Plan, the Disclosure Statement, and any Plan Document, on the one hand, and any provision of the Confirmation Order, on the other hand, that cannot be so reconciled, then, solely to the extent of such inconsistency, the provisions of the Confirmation Order shall govern, and any such provisions of the Confirmation Order shall be deemed a modification of this Plan, the Disclosure Statement, and the Plan Documents, as applicable.

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Dated: January 22, 2021

Respectfully submitted,

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: _____
James P. Seery, Jr.
Chief Executive Officer and Chief Restructuring Officer

Prepared by:

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ZAnnable@HaywardFirm.com

Counsel for the Debtor and Debtor-in-Possession

Exhibit B

Schedule of CLO Management Agreements and Related Contracts to Be Assumed

Schedule of CLO Management Agreements and Related Contracts to Be Assumed

1. Servicing Agreement, dated December 20, 2007, by and among Greenbriar CLO, Ltd., and Highland Capital Management, L.P.
2. Investment Management Agreement, dated November 1, 2007, by and between Longhorn Credit Funding, LLC, and Highland Capital Management, L.P. (as amended)
3. Reference Portfolio Management Agreement, dated August 1, 2016, by and between Highland Capital Management, L.P., and Valhalla CLO, Ltd.
4. Collateral Servicing Agreement, dated December 20, 2006, by and among Highland Park CDO I, Ltd., and Highland Capital Management, L.P.
5. Portfolio Management Agreement, dated March 15, 2005, by and among Southfork CLO Ltd., and Highland Capital Management, L.P.
6. Amended and Restated Portfolio Management Agreement, dated November 30, 2005, by and among Jaspar CLO Ltd., and Highland Capital Management, L.P.
7. Servicing Agreement, dated May 31, 2007, by and among Westchester CLO, Ltd., and Highland Capital Management, L.P.
8. Servicing Agreement, dated May 10, 2006, by and among Rockwall CDO Ltd. and Highland Capital Management, L.P. (as amended)
9. Portfolio Management Agreement, dated December 8, 2005, by and between Liberty CLO, Ltd., and Highland Capital Management, L.P.
10. Servicing Agreement, dated March 27, 2008, by and among Aberdeen Loan Funding, Ltd., and Highland Capital Management, L.P.
11. Servicing Agreement, dated May 9, 2007, by and among Rockwall CDO II Ltd. and Highland Capital Management, L.P.
12. Collateral Management Agreement, by and between, Highland Loan Funding V Ltd. and Highland Capital Management, L.P., dated August 1, 2001.
13. Collateral Management Agreement, dated August 18, 1999, by and between Highland Legacy Limited and Highland Capital Management, L.P.
14. Servicing Agreement, dated November 30, 2006, by and among Grayson CLO Ltd., and Highland Capital Management, L.P. (as amended)
15. Servicing Agreement, dated October 25, 2007, by and among Stratford CLO Ltd., and Highland Capital Management, L.P.
16. Servicing Agreement, dated August 3, 2006, by and among Red River CLO Ltd., and Highland Capital Management, L.P. (as amended)
17. Servicing Agreement, dated December 21, 2006, by and among Brentwood CLO, Ltd., and Highland Capital Management, L.P.
18. Servicing Agreement, dated March 13, 2007, by and among Eastland CLO Ltd., and Highland Capital Management, L.P.

19. Portfolio Management, Agreement, dated October 13, 2005, by and among Gleneagles CLO, Ltd., and Highland Capital Management, L.P.

20. Members' Agreement and Amendment, dated November 15, 2017, by and between Highland CLO Funding, Ltd. and Highland Capital Management, L.P.

21. Collateral Management Agreement, dated May 19, 1998, by and between Pam Capital Funding LP, Ranger Asset Mgt LP and Highland Capital Management, L.P.

22. Collateral Management Agreement, dated August 6, 1997, by and between Pamco Cayman Ltd., Ranger Asset Mgt LP and Highland Capital Management, L.P.

23. Amendment No. 1 to Servicing Agreement, October 2, 2007, between Highland Capital Management, L.P. and Red River CLO Ltd. et al

24. Interim Collateral Management Agreement, June 15, 2005, between Highland Capital Management, L.P. and Rockwall CDO Ltd

25. Amendment No. 1 to Servicing Agreement, October 2, 2007, between Highland Capital Management, L.P. and Rockwall CDO Ltd

26. Collateral Servicing Agreement dated December 20, 2006, between Highland Capital Management, L.P. and Highland Park CDO I, Ltd.; The Bank of New York Trust Company, National Association

27. Representations and Warranties Agreement, dated December 20, 2006, between Highland Capital Management, L.P. and Highland Park CDO I, Ltd.

28. Collateral Administration Agreement, dated March 27, 2008, between Highland Capital Management, L.P. and Aberdeen Loan Funding, Ltd.; State Street Bank and Trust Company

29. Collateral Administration Agreement, dated December 20, 2007, between Highland Capital Management, L.P. and Greenbriar CLO, Ltd.; State Street Bank and Trust Company

30. Collateral Acquisition Agreement, dated March 13, 2007, between Highland Capital Management, L.P. and Eastland CLO, Ltd

31. Collateral Administration Agreement, dated March 13, 2007, between Highland Capital Management, L.P. and Eastland CLO, Ltd. and Investors Bank and Trust Company

32. Collateral Administration Agreement, dated October 13, 2005, between Highland Capital Management, L.P. and Gleneagles CLO, Ltd.; JPMorgan Chase Bank, National Association

33. Collateral Acquisition Agreement, dated November 30, 2006, between Highland Capital Management, L.P. and Grayson CLO, Ltd.

34. Collateral Administration Agreement, dated November 30, 2006, between Highland Capital Management, L.P. and Grayson CLO, Ltd.; Investors Bank & Trust Company

35. Collateral Acquisition Agreement, dated August 3, 2006, between Highland Capital Management, L.P. and Red River CLO, Ltd.

36. Collateral Administration Agreement, dated August 3, 2006, between Highland Capital Management, L.P. and Red River CLO, Ltd.; U.S. Bank National Association

37. Master Warehousing and Participation Agreement, dated April 19, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; Highland Special Opportunities Holding Company

38. Master Warehousing and Participation Agreement, dated February 2, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.

39. Master Warehousing and Participation Agreement (Amendment No. 2), dated May 5, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.

40. Master Warehousing and Participation Agreement (Amendment No. 1), dated April 12, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.

41. Master Warehousing and Participation Agreement (Amendment No. 3), dated June 22, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.

42. Master Warehousing and Participation Agreement (Amendment No. 4), dated July 17, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.

43. Collateral Administration Agreement, dated February 2, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; U.S. Bank National Association; IXIS Financial Products Inc.

44. Collateral Administration Agreement, dated April 18, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; Highland Special Opportunities Holding Company; U.S. Bank National Association

45. Master Participation Agreement, dated June 5, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; Grand Central Asset Trust

46. A&R Asset Acquisition Agreement, dated July 18, 2001, between Highland Capital Management, L.P. and Salomon Smith Barney Inc.; Highland Loan Funding V Ltd.

47. A&R Master Participation Agreement, dated July 18, 2001, between Highland Capital Management, L.P. and Salomon Brothers Holding Company; Highland Loan Funding V Ltd.

48. Collateral Acquisition Agreement, dated June 29, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd.

49. Collateral Administration Agreement, dated June 29, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd.; JPMorgan Chase Bank, National Association

50. Master Warehousing and Participation Agreement, dated March 24, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd; MMP-5 Funding, LLC; and IXIS Financial Products Inc.

51. Master Warehousing and Participation Agreement (Amendment No. 1), dated May 16, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd; MMP-5 Funding, LLC; and IXIS Financial Products Inc.

52. Collateral Administration Agreement, dated December 8, 2005, between Highland Capital Management, L.P. and Liberty CLO Ltd.

53. Collateral Administration Agreement, dated May 10, 2006, between Highland Capital Management, L.P. and Rockwall CDO Ltd; JPMorgan Chase Bank, National Association

54. Collateral Administration Agreement, dated May 9, 2007, between Highland Capital Management, L.P. and Rockwall CDO II, Ltd.; Investors Bank & Trust Company

55. Collateral Administration Agreement, dated March 15, 2005, between Highland Capital Management, L.P. and Southfork CLO Ltd.; JPMorgan Chase Bank, National Association

56. Collateral Administration Agreement, dated October 25, 2007, between Highland Capital Management, L.P. and Stratford CLO Ltd.; State Street

57. Collateral Administration Agreement, dated August 18, 2004, between Highland Capital Management, L.P. and Valhalla CLO, Ltd.; JPMorgan Chase Bank

58. Collateral Acquisition Agreement, dated May 31, 2007, between Highland Capital Management, L.P. and Westchester CLO, Ltd.

59. Collateral Administration Agreement, dated May 31, 2007, between Highland Capital Management, L.P. and Westchester CLO, Ltd.; Investors Bank & Trust Company

60. Collateral Administration Agreement, dated December 21, 2006, between Highland Capital Management, L.P. and Brentwood CLO, Ltd.; Investors Bank & Trust Company

APPENDIX 4

EXHIBIT B

61. "*Estate Claims*" has the meaning given to it in Exhibit A to the *Notice of Final Term Sheet* [D.I. 354].

62. "*Exculpated Parties*" means, collectively, (i) the Debtor and its successors and assigns~~, direct and indirect majority owned subsidiaries, and the Managed Funds~~, (ii) the Employees, (iii) Strand, (iv) the Independent Directors, (v) the Committee, (vi) the members of the Committee (in their official capacities), (vii) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (viii) the CEO/CRO; and (ix) the Related Persons of each of the parties listed in (iv) through (viii); *provided, however,* that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), NexBank, SSB (and any of its subsidiaries), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term "Exculpated Party."

63. "*Executory Contract*" means a contract to which the Debtor is a party that is subject to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code.

64. "*Exhibit*" means an exhibit annexed hereto or to the Disclosure Statement (as such exhibits are amended, modified or otherwise supplemented from time to time), which are incorporated by reference herein.

65. "*Federal Judgment Rate*" means the post-judgment interest rate set forth in 28 U.S.C. § 1961 as of the Effective Date.

66. "*File*" or "*Filed*" or "*Filing*" means file, filed or filing with the Bankruptcy Court or its authorized designee in the Chapter 11 Case.

67. "*Final Order*" means an order or judgment of the Bankruptcy Court, which is in full force and effect, and as to which the time to appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing has expired and as to which no appeal, petition for *certiorari*, or other proceedings for a new trial, reargument or rehearing shall then be pending or as to which any right to appeal, petition for *certiorari*, new trial, reargument, or rehearing shall have been waived in writing in form and substance satisfactory to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, or, in the event that an appeal, writ of *certiorari*, new trial, reargument, or rehearing thereof has been sought, such order of the Bankruptcy Court shall have been determined by the highest court to which such order was appealed, or *certiorari*, new trial, reargument or rehearing shall have been denied and the time to take any further appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing shall have expired; *provided, however*, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be Filed with respect to such order shall not preclude such order from being a Final Order.

126. "*Strand*" means Strand Advisors, Inc., the Debtor's general partner.

127. "*Sub-Servicer*" means a third-party selected by the Claimant Trustee to service or sub-service the Reorganized Debtor Assets.

128. "*Sub-Servicer Agreement*" means the agreement that may be entered into providing for the servicing of the Reorganized Debtor Assets by the Sub-Servicer.

129. "*Subordinated Claim*" means any Claim that is subordinated to the Convenience Claims and General Unsecured Claims pursuant to ~~11 U.S.C. § 510 or~~an order entered by the Bankruptcy Court (including any other court having jurisdiction over the Chapter 11 Case) after notice and a hearing.

130. "*Subordinated Claimant Trust Interests*" means the Claimant Trust Interests to be distributed to Holders of Allowed Subordinated Claims under the Plan, which such interests shall be subordinated in right and priority to the Claimant Trust Interests distributed to Holders of Allowed General Unsecured Claims as provided in the Claimant Trust Agreement.

131. "*Trust Distribution*" means the transfer of Cash or other property by the Claimant Trustee to the Claimant Trust Beneficiaries.

132. "*Trustees*" means, collectively, the Claimant Trustee and Litigation Trustee.

133. "*UBS*" means, collectively, UBS Securities LLC and UBS AG London Branch.

134. "*Unexpired Lease*" means a lease to which the Debtor is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

135. "*Unimpaired*" means, with respect to a Class of Claims or Equity Interests that is not impaired within the meaning of section 1124 of the Bankruptcy Code.

136. "*Voting Deadline*" means the date and time by which all Ballots to accept or reject the Plan must be received in order to be counted under the under the Order of the Bankruptcy Court approving the Disclosure Statement as containing adequate information pursuant to section 1125(a) of the Bankruptcy Code and authorizing the Debtor to solicit acceptances of the Plan.

137. "*Voting Record Date*" means November 23, 2020.

Professional Fee Claim Objection Deadline. Each Holder of an Allowed Professional Fee Claim will be paid by the Debtor or the Claimant Trust, as applicable, in Cash within ten (10) Business Days of entry of the order approving such Allowed Professional Fee Claim.

On the Effective Date, the Claimant Trustee shall establish the Professional Fee Reserve. The Professional Fee Reserve shall vest in the Claimant Trust and shall be maintained by the Claimant Trustee in accordance with the Plan and Claimant Trust Agreement. The Claimant Trust shall fund the Professional Fee Reserve on the Effective Date in an estimated amount determined by the Debtor in good faith prior to the Confirmation Date and that approximates the total projected amount of unpaid Professional Fee Claims on the Effective Date. Following the payment of all Allowed Professional Fee Claims, any excess funds in the Professional Fee Reserve shall be released to the Claimant Trust to be used for other purposes consistent with the Plan and the Claimant Trust Agreement.

C. Priority Tax Claims

On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Priority Tax Claim is an Allowed Priority Tax Claim as of the Effective Date or (ii) the date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim, each Holder of an Allowed Priority Tax Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Priority Tax Claim, at the election of the Debtor: (a) Cash in an amount of a total value as of the Effective Date of the Plan equal to the amount of such Allowed Priority Tax Claim~~, (b)~~ in accordance with section 1129(a)(9)(C) of the Bankruptcy Code, or (b) if paid over time, payment of such Allowed Priority Tax Claim in accordance with section 1129(a)(9)(C) of the Bankruptcy Code; or (c) such other less favorable treatment as agreed to in writing by the Debtor and such Holder. Payment of statutory fees due pursuant to 28 U.S.C. § 1930(a)(6) will be made at all appropriate times until the entry of a final decree; *provided, however*, that the Debtor may prepay any or all such Claims at any time, without premium or penalty.

ARTICLE III.
CLASSIFICATION AND TREATMENT OF CLASSIFIED CLAIMS AND EQUITY INTERESTS

A. Summary

All Claims and Equity Interests, except Administrative Expense Claims and Priority Tax Claims, are classified in the Classes set forth below. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims, and Priority Tax Claims have not been classified.

The categories of Claims and Equity Interests listed below classify Claims and Equity Interests for all purposes including, without limitation, confirmation and distribution pursuant to the Plan and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code. The Plan deems a Claim or Equity Interest to be classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and will be deemed classified in a different Class to the extent that any remainder of such Claim or Equity Interest qualifies within

I. Special Provision Governing Unimpaired Claims

Except as otherwise provided in the Plan, nothing under the Plan will affect the Debtor's rights in respect of any Unimpaired Claims, including, without limitation, all rights in respect of legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claims.

J. Subordinated Claims

The allowance, classification, and treatment of all Claims under the Plan shall take into account and conform to the contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. ~~Under section 510 of the Bankruptcy Code, upon~~Upon written notice and hearing, the Debtor the Reorganized Debtor, and the Claimant Trustee reserve the right to seek entry of an order by the Bankruptcy Court to re-classify or to subordinate any Claim in accordance with any contractual, legal, or equitable subordination relating thereto, and the treatment afforded any Claim under the Plan that becomes a subordinated Claim at any time shall be modified to reflect such subordination.

ARTICLE IV.
MEANS FOR IMPLEMENTATION OF THIS PLAN

A. Summary

As discussed in the Disclosure Statement, the Plan will be implemented through (i) the Claimant Trust, (ii) the Litigation Sub-Trust, and (iii) the Reorganized Debtor.

On the Effective Date, all Class A Limited Partnership Interests, including the Class A Limited Partnership Interests held by Strand, as general partner, and Class B/C Limited Partnerships in the Debtor will be cancelled, and new Class A Limited Partnership Interests in the Reorganized Debtor will be issued to the Claimant Trust and New GP LLC – a newly-chartered limited liability company wholly-owned by the Claimant Trust. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor, and on and following the Effective Date, the Claimant Trust will be the Reorganized Debtor's limited partner and New GP LLC will be its general partner. The Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement, which will amend and restate, in all respects, the Debtor's current Limited Partnership Agreement. Following the Effective Date, the Reorganized Debtor will be managed consistent with the terms of the Reorganized Limited Partnership Agreement by New GP LLC. The sole managing member of New GP LLC will be the Claimant Trust, and the Claimant Trustee will be the sole officer of New GP LLC on the Effective Date.

Following the Effective Date, the Claimant Trust will administer the Claimant Trust Assets pursuant to this Plan and the Claimant Trust Agreement, and the Litigation Trustee will pursue, if applicable, the Estate Claims pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan. The Reorganized Debtor will administer the Reorganized Debtor Assets and, if needed, with the utilization of a Sub-Servicer, which administration will include, among other things, managing the wind down of the Managed Funds.

Notwithstanding anything herein to the contrary, the Debtor shall assume or reject that certain real property lease with Crescent TC Investors L.P. ("Landlord") for the Debtor's headquarters located at 200/300 Crescent Ct., Suite #700, Dallas, Texas 75201 (the "Lease") in accordance with the notice to Landlord, procedures and timing required by 11 U.S.C. §365(d)(4), as modified by that certain *Agreed Order Granting Motion to Extend Time to Assume or Reject Unexpired Nonresidential Real Property Lease* [Docket No. 1122].

B. Claims Based on Rejection of Executory Contracts or Unexpired Leases

Any Executory Contract or Unexpired Lease not assumed or rejected on or before the Confirmation Date shall be deemed rejected, pursuant to the Confirmation Order. Any Person asserting a Rejection Claim shall File a proof of claim within thirty days of the ~~Effective~~Confirmation Date. Any Rejection Claims that are not timely Filed pursuant to this Plan shall be forever disallowed and barred. If one or more Rejection Claims are timely Filed, the Claimant Trustee may File an objection to any Rejection Claim.

Rejection Claims shall be classified as General Unsecured Claims and shall be treated in accordance with ARTICLE III of this Plan.

C. Cure of Defaults for Assumed or Assigned Executory Contracts and Unexpired Leases

Any monetary amounts by which any Executory Contract or Unexpired Lease to be assumed or assigned hereunder is in default shall be satisfied, under section 365(b)(1) of the Bankruptcy Code, by the Debtor upon assumption or assignment thereof, by payment of the default amount in Cash as and when due in the ordinary course or on such other terms as the parties to such Executory Contracts may otherwise agree. The Debtor may serve a notice on the Committee and parties to Executory Contracts or Unexpired Leases to be assumed or assigned reflecting the Debtor's or Reorganized Debtor's intention to assume or assign the Executory Contract or Unexpired Lease in connection with this Plan and setting forth the proposed cure amount (if any).

If a dispute regarding (1) the amount of any payments to cure a default, (2) the ability of the Debtor, the Reorganized Debtor, or any assignee to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed or assigned or (3) any other matter pertaining to assumption or assignment, the cure payments required by section 365(b)(1) of the Bankruptcy Code will be made following the entry of a Final Order or orders resolving the dispute and approving the assumption or assignment.

Assumption or assignment of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise and full payment of any applicable cure amounts pursuant to this ARTICLE V.C shall result in the full release and satisfaction of any cure amounts, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed or assigned Executory Contract or Unexpired Lease at any time prior to the effective date of assumption or assignment. Any and all Proofs of Claim based upon Executory Contracts

forth in the Plan Documents; (ii) the provisions of the Confirmation Order and this Plan are nonseverable and mutually dependent; (iii) the implementation of this Plan in accordance with its terms is authorized; (iv) pursuant to section 1146 of the Bankruptcy Code, the delivery of any deed or other instrument or transfer order, in furtherance of, or in connection with this Plan, including any deeds, bills of sale, or assignments executed in connection with any disposition or transfer of Assets contemplated under this Plan, shall not be subject to any Stamp or Similar Tax; and (v) the vesting of the Claimant Trust Assets in the Claimant Trust and the Reorganized Debtor Assets in the Reorganized Debtor, in each case as of the Effective Date free and clear of liens and claims to the fullest extent permissible under applicable law pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under this Plan upon the Effective Date.

- All documents and agreements necessary to implement this Plan, including without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust Agreement, and the New GP LLC Documents, in each case in form and substance reasonably acceptable to the Debtor and the Committee, shall have (a) been tendered for delivery, and (b) been effected by, executed by, or otherwise deemed binding upon, all Entities party thereto and shall be in full force and effect. All conditions precedent to such documents and agreements shall have been satisfied or waived pursuant to the terms of such documents or agreements.

- All authorizations, consents, actions, documents, approvals (including any governmental approvals), certificates and agreements necessary to implement this Plan, including, without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust Agreement, and the New GP LLC Documents, shall have been obtained, effected or executed and delivered to the required parties and, to the extent required, filed with the applicable governmental units in accordance with applicable laws and any applicable waiting periods shall have expired without any action being taken or threatened by any competent authority that would restrain or prevent effectiveness or consummation of the Restructuring.

- The Debtor shall have obtained applicable directors' and officers' insurance coverage that is acceptable to each of the Debtor, the Committee, the Claimant Trust Oversight Committee, the Claimant Trustee and the Litigation Trustee.

- The Professional Fee Reserve shall be funded pursuant to this Plan in an amount determined by the Debtor in good faith.

B. Waiver of Conditions

The conditions to effectiveness of this Plan set forth in this ARTICLE VIII (other than that the Confirmation Order shall have been entered) may be waived in whole or in part by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee) ~~and any applicable parties in Section VII.A of this Plan~~, without notice, leave or order of the Bankruptcy Court or any formal action other than proceeding to confirm or

APPENDIX 5

EXHIBIT B

Objector	Objection	Claim	Status
James Dondero	D.I. 1661	Claim No. 138	Withdrawn with prejudice [D.I. 1510]
		Claim No. 141	Arises from equity; subject to subordination
		Claim No. 142	Arises from equity; subject to subordination
		Claim No. 145	Arises from equity; subject to subordination
		Claim No. 188	Withdrawn with prejudice [D.I. 1510]
		Indirect Equity Interest	Represents an indirect interest in Class A interests. Subordinated to Class B/C. Structurally subordinate. Represents 0.25% of total equity.
Get Good Trust	D.I. 1667	Claim No. 120	Arises from equity; subject to subordination
		Claim No. 128	Arises from equity; subject to subordination
		Claim No. 129	Arises from equity; subject to subordination
Dugaboy Investment Trust	D.I. 1667	Claim No. 113	Arises from equity; subject to subordination
		Claim No. 131	Objection filed and in litigation. Seeks to pierce the veil and hold the Debtor liable for subsidiary debts. Debtor believes claim is frivolous.
		Claim No. 177	Objection filed and in litigation. Seeks damages for postpetition management of estate. Debtor believes claim is frivolous.
		Class A Interests	Subordinated to Class B/C. Represents 0.1866% of total equity.
Highland Capital Management Fund Advisors, L.P.	D.I. 1676	Claim No. 95	Expunged [D.I. 1233]
		Claim No. 119	Expunged [D.I. 1233]
Highland Fixed Income Fund	D.I. 1676	Claim No. 109	Expunged [D.I. 1233]
Highland Funds I and its series	D.I. 1676	Claim No. 106	Expunged [D.I. 1233]
Highland Funds II and its series	D.I. 1676	Claim No. 114	Expunged [D.I. 1233]
Highland Global Allocation Fund	D.I. 1676	Claim No. 98	Expunged [D.I. 1233]
Highland Healthcare Opportunities Fund	D.I. 1676	Claim No. 116	Expunged [D.I. 1233]
Highland Income Fund	D.I. 1676	Claim No. 105	Expunged [D.I. 1233]
Highland Merger Arbitrate Fund	D.I. 1676	Claim No. 132	Expunged [D.I. 1233]
Highland Opportunistic Credit Fund	D.I. 1676	Claim No. 100	Expunged [D.I. 1233]
Highland Small-Cap Equity Fund	D.I. 1676	Claim No. 127	Expunged [D.I. 1233]
Highland Socially Responsible Equity Fund	D.I. 1676	Claim No. 115	Expunged [D.I. 1233]
Highland Total Return Fund	D.I. 1676	Claim No. 126	Expunged [D.I. 1233]
Highland/iBoxx Senior Loan ETF	D.I. 1676	Claim No. 122	Expunged [D.I. 1233]
NexPoint Advisors, L.P.	D.I. 1676	Claim No. 104	Expunged [D.I. 1233]
		Claim No. 108	Expunged [D.I. 1233]
NexPoint Capital, Inc.	D.I. 1676	Claim No. 107	Expunged [D.I. 1233]
		Claim No. 140	Expunged [D.I. 1233]
NexPoint Real Estate Strategies Fund	D.I. 1676	Claim No. 118	Expunged [D.I. 1233]

NexPoint Strategic Opportunities Fund	D.I. 1676	Claim No. 103	Expunged [D.I. 1233]
CLO Holdco, Ltd.	D.I. 1675	Claim No. 133	Claim voluntarily reduced to $0.00
		Claim No. 198	Claim voluntarily reduced to $0.00
NexBank Title, Inc.	D.I. 1676	None	N/A
NexBank Securities, Inc.	D.I. 1676	None	N/A
NexBank Capital, Inc.	D.I. 1676	None	N/A
NexBank	D.I. 1676	Claim No. 178	Expunged [D.I. 1155]
NexPoint Real Estate Finance Inc.	D.I. 1677	None	N/A
NexPoint Real Estate Capital, LLC	D.I. 1677	None	N/A
NexPoint Residential Trust, Inc.	D.I. 1677	None	N/A
NexPoint Hospitality Trust	D.I. 1677	None	N/A
NexPoint Real Estate Partners, LLC	D.I. 1677	None	N/A
NexPoint Multifamily Capital Trust, Inc.	D.I. 1677	None	N/A
VineBrook Homes Trust, Inc.	D.I. 1677	None	N/A
NexPoint Real Estate Advisors, L.P.	D.I. 1677	None	N/A
NexPoint Real Estate Advisors II, L.P.	D.I. 1677	None	N/A
NexPoint Real Estate Advisors III, L.P.	D.I. 1677	None	N/A
NexPoint Real Estate Advisors IV, L.P.	D.I. 1677	None	N/A
NexPoint Real Estate Advisors V, L.P.	D.I. 1677	None	N/A
NexPoint Real Estate Advisors VI, L.P.	D.I. 1677	None	N/A
NexPoint Real Estate Advisors VII, L.P.	D.I. 1677	None	N/A
NexPoint Real Estate Advisors VIII, L.P.	D.I. 1677	None	N/A
NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC	D.I. 1673	Claim No. 146	Objection filed and in litigation. Debtor believes claim is frivolous.
Scott Ellington	D.I. 1669	Claim No. 187	Terminated for cause. Debtor exploring options.
		Claim No. 192	Terminated for cause. Debtor exploring options.
Isaac Leventon	D.I. 1669	Claim No. 184	Terminated for cause. Debtor exploring options.

APPENDIX 6

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
	)	Friday, March 19, 2021
	)	9:30 a.m. Docket
Debtor.	)	
	)	MOTIONS TO STAY
	)	PENDING APPEAL
	)	

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

WEBEX APPEARANCES:

For the Debtor:	Jeffrey Nathan Pomerantz PACHULSKI STANG ZIEHL & JONES, LLP 10100 Santa Monica Blvd., 13th Floor Los Angeles, CA 90067-4003 (310) 277-6910
For the Debtor:	John A. Morris PACHULSKI STANG ZIEHL & JONES, LLP 780 Third Avenue, 34th Floor New York, NY 10017-2024 (212) 561-7700
For the Official Committee of Unsecured Creditors:	Matthew A. Clemente SIDLEY AUSTIN, LLP One South Dearborn Street Chicago, IL 60603 (312) 853-7539
For James Dondero:	Clay M. Taylor BONDS ELLIS EPPICH SCHAFER JONES, LLP 420 Throckmorton Street, Suite 1000 Fort Worth, TX 76102 (817) 405-6900

APPEARANCES, cont'd.:

For Get Good Trust and Dugaboy Investment Trust:	Douglas S. Draper HELLER, DRAPER & HORN, LLC 650 Poydras Street, Suite 2500 New Orleans, LA 70130 (504) 299-3300
For Certain Funds and Advisors:	Davor Rukavina MUNSCH, HARDT, KOPF & HARR 500 N. Akard Street, Suite 3800 Dallas, TX 75201-6659 (214) 855-7587
For Certain Funds and Advisors:	A. Lee Hogewood, III K&L GATES, LLP 4350 Lassiter at North Hills Avenue, Suite 300 Raleigh, NC 27609 (919) 743-7306
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Proceedings recorded by electronic sound recording; transcript produced by transcription service.

DALLAS, TEXAS - MARCH 19, 2021 - 9:39 A.M.

THE COURT: We have a Highland setting on various motions for stay pending appeal of the confirmation order. This is Case No. 19-34054. We have four Movants, or two Movants and two Joinders. Let's get appearances first from those Movants. First, for the Advisors, do we have Mr. Rukavina or someone from his team?

MR. RUKAVINA: Your Honor, good morning. Davor Rukavina. I apologize, my camera is not working. IT is running here to fix it. I represent NexPoint Advisors, LP and Highland Capital Management Advisors, LP.

THE COURT: All right. Now for the -- what we call the Funds, who do we have appearing? Someone from K&L Gates, Mr. Hogewood, by chance?

MR. HOGEWOOD: Good morning, Your Honor. This is Lee Hogewood representing the Funds. From K&L Gates, as you said. Thank you.

THE COURT: Okay. Thank you. All right. For the joinder parties, who is representing Mr. Dondero this morning?

MR. TAYLOR: Good morning, Your Honor. Clay Taylor appearing on behalf of Mr. Jim Dondero.

THE COURT: Okay. And now for the Get Good Trust and the Dugaboy Trust, who do we have appearing? Do we have Mr. Draper or someone?

MR. DRAPER: Good morning. Good morning, Your Honor.

Unfortunately, I was on mute. This is Douglas Draper appearing for the Get Good and Dugaboy Trusts.

THE COURT: All right. Thank you.

Now for the Debtor team, who do we have appearing from the Debtor team?

MR. POMERANTZ: Good morning, Your Honor. Jeff Pomerantz; Pachulski, Stang, Ziehl & Jones; on behalf of the Debtor. Several of my colleagues are on the phone, but I will be handling the matter today.

THE COURT: Okay. Good morning.

For the Unsecured Creditors' Committee, who joined in the Debtor's objection, who do we have appearing?

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

THE COURT: All right. Well, that was all of the parties who filed pleadings. I know we have a lot of observers this morning.

First, let me ask, can you hear me okay? I heard that there was a little bit of sound issue with my mic. Can everyone hear me okay? All right.

MR. CLEMENTE: Your Honor, when you first started, it was fuzzy, but when you were speaking just now, it sounded great.

THE COURT: Okay. Good.

All right. Well, let's talk about time estimates. I will tell you, I have a hard stop today at 12:15. In a normal case, we would be definitely finished, I think, in probably an hour-ish. I shouldn't say normal. I should say in an average case. But this case doesn't tend to be very average. So I would think an hour per side, okay -- hour for the Movant and Joinders and then an hour for the Debtor and Committee, so a two-hour time limit -- would be reasonable. Does anyone want to disagree with that?

All right. Well, then that's where I will limit you.

And let me just ask, so I kind of know going in, is it going to be that the Movants have a witness or evidence to put in? I saw last night the Debtors filed a witness and exhibit list, but I didn't scan it this morning to see -- oh, I do see that you filed, on the 17th, at least the Advisors filed a witness and exhibit list.

So, anyway, I'll start with Mr. Rukavina. Are you all -- is your team going to put on evidence?

MR. RUKAVINA: Your Honor, our only evidence is going to consist of my Docket 2043, those exhibits you referenced. We reserve the right to cross-examine Mr. Seery if the Debtor puts him on. But I think we envision mainly oral argument today.

And just so Your Honor knows, my exhibits are pretty much just a record of the confirmation hearing plus a few claim

transfer forms.

THE COURT: All right. Well, are there any housekeeping matters before I go ahead and let the Movants make their opening statement?

All right. Well, you may proceed. Mr. Rukavina, are you going first?

MR. RUKAVINA: No, Your Honor. Mr. Hogewood will. So I'll yield to the podium to him, with your permission.

THE COURT: All right. Mr. Hogewood, you may proceed.

OPENING STATEMENT ON BEHALF OF CERTAIN FUNDS AND ADVISORS

MR. HOGEWOOD: Thank you, Your Honor. Again, Lee Hogewood with K&L Gates on behalf of the Funds.

As Your Honor knows, this confirmation hearing started on February 2nd and continued on to February 3rd. The Debtors cleverly in their objection made reference to the movie *Groundhog Day*, and it seems appropriate for this case and for the day when the confirmation started. We're here about six weeks later asking for a stay pending appeal. Our papers have gone over many of the same arguments that the Court has rejected before, so in that regard it is indeed somewhat like the movie *Groundhog Day*.

We also know that stays pending appeal are rare, especially stays granted by the court that rendered the decision that is to be appealed. But the Rules require us to

come to this first -- this Court first to request a stay in the first instance.

The issues, I think, have been briefed, and there's no point in belaboring *Groundhog Day*-type arguments any more than is necessary. So I'm going to try to be relatively brief, and I think the group will beat the hour that has been assigned to us. We appreciate it.

Like injunctions, stays are the exception, not the rule, and the standards are similar. Balance of harms, likelihood of success, and the public interest. In 30 years of practice, I have obtained three stays pending appeal. In two of those, the bankruptcy judge granted the stay *sua sponte*. Judge Marvin Wooten, the Western District of North Carolina, stayed two decisions in the early '90s because he was confident he was right, he knew he had pushed the envelope on existing Fourth Circuit authority, and he knew that the appeal would be moot without a stay. He turned out to be right, the Fourth Circuit affirmed his decisions, and the law advanced in the manner that Judge Wooten thought that it should. In the other, the bankruptcy judge denied the stay and the district court subsequently granted it.

For many reasons, most of them already identified by Your Honor in earlier rulings, this is the type of case in which a stay should be granted. In Your Honor's ruling on February 8th and in the written order, the Court made abundantly clear

that this Court viewed this case to be exceptional for a long list of reasons detailed orally and in writing. A view of the case being exceptional was part of the justification for pushing the envelope on Fifth Circuit law on issues upon which the Funds have based their appeal.

And I want to be clear: The Funds' appeal is only on the issues of exculpation, injunction, and gatekeeper, in light of *Pacific Lumber*. The Debtors challenged standing, and we all agree that the question is are we, the Funds, a person aggrieved? The Funds are aggrieved in several ways.

First, the Court made findings regarding a lack of independence or being controlled by the so-called Dondero complex. The Funds, Your Honor, receive advice from the Advisors, and the Funds' boards make decisions based upon that advice, after making an independent determination of whether the advice is in the best interests of the Funds. The Funds then expect the Advisors to implement that advice that they have given, or, indeed, if the Funds disagree with the advice, to implement the decision that the Funds have made.

It is, therefore, customary for the Advisors to take the lead, including the lead in litigation matters on behalf of the Funds, and the Court's conclusions of Dondero's control and a lack of independence of the Funds based upon a lack of participation by the Funds is not fair. The finding converts customary conduct into a conspiracy of control.

The analogy that works for me on this, Your Honor, is a lawyer analogy. If the Pachulski law firm advises the Debtor to file an adversary proceeding and the Debtor's independent board considers and accepts the advice and directs Pachulski to do so, Pachulski files the complaints, proceeds to take depositions, and moves the litigation forward. No one would conclude from that conduct that Pachulski controlled the Debtor or that the Debtor lacked independence from its law firm.

The same conclusion should be reached regarding the Funds. As was testified to at several hearings in this case, the Funds' independent board meets regularly, and during the pendency of this case, and particularly over the last several months, almost weekly, if not more, to address and consider advice from the Advisors and its independent counsel, a partner at a law firm, not at K&L Gates.

These matters were testified to by Mr. Post, who is an officer of the Funds, and he is also an employee of the Advisors, but that does not make Mr. Post in control of the Funds.

While the factual finding of the Court on this topic of control is already on the record and some harm may have already been done, a stay pending appeal of the confirmation order mitigates the harm until the issue can be considered by a higher court.

The Funds also have a different view of the investment horizon for their assets, not the Debtors' assets, than is possible under the Debtor's so-called asset maximization plan. As part of that plan, the Debtor will be liquidating assets owned by the Funds, not the Debtor, more rapidly than the Funds' boards believe is in the best interests of their investors. The confirmed plan creates an irreconcilable conflict between the Debtor and its plan obligations and the Funds and their investors.

Interplay between the exculpation injunction and gatekeeper directly limits the Funds' contractual rights and may impair their ability to take action in the best interest of their holders, thousands of outside investors. The Funds and their owners are aggrieved by these provisions.

These issues have been presented repeatedly, and the Court clearly does not agree with the positions that I am stating on behalf of the Funds. That said, the Court has made clear that this is an exceptional case. And there is a good faith argument that we are making that the plan's provisions approved by the Court go well beyond what is permissible under existing Fifth Circuit law.

Indeed, the exceptional nature of the case, at least in part, the Court's -- was, at least in part, underlying the Court's willingness to enter these sweeping provisions. A stay pending appeal (audio gap) exceptional relief should be

granted in an exceptional case so that plan provisions can be collectively tested.

In the meantime, there is little harm to the Debtor in continuing to operate in Chapter 11 while the appeal proceeds, particularly if the Fifth Circuit accepts the certification of direct appeal from this Court.

These are important issues that merit a review without the threat of having the appeal dismissed as moot, and this Court enjoys the discretion to grant a stay pending appeal.

We respectfully request that you exercise that discretion in light of the previously-expressed view of the exceptional nature of this case. Thank you very much.

THE COURT: All right. Thank you.

Are there any other opening statements for the Movants or Joining Parties?

MR. RUKAVINA: Your Honor, Davor Rukavina, if I may.

THE COURT: Okay. Go ahead.

OPENING STATEMENT ON BEHALF OF CERTAIN FUNDS AND ADVISORS

MR. RUKAVINA: Your Honor, I'll echo what Mr. Hogewood said, and I hope that the Court has some sympathy for us. It's a difficult position we're in, telling a court that rendered an opinion, after careful thought and protracted deliberation, that she's wrong, and we do respectfully and we do so humbly. But like Mr. Hogewood said, we are required by the Rules to come to this Court first.

Your Honor, on my clients' standing, we are directly subject to the plan's injunctions. And I have presented Your Honor case law, including the Fifth Circuit *Zale* opinion, that confirms that, in and of itself, that grants us standing. And that's only logical. A person subject to contempt for violating an injunction has the ability to test that injunction on appeal.

As far as the economics of the plan, my exhibits, Your Honor, include four claim transfer forms that were filed two days ago. I think there's one more in the works. We have acquired, as part hiring various former Debtor employees, by agreement, we have acquired their Class 8 claims. The Debtor did object to those claims last evening, but as of now those claims still exist and have not been disallowed.

And if Your Honor wants to talk about the law, I have a case that confirms that a claim purchase, even after the entry of an underlying order, grants the party, so long as they acted timely, standing on the underlying order.

So my clients, Your Honor, now have standing not only to contest the plan's injunction provisions but also the underlying plan itself. And by that, I'm referring to the absolute priority rule.

Your Honor, I have briefed that. Your Honor has rejected my arguments. Your Honor has relied on a Western District opinion. Those issues are what they are. I would simply

humbly submit that I have made a substantial case on the merits on an important issue, which is, I think, what Judge Jones ruled is the standard for likelihood of success on the merits.

And it really is very simple, Your Honor. The Debtor argues and this Court accepted the argument that as long as equity doesn't get a penny until creditors are paid in full, then the absolute priority rule is preserved as opposed to being violated. And I would argue that that's not the case because the Code clearly provides for the preservation or grant of any property interest, any property interest at all, no matter if it's worthless or highly contingent.

On the exculpation and injunction provision, Your Honor. On exculpation, as I argued at the confirmation hearing, I think that the Fifth Circuit will revisit its *Pacific Lumber* opinion to allow the Court to exculpate case professionals for case administration during the pendency of the case. And I think Your Honor will be affirmed on that. I know some of my co-counsel will disagree.

But the fact of the matter is that *Pacific Lumber* exists today. It has yet to be overturned. So, Your Honor, we believe that we have a probability of success on that issue.

But more importantly, the exculpation that this Court approved does something that I don't think any court has approved before. It exculpates prospective future post-

reorganization liabilities. That Your Honor I don't think can do under any scenario.

On the injunction issue, as I argued before, if the Court will have no jurisdiction to entertain the purely post-confirmation action, I accept and I respect and I agree that the Court has vast powers with respect to pre-confirmation claims, but on the post-confirmation claims that are enjoined, if the Court will have no jurisdiction to try those claims, then the Court will have no jurisdiction to issue a finding that the claim is colorable or not. Because if the Court finds that the claim is not colorable, I'm done. There's no other court I can go to. There's no mechanism that I can at that point in time trigger to protect my clients' rights.

And Your Honor, with respect to the Debtor's arguments about prior orders entered in the case, it's black letter law that the Court cannot create jurisdiction and the parties cannot stipulate to jurisdiction. So whatever prior orders were entered in the case, and we can talk about whether they were intended to apply post-confirmation or not, those prior orders cannot be read as creating jurisdiction where none would exist, *i.e.*, post-confirmation.

Your Honor, on the Rule 2015.3 issue, it's not worth even talking about today. It's a minor issue. I made it to preserve the record on it.

I echo what Mr. Hogewood said about the Debtor not being

harmed. Mr. Seery has terminated or the Debtor has terminated the shared services agreements. The Debtor has terminated employees. The Debtor will have very little cost going forward as far as administering its assets. That cost will be incurred regardless of whether the plan goes effective or not.

The Debtor has only some six assets left to administer. The Debtor, as I understand it, is in the process of already trying to sell those assets. The Debtor can do that in Chapter 11 or post-confirmation.

So, as I asked Mr. Seery at the confirmation hearing, as I have briefed and as we have in the transcripts, the plan gives Mr. Seery nothing that he lacks today in order to finish administering this estate. By that, I mean to liquidate its assets and to adjudicate its liabilities.

The Debtor's response to my motion did accurately raise an issue that I had not fully developed, which is that, yes, the Debtor will have an increased cost if it's in a Chapter 11 that's open because of a stay pending appeal. And the Debtor -- the bond -- if the Court grants a stay pending appeal, a bond should take into account that increased cost. So that's the final point I have to make, Your Honor, which is that if we talk about the bond, whether now or later, what I had proposed initially was that okay, the creditors that would be paid soon should be compensated for the time value of money. That's a proposition that the Debtor appears to agree with.

And we know what the appropriate interest rate is. And then we should include in the bond an amount for the Debtor's additional burn rate for being in Chapter 11, meaning filing MORs, perhaps filing 9019 motions. But it's not $2.2 or $2.3 million per month, as the Debtor suggests. It's a far lower amount. And again, we can argue about that later, depending on whether the Debtor has evidence on that or not.

So we believe that a bond in the neighborhood of $3 or $4 million is appropriate, and that in the future, if we lose the appeal, then the Court will decide what portion of that bond should be forfeited, not as liquidated damages, not as the price of playing poker, but as compensation for the actual increased cost the estate incurred as a result of not having the plan go effective.

Thank you, Your Honor.

THE COURT: All right. Thank you.

Do any of the Joining Parties have opening statements?

MR. TAYLOR: Yes, Your Honor. Clay Taylor on behalf of Mr. Jim Dondero.

THE COURT: Okay.

OPENING STATEMENT ON BEHALF OF JAMES DONDERO

MR. TAYLOR: Your Honor, I'm not going to reiterate what Mr. Hogewood and Mr. Rukavina said, but I did want to address one thing that the Court has brought up before and I thought it was important to address that point. And that is,

what is Mr. Dondero's standing and how is -- and when we're talking about a stay pending appeal, how in the balancing of the harms to the respective parties, how is Mr. Dondero being harmed?

Well, Mr. Dondero has said from the beginning of this case, when Mr. Seery started selling off assets with little to no notice, that he wasn't getting enough value for those. Okay? And the question has been raised, well, if equity was never going to be reached anyway, how is Mr. Dondero harmed? Well, as Your Honor has seen, and the papers have certainly said, and as suits have started to be brought, alter ego claims are being brought against Mr. Dondero. To the extent the value, the full value of those assets are not realized, which Mr. Dondero says should be higher and could be higher if proper notice was given and a full auction-like process was instituted, then Mr. Dondero and the Unsecured Creditors' Committee or the Trust, as the case may be, if this plan goes effective, is going to bring those claims for the difference between what was actually recovered and what the full value of the debt is. And that could run into the tens or hundreds of millions of dollars.

So that is true irreparable harm that my client is going to face if there's no stay pending appeal. And we think that is a very important one. And as Mr. Rukavina just stated, there's no real difference to the Debtor and Highland if it

runs its wind-down plan through a Chapter 11 or, alternatively, under its wind-down or liquidation plan. And so, therefore, that is something we wanted the Court to consider.

THE COURT: Thank you. All right.

Any other openings from the Objectors? Or, I'm sorry, the Movants and Joinders? Mr. Draper, anything from you?

MR. DRAPER: Yes, Your Honor. I have just a few comments to make.

OPENING STATEMENT ON BEHALF OF THE GET GOOD TRUST AND DUGABOY INVESTMENT TRUST

MR. DRAPER: The Court has looked very carefully at *Pacific Lumber* and has spent an inordinate amount of time. In our joinder paper, we gave the Court the citation to *Stanford -- S.E.C. versus Stanford*, and I'd ask the Court, when you look at success on the merits, to take *Pacific Lumber*, take *S.E.C. v. Stanford*, and Judge Jones' decision ten years later, and juxtapose that to the *Blixseth* decision that was cited by Mr. Pomerantz. And you could see the Fifth Circuit view on both exculpation and releases.

And the interesting note is *Pacific Lumber* was written by Judge Jones in 2009, *S.E.C. v. Stanford* is 2019. And *S.E.C. v. Stanford*, though it's a receivership case, looks directly at the jurisdiction of a district court to grant the relief that's been requested here. And I'd ask the Court to take a

look at that. We think success on the merits is apparent from just looking at those three cases.

THE COURT: All right. Thank you.

All right. Mr. Pomerantz, opening statement?

MR. POMERANTZ: Yes, Your Honor. I have a fairly lengthy opening statement that I was going to go through each of the issues and elements in a lot more detail. I'm happy to do that, Your Honor. I have a lengthy argument on standing and harm and whatnot, if Your Honor believes that that would +be helpful. I don't want to waste the Court's time if Your Honor does not believe that would be helpful.

THE COURT: All right. Go ahead. I think it would all be helpful.

MR. POMERANTZ: Okay.

OPENING STATEMENT ON BEHALF OF THE DEBTOR

MR. POMERANTZ: Your Honor, we're here yet again -- first of all, I'd like to admit my exhibits into evidence. Again, as similar to Mr. Rukavina's exhibits, they are essentially documents that are part of the court record. I don't think there's any controversy regarding them.

Also, we do not intend to present any witnesses at the hearing today.

THE COURT: All right. Well, shall we --

MR. RUKAVINA: Your Honor, if --

THE COURT: Yes. Shall we both just stipulate to the

admissibility of all of these exhibits? Are you both in a position to do that?

MR. RUKAVINA: I am prepared to stipulate, Your Honor.

MR. POMERANTZ: Yes, I am, Your Honor.

THE COURT: All right. So, --

MR. POMERANTZ: Thank you, Your Honor.

THE COURT: So, let me just be clear. The Movants' collective exhibits are found at Docket Entry 2043, and it looks like we have -- is it Exhibits A through M, Mr. Rukavina?

MR. RUKAVINA: Yes, Your Honor. Exhibits A through M as in Mary.

THE COURT: Okay.

MR. RUKAVINA: One of those, just so Your Honor knows, has a wrong exhibit label on it, so we'll file an amended that just cleans it up, but otherwise it's all in there and correct.

THE COURT: All right. So those are admitted.

(Movants' Exhibits' A through M are received into evidence.)

THE COURT: And then Debtor's exhibits are at Docket Entry 2058. They are Numbers 1 through 33, correct, Mr. Pomerantz?

MR. POMERANTZ: Your Honor, I believe it's 1 through

36.

MR. MORRIS: Substantively, it's 1 through 33, Your Honor.

THE COURT: Okay.

MR. POMERANTZ: Okay.

THE COURT: All right. So those are admitted.

MR. POMERANTZ: Oh, you're right. That is correct.

THE COURT: Okay. Those will be admitted as well.

(Debtor's Exhibits 1 through 33 are received into evidence.)

THE COURT: All right. Go ahead.

MR. POMERANTZ: Thank you, Your Honor. Your Honor, we're here yet again to respond to a series of motions filed by the Dondero entities, now in their capacity as Appellants, seeking to put another roadblock in the way of the plan and distributions to creditors.

These motions, like the various litigation involving the Dondero entities that preceded them, border on the frivolous and are not presented in good faith. They are being prosecuted to harass the Debtor and its creditors, get them to spend more money, in the hope that at some point the Debtor and the creditors will accept Mr. Dondero's plan.

While yes, this case is exceptional, it's not exceptional because of any legal issues involved. It's exceptional as to the level at which a former CEO and person in control of the

Debtor has taken to interfere with the Debtor, its operations, and a court-appointed independent board.

Mr. Dondero has had every opportunity throughout this case to make a proposal acceptable to the Debtor and creditors to buy his company back. The Court has implored him to do so on many occasions, as have the Debtor and the creditors. But to this point, he's refused to provide an acceptable proposal.

He should just acknowledge defeat and go on with the remaining business ventures he has, but as we know, Your Honor, that's not the Dondero way. And we are here yet again spending estate resources which should really be put in creditors' pockets.

The Court should deny the motion for several reasons. First, as I will go into in some detail, the Appellants lack standing to appeal the confirmation order as they cannot demonstrate that they're persons aggrieved.

However, even if the Court determines that the Appellants do have standing to appeal, they cannot satisfy the standard for a stay, which, as everyone admits, is an extraordinary remedy that requires the Appellants to establish each of four elements. They can't demonstrate likelihood of success on the merits of any of the legal issues. They haven't established harm, let alone irreparable harm, from a stay. And conversely, the Debtor has presented a compelling case of why it and its creditors, who have been waiting for years to be

paid, will be harmed if the confirmation order is stayed. And lastly, Your Honor, the public interest is not stayed -- is not served by allowing the Dondero entities' parochial agenda to get in the way of a prompt conclusion in this case.

Before addressing each of these issues in detail, Your Honor, I did want to address an overarching issue that cuts across several of the Appellants' arguments specifically as they relate to the injunction and exculpation provisions. Appellants argued at confirmation and they repeat the arguments here in the papers and comments today that by extending the exculpation and injunction provisions to matters relating to implementation and consummation of the plan, the Appellants are prevented from exercising their rights on the post-effective-date commercial relationships that they will have with the Reorganized Debtors and for pursuing claims against protected parties relating to the same.

The argument, however, Your Honor, reflects a serious misunderstanding of this language, implementation and consummation. At confirmation, I informed the Court and all objecting parties that the words implementation and consummation did not go as far as the Appellants feared. Specifically, I reminded everyone that implementation was a term of art that was specifically referenced in 1123(a)(5) of the Code and which provides that a plan can provide for its implementation. And I described the primary means of

implementation under the plan that the exculpation and the injunction related to, which matters are set forth in Article 5 of the plan and include a cancellation of equity interests, the creation of new general partners and limited partner of the Reorganized Debtor, a restatement of the limited partnership agreement, and the establishment of the Claimant Trust and the Litigation Trust.

The injunction prohibits efforts to interfere, among other things, with those steps, and the exculpation prohibits parties from asserting claims against the exculpated parties relating to those activities that relate to implementation.

Implementation in the context of the injunction provision does not mean performance under post-effective date contractual relationships that the Debtor will operate after the effective date. Accordingly, the argument that the injunction prevents them from exercising rights under the CLO agreements is just not true.

Similarly, Your Honor, the term consummation is not vague either and does not mean what the Appellants contend. Consummation is a commonly-used term and has been defined by the Fifth Circuit and the Code. Section 1101(2) defines substantial consummation as the transfer of assets to be transferred under the plan, the assumption by the Debtor of the management of all assets and property dealt with by the plan, and the commencement of distributions under the plan.

While consummation of the plan may be broader than substantial consummation, again, it does not mean preventing parties from exercising their rights under post-effective date commercial contracts.

So, again, an injunction that prohibits acts to interfere with consummation of the plan and an exculpation that protects exculpated parties from being sued for negligent -- for actions taken in connection with consummation of the plan do not have the far-reaching effects the Appellants claim in their motion.

Your Honor, I would now like to turn to standing of the Appellants to prosecute the appeals. As we all agree, under Fifth Circuit law, bankruptcy appellate standing requires appellants to demonstrate they are persons aggrieved. The Appellants have the burden to demonstrate that they are directly and adversely or pecuniarily affected by the order and that their alleged injuries are not conjectural or hypothetical.

With the clarification of the meaning of implementation and consummation that I just discussed, the Appellants cannot meet their burden.

One more overarching comment that applies to the standing of all Appellants. They each argue, and Mr. Rukavina stressed it today, that, because they are subject to a plan injunction, that, by definition, they have appellate standing under *Zale*.

But Appellants misread *Zale*. In that case, the debtor obtained an injunction, the stated purpose of which was to prevent appellants from bringing claims against an insurer relating to a global settlement in which the appellants were left out. The Fifth Circuit rightfully held that where an injunction specifically barred those parties from pursuing their rights, they had standing to appeal. That is a far cry from the standing to appeal an injunction in a plan which is not party-specific but applies to the world to prevent anyone from interfering with the plan.

If Appellants are right, then in every case where there's a confirmed plan that contains an injunction, and they all do, that any party in the world would have standing to appeal because their rights are theoretically affected by the injunction. That just isn't the law. Something more, some tangible injury is required to confer standing on the Appellants.

In addressing the standing, lack of standing, I want to put the Appellants into three buckets. The first bucket are Dugaboy, Get Good, and Dondero, who filed joinders to the motion. None of these parties have legitimate claims in the case, and the Court found at confirmation that their interests were extremely remote and their objections not filed in good faith.

None of these parties have colorable Class 8 claims or are

harmed by the purported violation of the absolute priority rule.

None of these parties were harmed by the failure of the Debtor to file the 2015.3 reports.

None of these parties have attempted to assert claims against any of the exculpated parties that their concern will be lost if the exculpation provision is affirmed on the appeal.

And none of these parties have any ongoing business relationships or dealings with the protected parties such that the gatekeeper provision will actually have more than a theoretical effect on them. Why is there the gatekeeper provision in the plan? It prevents them from harassing the protected parties.

Mr. Dondero's counsel makes a new argument today in his comments, that because he is a defendant and because he will be pursued, he has a vested interest in making sure the assets are sold for as much as they can be sold for. If that's the case, Your Honor, every defendant in every bankruptcy matter would have the same argument. He hasn't presented any law, and I suspect he can't, to demonstrate standing.

Based upon the foregoing, Your Honor, Dugaboy, the Get Good Trust, and Mr. Dondero are not persons aggrieved by the confirmation order, as any effect on them is only conjectural or hypothetical.

Next, Your Honor, the Advisors. The Advisors argue, without authority, that because they are purportedly harmed by the plan, they can raise any infirmity with the plan, even if it does not affect them. They don't cite any authority for that proposition, and it doesn't make sense. In fact, the 2009 Southern District case of *Cypress Wood* is to the contrary, where the court stated that courts across the nation have determined that parties in interest may only object to plan provisions that directly implicate its own rights and interests.

If the appellate court reverses on the absolute priority rule or the 1129(a)(2) issues, which it won't, the Advisors' rights will not be affected at all.

Recognizing that the standing to appeal on the basis of a perceived violation of the absolute priority rule was tenuous, the Advisors attempted to manufacture standing by acquiring the claims of four employees who were terminated by the Debtor and now presumably work for the Advisor as one of the -- at one of the Dondero companies.

In fact, the Debtor could, if it wanted to, object to the transfers of the claims on a lack of good faith, that there is case law that says you can't acquire a case -- claims for the purpose of standing if it demonstrates good faith.

Notably, they acquired those claims on Wednesday, after -- long after the filing of their stay motion and after the

Debtor filed its opposition.

Putting aside acquiring -- whether -- putting aside the issue of whether acquiring these claims at this juncture, when none of those creditors appealed the order, none of those creditors objected to confirmation of the plan, could magically confer standing on the Advisors, which we say they can't, the fact is these claims are not valid. The Court heard testimony at various hearings, including with respect to the KERP motion and plan confirmation, that the Debtor intended to terminate the vast majority of its employees at or soon after confirmation, and that the termination of the employees prior to the vesting of their bonuses would eliminate those claims for bonuses. No one ever challenged that position.

Accordingly, since the four employees whose claims the Advisors purportedly acquired were terminated, those claim don't exist, and, in any event, would not be more than $40,000.

But Your Honor, there is more to the story, and it is reflected in the objection to these and other claims which the Debtor filed yesterday. It's not before Your Honor, but I think it's perspective Your Honor needs to be aware of in considering whether the Advisors have standing relating to these claims.

As the Court will recall, the Debtor obtained approval of

a KERP program that would have entitled a number of employees who were not expected to be with the Debtor long-term after confirmation to a cash payment if they signed a separation agreement. The employees whose claims were purportedly purchased by the Advisors are four of those 54 employees. None of them signed the separation agreement. As set forth in our objection, we are informed and believe that Mr. Dondero told them he would not hire them if they signed the agreement. Rather, we're informed and believe that Mr. Dondero required these employees to transfer the claims to one of his entities as a condition of their continued employment.

But there is more. As reflected in our claims objection, we have recently learned that the Debtor -- that certain of the Debtor's employees, acting on their own and without any approval from Mr. Seery or the independent board, changed the vesting requirements for the award letters that were given to employees in connection with the 2019 contingent award granted in August 2020 for services rendered in 2019.

What did that change do? It purportedly provided that the Debtor would remain on the hook for the 2019 contingent bonus award even after the Debtor terminated their employment, provided the employees continued to work for an affiliate. And what were the specific affiliates that were identified in the amendment, Your Honor? Highland Capital Management Fund Advisors, NexPoint Advisors, and NexPoint Securities.

These changes are not enforceable against the Debtor for a variety of reasons. The Debtor is continuing its investigation, and wouldn't be surprised to learn that these changes were orchestrated by Mr. Dondero in an attempt to stick the Debtor with a continuing liability where none were expected to exist.

Again, Your Honor, I don't raise these issues to litigate them now. I realize I was testifying from the podium. They will be litigated in connection with our claim objection. But I raise them in the context of the standing that the Appellants -- the Advisors have attempted to manufacture.

The Advisors also argue that they have standing to appeal the injunction because it prohibits the Advisors from advising or causing their clients to exercise their contractual rights against the Reorganized Debtor pursuant to the CLO management agreements.

Nothing, Your Honor, prevents the Advisors from advising their clients to do anything. It's not the Advisors that have commercial relationships with the Debtor under the CLO. It's the Funds. And those relationships with the Funds are they are investors in a fund that the Debtor manages. The Advisors are simply free to provide the Funds with any advice they want to.

Moreover, with the clarification I provided earlier, there is just no merit to the argument that the injunction in the

plan will affect the Advisors' advice to the Funds regarding the CLO agreements.

Advisors also say that the gatekeeper infringes on their ability to assert claims post-confirmation. As it relates to the CLO agreements, it's not the Advisors who have those claims, theoretically, but it's the Funds. And if the Advisors, as I think was indicated in a footnote in Mr. Rukavina's pleadings, are concerned that the gatekeeper provision impacts their ability to assert claims under the remaining commercial relationships they have with the Debtor with respect to shared services, that's incorrect as well. The February 24th order, Your Honor, and the subsequent agreement between the Advisors and the Debtor both provide that the bankruptcy court has exclusive jurisdiction to resolve any disputes between the parties.

Accordingly, it's not the gatekeeper provision that will require the Advisors to litigate in bankruptcy court, but rather that order and the agreement.

Lastly, Your Honor, are the Funds. They argue that the injunction provision prevents them from seeking to terminate the CLO agreements and exercising their rights thereunder, and for the reasons I discussed, they're wrong. It is the January 9th order that prevents the termination of the Debtor as the manager of the CLO agreements, and that issue is being litigated in connection with a preliminary injunction hearing

that Your Honor will hear next week. If the Debtor wins, then the Funds cannot seek to terminate the CLO management agreements. If the Debtor loses, nothing in the plan will prevent the Funds from exercising whatever rights they have to terminate the CLO agreements, subject to all applicable defenses.

What is impacted by the plan is the assertion of affirmative claims they may have, which would have to be presented to the Court under the gatekeeper provision.

And while it is not before the Court today, Your Honor, I do want to respond to the comments in the Funds' reply and also the comments made by Mr. Hogewood earlier that they are not related entities under the January 9th order. As hard as the Funds try, they cannot disentangle themselves from Mr. Dondero. Mr. Hogewood testified at the podium. We believe the testimony he gave is not consistent with the prior testimony that has been given by Mr. Dondero, Mr. Post, and Mr. Norris. The Funds' continuing assertions that they are managed by an independent board of directors has not convinced the Court that they're truly independent.

Your Honor has heard the testimony. Your Honor has assessed credibility. And most importantly, Your Honor has seen what's happened in the last few months of litigation with them. None of these so-called directors have ever testified to the Court, and up until these motions, the Funds and

Advisors have been in lockstep, asserting the same issues by the same counsel with the same witnesses for Advisors. You heard at the last hearing that the Funds wouldn't agree -- wouldn't force Mr. Dondero to do the shared service agreement because they didn't -- because Mr. Dondero needed to be in the -- in the facility.

There is no evidence that there is independence, and Mr. Hogewood's comments are just not well taken.

And the Court found in the confirmation order that the Funds are marching to the order thereon controlled by him. Those findings will be entitled to great deference, and it will be hard for them to be overturned on appeal. And the findings are sufficient in and of themselves to cause the Funds to come within the definition of related parties. But, again, that's not before Your Honor today.

In any event, for purposes of this motion, it's clear that neither the exculpation provision or the injunction provisions will affect the Funds' rights after the effective date, and they cannot establish standing to appeal with respect to those provisions.

The Debtors do acknowledge that, solely with respect to the gatekeeper provision, the Funds have standing to appeal that issue because of the requirement that they first come to the bankruptcy court before asserting claims under the CLO management agreements.

I would now like to turn to the merits of the motions and explain why the extraordinary remedy of a stay is not appropriate. The Appellants cannot demonstrate that they are likely to prevail on the merits of any of the issues they contend the Court erroneously decided, nor do they raise issues that are in serious dispute.

Let's first take the absolute priority rule. The Advisors repeat the arguments they made at confirmation that the plan violates the absolute priority rule because Class 10 and Class 11 interest holders can receive property after all Class 8 -- or that they can receive a contingent interest that is property but that will only receive a distribution until after all Class 8 and Class 9 creditors are paid in full with interest.

As I mentioned previously, Your Honor, the Advisors have no business making this argument because it doesn't affect them, and we challenge their standing on the claims they purchased. That claims acquisition was a last-minute gimmick, and a poor one, for the reasons that I just went over a few minutes ago.

On a more substantive level, though, Your Honor, the argument fails now for the same reasons it did at confirmation, and it hardly rises to an issue that they're likely to prevail on appeal.

The Advisors don't cite any new case law, make any new

arguments. They just claim that the Court got it wrong.

Importantly, the Advisors have not cited any case that concerned a fact pattern even remotely like the fact pattern in this case, of course, other than the *Introgen* case that just rejects their argument on strikingly similar facts.

Advisors continue to misconstrue the meaning and the purpose of the absolute priority rule. The rule is meant to prevent equity holders from receiving properties that senior creditors are entitled to until the -- unless the senior creditors consent or are paid in full.

The corollary to the rule which the Advisors brush aside is that no creditor can receive more than a full recovery based upon value determined at confirmation. The plan is faithful to both those concepts.

First, the Debtor does not dispute that the contingent interest is a property right, but that's not the end of the story. The language that the Advisors conveniently omitted from their brief from the Supreme Court *Ahlers* decision says that a retained equity interest which would violate the property -- the absolute priority rule is a property interest to which the creditors are entitled before shareholders can retain it for any purpose. Under the plan, the property interest that the Class 10 and Class 11 creditors are receiving is a springing contingent interest payable only after Class 8 and Class 9 holders are paid in full.

That interest, the right to receive payment after creditors are paid in full, is not an interest to which the creditors are entitled. It is, by definition, an interest that equity is entitled to after creditors are not entitled to receive anything more. Class 10 and Class 11 creditors are not entitled to receive anything until that time. They're not the beneficiaries of the Trust. They have no right to control the Claimant Trust. They can't transfer their interests.

As the *Introgen* court reasoned, the right is imaginary and nonexistent until creditors are paid in full, plus interest, as provided under the plan.

So, accordingly, the contingent interests held by the holders of the Class 10 and Class 11 claims are not property that creditors should receive under a straightforward application of the absolute priority rule.

Moreover, the plan provided for this contingent recovery to Class 10 and 11 creditors to avoid a valuation fight over the value of the Debtor's litigation claims at confirmation. As Your Honor is aware, the Debtor's assets consist of cash, publicly-traded stocks, interests in private equity, and causes of action. The Debtor had a good idea of the value of the non-litigation claims as of confirmation, and those values form the basis of the plan projections, which reflected that Class 8 general unsecured creditors were to receive approximately 70 cents on the dollar.

However, the Debtor did not provide at confirmation a value of the litigation assets as they existed at confirmation. Pursuit of those litigation assets which existed at the time of confirmation at some value could result in Class 8 and Class 9 creditors receiving more than a hundred percent on their claims. So what? To avoid a confirmation fight -- a valuation fight at confirmation where the Dondero parties would have undoubtedly argued that the value at confirmation of the Debtor's assets could result in payment in full or more to Class 8 and Class 9 claims, thus violating the absolute priority rule, the Debtor provided that any excess proceeds would be paid to the Class 10 and 11 interest holders.

Advisors brush this argument aside, claiming that debt-for-equity plans that are routinely approved provide that creditors may receive more than a hundred percent on their claims, and they say that the Supreme Court precedent gives this future upside to the creditors, not the equity holders. But the Advisors, Your Honor, miss the point. The debt-for-equity plans that Advisors point to give the creditors upside based upon future appreciation of value. The upside that the Debtor gives the Class 10 and the Class 11 interest holders is the contingent upside based upon value that existed as of confirmation.

Case law is clear that creditors cannot receive more than

a hundred percent of their claim based upon value at confirmation, and the plan is faithful to that proposition.

Turning to 1129(a)(2), Your Honor, all Appellants except for the Funds argue that the Court erred in confirming the plan because the Debtor did not file reports required by 2015.3 and thus could not satisfy 1129(a)(2) of the Code because the Debtor as the proponent of the plan has not complied with the applicable provisions of this title. Essentially, they argue that 1129(a)(2) is a strict liability statute and if the Debtor has violated one provision of the Code or Rules, no matter what, no matter what the context, and no matter who it affects, the Court cannot confirm the plan. Not raising this issue in their confirmation objections and waiting until the confirmation hearing was the quintessential "gotcha" moment. Had it really been a good faith objection, Your Honor, they would have raised it long ago. In any event, the argument fails for four reasons.

First, as reflected in the case law we cite in our opposition, courts in this jurisdiction have held that Section 1129(a)(2) is geared at making sure that the debtor as plan proponent complies with its disclosure obligations under Section 1125 and not requiring adherence to every code section and every rule.

Second, even if Section 1129(a)(2) is applicable, as the Southern District of Texas held in the *Cyprus Wood* case, this

section is not a silver bullet that allows creditors to defeat confirmation based upon any infraction committed by the debtor. *Cypress Wood* is not an outlier, as courts around the country have reached the same conclusion.

Third, failure to file the reports in this case, Your Honor, was harmless error. As the Court knows, the Debtor operates under court-approved protocols and has been transparent with the Committee from the commencement of the case. The Committee has substantial rights to oversee the Debtor's operations, and there was just no evidence presented at confirmation that the Committee hasn't received all relevant information regarding the Debtor's operations, asset sales, and transfers, and the value of its holdings.

Fourth, the cases cited by the Appellants are distinguishable. None of them involved failure of a confirmation because of a violation of a bankruptcy rule. In each of the cases, the debtor committed multiple material violations that went to the debtor's credibility, its transparency with creditors, and the indifference of their obligations as a debtor-in-possession. None of these cases were remotely similar to the case that we have here and support the denial of confirmation.

Next, Your Honor, I want to turn to the exculpation provision. The Appellants all argue that the Court exceeded its authority in approving the exculpation provision, which

they describe as unprecedented, far-reaching, and it tramples their rights.

As I discussed previously, Your Honor, the concern that the exculpation provision applies post-effective date to business decisions is just plainly wrong. It only applies post-effective date to narrow substantive issues relating to implementation and consummation of the plan and do not impact the ability to assert post-effective-date claims or enforce post-effective-date rights under assumed contracts.

I know, Your Honor, that both the exculpation provisions in *Pacific Lumber* and *Thru* applied to matters relating to implementation and consummation of the plan. We acknowledge, of course, that those exculpations were struck down for reasons distinguishable for this case. However, the Court found those provisions unacceptable because they applied to non-debtors, not because they applied to events occurring after the effective date relating to implementation or consummation of the plan.

Putting that issue aside, Your Honor, the principal argument Appellants rely -- raise is that the Court's ruling is directly contrary to the Fifth Circuit's opinion in *Pacific Lumber*. However, the Court was very careful in its ruling not to run afoul of *Pacific Lumber*, and, in fact, its ruling is consistent with *Pacific Lumber* and will not require any change in Fifth Circuit law.

First, the Court relying on *Pacific Lumber's* citation to the Fifth Circuit's prior decision in *Republic v. Shoaf*, the Court held that the Court has already exculpated the independent board, the CEO, the CRO, and their respective agents, pursuant to the January 9th and July 16th orders. As those orders were final, not appealed by the Court [sic], they are the law of the case and conclusively establish the exculpation of those parties independent of the exculpation provision of the plan.

The Advisors argue in their reply that these orders do not exculpate the parties for negligence and are only gatekeeper provisions. This argument, which they make in their reply for the first time, lacks any evidentiary support. Rather, the uncontroverted evidence at confirmation was to the contrary. Mr. Seery and Mr. Dubel, two of the three independent board members, testified at confirmation that they both understood that the January 9th order, and as it related to Mr. Seery the July 16th order, provided exculpation for negligence in the performance of their duties. They both testified that they would not have undertaken their role as independent director or CEO if they were not assured of exculpation.

Accordingly, the Advisors' argument that these orders did not provide for exculpation because they didn't use the word exculpation is just flat-out wrong.

The Advisors next argue that these orders were case

administration orders and were not intended to apply post-confirmation. So the Advisors would have the Court believe that the independent directors, who were concerned about exposure to frivolous litigation in this highly-contentious case, expected they would be protected from negligence and have the benefit of a gatekeeper provision during the case but they would be open game to be sued for anything anywhere after the case was concluded.

That argument is preposterous and certainly doesn't find any evidentiary support in the record.

With all due respect to Mr. Rukavina, who is a late entrant into this case, he is in no position to tell the Court what was or was not intended in connection with those orders.

Similarly, the argument that the orders must expire on confirmation because the Court lacks jurisdiction thereafter is illusory. The Court certainly has and retains jurisdiction post-confirmation to enforce orders that it's entered during the case.

Now, the Debtors do agree with the Appellants that the January 9th and the July 16th orders do not exculpate all of the exculpated parties under the plan. This is where the exculpation provision comes in. The Court found that the exculpation provision of the plan was consistent with *Pacific Lumber* for two reasons.

Initially, since the Fifth Circuit did approve exculpation

for Committee members, it is clear in the Fifth Circuit that there is no categorical prohibition on non-debtor exculpations. The Court rightfully found that the Fifth Circuit's rationale for exculpating Committees and their members was equally applicable to exculpating Strand, independent directors, the CEO, the CRO, and their respective agents. The Court found that these parties were analogous to Committee members rather than to incumbent directors and officers. They came into this highly-litigious case post-petition and would not have been willing to serve without exculpation for negligence.

The Court has also found that without the protection for exculpation for negligence suits from parties unhappy with their performance in the case and the outcome of the case, independent directors in general would be unwilling to serve in highly-contentious cases in the Fifth Circuit, which would be a setback for modern-day complex restructurings.

The Court also read *Pacific Lumber's* limited rejection of exculpation provisions as resting on a key factual finding that distinguished that case from this case. The Court rightfully determined that exculpation is appropriate if there is a showing that the costs that released parties might incur defending against such suits, such as negligence, are likely to swamp either the exculpated parties or the reorganization. Given the substantial costs that the Debtor has had to face

during this case litigating with the Dondero entities, the Court had no trouble finding that in this case the potential for litigation and the exculpated parties could swamp the reorganization, and for this reason determined that *Pacific Lumber* supported the Court's ruling.

Accordingly, Your Honor, this Court's ruling on exculpation provisions is entirely consistent with *Pacific Lumber* and the Appellants are not likely to succeed on appeal.

Your Honor, the Appellants are also not likely to succeed on appeal with respect to the appeal of the injunction provision. The Appellants often conflate the injunction provision with the gatekeeper provision. I will first address the injunction provision, which is really the first three paragraphs of Article 9(f) of the plan. The Funds argue that the injunction provision prohibits actions against non-debtors and is an impermissible third-party release. It is not. The injunction provision applies to the Debtor and its successors, the Reorganized Debtor, the Claimant Trust, and the Litigation Sub-Trust.

The Funds argue that it enjoins claims against protected parties. That's incorrect. Protected parties does not appear in the first three paragraphs of Article 9(f).

The Advisors' main argument is that the injunction provision is too broad because it prevents actions to interfere with the implementation and consummation of the

plan, and as I said earlier, my comments should alleviate the Advisors' concerns. We're not seeking to enjoin enforcement of contractual rights by use of the term implementation and consummation.

Appellants' argument that this injunction -- the injunction provision here in this case is broader than the injunction rejected by the district court in *Thru* is misleading. The only issue in *Thru* was whether it impermissibly applied to non-debtor third parties. That is not the issue here, as the injunction provision only applies to the Debtor and successors. *Thru* did not address whether or not -- an injunction extending to matters relating to implementation and consummation of the plan, as is the case we have here.

Lastly, Your Honor, the Appellants cannot demonstrate a likelihood of success with respect to the gatekeeper provision. The Court's determination to approve the gatekeeper provision was a mixed question of fact and law. Based upon the uncontroverted evidence at confirmation, the Court found that the Dondero entities' history of litigation, both prior to this case and during the case, justified the Court's approval of the gatekeeper provision.

The Court also heard uncontroverted testimony from Mr. Seery that the continued threat of harassing litigation from the Dondero entities would threaten success under the plan.

So, based upon the foregoing, the Court concluded that there was an evidentiary showing as to the need for a gatekeeper provision, a finding that is unlikely to get overturned on appeal.

The Appellants raise two arguments on why the gatekeeper provision is unlawful and is likely to get overturned on appeal. First they argue that the Court did not have authority to approve the gatekeeper provision. Second, they argue that the Court will not have jurisdiction to perform the gatekeeper function. Neither argument has any merit.

The Court relied on several provisions of the Bankruptcy Code providing for a gatekeeper provision in aid of implementation of the plan, including Section 105 and 1123(b)(6) of the Code. The Court also relied on the Fifth Circuit cases of *Carroll* from 2017 and *Baum* from 2008 for the authority of a court to deal with serial litigants by imposing a gatekeeper provision. And as we briefed, gatekeepers are not some new intervention, but have been approved by courts in this district, including Judge Lynn in the *Pilgrim's Pride* case and Judge Houser in *CHC Group*.

Similarly, Your Honor, the argument that the Court lacks jurisdiction to act as the gatekeeper fails. Excuse me, Your Honor. The Debtor agrees that the Court's jurisdiction is more limited post-confirmation. And that may ultimately mean that a court may not have authority to adjudicate each and

every claim relating to the post-confirmation period that comes before it, but it doesn't mean that the Court cannot act as a gatekeeper to determine if colorable claims exist. Appellants continue to ignore the Fifth Circuit's opinion in *Villegas*, where the Fifth Circuit said that a bankruptcy court may act as a gatekeeper under *Barton* to determine if a claim exists, even if the court will not have authority under *Stern* to adjudicate that claim. That's exactly what's going on here.

Accordingly, Appellants are not likely to prevail on appeal on this issue of the propriety of the gatekeeper function.

Next, with respect to harm, Your Honor, the Appellants must demonstrate that they will suffer irreparable harm if the stay is not granted. This they cannot do.

First, Appellants argue that, because their appeals may be rendered moot without a stay, that constitutes irreparable harm. This argument proves too much, Your Honor. If Appellants are correct, then any party objecting to confirmation of a plan that might be rendered moot without a stay would be entitled to a stay, and that's not the law.

Your Honor presided over a case last year called *SR Construction v. Palm Springs*, where Your Honor refused to grant a stay pending appeal of an order approving a credit bid. You were affirmed by the district court, which rejected

mootness as constituting irreparable harm, reasoning that: The Court agrees with the majority of courts in the circuit, finding that the risk of mooting a bankruptcy appeal standing alone does not constitute irreparable harm warranting a stay.

Appellants' remaining arguments suffer from the same misinterpretation of the language implementation of plan and consummation of the plan that I have previously discussed in the context of standing. Appellants are concerned that the injunction will prevent them from seeking to terminate the CLO agreements or exercising rights thereunder and the concern that the exculpation will prohibit them from asserting post-effective-date claims.

Preliminarily, these arguments only apply to the Funds, if at all. Neither Dondero, Get Good, Dugaboy have any -- or the Advisors have any post-confirmation contractual relationship with the Debtor other than the ones with the Advisors which I mentioned previously.

And as I said, while the Debtor and the Advisors were parties to shared service agreements, those agreements were terminated and the Court reserved exclusive jurisdiction over any remaining disputes, as well as in connection with the shared resource agreement that the parties have entered.

Nothing in the plan impacts the Advisors' ability to pursue whatever rights they have under the February 24th order relating to shared services or the shared resources agreement.

And the Funds are wrong that either the injunction provision or the exculpation provision affects their right under the CLO management agreements. The Funds', as I said, right to terminate the CLO management agreements will be determined by the existing adversary proceeding which is scheduled for hearing next week.

Thus, the plan does not insulate the Debtor and other parties from liability, which, under the applicable CLO agreements, in any event, limits such claims to negligence, willful misconduct, or fraud. Nor does the plan prevent the Funds from exercising their contractual remedies. It just prevents enjoined parties from filing an action before getting court approval and allowing that action to go through the gate.

Your Honor, turning to the harm that the Debtor and the creditors will suffer, they will suffer substantial harm, which basically the Appellants gloss over. They continue to argue that there's no harm, there's no exit financing, the Debtor can just do what it's doing, and that liquidating its assets, really, no harm, no foul. However, they're wrong, and the Debtor will be harmed in three significant ways.

First, as Mr. Seery provided uncontroverted testimony at the confirmation hearing, that the value of the Debtor's assets would be enhanced by eliminating the burdensome restrictions the Debtor operates under in Chapter 11.

Second, remaining in Chapter 11 will substantially increase professional fees compared to what they would be at confirmation. The Committee will still exist, with their complement of professionals, and the Dondero entities will likely continue to object to virtually every motion, requiring needless evidentiary hearings and likely more appeals.

Third, the creditors' rights to receive recoveries will be delayed. The argument that the delay can be compensated by a bond for interest at the federal judgment rate, which is less than 10 basis points, is farcical. These creditors have waited years, and in some cases more than a decade, to receive payment. Paltry interest is hardly sufficient compensation.

Accordingly, the Appellants cannot come close to demonstrating that the Debtor and its creditors will not be harmed.

And lastly, Your Honor, with respect to public interest, the Appellants argue that public interest is served because it's necessary to respect the contractual rights of various parties, protect the interests of thousands of investors, prevent the Debtor from violating the securities laws, and respecting and upholding precedent. Your Honor, while these words sound good, they really don't apply in this case. The Dondero entities are the only parties who have tried to get in the way of confirmation of the plan. It is the Dondero entities who are pursuing their agenda and their intent and

attempt to invoke the interests of innocent public retail investors, none of whom have ever appeared in this case, have any claims against the Debtor, or have any contractual relationship with the Debtor, should ring hollow to the Court.

As the *Yucaipa* court that we cite in our materials noted, in talking about the public interest, courts recognize the strong need for -- public need for finality of decisions, especially in bankruptcy proceedings. The public interest requires bankruptcy courts to consider the good of the case as a whole and not individual investment concerns. The public interest cannot tolerate any scenario under which private agendas can thwart the maximization of value.

Your Honor, the Court should not let the Dondero entities' agenda get in the way of the case any more than it has already done.

And lastly, Your Honor, with respect to the bond, if the Court is inclined to grant the motions, Appellants are required to post a bond to protect the Debtor from any harm resulting from the imposition of the stay and the delayed effective date. Appellants now agree that their initial proposal of a million dollars was insufficient to cover the additional costs of the case remaining in Chapter 11. Their new proposal in their reply, that the amount of the bond should be $3 million -- and I think Mr. Rukavina even upped that to $4 million -- is based on the faulty premise that

keeping the case in Chapter 11 will only result in an increase of professional fees per month of $125,000 compared to what it would be outside. Appellants don't seem to have been paying attention to the significant expenses the estate has been forced to incur because of Appellants' actions in the Chapter 11 case.

If the Debtor remains in Chapter 11, we'll have to seek approval of a variety of actions required by the Bankruptcy Code, including the monetization of assets, resolution of claims, retention and compensation of professionals. And if past is prologue, Your Honor, the Debtor can expect the Appellants in one form or another to object to many of these actions, objections which will involve discovery, an evidentiary hearing, and likely appeal, expenses that will not be necessary if the plan goes effective.

Accordingly, the argument the keeping the Chapter 11 cases going at an additional monthly cost of $125,000 while the appellate process plays out is fantasy. While no one has a crystal ball, Your Honor, to determine what the actual amount of the costs will be, the Debtor's proposed analysis, comparing average fees during the course of this case to those projected post-effective date, is as good a proxy as any. Therefore, Your Honor, the Debtor asks that if the Court is inclined to grant the stay that the Court condition the stay on the posting of a $17.4 million bond.

Thank you, Your Honor.

THE COURT: Okay. Thank you. All right. I'll hear rebuttal from the Movants.

MR. CLEMENTE: Your Honor, if I may? Your Honor, if I may?

THE COURT: Oh, I'm sorry.

MR. CLEMENTE: Matt Clemente, Committee --

THE COURT: I'm sorry.

MR. CLEMENTE: No, no. No need to apologize. Absolutely not, Your Honor.

THE COURT: Okay.

MR. CLEMENTE: I only have a minute or two, --

THE COURT: Okay.

MR. CLEMENTE: -- if Your Honor will indulge me, quickly.

THE COURT: Go ahead.

OPENING STATEMENT ON BEHALF OF THE CREDITORS' COMMITTEE

MR. CLEMENTE: Thank you, Your Honor. Again, Matt Clemente on behalf of the Committee, for the record.

Your Honor, you carefully considered a full record that was before you at the confirmation hearing, and you rendered a very thoughtful and detailed ruling and decision based on the voluminous record that was before you in this case, not just at the confirmation hearing but throughout the duration of this case since, I believe, late 2019, when it first came in

front of you.

Nothing in the Movants' arguments, Your Honor, raises any new issues that were not carefully considered by the Court in a thoughtful manner.

So, in short, Your Honor, Mr. Pomerantz effectively addressed and laid out the issues with respect to the Movants' request to stay, but they have failed to meet their incredibly high burden of the extraordinary remedy of giving a stay of a confirmation order.

Your Honor, additionally, from the Creditors' perspective, and Mr. Pomerantz touched very briefly on this, as Your Honor knows, many of the creditors here have been waiting, sometimes as long as a decade, and any delay occasioned by the stay will cause further harm to those creditors, Your Honor.

As Your Honor knows, the plan that Your Honor confirmed was heavily negotiated with the Committee, and the Committee believes it will serve, among other things, to reduce costs, allow for the efficient and timely distribution to creditors, provide a mechanism to vindicate claims against Dondero and his tentacles, and provide a detailed and carefully-constructed process and procedure to allow for the maximization of the assets through the monetization and the pursuit of claims.

Your Honor, the Committee believes that going effective is the way -- is in the best interest of the creditor

constituency, after carefully and thoughtfully considering the alternatives, including languishing in bankruptcy as suggested by the Movants.

Your Honor, I refer you to the rest of our arguments in our objection and joinder that we filed, but we believe that the Movants' motion for a stay should be overruled and that there should be no stay granted.

Your Honor, that's all I had for you. If you have any questions for me, I'd be happy to address them.

THE COURT: All right. No questions. All right.

MR. CLEMENTE: Thank you, Your Honor.

THE COURT: I'll hear anything further now from the Appellants collectively. I guess I'll start with Mr. Hogewood, since you went first before. Anything at this point to add?

MR. HOGEWOOD: Yes, Your Honor. Just very briefly. I believe that I heard Mr. Pomerantz acknowledge that the Funds had standing on a narrow point, and standing is standing, so I'll take that.

I don't think I testified from the podium. Rather, I summarized testimony that Mr. Post and others provided during the course of the confirmation hearing.

The gatekeeper provision goes well beyond what the Fifth Circuit has previously permitted, and that is of grave concern to our client, as well as the finding related to control. And

for those reasons, we are seeking a stay.

And then there was a reference to these --

THE COURT: Can I ask you a question? You say you perceive that the gatekeeping provision goes well beyond anything that the circuit has allowed. But what about my colleagues in the Northern District of Texas? Do you think this is broader than what retired Judge Lynn permitted in *Pilgrim's Pride* or our former Chief Judge Houser allowed in *CHC*?

MR. HOGEWOOD: Well, Your Honor, in this context, my clients' contracts and the CLO contracts have been assumed, and in order to exercise rights under those contracts we're obligated to seek permission. And we should be able to proceed under the terms of those contracts, and I don't think that we can do that under the current gatekeeper provision.

To the extent that that is similar to gatekeeper provisions decided by other bankruptcy judges, I -- it may be the same, but it is -- I don't -- but it is not yet the law of the Fifth Circuit, and I think that's a reason to grant a stay pending appeal, to determine whether the provisions in this plan are permissible within the Fifth Circuit.

THE COURT: Okay. Thank you.

MR. HOGEWOOD: The last thing I wanted to just briefly touch upon is I think there was a mention that we contest that we're related parties under what the January 2020

order. We weren't parties to that order. We did not consent to it on behalf of the Funds.

Even if we are related parties, that prohibition relates to Mr. Dondero. Mr. Dondero is prohibited from directing related parties to take specific action. And I understand that the Debtor disagrees that the Funds function independently. The Court has made findings on that subject, that they do not function independently. But that is one of the main reasons for which we are seeking both a stay and are pursuing this appeal, to ask the appellate court to correct those conclusions.

So, with that, Your Honor, we ask you to stay the confirmation order pending appeal, and I have nothing further. Thank you.

THE COURT: All right. Thank you. Mr. Rukavina?

MR. RUKAVINA: Your Honor, thank you. And I'll be brief.

On this employee claim transfer issue, Your Honor, when those issues come up before you, you'll see that the employees transferred their claims in late February or early March. They did so because my clients basically gave them the years of credit for seniority that they had at the Debtor with respect to our bonus plans. In other words, we're trying to make good what they lost with the Debtor. And in exchange, they assigned their claims to us.

The reason why I didn't file the 3001 notices until yesterday is because it wasn't until Friday night that the Debtor challenged my standing, even though the Court found I had standing at the confirmation. So I got the employees as fast as I could.

In other words, nothing to do with that had anything to do with engineering standing, and I question why Mr. Pomerantz would have a good faith basis for saying that.

As far as what I heard for the first time today, that some employees tampered with the books and records of the Debtor, I have no idea what the Debtor is talking about. I'm sure it'll come out in due course. But I hope that there's a good faith evidentiary basis for having made those statements.

Your Honor, if we look at -- and Your Honor doesn't have to pull it up; I'm not suggesting that you do -- but it's in the record. On Page 198 of the first day's confirmation trial, I asked Mr. Seery about the injunctions and I asked, and I'm quoting now, "Do I understand correctly that this provision we've just read means that, upon the assumption of these CLO management agreements, if the counterparties to those agreements want to take any action against the Reorganized Debtor, they first have to go through this channeling injunction?" Mr. Seery answers, "I believe that's what it says, yes."

And now, to paraphrase, I continue asking him, and I say,

"Because the wind-down of the business of the Reorganized Debtor will include the management of these assets?" And he says yes.

And also, very briefly, on Page 206 of that same transcript, and I'm paraphrasing now, I asked Mr. Seery to tell me what the interference with the implementation or consummation of the plan means, and he answers, now I'm quoting, "That it means in some way taking any actions to upset, disrupt, stop, or otherwise prohibit or hurt the estate from implementing or consummating the plan." Then I ask, "Is this intended to be very broad?" And he says yes. Then I ask him to be more specific, Your Honor. Mr. Morris objects based on form, and the Court sustains that objection before I may respond to it.

So I hope the Court will forgive us for being very concerned about these injunctions, especially when, in the last two months, we had a mandatory injunction hearing before Your Honor where the Debtor alleged massive, massive irreparable injury, just to concede that its request was moot, and based on tortious interference we had a hearing in January where the Debtor admitted that it closed its sales, there was no interference, and all that happened was that our employees, our employees, refused to do something that Mr. Seery requested.

So when I hear Mr. Pomerantz say, whoa, whoa, whoa, these

are actually very narrow provisions, Mr. Rukavina is not smart enough to understand what I'm saying, then I would suggest, Your Honor, that the Debtor do a plan modification and moot a lot of our objections. If Mr. Pomerantz's view of these injunctions as being narrow is true, notwithstanding what Mr. Seery testified to, then that's the proper remedy. Let's amend the plan by agreement, and if they want to moot ninety percent of our arguments, we'd be happy to do that.

We don't want to appeal. We don't want a stay pending appeal. We just don't want contempt in front of Your Honor four months from now because something that we do in good faith is brought before Your Honor as something nefarious because apparently we're all Dondero tentacles.

Your Honor, as far as the Debtor collaterally attacking its own confirmation order, now saying that, well, creditors might receive a hundred percent, on Page 41 the Court finds it's 71 percent, so I think that argument carries no weight.

And finally, Your Honor, I just want to leave you with one parting thought, because I think -- I think it is important. The Debtor has argued that we are all disrupters, that we are trying to help Mr. Dondero burn down the house. The Court, to one degree or another, seems to have accepted that view. What we have tried to tell Your Honor, at least the Advisors and the Funds, what we have tried to tell Your Honor is that there is a business dispute underlying all of this, a good faith

business dispute. The Debtor is liquidating assets worth more than a billion dollars in a manner that we'd rather the Debtor not do.

Now, the Court can decide whether the Debtor has the power to do so. It's a legitimate business dispute. I can see both sides of it. But it is that businesses dispute that is driving this appeal and this stay pending appeal.

I heard Mr. Pomerantz say that if the Chapter 11 case remains open, the Debtor will have to go to the Court to approve sales, et cetera. That's what we've been asking for for months now. We would love it if the Debtor did that, to -- in open, with transparency, with bid procedures, to sell these remaining assets. Because, well, not my clients directly, but Mr. Hogewood's clients, and my clients indirectly, own those interests in those assets. But the Debtor has never taken that position before. The Debtor has said that it gets to liquidate these assets without authority of the Court.

So if the price of a stay pending appeal is to have the Debtor have to come to the Court with approved sale processes and bid procedures, how can anyone complain about that? We will fund that stay pending appeal bond, as long as it's reasonable, any day of the week, because that's all that we've been asking for, that the Debtor not liquidate quickly and for less than appropriate value the assets that it has remaining

because it fundamentally conflicts with the rights of the underlying interest holders.

Thank you, Your Honor.

THE COURT: All right. Anyone else? Mr. Taylor?

MR. TAYLOR: Yes, Your Honor.

THE COURT: Uh-huh.

MR. TAYLOR: Yes, Your Honor. Clay Taylor on behalf of Mr. Dondero.

THE COURT: Okay.

MR. TAYLOR: To echo a little bit of what Mr. Rukavina said, and I head Mr. Pomerantz say they will have significant expenses getting court approval inside a Chapter 11, including getting permission for asset sales. One, I'm very encouraged to hear that they have now admitted the errors of their way and that they should have gotten permission for asset sales. It didn't happen before. But if we could just get adequate notice, either inside or outside of Chapter 11, that's what Mr. Dondero wants.

He wants the opportunity to bid in an open market for these assets or bring other bidders to the table. He wants to increase value. He fundamentally disagrees with Mr. Seery. And, you know, it's okay to have a disagreement on a business issue as to whether this is the best way to liquidate these assets. He wants to see if value could ever get in a waterfall down to Mr. Dondero. He wants to limit his

liability or any of those entities in which he owns or are a part of liability to the investors that they're holding their money. He wants to limit his potential liability for which these alleged alter ego claims are being brought and they say he is going to be liable for the difference in value. He also wants to make sure he preserves his reputation in the marketplace as having been a savvy investor.

So these are exactly the fundamental things that we're asking for that weren't done before. That's why we're asking for a stay pending appeal, so they actually either, one, have to provide the proper notice as required under the Code and Procedures, or alternatively, if they don't, that they can be held liable for their actions, without the exculpation and release and that we go through a gatekeeper process.

That is fundamentally the difference that we have and why we're asking for a stay pending appeal and why I try to state that succinctly and let Your Honor consider that. Thank you, Your Honor.

THE COURT: All right. Thank you. Mr. Draper, anything further from you?

MR. DRAPER: I have a small comment. Your Honor, look, you and I completely disagree on *Pacific Lumber* and its impact. You spent a great deal of time looking at it and, you know, you have your opinion and the Fifth Circuit will have its opinion, since we're going through a direct appeal.

The one point I would like to make is that I've never seen a *de minimis* limitation on somebody being a party in interest. I think that does not exist in the Bankruptcy Code. I disagree that I have a *de minimis* interest, but I don't think that takes somebody away from being a party in interest or being affected by an order, and there's no case that stands for that proposition.

So, with that, I have nothing further to say, Your Honor.

THE COURT: All right. Thank you.

MR. POMERANTZ: Your Honor, may I briefly respond? This is Jeff Pomerantz.

THE COURT: Well, no, we -- I usually let the movants have the last word, so I think we're done.

MR. POMERANTZ: Okay.

THE COURT: All right.

MR. POMERANTZ: Thank you, Your Honor.

THE COURT: My clock shows 11:06. I am going to take a break to collect my thoughts and look at these exhibits. And I'll tell you what. We'll come back in 30 minutes, at 11:36, and I'll give you my ruling.

We also have a few housekeeping matters, a couple of housekeeping matters that I want to address when we come back. You know, we have this hearing Monday on the contempt motion as to Mr. Dondero, and I just want to see where things are with the Fifth Circuit *mandamus* effort that Mr. Dondero is

pursuing. I don't know if you all will have any updates when I get back.

And then I hear that a motion for my recusal has been filed by Dondero through new counsel. When was that, Nate? Was that last night? Okay. Anyway.

THE CLERK: It was last night.

THE COURT: It was last night. So I'll just comment on that when I come back as well. So, I'll see you in 30 minutes.

THE CLERK: All rise.

(A recess ensued from 11:07 a.m. to 11:54 a.m.)

THE CLERK: All rise.

THE COURT: All right. Please be seated. All right. We are going back on the record in the Highland motion for stay pending appeal. The Court deliberated a little longer than I told you I would, but the Court is ready to make a record. Is everyone out there? Hopefully, we have everyone out there that we need.

All right. Mike, can you tell, everyone is still logged in?

THE CLERK: Yes, ma'am, they are.

THE COURT: Okay. All right. The Court has decided to deny the motions for stay pending appeal of the confirmation order.

First, as we all know very well, courts in this circuit

have held that a discretionary stay pending appeal of a bankruptcy court order should only be granted if a movant demonstrates the traditional four prongs: (1) a likelihood of success on the merits; (2) some irreparable injury if the stay is not granted; (3) the granting of the stay would not substantially harm other parties; and (4) the granting of the stay would serve the public interest. Many Fifth Circuit cases have articulated these standards, including *In re First South Savings Association*, 820 F.2d 700 (5th Cir. 1987) and *Ruiz v. Estelle*, 666 F.2d 854.

The Fifth Circuit has also made very clear the party seeking a stay pending appeal bears the burden of proof on each of these elements. The Court has said that while each of these four factors must be met, the movant need not always show a probability of success on the merits when a serious legal question is involved. The Court, the Fifth Circuit, has hastened to add that this is not a *coup de grâce* for movants; still there are the other three prongs that have to be met.

So, I also want to add a reference to Judge Marvin Isgur. My Southern District of Texas colleague wrote at length on this issue in a *TNT Procurement* decision in denying a request for a stay pending appeal as to three different orders he had entered during that Chapter 11 case. In that case, he held that although the movant had met its burden of proof on the first factor, likelihood of success on the merits as to some

of the legal issues in the challenged orders, that with regard to the second factor, irreparable injury, the presence of irreparable injury is a fact issue, and the movant requesting a stay pending appeal must prove such fact by a preponderance of the evidence. And Judge Isgur held that because the movant failed to present any evidence on this prong at the hearing, there could be no proof of irreparable injury. So he denied a stay pending appeal.

So, turning to the facts and arguments here, first, before addressing the four prongs, the four traditional factors for evaluating a request for a stay pending appeal, I'm going to address the standing challenge that the Debtor has made as to the four Appellants. I determine there is standing, just as I did at the confirmation hearing, although I really want to reiterate we have a very close call on this standing argument. Clearly, we do not have traditional creditors here appealing a plan. In fact, notably, we have an Official Unsecured Creditors' Committee with large strong creditors as members who have fought long and hard with this Debtor, both before the case in many years of litigation and during the case, and they've embraced the plan.

The four Objectors, the Court continues to believe, are following the marching orders of Mr. Dondero, the company's former CEO, and are *de facto* controlled by him, based on prior evidence this Court has heard.

In any event, the Court determines that these four Appellants, these four categories of Appellants, do have some plausible argument of being persons aggrieved or affected by the confirmation order, remote as that interest is by traditional Chapter 11 standards. And so, thus, I find they have standing.

Again, for the benefit of courts hearing an appeal on this or further considering a motion for stay pending appeal, I stress that this bankruptcy judge has a very hard view on this. It's an extremely close call. Again, these Appellants are not conventional creditors affected by plan class treatment, or direct interest holders, for that matter. So it's a hard call.

But, having found technical standing, the Court turns to the evidence here with regard to the four-factor test for a stay pending appeal. And we had no witnesses. We had merely documentary evidence and argument. The Court finds and concludes that this documentary evidence and argument did not meet the burden of proof necessary to justify a discretionary stay pending appeal.

On the first factor, likelihood of success on the merits, there was at least a serious legal question raised. There were, of course, three primary legal issues raised as errors by this Court in the confirmation order. The first two arguments were not pressed too much in legal argument today,

although they were stressed in the briefing. One, the absolute priority rule violation argument; and then, two, the Bankruptcy Rule 2015.3/Bankruptcy Code Section 1129(a)(2) violation argument.

The Court considered these arguments to wholly lack merit, and are borderline frivolous, frankly. They do not raise a serious legal question.

The question of the propriety of the exculpations, the plan injunctions, and the gatekeeping provisions are a harder call. While this Court strived mightily to understand the parameters, the dictates, the exceptions of *Pacific Lumber* as to the exculpations, the Court acknowledges others may reasonably disagree that I interpreted *Pacific Lumber* correctly as to when the Fifth Circuit might extend its policy rationales for exculpations or whether it might extend the holding of *Pacific Lumber* or elaborate on the holding of *Pacific Lumber* when there's a situation like this one where we have an independent CEO and board members who are more like Official Unsecured Creditors' Committee members than typical incumbent officers and directors, and also, in an exceptional situation like this case, where there's a real risk, a real risk of burdensome and vexatious litigation going forward if we don't have in place the exculpations, the injunctions, and the gatekeeping provisions.

I think there are also *res judicata* issues that cannot be

ignored with regard to the prior January and July 2020 orders that contained similar provisions to the exculpation provisions and gatekeeping provisions.

In any event, I'm going to spot the Appellants on this one, to use a slang term, the spot being that they have raised a serious legal question as to the exculpations, gatekeeping provisions, and plan injunctions, although I stress that I think pushing the envelope, to use that phraseology, is a bit of hyperbole certainly in connection with plan injunctions, which are very common in Chapter 11 plans, and even the gatekeeping provisions, which retired Judge Lynn and retired Chief Judge Houser have approved in very significant large Chapter 11 cases.

But turning now to the other three prongs, the Appellants have not met their burden of proof. They simply have not shown they will suffer irreparable harm, certainly not because of a mere mootness risk, and that's really the only harm that I truly think has been plausibly presented or argued here by Appellants.

They cannot show there will not be substantial harm to the overall bankruptcy estate, when it undeniably will endure more administrative costs and burdens if the Debtor continues on as a debtor-in-possession in an already very lengthy case, by today's measure. A 15-month case in today's world is a long Chapter 11 case.

And the Court believes there will be a substantial harm to the legitimate creditors here, the creditors who have faced nothing but delay in pursuing their claims for years and years, some for decades now.

And as far as the public interest factor, I do agree with one comment made today that this is more about Mr. Dondero's private agenda to get his company back, the company that he decided to file Chapter 11 back in October 2019, more than about protection of the public interest or the interests of retail investors that he or the Advisors or Funds purport to be acting to protect.

So the discretionary stay is denied.

As to the possibility of a stay pursuant to a bond being posted, we used to have a local district court rule that I believe was repealed a few years ago. But even if it's still around, it's not terribly apropos for a confirmation order. It was Local District Rule 62.1, dealing with a supersedeas bond. It provided, unless otherwise ordered by a presiding judge, a supersedeas bond staying execution of a money judgment shall be in the amount of judgment plus twenty percent of that amount to cover interest and any award of damages for delay, plus $250 to cover costs. Certainly, that would be a very large number here. And I don't entirely agree with retired Judge Richard Schmidt, who, in the *ASARCO* case, said the entire amount of the indebtedness under a plan is the

appropriate amount for a bond.

So, what I will do here is I will accept the Debtor's suggestion of $17.4 million as an appropriate amount of the bond based on the argument made in its pleadings and today. I will tell you I frankly think it's a little on the low side, but I will accept it as reasonable since the Debtor has, I guess, looked into this deeply and decided that would be reasonable.

So, if the Appellants are willing to post a $17.4 million bond, the Court will grant the stay pending appeal.

All right. Well, as I said, I have a hard stop at 12:15, so I'm going to ask --

MR. POMERANTZ: Your Honor, this is Jeff Pomerantz. I just had one comment on your last comment.

THE COURT: Okay.

MR. POMERANTZ: My presentation to the Court was not to say that are they should get a stay if they posted the bond. My comment to the Court and argument to the Court is they have not met the standard, but even if they had met the standard, they still need to post a bond. So it was only in the event that you found that they had satisfied their standard. So the Debtor's view is that there should not be any stay, regardless of whether they post a bond or not.

As I indicated in my argument and we indicate in our pleadings, one of our arguments that we did not quantify, and

I suspect we would have quantified if there would have been an evidentiary hearing on the bond, is the effect on the asset sale based upon Mr. Seery's testimony at confirmation.

So we don't think that the Appellants should have a right to a bond. They don't have a right to a bond. And I just wanted to make sure that Your Honor didn't misconstrue my comments differently.

THE COURT: All right. Well, I think I did misconstrue your argument. I mean, my understanding of the case law is the courts of appeal view this as there's a discretionary stay where the Court has the discretion to grant a stay pending appeal. And, you know, it's kind of unfortunate they use that term "discretionary," because there is a strict four-prong test that has to be met. But if the Appellants are willing to put up an appropriate dollar amount as far as a bond, then I don't have discretion. You know, I don't even go through the four-prong analysis.

So, you're telling me you think I got the case law wrong on that?

MR. POMERANTZ: Your Honor, I didn't read the briefing by the Appellants to suggest that. I certainly didn't read -- you know, present that to the Court in our arguments. I don't know if that's the law.

Your Honor, I fully expected that since -- look, a lot of what was presented on the amount of the bond was not evidence,

right? We presented exhibits. The Appellants presented exhibits.

If Your Honor is inclined to view it that way, I guess (a) I would like the opportunity to brief it; and (b) present evidence to Your Honor that the damage is in excess based upon the argument we made on the potential adverse impact to the sale of assets, as Mr. Seery testified on an uncontroverted basis at the confirmation hearing.

MR. RUKAVINA: Well, Your Honor, may I briefly interject?

THE COURT: Briefly.

MR. RUKAVINA: Your Honor, this was our evidentiary hearing, and just like the Court ruled against us based on the evidence on the discretionary stay, Mr. Pomerantz had his chance, the Court has adopted a $17.4 million number, we're going to try our best to get that bond in place ASAP.

If the Court is inclined to consider post-hearing matters, I would ask for a short administrative stay of the effective date of the plan so that we're not prejudiced by that, because otherwise we're kind of in limbo.

MR. CLEMENTE: And Your Honor, if I may, it's Matt Clemente on behalf of the Committee.

THE COURT: Uh-huh.

MR. CLEMENTE: I agree with Mr. Pomerantz's comments. I don't believe -- at least, I didn't appreciate that today

would be an evidentiary hearing over the size of the bond. I understood the pleadings to read that there was a stay that was being requested by the Court [sic], and if the Court should otherwise determine that, based on the law, the stay was required -- which I believe, based on Your Honor's ruling, you did not believe it met the standard -- then there would be a discussion of a bond.

So the Committee would like to offer evidence in connection with the Debtor, if appropriate, to the extent that Your Honor is suggesting that the size of a bond would then result in a stay as a matter of right on behalf of the Appellants, or the potential Appellants.

Thank you, Your Honor.

THE COURT: All right. Well, it was your burden, your -- Appellants -- burden to show -- and, again, I think I'm inclined to allow a little -- well, again, my understanding of the law is I have to grant a stay pending appeal if a sufficient bond is put up. You know, forget about the four prongs if a sufficient bond is put up.

I did not find the $1 million that increased to $3 or $4 million, whatever the number was, was sufficient.

It occurs to me that we really didn't tee up -- we really didn't tee up what was the size of the appropriate amount of bond, now that I think about it. It was all about the discretionary stay, with that just kind of thrown in.

So here is what I will do. I'll deny the motion before me, but it is certainly with leave for us to have a follow-up hearing on a bond amount. Okay? I mean, Mr. Rukavina makes a fair point that he ought to get a small stay, small, a stay between the time we come back -- between today and the time we come back for him to argue about the appropriate bond amount. So -- I'm running into my hard stop -- we'll talk about that hearing date in a moment, but let's talk about what we have set next week. We have the motion to hold Mr. Dondero in contempt related to the alleged violations of the preliminary injunction and TRO. Is there any update from the Fifth Circuit on the *mandamus* request?

MR. TAYLOR: Your Honor, this is Clay Taylor on behalf of Mr. Dondero.

My understanding of that is that briefing was requested by the Fifth Circuit of --

THE COURT: It was due the 16th.

MR. TAYLOR: -- the Debtor -- by the Debtor.

THE COURT: Yes. It was due the 16th.

MR. TAYLOR: You're correct. And that was filed. And it is under consideration by the Fifth Circuit. And beyond that, I mean, of course, I wish I could tell you when they're going to rule, but I can't. So I don't think anybody has any other update other than that.

THE COURT: All right. So we'll go forward Monday at

9:30 unless someone notifies my courtroom deputy over the weekend that the Fifth Circuit has said stop, you can't.

All right. Okay. And then there's -- I don't know if the apparently new counsel who has filed a motion of recusal is on the line, but I'll just tell people I will let you all know by the end of today if I think I need a hearing on that or I think I need to give other parties in interest the opportunity to weigh in on that. But I don't think it's going to stop me from going forward, just based on the very quick summary I got from one of my law clerks this morning. But I'll let you know by the end of the day today if I think I need to set that for hearing or need responsive pleadings.

All right. The last thing before I'm late for my engagement is, Mr. Pomerantz, at some point -- no, this is the next-to-last thing. At some point, you said we have a hearing next week on a preliminary injunction adversary as to the Funds. Is that next week?

MR. POMERANTZ: Your Honor, I may have misspoke. I think it's the 29th.

THE COURT: Okay.

MR. POMERANTZ: I could be corrected if I'm wrong. So, --

THE COURT: Okay. So, with that, I'm going to offer you this. Traci, correct me if I'm wrong: I don't think we have anything set right now on Wednesday of next week,

correct?

THE CLERK: That is correct.

THE COURT: Okay. I will offer you Wednesday to come back on the bond issue. And then, if that's the case, --

THE CLERK: That's --

THE COURT: -- then I'll give a temporary stay through 11:59 next Wednesday on implementing the plan to give the Appellants the opportunity to put on their argument and evidence and for the other parties to put on their argument and evidence about what is an appropriate bond amount. Does that work?

MR. RUKAVINA: Your Honor, very quickly, our agreement in principle with the Debtor was that we'd have a week after a hearing on a temporary stay. I would urge Your Honor to give us that after next Wednesday. Otherwise, we're going to have to go to district court immediately. I don't know if Mr. Pomerantz is agreeable to that.

MR. POMERANTZ: Yes, Your Honor. We're prepared to give a week from the hearing, as our prior agreement was with Mr. Rukavina.

THE COURT: Okay.

MR. POMERANTZ: I would also suggest that, with respect to the hearing next Wednesday, number one, that by the end of the day today -- and it could be late evening -- that parties at least file their witness lists for who would be a

witness at that hearing and that Your Honor set a joint deadline for any briefs, which would primarily be on the legal issue, for 3:00 p.m. Central time on Tuesday, so that Your Honor will have time to review them before the hearing and that we can at least see each other's legal position on whether a stay is appropriate even without meeting the standard in -- if there's a bond posted.

THE COURT: All right. Well, sounds reasonable to me, since we're talking about such a specific narrow issue. Is everyone good with those deadlines?

MR. RUKAVINA: Your Honor, yes, and I know Your Honor has to run. I will not be available for Wednesday, so please excuse me. I'll have someone else handle it.

And I would just ask that in the order denying the discretionary stay, or some order, that the effective date of the plan be pushed out by said week so we have it on paper and clarity. Thank you, Your Honor.

THE COURT: All right. That sounds reasonable, Mr. Pomerantz. Okay.

MR. POMERANTZ: Thank you, Your Honor. I guess the only addition to my -- what I -- on Tuesday, when people file their briefs, they should also file whatever exhibits they would be relying on Wednesday. Today, with the witness, I realize it's a little probably early for people to get all their exhibits, but they should be able to get their witnesses

by today and then their exhibits by 3:00 p.m. Central Tuesday, along with any briefs.

THE COURT: Okay. So that sounds reasonable. By the end of today, the witness and exhibit list, or did we just want to say witness --

MR. POMERANTZ: The witness list by the end of today.

THE COURT: Just the witness list.

MR. POMERANTZ: Just the witness list.

THE COURT: 3:00 p.m. Central time Tuesday for the exhibit list, with exhibits filed, and any briefing. Anyone have any contrary views?

Okay. That will be the ruling, then. And I'll see you Monday, I guess. We're adjourned.

THE CLERK: All rise.

MR. POMERANTZ: Thank you, Your Honor.

MR. RUKAVINA: Thank you.

(Proceedings concluded at 12:20 p.m.)

--oOo--

CERTIFICATE

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/ Kathy Rehling **03/19/2021**

_____ _____

Kathy Rehling, CETD-444 Date

Certified Electronic Court Transcriber

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APPENDIX 7

The following constitutes the ruling of the court and has the force and effect therein described.

Signed January 9, 2020

United States Bankruptcy Judge

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

In re:	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	§	Case No. 19-34054-sgj11
Debtor.	§	Related to Docket Nos. 7 & 259

ORDER APPROVING SETTLEMENT WITH OFFICIAL COMMITTEE OF UNSECURED CREDITORS REGARDING GOVERNANCE OF THE DEBTOR AND PROCEDURES FOR OPERATIONS IN THE ORDINARY COURSE

Upon the *Motion of the Debtor to Approve Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course* (the "Motion"),[2] filed by the above-captioned debtor and debtor in possession

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

[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

(the "Debtor"); the Court having reviewed the Motion, and finding that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§157 and 1334, (b) this is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(A), and (c) notice of this Motion having been sufficient under the circumstances and no other or further notice is required; and having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and having determined that the relief sought in the Motion is in the best interests of the Debtor and its estate; and after due deliberation and sufficient cause appearing therefore,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED on the terms and conditions set forth herein, and the United States Trustee's objection to the Motion is OVERRULED.

2. The Term Sheet is approved and the Debtor is authorized to take such steps as may be necessary to effectuate the settlement contained in the Term Sheet, including, but not limited to: (i) implementing the Document Production Protocol; and (ii) implementing the Protocols.

3. The Debtor is authorized (A) to compensate the Independent Directors for their services by paying each Independent Director a monthly retainer of (i) $60,000 for each of the first three months, (ii) $50,000 for each of the next three months, and (iii) $30,000 for each of the following six months, provided that the parties will re-visit the director compensation after the sixth month and (B) to reimburse each Independent Director for all reasonable travel or other expenses, including expenses of counsel, incurred by such Independent Director in connection with its service as an Independent Director in accordance with the Debtor's expense reimbursement policy as in effect from time to time.

4. The Debtor is authorized to guarantee Strand's obligations to indemnify each Independent Director pursuant to the terms of the Indemnification Agreements entered into by Strand with each Independent Director on the date hereof.

5. The Debtor is authorized to purchase an insurance policy to cover the Independent Directors.

6. All of the rights and obligations of the Debtor referred to in paragraphs 3 and 4 hereof shall be afforded administrative expense priority under 11 U.S.C. § 503(b).

7. Subject to the Protocols and the Term Sheet, the Debtor is authorized to continue operations in the ordinary course of its business.

8. Pursuant to the Term Sheet, Mr. James Dondero will remain as an employee of the Debtor, including maintaining his title as portfolio manager for all funds and investment vehicles for which he currently holds that title; provided, however, that Mr. Dondero's responsibilities in such capacities shall in all cases be as determined by the Independent Directors and Mr. Dondero shall receive no compensation for serving in such capacities. Mr. Dondero's role as an employee of the Debtor will be subject at all times to the supervision, direction and authority of the Independent Directors. In the event the Independent Directors determine for any reason that the Debtor shall no longer retain Mr. Dondero as an employee, Mr. Dondero shall resign immediately upon such determination.

9. Mr. Dondero shall not cause any Related Entity to terminate any agreements with the Debtor.

10. No entity may commence or pursue a claim or cause of action of any kind against any Independent Director, any Independent Director's agents, or any Independent

Director's advisors relating in any way to the Independent Director's role as an independent director of Strand without the Court (i) first determining after notice that such claim or cause of action represents a colorable claim of willful misconduct or gross negligence against Independent Director, any Independent Director's agents, or any Independent Director's advisors and (ii) specifically authorizing such entity to bring such claim. The Court will have sole jurisdiction to adjudicate any such claim for which approval of the Court to commence or pursue has been granted.

11. Nothing in the Protocols, the Term Sheet or this Order shall affect or impair Jefferies LLC's rights under its Prime Brokerage Customer Agreements with the Debtor and non-debtor Highland Select Equity Master Fund, L.P., or any of their affiliates, including, but not limited to, Jefferies LLC's rights of termination, liquidation and netting in accordance with the terms of the Prime Brokerage Customer Agreements or, to the extent applicable, under the Bankruptcy Code's "safe harbor" protections, including under sections 555 and 561 of the Bankruptcy Code. The Debtor shall not conduct any transactions or cause any transactions to be conducted in or relating to the Jefferies LLC accounts without the express consent and cooperation of Jefferies LLC or, in the event that Jefferies withholds consent, as otherwise ordered by the Court. For the avoidance of doubt, Jefferies LLC shall not be deemed to have waived any rights under the Prime Brokerage Customer Agreements or, to the extent applicable, the Bankruptcy Code's "safe harbor" protections, including under sections 555 and 561 of the Bankruptcy Code, and shall be entitled to take all actions authorized therein without further order of the Court

12. Notwithstanding any stay under applicable Bankruptcy Rules, this Order shall be effective immediately upon entry.

13. The Court shall retain jurisdiction over all matters arising from or related to the interpretation and implementation of this Order, including matters related to the Committee's approval rights over the appointment and removal of the Independent Directors.

END OF ORDER

APPENDIX 8

The following constitutes the ruling of the court and has the force and effect therein described.

Signed July 16, 2020

United States Bankruptcy Judge

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

In re:	§	
	§	**Case No. 19-34054**
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	**Chapter 11**
	§	**Re: Docket No. 774**
Debtor.	§	

ORDER APPROVING DEBTOR'S MOTION UNDER BANKRUPTCY CODE SECTIONS 105(a) AND 363(b) AUTHORIZING RETENTION OF JAMES P. SEERY, JR., AS CHIEF EXECUTIVE OFFICER, CHIEF RESTRUCTURING OFFICER, AND FOREIGN REPRESENTATIVE NUNC PRO TUNC TO MARCH 15, 2020

Upon the *Debtor's Motion under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative Nunc Pro Tunc To March 15, 2020* (the "Motion"),[1] and the

[1] All terms not otherwise defined herein shall be given the meanings ascribed to them in the Motion.

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Court finding that: (i) this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; (ii) venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409; (iii) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); (iv) due and sufficient notice of the Motion has been given; (v) entry into the Agreement was an exercise of the Debtor's sound business judgment; and (vi) it appearing that the relief requested in the Motion is necessary and in the best interests of the Debtor's estate and creditors; and good and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED, and DECREED that:

1. The Motion is **GRANTED**.

2. Pursuant to sections 363(b) and 105(a) of the Bankruptcy Code, the Agreement attached hereto as **Exhibit 1** and all terms and conditions thereof are approved, *nunc pro tunc* to March 15, 2020.

3. The Debtor is hereby authorized to enter into and perform under the Agreement.

4. The Debtor is authorized to indemnify Mr. Seery pursuant to the terms of the Agreement. Mr. Seery is also entitled to any indemnification or other similar provisions under the Debtor's existing or future insurance policies, including any policy tails obtained (or which may be obtained in the future), by the Debtor. The Debtor and Strand are authorized to enter into any agreements necessary to execute or implement the transactions described in this paragraph. For avoidance of doubt and notwithstanding anything to the contrary in this Order, Mr. Seery shall be entitled to any state law indemnity protections to which he may be entitled under applicable law.

5. No entity may commence or pursue a claim or cause of action of any kind against Mr. Seery relating in any way to his role as the chief executive officer and chief restructuring officer of the Debtor without the Bankruptcy Court (i) first determining after notice that such claim or cause of action represents a colorable claim of willful misconduct or gross negligence against Mr. Seery, and (ii) specifically authorizing such entity to bring such claim. The Bankruptcy Court shall have sole jurisdiction to adjudicate any such claim for which approval of the Court to commence or pursue has been granted.

6. Notwithstanding anything in the Motion, the Agreement or the Order to the contrary, the Agreement shall be deemed terminated upon the effective date of a confirmed plan of reorganization unless such plan provides otherwise.

7. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

8. This Court shall retain jurisdiction over any and all matters arising from or related to the interpretation and/or implementation of this Order.

9. The Foreign Representative Order is hereby amended to substitute James P. Seery, Jr., as the chief executive officer, in place of Bradley S. Sharp, as the Debtor's Foreign Representative, Bermuda Foreign Representative and Cayman Foreign Representative. All other provisions of the Foreign Representative Order shall remain in full force and effect.

###END OF ORDER###

EXHIBIT 1

Engagement Agreement

[redacted]

June 23, 2020

CONFIDENTIAL

The Board of Directors of Strand Advisors, Inc.
c/o Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201

Re: Highland Capital Management L.P. (the "Company")

Dear Fellow Board Members:

This letter agreement ("Agreement") sets forth the terms and conditions of the engagement of the undersigned James P. Seery, Jr. ("I", "me" or "my"), as Chief Executive Officer ("CEO") and Chief Restructuring Officer ("CRO"), effective as of March 15, 2020 (the "Commencement Date"), by the Company and its affiliates to perform financial advisory services as detailed below.

I appreciate the trust you have placed in me by asking me to assume these roles and thank you for the opportunity to continue to work with you to restructure the Company.

Roles:

I will serve as the CEO and CRO of the Company during its Chapter 11 bankruptcy case (the "Bankruptcy Case") currently pending in the United States Bankruptcy Court for the Northern District of Texas (the "Bankruptcy Court").

In those roles, I will be responsible for overall management of the business of the Company in Chapter 11 including, directing the reorganization and restructuring of the Company, monetization of assets, resolution of claims, development and negotiation of a plan of reorganization or liquidation, and implementation of such a plan.

My direct reports will include the individuals at the Company that currently report to the Board of Directors of Strand Advisors, Inc. (the "Board") or such other individuals employed by the Company as I determine should report to directly to me. In the event that the Board determines to restructure the reporting lines or functions of the Company, my direct reports will be amended in accordance with the Board approved restructuring.

At all times, I will remain a full member of the Board entitled to vote on all matters other than those on which I am conflicted.

I will devote as much time to this engagement as I determine is required to execute my responsibilities as CEO and CRO. I will have no specific on-site requirements in Dallas, but will be on site as much as I determine is necessary to execute my responsibilities as CEO and CRO, consistent with Covid-19 orders applicable to Dallas and New York City.

Limitations on Services

My services under this engagement are limited to those specifically noted in this Agreement and do not include legal, accounting, or tax-related assistance or advisory services. For the avoidance of doubt, I am not providing any legal services in connection with this engagement and will have not any duties as a lawyer to the Company, the Board, or any of the Company's employees. The accuracy and completeness of all information submitted to me by the Company are the sole responsibility of the Company, and I will be entitled to rely on such information without independent investigation or verification.

In my role as CEO and CRO, I will act as an independent professional contractor to the Company and will not be an employee of the Company. I will provide and pay for my own benefits, including medical benefits, by J.P Seery & Co. LLC or otherwise.

Fees and Expenses:

In consideration of my acceptance of this engagement and performance of the services pursuant to this Agreement, the Company shall pay the following:

1. Compensation for Services:
    a. Base Compensation: As compensation for my services as CEO and CRO of the Company, the Company shall pay me $150,000.00 per calendar month ("Base Compensation"). Base Compensation shall be due and payable at the start of each calendar month. Consistent with current Board compensation practice, invoices rendered by me to the Company are due and payable by the Company on receipt. Payment of the Base Compensation will be retroactive to March 15, 2020.
    b. Bonus Compensation/Restructuring Fee:
        i. The Company has agreed to pay me a restructuring fee upon confirmation of either a Case Resolution Plan or a Monetization Vehicle Plan in each case as defined below (the "Restructuring Fee").
        ii. Case Resolution Restructuring Plan
            1. On confirmation of any plan or reorganization or liquidation based on resolution of a material amount of the outstanding claims and their respective treatment, even if such plan includes (x) a debtor/creditor trust or similar monetization and claims resolution vehicle, (y) post-confirmation litigation of certain of the claims, and (z) post-confirmation monetization of debtor assets (a "Case Resolution Plan"):
                a. $1,000,000 on confirmation of the Case Resolution Plan;
                b. $500,000 on the effective date of the Case Resolution Plan; and
                c. $750,000 on completion of cash or property distributions to creditors as contemplated by the Case Resolution Plan.

iii. Debtor/Creditor Monetization Vehicle Restructuring Fee:
   1. On confirmation of any plan or reorganization or liquidation based on a debtor/creditor trust or similar asset monetization and claims resolution vehicle that does not include agreement among the debtor and creditors on a material amount of the outstanding claims and their respective treatment at confirmation (a "Monetization Vehicle Plan"):
      a. $500,000 on confirmation of the Monetization Vehicle Plan;
      b. $250,000 on the effective date of the Monetization Vehicle Plan; and
      c. A contingent restructuring fee to be determined by the board or oversight committee installed to oversee the implementation of any Monetization Vehicle Plan based on the CEO/CRO (or acting as trustee) based upon performance under the plan after all material distributions under the Monetization Vehicle Plan are made.

2. Out-of-Pocket Expenses: In addition to the Base and Bonus Compensation, I shall be entitled to reimbursement for actual and reasonable out-of-pocket expenses ("Expenses") incurred in connection with the provision of services hereunder. Expenses will be billed along with Base Compensation and shall be paid by the Company at the same time. Expenses will be generally consistent with expenses incurred to date as a member of the Board.

Bankruptcy Court Approval

Notwithstanding anything herein to the contrary, I understand that this Agreement is contingent, in all respects, on the approval of the Bankruptcy Court. I also understand that the Company will seek approval of this Agreement in stages and that the Company will first seek approval of my retention as CEO and CRO and the payment of the Base Compensation and will defer seeking Bankruptcy Court approval of the Restructuring Fee until there have been further developments in the Bankruptcy Case.

Conflicts and Other Engagements

I am not aware of any potential conflicts of interest based on my understanding of the various parties involved in this matter to date.

The Company is aware that this engagement is not an exclusive engagement of my time, and that I have and will continue to have other business engagements and investments unrelated to the Company. Nothing in this Agreement or otherwise precludes me from representing or working with or for any other person or entity in matters not directly related to the services being provided to the Company under this Agreement. However, I will not take on any engagements directly adverse to the Company during the term of this engagement.

Privilege

I understand that in the course of this engagement, I may become party to or my services may become part of work product of legal counsel to the Company (the Company's in-house and outside counsel are collectively referred to as "Counsel"), and all communications between Counsel and me relating to this engagement shall be protected from disclosure to third parties under the attorney work product doctrine and/or the attorney-client privilege, and, therefore, shall be treated by me as privileged and confidential. I further understand that the Company has the exclusive right to waive the attorney-client privilege, and Counsel has the exclusive right to waive the protections afforded under the attorney work-product doctrine.

Termination of Engagement

This Agreement may be terminated at any time by either the Company or by me upon two weeks advance written notice given to the other party. The termination of this Agreement shall not affect my right to receive, and the Company's obligation to pay, any and all Base Compensation and Expenses incurred (even if not billed) prior to the giving of the termination notice; provided, however, that (i) if this Agreement is terminated by me, the amount of Base Compensation owed shall be calculated based on the actual number of days worked during the applicable month and I will return any Base Compensation received in excess of such amount and (ii) if this Agreement is terminated by the Company, Base Compensation shall be deemed fully earned as of the first day of any month. Bonus Compensation shall be earned by me immediately upon termination of me by the Company; provided, however, I shall not be entitled to Bonus Compensation if (a) the Bankruptcy Case is converted to chapter 7 or dismissed; (b) a chapter 11 trustee is appointed in the Bankruptcy Case; (c) I am terminated by the Company for Cause; or (d) I resign prior to confirmation of a plan or court approval of a sale as described in the Fees and Expense/Compensation for Services section hereof. For purposes of this Agreement, "Cause" means any of the following grounds for termination of my engagement, in each case as reasonably determined by the Board within 60 days of the Board becoming aware of the existence of the event or circumstance: (A) fraud, embezzlement, or any act of moral turpitude or willful misconduct on my part; (B) conviction of or the entry of a plea of nolo contendere by me for any felony; (C) the willful breach by me of any material term of this Agreement; or (D) the willful failure or refusal by me to perform my duties to the Company, which, if capable of being cured, is not cured on or before fifteen (15) days after my receipt of written notice from the Company.

Conditional Requirement to Seek Further Bankruptcy Court Approval of Agreement

The official committee of unsecured creditors in the Bankruptcy Case (the "Committee") may, upon two weeks advance written notice to the Company, require the Company to file a motion with the Bankruptcy Court on normal notice seeking a continuation of this Agreement and if such motion is not filed, this Agreement will terminate at the expiration of such two week period. If the Company files such motion, I will be entitled to my Base Compensation through and including the date on which a final order is entered on such motion by the Bankruptcy Court. Notwithstanding anything herein to the contrary, the Committee may not deliver such notice to the Company until a date which is more than ninety days following the date the Bankruptcy Court enters an order approving this Agreement.

Indemnification

As a material part of the consideration to me under this Agreement, the Company agrees (i) to indemnify and hold harmless me and any of my affiliates (the "Indemnified Party"), to the fullest extent lawful, from and against any and all losses, claims, costs, damages or liabilities (or actions in respect thereof), joint or several, arising out of or related to this Agreement, my engagement under this Agreement, or any actions taken or omitted to be taken by me or the Company in connection with this Agreement and (ii) to reimburse the Indemnified Party for all expenses (including, without limitation, the reasonable fees and expenses of counsel) as they are incurred in connection with investigating, preparing, pursuing, defending, settling or compromising any action, suit, dispute, inquiry, investigation or proceeding, pending or threatened, brought by or against any person (including, without limitation, any shareholder or derivative action, or any fee dispute), arising out of or relating to this Agreement, or such engagement, or actions. However, the Company shall not be liable under the foregoing indemnity and reimbursement agreement for any loss, claim, damage or liability which is finally judicially determined by a court of competent jurisdiction to have resulted primarily from the willful misconduct or gross negligence of the Indemnified Party.

The indemnification and insurance currently covering my role as a director shall be extended to me and fully cover me as provided therein in my roles as CEO and CRO.

Miscellaneous

This Agreement (a) constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes any other communications, understandings or agreements among the parties with respect to the subject matter hereof, and (b) may be modified, amended or supplemented only by written agreement among all the parties hereto.

This Agreement is subject to approval by the Bankruptcy Court. As part of such approval the Company shall request that any such order approving this Agreement contain a provision extending the protections afforded to me as a Board Member pursuant to Paragraph 10 of the Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course entered by the Bankruptcy Court on January 9, 2020 [Docket No. 339] to my role as CEO and CRO, which Order prohibits the commencement of any action against me without first obtaining Bankruptcy Court approval to initiate such action.

This Agreement and all controversies arising from or related to performance hereunder shall be governed by and construed in accordance with the laws of the State of New York. The parties hereby submit to the jurisdiction of and venue in the federal and state courts located in New York City and waive any right to trial by jury in connection with any dispute related to this Agreement.

This Agreement shall be binding upon the parties and their respective successors and assigns, and no other person shall acquire or have any right under or by virtue of this Agreement.

Failure of any party at any time to require performance of any provision of this Agreement shall not affect the right to require full performance thereof at any time thereafter, and the waiver by any party of a breach of such provisions shall not be taken as or held to be a waiver of any subsequent breach or as nullifying the effectiveness of such provision.

Notices provided for in this Agreement shall be in writing and shall be deemed to have been duly given when delivered by hand or overnight courier or three days after it has been mailed by United States registered mail, return receipt requested, postage prepaid, addressed to the respective address set forth above in this Agreement, or to such other address as either party may have furnished to the other in writing in accordance herewith.

This Agreement and my rights and duties hereunder shall not be assignable or delegable by me.

The Company may withhold from any amounts payable under this Agreement such Federal, state and local taxes as may be required to be withheld pursuant to any applicable law or regulation.

This Agreement may be executed (including by electronic execution) in any number of counterparts, each of which when so executed shall be deemed an original, but all such counterparts shall constitute one and the same instrument. Delivery of an executed counterpart of this Agreement by electronic mail shall have the same force and effect as the delivery of an original executed counterpart of this Agreement.

Please confirm the foregoing is in accordance with your understanding by signing and returning a copy of this Agreement, whereupon it shall become binding and enforceable in accordance with its terms.

Very truly yours,

James. P. Seery, Jr.

AGREED AND ACCEPTED

HIGHLAND CAPITAL MANAGEMENT L.P.

By: Strand Advisors, Inc., its general partner

John Dubel Director Strand Advisors, Inc.	Russell Nelms Director Strand Advisors, Inc.

This Agreement shall be binding upon the parties and their respective successors and assigns, and no other person shall acquire or have any right under or by virtue of this Agreement.

Failure of any party at any time to require performance of any provision of this Agreement shall not affect the right to require full performance thereof at any time thereafter, and the waiver by any party of a breach of such provisions shall not be taken as or held to be a waiver of any subsequent breach or as nullifying the effectiveness of such provision.

Notices provided for in this Agreement shall be in writing and shall be deemed to have been duly given when delivered by hand or overnight courier or three days after it has been mailed by United States registered mail, return receipt requested, postage prepaid, addressed to the respective address set forth above in this Agreement, or to such other address as either party may have furnished to the other in writing in accordance herewith.

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Please confirm the foregoing is in accordance with your understanding by signing and returning a copy of this Agreement, whereupon it shall become binding and enforceable in accordance with its terms.

Very truly yours,

James. P. Seery, Jr.

AGREED AND ACCEPTED

HIGHLAND CAPITAL MANAGEMENT L.P.

By: Strand Advisors, Inc., its general partner

John Dubel Director Strand Advisors, Inc.	Russell Nelms Director Strand Advisors, Inc.

This Agreement shall be binding upon the parties and their respective successors and assigns, and no other person shall acquire or have any right under or by virtue of this Agreement.

Failure of any party at any time to require performance of any provision of this Agreement shall not affect the right to require full performance thereof at any time thereafter, and the waiver by any party of a breach of such provisions shall not be taken as or held to be a waiver of any subsequent breach or as nullifying the effectiveness of such provision.

Notices provided for in this Agreement shall be in writing and shall be deemed to have been duly given when delivered by hand or overnight courier or three days after it has been mailed by United States registered mail, return receipt requested, postage prepaid, addressed to the respective address set forth above in this Agreement, or to such other address as either party may have furnished to the other in writing in accordance herewith.

This Agreement and my rights and duties hereunder shall not be assignable or delegable by me.

The Company may withhold from any amounts payable under this Agreement such Federal, state and local taxes as may be required to be withheld pursuant to any applicable law or regulation.

This Agreement may be executed (including by electronic execution) in any number of counterparts, each of which when so executed shall be deemed an original, but all such counterparts shall constitute one and the same instrument. Delivery of an executed counterpart of this Agreement by electronic mail shall have the same force and effect as the delivery of an original executed counterpart of this Agreement.

Please confirm the foregoing is in accordance with your understanding by signing and returning a copy of this Agreement, whereupon it shall become binding and enforceable in accordance with its terms.

Very truly yours,

James. P. Seery, Jr.

AGREED AND ACCEPTED

HIGHLAND CAPITAL MANAGEMENT L.P.

By: Strand Advisors, Inc., its general partner

John Dubel
Director
Strand Advisors, Inc.

Russell Nelms
Director
Strand Advisors, Inc.

APPENDIX 9

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

In Re:	**Case No. 19-34054-sgj-11**
	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,	Dallas, Texas
	Tuesday, February 2, 2021
	9:30 a.m. Docket
Debtor.	
	CONFIRMATION HEARING [1808]
	AGREED MOTION TO ASSUME [1624]

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

WEBEX APPEARANCES:

For the Debtor:	Jeffrey Nathan Pomerantz PACHULSKI STANG ZIEHL & JONES, LLP 10100 Santa Monica Blvd., 13th Floor Los Angeles, CA 90067-4003 (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 the Debtor:	Ira D. Kharasch PACHULSKI STANG ZIEHL & JONES, LLP 10100 Santa Monica Blvd., 13th Floor Los Angeles, CA 90067-4003 (310) 277-6910
For the Official Committee of Unsecured Creditors:	Matthew A. Clemente SIDLEY AUSTIN, LLP One South Dearborn Street Chicago, IL 60603 (312) 853-7539

Exhibit C

APPEARANCES, cont'd.:

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 Acis Capital Management GP, LLC:	Rakhee V. Patel WINSTEAD, P.C. 2728 N. Harwood Street, Suite 500 Dallas, TX 75201 (214) 745-5250
For UBS Securities, LLC:	Andrew Clubok LATHAM & WATKINS, LLP 555 Eleventh Street, NW, Suite 1000 Washington, DC 20004 (202) 637-2200
For Patrick Daugherty:	Jason Patrick Kathman PRONSKE & KATHMAN, P.C. 2701 Dallas Parkway, Suite 590 Plano, TX 75093 (214) 658-6500
For HarbourVest, et al.:	Erica S. Weisgerber DEBEVOISE & PLIMPTON, LLP 919 Third Avenue New York, NY 10022 (212) 909-6000
For James Dondero:	Clay M. Taylor 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
For Get Good Trust and Dugaboy Investment Trust:	Douglas S. Draper HELLER, DRAPER & HORN, LLC 650 Poydras Street, Suite 2500 New Orleans, LA 70130 (504) 299-3300

APPEARANCES, cont'd.:

For Certain Funds and Advisors:	Davor Rukavina Julian Vasek MUNSCH, HARDT, KOPF & HARR 500 N. Akard Street, Suite 3800 Dallas, TX 75201-6659 (214) 855-7587
For Certain Funds and Advisors:	A. Lee Hogewood, III K&L GATES, LLP 4350 Lassiter at North Hills Avenue, Suite 300 Raleigh, NC 27609 (919) 743-7306
For the NexPoint Parties:	Lauren K. Drawhorn WICK PHILLIPS 3131 McKinney Avenue, Suite 100 Dallas, TX 75204 (214) 692-6200
For Scott Ellington, Isaac Leventon, Thomas Surgent, and Frank Waterhouse:	Frances A. Smith ROSS & SMITH, P.C. Plaza of the Americas 700 N. Pearl Street, Suite 1610 Dallas, TX 75201 (214) 593-4976
For Scott Ellington, Isaac Leventon, Thomas Surgent, and Frank Waterhouse:	Debra A. Dandeneau BAKER & MCKENZIE, LLP 452 Fifth Avenue New York, NY 10018 (212) 626-4875
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 Davis Deadman, Todd Travers, and Paul Kauffman:	Jason Patrick Kathman PRONSKE & KATHMAN, P.C. 2701 Dallas Parkway, Suite 590 Plano, TX 75093 (214) 658-6500

APPEARANCES, cont'd.:

For the United States of America (IRS):	David G. Adams U.S. STATES DEPARTMENT OF JUSTICE, TAX DIVISION 717 N. Harwood Street, Suite 400 Dallas, TX 75201 (214) 880-2432
For Highland CLO Funding, Ltd.:	Rebecca Matsumura KING & SPALDING, LLP 500 West 2nd Street, Suite 1800 Austin, TX 78701 (512) 457-2024
For Crescent TC Investors:	Michael S. Held JACKSON WALKER, LLP 2323 Ross Avenue, Suite 600 Dallas, TX 75201 (214) 953-5859
For the Issuer Group:	Amy K. Anderson JONES WALKER, LLP 811 Main Street, Suite 2900 Houston, TX 77002 (713) 437-1866
Recorded by:	Michael F. Edmond, Sr. UNITED STATES BANKRUPTCY COURT 1100 Commerce Street, 12th Floor Dallas, TX 75242 (214) 753-2062
Transcribed by:	Kathy Rehling 311 Paradise Cove Shady Shores, TX 76208 (972) 786-3063

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

DALLAS, TEXAS - FEBRUARY 2, 2021 - 9:38 A.M.

THE COURT: Good morning. Please be seated. All right. We are ready to get started now in Highland Capital. We have a confirmation hearing as well as a motion to assume the non-residential real property lease at the headquarters. All right. This is Case No. 19-34054. I know we're going to have a lot of appearances today. I think we're just down to a handful of objections, but I'm nevertheless going to go ahead and get formal appearances from our key parties that we've had historically in this case.

First, for the Debtor team, do we have Mr. Pomerantz and your crew?

MR. POMERANTZ: Yes. Good morning, Your Honor. Jeff Pomerantz, along with John Morris, Ira Kharasch, and Greg Demo, on behalf of the Debtor-in-Possession, Highland Capital.

THE COURT: All right. Good morning. All right. For the Unsecured Creditors' Committee team, do we have Mr. Clemente and others?

MR. CLEMENTE: Yes. Good morning, Your Honor. Matthew Clements; Sidley Austin; on behalf of the Official Committee of Unsecured Creditors.

THE COURT: All right. I'm actually going to call a roll call for the Committee members who have obviously been very active during this case. For the Redeemer Committee and Crusader Fund, do we have Ms. Mascherin and her team?

(Pause.) Okay. We're -- if -- you must be on mute.

MS. MASCHERIN: Your Honor, I apologize.

THE COURT: Okay. Go ahead.

MS. MASCHERIN: I apologize, Your Honor. I was on mute and could not figure out how to unmute myself quickly. Terri Mascherin; Jenner & Block; on behalf of the Redeemer Committee.

THE COURT: All right. Good morning.

All right. What about Acis? Do we have Ms. Patel and others for the Acis team?

MS. PATEL: Good morning, Your Honor. Rakhee Patel on behalf of Acis Capital Management.

THE COURT: Good morning.

All right. Mr. Clubok, I see you there for the UBS team, correct?

MR. CLUBOK: Yes. Good morning, Your Honor.

THE COURT: Good morning.

All right. For Patrick Daugherty, I think I see Mr. Kathman out there, correct?

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

THE COURT: All right. Good morning.

All right. What about HarbourVest? Anyone on the line for HarbourVest?

MS. WEISGERBER: Good morning, Your Honor. Erica

Weisgerber for HarbourVest.

THE COURT: All right. Very good.

All right. Well, I'll now, I guess, turn to some of the Objectors that I haven't hit yet. Who do we have appearing for Mr. Dondero this morning?

MR. TAYLOR: Good morning, Your Honor. Clay Taylor of the law firm of Bonds Ellis Eppich Schaefer & Jones appearing on behalf of Mr. Dondero. I have with me, of course, Mr. Dondero, who is in the room with me. Dennis Michael Lynn, John Bonds, and Bryan Assink are also appearing on behalf of Mr. Dondero.

THE COURT: All right. Thank you, Mr. Taylor.

All right. For the Dugaboy Trust and Get Good Trust, do we have Mr. Draper and others?

MR. DRAPER: Yes, Your Honor. This is Douglas Draper on the line.

THE COURT: All right. Good morning.

MR. DRAPER: Good morning, Your Honor.

THE COURT: All right. What about what I'll call Highland Fund, the Highland Funds and Advisors? Do we have Mr. Rukavina this morning, or who do we have?

MR. RUKAVINA: Your Honor, good morning. Davor Rukavina and Julian Vasek for the Funds and Advisors. I can make a full appearance, but it's the parties listed on Docket 1670.

THE COURT: All right. Thank you, Mr. Rukavina.

All right. What about --

MR. HOGEWOOD: Your Honor?

THE COURT: Go ahead.

MR. HOGEWOOD: Your Honor, Lee Hogewood. I'm sorry, Your Honor. Lee Hogewood is also here on behalf of the same parties.

THE COURT: All right. Thank you, sir.

All right. What about NexPoint Real Estate Partners, HCRE Partners?

MS. DRAWHORN: Good morning, Your Honor. Lauren Drawhorn with Wick Phillips on behalf of NexPoint Real Estate Partners, LLC. I'm also here on behalf of the NexPoint Real Estate entities which are listed on Docket 1677, and NexBank, which is -- their objection is 1676.

THE COURT: All right. Thank you.

All right. Let's cover some of the employees. I think I see Ms. Smith out there. Are you appearing for Mr. Ellington and Mr. Leventon?

MS. SMITH: Yes, Your Honor. Frances Smith with Ross & Smith, along with Debra Dandeneau of Baker McKenzie, on behalf of Scott Ellington, Isaac Leventon, Thomas Surgent, and Frank Waterhouse.

THE COURT: All right. Could you spell the last name of your co-counsel from Baker McKenzie? I didn't clearly get

that.

MS. SMITH: Yes, Your Honor. It's Debra Dandeneau, D-A-N-D-E-N-N-A-U [sic].

THE COURT: Okay. Thank you.

All right. CLO Holdco, do we have you appearing this morning?

MR. KANE: Your Honor, John Kane on behalf of CLO Holdco.

THE COURT: Thank you, Mr. Kane.

All right. I know we had a different group of current or former employees -- Brad Borud, Jack Yang -- and some joining parties: Kauffman, Travers, Deadman. Who do we have appearing for those? (Pause.) Anyone? If you're appearing, we're not hearing you. Go ahead.

MR. KATHMAN: Good morning, Your Honor. Jason Kathman. I represent Mr. Deadman, Mr. Travers, and Mr. Kauffman as well.

THE COURT: Okay. Thank you. And I can't remember who represents Mr. Borud and Yang. Someone separately.

MR. KATHMAN: It's Mr. Winikka, Your Honor.

THE COURT: Oh, Mr. Winikka.

MR. KATHMAN: And I haven't scrolled through to see whether he's with -- in the 120 people signed in this morning. But I believe that objection has been resolved. I think Mr. Pomerantz will probably address that later. So Mr. Winikka

may not be appearing.

THE COURT: Okay. All right. Well, anyone for the IRS?

MR. ADAMS: Good morning, Your Honor. David Adams, Department of Justice, on behalf of the United States and its agency, the Internal Revenue Service.

THE COURT: Thank you, Mr. Adams.

For the U.S. Trustee, who do we have appearing this morning? (No response.) I'm not hearing you. If you're trying to appear, you must be on mute. (No response.) All right. Well, I suspect at some point we'll hear from the U.S. Trustee, even though I don't hear anyone now.

At this point, I will open it up to anyone else who wishes to appear who I failed to call.

MS. MATSUMURA: Your Honor, this is Rebecca Matsumura from King & Spalding representing Highland CLO Funding, Ltd. Thank you.

THE COURT: All right. Thank you, Ms. Matsumura. HCLOF.

Anyone else?

MR. HELD: Your Honor, this is Michael Held with the law firm of Jackson Walker, LLP on behalf of the office landlord, Crescent TC Investors, LP.

THE COURT: All right. Thank you, Mr. Held.

MR. HELD: Thank you, Your Honor.

THE COURT: Okay. Any other lawyer appearances?

All right. Well, again, if there's anyone out there who did not get to appear, maybe we'll hear from you at some point as the day goes on.

All right. Mr. Pomerantz, this is an important day, obviously. How did you want to begin things?

MR. POMERANTZ: So, Your Honor, I have a brief opening to talk about what I plan to do, and a little more lengthy opening, and it'll be come clear. So if I may proceed, Your Honor?

THE COURT: You may.

MR. POMERANTZ: Your Honor, we're here to request that the Court confirm the Debtor's Fifth Amended Plan of Reorganization, as modified. The operative documents before Your Honor are the Fifth Amended Plan, as modified, that was filed along with our pleadings in support of confirmation on January 22nd and the minor amendments that we filed on February 1st.

Here is my proposal on how we can proceed this morning. I would intend to provide the Court with an opening statement that would last approximately 20 minutes. And then after any other party who desires to make an opening statement, I would propose that the Debtor put on its evidence that it intends to rely on in support of confirmation. The evidence consists of the exhibits that the Debtor filed with its witness and

exhibit list on January 22nd and certain amendments that we filed yesterday.

We would also put on the testimony of the following witnesses: Jim Seery, the Debtor's chief executive officer, who Your Honor is very familiar with, and also a member of Strand's board of directors; John Dubel, a member of Strand's board of directors; and Mark Tauber, a vice president with Aon Financial Services, the Debtor's D&O broker.

We have also submitted the declaration of Patrick Leatham, who is with KCC, the Debtor's balloting agent. And we don't intend to put Mr. Leatham on the stand, but he is available on the WebEx for cross-examination, to the extent necessary.

I propose that I would leave the bulk of my argument, which includes going through the Section 1129 requirements for plan confirmation, as well as responding to the remaining outstanding objections, until my closing argument.

With that, Your Honor, I will pause and ask the Court if Your Honor has any questions before I proceed.

THE COURT: I do not have questions, so your method of going forward sounds appropriate. You may go ahead.

MR. POMERANTZ: Thank you, Your Honor.

OPENING STATEMENT ON BEHALF OF THE DEBTOR

MR. POMERANTZ: As I indicated, Your Honor, we stand here side by side with the Creditors' Committee asking that the Court confirm the Debtor's plan of reorganization.

As Your Honor is well aware, this case started in December in -- October 2019, was transferred to Your Honor's court in December 2019, and has been pending for approximately 15 months.

On January 9, 2020, I stood before Your Honor seeking the approval of the independent board of directors of Strand, the general partner of the Debtor, pursuant to a heavily-negotiated agreement with the Committee. And as the Court has remarked on occasions throughout the case, the economic stakeholders in this case believed that the installation of a new board consisting of highly-qualified restructuring professionals and a bankruptcy judge, a former bankruptcy judge, was far more attractive than the alternative, which was appointment of a trustee. And upon approval of the settlement, members of the board -- principally, Mr. Seery -- testified that one of the board's goals was to change the culture of litigation that plagued Highland in the decade before filing and threatened to embroil the Debtor in continued litigation if changes were not made.

And as Your Honor is well aware, the last 14 months have not been easy. The board took its role as an independent fiduciary extremely seriously, much to the consternation of the Committee at times, and more recently, to the consternation of Mr. Dondero and his affiliated entities.

And what has the Debtor, under the leadership of the

board, been able to accomplish during this case? The answer is a lot more than many parties believed when the board was installed.

The Debtor reached a settlement with the Redeemer Committee, resolving disputes that had been litigated for many years, in many forums, and that resulted in an arbitration award that was the catalyst for the bankruptcy filing.

Participating in a court-ordered mediation at the end of August 2020 and September, the Debtor reached agreement with Acis and Josh Terry. The Court is all too familiar with the years of disputes between the Debtor and Acis and Josh Terry, which spanned arbitration proceedings and an extremely combative Chapter 11 that Your Honor presided over.

The Debtor next reached an agreement with HarbourVest regarding their assertion of over $300 million of claims against the estate. The HarbourVest litigation stemmed from its investment in the Acis CLOs and would have resulted in complex, fact-intensive litigation which would have forced the Court to revisit many of the issues addressed in the Acis case.

And perhaps most significantly, Your Honor, the Debtor was able to resolve disputes with UBS, disputes which took the most time of any claim in this case, through a contested stay relief motion, a hotly-contested summary judgment motion, and a Rule 3018 motion.

While the Debtor and UBS hoped to file a 9019 motion prior to the commencement of the hearing, they were not able to do so. However, I am now in a position to disclose to the Court the terms of the settlement, which is the subject of documentation acceptable to the Debtor and UBS. The settlement provides for, among other things, the following terms:

UBS will receive a $50 million Class 8 general unsecured claim against the Debtor.

UBS will receive a $25 million Class 9 subordinated general unsecured claim against the Debtor.

UBS will receive a cash payment of $18.5 million from Multi-Strat, which was a defendant and the subject of fraudulent transfer claims.

The Debtor will use reasonable efforts to assist UBS to collect its Phase I judgment against CDL Fund and assets CDL Fund may have.

The parties will also agree to mutual and general releases, subject to agreed carve-outs.

And, of course, the parties will not be bound until the Court approves the settlement pursuant to a 9019 motion we would hope to get on file shortly.

I am also pleased to let the Court know -- breaking news -- that this morning we reached an agreement to settle Patrick Daugherty's claims. I would now like to, at the request of

Mr. Kathman, read into the record the Patrick Daugherty settlement.

Under the Patrick Daugherty settlement, Mr. Daugherty will receive a $750,000 cash payment on the effective date. He will receive an $8.25 million general unsecured claim, and he will receive a $2.75 million Class 9 subordinated claim.

The settlement of all claims against the Debtor and its affiliates -- and affiliates will be defined in the documents -- with the exception of the tax claim against the Debtor, Mr. Dondero, and Mr. Okada -- and for the avoidance of doubt, except as I describe below, nothing in the settlement is intended to affect any pending litigation Mr. Daugherty has against Mr. Dondero, Scott Ellington, Isaac Leventon, Marc Katz, Michael Hurst, and Hunton Andrew Kurth.

Mr. Daugherty will release the Debtor and its affiliates and current employees for all claims and causes of action, except for the agreements I identify below, and dismiss all current employees as to pending actions. We believe this only applies to Thomas Surgent and no other employee is implicated.

Mr. Surgent and other employees, including but not limited to David Klos, Frank Waterhouse, Brian Collins, Lucy Bannon, and Matt Diorio, will receive releases similar to the covenant in Paragraph 1D of the Acis settlement agreement, which essentially provided the release would go away if they assisted anyone in pursuing claims against Mr. Daugherty.

Highland and the above-mentioned parties will accept service of any subpoenas and acknowledge the jurisdiction of the Delaware Chancery Court for the purposes of accepting any subpoenas. And for the avoidance of doubt, Highland will accept service on behalf of the employees only in their capacity as such.

Highland will also use material -- will use reasonable efforts at no material cost to assist Daugherty in vacating a Texas judgment that was issued against him. We've also looked at a form of the motion and believe we have agreed on the form of the motion.

Highland, its affiliates, and current employees will covenant and agree they will not pursue or seek to enforce the injunction and the Texas judgment against Daugherty.

And lastly, Daugherty will not be able to settle any claims for negligence or other claims that might be subject to indemnification by the Debtor or any successor.

Accordingly, Your Honor, other than the claims of Mr. Dondero and his related entities, and the unliquidated claims of certain employees, substantially all claims have been resolved in this case, a truly remarkable achievement.

Separate and apart, Your Honor, from the work done resolving the claims, the Debtor, under the direction of the independent board, has worked extremely hard to develop a plan of reorganization.

After the independent board got its bearings, it started to work on various plan alternatives. And the board received a lot of pressure from the Committee to go straight to a plan seeking to monetize assets like the one before Your Honor today. However, the board believed that before proceeding to do so and go down an asset monetization path, it should adequately diligence all alternatives, including a continuation of the current business model, a reorganization sponsored by Mr. Dondero and his affiliates, a sale of the Debtor's assets, including a sale to Mr. Dondero.

In June 2020, plan negotiations proceeded in earnest, and the Debtor started to negotiate an asset monetization plan with the Committee, while still pursuing other alternatives.

Preparation of an asset monetization plan is not typically a complicated process. However, creating the appropriate structure for a business like the Debtor's was extremely complicated, because of the contractual, regulatory, tax, and governance issues that had to be carefully considered.

At the same time the Committee negotiations were proceeding down that path, Mr. Seery continued to spend substantial time trying to negotiate a grand bargain plan with Mr. Dondero. It is not an exaggeration to say that over the last several months Mr. Seery has dedicated hundreds of hours towards a potential grand bargain plan.

And why did he do it? Because he has always believed that

a global restructuring among all parties was the best opportunity to fully and finally resolve the acrimony that continued to plague the Debtor.

Notwithstanding Mr. Seery's and the independent board's best efforts, they were not able to reach consensus on a grand bargain plan, and the Debtor filed the plan, the initial plan, on August 12th, which ultimately evolved into the plan before the Court today.

The Court conducted an initial hearing on the disclosure statement on October 27th, and then ultimately approved -- the Court approved the disclosure statement at a hearing on November 23rd.

While the Debtor continued to work towards resolving issues with the Committee with the filed plan, Mr. Dondero, beginning to finally see that the train was leaving the station, started to do whatever he could to get in the way of plan confirmation.

He objected to the Acis settlement. When his objection was overruled, he filed an appeal.

He objected to the HarbourVest settlement. When his objection was overruled, he had Dugaboy file an appeal.

He started to interfere with the Debtor's management of its CLOs, stopping trades, refusing to provide support, and threatening Mr. Seery and the Debtor's employees.

He had his Advisors and Funds that he owned and controlled

file motions that Your Honor said was a waste of time.

He had those same Funds and Advisors threaten to terminate the Debtor as a manager, in blatant violation of the Court's January 9, 2020 order.

His conduct was so egregious that it warranted entry of a temporary restraining order and preliminary injunction against him. And of course, he has appealed that ruling as well.

But that was not all. He brazenly threw out his phone, in what the Court has remarked was spoliation of evidence, and he violated the TRO in other ways, actions for which he will answer for at the contempt hearing scheduled later this week.

And, of course, he and his pack of related entities have filed a series of objections. We have received 12 objections to the plan, Your Honor, excluding three joinders. And as I mentioned, we have been pleased to report that we've been able to resolve six of them: those of the Senior Employees, those of Patrick Daugherty, those of CLO Holdco, those of the IRS, those of Texas Taxing Authorities, and those of Jack Young and Brad Borud.

The CLO Holdco objection was withdrawn in connection with the settlement reached with them in connection with the preliminary injunction hearing that the Court heard -- started to hear last week.

The Taxing Authorities' objections have been resolved by the Debtor agreeing to make certain modifications to the plan

that were included in our filing yesterday and to include certain provisions in the confirmation order to address other concerns.

The group of employees who are referred to as the Senior Employee are comprised of four individuals -- Frank Waterhouse, Thomas Surgent, Scott Ellington, and Isaac Leventon -- although Mr. Ellington and Mr. Leventon are no longer employed by the Debtor.

On January 22nd, Your Honor, we filed executed stipulations with Frank Waterhouse and Thomas Surgent. These stipulations were essentially the Senior Employee stipulations that were referred to in the plan and the disclosure statement.

And as part of those stipulations, the Debtor, in consultation with and agreement from the Committee, agreed to certain modifications of the prior version of the Senior Employee stipulation with both Mr. Waterhouse and Mr. Surgent that effectively reduced the compensation they needed to provide for the release from 40 percent to five percent of their claims.

The Debtor and the Committee believed the resolution with Mr. Surgent and with Mr. Waterhouse was fair, given the importance of these two people to the transition effort and the increased reliance upon them that the Debtor would have with the departure of Mr. Ellington and Mr. Leventon. And as

a result of that agreement, Your Honor, on January 27th, Mr. Waterhouse and Mr. Surgent withdrew from the Senior Employee objection.

Subsequently, we reached agreement with Mr. Ellington and Mr. Leventon to resolve the objections they raised with confirmation. And at Ms. Dandeneau's request, I would like to read into the record the agreement reached with both of them, and I know she will correct me if I get anything wrong.

THE COURT: Okay.

MR. POMERANTZ: Among other things, Mr. Ellington and Mr. Leventon asserted in their objection that they were entitled to have their liquidated bonus claims treated as Class 7 convenience claims under the plan, under their reading of the plan, and their understanding of communications with Mr. Seery. The Debtor disputed the entitlement to elect Class 7 based upon the terms of the plan, the disclosure statement, and applicable law. But as I said, the parties have resolved this dispute.

Mr. Ellington asserts liquidated bonus claims in the aggregate amount of $1,367,197, which, to receive convenience class treatment under anybody's analysis, would have had to be reduced to a million dollars.

Mr. Leventon asserts a liquidated bonus claim in the amount of $598,198.

If Mr. Ellington and Mr. Leventon were entitled to be

included in the convenience class, as they claimed, they would be entitled to receive 85 percent of their claim as and when the claims were allowed under the plan.

To settle the dispute regarding whether, in fact, they would be entitled to the convenience class treatment, they have agreed to reduce the percentage they would otherwise be entitled to receive from 85 percent to 70.125 percent. And as a result, Mr. Ellington's Class 7 convenience claim would be entitled to receive $701,250 if allowed, and Mr. Leventon's Class 7 convenience claim would be entitled to receive $413,175.10 if allowed.

Mr. Ellington and Mr. Leventon would reserve the right to assert that a hundred percent of their liquidated bonus claims are entitled to administrative priority, and the Debtor, the Committee, the estate and their successors, would reserve all rights to object.

If anyone did object to the allowance of the liquidated bonus claims and Mr. Ellington and/or Mr. Leventon prevailed in such disputes, then the discount that was previously agreed to -- 85 percent to 70.125 percent -- would go away and they would be entitled to receive the full 85 percent payout as essentially a penalty for litigating against them on their allowed claims and losing.

As an alternative to the estate preserving the right to object to the allowance of Mr. Ellington and Mr. Leventon's

liquidated bonus claims, the Debtor and the Committee have an option to be exercised before the effective date to just agree that both their claims will be allowed, and allowed as Class 7 convenience claims. And if that agreement was reached, then the amount of such liquidated bonus claims, they would receive a payment equal to 60 percent of their allowed convenience class claim.

In exchange, Mr. Ellington and Mr. Leventon would waive their right to assert payment of a hundred percent of their liquidated bonus claims as an administrative expense.

So, under this circumstance, Mr. Ellington would receive an allowed claim of $600,000, which is 60 percent of a million dollars, and Mr. Leventon will receive a payment on account of his Class 7 claim of $358,918.80.

Under both scenarios, Mr. Ellington and Mr. Leventon would preserve their paid time off claims that are treated in Class 6, and they would preserve their other claims in Class 8, largely unliquidated indemnification claims, subject to the rights of any party in interest to object to those claims.

Mr. Ellington will change his vote in Class 8 from rejecting the plan to accepting the plan, and Mr. Leventon would change his votes in Class 8 and Class 7 from rejecting the plan to accepting the plan. And Mr. Ellington and Mr. Leventon would withdraw any remaining objections to confirmation of the plan, and we intend to put this settlement

in the confirmation order.

Your Honor, six objections to the plan remain outstanding. One objection was filed by the Office of the United States Trustee, and the remaining five objections are from Mr. Dondero and his related entities. And I would like to put up a demonstrative on the screen which shows how all of these objections lead back to Jim Dondero.

THE COURT: All right.

MR. POMERANTZ: You see on the top left, Your Honor, there's a box in white that says A through E, which are the five remaining objections. And you can see how they relate. But all of it goes back to that orange box in the middle, Jim Dondero.

These objections, which I will address in my closing argument in detail, are not really focused on concerns that creditors are being treated unfairly, and that's because Mr. Dondero and his entities don't really have any valid claims. Mr. Dondero owns no equity in the Debtor. He owns the Debtor's general partner, Strand, which in turn owns a quarter percent of the total equity in the Debtor. Mr. Dondero's only other claim is a claim for indemnification. And as Your Honor would expect, the Debtor intends to fight that claim vigorously.

Dugaboy and Get Good have asserted frivolous administrative and unsecured claims, which I will discuss in

more detail later.

Dugaboy does have an equity interest in the Debtor, but it represents eighteen-hundredths of a percent of the Debtor's total equity.

And Mr. Rukavina's clients similarly have no general unsecured claims against the Debtor. Either his clients did not file proofs of claim or filed claims and then agreed to have them expunged. The only claims that his clients assert is a disputed administrative claim filed by NexPoint Advisors.

And the objections aren't legitimately concerned about the post-confirmation operations of the estate, to preserve equity value, how much people are getting, whether Mr. Seery is really the right person to run these estates. That's because Mr. Dondero has repeatedly told the Court that he believes his offer, which doesn't come close to satisfying claims in full in this case, is for fair value and that creditors, who are owed more than $280 million, will not receive anywhere close to the amount of their claims.

Rather, Mr. Dondero and his entities are concerned with one thing and one thing only: how to preserve their rights to continue their frivolous litigation after confirmation against the independent directors, the Claimant Trustee, the Litigation Trustee, the employees, the Claimant Trust Oversight Board, and anyone who will stand in their way. For Mr. Dondero, the decision is binary: Either give him what he

wants, or as he has told Mr. Seery, he will burn down the place.

Your Honor will hear a lot of argument today about how the -- and tomorrow, in closing -- about how the injunction, the gatekeeper, and the exculpation provisions of the plan are not appropriate under applicable law. The Debtor, of course, disagrees with these arguments, and I will address them in detail in my closing argument.

But I do think it's important to focus the Court at the outset on the January 9, 2020 order that the Court entered which addressed some of these issues. This order, which has not been appealed, which was actually agreed to by Mr. Dondero, has no expiration by its terms and will continue post-confirmation, did some things that the Objectors just refuse to recognize and accept.

It approved an exculpation for negligence for the independent directors and their agents. It provided that the Court would be the gatekeeper to determine whether any claims asserted for them -- against them for gross negligence and willful misconduct could be pursued, and if so, provided that this Court would have exclusive jurisdiction to adjudicate those claims. And it prevented Mr. Dondero and his related entities from causing any related entity to terminate any agreements with the Debtor.

I also note, Your Honor, that the Court's July 16, 2020

order approving Mr. Seery as chief executive officer and chief restructuring officer included the same exculpation and gatekeeping provision as contained in the January 29th -- January 9th order.

Your Honor, we have all come too far to allow Mr. Dondero to make good on his promise to Mr. Seery to burn down the place if he didn't get what he wanted. The Debtor deserves better, the creditors deserve better, and this Court deserves better.

That concludes my opening argument, Your Honor.

THE COURT: All right. Thank you. I had one follow-up question about the Daugherty settlement. You did not mention, is it going to be reflected in the confirmation order, is it going to be the subject of a 9019 motion, or something else?

MR. POMERANTZ: It'll be subject to a -- it'll be subject to a 9019 motion, Your Honor.

THE COURT: All right.

MR. POMERANTZ: I apologize for leaving that out.

THE COURT: All right. Thank you. Well, --

MR. KATHMAN: Your --

THE COURT: -- I appreciate that you stuck closely to your 20-minute time estimate.

As far as other opening statements today, I'm going to start with the objections that were resolved. Mr. Kathman, I

see you there. Who will speak on behalf of Patrick Daugherty and the announced settlement?

OPENING STATEMENT ON BEHALF OF PATRICK DAUGHERTY

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

Mr. Pomerantz correctly recited the bullet points of the settlement that we agreed to in principle this morning. There was one that he did leave off that I do want to make sure that I mention and that it's read into the record. And he read at the top end that Mr. Daugherty does maintain his ability to pursue his 2008 tax refund bonus claim, or tax refund compensation claim. If the Court will recall, there's a contingent liability out there based on how compensation was paid back in 2008 that's the subject of an IRS audit. And so the settlement expressly contemplates that those -- that that claim will be preserved and Mr. Daugherty may pursue that claim. Should the IRS have an adverse ruling and we have to pay money back, we get to preserve that claim.

And so the one thing that is preserved, Your Honor -- and the same way that Mr. Pomerantz read verbatim the words, I'm going to read verbatim the words that we've agreed to: Daugherty maintains and may pursue the 2008 tax refund compensation portion of his claim that is currently a disputed contingent liability. The Debtor and all successors reserve the right to assert any and all defenses to this portion of

the Daugherty claim. The litigation of this claim shall be stayed until the IRS makes a final determination, provided, however, Daugherty may file a motion with the Bankruptcy Court seeking to have the amount of his tax claim determined for reservation purposes as a "disputed claim" under the Debtor's plan. The Debtor and all successors reserve the right to assert any and all defenses to any such motion.

So the Debtor's plan says that they can make estimations for disputed claims. There is not currently something reserving this particular claim, so we wanted to make sure we reserve our rights to be able to have that amount reserved under the Debtor's plan. And the Debtor obviously preserves their ability to object to that.

With that, Your Honor, it is going to be papered up in a 9019, and we'll have some further things to say at the 9019 hearing, but didn't want to derail the Debtor's confirmation hearing this morning.

THE COURT: All right. And --

MR. POMERANTZ: And Mr. Kathman is -- Mr. Kathman is correct. I neglected to mention that provision, but he is -- he read it, and that's agreed to.

THE COURT: All right. And I did not hear anything about Mr. Daugherty's vote on the plan. Is there an agreement to change or a motion to change the vote from no to yes?

MR. KATHMAN: Your Honor, that wasn't, I think,

directly -- and Mr. Pomerantz can correct me if I'm wrong, or Mr. Morris, actually, probably more could -- that wasn't directly addressed, but I think the answer to that is probably they don't need our vote.

THE COURT: Okay.

MR. KATHMAN: I think they have enough votes in that class to carry.

THE COURT: Okay.

MR. KATHMAN: But the answer directly is that that wasn't specifically addressed one way or the other.

THE COURT: All right.

MR. POMERANTZ: That is correct, Your Honor. We would, of course, not oppose Mr. Daugherty changing his vote, but as Your Honor saw in the ballot summary, we are way over the amount in dollar amounts of claims. But if they wanted to change their vote, we wouldn't oppose.

THE COURT: All right. Well, --

MR. KATHMAN: Your Honor, I have -- I have the benefit of Mr. Daugherty. He is on -- I should note, Mr. Daugherty is on the hearing this morning. He just let me know that he is willing to change his vote. If the Debtor were to so make a motion, we're fine changing our vote to in favor of the plan.

THE COURT: All right. All right. Well, we'll get the ballot agent declaration or testimony later. At one time

when I had checked, there was a numerosity problem but not a dollar amount problem. And it sounds like that is no longer an issue, perhaps because of the employee votes, or I don't know.

But, all right. Well, thank you.

MR. POMERANTZ: Your Honor, there is still a numerosity problem.

THE COURT: Okay.

MR. POMERANTZ: There's not a dollar amount problem.

THE COURT: Okay.

MR. POMERANTZ: But we'll address that and cram-down in closing.

THE COURT: All right. Very good.

All right. Well, I want to hear from the -- what we've called the Senior Employee group. Is Ms. Dandeneau going to confirm the announcement of Mr. Pomerantz?

MS. DANDENEAU: Yes, Your Honor. I confirm that Mr. Pomerantz's recitation of the terms to which we've agreed is accurate.

THE COURT: All right. Very good.

All right. I suppose I should circle back to UBS. We've, of course, heard in prior hearings the past few weeks that there was a settlement with UBS, but Mr. Clubok, could I get you to confirm what Mr. Pomerantz announced earlier about the UBS settlement?

MR. CLUBOK: Yes. Good morning again, Your Honor.

Yes, we have reached a settlement, and it's just -- and it's been approved internally at UBS and obviously by the Debtor. It's just subject to the final documentation. And we are working very closely with the Debtor to try to do that as quickly as possible.

THE COURT: All right. Thank you.

All right. Well, let me go, then, to other opening statements. Is there anyone else who at this time wishes to make an opening statement? And, you know, for the pending objectors, please, no more than 20 minutes.

MR. CLEMENTE: Your Honor? Your Honor, if I may, it's Matt Clemente on behalf of the Committee.

THE COURT: Okay.

MR. CLEMENTE: I'd be very brief, but I would like to make some remarks to Your Honor. It'll be less than five minutes.

THE COURT: All right. Go ahead.

MR. CLEMENTE: Thank you, Your Honor.

OPENING STATEMENT ON BEHALF OF THE UNSECURED CREDITORS' COMMITTEE

MR. CLEMENTE: Again, for the record, Matt Clemente; Sidley Austin; on behalf of the Official Committee of Unsecured Creditors.

Your Honor, to be clear, the Committee fully supports confirmation of the Debtor's plan and believes the plan is

confirmable and should be confirmed.

Although it has taken us quite some time to get to this point, Your Honor, and as Mr. Pomerantz referred, the Debtor's business is somewhat complex, the plan is remarkably straightforward, Your Honor, and has only been made complicated by the various objections filed by Mr. Dondero's tentacles.

At bottom, Your Honor, the plan is designed to recognize the reality of the situation that the Committee has continually been expressing to Your Honor, and that is the overwhelming amount of creditors in terms of dollars are litigation creditors, creditors who are here entirely because of the fraudulent and other conduct of Mr. Dondero and his tentacles.

The other third-party creditors, Your Honor, by and large are those collateral to these litigation claims in terms of true trade creditors and service providers.

Recognizing this fact, Your Honor, the plan contains an appropriate convenience class, which, in the Committee's view, provides a fair way to capture a large number of claims and appropriately recognizes the distinction between those claims and the large litigation claims. And the holders of these large litigation claims, including now Mr. Daugherty, have voted in favor of allowing this convenience class treatment.

Your Honor, after distributions are made to the

administrative creditors, the priority creditors, the secured creditors, and the convenience creditors, the remainder goes to general unsecured creditors who will control how this value is realized. These are the large litigation creditors.

Additionally, Your Honor, recognizing the possibility of recovery in excess of general unsecured claims plus interest, and to thwart, from the Committee's perspective, what would have undoubtedly been an argument by one of the Dondero tentacles that the general unsecured creditors could be paid more than they are owed, the plan provides for a contingent interest to kick in after payment in full for interests of all prior claims.

Your Honor, this is the sum and substance of the plan. At bottom, fairly straightforward. And the true creditors, Your Honor, have voted overwhelmingly in favor of the plan. Class 8 has voted to support the plan. Class 7 has voted to accept the plan. And now I believe, with Mr. Daugherty's settlement, one hundred percent in amount of Class 8, non-insider, non-Dondero-controlled or (audio gap) have voted in favor of the plan.

To be clear, as Your Honor pointed out and as Mr. Pomerantz referenced, there is not numerosity in Class 8, Your Honor, but that is driven, as Your Honor will see, from approximately 30 no-votes of current employees who the Committee believes are not owed any amounts and therefore they

will not be receiving payments under the plan, yet they voted against the plan. So although we have a technical cram-down plan from the Class 8 perspective, Your Honor, the plan voting reflects the reality that the economic parties in interest overwhelmingly support the plan.

So, Your Honor, cutting through the machinations of the Dondero tentacles, we do have a fairly straightforward plan and a plan that the Committee believes is confirmable and should be confirmed.

Your Honor, since I've been in front of you for over a year now, I've referred to the goals of the Committee in this case, and the goals are straightforward in terms of expressing them but can be difficult in reality to implement them. The Committee's goals have been two-fold: to maximize the value of the estate and therefore the recoveries for its constituency, and to disentangle from the Dondero (audio gap).

As with all things Highland, although these goals are straightforward, they're remarkably difficult to achieve, given the Dondero tentacles. However, the Committee strongly believes the plan achieves these two goals.

First, the plan provides a credible path to maximize recovery with Mr. Seery, who has gotten to know the assets and who has performed skillfully and credibly throughout this very difficult process. It is a difficult set of assets and complex set of assets, as Your Honor knows very well.

To be sure, there is uncertainty associated with the Debtor's projections, but that is inherent in the nature of the assets of the Debtor, and frankly, is inherent in the nature of projections themselves. And Mr. Dondero and his tentacles will point to the downside, potentially, in those projections, but the Court will be reminded that there is also potential upside in those projections, an upside that would inure to the benefit of the general unsecured claims.

Second, Your Honor, although it is seemingly impossible to free yourself from the Dondero web until every single one of the 2,000 barbed tentacles is painfully removed, if that's even possible, Your Honor, the Reorganized Debtor, the Claimant Trust, the Claimant Trustee, the Litigation Sub-Trust, the Litigation Trustee, and the Oversight Board construct and mechanisms is a structure that the Committee believes provides the creditors with the best possibility to do so, and that is to deal with what will undoubtedly be a flurry of attacks from Mr. Dondero and his tentacles.

This is a virtual certainty, Your Honor. The creditors have seen this movie before and Your Honor has seen this movie before. They have seen Mr. Dondero make and break promises. They have seen Mr. Dondero attempt to bludgeon adversaries into submission in order to accept his offerings, and they have heard Mr. Dondero say that which he has said in this court during the preliminary injunction hearing --

specifically, that the Debtor's plan "is going to end up in a myriad of litigation."

The creditors are steeled in their will to be rid of Mr. Dondero, and they're confident in this structure to do so.

To be clear, Your Honor, what is before the Court today for confirmation is the Debtor's plan, not some other plan that no one supports other than Mr. Dondero and his tentacles. The question isn't whether Mr. Dondero has a better proposal -- and footnote, Your Honor, the answer is he does not, both from a qualitative and quantitative perspective -- but whether the plan before the Court is in the best interest of creditors and should be confirmed. The Committee strongly believes it is, and should, and all the Committee members support confirmation of the Debtor's plan.

Recognizing Mr. Dondero's behavior, Your Honor, and threats regarding how he will behave in the future, there are certain provisions in the plan that are of critical importance to the creditors. Of course, all provisions in the plan are extremely important, Your Honor, but as Mr. Pomerantz referenced, the creditors need the gatekeeper, exculpation, and injunction provisions.

The reason is obvious, and is emphasized by the supplemental objection filed just yesterday by some of Mr. Dondero's tentacles -- namely, the Dugaboy and the Get Good Trusts. And I quote, Your Honor: "It is virtually certain

that, under the Debtor's plan, there will be years of litigation in multiple adversary proceedings, appeals, and collection activities, all adding substantial uncertainty and delay."

Additionally, Your Honor has seen from the proceedings in this case and has expressed frustration at numerous times at the myriad and at times baseless and borderline frivolous and out of touch with reality suits and objections and proceedings that the Dondero tentacles bring. The creditors need the gatekeeper, exculpation, and injunction provisions to preserve and protect value. And the record, I think, to this point is clear, and will be further made clear through the confirmation proceedings, that the protections are appropriate and entirely within this Court's authority to grant.

In sum, Your Honor, the Committee fully supports confirmation of the plan. The Committee believes it is confirmable and should be confirmed, and two classes of creditors and the overwhelming amount of creditors in terms of dollars agree.

That's it, Your Honor. Unless you have questions for me, I have nothing further at this time.

THE COURT: All right. Thank you, Mr. Clemente.

MR. CLEMENTE: Thank you, Your Honor.

THE COURT: All right. Who else wishes to be heard?

MR. DRAPER: Your Honor, this is Douglas Draper. I'd

like to be heard. I have a few -- I'll take five minutes, at most --

THE COURT: All right. Go ahead.

MR. DRAPER: -- and just focus on a few things.

OPENING STATEMENT ON BEHALF OF THE GET GOOD TRUST AND DUGABOY INVESTMENT TRUST

MR. DRAPER: I'm going to focus my opening remarks on the releases, the exculpations, and channeling injunctions in the plan. I'm not waiving my other objections, but, rather, trying not to subject the Court to hearing the same argument from multiple lawyers.

The good thing about the law is that it's absolute in certain respects. It does not matter who is asserting a legal protection, the law applies it. For example, a serial killer is entitled to a *Miranda* warning and a protection against unlawful search and seizure. The law does not allow tainted evidence or an unlawful admission into evidence, notwithstanding the fact that the lack of admission of that evidence may lead to the freeing of that serial killer.

Today, you must make an independent evaluation as to whether the plan complies with 1129 and applicable law. The decision must be made notwithstanding the fact that it is being made by a Dondero entity. It's not being -- it must be applied notwithstanding the fact that it's being made by me.

We contend that the plan does not meet the hurdle and

confirmation should be denied, notwithstanding the fact that the infirmity with the plan is asserted by me and notwithstanding the fact that Mr. Pomerantz and the unsecured creditors have overwhelming support.

We all know 1141, the Barton Doctrine, and 544 -- 524 provide injunctions and protections for certain parties associated with the Debtor. Had the plan merely referenced these sections and stated that the injunction, et cetera, shall not exceed those allowed pursuant to *Pacific Lumber*, I would not be making this argument.

Instead, we see a plan that has a definition of Exculpated Parties, Released Parties, Related Parties, that exceed the protections afforded by the Bankruptcy Code, the Barton Doctrine, and 524.

We have a grant of jurisdiction and oversight that exceeds that allowed under *Craig's Store*, the *Craig's Store* line of cases.

We have releases of claims against non-debtor parties, such as Strand, who is, under the Bankruptcy Code, under 723, liable for the debts of the Debtor.

The plan, with its expansive releases, released parties, grant of injunctions, exculpations and channeling injunctions, are impermissible under Fifth Circuit case law. And I would ask the Court to look closely at those definitions, who is -- who the law allows to be exculpated and released and who the

law specifically prohibits being exculpated and released, and, in fact, apply the *Pacific Lumber* line of -- case, as well as 524 and the Bankruptcy Code when you look at these issues.

Notwithstanding the overwhelming so-called support by the creditors at issue, the law must be applied, and it must be applied pursuant to what the Fifth Circuit requires.

THE COURT: All right. Thank you, Mr. Draper.

Other Objectors with opening statements?

MR. RUKAVINA: Your Honor, Davor Rukavina. Briefly?

THE COURT: Okay.

OPENING STATEMENT ON BEHALF OF CERTAIN FUNDS AND ADVISORS

MR. RUKAVINA: Your Honor, I represent various funds, including three of which have independent boards. The Debtor manages more than $140 million of those funds, and the Debtor manages around a billion dollars in CLOs.

Whether I am a tentacle of Mr. Dondero or not -- I'm not, since there's an independent board -- the fact remains that the Debtor wants to manage these assets and my clients' money post-assumption and post-confirmation with effective judicial immunity. So our fundamental problem with this plan is the assumption of those contracts under 365(c) and (b). I think we'll have to wait for the evidence to see what the Debtor proposes and has, and I will reserve, I guess, the balance of my arguments on that to closing, depending on what the evidence is.

But I don't want the Court to lose sight of the fact that what the Debtor wants to do is, in contravention of our desires, continue managing our assets post-confirmation, even as it liquidates, just to make a buck. It's our money, Your Honor, and whether we're Dondero or not, we're a couple hundred million, probably, or more, of third-party investment professionals, pension funds, et cetera, and we should not be all tainted without evidence as a tentacle of someone whom, I'll remind everyone here, built a multi-billion dollar company and made a lot of money for people.

The second objection, Your Honor, goes to the Class 8 rejection. It sounds like there's still a problem with the number of creditors, even though certain creditors have switched their votes. That raises now the fair and equitable standard, together with the undue discrimination and the absolute priority rule. I think we'll have to let the evidence play out, and I'll reserve the balance of my closing or the balance of my remarks to closing on that issue.

The third issue, Your Honor, is the same exculpation and release and injunction provisions that Mr. Draper raised. Those are legal matters that I'll discuss at closing, but I do note that the Debtor purports to prevent my clients from exercising post-assumption post-confirmation rights, period. And that's just inappropriate, because if the Debtor wants the benefits of these agreements, well, then of course it has to

comply with the burdens. And to say *a priori* that anything that my clients might do post-confirmation would be the result of a bad-faith Mr. Dondero strategy, there's no basis for that and that's not the basis on which my clients' rights in the future, when there is no bankruptcy estate and there is no bankruptcy jurisdiction, can be enjoined.

And the final point, Your Honor, entails this channeling injunction. I'll talk about it during closing. It is inappropriate under 28 U.S.C. 959. This is not a Barton Doctrine trustee issue, this is a debtor-in-possession, and a channeling injunction, the Court will have no jurisdiction post-confirmation.

Thank you, Your Honor.

THE COURT: All right. Thank you.

Does Mr. Dondero's counsel have an opening statement?

MR. TAYLOR: I do, Your Honor. I'll keep it brief. This is Clay Taylor on behalf of Mr. Dondero.

THE COURT: Okay.

OPENING STATEMENT ON BEHALF OF JAMES D. DONDERO

MR. TAYLOR: Your Honor, the plan is clear in some respects, and I'm not going to belabor these points, as other objecting counsel have already addressed this. But the plan does provide for non-debtor releases, and it provides for non-debtor releases for parties beyond that which is allowed by *Pacific Lumber* and under the Code.

It also provides for exculpations of non-debtor parties in excess of that which is allowed under the Code and applicable case law.

Finally -- or, not finally, but third, it requires this Court to keep a broad retention of post-confirmation jurisdiction that could go on for years, and that is improper.

Finally, it requires the parties to submit to the jurisdiction of this Court via a channeling injunction, which we believe is beyond that which is allowed under applicable Fifth Circuit precedent.

What is clear, what the evidence will show -- and I thought it was interesting that none of the proponents of plan confirmation ever talk about what the evidence is going to show. They testified a lot before Your Honor, but they didn't ever talk about what the evidence would show. What the evidence will show is this plan was solicited via a disclosure statement that told all the unsecured creditors, we project that you're going to receive 87 cents on the dollar on your claim.

About two months later, and this was Friday of this past week, they changed those projections, and those projections then showed unsecured creditors, under a plan analysis, that they were going to receive 62 cents on the dollar. That is in contrast to the liquidation analysis that had been prepared just two months prior showing that, under a hypothetical

Chapter 7 liquidation analysis, that the unsecured creditors would receive 65 cents on the dollar. Obviously, 62 cents is less than 65 percent.

Realizing they had a problem, I guess, over the weekend, they changed last night, the night before confirmation, and sent us some new projections that now show that the unsecured creditors under a plan would receive 71 cents on the dollar.

Your Honor, what the evidence will show, and it is Highland's burden to show this, is that -- that they meet the best interests of the creditors. And part of that is that they will do better under a plan rather than under a hypothetical Chapter 7.

Quite simply, they don't have the evidence, nor have they done the analysis to be able to prove that to this Court.

What the evidence will also show is clear is that Mr. Seery, under the plan analysis, is scheduled to receive at least $3.6 million over just the first two years of this plan if it doesn't go any further. And that's just for monthly payouts of $150,000 per month. That's not including a to-be-agreed-upon success fee structure, which hasn't been negotiated yet. And if it hasn't been negotiated yet, it can't be analyzed yet to see if those costs would exceed their benefits and therefore drive the return down such that a hypothetical Chapter 7 trustee could do better.

There is also going to be additional costs for the

Litigation Trustee and the fees that they are going to charge. There's going to be an Oversight Committee, and those fees are also to be negotiated. There's also U.S. Trustee fees, which Mr. Seery tells us that he has calculated within the liquidation and plan analysis numbers, albeit both myself and Mr. Draper, as the evidence will show, have asked for the rollups that come behind the liquidation and plan analysis in each instance of the three iterations that have been done in two months, and we have been denied that information. That evidence is not going to come in before this Court, and without that rollup information, this Court can't make an independent verification that this meets the best interests of the creditor and better than a hypothetical Chapter 7 trustee.

What the evidence will also show, make an assumption that, under a plan analysis, that Mr. Seery will be able to generate higher returns on the sale of the assets of the Highland debtor and its subsidiaries, to the neighborhood of $60 million higher. There is no independent verification of this. There has been no due diligence done. It was merely an assumption done by Mr. Seery and his advisors, and we submit that they will not have the evidence to show that they can beat a Chapter 7 trustee.

This Court does have an alternative before it. There is an alternative plan that has been filed under seal. The Court is aware of it. And it guarantees that creditors will receive

at least 65 cents on the dollar. Moreover, those claims are guaranteed -- and they're going to be secured that they will be paid that money.

MR. POMERANTZ: Your Honor, this is under -- this is under seal. And I never interrupt somebody's argument, but this plan is under seal for a reason, Your Honor, and I object to any description of the terms of a plan that's not before Your Honor and is under seal.

THE COURT: Okay. I sustain that objection.

MR. TAYLOR: Your Honor has a means to cut the Gordian knot of the litigation and appeals before it and to ensure that there is certainty for creditors. It would massively reduce the administrative fee burn that is contemplated under the proposed plan before the Court. As I've mentioned, it's at least $3.6 million just in monthly fees for Mr. Seery alone. All of the rest of the fees are yet to be determined and to be negotiated. I don't see how any analysis could have been done regarding the administrative fee burn that is going to happen over the two years and potentially much further as this case draws on.

For those reasons alone, Your Honor, we believe that the plan confirmation should be denied and this Court should look at the alternatives before it.

MR. KATHMAN: Can I say something before --

MR. TAYLOR: Thank you, Your Honor.

THE COURT: All right. Thank you.

All right. Have I missed any Objectors?

MR. KATHMAN: Your Honor?

MS. DRAWHORN: Yes, Your Honor.

THE COURT: Okay. Ms. --

MR. KATHMAN: Your Honor, if I could spend just one minute, and I -- we -- I -- we filed a joinder on behalf of Mr. -- or, Jason Kathman on behalf of Davis Deadman, Todd Travers, and Paul Kauffman.

THE COURT: Uh-huh.

OPENING STATEMENT ON BEHALF OF DAVIS DEADMAN, TODD TRAVERS, AND PAUL KAUFFMAN

MR. KATHMAN: Mr. Pomerantz had noted, I think, at the front end that the Debtor amended their plan that resolved those objections. I just want to say for the record that those had been resolved.

And with that, Your Honor, may I be dismissed?

THE COURT: Yes, you may. Thank you.

MR. KATHMAN: Thank you, Your Honor.

THE COURT: All right. Was Ms. Drawhorn speaking up to make an opening statement?

MS. DRAWHORN: Yes.

THE COURT: Go ahead.

MS. DRAWHORN: Yes, Your Honor.

THE COURT: Go ahead.

OPENING STATEMENT ON BEHALF OF THE NEXPOINT PARTIES

MS. DRAWHORN: Just very briefly, Lauren Drawhorn on behalf of NexPoint Real Estate Partners, the NexPoint Real Estate entities, and NexBank.

Just a very brief opening. Just wanted to note that it seems that the Debtor's and the Committee's position seems to be if there's some way, any way, to connect an entity to Mr. Dondero, then they don't need to perform any true evaluation of potential claims or that party's rights or their concerns, and that results in ignoring not only the merits of many claims but also the basic requirements of due process and the statutes, the Bankruptcy Code, and the case law.

We filed objections that were focused largely on the injunctions and the releases, and then also the proposed subordination provisions.

Two of my clients, one of them has a proof of claim, and while it is being disputed, that claim is out there and should get -- be entitled to be pursued and defended, and many of the injunctions appear to prevent my client from doing so.

Similarly, it was mentioned that NexBank, in the demonstrative, had a terminated service agreement, but there's periods of time for which no services were provided but payment was made, and that's a potential admin claim that has been raised. And the injunction, again, appears to prevent my clients from pursuing these claims.

So I think, despite the general response to any connection to Dondero means there's no merit, that's not what we're here for today. We need to really look at the merits of all potential claims and all -- the rights of all parties and the -- how the injunction and release provisions prevent that and how they don't comply with the required law.

And, of course, we join in with many of the other objections, but that's my main point for the opening today.

THE COURT: All right. Thank you.

All right. I think I have covered all of the at least pending objections except the U.S. Trustee. I'll check again to see if someone is out there for the U.S. Trustee. (No response.) All right. If you're there, we're not hearing you. You're on mute.

Okay. Any other attorneys out there who wish to make an opening statement?

All right. Well, I'll turn back to Mr. Pomerantz. You may call your first witness.

MR. POMERANTZ: Okay. I will turn the virtual podium over to my partner, John Morris, who will be putting on our witnesses.

THE COURT: All right. Mr. Morris, you may call your first witness.

MR. MORRIS: Good morning, Your Honor. John Morris from Pachulski Stang Ziehl & Jones on behalf of the Debtor.

Can you hear me okay?

THE COURT: I can.

MR. MORRIS: Okay. Thank you very much.

The Debtor calls James Seery as its first witness.

THE COURT: All right. Mr. Seery, if you could say, "Testing, one, two," please.

MR. SEERY: Testing, one, two.

THE COURT: All right. Hmm, I've not picked up your video yet. Let's try it again.

MR. SEERY: Testing, one, two. Testing.

MR. MORRIS: We have the audio.

THE COURT: We have the audio.

MR. SEERY: Oh.

MR. MORRIS: There we go.

THE COURT: There you are.

MR. SEERY: The video should be working.

THE COURT: All right.

MR. POMERANTZ: Yeah. Actually, one -- Your Honor, one thing before we start. We have Patrick Leatham from KCC. He is prepared to sit on the line for the whole day until his time comes. I would just like to know if anyone intends to cross-examine him or object to his declaration. Because if they don't, we could excuse Mr. Leatham.

THE COURT: All right. What about that? Anyone want to cross-examine the balloting agent?

MR. RUKAVINA: Your Honor, Davor Rukavina. I do not. If the Debtor would just state, with the change of votes in Class 8, what the final tally is, I see no reason to dispute that, and then we can dismiss this gentleman. But I do think that we should all know, with the change of votes, what it now is.

THE COURT: All right.

MR. POMERANTZ: We will -- we will work on that, Your Honor, with the changes as a result of the settlements today, and including Mr. Daugherty's client. We can get that information sometime today.

THE COURT: All right. So, Mr. Rukavina, do you agree that he can be excused with that representation, or do you want --

MR. RUKAVINA: Yes, Your Honor.

THE COURT: Okay. All right. So, it's Mr. Leatham? You are excused if you want to drop off this video.

All right. Mr. Seery, please raise your right hand.

JAMES P. SEERY, DEBTOR'S WITNESS, SWORN

THE COURT: All right. Thank you. Mr. Morris, go ahead.

MR. MORRIS: Thank you, Your Honor.

If I may, I'd like to just begin by moving my exhibits into evidence so that it'll make this all go a little bit smoother.

THE COURT: All right.

MR. MORRIS: And if you'll indulge me just a little patience, please, because the Debtor's exhibits are found in three separate places.

THE COURT: Uh-huh.

MR. MORRIS: And I would just take them one at a time.

First, at Docket No. 1822, the Court will find Debtor's Exhibits A through what I'm referring to as 6Z. Six Zs. So the Debtor respectfully moves into evidence Exhibits A through 6Z on Docket No. 1822.

THE COURT: All right. Are there any objections?

MR. RUKAVINA: Your Honor, I have a number of targeted objections to all of the exhibits. Did I hear Mr. Morris say 6Z?

THE COURT: Yes.

MR. MORRIS: Yes.

MR. RUKAVINA: Or six -- then, Your Honor, I can go through my limited objections, if that pleases the Court.

THE COURT: All right. Go ahead.

MR. RUKAVINA: Your Honor, Exhibit B, a transcript, B as in boy. Exhibit D, an email, D as in dog. Exhibit E as in Edward. Moving on, Your Honor, 4D as in dog. 4E as in Edward.

MR. MORRIS: Slow down, please.

THE COURT: Okay.

MR. RUKAVINA: I'm sorry.

THE COURT: You said 4D as in dog, correct?

MR. RUKAVINA: Then -- yes, Your Honor. Then 4E as in Edward.

THE COURT: Okay.

MR. RUKAVINA: 4G as in George. Your Honor, one, two, three, four, five T. 5T as in Tom. And then, Your Honor, one, two -- 6R. 6S. 6T as in Tom. And 6U as in under. That's it.

THE COURT: All right. Well, Mr. Morris, do you want to carve those out for now and just offer them the old-fashioned way and I can rule on the objections then?

MR. MORRIS: Why don't we do that? I may just deal with it at the end of the case. But subject to those objections, the Debtor then moves into evidence the balance of the exhibits on Docket 1822.

THE COURT: All right. So, for the record, the Court will admit all exhibits at Docket No. 1822 at this time except B, D, E, 4D, 4E, 4G, 5T, 6R, 6S, 6T, and 6U.

(Debtor's Docket 1822 exhibits, exclusive of Exhibits B, D, E, 4D, 4E, 4G, 5T, 6R, 6S, 6T, and 6U, are received into evidence.)

THE COURT: All right. Mr. Morris, continue.

MR. MORRIS: Thank you, Your Honor.

Next, at Docket 1866, you'll find Debtor's Exhibits 7A through 7E, and the Debtor respectfully moves those dockets -- documents into evidence.

THE COURT: All right. Any objection? (No response.) Are there any objections?

MR. RUKAVINA: Your Honor, not from -- not from me.

THE COURT: All right. Hearing no objections, the Court will admit all Debtor exhibits appearing at Docket Entry No. 1866.

MR. MORRIS: Thank you, Your Honor.

(Debtor's Docket 1866 exhibits are received into evidence.)

MR. MORRIS: And finally, at Docket 1877, the Court will find Debtor's Exhibits 7F through 7Q, and the Debtor respectfully moves for the admission of those documents into evidence.

THE COURT: All right. Any objection?

MR. RUKAVINA: Your Honor, I might have to talk about this with Mr. Morris, but I have 7F as any document entered in the case, 7G as any document to be filed, et cetera. Mr. Morris, am I wrong about that?

MR. MORRIS: I don't have that list in front of me. So I'll reserve on those documents and we can talk about them at a break, Your Honor.

THE COURT: All right.

MR. DRAPER: Your Honor, this is Douglas Draper. I object, and I don't have the number in front of me, it's the liquidation analysis and the plan summary. It's a summary exhibit, and we've not been given the underlying documentation with respect to them. I'd ask Mr. Morris to deal with that separately also.

MR. MORRIS: All right. Well, we're certainly going to be moving that into evidence, so we can deal with that at the time, Your Honor.

THE COURT: Okay. Which documents are they? Which exhibits are those?

MR. DRAPER: I don't have the number in front -- Mr. Morris, do you have the number for that exhibit?

MR. MORRIS: I do, but why don't we just deal with it when I -- when I get into --

THE COURT: Okay.

MR. MORRIS: -- into the testimony?

THE COURT: I just wanted the record clear what I am admitting at this time at Docket Entry No. 1877. Or do you want to just --

MR. MORRIS: Okay.

THE COURT: -- hold all those --

MR. MORRIS: Mr. Rukavina, other than F and G, which you noted, is there any objection to any of the other documents on that witness and exhibit list?

MR. RUKAVINA: Well, I also have H as impeachment/ rebuttal, I as any document offered by any other party. So I would suggest, Mr. Morris, that I have my associate confirm that I have the right -- the right stuff here, and we can take it up maybe during a break. But I have F, G, H, I as so-called catchalls, not any discrete exhibits.

MR. MORRIS: All right. All right, Your Honor. Let's, let's just proceed. We've got -- we took care of Docket No. 1822 and 1866, and the balance we'll deal with at a break, --

THE COURT: All right.

MR. MORRIS: -- unless they come up through testimony.

THE COURT: All right. That sounds good.

MR. MORRIS: Okay. Thank you very much. May I proceed?

THE COURT: You may.

MR. MORRIS: Okay.

DIRECT EXAMINATION

BY MR. MORRIS:

Q Good morning, Mr. Seery.

A (no response)

Q Can you hear me?

A Apologies. I went on mute. Can you hear me now? I apologize.

Q Yes. Good morning.

MR. MORRIS: So, let's begin, Your Honor, with just a little bit of background of Mr. Seery and how he got involved in the case.

BY MR. MORRIS:

Q Mr. Seery, what's your current position with the Debtor?

A I am the CEO, the CRO -- the chief restructuring officer -- as well as an independent director on the Strand Advisors board of directors.

Q Okay.

MR. MORRIS: Your Honor, I'm going to ask Mr. Seery to describe a bit for his background. For the record, you'll find that Exhibits 6X, 6Y, and 6Z, on the Debtor's exhibit list at Docket 1822, the resumes and *C.V.s* of the three independent members of the board. If Your Honor has any question about their qualifications and their experience, that evidence is already in the record.

THE COURT: Okay.

BY MR. MORRIS:

Q But Mr. Seery, without going into the detail of everything that's on your *C.V.*, can you just describe for the Court generally your professional background, starting, well, with your time as a lawyer?

A I've been involved in the restructuring, finance, investing and managing of assets and banking-type assets for

over 30 years.

I began in restructuring in real estate. Became a lawyer, and was a lawyer in private practice dealing with restructuring and finance for approximately ten years, in addition to time before that on the real estate side.

I joined Lehman Brothers on the business side in 1999, where I immediately began working on the -- with a distress team as a team member investing off the balance sheet, Lehman Brothers assets in various types of distressed financing investments. Bonds, loans, equities. In addition, then I became the head of Lehman's loan business globally. I ran that business for the number of years. Was one of the key players in selling Lehman Brothers to Barclays in a very difficult situation and structure.

After that, joined some of my partners, we formed a hedge fund called RiverBirch Capital, about a billion and a half dollar hedge fund in -- operating in -- globally, but mostly U.S. stressed/distressed assets that we invested in. Oftentimes, though, we would run from high-grade assets all the way down to equities, different types of investors, different types of investments.

Thereafter, I left -- was -- joined Guggenheim. I left Guggenheim, and shortly thereafter became a director at Strand.

Q Prior to acceptance of the positions that you described

earlier, were you at all familiar with Highland or Mr. Dondero?

A Yeah. I was, yes.

Q Can you just describe for the Court how you became familiar with Highland and Mr. Dondero?

A Highland was a customer of Lehman Brothers, and it was -- particularly in the loan business. And the CLO businesses. Highland was run by Mr. Dondero, and I knew of that business through that --

(Interruption.)

MR. MORRIS: Can somebody please put their device on mute?

A VOICE: That's Mr. Taylor.

THE COURT: Mr. Taylor, you were off mute, apparently, for a moment. Make sure you're staying on mute. Thank you.

MR. TAYLOR: Yes. Sorry, Your Honor. I thought we might have a hearsay objection. I wasn't sure what the answer was going to be, so I wanted to be prepared to object.

THE COURT: All right. Thank you.

BY MR. MORRIS:

Q Did you know or meet Mr. Dondero in the course of what you just described?

A Yes, I did. I believe we met once or twice over the years. There was a senior team member who handled the

Highland relationship. He was quite good, quite experienced, and he handled most of the Highland relationship issues. But Highland, we came across a number of times, whether it be in -- I came across a number of times, whether it be in specific investments we had where they would be either a competing party or holding a similar interest, whether they were a customer purchasing loans or securities, whether they were a potential CLO customer where we were structuring some assets for them.

Q Okay. And who are the two other members of the independent board at Strand?

A John Dubel and Russel Nelms.

Q And had you had any personal experience with either of those gentleman prior to this case?

A I knew of Mr. Nelms and his experience as a bankruptcy judge in the Northern District of Texas, and I had worked on one matter with Mr. Dubel, but very, very briefly, while he was the CEO of FGIC, which is a large insurer in the financial insurance space that he was responsible for reorganizing and ultimately winding down.

Q Okay. How did you learn about this particular case? How did you learn about the opportunity or the possibility of becoming an independent director?

A Initially, I was contacted by some of the creditors and asked whether I was interested, and I indicated that I was.

Subsequently, I received a call from the Debtor's representatives as well meeting the counsel as well as the financial advisor as well as specific members of the Debtor's senior management.

Q Do you know how long in advance of the January 9th settlement you were first contacted?

A Probably four, four or five days at the most, but started working immediately at that time because it was a pretty complicated matter and the interview process would be quick because of the hearing date that was coming up.

Q Do you recall the names of any of the creditors who reached out to you?

A I spoke to counsel for UBS. Certainly, Committee counsel. I don't recall if I spoke to anybody from Jenner Block in the initial interview. And then I spoke to representatives from your firm as well as Mr. Leventon and ultimately Mr. Ellington.

Q Did you do any due diligence before accepting the appointment?

A I did, yes.

Q Can you describe for the Court the due diligence you did before accepting your appointment as independent director?

A Well, I got the petition, I read the petition, as well as the first day, as well as the venue-changing motion. In addition, I went through the schedules. Ultimately, I took a

look at and examined the limited partnership agreement of the Debtor, with particular focus on the indemnity provisions. I then sat down with the Committee to get their views as part of the interview process, as well as the Debtor's counsel and Debtor's representatives.

Q Did you -- in the course of your diligence, did you come to an understanding or did you form a view as to why an independent board was being sought at that time?

A Yes, I did.

Q And what view or understanding did you come to?

A There was extreme antipathy from the creditors, as evidenced by the venue motion and the documents around that venue motion.

In addition, in the first day order, or affidavit, you could see the issues related to Redeemer and the length of time that litigation has been gone on, going on.

The creditors became extremely concern with Mr. Dondero having any control over the operations of the Debtor and wanted to make sure that either he was removed from that or that -- and someone else was brought in, or that the case was somehow taken over by a trustee.

Q Did you form any views as to the causes of the Debtor's bankruptcy filing?

A The initial cause was the entry or the soon-to-be-entered order related to the arbitration with Redeemer, but it was

pretty clear from looking at the first day that there was a number of litigations. The bulk of the creditor body was made up of -- on the liquidated side was made up of litigation creditors. And then the other creditors, the Committee members, other than Meta-e, were significant litigation creditors.

MR. MORRIS: Your Honor, I think Mr. Seery was sworn in, but unless -- unless you -- if you think there's a need, I'm happy to have you swear Mr. Seery in again just to make sure his testimony is under oath.

THE WITNESS: I was sworn in.

THE COURT: Yes, I swore him in.

MR. MORRIS: That's what I thought. That's what I thought. Somebody had made the suggestion to me, so I was just trying to make sure, because I didn't want any unsworn testimony here today.

THE COURT: We did.

MR. MORRIS: Okay.

THE COURT: We did.

MR. MORRIS: Thank you. Thank you.

BY MR. MORRIS:

Q Ultimately, sir, just to move this along a little bit, do you recall that an agreement was reached with the UCC and Mr. Dondero and the Debtor concerning governance issues?

A Yes, I do.

Q And did you accept your position as an independent director at Strand as part of that corporate governance settlement?

A That, that was part of the appointment. We -- the independent directors were brought in to take -- really, to take control of the company as independent fiduciaries. And the idea, I think, was that there was a Chapter 7 motion that was about to be filed by the Committee, or at least that was the representation, and the Debtor had a choice, they could either accept the independent directors or they could face the motion.

What actually happened was a little bit more complicated. The creditors and the Debtor agreed on the selection of Mr. Dubel and myself. And then because they couldn't agree on the third member of the independent board, they left it to Mr. Dubel and myself to actually come up with a process, interview candidates, and make that selection, which we did, which ultimately became Mr. Nelms.

Q And did all of this take place during that four- or five-day period prior to January 9th?

A It did, yes.

Q Okay. And let's talk about the makeup of the board. You've identified the other individuals. How would you characterize the skillset and the capability of the individual?

A Well, on paper, I think it's a pretty uniquely-constructed board for this type of asset management business with the diversity of these types of assets and the diversity of issues that we had.

So, former Judge Nelms, obviously skilled in bankruptcy and the law around bankruptcy, but also very skilled in mediation, conflict resolution, and in particular his prepetition or maybe pre-judicial experience in litigation and litigation involving fiduciary duties we thought could be very, very important because of the myriad of interrelated issues that we could see that might arise.

John Dubel is an extremely well-known and respected restructuring professional. He has been dealing these kinds of assignments as an independent fiduciary for, gosh, as long as I can recall, but at least going back 15 to 20 years. He had experience in accounting, but he's also been the leader of these kinds of organizations going through restructuring in many operational type roles, and so he was a perfect fit.

And my experience in both restructuring as well as asset management and investment I think dovetailed nicely with the experience that Mr. Nelms and Mr. Dubel have.

Q Okay. Let's talk for just a moment at a high level of the agreement that was reached. Do you remember that there were several documents that embodied the terms of the agreement?

A Yes, I do.

Q And do you remember one of them was an order that the Court entered on January 9th?
A Yes.
MR. MORRIS: All right. Your Honor, just for the record, and we'll be looking at this, but that would be document Exhibit 5Q as in queen, and that's at Docket No. 1822.
BY MR. MORRIS:
Q Do you remember there was a separate term sheet, Mr. Seery, that was also part of the agreement among the constituents?
A Yes. There were -- I think there were a couple of term sheets and stipulations, but I do recall that there was some very specific term sheets with the terms.
MR. MORRIS: All right. And we'll look at that one as well, Your Honor, but that can be found at Exhibit 5O as in Oscar.
BY MR. MORRIS:
Q And then, finally, do you recall that Mr. Dondero signed a stipulation that was also part of the agreement?
A Yes. That was absolutely key to the agreement for the creditors and perhaps the Court. But it was really -- it needed to be clear that he was signed on to this transaction.
MR. MORRIS: Okay. And we'll look at that as well. That's Exhibit 7Q. And remind me, we'll move that one into

evidence.

BY MR. MORRIS:

Q Did you and the other prospective independent directors actually participate in the negotiation of any aspect of this agreement that you've generally described?

A Absolutely. Although we hadn't been appointed yet, these agreements were going to be the structure with which -- or under which we would come in as independent fiduciaries. They would govern a lot of our relationships. They would provide for the protections that we required and that I required. So they were exceedingly important to me.

Q Can you describe for the Court at a general level your understanding of the overall structure of the corporate governance settlement?

A From a very high level, the settlement was -- Highland Capital Partners is a limited partnership. It's managed by its general partner, Strand Advisors. Although Strand is the GP, its effective interest in Highland is minimal, about .25 percent of the effective partnership interest. But it is the general partner. So it does govern the -- the partnership.

We came in as an independent board that would oversee and control Strand Advisors and thereby, through the general partner position, oversee and control HCMLP, the Debtor.

In addition, the Committee then overlaid what we could do with respect to how we operated the business in the ordinary

course in Chapter 11 with a specific set of protocols that governed certain transactions that we would have to get permission from either the Committee or the Court to engage in.

And in addition, Mr. Dondero, notwithstanding the insertion of the independent board at Strand, also had a set of restrictions around him, because, of course, not only was he the former control entity at Highland and Strand, he also had a hundred percent of the ownership -- indirectly, of course -- of Strand and could have removed the board. So there were restrictions around what he could do with respect to the board. There were also restrictions around what he could do through various entities to terminate contracts and --

Q All right. We'll look at some of those in detail. Did, to the best of your recollection, did Mr. Dondero give up his position as president or CEO of the Debtor?

A He did, yes.

Q And did he nevertheless stay on as an employee of the Debtor and retain a position as portfolio manager?

A He did. At the last second, I believe it was the night before, when we were actually in Dallas preparing for the hearing, but Mr. Ellington raised the concern that if Dondero was removed from not only the presidency but also the portfolio management position, potentially there would be some

agreements that might or might not be subject to Court approval that could be terminated and value would be lost. So this was a very last-second provision. Obviously, the -- as new estate fiduciaries, we didn't want value to be lost instantly for key man or some other reason. And the Committee ultimately, or I guess you'd say reluctantly, agreed to that because we just didn't have time to look at any of -- any such agreements.

MR. MORRIS: All right. Let's -- can we put up on the screen, Ms. Canty, Debtor's Exhibit 5Q?

And this is in evidence, Your Honor. This is the January 9th order.

And can we please go to Paragraph 8?

BY MR. MORRIS:

Q Mr. Seery, you had mentioned just a few minutes ago that there were certain restrictions that were placed on Mr. Dondero. Does Paragraph 8, to the best of your recollection, provide for the substance of at least some of those restrictions?

A It does, yes.

Q And can you just describe for the Court your understanding of the restrictions that were imposed on Mr. Dondero pursuant to Paragraph 8?

A Well, as I recall, when Mr. Ellington came in with the last-minute request, the Committee was extremely upset about

it. We talked about it. Obviously, we, as an independent board that was going to come in, didn't know the underlying contracts and couldn't really render any judgment as to whether there would be value lost. So, the Committee agreed, but they wanted to make sure that Mr. Dondero still reported to -- directly to the board, and if the board asked Mr. Dondero to leave, he would do so.

Q Okay. Just looking at this paragraph, is it your understanding that the scope and responsibilities of Mr. Dondero would be determined by the board?

A Yes.

Q And was it your understanding that Mr. Dondero would serve without compensation?

A Yes.

MR. DRAPER: Objection. Leading, Your Honor.

THE COURT: Overruled.

BY MR. MORRIS:

Q Was it your understanding that Mr. Dondero's role would be subject to the direct supervision, direction, and authority of the board?

A That's, you know, that's what the order says and that's what the agreement was. In practice, that was really going to have to evolve because we were coming in very cold and obviously he'd been there for --

(Interruption.)

THE COURT: All right. Someone needs to put their phone on mute. I don't know who it is.

BY MR. MORRIS:

Q Was it also part of the agreement that Mr. Dondero would (garbled) upon the board's request?

A I think I got you, but yes, that's contained in this paragraph, and Mr. Dondero agreed to that.

THE COURT: All right. Whoever LC is, your phone needs to be put on mute. Okay. Please be sensitive to keeping your device on mute except for Mr. Morris and Mr. Seery.

All right. Go ahead.

BY MR. MORRIS:

Q Do you recall, Mr. Seery, whether there were any restrictions placed on Mr. Dondero's ability to terminate agreements with the Debtor?

A Yes. That was a very specific provision as well.

Q Can we take a look at Paragraph 9 below? Is that the provision that you're referring to?

A That's the provision in the order. I believe there were other agreements -- certainly, discussion around it -- because it was an important provision because it had been borne out of some experience that Acis and Mr. Terry had had in particular. So it was supposed to be broad and prevent both direct and indirect termination of agreements.

Q Okay. And do you know, do you recall that the definition of related entity is contained within the term sheet that you referred to earlier?

A It's a pretty extensive -- I recall the definition not specifically, but it's a pretty extensive definition. It includes any of the entities that he owns, that Mr. Dondero owns, that Mr. Dondero controls, that Mr. Dondero manages, that Mr. Dondero owns indirectly, that Mr. Dondero manages indirectly, and it really covers a wide swath of those entities in which he has interests and control.

MR. MORRIS: All right. Let's see if we could just look at the definition specifically at Exhibit 5O as in Oscar. And if we could just scroll down to the next page.

Now, this was -- this is part of the term sheet that was filed at Docket 354.

BY MR. MORRIS:

Q At Definition I(d), is that the definition of related entity that you were referring to?

A That's correct.

Q Okay. In addition to what you've described, I think you also mentioned that there was a separate stipulation that Mr. Dondero entered into as part of the corporate governance settlement. Do I have that right?

A That's my recollection, yes. And I believe he signed it, and that was a key gating issue to the hearing that we had on

January 9th.

Q And what do you recall about that document as being a key gating issue?

A The key gating issue that I recall is that it had to be signed. And I don't believe it was signed until that very morning.

MR. MORRIS: All right. Can we call up Exhibit 7Q as in queen?

BY MR. MORRIS:

Q All right. Is this the stipulation that you were referring to? We can scroll down to any portion you want.

A I believe that is, yes.

MR. MORRIS: Okay. Can we just scroll down to see Mr. Dondero's signature? Yeah. That's -- okay.

So, that's dated January 9th. This was filed at Docket 338. It's on the Debtor's exhibit list as Exhibit 7Q. And the Debtor would respectfully move Exhibit 7Q into evidence.

THE COURT: Any objection? All right. 7Q is admitted.

(Debtor's Exhibit 7Q is received into evidence.)

MR. MORRIS: Okay. And if we could just scroll up a page or two to the four bullet points. Yeah, right there. A little more.

BY MR. MORRIS:

Q Okay. So, do you see Paragraph 10 contains the

stipulation?

A Yes.

Q And as you recall, Mr. Seery, in the events leading up to the entry of the order approving the settlement, was this one of the documents that was being negotiated among -- among the parties?

A Yes, it was.

Q Okay. You mentioned that there were certain provisions of the January 9th order that were important to you and the other independent directors. Do I have that right?

A Yes.

MR. MORRIS: Let's see if we can back to Exhibit 5Q, please, Paragraph 4.

BY MR. MORRIS:

Q Okay. Paragraph 4, can you tell me what Paragraph -- what Paragraph 4 is and why it was important to you?

A Well, there really were four key, I guess I'll use the term gating items again, for my involvement, and ultimately in discussions with Mr. Nelms and Mr. Dondero -- Mr. Dubel, their involvement in the matter.

Because of the litigious nature of the Highland operations and the expectations we had for more litigation after taking a look at the Acis case, we wanted to make sure that, as independents coming into a situation with really no stake in the particular outcome, other than trying to achieve a

successful reorganization, that we were protected. So, number one, I looked at the limited partnership agreement. I wanted to make sure that the LPA contained broad and at least standard indemnification provisions and that they would apply to the board.

Number two, because -- that then requires you to look at the indemnification provisions at Strand, because you're a director of Strand, the GP. So then we looked at those. I took a close examination of those. They looked okay, except Strand didn't have any assets other than its equity interest in Highland, and if that equity interest turned out to be zero, that indemnity wouldn't be very valuable.

So I wanted to make sure that Highland, the Debtor, guaranteed the indemnity (garbled) on a postpetition basis, so that if there were a failure of D&O, which I'll get to in a second, or it wasn't enough, that we would have a senior claim in the case, an admin claim in the case.

I then, of course, wanted to make sure that we had D&O insurance. This was very difficult to get, because, frankly, there's a Dondero exclusion in some of the markets, we've been told by our insurance brokers, and so getting the right policy that would cover the independent board was difficult. We did get that.

And then ultimately there'll be another provision in the agreement here -- I don't see it off the top of my head -- but

a gatekeeper provision. And that provision --

Q Hold on one second, Mr. Seery, because we'd want to scroll. So Paragraph 4 and Paragraph 5, were those, were those provisions put in there at the insistence of the prospective independent directors?

A Yes. And remember, so the Paragraph 4, as I said, is the guarantee of Strand's obligations for its indemnity. Again, Strand didn't have any money, so the Debtor had to be the one purchasing the D&O for the directors and for Strand. So those are the two provisions that really worked to address my concerns about the indemnities and then the D&O.

MR. MORRIS: Okay. Can we go to Paragraph 10, please? There you go.

BY MR. MORRIS:

Q Is this the other provision that you were referring to?

A This is. It's come to be known as the gatekeeper provision, but it's a provision that I actually got from other cases. Again, another very litigious case that I thought it was appropriate to bring in to this case.

And the concept here is that when you're dealing with parties that seem to be willing to engage in decade-long litigation in multiple forums, not only domestically but even throughout the world, it seemed important and prudent for me and a requirement that I set out that somebody would have to come to this Court, the court with jurisdiction over these

matters, to determine whether there was a colorable claim. And that colorable claim would have to show gross negligence and willful misconduct, *i.e.*, something that would not otherwise be indemnified.

So it basically sets an exculpation standard for negligence. It exculpates the directors from negligence. And if somebody wants to bring a cause against the directors, they have to come to this Court first and get a finding that there's a colorable claim for gross negligence or willful misconduct.

Q Would you have accepted the engagement as an independent director without the Paragraphs 4, 5, and 10 that we just looked at?

A No. These were very specific requests. The language here has been 'smithed, to be sure, but I provided the original language for 10 and insisted on the guaranty provision above to assure that the indemnity would have some support.

Q And ultimately, did the Committee and the Debtor agree to provide all of the protection afforded by Paragraphs 4, 5, and 10?

A Yes.

Q Okay.

MR. MORRIS: Your Honor, we're going to move on now to good faith, Section 1129(e)(3), just to give you a little bit of a roadmap of where we're going.

BY MR. MORRIS:

Q Let's talk about the process that led to the plan that the Debtor is asking the Court to confirm today. Real basic stuff at the beginning. Can you tell me your understanding of the makeup of the UCC, of the Creditors' Committee?

A The Creditors' Committee in this case has four members. It's UBS, the Redeemer Committee, which are former holders of interests in a fund called the Crusader Fund, which was a Highland fund, who had redeemed and then had a dispute with Highland.

And the next creditor is Mr. Terry and Acis. We generally group them as one, but the creditor is Acis.

And the fourth creditor is an entity called Meta-e, and they provide litigation support and technical support and discovery support in litigations for the Debtor, including in this case now.

Q All right. Just focusing really on the early period, the first few months, can you describe the early stages of the negotiations with the UCC as best as you can recall?

A Well, I think the early stage of the case wasn't directly a negotiation; it was really trying to understand as best we could the myriad of assets that we had here, the various businesses that the Debtor either owned, controlled, or managed, as well as the claims.

We went through a process of trying to understand each of

the claims that the Debtor -- or against the Debtor that were represented by the Committee, as well as some other claims that were not on the Committee.

Q Was the Debtor -- I mean, was the Committee initially pushing the independent board to go to a monetization plan, an asset monetization plan?

A Very quickly and early on, the Debtor -- the Committee took a pretty aggressive approach with the Debtor and the independent board. I think the Committee's perspective, as articulated to me, and where -- at least how we took it, was that they'd been litigating for years and they sort of knew the situation and the value of their claims, that the Debtor was insolvent, in their view, and that we should be operating the estate in essence for the benefit of the creditors.

Q And what was the board's view in reaction to that?

A We disputed it. And the reason we disputed it was very straightforward. Save for the Redeemer claim, which at least had an arbitration award, Acis and Mr. Terry didn't have any specific awards, notwithstanding the results of the Acis bankruptcy, and UBS, while it had a judgment, that judgment was not against the Debtor.

So our view was, until we have our hands around these claims and we determine what the validity is in our estate, that we would treat the Debtor as if it were solvent. We also wanted to assess the value of the assets. So, looking at the

assets not just from a book value but what they might be really worth in the market.

Q And did the board in the early portion of the case consider all strategic alternatives?

A I don't know if we considered every strategic alternative, but we certainly considered a lot of alternatives.

Q Can you describe for the Court the alternatives that were considered by the board before settling on the asset monetization plan?

A Well, early on, you know, we looked at each of the -- what we would think of the large category types of ways to resolve a case. Number one, could we go through a very traditional reorganization with either stretching out claims to creditors after settlement or converting some of those to equity, getting new equity infusions? We considered those alternatives.

Number two, we considered whether we should simply sell the assets. That's one of the things that the Committee was pushing for. They could be sold to third parties. They could be sold individually. Mr. Dondero potentially could buy some of the assets. That'd be a reasonable reorganization in this case.

We also considered whether that, you know, we would just do a straight liquidation. Is there some value to doing -- converting the case to a 7 and doing a straight liquidation?

We also considered a grand bargain plan, and this was something that I worked on quite a bit. The phrase is mine, although no pride of authorship, certainly, since it didn't work out. But that perhaps we could come to an agreement with the major creditors and with Mr. Dondero and then shift some of the expenses in the case out further to litigate some of the other claims while reorganizing around the base business.

And then, finally, we considered the asset monetization plan, and ultimately that evolved into what we have today.

Q Were there guiding principles or factors that the board was focused on as it assessed these different options?

A Well, the number one guiding principle was overall fairness and equitable treatment of the various stakeholders. So, again, at that point, we didn't know exactly what, if anything, we would owe to claimants like UBS or HarbourVest or even Mr. Terry and Acis. We had a good sense of where we would end up with Redeemer, I think, but we still had some options and wanted to negotiate the issues related to potential appeal rights that we had. So I think that was the number one overall concern.

But that did evolve over time. Costs of the case were exceptionally high. And the reason they're so high is that Highland was run for a long time, at least from what we can tell, at an operating deficit. Typically, what it would do is run at a deficit and then sell assets to cover the shortfall,

and it would defer a whole bunch of employee -- potential employee compensation. And because of the way the environment was going, particularly in the first half of the year, it didn't look to us like there was going to be any great asset increase that would somehow save us from the hole that was being dug, the considerable amount of expenses to run the case.

Q Did changing the culture of litigation factor into the path that the board considered?

A Well, we certainly looked at the way the company had run and why it got to where it is in terms of litigating. And not just litigating valid claims, but litigating any claim to the *nth* degree. And stories are legion, I won't talk about them, but of Highland taking outrageous positions and then pursuing them, hoping that the other side caves.

We determined that this estate couldn't bear that kind of expense, and it wasn't fair and equitable to do that anyway. So we wanted to attack the claims that we could -- and I say attack; try to resolve them as swiftly as we could -- protecting the Debtor's interests but trying to find an equitable resolution.

I'm not averse to litigating. And I think when there are claims that are legitimate, the Debtor should pursue them. There's always -- a good settlement is always better than a bad litigation. But if there (indecipherable) to resolve

them, we should -- we should pursue those. And if we have defenses, we should pursue those, and not just be held up because someone else is willing to, you know, take a more difficult position than we are.

But in this case, it really did cry out for some sort of resolution on many of these cases because they were far beyond -- far beyond the facts and far beyond the dollars. There was personal antipathy involved in virtually every one of the unlitigated or unliquidated Committee cases.

Q Did the board, as it was assessing the various strategic alternatives, consider maximization of the value?

A Always number one was, can we maximize value? But that has to be done within the context of the risk you're taking and the time it takes. So, not all wine ages well in a cave and not all investments get to be more valuable over time. We wanted to look at each individual asset that the Debtor had, each claim that the Debtor had, each defense that the Debtor had, and consider the time and the costs and then try to find the best way to maximize value with those multiple considerations.

Q How about the role and support of the UCC, how did that factor into the decision-making, the Debtor's decision-making as to what plan to pursue?

A Well, you know, the decision-making with the UCC was cumbersome and oftentimes difficult. Sometimes our relations

were very contentious, and sometimes they continue to be. But the Committee had significant oversight because of the protocols that had been agreed to. Some of the disputes we had with the Committee found their way into the court. Those time and that cost, some of which we won, some of which we lost, but those factored into our analysis.

But eventually we knew that we were going to need to get, you know, some significant portion of the Committee to agree, because, at minimum, Meta-e had a liquidated claim, and Redeemer was very close to fully liquidated, so we were going to need support from the Committee with whatever we tried to push through. And so that's how we negotiated with the Committee from that perspective.

Q Is it fair to say that the Debtor and the Committee's interests because aligned upon approval of the disclosure statement back at the end of November?

A I don't think they became perfectly aligned, because we still have, you know, some disputes around, you know, implementation and things like the employee releases, which were very important to me. But I think we're largely aligned and that the Committee is supportive, as Mr. Clemente said at the start of this hearing, of the plan. We negotiated at arm's length with them about most of the provisions. I would say virtually everything was a relatively significant negotiation, or at least there was a good faith exchange of

views on each side and assessment of legal and financial risks. And I think at this point they're largely in support of the plan.

Q All right. Let's -- you mentioned the grand bargain, and I just want to spend a few minutes talking about that, how that evolved. Focusing your attention in the kind of late spring/early summer, can you tell me what efforts you and the board made in trying to achieve a grand bargain in that early part of the case?

A Well, we had -- at that point, we had reached agreement, at least in principle, with Redeemer. And the thought was -- my thought was that we could construct a plan, understanding what the cash flows looked like and what we thought the base value of the asset looked like -- and those are not just the assets that are tangible assets, but the notes that are collectible by the Debtor as well -- and then engage with UBS in particular. Redeemer. To some degree, Mr. Terry. We had not yet reached any agreement with him. But UBS, we thought of as a slightly -- I don't mean this to be disparaging -- but a slightly more commercial player than Acis because of the history that Acis had to deal with and endure.

And we were hoping that we could get some sort of coalescence around an agreed distribution that would require those creditors to take a lot less than they might have otherwise agreed, Mr. Dondero to put in more than he otherwise

thought he could put in or would be willing to put in, and then we would get out to Acis and the other creditors with a plan.

And so I built, with the team at DSI, a detailed model on how the distributions could work and what the potential timing could be, trying to, each time, move in a multidimensional way with UBS, Redeemer, Mr. Dondero, and to some degree Acis, around the respective issues for their claims.

Again, UBS and Acis had not been resolved and weren't close, but the thought was if we could get dollar agreements for distribution, perhaps we could then figure out how to construct settlements of their claims.

Q During this time period, did you work directly with Mr. Dondero in the formulation of a potential grand bargain?

A I did, yes.

Q And the model that you described, did that go through a number of iterations?

A It went through multiple iterations. I don't believe I ever shared the model with anybody. One of the reasons for that is I didn't want -- I felt I had -- if I was going to share it with Mr. Dondero, for example, I'd have to share it with UBS and I'd have to share it with Redeemer. And I wanted it to be -- I wanted it to be a working model with the team at DSI. In particular, we would make, you know, adjustments on an almost-daily basis.

Mr. Dondero had -- remember, he was still portfolio manager at that time. He also had a related-party interest, as people have seen from some of the litigation around the sales of securities. He had access and was receiving emails from the team as well as from the finance team. So he had access to the information at that point and had a view around the value. And this was more trying to adjust what those distributions would look like depending on the amounts that he would be willing to contribute.

Q Moving on in time, did there come a time when the Debtor participated in a mediation with certain of the major constituents in the case?

A Yes. That was towards the end of the summer.

Q And during that mediation, did the concept of a grand bargain, was that put on the table? Without discussing any particulars about it, just as a matter of process, was the grand bargain subject to the mediation discussions?

A Well, the mediation had multiple components, so the answer to the question in short is yes, but I'll go longer because I tend to. The grand bargain plan stayed in place, and that was going to be an overall settlement. The mediation was initially, I think, as a main course, focused on Acis, UBS, and then the third piece being the grand bargain. And if you could settle one of those claims, perhaps -- obviously, if you could settle both of them, you could get to then focusing on

the grand bargain.

But even before we got to mediation, the idea of the monetization plan had also been put forth. Notwithstanding that it wasn't my idea, I actually thought that it was a good idea, ultimately. Didn't initially. And the reason for that is that it set a marker for what a base expectation could be for the creditors and just for Mr. Dondero. And knowing that that was out there, at least with them, that could hopefully be a catalyst in the mediation for folks to say, let's see if we can get our claims done and get a grand bargain done, because if we don't we have this Debtor monetization plan. And by that -- at that point, I don't think we had much agreement with the Committee on anything, and certainly with Mr. Dondero, on -- on a monetization plan.

Q All right. And let's just bring it forward from the fall, post-mediation, to the present. Has -- has -- have you and the board continued discussing with Mr. Dondero the possibility of a grand bargain?

A Well, it's shifted. So, the grand bargain discussions really -- you had multiple phases. So, you had pre-mediation. There was the grand bargain discussions that I just described previously that also involved UBS and Redeemer, and to some degree Acis and Mr. Terry. Then you have the mediation, which is much more focused on the claims and whether they can fit into the grand bargain with Mr. Dondero.

And the way that was conducted was a little bit more separated, meaning the parties would talk to the mediator, the mediator would then go and talk to other parties and try to work a settlement on each of those components.

Subsequent to the mediation where we reached the agreement with Acis and Mr. Terry, and we ultimately in that timeframe banged out the final terms of our agreement with Redeemer, we engaged with Mr. Dondero around -- I wouldn't call it the grand bargain, but a different plan. By that point, the monetization plan had started to gain some traction with the creditor group, and Mr. Dondero and his counsel, I believe, focused on the potential of what was referred to as a pot plan. And while it has the -- it could have the ability of being a resolution plan, it wasn't the grand bargain plan that I had initially envisioned. And pot plan was really a misnomer, because it didn't have a whole pot, so -- so it's a little bit of a hybrid.

Q Did the board spend time during its meetings discussing various pot plan proposals that had been put forth by Mr. Dondero?

A Oh, absolutely. And not only the board. I mean, we did our own work as an independent board and then brought in our professional advisors, both your firm and the DSI folks, to go through analytics around the pot plan, and even before that, the other plan alternatives, but we had direct discussions

with Mr. Dondero and his counsel.

Q And in the last couple of months, has the board listened to presentations that were made by Mr. Dondero and his counsel concerning various forms of the pot plan?

A Yes. At least two or three.

Q And during this time, has the board and the Debtor communicated with the Committee concerning different iterations of the proposed pot plan?

A Yes. We've had continual discussions with the Committee regarding the various iterations of the potential grand bargain all the way through the pot plan.

Q And during this process, did the Debtor provide Mr. Dondero and his counsel with certain financial information that had been requested?

A Yes. As I said, up 'til the point where he resigned and was then ultimately, at the end of the year, removed from the office, he had access to financial information related to the Debtor and even got the information from the financial group. Subsequent to that, we've provided him with requests -- with financial information that was requested by his counsel.

Q Okay. Were your efforts at the grand bargain or the pursuit of the pot plan successful?

A No, they were not.

Q Do you have an understanding as to -- just, again, without going into -- into details about any particular proposal, do

you have an understanding as to what the barrier was to success?

A The grand bargain, we just never got the traction that we needed to get that going and the sides were just far -- too far apart. And the pot plan, similarly. Our discussions with Mr. Dondero and the Committee, they're -- they're very far apart.

Q And is it fair to say that the Committee's lack of support in either the grand bargain or the pot plan is the principal cause as to why we're not talking about that today?

A Well, it's -- it -- right now, we've got the plan that's on file, the monetization plan. The monetization plan has gone out for creditor vote and has received support. It distributes, we think, equitably, as well as a significant amount of distributions to unsecured creditors. And there really isn't an alternative that we see, based upon the numbers I've seen, that competes with it or has any traction with the largest creditors.

Q All right. So, now we've talked about various proposals or alternatives that were considered by the board, including the grand bargain and the pot plan. Let's spend some time talking about the plan that is before the Court today and how we got here. And I'd like to take you really back to the beginning, if I may.

Tell us, tell the Court just what the board was doing in

the early months after getting appointed, because I think context is important here. What were you all doing the first few months of the case?

A Well, the first few months, we really were drinking from the proverbial fire hose, trying to get an understanding of the business, how it had been managed previously, what the issues related to the different parts of the business were. And then an understanding of each of the employees that were working under us, what their roles were, how they performed them, who sat where with respect to each of the assets, what the contracts looked like, whether they be shared service or management agreements. And then we started looking at the individual assets in terms of value.

At the same time, we were trying to get up to speed on the complex nature of the claims that were in the case. The liquidated claims were relatively easy, but there had been a significant amount of transfers in and out of the Debtor, and then there's a myriad of relationships involving related entities that we had to understand, both with respect to the claims as well as with respect to the assets.

And so that -- those were the main things we were doing for those first few months in the case.

Q Just a couple months into the case, the COVID pandemic reared its head. Do you recall that?

A Yes. We had been in Dallas every day working up 'til the

time of the COVID and some of the shutdown orders, particularly in the Northeast, and so that changed the dynamic of how we could function every day.

Notwithstanding that, we -- we were able to manage from afar, and ultimately, when there were some cases in the office of COVID, we -- on the Highland side, not the related entity side, but on the Highland side -- we determined that the staff and the team should work from home, which they were able to do quite well.

Q Okay. In those early months, do you recall that there was a substantial erosion of value, at least as of the time you were appointed in those first three or four months?

A There was. And I think we've heard some -- some noise about what that value was and the drop in the asset value as opposed to net value. But the asset value did, did drop significantly.

Q Can you describe for the Court your recollection as to the causes of the drop in the value that you just descried?

A Yes. The number one drop was a reservation that the board took for a receivable from an entity called Hunter Mountain. The quick version of this is that Hunter Mountain owns Highland. As I mentioned, while Strand is the GP, it only has a quarter-percent interest in Highland. The vast majority of the interests are owned by an entity called the Hunter Mountain Investment Trust in a very complicated, tax-driven

structure.

Dondero and Okada transferred their interests in Highland at a high valuation to Hunter Mountain. Hunter Mountain then didn't have the money, so it, in essence, borrowed the money from the Debtor in a note to pay for those interests. There's a circular running of the cash, but we were not sure where, if any, where any assets are, if they would be sufficient. So we took a reservation of $58 million for that note.

The second biggest piece of the reduction in value was the equity that was lost in the Select Equity account. This is a Debtor trading account that was managed by Mr. Dondero. $54 million was lost in that account. Basically, it was really highly margined, very high leverage in that account when the market volatility came in. As it grew through January, February, March, more and more margin calls. Ultimately, Jefferies, which had Safe Harbor protections -- technically, the account was not a Debtor account, but they would have had it anyway -- they seized that account. $54 million in equity was lost in that account.

The next highest amount is about $35 million, but it's higher now. That's just the bankruptcy costs, where we have spent cash and Debtor assets in the case. It was about $36 to $40 million through the end of the year. That's now higher.

About $30 million was lost in paying back Jefferies on the asset side of the ledger in the Highland internal equity

account. This was similar to the equity -- the Select Equity account, also managed by Mr. Dondero. Extremely highly-levered coming into the market volatility of the first quarter, which was exacerbated, obviously, by the COVID. That was about $30 million that was repaid in margin loan in that account.

In addition, $25 million of equity was lost in that account while Mr. Dondero was managing it. I took over effectively managing it in mid-March and worked with Jefferies to keep them from seizing the account. We've since gotten a bunch of value coming back from that account, but that was the amount that was lost.

About $10 million was lost in the Carey Limousine loan transaction. That is a -- an interesting little company. Has done a nice job -- management did a very good job coming into the year, and it actually had real value, notwithstanding the changeover to Uber in people's preferences. But with the COVID, it really relied on events, airport travel, executive travel, and that really took a bite out of it, although, you know, we're hoping to be able to restructure, we have restructured it to some degree, and we're hoping that there could be value there.

And then about $7 million was lost in equity in an entity called NexPoint Hospitality Trust. This is another extremely highly-levered hospitality REIT that NexPoint manages. It

trades on the Toronto Stock Exchange. And I think likely that -- it's got a lot of issues with respect to its mortgage debt. And because it was hospitality, it was really hurt by the COVID.

And I think that's probably -- those numbers add up to north of $200 million of the loss.

Q All right. Thank you for that recitation, Mr. Seery. So, turning to the spring, after all of those issues were addressed, at the same time you were working on the grand bargain, did the Debtor and its professionals begin formulating the monetization plan that we have today?

A I'm sorry, in the spring? I lost that question. I apologize.

Q That's okay. After you dealt with everything that you just described, were you doing two things at once? Were you working on the grand bargain and the asset monetization plan at the same time?

A Yes, that's correct.

Q All right. Can you just describe for the Court kind of, you know, how the asset monetization plan evolved up until the point of the mediation?

A Yes. I alluded to it earlier, but because the Debtor was running an operating deficit, we were very concerned about liquidity. Highland typically runs, from a liquidity perspective and a cash perspective, very close to the edge. I

don't feel particularly comfortable helping lead an organization that's running that close to the edge. And I was very focused on the burn that we had on an operating basis, as well as the professional cost burn, because for a case this size it was significant.

The rest of the board felt similarly, and one of the directors, and I'm not sure if it was Mr. Nelms or Mr. Dubel, came up with the idea that we needed an alternative to continuing to just burn assets while we were in this case. There had to be some sort of catalyst to get the parties, both Mr. Dondero as well as the creditors -- at that point, as I said, we weren't settled with Acis or UBS, and we weren't, frankly, close with either of them. And so we needed what -- what I think the -- the idea was that we needed a catalyst to have people focus on what the alternative was. Because continuing to run the case until we ran out of money was not an acceptable alternative.

What I didn't like about the plan was it didn't have anybody's support, and so I wasn't sure how we made progress with it without having some Committee member or Mr. Dondero in support of it. I was outvoted, although maybe I came around in the actual vote. But ultimately, I think it was actually a quite smart idea, because it did set the basis for what the case would be. Either there would be some resolution or it would push towards the monetization plan, and parties could

then assess whether they liked the monetization plan or not. That if I was going to be the Claimant Trustee or the -- defending the, you know, against the claims, they would have the pleasure of litigating with me for some period of time. Or they could come to some either grand bargain or ultimately some other resolution.

And as we started to develop a plan and put more of a framework -- more flesh around the framework, it actually started to look more and more like a real viable alternative to either long-term litigation or some other grand bargain if we couldn't get there.

Q And ultimately, did the board authorize the Debtor to file its initial version of the asset monetization plan at around the time of the mediation?

A Yeah. We developed it over the summer and really fleshed it out in terms of how the structure would work, what the tax issues were, what the governance issues were. We did that largely negotiating with ourselves, so we -- we were extremely successful. And then we filed, we filed that plan right before the mediation.

And my recollection is that there was some concern from the mediators that they thought that putting that plan out in the public could upset the possibility of a grand bargain, so we ended up filing that under seal.

Q Do you recall what the Committee's initial reaction was to

the asset monetization plan that you filed under seal?

A Well, initially, they -- the Committee didn't like it. They didn't like the governance. They didn't like the fact that it set up for those creditors who didn't litigate the prospect of litigations to try to resolve their claims. It effectively cut out some of the advisory that the Committee currently had. The -- one of the driving forces behind the asset monetization plan and how we initially started it is we can't continue these costs, as I said. Well, an easy way to get rid of -- to reduce the costs is to get rid of half of them.

So if you could get rid of the Committee, effectively, and coalesce around an asset monetization vehicle, then if folks wanted to resolve their claim, you could. If you had to litigate it, you could, but you'd have one set of lawyers that the estate was paying for, one set of financial advisors the estate was paying for, as opposed to multiple sets.

Q In addition to the corporate governance issues that you just described, did the Committee and the Debtor quickly reach an agreement on the terms of the treatment of employee claims and the scope of the releases for the employees?

A No. Not very quickly at all.

Q Yeah.

A You know, again, one of the issues in this case that drives perspectives is the history that creditors have in

dealing with Highland and in dealing with many of the employees at Highland, you know, who had worked for Mr. Dondero and served at his pleasure for a long time, and how they had been treated in various of their attempts to collect their claims. So the idea of giving any sort of releases to the employees was anathema to -- to many of the Committee members.

From my perspective, you know, releases are particularly important because there's a *quid pro quo* leading up to the confirmation of a plan, particularly with a monetization plan where it's clear that the employees are all going to be or largely going to be either transitioned or terminated. If they're going to keep working towards that, we either have to have some sort of financial incentive or some sort of assurance that their actions which are done in good faith to try to pursue this give them the benefit of more than just their paycheck.

And so we thought we were setting up the *quid pro quo* in terms of work towards the monetization, bring the case home, and you're entitled to a release, so long as you haven't done something that was grossly negligent or willful misconduct. And the Committee, I think, wanted to have a more aggressive posture.

Q And did those disagreements over corporate governance and the employee releases kind of spill out into the public at

that disclosure statement hearing in October?
A I think they spilled out at that hearing as well as in the hearing either the next day or two days later around Mr. Daugherty's claim. And again, it was -- it was contentious. I tend to try to reach resolution, but I tend to hold firm when I think that there's a good reason, an equitable reason to do so, and compromising that issue was very difficult for me.
Q But in the weeks that followed, did the Committee and the Debtor indeed negotiate to resolve to their mutual satisfaction the issues surrounding corporate governance and employee releases?
A We did, yes.
Q And were -- was the Debtor able to get its disclosure statement approved with Committee support in late November?
A We did, yes.
Q Can you describe for the Court generally kind of the process by which the Debtor negotiated with the Committee? I'll ask it as broadly as I can, and I'll focus if I need to.
A Yeah. The process was usually in group settings with the independent directors, professionals, and the Committee members and their professionals. Oftentimes, then, there would be certain one-off conversations if there was a particular issue that was more important to one Committee member or another, or if they were designated by the Committee

to be the point on that. And so I negotiated on behalf of the Debtor, both collectively and individually, around these points.

The biggest issues related to governance of the Claimant Trust, the separation of the Claimant Trust and the Litigation Trust, which was important to me, the treatment of employees between the filing -- the time we came up with the case and when we were going to exit, and then how that release provision would work.

Q Is it fair to say that numerous iterations of the various documents that embodied the plan were exchanged between the Debtor and the Committee?

A Yes. There were -- there were dozens.

Q Fair to say that the negotiations were arm's length?

A Absolutely. Often contentious, always professional, but I do think that there were, you know, well -- good-faith views held by folks on both sides. And I think we were fortunate to be able to get resolution of those, because they were strongly-held views.

Q Okay. And ultimately, I think you've already testified, and Mr. Clemente certainly made it clear: Is the Debtor -- does the Debtor have the Committee on board for their plan today?

A My understanding is again -- and you heard Mr. Clemente -- both the Committee and each of the individual members are

supportive of the plan.

Q All right. Let's switch to Mr. Dondero and his reaction to the asset monetization plan. Can you describe for the Court based on your experience and your interaction with him what you interpreted Mr. Dondero's position to be?

A VOICE: Objection, hearsay, or --

MR. DRAPER: Objection, hearsay. Calls for speculation, Your Honor.

THE COURT: Overruled.

THE WITNESS: Yeah. I had direct discussions with Mr. Dondero regarding the plan, the asset monetization plan, as I mentioned, direct discussions regarding a potential grand bargain. The initial view from Mr. Dondero was, and he told me, that if he didn't get a plan that he agreed to, if he didn't have a specific control or agreement around what got paid to Acis and Mr. Terry and what got paid to Redeemer specifically, that he would, quote, burn the place down. I know that because it is, excuse the pun, seared into my mind, but I also wrote it down. And that was, you know, in the early summer.

We had subsequent discussions around the plan, and as we were talking about the -- about the grand bargain or -- the pot plan hadn't come out at that point -- even on a large call -- the plan initially called for a transition, and still does, of employees of the Debtor to a related entity to continue

performing services that were under the prior shared service agreements that we were going to terminate.

But that transition is wholly dependent on Mr. Dondero. And we had a call with at least five to seven people on it where I said to Mr. Dondero, look, this is going to be in your financial interest to agree to a smooth transition. These people have worked for you for a long time. It's for their benefit. You portfolio-manage these funds. It's to the benefit of those funds to do this smoothly. And if there's litigation between you and the estate later, then those chips will fall where they may.

And he told me to be prepared for a much more difficult transition than I envisioned.

And I specifically said to him, and this one sticks in my mind because I recall it, I said, don't worry, Mr. Dondero -- I think I used Jim -- I will be prepared. I was a Boy Scout and we spend time preparing for these kinds of things. So we're -- we would love to get done the best transition we can, but we will be prepared for a difficult one.

So, from the start, the idea of the monetization plan was not something that obviously he supported. We did agree with -- after his inquiry or request with the mediators, to file it under seal while we went into the mediation.

BY MR. MORRIS:

Q And after, after that was filed in September, early

October, did Mr. Dondero start to act in a way that the board perceived to be against the Debtor's interests?

A Certainly. I mean, he previously had shown inclinations of that, but that -- it got very aggressive as he interfered with the trades we were trying to do in terms of managing the CLO assets. He took a position that postpetition, which was really one of his entities taking a position, that postposition a sale of life policy assets was somehow not in the best interests of the funds and that we had abused our position, notwithstanding that he turned it over to us with no liquidity to maintain those life policies. There were several other instances. And those led to the decision to, one, have him resign, and then ultimately, after the text to me that I perceived as threatening, and we've had subsequent hearings on it, we asked him to leave the office.

Q Okay. Let's move back to the plan here. Can you describe, you know, generally, if you can, the purpose and intent of the asset monetization plan?

A Well, very simply, the main purpose is to maximize value. This is not a competition between Mr. Dondero and myself. I have no stake in getting more money out of the maximization other than my duty to do the job that I was hired to do.

So our goal is to manage the assets in what we think is the best way to do that over time, and find opportunities where the market is right to monetize the assets, primarily

through sales. There may be other instances, depending on the type of asset, whether a sale makes sense, if we can structure it through some kind of distribution that's more structured.

Q We've used the phrase a bunch of times already. Can you describe in your own words what an asset monetization plan is in the context of the Debtor's proposal?

A Well, it may be slightly an awkward moniker, but I think it's not completely different than what you'd see, in some respects, to a regular plan, where you equitize debt and you operate the business for the benefit of the equitized debt. Here, it's a little different in that we know exactly how we're going to move forward. We've effectively -- we'll effectively turn the debt obligations into trust interests and we will pay those as we sell down assets. So we've got it structured in a way where we can pivot depending on market conditions and we'll be managing certain funds that the assets sit in.

So there's really four assets where the assets sit, and we'll manage those. First are the ones that the Debtor owns directly. Second will be the ones that are in Restoration Capital -- Restoration Capital Partners. Third are the assets in a fund called Multi-Strat. Fourth is the direct ownership interest in Cornerstone, and technically (garbled) would be the -- would be the next one.

So we have the ability to manage these individual assets

and then be able to sell them in what we determine to be the best way to maximize value, depending on the timing.

Q And when you say that you're going to continue to operate the business, do you mean that the Debtor will continue to manage the assets you've just described in the same way that it had prior to the petition date?

A It'll be a smaller team, but that's the Debtor's business. So what we won't be doing are the shared services anymore. That was part of the Debtor's business. But we will be managing the assets. So the 1.0 CLOs, we'll manage those assets. The RCP assets, we'll manage those assets. The Trussway Holdings assets, we'll managing those assets. Each of them is a little bit different. There's things as diverse as operating companies to real estate. We'll operate, subject to final agreement, but the Longhorn A and B, which are separate accounts that are -- were funded and are controlled by the largest -- one of the largest investors in the world. And so they have agreed that we should manage those assets for them.

So we're -- that's the business that the Debtor is in. It won't be doing all of the businesses that the Debtor was in before, like the shared services, but the management of the assets will be very similar.

Q And why do these funds and these assets need continued management? Why aren't you just selling them?

A Well, in some respects, they could just be sold, but the -- we believe that the value would be a lot lower. So, a lot of them are complex. The time to sell them may not be now. Some will require restructuring in some way, whether -- not through a reorganization process, but some sort of structural treatment to how the obligations at the individual asset are treated, or the equity at the individual asset. So we're going to manage each of them and look for market opportunities where we think the value can be maximized.

MR. MORRIS: Your Honor, I'm about to switch to another topic. We have been going for a little bit more than two and a half hours. I'm happy to just continue if you and the witness are, but I just wanted to give you a head's up that I'm about to switch topics. If you wanted to take a short break, we could. If you want me to continue, I'm happy to do that, too.

THE COURT: Well, let me ask you, how much longer do you think you're going to take overall with Mr. Seery?

MR. MORRIS: I think I'll probably have another hour to an hour and a half, Your Honor. We want to make a complete factual record here.

THE COURT: All right. Well, it's 12:07 Central time. Why don't we take a 30-minute lunch break, okay? Can everybody do their lunch snack that fast?

MR. MORRIS: Sure.

THE COURT: I think that would probably be the way to go. So we'll come back -- it's now 12:08. We'll come back at 12:38 Central time and resume --

MR. MORRIS: Okay.

THE COURT: -- resume this direct testimony, okay? So, see you in 30 minutes.

MR. MORRIS: Thank you very much.

THE COURT: Okay.

THE CLERK: All rise.

(A recess ensued from 12:08 p.m. to 12:44 p.m.)

THE COURT: We are going back on the record in the Highland confirmation hearing. It's 12:44 Central time. I took a little bit longer break than I said we would.

Mr. Morris and Mr. Seery, are you ready to resume?

MR. MORRIS: I am, Your Honor.

THE WITNESS: Yes, Your Honor.

THE COURT: Okay, good. A couple of things. I'm required to remind you you're still under oath, Mr. Seery. And also, just for people's planning purposes, what I intend to do is, when the direct examination of Mr. Seery is finished, I'm going to allow cross-examination of the Objectors in the same amount of time in the aggregate that the Debtor got, okay? So, Objectors, in the aggregate, you can spend as long cross-examining as the Debtor spent examining. I can figure out this is the most significant witness, so I'm

assuming that Debtor's other witnesses are going to be a lot shorter than this, but --

MR. MORRIS: Yes, I promise.

THE COURT: -- that's how we'll proceed. And I expect to finish Mr. Seery today.

So, all right. With that, you may proceed, Mr. Morris.

MR. MORRIS: Okay.

DIRECT EXAMINATION, RESUMED

BY MR. MORRIS:

Q Can you hear me okay, Mr. Seery?

A Yes, sir.

Q Okay. Before we move on to the next topic, you spent some time describing the asset monetization plan. Would it be fair to describe that as a long-term going-concern liquidation?

A Long-term is subjective. We anticipate that we'll be able to monetize the assets in two years. We could go out longer to three. There's no absolute restriction that we couldn't take longer, depending on what we see in the market, but the objective would be to find maximization opportunities within that time period.

Q Okay. So let's turn now to the post-confirmation corporate governance structure.

(Interruption.)

THE WITNESS: Mr. Golub (phonetic), you should mute.

THE COURT: Yes. I don't know -- I didn't catch who

that was. But anyway, anyone other than --

A VOICE: It's someone named Garrett Golub.

THE COURT: -- Morris and Seery, please mute. All right. Go ahead.

MR. MORRIS: Okay.

BY MR. MORRIS:

Q At a high level, Mr. Seery, can you please describe for the Court the post-confirmation structure that's envisioned under the proposed plan?

A At a high level, we anticipate reorganizing HCMLP such that the current parties of interest will be extinguished and, in exchange, creditors will get trust interests. There'll be a trust that will sit on top of HCMLP and it will have an overall responsibility for the Claimant Trust, which will be the HCMLP assets plus the assets that we move into the Claimant Trust, depending on structural considerations. And then a Litigation Trust, which will be a separate trust, and that will roll up into the main trust. And the main trust will be where the creditors hold their interests. And those interests take the form of senior interests or junior interests.

Q All right. You mentioned a Claimant Trust. Who is proposed to serve as the Claimant Trustee?

A I am.

Q And you mentioned a Litigation Trust. Is there someone

proposed to serve as the Litigation Trustee?

A A gentleman named Marc Kirschner. He's been doing these kinds of things for a long time.

Q Is there going to be any kind of oversight group or committee?

A There is an oversight committee that sits at the main trust. Into it will report Mr. Kirschner and myself. It has oversight responsibilities similar to a board of directors in terms of the operations of the Claimant Trust and the Litigation Trust.

Q Do you have an understanding as to who the initial members of the Claimant Oversight Committee?

A The initial members will be each of the members of the Creditors' Committee. So, UBS, Acis, Redeemer, a representative from Redeemer, and Meta-e, as well as an independent named David Pauker. So that's the initial structure.

Q And can you describe for the Court, how did Mr. Pauker get involved in this?

A He was selected by the Committee.

Q Okay. Is there -- Meta-e is a convenience class claim holder. Do I have that right?

A Yeah. They're -- they -- as I went through earlier, they had a liquidated claim for litigation services. So we expected that they'll be paid off rather early in the process.

At that point, we suspect they wouldn't -- they would no longer be an Oversight Committee member and they would be replaced by an independent.

Q And do you have any understanding as to how that independent will be chosen?

A I believe it's chosen by the other members.

Q Okay. Can you describe your proposed compensation structure as the proposed Claimant Trustee?

A My compensation will be $150,000 a month, which is the same compensation I have now. In addition, we'll negotiate a bonus structure with the Oversight Committee. And that will likely be a bonus not just for myself but for the entire team, depending on performance.

Q Okay. And that -- and who is that negotiation going to be had with?

A The Oversight Committee.

Q Okay. Are you familiar with Mr. Pauker's compensation structure?

A I -- I've seen it. I don't recall specifically. I think his -- from the models, I think he's about 40 or 50 grand a month, something along those lines.

Q Okay. How about Mr. Kirschner? Do you recall -- let me just ask you this. Does it refresh your recollection at all if I said that 250 in year one for Mr. Pauker?

A Yeah. So maybe closer to $20,000 to $25,000 a month. And

then Mr. Kirschner is a lower amount, but he would get a contingency fee arrangement somewhere dependent on the recoveries from his litigations.

Q Okay. You mentioned earlier that the Debtor intends to continue operations at least for some period of time post-effective date. Do you have a view as to whether the post-confirmation entity will have sufficient personnel to manage the business?

A I do, yes.

Q And why is that? What makes you believe that the Debtor will have -- the post-confirmation Debtor will have sufficient personnel to manage the business?

A Well, we've gone through and looked at each of the assets and what is required to manage those assets. We have a lot of experience doing it during the case. The bulk of the employees, who do a fine job, are really doing shared service arrangements. The direct asset management group is a smaller group, and we'll be able to manage those with the team we're putting together.

Q Okay. How does the ten employees compare to the original plan that was set forth in the disclosure statement, if you recall?

A Well, we had less, and I believe the number was either two or three, along with me, and then using a lot of outside professional help. But we determined that we wanted to have a

much more robust team, based on the litigation that we're seeing around the case and we expect to continue post-exit, so that the team can manage those assets unfettered.

In addition, we were taking on the CLO management, the 1.0 CLO contracts. These one -- as I've mentioned before, they're not traditional CLOs in the sense that they require the same hands-on management, but they do require an experienced team to help manage the exposures, most of which are cross-holdings in different -- in different entities or different investments that Highland also has exposure to.

Q In addition to the assumption of the CLO management agreements, has the Debtor made any decisions regarding the possibility of hiring a sub-servicer?

A We have, yes.

Q And did that factor into the Debtor's decision to increase the number of personnel it was going to retain?

A Well, we determined we weren't going to hire a sub-servicer. And I'm not sure exactly when we made that determination. We do have a TPA, which is SEI, and that's a third-party administrator, to sift through the funds and provide accounting supporting to those, to those funds. So that -- they will help. We also have an outside consultant that we're using, Experienced Advisory Consultants, who are financial consultants who've worked in the business. So we do have those.

But we didn't think that we would get a third-party sub-servicer, as was the case in Acis, and determined that wasn't in the best interest of the estate.

Q Can you just shed a little light on what factors the Debtor took into account in deciding not to hire a sub-servicer?

A Well, we primarily looked at cost, as well as control of the assets, and determined that that was -- those were in the best interests of the estate, to keep them managed internally. We reviewed that with the Committee, and they agreed.

Q Okay.

MR. MORRIS: Let's turn now to the best interests of creditors' test, Your Honor, 1129(a)(7), and let's talk about whether the plan is in the best interests of creditors.

BY MR. MORRIS:

Q Has the Debtor done any analysis to determine the likely value to be realized in a Chapter 7 liquidation?

A We have, yes.

Q And has the Debtor done any analysis to determine the likely recoveries under the plan?

A Yes.

Q Okay. Do you recall when these projections were first prepared?

A We started working on projections in the fall, as we were developing the monetization plan. We filed projections, I

believe, in November. We've subsequently updated those projections based on the claims, market condition, and value of the assets.

Q And were those updates provided to plan objectors last week?

A Yes, they were.

Q Okay. Can we refer to the projections that were in the disclosure statement as the November projections?

A That'd be fine.

Q And can we refer to the projections that were provided to the objectors last week as the January projections?

A Yes.

Q And as --

A I think they're actually -- I think they're actually dated February 1, is the most recent update.

Q Okay. And then was a further update provided yesterday and filed on the docket, to the best of your knowledge?

A Yes.

Q All right. We'll talk about some of the changes in those projections.

MR. MORRIS: Can we call up on the screen Debtor's Exhibit 7D as in dog? And this document is in evidence. Um, --

THE COURT: No, this is -- oh, wait. How many Ds is it? Seven?

MR. MORRIS: It's 7D, so that would be on Docket 1866, all of which has been admitted.

THE COURT: Okay. You're right.

MR. MORRIS: Okay.

And if we could just, I'm sorry, go to Page 3.

BY MR. MORRIS:

Q Is there any way to look at this, Mr. Seery? Is this the January projections that were provided last week?

A Yes.

Q Okay. Can you describe for the Court the process by which this set of projections and the November projections were prepared? How did the Debtor go about preparing these projections?

A Yeah. These are prepared what I would call bottoms-up. So what we did was we looked at each of the assets that the Debtor owns or manages or has a direct or indirect interest in, used the values that we have for those assets, because we do keep valuations for each of the assets that the Debtor owns or manages in the ordinary course of business. We then adjusted those depending on what we saw as the outcomes for the case, either a plan outcome or a liquidation outcome, and then rolled those into the -- into the numbers that you see here.

So the 257 and change. And please excuse my eyesight. I'm going to make this bigger. The 257 is the estimated

proceeds from monetization. Above that, you see cash. That's our estimated cash at 131. And we monitor those, those values daily.

Q And were these projections prepared under your supervision?

A They were, yes.

Q Okay. And who was involved in the preparation of this document and other iterations of the projections?

A The team at DSI. Obviously, myself; the team at DSI; as well as the, at least from a review perspective, counsel.

Q All of these contain various assumptions. Do I have that right?

A Yes.

MR. MORRIS: Can we go to the prior page, please, I think is where the assumptions are? And let's just look at a few of them. Okay. Can we make that a little bigger, La Asia? Okay. Good.

BY MR. MORRIS:

Q Why does the Debtor's projections and liquidation analysis contain any assumptions? Why, why include assumptions?

A Well, all projections contain assumptions. So an assumption -- I was strangely asked the question at deposition, what does that mean? It's a thing or fact that one accepts as true for the purposes of analysis. And so in terms of looking out into the future as to what the potential

operation expenses will be and what the potential recoveries will be, one has to make assumptions in order to be able to compare apples to apples.

Q And do you believe that these assumptions are reasonable?

A Yes. It would make no sense to have assumptions that aren't reasonable. I mean, and we've all seen that with analysis through our respective careers. It really should be grounded in some fact and a reasonable projection on what can happen in the future, based upon experience.

Q Okay. And have you personally vetted each of the assumptions on this page?

A Yes.

Q Okay. Let's just look at a few of them. Let's start with B. It says, All investment assets are sold by December 31, 2022. Do you see that?

A Yes.

Q Why did the Debtor make that assumption?

A We looked at a two-year projection horizon. We thought that that was a reasonable amount of time, looking at these assets, to monetize the assets. Remember that we did go through a process of the case over the last year, and we did consider monetization asset events for certain of the assets throughout the case, some of which we were successful on, some of which we weren't, some we just determined to pull back. But we do believe that, based upon our view of the market and

where we think these assets will be positioned, that monetizing them over a two-year period makes sense.

Q And is it possible that it takes longer than that?

A It's possible. The -- you know, we would be wrong about the market. The -- we could go into a full-blown recession. Capital could dry up. The financing markets could turn negative. But they're extremely positive right now. Those things could happen. But we're assuming that they won't.

Q And is it possible that you complete the process on a more accelerated timeframe?

A That's always possible. It's not, in my experience, a good way to plan. Luck really isn't a business strategy. But if good opportunity shows up and folks want to pay full value for an asset, we certainly wouldn't turn them away just so we could stretch out the time period.

Q Is it fair to say that this projected time period is your best estimate on the most likely timeframe needed?

A It's -- I think it's the best estimate that we have based upon our experience with the assets, again, and our projection of the marketplace that we see now. If things change, we'll adjust it, but this is a fair estimate of when we can get the monetization accomplished.

Q Okay. The next assumption relates to certain demand notes. Do you see that?

A Yes.

Q Can you explain to the Court what that assumption is and why the Debtor believed that it was reasonable?

A Well, the Debtor has certain notes that are demand notes. These are all from related entities. Most of the notes, the demand notes, we have demanded, and we've commenced litigation to collect. And we assume that we're going to be able to collect those.

Three notes that were long-term notes -- these were notes with maturities in 2047 that had been stretched out a couple years ago -- were defaulted recently. And we have accelerated those notes and we've asserted demands and we have commenced litigation, I believe, on each of those last week to collect. So we do estimate that we will collect on all of the notes that we've demanded and that we've commenced action on. So the demand notes as well as the accelerated notes.

The next, the next bullet shows there's one Dugaboy note that has not defaulted. That also has a 2047 maturity. I believe it's about $18 million. And we expect that one to stay current, because now I think the relater parties learned that when you don't pay a long-dated note, it accelerates, provided the holder, which is us, wishes to accelerate it, which we did. And so that note we do not expect to be collected in the time period.

Q Okay.

MR. MORRIS: Let's go down to M.

BY MR. MORRIS:

Q M relates to certain claims. Do you see that?

A Yes.

Q Can you just describe at a high level what assumption was made with which -- with respect to which particular claims?

A Well, we've summarized them there. And what we've assumed is that, with respect to Class 8, IFA, which is a derivative litigation claim that seeks to hold, loosely, HCMLP liable for obligations of NexBank, is worth zero. I think that's pretty close to settling. We assumed here $94.8 million for UBS, which was the estimated amount, and $45 million for HarbourVest.

Q And when you say the estimated amount, are you referring to the 3018 order on voting?

A Yes. We just use the estimated amount in this projection based upon the 3018 order.

Q Okay. And finally, let's look at P. P has a payout schedule. Do I have that right?

A That's an estimated payout schedule, yes.

Q And what do you mean by that, that it's estimated?

A Based upon our projections and how we perceive being able to monetize the assets and reach the valuations that we want to reach, we believe we could make these distributions. However, there's no requirement to make them.

So the first and foremost objective we have, as I said

earlier, is to maximize value, and not -- it's not based on a payment schedule, it's based upon the market opportunity. And we've estimated for our purposes here that we'll be able to meet these distribution amounts, but there's no requirement to do so.

Q Okay.

MR. MORRIS: Let's go to Page 3 of the document, please.

BY MR. MORRIS:

Q Can you just describe generally what this page reflects?

A This is a comparison of the plan analysis and what we expect to achieve under the plan and the liquidation analysis if a trustee, a Chapter 7 trustee, were to take over. And it compares those two distribution amounts based upon the assumptions on the prior page.

Q All right. Let's just look at some of the -- some of the data points on here. If we look at the plan analysis, what is -- what is projected to be available for distribution, the value that's available for distribution?

A $222.6 million.

Q Okay. So, 222? And on a claims pool that's estimated to be, for this purpose, how much?

A $313 million.

Q And what is the distribution, the projected distribution to general unsecured creditors on a percentage basis?

A On this analysis, to general unsecured creditors, it's 62.14 percent. But remember, that backs out the payment to the Class 7 creditors of 85 cents above.

Q Okay. And does this plan analysis include any value for litigation claims?

A No, it does not.

Q And is that true for all forms of the Debtor's projections?

A That's correct, yes.

Q Okay. And let's look at the right-hand column for a moment. It says, Liquidation Analysis. What does that column represent?

A That represents our estimate of what a Chapter 7 trustee could achieve if it were to take over the assets, sell them, and make distributions.

Q Okay. And let's just look at the comparable data points there. Under the liquidation analysis, as of -- the January liquidation analysis as of last week, what was projected to be available for distribution?

A A hundred and -- approximately $175 million.

Q Okay. And what was the claims pool?

A The claims pool was $326 million. Recall that that's a slightly larger claims pool because it doesn't back out the Class 7 claims.

Q Okay. The convenience class claims?

A Correct.
Q Okay. And what's the projected recovery for general unsecured claims under the liquidation analysis?
A Based on this analysis and the assumptions, 48 (audio gap).
Q Okay. Based on the Debtor's analysis, are creditors expected to do better under this analysis in the -- under the Debtor's plan versus the hypothetical Chapter 7 liquidation?
A Yes. Both -- both Class 7 and Class 8.
Q Okay. Now, this set of projections differs from the projections that were included in the disclosure statement; is that right?
A That's correct.
Q Okay. Can we just talk about what the differences are between the November projections that were in the disclosure statement and the January projections that are up on the screen? Let's start with the monetization of assets, the second line. Do you recall if there was an increase, a decrease, or did the value from the monetization of assets stay the same between the November projections and the January projections?
A They increased from November 'til -- 'til now.
Q Okay. Can you explain to the judge why the value from the monetization of assets increased from November to January?
A Well, really, it's the composition of the assets and their

value. So there's four main drivers.

The first is HarbourVest. We had a settlement with HarbourVest, which include HarbourVest transferring to the Debtor $22-1/2 million of HCLOF interests. Those have a real value, and we've now included them in the -- in the asset pool. We've also included HarbourVest in the claims pool.

The second was we talked a little bit earlier on the assumptions on the notes. We previously had anticipated that, on the long-dated notes, a collection, we -- we'd receive principal and interest currently, but we wouldn't receive the full amount of the principal that was due well off in the future, and we would sell it a discount.

So the amount of the asset pool has been increased by $24 million, and that reflects the delta between or the change between what was in the prior plan, the notes paying and then being sold at a discount, and what's in the current plan, which include the accelerated notes, which is a $24 million note that Advisors defaulted on that we have accelerated and brought action on, as well as two six -- roughly $6 million notes, one from Highland Capital Real Estate and the other from HCM Services. So that's, that's additional 24.

In addition, Trussway, we've reexamined where Trussway is in the market, both its marketplace and its performance, and reassessed where the value is. So that has increased by about $10.6 million.

That doesn't mean that we would sell it today. It means that, when you look at the performance of the company, what we think are the best opportunities in the market. As we see the marketplace with managing the company over time, we think that that asset has appreciated considerably since November.

And then, finally, there were additional revenues that flow into the model from the November analysis which would be distributable, and those include revenues from the 1.0 CLOs.

Q Okay. So that accounts for the difference and the increase in value from the monetization of assets. Is there also an increase in expenses from the November projections to the January projections?

A Yeah. It's -- it's about -- it's around $25 million additional increase.

Q And can you explain to the Court what is the driver behind that increase in expenses?

A Yeah. There's several drivers to that. The first one is head count. So our head count, we've increased. As I mentioned earlier, we determined that we wanted to have a much more robust management presence. So we've increased the head count, so we have a base comp, compensation, about $5 million more than we initially thought.

Secondly, we have bonus comp. So we've back-ended -- structured a backend bonus performance bonus for the team, and that will run another $5 million, roughly.

Previously, we had thought about, as you mentioned earlier, the sub-servicing, but we've now talked about and we have engaged a TPA, SEI, as well as experienced advisors. That's another $1 to $2 million.

Operating expenses have increased by about $8 million, based upon our assessment. The biggest driver there is D&O, which is up about $3 million. In addition, we've gotten -- we determined to keep a bunch of agreements related to data collection and operations. Those were requested by the Committee, but they also serve us in performing our functions. That's another couple million dollars.

My comp, my bonus comp was not in the prior model. So I have a bonus that has not been agreed to by the Court for the bankruptcy performance. This is not a future bonus. And we built that into the model. Obviously, it's subject to Court approval and Committee objection, and I suppose anybody else's objection, but we'll -- we'll be before the Court for that. But we wanted to build that into the model so that we had it covered in the event that it was approved.

Q Was there also a change in the assumption from November to January with respect to the size of the general unsecured claim pool?

A Yes. There have been -- there have been several changes that have happened, and we've added those and refined the claim pool numbers.

Q And are those changes reflected in the assumption we looked at earlier, Exhibit -- Assumption M, which went through certain claims that have been liquidated?

A Some, some are. That assumption, I don't believe, was -- it's not in front of me, but wasn't up to date. So, that one, for example, assumed UBS at the 3018 estimated amount. We've since refined that number to reflect the agreed-upon transaction with UBS, which is subject to Court approval.

Q Right. But before we get to that, for purposes of the January model, the one that's up on the page -- and if we need to look at the prior page --

MR. MORRIS: Let's go to the prior page, the assumption. Assumption M.

BY MR. MORRIS:

Q Assume the UBS, the UBS claim at the $94.8 million, the 3018 number. Do you remember that?

A Yeah. That's, that -- that's the assumption in this model. I think back in November we assumed HarbourVest at zero and UBS at zero. So we've since -- we've since refined those numbers, obviously, through both the 3018 process as well as the settlement with HarbourVest.

Q And did the -- did the inclusion -- withdrawn. At the time that you prepared the November model -- withdrawn. At the time the Debtor prepared the November model, did it know what the UBS or the HarbourVest claims would be valued at?

A No. We just had our assumption back then, which was zero. And now, obviously, we know.

Q And so the January model took into account the settlement with HarbourVest and the 3018 motion; do I have that right?

A That's correct. That's in the assumptions.

Q And what was the impact on the projected recoveries to general unsecured creditors from the changes that you've just described, including the increase in the claims amount?

A Well, when -- like any fraction, the distribution will go down if the claimant pool goes up. So, with the denominator going up by the UBS and the UBS amount -- the UBS and the HarbourVest amounts, the distribution percentage went down.

Q Okay. I want to focus your attention on the second line where we've got the monetization of assets under the plan at $258 million but under the liquidation analysis it's $192 million. Do you see that?

A Yes.

Q Can you tell Judge Jernigan why the Debtor believes that under the plan the Debtor or the post-confirmation Debtor is likely to receive or recover more for the --

(Interruption.)

THE COURT: All right. Hang on a minute. Where is that coming from, Mike?

THE CLERK: Someone is calling in.

THE COURT: Okay.

MR. MORRIS: Thank you.

THE COURT: Mr. --

MR. MORRIS: Let me restate the question.

THE COURT: Yes. Restate.

BY MR. MORRIS:

Q Can you explain to Judge Jernigan why the Debtor believes that the -- under the plan corporate structure, the Debtor is likely to recover more from the monetization of assets than a Chapter 7 liquidation trustee would?

A Sure. My experience is that Chapter 7 trustees will generally try to move quickly to monetize assets. They will retain their own professionals, they will examine the assets, and they will look to sell those assets swiftly.

The monetization plan does not plan to do that. I've got a year's of experience -- a year now of experience with these assets, as well as we'll have a team with several years at least each of experience with the assets. We intend to look for market opportunities, and think we'll be able to do it in a much better fashion than a liquidating Chapter 7 trustee.

The nature of these assets is complex. Many of them are private equity investments in operating businesses. Certain of them are complicated real estate structures that need to be dealt with. Some of them are securities that, depending on when you want to sell them, we believe there'll be better times than moving quickly forward to sell them now.

So, with each of them, we think that we'll be able to do better than a Chapter 7 trustee based upon our experience. The only thing that we're level-set with a Chapter 7 trustee on is that cash is cash.

Q Do you have any concerns that a Chapter 7 trustee might not be able to retain the same personnel that the Debtor is projected to retain?

A Well, again, in my experience, it would be very difficult for a Chapter 7 trustee to retain the same professionals, and typically they don't.

Secondly, retaining the individuals, I think, would be very difficult for a Chapter 7 trustee, would not have a relationship with them, and that gap of time and the risks that they would have to take to join a Chapter 7 trustee I think would lead most of them to look for different opportunities.

Q Okay. One of the other things, one of the other changes I think you mentioned between the November and the January projections was the decision to assume the CLO management contracts. Do I have that right?

A That's correct.

Q And why has the Debtor decided to assume the CLO management contracts? How does that impact the analysis on the screen?

A Well, it does add to the expense, but it also adds to the

proceeds.

When we did the HarbourVest settlement, we ended up with the first significant interest in HCLOF. HCLOF owns the vast majority of the equity in Acis 7, and also owns significant preferred share interests in the 1.0 CLOs. And we think it's in the best interest of the estate to keep the management of those assets where we have an interest in the outcome of maximizing value with the estate.

In addition, we're going to have employees who are going to work with us to manage those specific assets, so we feel like that will be something where we can control the disposition much better.

There's also cross-interests that these CLOs have in -- the 1.0 CLOs have in a number of other investments that Highland has. As in all things Highland, it's interrelated, and so many of the companies have direct loans from the CLOs. We intend to refinance that, but we feel much more comfortable and feel that there would be value maximization if we're able to work directly with the Issuers as a manager while we seek in those underlying investments to refinance the CLO debt.

Q Has the Debtor -- has the Debtor reached an agreement with the Issuers on the assumption of the CLO management agreements?

A Yes, we have.

Q Can you describe for the Court the terms of the

assumption?

MR. RUKAVINA: Your Honor, this --

THE WITNESS: Yes.

MR. RUKAVINA: Your Honor, this is Davor Rukavina. I would object to this as hearsay.

THE COURT: Well, he has not --

MR. MORRIS: It's --

THE COURT: He's not said an out-of-court statement yet, so I overrule.

Go ahead.

THE WITNESS: Yeah, we -- we are going to assume the CLO contracts. We have had direct discussions with the Issuers. They have agreed.

The basic terms are that we're going to cure them by satisfying about $500,000 of cure costs related to costs that the CLO Issuers have incurred in respect of the case, and we'll be able to pay that over time.

MR. RUKAVINA: Your Honor, this is Davor Rukavina. I would renew my objection and move to strike his answer that they've agreed. That is hearsay, an out-of-court statement offered to prove the truth of the matter asserted.

THE COURT: Okay. Mr. Morris, what is your response?

MR. MORRIS: He's describing an agreement. I actually think it's in the Debtor's plan that's on file already. But he's describing the terms of an agreement. He's

not saying what anybody said. There's no out-of-court statement. It's an agreement that's being described.

THE COURT: All right. Thank you. I overrule the objection.

MR. MORRIS: Okay.

BY MR. MORRIS:

Q Does the Debtor believe that the CLO agreements will be profitable?

A Yes.

Q And why does the Debtor believe that the CLO agreements will be profitable to the post-confirmation estate?

A Well, we don't -- we don't break out profitability on a line-by-line basis. But the simple math is that the revenues from the CLO contracts which will roll in to the Debtor from the management fees are more than what we anticipate the actual direct costs of monitoring and managing those assets would be.

Q Okay. Are you aware that yesterday the Debtor filed a further revised set of projections?

A I am, yes.

Q All right. Let's call those the February projections.

MR. MORRIS: Can we put those on the screen? It's Exhibit 7P, Your Honor.

THE COURT: Okay.

MR. MORRIS: All right. I think that for some reason

-- yeah, okay. There we go. Perfect. Right there.

Your Honor, these are the projections that were filed yesterday. I'm going to move for the admission into evidence of these projections.

THE COURT: All right.

MR. TAYLOR: Your Honor, this is Clay Taylor.

THE COURT: Go ahead.

MR. TAYLOR: We object. These were -- these were not previously provided. They were provided on the eve of the confirmation hearing, after the Debtors had already revised them once and provided those on -- after close of business on a Friday before Mr. Seery's deposition. And these were provided even later, certainly not within the three days required by the Rule. And therefore we move to -- that these should not be allowed into evidence.

THE COURT: Mr. Morris, what is your response to that?

MR. MORRIS: Your Honor, first of all, the January projections were provided in advance of Mr. Seery's deposition and he was questioned extensively on it. These projections have been updated since then, I think for the singular purpose of reflecting the UBS settlement.

As Your Honor just saw, the prior projections included an assumption based on the 3018 motion. Since Mr. Seery's deposition, UBS and the Debtor have agreed to publicly

disclose the terms of the settlement, and that's reflected in these revised numbers. I think there was one other change that Mr. Seery can testify to, but those are the only changes that were made.

THE COURT: All right. Mr. Seery, what besides the UBS settlement do you think was put in these overnight ones?

THE WITNESS: I believe the only other change, Your Honor, was correcting a mistake. In Assumption M, the second line is assumes RCP claims will offset against HCMLP's interest in the fund and will not be paid from the Debtor's assets. That hasn't changed.

Basically, the Debtor got an advance from RCP that was to -- for tax distributions, and did not repay it. The RCP investors are entitled to recovery of that. So we had previously backed that out. It's about four million bucks. What happened was it was just double-counted.

THE COURT: Okay.

THE WITNESS: So, as an additional claim, it was counted as $8 million. I think that's the only other change.

THE COURT: All right. I overrule the objection. You may go forward. I admit 7P.

MR. MORRIS: Thank you, Your Honor.

(Debtor's Exhibit 7P is received into evidence.)

MR. MORRIS: Can you just -- if we can go to the next page, please.

BY MR. MORRIS:

Q So, with -- seeing that the claims pool under the plan previously was $313 million, and what's the claims pool under the projections up on the screen under the plan?

A Two -- well, remember, there's 273 for Class 8, and then you'd add in the Class 7 as well, which is the $10.2 million. So the 273 went from 313 to 273 with that settlement.

Q And is there any -- is there any reason for the decrease other than the change from the 3018 settlement -- order figure to the actual settlement amount?

A For the UBS piece, no. And then, as I mentioned, I believe the other piece would have been that four million -- that additional $4 million that was taken out.

Q And did those two changes have a -- did those two changes have an impact on the projected recoveries under the plan?

A Sure, particularly with respect to -- to the Class 8. Those recoveries went up significantly because the denominator went up.

Q Okay. Does the Debtor believe that its plan is feasible?

A Yes, absolutely.

Q And do you know whether the administrative priority and convenience class claims will be paid in full under the Debtor's plan?

A Yes. We monitor the cash very closely, so we do have additional cash to raise, but we're set to reach or exceed

that target, so we do believe we'll be able to pay all the administrative claims when they come in. Obviously, we have to see what they are. We will be able to pay Class 7 on the effective date. Any other distributions, we expect to be able to make as well.

So, and then it's -- then it's a question of going forward with a few other claims that we have to pay over time. We have the cash flow to pay those. Frontier, for example, we'll be able to pay that claim over time in accordance with the restructured terms. If the assets that secure that claim are sold, they would be paid when those assets are sold.

Q Frontier, will the plan enable the Debtor to pay off the Frontier secured claim?

A Yes. That's what I was explaining. The cash flow is sufficient to support the current P&I on that claim. We will be able to satisfy it from other assets if we determine not to sell the asset securing the Frontier claim, or if we sell the asset securing the Frontier claim we could satisfy that claim. The asset far exceeds the value of the claim.

Q Has the plan been proposed for the purpose of avoiding the payment of any taxes?

A No. We expect all tax claims to be paid in accordance with the Code, and to the extent that there are additional taxes generated, we would pay them.

Q Okay. Let's just talk about Mr. Dondero for a moment

before we move on. Are you aware that Mr. Dondero's counsel has requested the backup to, you know, these numbers, including the asset values?

A It -- I'm not sure if it was his counsel or one of the other related-entity counsels.

Q Okay. But you're aware that a request was made for the details regarding the asset values and the other aspects of this?

A Yes.

Q Those were -- were those formal requests or informal requests?

A They were certainly at my deposition.

Q Right. But you haven't seen a document request or anything like that, have you?

A No.

Q Did the Debtor make a decision as to whether or not to provide the rollup, the backup information to Mr. Dondero or the entities acting on his behalf?

A Yes.

Q And what did the Debtor decide?

A We would not do that.

Q And why did the Debtor decide that?

A Well, I think that's pretty standard. The underlying documentation and the specific terms of the model are very specific, and they are -- they are confidential business

information that runs through what we expect to spend and what we expect to receive and when we expect to sell assets and then receive proceeds, and the prices at which we expect to sell them.

To the extent that any entity wants to have that information as a potential bidder, that would be very detrimental to our ability to maximize value. So, typically, I wouldn't expect that to be given out, and I would not approve it to be given out here.

Q Did the Debtor disclose to Mr. Dondero's counsel or counsel for one of his entities the agreement in principle with UBS before the updated plan analysis was filed last night?

A I believe that disclosure was done a while ago, to Mr. Lynn.

Q So, to the best of your -- so, to the best of your knowledge, the Debtor actually shared the specifics of the agreement with UBS with Mr. Dondero and his counsel before last night?

A Yes. I have specific personal knowledge of it because we had to ask UBS for their permission, and they agreed.

Q Okay.

MR. MORRIS: All right. Let's move on to 1129(b), Your Honor, the cram-down portion.

BY MR. MORRIS:

Q Are you aware, Mr. Seery, how various classes have voted under the plan?
A I am generally, yes.
Q Okay. Did any class vote to reject the plan, to the best of your knowledge?
A I don't -- I guess it depends on how you define the class. I think the answer is that I don't believe that, when you count the full votes of the -- the allowed claims and the votes in any class, I don't believe any of the classes voted to reject the plan.
Q What type of claims are in Class 8?
A General unsecured claims.
Q And what percentage of the dollar amount of Class 8 voted to accept?
A It's -- I think it's near -- now with the Daugherty agreements, it's near a hundred percent of the third-party dollars. I don't know the individual employees' claims off the top of my head.
Q All right. And what about the number in Class 8? Have a majority voted to accept or reject in Class 8?
A If you include the employee claims -- which, again, we think have no dollar amounts -- then I think it's a majority would have rejected. The vast dollar amounts did accept.
Q Okay. Let's talk about those employees claims for a moment. Do you have an understanding as to the basis of the

claims?
A Yes.
Q What's your understanding of the basis of the claims?
A Most of the claims are based on deferred compensation, and that's the 2005 Highland Capital Management bonus plan. And that bonus plan provides certain deferred payment amounts to the employees to be paid over multiple-year periods, provided that they are in the seat when the payment is due. That's the vesting date.
Q Okay.
MR. MORRIS: Your Honor, just as a note-keeping matter, the deferred compensation plan and the annual bonus plan are Exhibits 6F and 6G, respectively, and they're on Docket 1822.
THE COURT: All right.
BY MR. MORRIS:
Q And Mr. Seery, are you generally familiar with those plans?
A I am, yes.
Q In order to receive benefits under the plans, are the employees required to be employed at the time of vesting?
A Yeah. Our counsel refers to them, various terms, but generally -- our outside labor counsel. They're referred to as seat-in-the-seat plans, meaning that your seat has to be in a seat at the office at the day that the payment is due. If

you're terminated for cause or if you resign, you're not entitled to any payment.

So either you're there and you receive it or you're not and you don't. The only exception to that, I believe, is death and disability. Or disability.

Q All right. Did the Debtor terminate the annual bonus plan?

A Yes, we did.

Q And in what context did the Debtor terminate the annual bonus plan?

A Well, we had discussion on it last week. As Mr. Dondero had also testified, the plan was to terminate all the employees prior to the transition. That's well known among the employees. The board terminated the 2005 bonus plan and instead replaced it with a KERP plan that was approved by this Court.

Q And what was your understanding of the consequences of the termination of the bonus plan for -- for purposes of the claims that have been asserted by the employees who rejected in Class 8?

A It's clear that, under the 2005 HCMLP bonus plan, no amounts are due because the plan has been terminated.

Q All right. Do you have an understanding as to when payments become due under the deferred compensation -- under the compensation plan?

A I do, yes.
Q And when are they due?
A The next payments are due in May.
Q And what is the Debtor intending to do with respect to the objecting employees?
A The Debtor will have terminated all those employees before that date.
Q All right. So, what's -- what are the consequences of their termination vis-à-vis their claims under the deferred compensation plan?
A They won't have any claims.
Q Okay. So is it the Debtor's view that the employees who voted to reject in Class 8 have no valid claims under the annual comp -- annual bonus plan or the deferred compensation plan?
MR. RUKAVINA: Your Honor, this is Davor Rukavina. With due respect, Your Honor, these employees have voted. The voting is on file. There has been no claim objections to their claims filed. There's been no motion to designate their votes filed. So Mr. Seery's answer to this is irrelevant. They have votes -- pursuant to this Court's disclosure statement order, they have votes and they have counted, and now Mr. Seery is attempting to basically impeach his own balloting summary.
THE COURT: Mr. Morris, what is your response?

MR. MORRIS: The point of cram-down, Your Honor, is it fair and equitable. Does -- does -- is it really fair and equitable to the 99 percent of the economic interests to allow 24 employees who have no valid claims to carry the day here? And this is -- that's what cram-down is about, Your Honor.

THE COURT: All right. I overrule the objection.

BY MR. MORRIS:

Q Let's talk about Class 7 for a moment, Mr. Seery. That's the convenience class; is that right?

A That's correct.

Q How and why was that created?

A Well, initially, that was created because we had two types of creditors in the case, broadly speaking. We had liquidated claims, which were primarily trade-type creditors, and we had unliquidated claims, which were the litigation-type creditors. And so that class was created to deal with the liquidated claims, and the Class 8 would deal with the unliquidated claims, which were expected to, as we talked about earlier with respect to the monetization plan, take some time to resolve.

Q Was the creation of the convenience class a product of negotiations with the Committee?

A The initial discussion on how we set it up I believe was generated by the Debtor's side, but how it evolved and who would be in it and how it was treated in terms of

distributions was a product of negotiation with the Committee.
Q Okay. So how was the dollar threshold figure arrived at? How did you actually determine to create a convenience class at a million dollars?
A It was through negotiation with the Committee. So this was one of those items that moved a fair bit, in my recollection, through the many negotiations we had, heated negotiations on some of these items, with the Committee.
Q And are all convenience class -- all holders of convenience class claims holders of claims that were liquidated at the time the decision was made to create the class?
A I believe so. I don't think there's been -- other than -- well, there -- we just had some settlements today, and I think that relates to the employees, but those would be the only ones that there would be disputes about, and that would roll into the liquidat... the convenience class.
Q Okay. Finally, is there any circumstance under which holders of Class 10 or 11, Class 10 or Class 11 claims will be able to obtain a recovery under the plan?
A Theoretically, there's a circumstance, and that is if every other creditor in the case were to be paid in full, with interest at the federal judgment rate, including Class 9, which are the subordinated claims. If those all got paid in full, then theoretically the junior interest holders could

receive distributions.

However, based upon our projections, that would be wholly dependent on a significant recovery in the Litigation -- by the Litigation Trustee.

Q Okay. Let's move now to questions of the Debtor release and the plan injunction. Is the Debtor providing a release under the plan?

A Yes.

Q Is anyone other than the Debtor providing a release under the plan?

A No.

Q Who is the Debtor proposing to release under the plan?

A The release parties are pretty similar to what you typically would see, in my experience, in most plans. You have the independent board, myself as CEO and CRO, the professional -- the Committee members, the professionals in the case, and the employees that we reached agreement with respect to certain of them who have signed on to a stipulation, and others, get a broader release for negligence.

Q Okay. Is the Debtor aware of any facts that might give rise to a colorable claim against any of the proposed release parties?

A Not with respect to any of the release parties. So the -- obviously, I don't think there's any claims against me. But the same is true with respect to the oversight board, the

independent board.

The Committee has been, you know, working with us hand-in-glove, and I think if they thought we -- there was something there, we would have heard it.

With respect to the professionals, we haven't seen anything as an independent board.

And with respect to the employees' that -- general negligence release, these are current employees and we have been monitoring them for a year and we don't have any evidence or anything to suggest that there would be a claim against them.

Q Are there conditions to the employees' release?

A There are. So, the employee release, as we talked about earlier, was highly negotiated with the Committee. It requires that employees assist in the monetization efforts, which is really on the transition and the monetization. They don't have to assist in bringing litigations against anybody, so that's not part of what the provision requires. But it does require that they assist generally in our efforts to monetize assets.

We don't think that's going to be significant, but if there are individual questions or help we need, we certainly would reach out to them. If it's significant time, that will be a different discussion.

And then with respect to the two senior employees who

signed the stipulation, they have to give up a part of their distribution for their release.

Q All right. I think you just alluded to this, but has the release been the subject of negotiation with the Creditors' Committee?

A Yeah. We've touched on it a bunch of times, and we certainly, unfortunately, let it spill over into the court a couple times. It was a hotly-negotiated piece of the plan.

Q Okay. Has the Committee indicated to the Debtor in any way that anybody subject to the release is the subject of a colorable claim?

A Anyone subject to the release? No.

Q Yeah. All right. Let's talk about the plan injunction for a moment. Are you familiar with the plan injunction?

A Broadly, yes.

Q And what is your broad understanding of the plan injunction?

A Anybody who has a claim or thinks they have a claim will broadly be enjoined from bringing that, other than as it's satisfied under the plan or else ultimately bringing it before this Court. And that's the gatekeeper part, which is a little bit of combining the two pieces.

Q And what's your understanding of the purpose of the injunction?

A It's really to prevent vexatious litigation. We, as

independent directors, stepped into what I think most people would fairly say is one of the more litigious businesses and enterprises that they've seen. And we have a plan that will allow us to monetize assets for the benefit of the creditor body, provided we're able to do that and not have to put out fires every day on different fronts. So what we're hoping to do with the injunction is ensure that we can actually fulfill the purposes of the plan.

Q All right. Let's talk about some of the litigation that you're referring to.

MR. MORRIS: Can we put up on the screen the demonstrative for the Crusader litigation?

BY MR. MORRIS:

Q And Mr. Seery, I would just ask you to kind of describe your understanding in a general way about the history of the Crusader litigation.

MR. MORRIS: And, Your Honor, just to be clear here, this is a demonstrative exhibit. As you can see in the footnotes, it's heavily footnoted to the documents and to -- and, really, to the court cases themselves. The documents on the exhibit list include the dockets from each of the underlying litigations. And I just want to just have Mr. Seery describe at an extremely high level some of the litigation that the Debtor has confronted over the years, you know, as the driver, as he just testified to, for the decision

to seek this gatekeeper injunction.

THE COURT: All right.

BY MR. MORRIS:

Q So, Mr. Seery, can you just describe kind of in general terms the Crusader litigation?

A Yeah. I apologize to the Redeemer team for maybe not doing this justice. But this is litigation that came out of a financial crisis upheaval related to this fund. Disputes arose with respect to the holders of the interests, which were the -- ultimately became the Redeemers, and Highland as the manager.

That went through initial litigation, and then into the Bermuda courts, where it was subject to a scheme. The scheme required or allowed for the liquidation of the fund and then distributions to the -- to the holders, and then deferred many of the payments to Highland.

At some point, Highland, frustrated that it wasn't able to get the payments, decided to just take them, and I think, you know, fairly -- can be fairly described, at least by the arbitration panel, as coming up with reasons that may not have been wholly anchored in reality as to what its reasons were for taking that money.

That led to further disputes with the Redeemers, who then terminated Highland and brought an arbitration action against Highland. They were successful in that arbitration and

received a $137 arbitration award. And right up to the petition date, that arbitration pursued. When they finally got their -- the arbitration award, they were going to Delaware Chancery Court to file it and perfect it, and the Debtor filed.

Q Okay.

MR. MORRIS: Let's go to the next slide, the Terry/Acis slide. If we could just open that up a little bit. It's -- as you can imagine, Your Honor, it's a little difficult to kind of summarize the Acis/Terry saga in one slide, but we've done the best we can.

BY MR. MORRIS:

Q Mr. Seery, can you describe generally for Judge Jernigan, who is well-versed in the matter, the broad overview of this litigation?

A There's clearly nothing I can tell the Court about the bankruptcy that it doesn't already know. But very quickly, for the record, Mr. Terry was an employee at Highland. He also has a partnership interest in Acis, which was, in essence, the Highland CLO business. He -- and he got into a dispute with Mr. Dondero regarding certain transactions that Mr. Dondero wanted to enter into and Mr. Terry didn't believe were appropriate for the investors.

Strangely, the assets that underlie that dispute are still in the Highland portfolio, both Targa (phonetic) and Trussway.

Mr. Terry was terminated, or quit, depending on whose side of the argument you take. Mr. Terry then sought compensation in the arbitration pursuant to the partnership agreement. Ultimately, he was awarded an arbitration award of roughly $8 million.

When he went to enforce that -- that was against Acis. When he went to enforce that against Acis, which had all the contracts, Highland went about, I think, terribly denuding Acis and moving value. Mr. Terry ultimately was able to file an involuntary against Acis, and after a tremendous amount of litigation had a plan confirmed that gave him certain rights in Acis and any ability to challenge certain transactions with respect to Highland that formed the basis of his claims in the Highland bankruptcy.

That wasn't the end of the saga, because Highland commenced a litigation -- well, not Highland, but HCLOF and others, directed by others -- commenced litigation against Mr. Terry in Guernsey, an island in the English Channel. That litigation wound its way for a couple -- probably close to two years, at least a year and a half, and ultimately was -- it was dismissed in Mr. Terry's favor.

While that was pending, litigation was commenced in New York Supreme Court against Mr. Terry and virtually anybody who had ever associated with him in the business, including -- including some of the rating agencies. That was withdrawn as

part of our efforts working with DAF to try to bring a little bit of sanity to the case. But it was withdrawn without prejudice.

But ultimately, you know, we've agreed to a claims settlement, which was approved by this Court, with Acis and Mr. Terry.

Q All right.

MR. MORRIS: How about UBS? Can we get the UBS slide?

THE WITNESS: I should mention that there's other litigations involving Mr. Terry and Highland individuals that are outstanding, I believe, in Texas court. We have not yet had to deal with those.

BY MR. MORRIS:

Q Okay. Can you describe for the Court your general understanding of the UBS litigation?

A Again, UBS comes out of the financial crisis. It was a warehouse facility that UBS had established for Highland. It actually was a pre-crisis facility that was restructured in early '08, while the markets were starting to slide but before they really collapsed. That litigation started after Highland failed to make a margin call. UBS foreclosed out -- or it wasn't really a foreclosure, because it's a warehouse facility, but basically closed out all the interest and sought recovery from Highland for the shortfall.

Highland was one of the defendants, but there are numerous defendants, including some foreign subsidiaries of Highland.

That case wend its way through the New York Supreme Court, up and down between the Supreme and the Appellate Division, which is the intermediate appellate court in New York. Incredibly litigious effort over virtually every single item you could possibly think of.

Ultimately, UBS got a judgment for $500-plus million and -- plus prejudgment interest against two of the Highland subsidiaries. It then sought to commence action up -- enforce its judgment through various theories against Highland. That is part of the settlement that we have -- it's been part of the lift stay motion here, the 3019, as well as the 3018, and as well as the ultimate settlement we've discussed today.

Q Okay. Moving on to Mr. Daugherty, can you describe for the Court your understanding of the Daugherty litigation?

A The Daugherty litigation goes back even further. It did -- I think the original disputes were -- or, again, started to happen between Mr. Daugherty and Mr. Dondero even prior to the crisis, but Mr. Dondero -- Daugherty certainly stayed with Highland post-crisis. And then when Mr. Daugherty was severed or either resigned or terminated from his position, there was various litigations that began between the parties very intensely in state court, one of the more nasty litigations that you can imagine, replete with salacious allegations and

press releases.

That litigation then led to an award originally for Mr. Daugherty from HERA, which was an entity that had assets that Mr. Daugherty alleges were stripped. Mr. Daugherty had to pay a judgment against Highland. Ultimately, litigations were commenced in both the state court and the Delaware Chancery Court. Those litigations, many of those continue, because they're not just against the entities but specific individuals. Mr. Daugherty got a voting -- a claim allowed for voting purposes in our case of $9.1 million, and we've since reached an agreement with Mr. Daugherty on his claim, save for a tax case which we announced earlier that relates to compensation, claimed compensation with respect to a tax distribution, which we have defenses for and he has claims for.

MR. MORRIS: All right. We can take that down, please.

BY MR. MORRIS:

Q And let's just talk for a few minutes about some of the things that have happened in this case. Did Mr. Dondero engage in conduct that caused the Debtor to seek and obtain a temporary restraining order?

A Yes, he did.

Q And did the Debtor -- did Mr. Dondero engage in conduct that caused the Debtor to seek and obtain a preliminary

injunction against him?
A Yes.
Q And has the Debtor filed a motion to hold Mr. Dondero in contempt for violation of the TRO?
A Yes.
Q Are you aware that -- of the CLO-related motion that was filed in mid-December?
A It's similar in that these are controlled entities that brought similar types of claims against the Debtor and interfered in similar ways, albeit not as directly threatening with respect to the personnel of the Debtor.
Q Okay. And you're aware of how that -- that motion was resolved?
A I know we resolved it, and I'm drawing a blank on that. But --
Q All right. Are you aware, did Mr. Daugherty also object to the Acis and HarbourVest settlements, or at least either him or entities acting on his behalf?
A I think you meant Mr. Dondero. I don't believe Mr. Daugherty did.
Q You're right. Thank you. Let me ask the question again. Thank you for the clarification. We're almost done. To the best of your knowledge, did Mr. Dondero or entities that he controls file objections to the Acis and HarbourVest settlements?

A Yes, they did.

Q And we're here today with this long recitation because the remaining objectors are all Mr. Dondero or entities owned or controlled by him; is that right?

A That's correct.

Q All right.

MR. RUKAVINA: Your Honor, I didn't have a chance to object in time. Entities owned or controlled by Mr. Dondero. There's no evidence of that with respect to at least three of my clients, and this witness has not been asked predicate questions to lay a foundation. Mr. Dondero does not own or control the three retail (inaudible). So I move to strike that answer.

MR. MORRIS: Your Honor, I withdraw with respect to the three funds. It's fine.

THE COURT: All right. With that withdrawal, then I think that resolves the objection.

MR. MORRIS: Uh, --

THE COURT: Or I overrule the remaining portion. Okay. Go ahead.

MR. RUKAVINA: That does, Your Honor. Thank you.

BY MR. MORRIS:

Q Are -- are -- is everything that you just described, Mr. Seery, the basis for the Debtor's request for the gatekeeper and injunction features of the plan?

A Well, everything I described are a part of the basis for that. I didn't describe every single basis with respect to why those --

Q So what are -- what are the other reasons that the Debtor is seeking the gatekeeper and injunction provisions in the plan?

A We really do need to be able to operate the business and monetize the assets without direct interference and litigation threats. We didn't go through some of the specifics, and I hesitate to burden the Court again, but the email to me, the email to Mr. Surgent, the testimony threatening -- effectively threatening Mr. Surgent, in my opinion, by Mr. Dondero, in the court in previous weeks, statements by his counsel indicating that Mr. Dondero is going to sue me for hundreds of millions of dollars down the road.

I mean, this is nonstop. I'm an independent fiduciary. I'm trying to maximize value for the estate. I've got some guy who's threatening to sue me? It's absurd.

MR. MORRIS: Your Honor, I have no further questions, but what I would respectfully request is that we take just a short five-minute break. I'd like to just confer with my colleagues before I pass the witness.

THE COURT: All right. Five-minute break.

MR. MORRIS: Thank you, Your Honor.

THE CLERK: All rise.

(A recess ensued from 1:58 p.m. to 2:06 p.m.)

THE CLERK: All rise.

THE COURT: All right. Please be seated. We're back on the record in Highland. Mr. Morris, anything else?

MR. MORRIS: All right, Your Honor. Can you hear me?

THE COURT: I can, uh-huh.

MR. MORRIS: Okay. Mr. Seery, are you there?

THE WITNESS: I am, yes.

MR. MORRIS: I just have a few follow-up questions, Your Honor, if I may.

THE COURT: Okay.

DIRECT EXAMINATION, RESUMED

BY MR. MORRIS:

Q Okay. Mr. Seery, we talked for a bit about the difference between the convenience class and the general unsecured claims. Do you recall that?

A Yes.

Q And that's the difference between Class 7 and 8; do I have that right?

A Yes.

Q And what is the recovery for claimants in Class 7, to the best of your recollection, the convenience class?

A It's 85 cents.

Q And under --

A On the dollar.

Q And under the projections that were filed last night, and we can call them up on the screen if you don't have total recall, do you recall what Class 8 is projected to recover now that we've taken into account the UBS settlement?
A Approximately 71.
Q Okay.
A Percent. 71 cents on the dollar.
THE COURT: Okay. The answer --
BY MR. MORRIS:
Q Okay. Do I this right --
THE COURT: The answer was a little garbled. Can you repeat the answer, Mr. Seery?
THE WITNESS: Approximately 71 cents on the dollar, Your Honor.
THE COURT: Okay. Thank you.
BY MR. MORRIS:
Q Okay. And do I have that right, that that 71 cents includes no value for potential litigation claims?
A That's correct. We didn't even put that in our projections at all.
Q So is it possible, depending on Mr. Kirschner's work, that holders of Class 8 claims could recover an amount in excess of 85 percent?
A It's possible, yes.
Q Okay. Are you aware that Dugaboy has suggested that the

Debtor should resolicit because their -- their -- the projections in the November disclosure statement were misleading?

A I'm aware that they've made allegations along those lines, yes.

Q Okay. Do you think the November projections were misleading in any way?

A No, not at all.

Q And why not?

A Well, the plan was -- the projections are for the plan, and they contain assumptions. And it was clear in the plan that those assumptions could change. So the value of the assets, which aren't static, does change. The costs aren't static. They do change. The amount of the claims, the denominator, was not static and would change.

Q Okay. And were the -- were the changes in the claims, for example, changes that were all subject to public viewing, as the Court ruled on 3018, as the settlement with HarbourVest was announced?

A Well, the plan -- the terms of the plan made clear that the Class 8 claims would -- would be whatever the final amounts of those claims were going to be. We did resolve the claims of HarbourVest and then ultimately the settlement announced today, but in front of -- in front of the world, in front of the Court, with a 9019 motion.

Q Okay. We had finished up with some questioning about the gatekeeper and the injunction provision. Do you recall that?
A Yes, I do.
Q And you had testified as to the reasons why the Debtor was seeking that particular protection. Do you recall that?
A Yes.
Q In the absence of that protection, does the Debtor have any concerns that interference by Mr. Dondero could adversely impact the timing of the Debtor's plan?
A Well, that's my opinion and what I testified to before. I think the -- the injunction -- the exculpation, the injunction, and the gatekeeper are really critical and essential elements of this plan, because we have to have the ability, unfettered by litigation, particularly vexatious litigation in multiple jurisdictions, we have to be able to avoid that and be able to focus on monetizing the assets and try to maximize value.
Q Is there a concern that that value would erode if resources and time and attention are diverted to the litigation you've just described?
A Absolutely. The focus of the team has to be on the assets' monetization, creative ways to get the most value out of those assets, and not on defending itself, trying to paper up some sort of litigation defense against vexatious litigation, and also spending time actually defending

ourselves in various courts.

Q Okay. Last couple of questions. If there was no gatekeeper provision in the plan, would you accept appointment as the Claimant Trustee?

A You broke up. No which provision?

Q If there was no gatekeeper provision in the -- in the confirmation order, would you accept the position as Claimant Trustee?

A No, I wouldn't. Just -- just like when I came on, there were -- there are some pretty essential elements that I mentioned before. One is indemnification. Two is directors and officers insurance. And three was a gatekeeper function. I want to make sure that we're not at risk, that I'm not at risk, for doing my job.

Q And I think you just said it, but if you were unable to obtain D&O insurance, would you accept the position as Claimant Trustee?

A No, I would not.

MR. MORRIS: I have no further questions, Your Honor.

THE COURT: All right. So, you went two hours and 34 minutes in total with your direct. So we'll now pass the witness for cross. And the Objectors get an aggregate of two hours and 34 minutes.

Who's going to go first?

MR. RUKAVINA: Your Honor, Davor Rukavina. I will.

THE COURT: Okay. Go ahead.

MR. RUKAVINA: Mr. Vasek, if you can pull up Exhibit 6N, the ballot summary, Page 7 of 15 on the top.

MR. POMERANTZ: Mr. Morris, you're not on mute.

MR. MORRIS: Thank you, sir.

MR. RUKAVINA: Mr. Vasek, did you hear me? There it is.

CROSS-EXAMINATION

BY MR. RUKAVINA:

Q Mr. Seery, are you familiar with this ballot tabulation that was filed with the Court and that has been admitted into evidence?

A Yes, I believe I've seen this.

Q Okay. And this says that 31 Class 8 creditors rejected and 12 Class 8 creditors accepted the plan, correct?

A That's correct.

Q And since then, I think we've heard that Mr. Daugherty and maybe two other employees have changed their vote to an accept; is that correct?

A That's correct, yes.

Q Okay. Other than three, those three employees that are changing, do you know of any other Class 8 creditors that are changing their votes?

A Mr. Daugherty is not an employee.

Q I apologize. Other than those three Class 8 creditors

that are changing their votes, do you know of any other ones that are changing their votes?

A No.

Q Okay. You didn't tabulate the ballots, did you?

A No, I did not.

Q Do you have any reason to question the accuracy of this ballot summary that's been filed with the Court?

A No, I do not.

Q Okay. You mentioned that many of the people that rejected the plan are former employees who you don't think will ultimately have allowed claims, correct?

A Not ultimately. I said they don't have them now.

Q Okay. Are you aware that the Court ordered that contingent unliquidated claims be allowed to vote in an estimated amount of one dollar?

A I'm aware of that, yes.

Q Okay. All right. Now, no motion to reconsider that order has been filed, correct?

A Not to my knowledge.

Q Okay. No objection to these rejecting employees' claims have been filed yet, correct?

A Correct.

Q Okay. And no motion to strike or designate their vote has been filed as of now, correct?

A Correct.

MR. RUKAVINA: You can take down that exhibit, Mr. Vasek.

BY MR. RUKAVINA:

Q Mr. Seery, the Debtor itself is a limited partnership; I think you confirmed that earlier, correct?

A Correct.

Q And its sole general partner is Strand Advisors, Inc., correct?

A Correct.

Q And to your understanding, the Debtor, as a limited partnership, is managed by its general partner, correct?

A Correct.

Q Okay. And Strand, that's where the independent board of you, Mr. Nelms, and Mr. Dubel -- or I apologize if I'm misspelling, misstating his name -- that's where the board sits, at Strand, correct?

A Yes.

Q Okay. And that board has been in place since about January 9, 2020?

A Yes.

Q Okay. Strand is not a debtor in bankruptcy, correct?

A No.

Q Okay. Do you have any understanding as to whether, under non-bankruptcy law, a general partner is liable for the debts of the limited partnership that it manages?

A I do.
Q Okay. What's your understanding?
A Typically, a general partner is liable for the debts of the partnership.
Q Okay. And under the plan, Strand itself is an exculpated party and a protected party and a released party for matters arising after January 9, 2020, correct?
A Yes.
Q Okay. You mentioned that you're the chief executive officer and chief restructuring officer in this case for the Debtor, correct?
A For the Debtor, yes.
Q Yeah. You are not a Chapter 11 trustee, right?
A No.
Q Okay. You are one of the principal authors of this plan, correct?
A Consultant.
MR. MORRIS: Objection to the form of the question.
THE COURT: Sustained.
BY MR. RUKAVINA:
Q You are --
THE COURT: Sustained.
BY MR. RUKAVINA:
Q You are --
THE COURT: Rephrase.

BY MR. RUKAVINA:

Q -- one of the principal --

MR. RUKAVINA: I apologize.

BY MR. RUKAVINA:

Q You had input in creating this plan, didn't you?

A I did, yes.

Q Okay. And you're familiar with the plan's provisions, aren't you?

A Yes.

Q Okay. And you, of course, approve of the plan, correct?

A Yes.

Q Okay. And you are, of course, familiar generally with what the property of the estate currently is, correct?

A Yes.

Q Okay. And part of the purpose of the plan, I take it, is to vest that property in the Claimant Trust in some respects and the Reorganized Debtor in some respects, correct?

A I don't -- I don't know if that's a fair characterization. Some property -- maybe some property will stay with the Debtor, some will be transferred directly to the Trust.

Q Okay. All property of the estate as it currently exists will stay with the Debtor or go to the Trust, correct?

A Yes.

Q Okay. And under the plan, the Creditor Trust will be responsible for payment of prepetition claims, correct?

A Yes.
Q And under the plan, the Creditor Trust will be responsible for the payment of postpetition pre-confirmation claims, correct?
A Do you mean admin claims? I don't --
Q Sure.
A I don't understand your question. I'm sorry.
Q Yes. We can call them admin claims.
A Yeah. Those -- they'll be -- they will be paid on the effective date or in and around that time. So I'm not sure if that's actually going to be from the Trust, but I think it's actually from the Debtor, as opposed to from the Trust.
Q Okay. But after the creation of the Claimant Trust, --
A Uh-huh.
Q -- whatever administrative claims are not paid by that time will be assumed by and paid from the Claimant Trust, correct?
A I don't recall that specifically.
Q Is it your testimony that the Reorganized Debtor will be obligated post-effective date of the plan to pay any admin claims that are then unpaid?
MR. MORRIS: Objection to the form of the question.
THE COURT: Sustained. Rephrase.
BY MR. RUKAVINA:
Q Who pays unpaid admin claims under the plan once the plan

goes effective?
A I believe the Debtor does. The Reorganized Debtor.
Q Okay. The Reorganized Debtor also gets a discharge, correct?
A Yes.
Q Okay. And there is no bankruptcy estate left after the plan goes effective, correct?
MR. MORRIS: Objection to the form of the question.
THE COURT: Overruled.
MR. RUKAVINA: Your Honor, I have the right to know what the objection to my question is.
THE COURT: I overruled.
MR. MORRIS: Okay.
THE COURT: I overruled the objection.
MR. RUKAVINA: Thank you.
BY MR. RUKAVINA:
Q Mr. Seery, do you remember my question?
A That whether there was a bankruptcy estate after the effective date?
Q Yes.
A There wouldn't be a bankruptcy estate anymore, no.
Q Okay. Under the plan, the creditors, to the extent that they have their claims allowed, the prepetition creditors, they're the beneficiaries of the Claimant Trust, correct?
A They are some of the beneficiaries, yes.

Q Okay. And you would be the Trustee, I think you said, of the Claimant Trust?
A Of the Claimant Trust, yes.
Q Okay. And you will have fiduciary duties to the beneficiaries of the Claimant Trust, correct?
A I believe I have some, yes.
Q Okay. Well, as the Trustee, you will have some fiduciary duties; you do agree with that?
A That's what I said, yes.
Q Okay. What's your understanding of what those fiduciary duties to the beneficiaries of the Claimant Trust will be?
A I think they'll be -- they are cabined to some degree by the provisions of the agreement, but generally there will be a duty of care and a duty of loyalty.
Q Do you feel like you'll have a duty to try to maximize their recoveries?
A That depends.
Q On what?
A My judgment on what's the -- if I'm exercising my duty of care and my duty of loyalty.
Q Okay. But surely you'd like to, whether you have a duty or not, you'd like to maximize their recoveries as Trustee, wouldn't you?
A Yes.
Q Okay. Now, in addition to the beneficiaries, which I

believe are the Class 8 and Class 9 creditors, the plan proposes to give non-vested contingent interests in the Trust to certain holders of limited partnership interests, correct?

A Yes.

Q Okay. And those non-vested contingent interests would only be paid and would only vest if and when all unsecured creditors and subordinated creditors are paid in full, with interest, correct?

A Yes.

Q Okay. And those non-vested contingent interests are a property interest, although they're an inchoate property interest, correct?

A I don't know. I think I testified in my deposition that I -- I reached for inchoate, but I'm not an expert in the definitions of property interests. I don't know if they're too ethereal to be considered a property interest.

Q Okay.

MR. RUKAVINA: Mr. Vasek, will you please pull up Mr. Seery's deposition at Page 215? And if you'll go to Page 200 -- can you zoom -- can you zoom that in a little bit? Mr. Vasek, can you zoom on that?

MR. VASEK: Just a moment. There's some sort of issue here.

MR. RUKAVINA: Okay. And then go to Page 216. Scroll down to 216, please.

MR. VASEK: Okay. I can't see it, so --

MR. RUKAVINA: Okay. Stay, stay where you are. Go down one more row.

BY MR. RUKAVINA:

Q Okay. Mr. Seery, can you see this?

A Yes.

Q Okay. So, I ask you on Line 21, "They may be a property interest, but inchoate only, correct?" And you answer, "That is my belief. I don't claim to be an expert on the different types of property interests," --

MR. RUKAVINA: Mr. Vasek, can you go to the next page?

BY MR. RUKAVINA:

Q (continues) "-- whether they be inchoate, reversionary, ethereal. I don't claim to be an expert on the different types of property interests."

Do you see that answer, sir?

A Yes.

Q And do you stand by your answer given on Lines 23 through Line 4 of the next page?

A Yes.

Q Okay. And these non-vested contingency -- contingent interests in the Claimant Trust, they may have some value in the future, correct?

A Yes.

MR. RUKAVINA: Okay. You can take that down, Mr. Vasek.

BY MR. RUKAVINA:

Q Have you tried to see whether anyone outside this case, or anyone at all, would pay anything for those unvested contingent interests to the Claimant Trust?

A No.

Q Okay. Now, the Debtor is a registered investment advisor under the Investment Advisers Act of 1940; is that correct?

A That's correct.

Q And under that Act, the Debtor owes a fiduciary duty to the funds that it manages and to the investors of those funds, correct?

A Clearly to the funds, and generally to the investors more broadly, yes.

Q Okay. And would you agree that that duty compels the Debtor to look for the interests of the funds and the investors of those funds ahead of its own interests?

A Generally, but it's a much more fine line than what you're describing. It means you can't -- the manager can't put its own interests in front of the investors and the funds. It doesn't mean that the manager subordinates its interest in the -- to the investors and the funds.

MR. RUKAVINA: Well, Mr. Vasek, please pull up the October 20th transcript at Page 233.

MR. MORRIS: What transcript is this?

MR. RUKAVINA: October 20, 2019. Mr. Vasek has the docket entry.

MR. MORRIS: Oh, so it's the -- Your Honor, I just do want to point out that Mr. Rukavina objected, in fact, to the use of trial transcripts, but we'll get to that when we put on our evidence, when we finish up.

MR. RUKAVINA: Well, Your Honor, I believe that you're allowed to use a trial transcript to impeach testimony, which is what I'm going to do now.

So, for that purpose, Mr. Vasek, if you could -- are you on Page 233?

THE COURT: And just so the record is clear, this is from October 2020, not October 2019, which is, I think, what I heard. Continue.

MR. MORRIS: Your --

MR. RUKAVINA: Your Honor, I apologize, you did hear that and I did make a mistake. Yes, this is at Docket 1271.

Mr. Vasek, if you'll scroll down, please. Okay. No, stop there.

BY MR. RUKAVINA:

Q And you see on Line 16, sir, you're asked your understanding, and then you answer, "Okay." "And in exercising those duties, the manager, under the Advisers Act, has a duty to subordinate its interests to the interests of

those investors in the CLOs, correct?" And you answer --

MR. RUKAVINA: Go down, Mr. Vasek.

BY MR. RUKAVINA:

Q -- "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 -- that the manager owes to the investors. And to the extent" --

MR. RUKAVINA: Scroll down, please.

BY MR. RUKAVINA:

Q "And to the extent that the manager's interests would somehow be -- somehow interfere with the investors' in the CLO, he is supposed to -- he or she is supposed to subordinate those to the benefit of the investors."

Did I read that accurately, Mr. Seery?

A You did.

Q Was that your testimony on October 20th last?

A Yes.

Q Okay. Are you willing to revise your testimony from a few minutes ago that the manager does not have to subordinate its interests to the interests of the investors?

A No. I think that's very similar.

Q Okay.

A You left out the part about garbled up top where I said it

was nuanced, almost exactly what I just said. On Line 9, I believe, on the prior page.

Q Well, I heard you say a couple of minutes ago, and maybe I misunderstood because of the WebEx nature, that the manager does not have to subordinate its interests to the interests of the investors. Did I misheard you say that a few minutes ago?

A I think you misheard it. I said it's a nuanced analysis, and it's -- it's pretty significant. But the manager does subordinate his general interest and assures that the CLO or any of the investors' interests are paramount, but he doesn't subordinate every single interest.

For example, and I think it's in this testimony, the manager, if the fund isn't doing well, doesn't just have to take his fee and not get paid. He's allowed -- entitled to take his fee. He doesn't subordinate every single interest of his. He doesn't give up his home and his family. So it's -- it's a nuanced analysis. The interests of the manager are subordinated to the interests of the investors and the fund. I don't -- I don't disagree with anything I said there. I think I'm consistent.

Q Okay.

MR. RUKAVINA: You can take that down, Mr. Vasek.

BY MR. RUKAVINA:

Q So, how do you describe, sir, the fiduciary duty that the Debtor owes to the funds that it manages and to the investors

in those funds?

MR. MORRIS: Objection to the -- to the extent it calls for a legal conclusion, Your Honor. I just want to make sure we're -- we're asking a witness for his lay views.

THE COURT: Okay. I overrule the objection. He can answer.

THE WITNESS: Yes. As a manager of a fund, the manager is a fiduciary to the fund, and sometimes to the investors, depending on the structure of the fund. Some funds are purposely set up where the investors are actually debt-holders, and their interests are much more cabined by the terms of the contract, as opposed to straight equity holders. But the manager has a duty to seek to maximize value of the assets in the best interests of the underlying -- of the fund and the underlying investors, to the extent that it can, within the confines and structure of the fund.

BY MR. RUKAVINA:

Q Okay. And these duties as you just described them, they would apply to the Reorganized Debtor, correct?

A They would apply to the Reorganized Debtor to the extent that it's a manager for a fund, not, for example, with respect to necessarily interests -- the inchoate interests that we talked about earlier.

Q Sure. And I apologize, I meant just for the fund. And if the manager, the Reorganized Debtor, breaches those duties,

then it's possible that there's going to be liability, correct?

A It's possible.

Q Okay. Now, under the plan, the limited partnership interests in the Reorganized Debtor will be owned by the Claimant Trust, correct?

A Yes.

Q Okay. And there's a new entity called New GP, LLC that will be created or already has been created, correct?

A Yes.

Q Okay. And that entity will hold the general partnership interest in the Reorganized Debtor, correct?

A I believe that's correct.

Q Okay. And that entity -- that being New GP, LLC -- will also be owned by the Claimant Trust, correct?

A Yes.

Q Okay. Who will manage the Reorganized Debtor?

A The G -- the GP will manage the Reorganized Debtor.

Q Okay. And will there be an officer or officers of the Reorganized Debtor, or will it all be managed through the GP?

A It'll be managed through the GP.

Q Okay. And who will manage the GP?

A Likely, I will.

Q Okay. That's the current plan, that you will?

A I'll be the Claimant Trustee, and I believe that I'll be

responsible for any assets that remain in the Reorganized Debtor, yes.

Q Okay. Right now, the Debtor is managing its own assets as the Debtor-in-Possession, right?

A Yes.

Q And it is managing various funds and CLOs, right?

A Yes.

Q Okay. And right now, the Debtor is attempting to reduce some of its assets to money, like the promissory notes that you mentioned earlier that the Debtor filed suit on, correct?

A Yes.

Q And the Debtor is trying to reduce some of its assets to money, like the promissory notes, to benefit its creditors, correct?

A Yes.

Q Okay. And correct me if I'm wrong, but the Committee has filed various claims and causes of action against Mr. Dondero, correct?

A They -- they've filed some. I haven't -- I haven't looked at their (indecipherable) closely, but --

Q Okay.

A -- some are preserved in the case.

Q You understand --

A In the plan. I'm sorry.

Q You understand that the Committee is doing that for the

benefit of the estate, correct?
A Yes.
Q And you understand that they're also doing that for the benefit of creditors, correct?
A Yes.
Q Okay. And under the plan, just so that I'm clear, those claims that the Committee has asserted will be preserved and will vest in either the Claimant Trust or the Litigation Sub-Trust, correct?
A Yes.
Q Okay. And under the plan, the Reorganized Debtor would continue to manage its assets, correct?
A Yes.
Q And it would continue to manage the Funds and the CLOs, correct?
A Yes.
Q And the Claimant Trust would attempt to liquidate and distribute to its beneficiaries the assets that are transferred to it, correct?
A Yes.
Q Okay. And you mentioned that the Claimant Trust will have an Oversight Board comprised of five members, right?
A Yes.
Q And four of them will be the people that are currently on the Committee, right?

A Yes.
Q And the fifth is David Pauker, and I think you mentioned that he's independent. David Pauker is the fifth member, right?
A Yes.
Q Who -- who is he?
A David Pauker is a very well-known professional in the restructuring world. He's a long-time financial advisor in -- in reorganizations. He's served on numerous boards in restructuring -- restructurings.
Q Okay. So, other than a different corporate structure and the Claimant Trust, the monetization of assets for the benefit of creditors would continue post-confirmation as now, correct?
A I -- I believe so. I'm not exactly sure what you asked there.
Q No one is putting in any new money under the plan, are they?
A No. No.
Q Okay. There's no exit financing contingent on the plan being confirmed, right?
A You mean no exit -- the plan is not contingent on exit financing. I think you just mixed up your -- your financing and your plan.
Q I apologize. There's no exit financing in place today, correct?

A No.
Q Okay. So, post-confirmation, you are basically going to continue managing the CLOs and funds and trying to monetize assets for creditors the same as you are today, correct?
A Similar, yes.
Q Okay. And just like the Committee has some oversight role in the case, the members of the Oversight Board will have some oversight role post-confirmation, correct?
A Yes.
Q Okay. You don't need anything in the plan itself to enable you to continue managing the Debtor and its assets, correct?
A I don't need anything in the plan?
Q Correct.
A I don't -- I don't understand the question. Can you rephrase it?
Q Well, you are managing the Debtor and its assets today, correct?
A Yes.
Q Okay. Nothing in the plan is going to change that, correct?
A Well, it's going to change it a lot.
Q Okay. Well, with respect to you managing the Funds and the CLOs, you don't need anything in the plan that you don't have today to keep managing them, do you?

A No. The Debtor manages them, and I will -- I'm the CEO and I'll be in a similar position with a different team.
Q Okay. And I believe you told me that you expect the Debtor to administer the CLOs for two or three years, maybe?
A However long it takes, but we expect -- our projections are that we'd be able to monetize most of the assets within two years.
Q Does that include the CLOs?
A It does, yes.
Q Okay. Now, you're going to be the person for the Reorganized Debtor in charge of managing the CLOs, correct?
A I'll be the person responsible for managing the Reorganized Debtor. The Reorganized Debtor will be the manager of the CLOs.
Q Okay. But the buck will stop with you at the Reorganized Debtor, right?
A Yes.
Q Okay. You're going to have a team of employees and outside professionals helping you, but ultimately, on behalf of the Reorganized Debtor, you're going to be the one in charge of managing the CLOs, correct?
A Yes.
Q Okay. That means that you'll also be making decisions as to when to sell assets of the CLOs, correct?
A Yes.

Q Okay. And to be clear, the CLOs, they own their own assets, whatever they are, and the Debtor just manages those assets, right?
A Correct.
Q The Debtor doesn't directly own those assets, right?
A No.
Q And currently there's more than one billion dollars in CLO assets that the Debtor manages?
A Approximately.
Q Yeah. And the Debtor receives fees for its services, correct?
A Yes.
Q Can you generally describe how the amount of those fees is calculated and paid, if you have an understanding?
A How the fees are calculated and paid?
Q Yes, sir.
A It's a percentage of the assets.
Q Assets administered or assets sold in any given time period?
A Administered.
Q Okay. So the sale of CLO assets does not affect the fees that the Reorganized Debtor would receive under these agreements?
MR. MORRIS: Objection to the form of the question.
THE COURT: Over --

THE WITNESS: That's not correct.

THE COURT: Overruled.

BY MR. RUKAVINA:

Q Okay. What is not correct about that?

A When you sell the assets, the amount administered shrinks, so you have less fees.

MR. RUKAVINA: Your Honor, the answer cut out at the very end. You have less--?

THE WITNESS: Fees.

BY MR. RUKAVINA:

Q Fees? I understand. Okay. So are you saying that there is a disincentive to the Reorganized Debtor to sell assets in the CLOs?

A No.

Q Okay. Is there an incentive to the Reorganized Debtor to sell assets in the CLOs?

A To do their job correctly, yes.

Q Okay. And the Debtor wishes to assume those contracts because the Debtor will get those fees going forward and there'll be a profit, even after the expenses of servicing those contracts are taken out, correct?

A They are profitable. That's one of the reasons that we're assuming, yes.

Q Okay. Now, over my objection, you testified that the CLOs have agreed to the assumption of these contracts, right?

A Yes.
Q Okay. Is there anything in the record other than your testimony here today demonstrating that?
A I believe there is, yes.
Q What do you believe there is in the record other than your testimony?
A I believe we filed a notice of assumption.
Q Okay. My question is a little bit different. You testified that the CLOs, over my objection, have agreed to the assumption. You did testify so, right?
A Yes.
Q Okay. What is there in the record, sir, from the CLOs confirming that?
A You mean today's record?
Q Yes, sir.
A I'm the only one who's testified so far.
Q Okay. Are you aware of anything in the exhibits that would confirm your testimony?
A Not that I know of.
Q Has there been an agreement with the CLOs that's been reduced to writing?
A Yes.
Q So there is a written agreement with the CLOs providing for assumption?
A Yes.

Q A signed, written agreement?
A No, it's -- it's email.
Q Okay. When was this email agreement reached?
A Within the last couple weeks. There's a number of back and forths where that was agreed to, and I believe we filed a notice of assumption.
MR. RUKAVINA: Mr. Vasek, if you will please pull up Mr. Seery's January 29th deposition.
BY MR. RUKAVINA:
Q Mr. Seery, you remember me deposing you last Friday, correct?
A Yes.
Q And you remember me asking you if there was a written agreement in place with the CLOs?
A I don't recall specifically.
MR. RUKAVINA: Okay. Mr. Vasek, if you would please scroll to that. Okay. Stop there.
BY MR. RUKAVINA:
Q Sir, you'll recall I also deposed you January 20th, right?
A Yes.
Q Okay. And do you remember that we had some discussion regarding whether the CLOs would consent or not?
A Yes.
Q Okay. And do you remember telling me something like that like you think that they will and that's still in the works on

January 20th?

A I don't recall specifically, but if you say that's what it says.

Q Okay. Well, here I'm asking you on January 29th, Line 17, "I asked you before and you didn't have anything in writing by then, so let me ask now. As of today, do you have anything in writing from the CLOs consenting to the assumption of those management agreements?" I'm sorry. Contracts. Answer, "I don't believe that I do. It could be on my email I opened. I don't recall."

MR. RUKAVINA: Scroll down, Mr. Vasek.

BY MR. RUKAVINA:

Q Okay. Then I ask, "Do you have an understanding of whether those CLOs have consented in writing to the assumption of the management agreements?" And you answer, "I believe they have. The actual final docs haven't been completed, but I believe they have agreed in writing, yes."

Then I ask --

MR. RUKAVINA: Scroll down a little bit more.

BY MR. RUKAVINA:

Q I ask, "Do you expect the final docs to be completed before Tuesday's confirmation hearing?" Answer, "I don't know whether they will be done by Tuesday."

Did I read all of that correctly, sir?

A Other than your misstatement. The word was "unopened."

Q Thank you. So, let me ask you again today. As of today, is there a written agreement that has been signed by the parties providing for the assumption of the CLO agreements?
A When phrased the way you did, is it signed by the parties, no.
Q Okay.
MR. RUKAVINA: You can take that down, Mr. Vasek.
BY MR. RUKAVINA:
Q I think -- I'm not sure if you quantified this earlier, but it might help. I believe that the Reorganized Debtor projects that it will generate revenue of $8.269 million post-reorganization from managing the CLO contracts, correct?
A It's in that neighborhood. I did not testify to that earlier.
Q That's what I meant. And when I asked you at deposition, you were able to give me an estimate of how much it would cost to generate that revenue, correct?
A I was not?
Q You were? I'm sorry. Let me --
A Did you say I wasn't or I was?
Q Let me -- I apologize. Let me ask again. I talk too fast and I have an accent. You have been able to give an estimate of how much the Reorganized Debtor will expend to generate that revenue, correct?
A Yes.

Q Okay. Do you remember what your estimate is?
A I -- I think it was around $2 million a year. It was a portion of our employees plus the contracts.
Q Okay. So, over the life of the projection at $8.2 million, do you remember that you projected costs of about $3.5 to $4 million to generate that revenue?
A If -- if you are representing that to me, I'd accept it. Yes, that sounds about right.
Q Well, suffice it to say you're projecting at least $4 million in net profit over the next two years for the Reorganized Debtor from managing the CLO agreements, correct?
A Net profit is not a fair, fair way to analyze it, no.
Q Okay. Are you projecting any profit for the Reorganized Debtor from managing the CLO agreements post-confirmation?
A Yes.
Q Okay. Do you have an estimate of what that profit is?
A General overview are the contracts are profitable to about the tune of $4 million over that period.
Q Okay. Thank you. If the Reorganized Debtor makes a profit post-confirmation, is it fair to say that that would then be dividended up or distributed up to the partners, ultimately to the Claimant Trust?
A I don't think that's fair to say, no.
Q Okay. So, if the Reorganized Debtor makes a profit post-confirmation, where does that profit go?

A The Reorganized Debtor -- what kind of profit? I don't understand your question.
Q Okay. I apologize if I'm being too simplistic about it. If a business, after it takes account of its expenses to generate revenue, has any money left over, would that be profit to you?
A Yes.
Q Okay. Do you think that the Reorganized Debtor, post-confirmation, will make a profit?
A I don't know.
Q Okay. Do you think that the Reorganized Debtor, post-confirmation, will lose money?
A I think there will be costs, and the costs will exceed the -- the amount that it generates on an income basis, yes.
Q Okay. Thank you.
MR. RUKAVINA: Mr. Vasek, if you'll please pull up the plan, the injunctions, and releases. 9F.
(Pause.)
BY MR. RUKAVINA:
Q I apologize, Mr. Seery.
MR. RUKAVINA: So, Mr. Vasek, if you'll go to the bottom of the Page 51. Stop there.
BY MR. RUKAVINA:
Q So, I'm going to read just the first couple sentences here, Mr. Seery, if you'll read it along with me. Subject --

this is the bottom paragraph: Subject in all respects to Article 12(b), no enjoined party may commence or pursue a claim or cause of action of any kind against any protected party that arose or arises from or is related to the Chapter 11 case, the negotiation of the plan, the administration of the plan, or property to be distributed under the plan, the wind-down of the business of the Debtor or Reorganized Debtor.

I'd like to stop there. Do you see that clause there, Mr. Seery, talking about the wind-down of the business of the Debtor or Reorganized Debtor? Do you see that, sir?

A Yes.

Q Okay. Do I understand correctly that this provision we've just read means that, upon the assumption of these CLO management agreements, if the counterparties to those agreements want to take any action against the Reorganized Debtor, they first have to go through this channeling injunction?

A I believe that's what it says, yes.

Q Okay. Because the wind-down of the business of the Reorganized Debtor will include the management of these CLO portfolio management agreements, correct?

A Yes.

Q Okay. As well as the management of various funds that the Debtor owns, correct?

A Yes.

Q Okay. And would you agree with me that the new general partner, New GP, LLC, is also a protected party under the plan?
A I assume it is. I don't recall specifically.
Q I believe you discussed to some degree postpetition losses. I'd like to visit a little bit about those. Since January 9th, 2020, Mr. Dondero was not an officer of the Debtor, correct?
A Correct.
Q And since January 9th, 2020, he was no longer a director of Strand, correct?
A That's correct.
Q Since January 9th, 2020, until he was asked to resign, he was an employee, correct?
A Yes.
Q And about -- I'm trying to remember. About when did he resign? October something of 2020? Do you remember?
A I don't recall.
Q Okay. Do you recall if it was in October 2020?
A It was in the fall.
Q Okay. And he resigned because the independent board asked him to resign, correct?
A Yes.
Q Okay. And you mentioned that the estate has had a postpetition drop in the value of its assets and the assets

that it manages. Right?
A I believe I went through the estate's assets. The only asset that wasn't a direct estate asset was the hundred percent control of Select Equity Fund. I didn't talk about the Fund assets.
Q Okay. Do you recall that the disclosure statement that the Court approved states that, postpetition, there was a drop from approximately $566 million to $328 million in the value of Debtor assets and assets under Debtor management?
A Yes. That's the $200 million I walked through earlier.
Q Okay. And I believe you mentioned some of it was due to the pandemic, right?
A It certainly impacted the markets. The pandemic didn't cause a specific loss. It impacted the markets and the ability to work within those markets.
Q But you also believe that Mr. Dondero was responsible for something like a hundred million dollars of these losses, right?
A Probably more.
Q Okay. Mr. Dondero is not being released or exculpated for that, is he?
A No.
Q And while Mr. Dondero was an employee during the period of these losses, he answered to you as CEO and CRO, correct?
A Not during that period. I wasn't (audio gap) until later.

Q I'm sorry. As of January 9th, 2020, were you the CEO of the Debtor?
A No.
Q When did you become the CEO of the Debtor?
A I believe the order was July 9th, retroactive to a date in March.
Q July 9th, 2020?
A Correct.
Q Okay. And when did you become the CRO of the Debtor?
A At the same time.
Q Okay. So, between January and July 2020, you were one of the independent directors, correct?
A Yes.
Q Okay. So, during that period of time, would Mr. Dondero have answered to that independent board?
A Yes.
Q Okay. Now, if someone alleges that that independent board has any liability on account of Mr. Dondero's losses, that's released under this plan, isn't it?
A Yes.
Q Okay. And if someone alleges that Strand has any liability on account of Mr. Dondero's losses, that's released under this plan, correct?
A Yes.
Q Okay. And if someone believes that the Debtor -- that the

way that the Debtor has managed the CLOs or its funds postpetition gives rise to a cause of action in negligence, that's also released and exculpated in the plan, correct?

A I believe it would be. I'm not positive, but I believe it would be.

Q Well, let's be clear. The plan does not release or exculpate you or Strand or the board for willful misconduct, gross negligence, fraud, or criminal conduct, correct?

A No, it does not.

Q Okay. And I'm not, just so we're clear, I'm not alleging that, okay? So I want the judge to understand I'm not alleging that. But the plan does release and exculpate for negligence, right?

A Yes.

Q Okay. Where do you have an understanding a cause of action for breach of fiduciary duty lies on the spectrum of negligence all the way to criminal conduct?

A It's -- it's not -- generally not criminal, although I suppose that breach of fiduciary duty could be criminal. Typically, it's negligence, and that you would breach a duty for either duty of care, duty of loyalty. But it could slide to willful. And probably most of the instances where they come up are where someone has done something willfully or grossly negligent.

Q Okay. But -- and I would agree with you. But there are

certain breaches of fiduciary duty that are possible based on simple negligence, correct?

A They are, and in these instances, they don't -- they don't rise to actionable claims because they're indemnified by the funds.

Q Okay. You have to explain that to me. So, the negligence claim is not actionable because someone is indemnifying it?

A Typically, there's no way to recover because it's indemnified by the fund that the investor might be in. If it goes beyond that, then it wouldn't be.

Q Okay. So there are potential negligence breach of fiduciary duty claims that might be subject to these exculpations and releases that would not be indemnified?

A Gross negligence and willful misconduct, certainly.

Q Okay. Now, post-confirmation, post-confirmation, if the Debtor, or the Reorganized Debtor, rather, engages in negligence or any actionable conduct, that's when the channeling injunction comes into play, right?

A I don't quite understand your question.

Q Okay.

A Can you repeat that?

Q Sure. To your understanding, does the channeling injunction we're looking at right now -- and you can read it if you need to -- does it apply to purely post-confirmation alleged causes of action?

A It does apply to those, yes.
Q Okay. And it says that the Bankruptcy Court will have sole and exclusive jurisdiction to determine whether a claim or cause of action is colorable, and, only to the extent legally permissible and as provided for in Article 11, shall have jurisdiction to adjudicate the underlying colorable claim or cause of action.
Do you see that, sir?
A I do.
Q Okay. And this -- the Bankruptcy Court's exclusive jurisdiction here, that would continue after confirmation? Is that the intent behind the plan?
A It has -- it says what it says. Will have the sole and exclusive jurisdiction to determine whether a claim is colorable, and then, to the extent permissible, it'll have jurisdiction to adjudicate.
Q Okay. Nothing in this plan limits the period of the Bankruptcy Court's inquiry to the pre-confirmation time frame, correct?
A I don't believe it does, no.
Q Okay. Have you taken into account the potential that this bankruptcy case will eventually be closed with a final decree?
A Have I taken that into account?
Q Well, do you know what a final decree in Chapter 11 is?
A I do.

Q Okay. So, help me understand. If there's a final decree and the bankruptcy case is closed, then who do I go to, because the Bankruptcy Court has exclusive jurisdiction, to get this clearing injunction cleared?

MR. MORRIS: Objection to the form of the question, Your Honor.

THE COURT: Sustained. Rephrase.

MR. RUKAVINA: Okay.

BY MR. RUKAVINA:

Q Is it the plan's intent, Mr. Seery, that this channeling injunction that we just looked at would continue to apply even after a point in time in which the bankruptcy case is closed?

A I don't believe so.

MR. RUKAVINA: Again, Your Honor, someone -- I heard someone's phone right when he answered, and I didn't hear his answer, if he could please re-answer.

THE WITNESS: I don't -- I don't think if the case is closed that's the intention.

BY MR. RUKAVINA:

Q Okay. What about if there's a final decree entered?

MR. MORRIS: Objection, Your Honor. You know, the document kind of speaks for itself.

THE COURT: Overruled. He can answer if he knows.

THE WITNESS: Yeah. I don't -- I don't -- I'm not making a distinction between the case being closed and the

final decree. I believe in both instances they'll be pretty close to the same time and we'll make a judgment then as to how to close the case in accordance --

Q Okay.

A -- with the rules.

MR. RUKAVINA: Mr. Vasek, if you'll please scroll up to the beginning of this injunction. A little bit higher. Right there. Right there.

BY MR. RUKAVINA:

Q The very first clause, Mr. Seery, if you'll read with me, says, Upon entry of the confirmation order -- pardon me -- all enjoined parties are and shall be permanently enjoined on and after the effective date from taking any actions to interfere with the implementation or consummation of the plan.

Do you see that, sir?

A I do, yes.

Q What does interfering with the implementation or consummation of the plan mean?

A It means in some way taking actions to upset, distract, stop, or otherwise prohibit or hurt the estate from implementing or consummating the plan.

Q Okay. And is that intended -- is that clause we just read and you described intended to be very broad?

A I -- I think it's -- if the words have meaning, yes, that

it should -- it's pretty broad.

Q Okay. Is the Debtor not able to state with more specificity what it would believe interference with the implementation or consummation of the plan would mean?

MR. MORRIS: Objection to the form of the question.

THE COURT: Sustained.

THE WITNESS: I think it's -- I think it's --

THE COURT: Sustained.

MR. RUKAVINA: Okay.

THE WITNESS: I'm sorry.

BY MR. RUKAVINA:

Q Well, you just gave us four or five examples of what interfering with the implementation or consummation of the plan might be. Why isn't that, those four or five examples, why aren't they listed here?

MR. MORRIS: Object to the form of the question.

MR. RUKAVINA: Well, Your Honor, I'll withdraw it and I'll argue this at closing argument.

THE COURT: Okay.

BY MR. RUKAVINA:

Q When did the Committee agree to you serving as the Claimant Trustee?

A In the late -- in the late fall. I've been contemplated to be the Claimant Trustee. I'm willing to take -- if we can come to an agreement. They have their options open if we

can't come to an agreement on compensation.
Q Okay. And since the Committee agreed to you being the Claimant Trustee, you have reached a resolution with UBS, correct?
A I don't think so. I think that that was before UBS, the UBS resolution was reached.
Q I'm sorry. When did you reach the UBS resolution in principle with UBS?
A I don't recall the exact date, but I do recall specific conversations where some of the Committee members were supportive. I didn't know that UBS wasn't, but I assumed that some meant not all. And that was UBS, because I don't think we had a deal yet.
Q Well, let me ask the question in a little bit of a different way. Whenever the Debtor reached the agreement in principle with UBS that your counsel described this morning, whenever that point in time was, the Committee had already agreed before that point in time to you serving as Claimant Trustee, correct?
A I believe so, yes.
Q And is the answer the same with respect to the HarbourVest settlement?
A I believe so. With HarbourVest, I believe so as well, yes.
Q What about the Acis settlement?

A I don't believe so. I think Acis came first. I don't think we settled on an agreement on Claimant Trustee until after the Acis -- certainly after the Acis agreement, maybe not after the Acis 9019. I just don't recall.

Q Okay. And the million-dollar cutoff for convenience class creditors, that number was a negotiated amount with the Committee, correct?

A Yes.

Q Okay. Thank you, Mr. Seery.

MR. RUKAVINA: Your Honor, I'll pass the witness.

THE COURT: All right. Just for purposes of time, it's 3:00 o'clock, so you went 48 minutes.

Who's next?

MR. DRAPER: Mr. Taylor is.

THE COURT: All right. Mr. Taylor, go ahead.

MR. TAYLOR: Yes, Your Honor. At this time, what we would like the Court to do, we are asking for a brief continuance and to go into tomorrow, and there is a reason for that and I would like to explain it.

Mr. Dondero has communicated an offer which we believe to be a higher and better offer than what the plan analysis, even in its most recent iteration that was just changed last night, will yield significantly higher recoveries. Those are guaranteed recoveries. There is a cash component to that offer. There are some debt components, but they would be

secured by substantially all of the assets of Highland.

We believe it's a higher and better offer, that the creditors and the Creditors' Committee, Mr. Seery, who obviously has been testifying all day on the stand, may have heard some -- some inkling of it via a text or an email he might have been able to glance at, or maybe not, because he's been too busy, and that's understandable.

But we do believe it is a material offer. It is a real offer. And for that reason, we would like to request the Court's indulgence. This has gone rather fast. We believe that in the event that it does not gain any traction, then we could complete this confirmation hearing tomorrow, or it's more than likely that we could. And therefore we would request a continuance until tomorrow morning beginning at 9:30 so all the parties can confer, consider that offer, and see if it gains any traction.

THE COURT: All right.

MR. POMERANTZ: Your -- Your --

THE COURT: Go ahead. Mr. Morris? Or who is going to respond --

MR. POMERANTZ: Your --

THE COURT: -- to that?

MR. POMERANTZ: Your Honor, this is Jeff --

THE COURT: Mr. Pomerantz?

MR. POMERANTZ: This is Jeff Pomerantz. I will

respond.

I think right at the beginning of the hearing, or slightly after, I did receive an email from Michael Lynn extending this offer. The email was also addressed to Mr. Clemente. As we have told Your Honor before, if the Committee is interested in continuing negotiations with Mr. Dondero, far be it from us to stand in the way.

So what I would really ask is for Mr. Clemente to respond to think if -- to see if he thinks that this offer is worthy. If it's worthy and the Committee wants to consider it, we would by all means support a continuance. If it is not, I think this is just a last-minute delay without a reason. And if there is no likelihood of that being acceptable or the Committee wanting to engage, we would want to continue on.

THE COURT: All right. Mr. Clemente, what say you?

MR. CLEMENTE: Yes. Yes, Your Honor. Matt Clemente on behalf of the Committee.

Obviously, I haven't had a chance to confer with my Committee members, but there's no reason to not continue the confirmation hearing today. I will be able to confer with them over email, et cetera, this evening. There's simply no reason to not continue going forward at this particular point in time, Your Honor.

So, although I haven't conferred with the Committee members, that would be what I would recommend to them. And so

my view, the Committee's view, I believe, would be let's continue forward and we'll discuss Mr. Dondero's proposal that I know came across after opening statements this morning, you know, in due course. But I do not believe that a continuance here is necessary or appropriate.

THE COURT: All right. Mr. Taylor, that request is denied, so you may cross-examine.

MR. TAYLOR: Yes. (Pause.) I'm sorry, Your Honor. I have a couple people that are in my ear. But yes, I'm ready to proceed.

THE COURT: Okay.

CROSS-EXAMINATION

BY MR. TAYLOR:

Q Mr. Seery, I believe you can probably largely testify from your memory of the various iterations of the plan analysis versus the liquidation analysis. But to the extent that you're unable to, we can certainly pull those up.

Mr. Seery, you put forth or Highland put forth on November 24th of 2020 a plan analysis versus a liquidation analysis, correct?

A I think that's the approximate date, yes.

Q Okay. And do you recall what the plan analysis predicted the recovery to general unsecured creditors in Class 8 would be at that time?

A I believe it was in the 80s.

Q And approximately 87.44 percent?
A That sounds close, yes.
Q Okay. And then just right before -- the evening before your deposition that took place on January 29th, I believe a revised plan analysis versus a liquidation analysis was provided. Do you remember that?
A Yes.
Q Okay. And what was the predicted recovery to general unsecured creditors under that analysis?
A I believe that was --
MR. MORRIS: Object to the form of the question. I just want to make sure that we're talking about the -- and maybe I misunderstood the question -- plan versus liquidation.
THE COURT: Okay. Could you restate --
MR. TAYLOR: I said plan analysis.
THE COURT: Plan.
THE WITNESS: I believe that that initially was in the -- in the high 60s.
BY MR. TAYLOR:
Q It was --
A Might have been --
Q -- 62.14 percent; is that correct?
A Okay. Yeah. That sounds -- I'll take your representation. That's fine.
Q Okay. And going back to the November 28th liquidation

analysis, what did Highland believe that creditors in Class 8 would get under a liquidation analysis?

A I don't recall the -- if you just tell me, I'll -- I'll -- if you're reading it, I'll agree with -- because I -- from my memory.

Q 62.6 percent? Is that correct?

A That sounds about right.

Q You would agree with me, would you not, that 62.6 cents on the dollar is higher than 62.14 cents, correct?

A Yes.

Q And so at least comparing the January 28th versus -- of 2021 versus the November 24th of 2020, the liquidation analysis actually ended up being higher than the plan analysis, correct?

A Yes.

Q But there was -- there was some changes also in the plan analysis. I'm sorry. There were some subsequent changes that were done over the weekend that were provided on February 1st. Is that correct?

A Yes.

Q Okay. And what were -- give us an overview of what those changes were.

A What are -- what are you comparing? What would you like me to compare?

Q Okay. The January to February plan analysis, what were

the changes? Why did it go up from 62.6 to 71.3?
A The main changes, as we discussed earlier, and maybe the only major change, was the UBS claim amount, which went down significantly from the earlier iteration. And then there was the small change related to the RCP recovery, which was a double-count.
Q Okay. And you talked about earlier about what assumptions went into these analyses, correct?
A Yes.
Q And you said these assumptions were always done after careful consideration. Is that a correct summation of what you said?
A I think that's fair.
Q Okay.
MR. TAYLOR: Mr. Assink, could you pull up the November assumptions?
BY MR. TAYLOR:
Q I believe that's coming up, Mr. Seery. The Court.
(Pause.)
MR. TAYLOR: And go down one page, please, Mr. Assink. Roll up. The Assumption L.
BY MR. TAYLOR:
Q So, these are the November assumptions, correct, Mr. Seery?
A I believe so, yes.

Q Okay. And what was the assumption that you made after careful consideration regarding the claims for UBS and HarbourVest?

A The plan assumes zero, that was L, for those claims.

Q Okay. And ultimately what did -- and I believe you just announced this today and made this public today -- what is UBS's claim? What are you proposing that it be allowed at?

A $50 million in Class 8, and then they have a junior claim as well.

Q Okay. And what about HarbourVest? What kind of allowed claim did they end up with?

A $45 million in Class 8 and a $35 million junior claim.

Q So your well-reasoned assumption, carefully considered, was off by $95 million; is that correct?

MR. MORRIS: Objection to the form of the question.

THE COURT: Overruled.

THE WITNESS: The difference between zero and those numbers is $95 million, yes.

BY MR. TAYLOR:

Q You solicited creditors of the Highland estate based upon the November plan analysis and liquidation analysis that was provided and that we're looking at right now, correct?

A It was one of the bases, yes. It's the plan is what -- what we solicited votes for, not the projections.

Q But this was included within the disclosure statement; is

that correct?
A It's one of the bases. It was included, yes.
Q And this is the bases by which you believe that the best interests of the creditors have been met better than a Chapter 7 liquidation, correct?
A I believe this evidences that the best interest test would be satisfied, yes.
Q And so the record is very clear, for this Court and anybody looking at the record, no solicitation was done of the creditor body after the disclosure statement was sent out? No updates were sent, correct?
A Updated projections were filed, but no solicitation was -- was -- there was only one solicitation. We did not resolicit. That's correct.
Q Okay. Mr. Seery, how much are you -- after this plan, or if this plan is confirmed, how much are you going to be paid per month to be the Trustee?
A For the Trustee role, $150,000 per month is the base.
Q It's a base amount? On top of that, you're going to receive some sort of bonus amount, correct?
A There's two bonuses. There's a bonus for the bankruptcy case, which I'd need Court approval for, and then I'm going to seek a bonus for the Trustee work, which would be a combination of myself and the team for a performance bonus. That's to be negotiated.

To be fair, the Committee or the Oversight Group may not agree to any change, in which case we would not have an agreement.

Q And what would happen if you don't come to an agreement, Mr. Seery?

A They would have to get a different Plan Trustee.

Q Okay. So it's certainly going to have to be greater than zero, correct?

A Typically.

Q Is it going to be in the nature of three or four percent of the sales proceeds, or have you considered that?

A Oh, I'm sorry. Yeah, you mean the bonus? No. I've been thinking -- my apologies. I misunderstood. I thought you meant any number. I haven't -- I haven't had negotiation with them. I'm thinking about looking at the full recovery of the team -- for the team, looking at expected performance numbers, and then trying to negotiate a structure of bonus compensation that would be payable to the whole team, and then allocated by the CEO (garbled) which would be made.

Q When predicting the expenses of the Trust going forward in your projections, did you build in an amount for a bonus fee?

A No. It wouldn't be part of the expenses. It would come out at the end.

Q Okay. So those additional expenses are not shown in the plan analysis, correct?

A No, they're not. It's just not going to be an expense. It'll be a -- as an operating expense. It'll be an expenditure at the end out of distributions.

Q Okay. And did you subtract those from the distributions?

A No.

Q Okay. A Chapter 7 trustee is not going to charge $150,000 or more to monetize these assets, is he?

A No.

Q Have you priced how much D&O insurance is going to be on a go-forward basis post-confirmation?

A I'm sorry. I couldn't -- couldn't hear you.

Q Sorry. Let me get closer to my mic. Have you priced what D&O insurance is going to run the Trust on a go-forward basis post-confirmation?

A Yes.

Q Okay. And what are you projecting that to run?

A About $3-1/2 million.

Q And is that per annum for over the two-year life of this plan?

A Well, it's the two-year projection period, not life. But I expect that that's for the two-year projection period.

Q Okay. So approximately one point -- I'm sorry, you said $3.5 million, correct?

A Yes.

Q Okay. So, $1.75 million per year?

A Yes.
Q On top of the minimum $1.8 million per year that you're going to be paid, correct?
A Well, that's -- that's the base compensation. But, again, to be fair to the Oversight Committee, they haven't approved it yet. So the Committee, the Committee reserves their rights to negotiate a total package.
Q And there's going to be a Litigation Trustee, correct?
A Yes.
Q And that Litigation Trustee is going to be paid some amount of compensation, correct?
A Yes.
Q That has not been negotiated yet, correct?
A No, I believe -- I believe the base piece has. But his -- I don't know what the contingency fee or if that's been negotiated yet. I don't know.
Q And what is the base fee for the Litigation Trustee?
A My recollection is it was about $250,000 a year, some number in that area.
Q Thank you. So, at this point, over the two-year period, we're looking at approximately $3.6 million to you, $3.5 million to the D&O insurance, and approximately $500,000 base fee to the Litigation Trustee, plus a contingency. Is that correct?
A That's probably real close, yes.

Q Okay. And how about U.S. Trustee fees? You've estimated of how much those are going to be during the two-year period, correct?
A They're built into the plan up 'til -- I think it's only up until the actual effective date, but I don't recall the specifics.
Q Okay. And U.S. Trustee fees, the case is going to stay open and those are going to continue to have to be paid, even after confirmation, correct?
A Yes.
Q Okay. And do you have an estimate of how much those are going to run per annum or over that two-year period?
A I don't recall, no.
Q Okay. Well, they're provided within your projections, correct?
A Yes.
Q Okay. A Chapter 7 trustee would not have to incur any of these costs, would they?
A I don't think they'll have to incur Chapter -- U.S. Trustee fees. I don't know whether they would bring on a litigation trustee or not. I would assume, since there's -- appear to be valuable claims, they probably would, but perhaps they would do it themselves. So I don't know the specifics of what they would do.
Q In preparing your liquidation analysis, did you ask

Pachulski if they would be willing to work for a Chapter 7 trustee if one was appointed?

A I didn't specifically ask, no.

Q Did you ask DIS, your, for lack of a better word, financial advisors in this case, if they would be willing to work with a Chapter 7 trustee?

A DSI. No, I did not specifically ask them.

Q Okay. All right. Any of the accountants that you're working with, did you ask them if they would be willing to work with a Chapter 7 trustee?

A I didn't specifically ask them, no.

Q Okay. The proposed plan has no requirements that you notice any potential sale of either Highland assets or Highland subsidiary assets; is that correct?

A Do you mean after the effective date?

Q Yes.

A No, it does not.

Q In the SSP sale, which is a subsidiary of Trussway, which is a subsidiary of Highland, or actually it's a sub of a sub of Highland, you conducted the sale of SSP, correct?

A The team did, yes. I was part.

Q All right. That was not noticed to the creditor body; is that correct?

A That's correct.

Q And it is the Debtor's and your position that no notice

was required because this was a sub of a sub and therefore this was in the ordinary course?

A Not exactly, no.

Q Okay. Then what is your position?

A It was in the ordinary course. It was -- I believe it's a sub of a sub of a sub, and a significant portion of the interests are owned by third parties.

Q It is possible, is it not, that had you noticed this to the larger creditor body, that you might have engendered a competitive bidding situation that might have reached a higher return for investors, correct?

A The same possibility is it could have gone lower.

Q But it is possible, correct?

A Certainly possible.

Q In fact, there is normally requirements under the Bankruptcy Code and the Rules that asset sales are noticed out to the creditor body, correct?

A Asset sales that -- property of the estate, yes. Other than in the ordinary course, of course.

Q I believe you have described Mr. Dondero as being very litigious within this case; is that correct?

A I believe so, yes.

Q Okay. Did Mr. Dondero initiate any litigation in this case prior to September 2020?

A Prior to September? I don't believe so. I don't know

when he filed the claim from NexPoint. It certainly indicated that -- I believe it was from NexPoint. My memory is slightly off here. He filed a claim in -- administrative claim, which effectively is like you're bringing a complaint, against HCMLP for the management of Multi-Strat and the sale of the life settlement policies out of Multi-Strat, which was conducted in the spring.

Q And wasn't Mr. Dondero seeking document production related to that sale?

A No.

Q Okay. I believe that the preliminary injunction that you talked about and were questioned earlier, the plan asks to enjoin (garbled) party from allowing the plan to go effective. Is that correct?

A I'm sorry. I didn't understand you question. There was a -- there was a bunch of interference.

Q Okay. Sure. I'm sorry about that. I don't know if that's -- I don't think that's me, but --

A It may not be. It sounded like someone else.

Q The injunction prohibits anybody from interfering with the plan going effective, correct?

A The plan injunction?

Q Yes.

A Yes.

Q Okay. Just so I'm clear, is the plan injunction

attempting to strip appellate rights of Mr. Dondero?
A No.
Q Okay. So, if, for instance, if he were to file any appeal of an order confirming this plan, he wouldn't be in violation of that plan injunction?
A I don't think so, because the order wouldn't be final.
Q Okay. But it -- it says upon entry of a confirmation order, you're enjoined from doing so. So that's not the intent?
A It certainly would not be my intent. I don't think that anybody had that in mind.
Q Okay. And if Mr. Dondero were to seek a stay pending appeal either during that 14-day period or afterwards, is that plan injunction attempting to stop that -- that sort of action?
A I apologize. You're breaking up. But I think I understood your question. No, it was -- it was your screen as well. No. If either this Court stays its own order or a higher court says that the order is stayed, then there would be no way there could be any allegation that it's interfering with an order if it's not effective.
Q Mr. Dondero opposed the Acis sale, correct?
A The Acis settlement?
Q Correct.
A Yes.

Q After he opposed the Acis settlement, the next filing Mr. Dondero made was requesting that the Debtor notice the sale of any assets or any major subsidiary assets. Is that correct?
A I don't recall the sequence of his filings. I think that Judge Lynn at least sent a letter to that effect. I don't recall if there is a filing to that effect.
Q Did Mr. Dondero, through his counsel, attempt to resolve that motion without filing anything further?
A I don't recall the specifics of the motion. I know they asked for some sort of relief that -- that we thought was inappropriate.
Q When the Court postponed any hearing on Mr. Dondero's request for relief until the eve of the confirmation hearing, and Mr. Pomerantz announced that no sales were expected before confirmation, did Mr. Dondero withdraw his motion?
A Again, I don't recall the specifics of the motion. I only recall the letter from Judge Lynn.
Q Did Mr. Dondero do anything more than object to the HarbourVest deal?
A Not that I know of.
Q Did Mr. Dondero do anything more than respond to the Defendants' injunction suit?
MR. MORRIS: Objection to the form of the question. I mean, -- objection to the form.
THE COURT: Overruled.

MR. TAYLOR: I apologize. I should have said the Debtor's injunction suit.

THE WITNESS: Yeah, the -- I'm not sure of the specific order, but certainly the communications with me, which I think are prior to the order. The communications with Mr. Surgent, which I believe are after the order. Certain communications with Mr. Waterhouse, which were oral. Those were all similarly difficult and obstreperous actions.

BY MR. TAYLOR:

Q Has Mr. Dondero commenced any adversary proceeding or litigation in this case other than filing a competing plan?

MR. MORRIS: Objection to the form of the question.

THE COURT: Over --

THE WITNESS: Yeah, I don't --

THE COURT: -- ruled.

THE WITNESS: I don't believe he's commenced an adversary. I'm sorry, Judge. I don't believe he's commenced an adversary proceeding, no.

BY MR. TAYLOR:

Q Mr. Dondero didn't file any opposition to the life settlement sale, did he?

A We didn't do the life settlement (garbled) Court.

Q Right. Again, that wasn't noticed through the -- this Court, was it?

A It was an -- the reason was it was an asset of Multi-Strat

Fund. It wasn't an asset of the Debtor's.
Q Okay. Mr. Dondero did have concerns regarding the life settlement sale, correct?
A Yes.
Q In fact, he believed that they were being sold for substantially less than what could have otherwise been received, correct?
A He may have.
Q And if you conduct any subsequent sales for less than market value that might ultimately prevent the waterfall from ever reaching Mr. Dondero, he would have no recourse under this proposed plan to object to this sale or otherwise have any comment on it. Is that correct?
A I clearly object to the thinking that that was less than market value. It was -- it was more than market value. So I don't -- I disagree with the premise of your question.
Q So, I don't believe that was the question that was asked. The question that was asked is, as you move forward with your -- what I will characterize as a wind-down plan, not putting that word in your mouth -- but as you execute forward on your plan, as these sales of these assets go through, no notice is going to be provided, correct?
A Not necessarily. It depends on the asset and what we think of the, you know, the -- the position of the parties at the time.

If we have a -- if we have a transaction that's pending that wouldn't be hurt by a notice and that we'd be able to get the Court's imprimatur to maybe more better insulate, if you will, against Mr. Dondero's attacks, then we may well come to the Court to seek that.

The problem with noticing sales is that -- that it often depresses value. That's just not the way folks outside of the bankruptcy world (audio gap) sales.

Q So there's no requirement that either public or private notice be provided, correct?

A No. Meaning it is correct.

Q Okay. And if Mr. Dondero had objections either to the pricing of the sale or the manner and means by which the sale was being conducted, he would be prohibited by the plan injunction from bringing any objection to such sale, correct?

A I believe so, yes.

Q Mr. Dondero also had concerns regarding the OmniMax sale, correct?

A Mr. Dondero did not go along with the OmniMax sale with the assets that he managed. I don't know if he had concerns with -- with our sale or OmniMax's interests.

Q Did Mr. Dondero ever express to you any concern that the value wasn't being maximized regarding the sale of those assets?

A He thought he could get more. I don't know that he

thought that he could get more for his assets that he was managing or whether he thought he could get more for all of the assets.

Q Other than voicing those concerns, did Mr. Dondero file any pleading with this Court attempting to block that sale?

A Pleading with the Court? No.

MR. TAYLOR: Your Honor, I would like to confer with my colleagues just very briefly and see if they have anything further. And even if they don't, Mr. Lynn of my firm would like a very brief moment to address the Court prior to me passing the witness.

So, if I may have a literally hopefully one-minute break where I can turn my camera off and my microphone off to confer with my colleagues, and then move forward?

THE COURT: Okay. Well, you can have a one-minute break, but we're going to continue on with cross-examination at this point. Okay? I'm not sure what you meant by Mr. Lynn wants to raise an issue at this point. Could you elaborate?

MR. TAYLOR: I will get some elaboration during our 30-second to one-minute break, Your Honor. I was just passed a note.

THE COURT: All right. So, but I'll just you know, --

A VOICE: Your Honor?

THE COURT: -- I'm inclined to continue with the

cross-examination. You know, this isn't a time for, you know, arguments or anything like that. All right?

So, we'll take a one-minute break. You can turn off your audio and video for one minute, and come back.

(Off the record, 3:33 p.m. to 3:34 p.m.)

THE WITNESS: Your Honor?

THE COURT: Yes?

THE WITNESS: It's Jim Seery. Can I turn it into just a two-minute break, since I've sat in my seat, and it would be better for him to just continue straight through. I could use one or two minutes.

THE COURT: Okay.

THE WITNESS: I apologize.

THE COURT: All right. Well, it's been more than minute. Let's just say a five-minute break for everyone, and we'll come back at 3:39 Central time. Okay.

THE WITNESS: Okay. Thank you, Your Honor. I appreciate that.

(A recess ensued from 3:35 p.m. until 3:40 p.m.)

THE CLERK: All rise.

THE COURT: Please be seated. All right. We are back on the record. Mr. Taylor, are you there?

MR. TAYLOR: I am, Your Honor. My video is not wanting to start, but my -- I believe my audio is on.

THE COURT: Okay. After you went offline for your

one-minute break, Mr. Seery asked for a five-minute bathroom break, or a couple-minute. Anyway, we've been gone on a bathroom break. We're back now.

MR. TAYLOR: Thank you. I was actually -- I was still listening with one ear, --

THE COURT: Okay.

MR. TAYLOR: -- Your Honor, so I understand.

THE COURT: All right.

MR. TAYLOR: So, thank you.

THE COURT: Are you finished with cross, or no?

MR. TAYLOR: Just a little bit of a follow-up.

CROSS-EXAMINATION, RESUMED

BY MR. TAYLOR:

Q Mr. Seery, you had previously testified that Mr. Dondero's counsel had threatened you and/or the independent board, I was not exactly sure who you were referring to, with suits, and I believe you said a hundred million dollars' worth of suits and getting dragged into litigation.

Is that still your testimony today, that you were -- you were threatened with suit by this firm of a suit of over a hundred million dollars?

A I believe what I was told by my counsel was that, not Mr. Dondero's, but one of the other counsel, who I can name, said specifically that Dondero will sue Seery for hundreds of millions of dollars. We're going to take it up to the Fifth

Circuit, get it reversed, and he'll go after him.

Q Okay. So it was not Mr. Dondero's counsel, and you were not -- is that correct?

A No. It was one of the other counsel on the phone today.

Q Okay. And you base that not upon your own personal knowledge but based on some -- something else that you were told, correct?

A Yes. By my counsel.

Q Thank you.

MR. TAYLOR: Yes, Your Honor. We can pass the witness.

THE COURT: Okay. So, you've gone, or you and Mr. Rukavina collectively have gone one hour and 17 minutes. Mr. Draper, you're next.

MR. DRAPER: Yes, Your Honor. Thank you. I basically have no more than ten questions, so I gather the Court will welcome that.

THE COURT: Okay.

CROSS-EXAMINATION

BY MR. DRAPER:

Q Mr. Seery, has the new general partner been formed yet?

A I don't know if they've been -- we've actually done the formation, but it -- it would be in process.

Q So it either has been formed or has not been formed?

A I don't -- I don't know the answer.

Q Okay. Now, going forward, Judge Nelms and Mr. Dubel will have nothing to do with the Reorganized Debtor, correct?
A Not necessarily, but they don't have a specific role at this time.
Q They won't be officers or directors of the new general partner or the Reorganized Debtor, correct?
A I don't -- I don't believe so, but it's not set in stone.
Q All right. Has any finance -- has any party who is the beneficiary of an exculpation, a release, or the channeling injunction contributed anything to this plan of reorganization in terms of money?
A No.
Q Have you ever interviewed a trustee as to how they would liquidate the assets or monetize the assets in this case?
A No.
Q And last question is, is there any bankruptcy prohibition that you're aware of that a Chapter 7 trustee could not do what you're doing?
A Which -- which -- what do you mean, under the plan?
Q No. Could not monetize the assets of the estate in the manner that you're attempting to monetize them.
A I don't think there's a specific rule, but I just haven't -- I haven't seen that before, no. So I don't think there's a specific rule that I know of.
Q Okay.

MR. DRAPER: I have nothing further for this witness.

THE COURT: All right. I should have asked, we had a couple of other objectors. Ms. Drawhorn, did you have any questions?

MS. DRAWHORN: I have no questions, Your Honor.

THE COURT: All right. Were there any other objectors out there that I missed that might have questions? All right. Any redirect?

MR. MORRIS: Your Honor, if I may, can I -- can I just take a short minute to confer with my colleagues?

THE COURT: Sure. You can --

MR. MORRIS: Thank you.

THE COURT: -- put you --

MR. MORRIS: Two -- two minutes, Your Honor.

THE COURT: Okay.

(Pause, 3:45 p.m. until 3:48 p.m.)

THE COURT: All right. We've been a couple of minutes. Mr. Morris?

MR. MORRIS: Yes, Your Honor.

THE COURT: What are --

MR. MORRIS: Just, just a few points, Your Honor.

THE COURT: Okay.

MR. MORRIS: Hold on a sec. You ready, Mr. Seery?

THE WITNESS: I am, yes.

REDIRECT EXAMINATION

BY MR. MORRIS:

Q You were asked a number of questions about your compensation. Do you recall all that?

A Yes, I do.

Q And you testified to the $150,000 a month. Do you recall that?

A Yes.

Q Under the -- under the documentation right now, your compensation is still subject to negotiation with the Committee; is that right?

A Yes, it is.

Q Okay. You were asked a couple of questions about the conduct of Mr. Dondero. Earlier, you testified that the monetization plan was filed under seal at around the time of the mediation. Do I have that right?

A Yes. Right at the start of the mediation.

Q Okay. And is that the first time that the Debtor made the constituents aware, including Mr. Dondero, that it intended to use that as a catalyst towards getting to a plan?

A That's the first time that we filed it, but that plan had been discussed prior to that.

Q And do you recall that there came a point in time where you -- when the Debtor gave notice that it intended to terminate the shared services agreements with the Dondero-related entities?

A Yes.
Q And when did that happen?
A That was about 60 -- now it's like 62 days ago.
Q Uh-huh. And you know, from your perspective, from the filing of the monetization plan in August through the notice of shared services, is that what you believe has contributed to the resistance by Mr. Dondero to the Debtor's pursuit of this plan?
A Well, I think there's a number of factors that contributed, but the evidence that I've seen is that when we started talking about a transition, if there wasn't going to be a deal, if Mr. Dondero couldn't reach a deal with the creditors, we were going to push forward with the monetization plan. And the monetization plan required the transition of the employees. And indeed, it called specifically, and we had testimony regarding it all through the case, about the employees being terminated or transferred.

In order to transfer them over to an entity that's related, Mr. Dondero pulls all of those strings. And he refused to engage on that. We started in the fall. We specifically told employees of the Debtor not to engage. They couldn't spend his money, which made sense --

MR. TAYLOR: Objection, Your Honor.

THE WITNESS: So, very -- that --

THE COURT: Just -- there's an objection.

MR. MORRIS: There's an objection.

THE WITNESS: I'm sorry.

THE COURT: There was an objection.

MR. TAYLOR: Yes, Your Honor. Object --

THE COURT: Go ahead.

MR. TAYLOR: Yes, Your Honor. This is Clay, Clay Taylor. Objection. He's directly said Mr. Dondero told other employees *x*, and that is purely hearsay, not based upon his personal opinion, or his personal knowledge, and therefore that part of the answer should be struck.

MR. MORRIS: Your Honor, it's a statement against interest.

THE COURT: Overrule the objection. Go ahead.

THE WITNESS: Yeah. The difficulty of transitioning this business, I've equated it to doing a corporate carve-out transaction on an M&A side. It's hard, and you need counterparties on the other side willing to engage. And what we went through over the weekend, on Friday, was seemingly that the Funds, you know, directed by Mr. Dondero, just haven't engaged.

We actually gave them an extra two weeks to engage, because it's -- they've really been unable to do anything. I mean, hopefully, we've got the employees working in a way that can -- that can foster and get around some of this obstreperousness, and I've used that word before, but that's

what it is. It's really an attempt to just prevent the plan from going forward.

And at some point, the plan will go forward. And if we are unable to transition people, we will simply have to terminate them. And that is not a good outcome for those employees, but it's not a good outcome for the Funds, either. And the Funds, Mr. Dondero, the Advisors, the boards, nobody wants to do anything except come in this court.

BY MR. MORRIS:

Q Do you recall being asked about Mr. Dondero and certain things that he didn't do and certain actions that he hadn't taken?

A Yes.

Q By Mr. Taylor? To the best of your recollection, did Mr. Dondero personally object to the HarbourVest settlement?

A I -- I don't recall if he did or if it was one of the entities.

Q It was Dugaboy. Does that refresh your recollection?

A Dugaboy certainly objected, yes.

Q And do you understand that Dugaboy has appealed the granting of the 9019 order in the HarbourVest settlement?

A Yes.

Q And Mr. Taylor asked you to confirm that Mr. Dondero hadn't taken any action with respect to the life settlement deal. Do you remember that?

A I do.
Q But are you aware that Dugaboy actually filed an administrative claim relating to the alleged mismanagement of the life settlement sale?
A Yes, I did, I did allude to that. I wasn't sure it was Dugaboy, but -- but that was very --
Q Uh-huh.
A -- very early on, an objection filed in the form of an administrative claim or complaint against, if you will, against Highland for the management of Multi-Strat.
Q Uh-huh. And Mr. Dondero didn't personally file any motion seeking to inhibit the Debtor from managing the CLO assets; is that right?
A No, not the CLO assets, no.
Q Yeah. But the Funds and the Advisors did. That was the hearing on December 16th. Do you recall that?
A Yeah. That was the -- the Funds. K&L Gates, the Funds, and the various Advisors.
Q All right. Do you recall Mr. Rukavina asking you whether there was any evidence in the record to support your testimony that there was an agreement in place to assume the CLO management agreements?
A I recall the question, yes.
Q Okay.
MR. MORRIS: Your Honor, I'm going to ask Ms. Canty

to put up on the screen the Debtor's omnibus reply to the plan objections.

THE COURT: Okay.

MR. MORRIS: It was filed -- it was filed on January 22nd. And if we can go, I think, to -- I think it's Paragraph -- I think it's Paragraph 135 on Page 71. Yeah. Okay.

BY MR. MORRIS:

Q Take a look at that, Mr. Seery. Does that -- does that statement in Paragraph 135 accurately reflect the understanding that's been reached between the Debtor and the CLO Issuers with respect to the Debtor's assumption of the CLO management agreements?

A Yes. I think that's consistent with what I testified to earlier, the substance of the agreement.

MR. MORRIS: And if we can just scroll to the top, just to see the date. Or the bottom. I guess the top.

THE WITNESS: Do you mean the date of this pleading?

BY MR. MORRIS:

Q Yeah. So, it was filed on January 22nd, right, ten days ago? Okay.

A That's correct.

MR. MORRIS: I'd like to put up on the screen an email, Your Honor, that I'd like to mark as Debtor's Exhibit 10A. And this is --

BY MR. MORRIS:

Q Do you recall, Mr. Seery, you testified that the agreement was reflected in an email?
A Yes.
Q Is this the email that you're referring to?
MR. MORRIS: If we could scroll down. Right there.
THE WITNESS: Yes.
MR. MORRIS: Okay. One -- the email below. Okay. Right there.
BY MR. MORRIS:
Q Is that the -- is that the email you had in mind?
A It was the series of emails. We -- we had a -- I think I testified in the prior testimony, or my -- one of my depositions, that we had had a number of conversations with the Issuers and their counsel, and this was the summary of the agreement that was contained in these emails.
Q Okay. And this is, this is the same date as the omnibus reply that we just looked at, right, January 22nd?
A That's correct.
Q Okay. You were asked a question, I think, late in your cross-examination about a Chapter 7 trustee's ability to sell the assets in the same way as you are proposing to do. Do you recall that testimony?
A Yes.
Q And I think, if I understood correctly, the question was narrowly tailored to whether there was any legal impediment to

a trustee doing -- performing the same functions as you. Do I have that right?

A That's the question I was asked, whether the Bankruptcy Code had a specific prohibition.

Q Okay. And I think, I think you testified that you weren't aware of anything. Is that right?

A That's correct.

Q All right. But let's talk about practice. Do you think a Chapter 7 trustee will realize the same value as you and the team that you're assembling will, in terms of maximizing value and getting the maximum recovery for the assets?

A No. As I testified earlier, you know, I've been working with these assets now for a year. It's a complicated structure. The assets are all slightly different. And sometimes much more than slightly. And the team that we're going to have helping managing is familiar with the assets as well. We believe we'll be able to execute very well in the markets that we (garbled).

Q Do you think a Chapter 7 trustee will have a steep learning curve in trying to even begin to understand the nature of the assets and how to market and sell them?

A I think anybody coming into this, the way this company is set up, as an asset manager, and the diversity of the assets, would have a steep learning curve, yes.

Q Do you have any view as to whether the perception in the

marketplace of a Chapter 7 trustee taking over to sell the assets will have an impact on value as compared to a post-confirmation estate of the type that's being proposed under the plan?

A Yes, I do, and it certainly would be negative, in my experience. Typically, assets are not conducted -- asset sales are not conducted through a bankruptcy court, and certainly not with a Chapter 7 trustee that has to sell them, and generally is viewed as having to sell them quickly. So we -- we approach each asset differently, but certainly in a way that would be much more conducive to maximizing value than a Chapter 7 trustee could, just by the nature of their role.

Q Is it -- is it your understanding that, under the proposed plan and under the proposed corporate governance structure, that the Claims Oversight Committee will -- will manage you? That you'll report to that Committee and that they'll have the opportunity to make their assessment as to the quality of your work?

A Yeah, absolutely. And that's consistent with what we've done before in this case. Even where it wasn't an asset of the estate or was being sold in the ordinary course, we spent time with the Committee and the Committee professionals before selling assets.

Q And you've worked with the Committee for over -- for a year now, right?

A It's over a year.
Q And the Committee is comfortable with you taking this role; is that right?
A I think they're supportive of it. Comfortable might be not the right word choice.
Q Okay. I appreciate the clarification. And do you have any reason to believe that the -- that the Oversight Committee is going to allow you the unfettered discretion to do whatever you want with the assets of the Trust?
A Not a chance. Not with this group. Nor would I want to. There's no right or wrong answer for most of these things, and the collaborative views from professionals and people who have an economic stake in the outcome will be helpful.
Q Okay. You were asked some questions about the November projections and the -- and the assumption that was made that valued the HarbourVest and the UBS claims at zero. Do you recall that?
A Yes.
Q As of that time, was the Debtor still in active litigation with both of those claim holders?
A Very much so.
Q And after the disclosure statement was issued, do you recall that the Court entered its order on UBS's Rule 3018 motion?
A Yes.

Q And do you recall what the -- what the claims estimate was for voting purposes under that order?
A It was about $95 million. That was -- it was together with the summary judgment orders of that date. They were separate orders, but that was the lone hearing.
Q And was that public information, that order was publicly filed on the docket; isn't that right?
A Yes, it was.
Q Is there anything in the world that you can think of that would have prevented any claim holder from doing the math to try to figure out the impact on the estimated recoveries from the -- by using that 3018 claims estimate?
A No. It would have -- it would have been quite easy to do.
Q And, in fact, that's what you wound up doing with respect to the January projections, right?
A That's correct.
Q And do you recall when the HarbourVest settlement, when the 9019 motion was filed?
A I don't recall the actual filing. It was subsequent to the UBS, though.
MR. MORRIS: Ms. Canty, if you have it, can we just put it on the screen, to see if we can refresh Mr. Seery's recollection? If we could just look at the very top.
BY MR. MORRIS:
Q Does that refresh your recollection that the 9019 motion

was filed on December 23rd?
A Yes, it does. The agreement was reached before that, but it took a little bit of time to document the particulars and then to -- to get it filed.
Q And this wasn't filed under seal, to the best of your recollection, was it?
A No, no. This was -- this was open, and we had a very open hearing about it, because it was a related-party objection.
Q And to the best of your recollection, did this 9019 motion publicly disclose all of the material terms of the proposed settlement?
A Yes, it did.
Q Can you think of anything in the world that would have prevented any interested party from doing the math to figure out how this particular settlement would impact the claim recoveries set forth in the Debtor's disclosure statement?
A No. And just again, to be clear, the plan and the projections had assumptions, but the plan was very clear that the denominator was going to be determined by the total amount of allowed claims.
Q And, again, at the time that that was filed, you hadn't reached a settlement with HarbourVest, had you?
A No.
Q And the order on the 3018 motion hadn't yet been filed; is that right?

A That's correct.
Q Okay. Has -- are you aware of any creditor expressing any interest in trying to change their vote as a result of the updates of the forecasts?
A Only Mr. Daugherty. And actually, they have a stipulation with the two -- the two former employees.
Q All right. But to be fair, that wasn't -- had nothing to do with the revisions to the projections? That was just in connection with their settlement; is that right?
A That's correct. As was, I suspect, Mr. Daugherty's, but he'd been aware of the settlements, just like everyone else.
Q Okay. You were asked a couple of questions, I think, by Mr. Rukavina about whether there is anything that you need to do your job on a go-forward basis. And I think you said no. Do I -- do I have that right? Nothing further that you need?
A I -- I'm not really sure what your question means, to be honest.
Q Okay. Fair enough. To be clear, is there any chance that you would accept the position as the Claimant Trustee if the gatekeeper and injunction provisions of the proposed plan were extracted from those documents?
A No. As I said earlier, they're integral in my view to the entire plan, but they're absolutely essential to my bottom.
Q Okay. And through -- through the date of the effective date, are you relying on the exculpation clause of the -- have

you been relying on the exculpation clause in the January 9th order that you testified to at the beginning of this hearing?

A Yeah. Both the January 9th order as well as the July order with respect to my CEO/CRO positions.

Q Okay.

MR. MORRIS: I've got nothing further, Your Honor.

THE COURT: All right. Any recross on that redirect?

A VOICE: I believe Mr. Rukavina is speaking but is muted, Your Honor.

THE COURT: Mr. Rukavina, do you have any recross?

MR. RUKAVINA: Your Honor, I do, yes. Thank you. I apologize.

THE COURT: Okay.

MR. RUKAVINA: Can you hear me now?

THE COURT: Yes.

THE WITNESS: Yes.

MR. RUKAVINA: Thank you.

Mr. Vasek, if you'll please pull up the Debtor's Omnibus Reply, Docket 1807. And if you'll go to Exhibit C. Do a word search for Exhibit C. It's attached to it. Okay. Now scroll down. Stop there.

RECROSS-EXAMINATION

BY MR. RUKAVINA:

Q Mr. Seery, do you see what's attached as Exhibit C to the Omnibus Reply, which is proposed language in the confirmation

order?
A I see the exhibit. I didn't know if this was -- I don't know exactly what it's for. If it's proposed language, I'll accept your representation.
MR. RUKAVINA: Well, scroll back up to Exhibit C, Mr. Vasek. I want to make sure that I understand what you're saying. Scroll back up. Do the word search for where Exhibit C appears first. Start again. Okay. So scroll up.
BY MR. RUKAVINA:
Q So, you'll recall Mr. Morris was asking you about the paragraph in here where you outlined the terms of the agreement with the CLOs. Do you recall that testimony?
A Yes.
Q Okay. And then you see it says, The Debtor and the CLOs agreed to seek approval of this compromise by adding language to the confirmation order. A copy of that language is attached hereto as Exhibit C and will be included in the confirmation order.
Do you see that, sir?
A I do.
Q Okay.
MR. RUKAVINA: Mr. Vasek, go back to Exhibit C.
BY MR. RUKAVINA:
Q So it's correct that this Exhibit C is the referenced agreement that the Debtor and the CLOs will seek approval of,

correct?
A The -- the -- it may be word-splitting, but I believe it says that they've reached agreement and this is the language that will evidence that agreement or embody that agreement.
Q Okay.
MR. RUKAVINA: Scroll down, Ms. Vasek, to the next page, please.
BY MR. RUKAVINA:
Q Real quick, do the CLOs owe the Debtor any money for the management fees?
A I don't -- well, the answer is there are accrued fees that haven't been paid, but when they have cash they run through the waterfall and pay them.
Q And I believe you mentioned to me those accrued fees before. They're several million dollars, correct?
A It -- I don't know right off the top of my head. They can aggregate and then they get paid down in the quarter depending on the waterfall. And it's -- it's not a fair statement by either of us to say the CLOs, as if they're all the same. Each one is different.
Q I understand. But as of today, you agree that the CLOs collectively owe some amount of money to the Debtor in accrued and unpaid management fees?
A I believe that's the case.
Q Okay. And do you believe it's north of a million dollars?

A I don't recall.
Q Okay.
MR. RUKAVINA: Well, scroll down a couple of more lines, Mr. Vasek. Stay there.
BY MR. RUKAVINA:
Q Sir, if you'll read with me, isn't the Debtor releasing each Issuer, which is the CLOs, for and from any and all claims, debts, et cetera, by this provision?
A Claims. Not -- not fees, but claims. I don't believe there's any release of fees that the CLOs might owe and would run through the waterfall here.
Q Okay. For and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs, and expenses, including without limitation attorneys' fees and related costs, damages, injuries, suits, actions, and causes of action, of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed.
Are you saying that that does not release whatever fees have accrued and the CLOs owe?
A I don't believe it would. If it did, your client should be ecstatic. But I don't believe it does that.
Q And you don't believe that it releases the CLOs of any and all other obligations that they may have to the Debtor and the

estate?
A I -- again, I don't believe there are any, but I think it's a broad release of claims away from the actual fees that are generated by the Debtor. I don't believe there's an intention to release fees that have accrued.
Q Have you seen this language before I showed it to you right now?
A I believe I have, yes.
Q Okay. Take a minute. Can you point the Court to anywhere where present or future fees under the CLO agreements are excepted from the release?
A I could go through, I'll take your representation, but I don't believe that that's what it -- it's supposed to release fees. Again, if the fees are owed, they get paid, if there are assets there to pay them.
Q Okay. This release and this settlement was never noticed out as part of a 9019, was it?
A I don't believe so, no.
Q Okay. So, other than bringing it up here today, this is the first that the Court, at least, has heard of this, correct?
A Yeah, again, I don't --
MR. MORRIS: Objection to the form of the question.
THE WITNESS: Yeah. I just stated before that I don't think this is a -- that there claims.

THE COURT: Wait. Slow down. I think --

MR. SEERY: Oh, I'm sorry, Your Honor.

THE COURT: -- there was an objection. Go ahead, Mr. Morris.

MR. MORRIS: The notion that this is the first time the Court has heard of this is just factually incorrect. First of all, it's in the document from January 22nd. Second of all, Mr. Seery testified to it last week at the preliminary injunction hearing. I mean, --

THE COURT: I -- I --

MR. MORRIS: -- I don't know what the point of the inquiry is, but there's -- this is not new news.

THE COURT: Okay. I sustain the objection.

BY MR. RUKAVINA:

Q And Mr. Seery, can you point me to any document where counsel for the CLOs has signed this particular confirmation order or any other document agreeing to this language in the confirmation order?

A I don't think there's any document that's signed. I think we already went over that. I think the email is evidence their agreement to the general terms. I don't see any agreement with respect to this particular language.

Q Well, you have no personal information? You're going on what your lawyers told you that the CLOs agreed to, correct?

A That's correct.

Q Okay. You didn't personally --
A Excuse me. That's correct with respect to this language, not with respect to the agreement. I was on the phone when they agreed.
Q Okay. And they agreed orally, you're saying, to basically the assumption of the CLO management agreements?
A Correct.
Q Okay.

MR. RUKAVINA: Thank you, Your Honor. I'll pass the witness.

THE COURT: All right. Other recross?

MR. TAYLOR: Yes, Your Honor, I do.

THE COURT: Go ahead.

RECROSS-EXAMINATION

BY MR. TAYLOR:

Q Mr. Seery, Clay Taylor again. You worked -- I'm sorry, let me restart. I believe you testified earlier, in response to questions by Mr. Morris, that you didn't believe a Chapter 7 trustee would be very effective in monetizing these assets, correct?
A I think I said I didn't believe that the Chapter 7 trustee would be as effective at monetizing the assets as the Reorganized Debtor would be, and me in the role as Claimant Trustee.
Q And one of the reasons that you gave is you believe that

the Chapter 7 trustee had to liquidate assets so quickly that it could not be effective; is that correct?

A Typically, that's the case, yes.

Q You worked for the Lehman trustee, correct?

A That's incorrect.

Q Okay. Did you work on the Lehman case?

A Did I work in the case? No.

Q Okay. Did you -- how were you involved within -- within the Lehman case?

A It's a long history, but I was a relatively senior person, not senior level, not senior management level person at Lehman. I ran the loan businesses and I helped a number of other places and I -- in the organization. I helped construct the sale of Lehman to Barclays out of the broker-dealer and then helped consummate that sale.

Q Okay. I believe, in that case, it was a SIPC -- the trustee was a SIPC trustee, correct?

A With respect to the broker-dealer.

Q Okay. And you believe that a SIPC trustee is very -- has very similar rules with respect to asset sales; is that correct?

A There are some similarities, absolutely.

Q Okay. And so in that case, the trustee was in place for seven years, yet you believe -- you want this Court to believe that a Chapter 7 trustee has to liquidate assets in a very

short time frame, is that correct?

MR. MORRIS: Objection to the form of the question.

THE WITNESS: Yeah, in the Lehman case, --

THE COURT: Overruled.

THE WITNESS: I'm sorry, Judge.

THE COURT: Go ahead.

THE WITNESS: In the Lehman case, the SIPC trustee spent years litigating, not liquidating. The broker-dealer was sold in our structured deal to Barclays, and then the SIPC trustee liquidated the remainder of the estate, which was the broker-dealer, but most of it had been sold to Barclays. It was really a litigation case.

BY MR. TAYLOR:

Q But it did -- that trustee did sell off subsequent assets after the initial sale, correct?

A That trustee, I don't think, managed -- I don't know about that. The trustee didn't really manage any assets. Other than litigations.

Q You've also testified that you didn't believe or that you would not take on this role without the gatekeeper and injunction -- gatekeeper role and injunction being in place; is that correct?

A Yes.

Q And you're also familiar with the Barton Doctrine, correct?

A I'm not.
Q Okay. Do you believe that a Chapter 7 trustee could be sued by third parties without obtaining either relief from this Court -- let me just stop there. Do you believe that a Chapter 7 trustee could be sued without seeking leave of this Court?
A I think it would be difficult. I know that Chapter 7 trustees have qualified immunity, so I think, whether it would be leave of this Court or it's just that there's a very high bar to suing them, I'm not exactly sure. It's not something I've spent time on.
Q Okay. So a hypothetical Chapter 7 trustee would have no need of the gatekeeper role or injunction if this case were converted to one under Chapter 7, correct?
A That's probably true.
Q Thank you.
MR. TAYLOR: No further questions.
THE COURT: All right. Any other recross?
MR. DRAPER: Your Honor, I have nothing --
THE COURT: All right.
MR. DRAPER: -- further.
THE COURT: All right. I think we're done, but anyone I've missed?
All right. Mr. Seery, it's been a long day. You are excused from the virtual witness stand.

THE WITNESS: Thank you, Your Honor.

THE COURT: All right. Mr. Morris, let's see if there's anything else we can accomplish today. It's 4:18 Central time. Who would be your next witness?

MR. MORRIS: My next witness would be John Dubel, Your Honor.

THE COURT: All right. Can you give us a time estimate for direct?

MR. MORRIS: I wouldn't expect Mr. Dubel to be more than 20 minutes or so, but I would offer the Court, if you think it would be helpful, counsel for the CLO Issuers is on the call, and I believe that they would be prepared to just confirm for Your Honor that there is an agreement in principle, just as Mr. Seery has testified to, and maybe you want to hear from her. I know she's not really a witness, but she might be able to make some representations to give the Court some comfort that everything Mr. Seery has said is true.

THE COURT: I think that would be useful. Is it Ms. Anderson or who is it?

MS. ANDERSON: That is -- it is, Your Honor. And you know, I appreciate the testimony given. I certainly do not want to testify, but thought it might be useful for the Court to hear from us.

Amy Anderson on behalf of the Issuers from Jones Walker. Schulte Roth also represents the Issuers. And I can represent

to the Court that the agreement as it's represented on Docket 1807, as more particularly described in Exhibit C, which Your Honor has seen, is the agreement reached between the Issuers and the Debtor.

There was some testimony about fees owed, accrued fees owed to the Debtor. I certainly cannot speak to the substance of each particular management agreement with each CLO. They are all distinct and unique and very lengthy documents. I will -- I can represent to the Court that any accrued fees that are owed were not intended to be included in the release. It is -- it is not meant to release fees owed to Highland under the particular management agreements.

Of course, if the Court has any questions or if I can provide anything further, I'm happy to. And I will be on the hearing today and tomorrow, but I thought it might be useful, given the topic of the testimony this afternoon.

THE COURT: All right. That was useful. Thank you, Ms. Anderson.

All right. Well, Mr. Morris, shall we go ahead and hear from Mr. Dubel today, perhaps finish up a second witness?

MR. MORRIS: Yeah. I think we have the time. I think Mr. Dubel is here. Are you here, Mr. Dubel?

MR. DUBEL: I am. Can you hear me, Your Honor?

THE COURT: I can hear you, but I cannot see you. Oh, now I can see you. Please raise your right hand.

JOHN S. DUBEL, DEBTOR'S WITNESS, SWORN

THE COURT: All right. Thank you. Mr. Morris, go ahead.

MR. MORRIS: Thank you very much, Your Honor.

DIRECT EXAMINATION

BY MR. MORRIS:

Q Mr. Dubel, can you hear me?

A I can, Mr. Morris.

Q Okay. Do you have a position today with the Debtor, sir?

A I am a director of Strand Advisors, Inc., which is the general partner of the Debtor.

Q Okay. And can you --

MR. MORRIS: Your Honor, just as a reminder, I'm going to ask Mr. Dubel to describe his professional experience in some detail, to put into context his testimony, but his *C.V.* can be found at Exhibit 6Y as in yellow on Docket No. 1822.

THE COURT: All right.

BY MR. MORRIS:

Q Mr. Dubel, can you describe your professional background?

A Yes. I have approximately, almost, and I hate to say it because it's making me feel old, but I have almost 40 years of experience working in the restructuring industry.

I have served in many roles in that, both as an advisor, an investor in distressed debt, and also a member of

management teams, and as a director, both an independent director and a non-independent director.

My executive roles have included the -- both an executive director, chief executive officer, president, chief restructuring officer, chief financial officer. And I have been involved in some of the largest Chapter 11 cases over the last several decades, including cases like *WorldCom* and *SunEdison*.

Q Let's focus your attention for a moment just on the position of independent director. Have you served in that capacity before this case?

A I have.

Q Can you describe for the Court some of the cases in which you've served as an independent director?

A Sure. I've served as an independent director in several cases that were I'll call post-reorg cases. *Werner Company*, which was the largest climbing equipment manufacturer in the world, manufacturer of ladders, Werner Ladders. You'll see them on every pickup truck running around the countryside.

FXI Corporation, which is a -- one of the largest foam manufacturers. Everybody's probably slept or sat on one of their products.

Barneys New York, back in 2012, when they did an out-of-court restructuring. I had previously been involved with Barneys 15 years before that, and so I was called upon because

of my knowledge to be an independent director in that situation. Have had no relationship with Barneys since it emerged from Chapter 11 back in 1998.

I have been the independent director in *WMC Mortgage*, which was a mortgage company owned by General Electric.

And I am currently serving as an independent director in a company -- in two companies. One, *Alpha Media*, which is a large radio station chain that recently filed Chapter 11, I believe it was late Sunday night, and I am also an independent director in the *Purdue Pharma* bankruptcy, and have served prior to the bankruptcy and am the chair of the special independent committee of directors -- special committee of independent directors in that particular situation.

Q That sounds like a lot. In terms of other fiduciary capacities, I think your *C.V.* refers to Leslie Fay. Were you involved in that case, and if so, how?

A I was. That was -- for those people who may remember it, that goes back into the 1993 era. *Leslie Fay* was a large apparel manufacturer, and at the time was one of the largest companies that had gone through an extensive fraud. I say at the time because it was about a $180 million fraud, which pales by some of the ones that have followed it.

I was brought in as the executive vice president in charge of restructuring, chief financial officer, and was also added to the board of directors. Even though I wasn't independent,

I was added to the board of directors to have the fresh face on the board in that particular situation because of the fraud that had taken place.

Q And --

A *Sun* --

Q Go ahead.

A *SunEdison*, I was brought in as the CEO. Actually, initially, as the chief restructuring officer, with a mandate to replace the CEO, which took place shortly after I was brought on board and -- because of various issues surrounding investigations by the SEC, DOJ, and allegations by the creditors of fraud. And so I was brought in to run the company through its Chapter 11 process.

As I'd mentioned earlier, *WorldCom*, I was brought in at the beginning of the case as the fresh chief financial officer. And I think everybody is familiar with what happened in the *WorldCom* situation.

Q All right. Based on that experience, do you have a view as to whether the appointment of independent directors is unusual?

A It is not. More recently, it has -- it had been in the past. Usually, you know, they would try and take the existing directors and form a special committee of the existing directors. But I think the state of the art has become more where independent directors are brought in, mainly because the

cases have become a lot more complex in nature, and larger, and the transactions themselves are much more sophisticated. And so having somebody independent has been important for analyzing the various transactions. And also, quite often, it's just bringing a fresh, independent voice to the company on the board.

Q Do you have an understanding as to the purpose and the role of independent directors generally in restructuring and bankruptcy cases?

A Sure. As I kind of alluded to a little bit earlier, the -- probably the most critical thing is for restoring confidence in the company and in the management in terms of corporate governance, especially when there have been troubled situations, where -- whether it's been fraud or allegations made against the company and its prior management or when management has left under difficult situations.

Also, you know, independent thought process being brought to the board is very important for helping guide companies. It's quite often the existing management team or the existing board may get stuck in a rut, as you can say, you know, in terms of their thinking on how to manage it, and having somebody with restructuring experience who provides that independent voice is very important to the operations.

In addition, having someone who can look at conflicts that might arise between shareholders or shareholders and the board

members is important. As I mentioned earlier, the *WMC Mortgage* situation was one where I was brought on to -- as an independent member of the board to effectively negotiate an agreement or a settlement between WMC and its parent, General Electric. That entity was being -- WMC was being sued for billions of dollars, and there were issues as to whether or not General Electric should fund those obligations. And so that was a role that is quite often occurring in today's day and age.

In addition, evaluating transactions for companies is important, whereby either the shareholders who sit on the board or board members may be involved in those transactions, needing an independent voice to review it. And, you know, I have served in situations. Again, *Barneys New York* and *Alpha Media* is another example where, as an independent director, I am one of the parties responsible for evaluating those transactions and making recommendations to the entire board.

And then, again, you know, situations where it's just highly-contentious and having, as I said, having that independent view brought to the table is something that is very helpful in these cases.

Q I appreciate the fulsomeness of the answer. During the time that you served in these various fiduciary capacities, is it fair to say you spent a lot of time considering and addressing issues relating to D&O and other executive

liability issues?

A It's usually one of the things that you get involved with thinking about prior to taking on the role because you want to make sure that there are the appropriate protections for the director.

Q Can you describe for the Court some of the protections that you've sought or that you've seen employed in some of the cases you've worked on, including this one, by the way?

A Sure. I mean, one of the first things you look to is does the company -- will the company indemnify the director for serving in that capacity? And if the company will not indemnify, then there's always a question as to why not, and it's probably something you don't want to get involved with.

Generally, that is something that I don't think I've ever seen a case where there has not been indemnification. Obviously, it would, you know, cause great pause or concern if they weren't willing to indemnify. But that is important.

Providing D&O insurance is very important. And in most situations, you know, over the last 10-15 years, if there's not adequate D&O insurance -- quite often, the D&O insurance has been tapped out because of claims that will -- have been brought or are anticipated to be brought -- new D&O insurance is something that's front and center for the minds of independent directors such as myself.

As you -- that gets you into the case and gets you moving.

As you start to look towards the confirmation and exit from the case, things that would be appropriate, that, you know, would always be something you would want to look at would be exculpation language, releases. And in this particular case, the injunction, or what Mr. Seery earlier referred to as the gatekeeper clause, is something that is very important for directors, both, you know, as they're thinking through it and as they emerge.

Q All right. Let's shift now to this case, with that background. How did you learn about this case?

A I had a party who was involved in the case reach out to me in early part of December of 2019 to see if I would be interested in getting involved. I think that was about the time -- it was after -- as I recall, it was after the case had been moved to Dallas and when there was a -- consideration of either a Chapter 11 or a Chapter 7 trustee. I can't remember exactly which it was. But there was talk about a motion to bring on a trustee and get rid of all the management and the like and such.

Q Can you describe in as much detail as you can recall the facts and circumstances that led to your appointment as an independent director?

A Sure. I, as I said, I had -- early December, I had an -- one of the parties involved -- had, probably within the next week, probably two or three others -- that reached out to see

if I would be interested in participating. I met with the Creditors' Committee or -- I'm not sure if it was all the members, but representatives of the Creditors' Committee, along with counsel, and I believe financial advisors were involved. They walked me through the issues. They wanted to hear about my *C.V.* Quite a few of them knew me, knew me well, but others wanted to hear about my background and how I would look at things as an independent director.

That went through into the latter part of December. I knew that they were talking to other parties. I think it was probably right around the first of the year or so that I was informed, maybe a little bit earlier than that, that I was informed that Mr. Seery was one of the other parties that they were talking to, and Mr. Seery and I were put in touch with each other. I had worked with Mr. Seery back probably nine years earlier when I was the CEO of FGIC. He was involved in a matter that we were restructuring, and so knew him a little bit and was comfortable working with him as a, you know, another independent director.

Then we took the time that we had to to -- or, I took the time to -- from the beginning, you know, the early part of December, look at the docket, understand what was taking place. I -- in addition, I met with the company and its advisors, in-house counsel, the folks at DSI who were at the time the CRO and the company's counsel to better understand

some of the issues.

Mr. Seery and I, as I said, were both selected, and we went through the process of, I guess, breaking the tie, I think, if I could say it that way, amongst the creditors and the Debtor as to who would be the third member of the board. And we were given the opportunity to go out, interview, and select the third member, which resulted in Russell Nelms' appointment to the board. And also during that time, we were given the opportunity to have some input -- not a hundred percent input, but some input -- on the January 9th order that -- the January 9, 2020 order that was put in place appointing us and giving us some of the protections that we felt were appropriate and necessary in this case.

Q All right. We'll get to that in a moment, but during this diligence period, did you form an understanding as to why an independent board was being formed, why it was being sought?

A Yes. There was, my words, there was a lot of distrust between the creditors and the management -- not the CRO, but the prior management of the company -- and there had been a motion brought both to obviously bring the case back to Dallas from I think it was originally in Delaware and then there was a motion to seek, you know, to remove management and put in a trustee.

There had been a dozen years of litigation with one party, about eight or nine years with another major party, and

several other of the major creditors were litigants. The other, as I understood, the other creditors, main creditors in the case were all lawyers who had not yet gotten paid for the litigation work that they had done. And so it was obvious that this was a very -- a highly-litigious situation.

Q In addition to speaking with the various constituents, did you do any diligence on your own to try to understand the case before you accepted the appointment?

A Yes. I went to the docket to look at all the -- not every single thing that had been filed, but to try and look at all the key, relevant items that had been filed, get a better understanding of what was out there. Looked at some of the initial filings of the company in terms of the, you know, the creditors, to understand who the creditor base was per the schedules that had been filed. Looked at the -- some of the various pleadings that had been put in place.

Q Did you form a view as to the causes of the bankruptcy filing?

A Litigation. That was my clear view. This company had been in litigation with multiple parties, various different parties, since around 2008. Generally, you would see litigation like the types that were, you know, that were here, you know, you'd litigate for a while, then you'd try and settle it.

It did not appear to me that there was any intention on

the -- the Debtor to settle these litigations, but would rather just continue the process and proceed forward on the litigation until the very last minute. And so it was obvious that this was going to -- that the Debtor was a, as I said, a highly-litigious shop, and that was one of the causes, obviously, the cause of the filing, along with the fact that judgments were about to be entered against the Debtor.

Q All right. And in January 2020, do you recall that's when the agreement was reached between the Debtor, the Committee, and Mr. Dondero?

A Yeah, it was the first week or so, which resulted in a hearing on I believe it was January 9th in front of Judge Jernigan.

Q And as a part of that -- I think you testified at that hearing. Do I have that right?

A I don't recall if I did. I might have. I might have testified at a subsequent hearing. But --

Q But was --

A -- I was in the courtroom for that hearing, yes.

Q Was it part of that process by which you accepted the appointment as independent director?

A I accepted it based upon the order that had been negotiated amongst the parties, the creditors, the Debtor, Mr. Dondero, and others. And that was the key thing that was -- and approved by the Court on that date. And that was key for

my acceptance of the role as an independent director.

Q And did you and the other prospective independent directors participate in the negotiation of the substance of the agreement?

A We did. We didn't have a hundred percent say over it, but we were able to get our voices heard. As Mr. Seery testified earlier, he was instrumental in coming up with an idea about how to put in place the injunction, you know, the -- I think he referred to it as the gatekeeper injunction, which was obviously in this case very critical to all three of us: Mr. Seery, Mr. Nelms, and myself.

Q Can you describe for the Court kind of the issues of concern to you and the other prospective board members? What was it that you were focused on in terms of the negotiations?

A Well, obviously, indemnification was important, but that was something that was going to be granted. Having the right to obtain separate D&O insurance just for the three directors was important. We were concerned that Strand Advisors, Inc. really had no assets, and so we wanted to make sure that the Debtor was going to get -- was going to basically guarantee the indemnification.

The -- because of the litigious nature and what we had heard from all of the various parties involved, including people inside the Debtor who we had talked with, that it would be something that was important for us to make sure that the

injunction, the gatekeeper injunction was put in place.

Q And can you elaborate a little bit on I think you said you had done some diligence and you had formed a view as to the causes of the bankruptcy filing, but did this case present any specific concerns or issues that you and the board members had to address perhaps above and beyond what you experienced in some of the other cases you described?

A Well, as I said earlier, the fact that the litigation -- the various litigations with the creditors have been going on for what I viewed as an inordinate amount of years, and that it was clear from my diligence that I had done that this had been directed by Mr. Dondero, to keep this moving forward in the litigation, and to, in essence, just, you know, never give up on the litigation.

It was important that the types of protections that we were afforded in the January 9th order were put in place, because we -- none of us -- none of the three of us, and myself in particular, did not want to be in a position where we would be sued and harassed through lawsuits for the next, you know, ten years or so. That's not something anybody would want to sign up for.

Q All right. Let's look at the January 9th order and the specific provisions I think that you're alluding to.

MR. MORRIS: Can we call up Exhibit 5Q, please?

THE WITNESS: Pardon me while I put my glasses on to

read this.

MR. MORRIS: All right. And if we can go to Paragraph 4.

BY MR. MORRIS:

Q Is that the paragraph, sir, that was intended to address the concern that you just articulated about Strand not having any assets of its own?

A Yes, it is.

Q And can you just describe for the Court how that particular provision addressed that concern?

A Sure. Since we were directors of Strand, which is the general partner of the Debtor, we felt it was important that the general -- that Highland, the Debtor, would provide the guaranty on indemnification, because Highland had the assets to back up the indemnification.

It was also pretty clear, from my experience in having placed D&O insurance, you know, over the last 25-30 years, that if there was no, you know, opportunity for indemnification, putting in place insurance would be very difficult or exorbitantly expensive. So having this indemnification by Highland was a very important piece of the order that we were seeking.

Q And the next piece is the insurance piece in Paragraph 5. Do you see that?

A I do.

Q Did you have any involvement in the Debtor's efforts to obtain D&O insurance for the independent board?
A I did.
Q Can you just describe for the Court what role you played and what issues came up as the Debtor sought to obtain that insurance?
A Sure. The Debtors had been looking to get an insurance policy in place. They were not able to do that. I happen to have worked with an insurance broker on D&O situations in some very difficult situations over the years and brought them into the mix. They were able to go out to the market and find a policy that would cover us, the -- kind of the key components of that policy, though, were, number one, the guaranty that HCMLP would give -- I'm sorry, the guaranty that HCMLP would give to Strand's obligations, and also the -- I'll call it the gatekeeper provision was very important because these parties did not want to have -- they wanted to have what was referred to, commonly referred to as the Dondero Exclusion.

So while we were -- we purchased a policy that covered us, it did have an exclusion, unless there were no assets left, and then the what I'll call -- we refer to as kind of a Side A policy would kick in.

Q Okay. What do you mean by the Dondero Exclusion?
A The insurers did not want to cover the -- any litigation that Mr. Dondero would bring against directors. It was pretty

commonly known in the marketplace that Mr. Dondero was very litigious, and insurers were not willing to write the insurance without the protections that this order afforded because they did not want to be hit with frivolous -- hit with claims on the policy for frivolous litigation that might be brought.

MR. TAYLOR: Your Honor, this is Mr. Taylor. I've got to object to the last answer. He testified as to what the insurers' belief was and what they would or would not do based upon their own knowledge. It's not within his personal knowledge. And therefore we'd move to strike.

THE COURT: I overrule that objection.

MR. MORRIS: Your Honor?

THE COURT: I overrule the objection.

MR. MORRIS: Thank you. Thank you, Your Honor.

BY MR. MORRIS:

Q Mr. Dubel, can you explain to the Court, in your work in trying to secure the D&O insurance, what rule the gatekeeper provision played in the Debtor's ability to get that?

A Based upon my discussions with the insurance broker, who I have worked with for 25-plus years, had that gatekeeper provision not been put in place, we would not have been able to get insurance.

Q All right. Let's look at the gatekeeper provision.

MR. MORRIS: Can we go down to Paragraph 10, please?

Perfect. Right there.

BY MR. MORRIS:

Q Is this gatekeeper provision, is this also the source of the exculpation that you referred to?

A Yes.

Q And what's your understanding of how the exculpation and gatekeeper functions together?

A Well, my apologies, I'm not an attorney, so just from a business point of view, the way I look at this is that, you know, obviously, we're -- you know, the directors are not protected from willful misconduct or gross negligence, but any negligence -- you know, claims brought under negligence and the likes of such, and things that might be considered frivolous, would have to first go to Your Honor in the Bankruptcy Court for a review to determine if they were claims that should be entitled to be brought.

Q If you take a look at the provision, right, do you understand that nobody can bring a claim without -- in little i, it says, first determining -- without the Court first determining, after notice, that such claim or cause of action represents a colorable claim of willful misconduct or gross negligence against an indirect -- independent director. Do you see that?

A I do.

Q Is it your understanding that parties can only bring

claims for gross negligence or willful misconduct if the Court makes a determination that there is a colorable claim?

A That's my understanding.

Q And the second --

A I think they have the right -- I think they have the right to go to the Court to ask if they can bring the claim, but the Court has to make the determination that it's a colorable claim for willful misconduct or gross negligence.

Q And if the Court -- is it your understanding that if the Court doesn't find that there is a colorable claim of willful misconduct or gross negligence, then the claim can't be brought against the independent directors?

A That is my understanding, yes.

Q And was -- taken together, Paragraphs 4, 5, and 10, were they of importance to you and the other independent directors before accepting the position?

A They were absolutely critical to me and definitely critical to the other directors, because we all negotiated that together, and it would -- I don't -- I don't think any of the three of us would have taken on this role if those paragraphs had not been included in the order.

Q Okay. Just speaking for yourself personally, is there any chance you would have accepted the appointment without all three of those provisions?

A I would not have.

Q And why is that? In this particular case, why did you personally believe that you needed all three of those provisions?

A Well, you know, people like myself, you know, someone who's coming in as an independent director, come in in a fiduciary capacity. And, you know, we take on risks. Now, granted, in a Chapter 11 case, as the saying goes, you know, it's a lot safer because everything has to be approved by the Court, but there are still opportunities for parties to, in essence, have mischief going on and bring nuisance lawsuits that would take a lot of time and effort away from either the role of our job of restructuring the entity or post-restructuring, would just be nuisance things that would cost us money. And we, you know, I did not want to be involved in that situation, knowing the litigious nature of Mr. Dondero from the research that I had done, you know, the diligence that I had done. I did not want to subject myself to that. And it has proven an appropriate and very solid order because of the conduct of Mr. Dondero, as Mr. Seery has testified to earlier.

Q Do you have a view as to what the likely effect would be on future corporate restructurings if you and your fellow directors weren't able to obtain the type of protection afforded in the January 9th order?

A I think it would be very difficult to find qualified

people who would be willing to serve in these types of positions if they knew they had a target on their backs. You know, it was something that was clear to us, to Mr. Seery, Mr. Nelms, myself at the time, that if we had a target -- we felt like we would have a target on our back if we didn't have these protections.

It just wasn't worth the risk, the stress, the uncertainty, the potential cost to us. And so I don't think anybody else would be, you know, willing to take on the roles as an independent director with the facts and circumstances and the players involved in this particular case.

MR. MORRIS: I have no further questions, Your Honor.

THE COURT: All right. Pass the witness. Let's see. You went -- I'm going to give a time. You went 32 minutes. So, for cross of this witness, I'm going to limit it to an aggregate of 32 minutes. Who wants to go first?

MR. DRAPER: Your Honor, this is Douglas Draper. I'll be happy to go first.

THE COURT: All right.

CROSS-EXAMINATION

BY MR. DRAPER:

Q Mr. Dubel, prior to your engagement, did you happen to read the case of *Pacific Lumber*?

A I did not.

Q And were you advised about *Pacific Lumber* by somebody

other than a -- your lawyer?
A I'm not familiar with the case at all, Mr. Draper.
Q Are you aware, and you've been around a long time, that different circuits have different rules for liabilities of officers, directors, and people like that?
A I am aware that there are different, I don't know what the right term is, but precedents, I guess, in different circuits for any number of things, whether it's a sale motion or protections of officers and directors or anything. So each circuit has its own unique situations.
Q And one last question. On a go-forward, after -- if this plan is confirmed and on the effective date, you will not have any role whatsoever as an officer or director of the new general partner, correct?
A I have not been asked to. As Mr. Seery testified, he may ask for assistance or just -- in most situations that I'm involved with, I may have a continuing role just as a -- I'll call it an advisor or somebody to provide a history. But at this point in time, I have not been asked to have any involvement.
Q And based on your experience, you know that there's a different liability for a director and an officer versus somebody who is an advisor?
MR. MORRIS: Objection to the form of the question. No foundation.

THE COURT: Overruled.

MR. DRAPER: Mr. Dubel has shown --

THE COURT: Mr. Dubel, you can answer if you know.

MR. DRAPER: Mr. Dubel, you can answer.

THE WITNESS: I'm sorry, Your Honor, I didn't hear you say overruled. Thank you.

Mr. Draper, I apologize, could you repeat the question?

BY MR. DRAPER:

Q The question is you know from your experience that there's a different liability for somebody who is an officer or director versus somebody who's an advisor?

A Yes, that's my experience, which is why in several situations post-reorganization, while I have not been involved *per se*, and I use the term involved meaning, you know, on a day-to-day basis, if someone asks me to assist, I'll usually ask them to bring me in as a non -- an unpaid employee or a, you know, a nominally-amount-paid employee, so that I would be protected by whatever protections the company might provide.

MR. DRAPER: I have nothing further for this witness, Your Honor.

THE COURT: All right. Other cross?

MR. TAYLOR: Yes, Your Honor.

MR. RUKAVINA: Yes, Your Honor.

MR. TAYLOR: Oh, go ahead, Davor.

MR. RUKAVINA: No, Clay, go ahead.

CROSS-EXAMINATION

BY MR. TAYLOR:

Q Mr. Dubel, this is Clay Taylor here on behalf on Mr. Dondero. I believe you had previously testified in response to questions from Mr. Morris that Mr. Dondero had engaged in a pattern of litigious behavior; is that correct?

A I believe that's the testimony I gave, yes.

Q Okay. And please give me the specific examples of which cases you believe he has engaged in overly-litigious behavior.

A Well, all of the cases that resulted in creditors, large creditors in our bankruptcy. That would be the UBS situation, the Crusader situation which became the Redeemer Committee, litigation with Mr. Daugherty, with Acis and Mr. Terry. And as I mentioned earlier, I'd, you know, been informed by members of the management team that it was Mr. Dondero's style to just litigate until the very end to try and grind people down.

Q Okay. Was Mr. Dondero or a Highland entity the plaintiff in the UBS case?

A No, but what was referred -- what I was referring to was the nature in which he defended it and went overboard and refused to ever, you know, try and settle things in a manner that would have gotten things done. And just looking at, having been involved in the restructuring industry for the last 40 years, as I said, almost 40 years, and been involved

in many, many litigious situations, it's obvious when someone is litigious, whether they're the plaintiff or the defendant.

Q So are you personally familiar with the settlement negotiations in the UBS case that happened pre-bankruptcy, then?

A I have been informed that there were settlement negotiations, and subsequently determined, through discussions with the parties, that they weren't really close to -- to a settlement.

Q But are you aware of --

A Mr. Dondero might have thought they were, but they were not.

Q Okay. Would you be surprised to learn if UBS had offered to settle pre-bankruptcy for $7 million?

A As I understand, settlements -- settlement offers pre-bankruptcy had a tremendous number of -- I don't know what the right term is -- things tied to it and that clearly were never going to get done.

Q Okay. When you say things were tied to it, what things were tied to it?

A I don't know all of the settlement discussions that took place, but what I was informed was that there were a lot of conditions that were included in that. And it's -- if it had been an offer of $7 million and Mr. Dondero didn't settle for that, there must have been a reason why. So, you know, since

the entities -- all of the entities within the Highland Capital empire, if you'd call it that, were being sued for almost a billion dollars.

Q Okay. And you say there was lots of conditions that were tied to that. What were the conditions?

A As I said earlier, I wasn't informed of them on all the prepetition settlements. That's just what I was told, there was conditions.

Q Okay. And who were you told these things by?

A Both external counsel and internal counsel. Mr. Ellington, Scott Ellington, and Isaac -- the litigation counsel.

Q Okay. So --

A That's -- sorry.

Q Okay. In each of these cases, you were informed by your views by statements that were made to you by other people?

A Yes.

Q Okay.

A Made -- and particularly made by members of management of the Debtor, which is pretty informed.

Q Okay. Which members of management were those?

A As I just testified, it was Mr. Ellington, who was the general -- the Debtor's general counsel, and Mr. Leventon, Isaac Leventon, who was the -- I believe his title was associate general counsel in charge of litigation.

Q Okay. Thank you.

MR. TAYLOR: No further questions.

THE COURT: All right. Mr. Rukavina?

CROSS-EXAMINATION

BY MR. RUKAVINA:

Q Mr. Dubel, we've never met, although I think we were on the phone once together. I know you're a director, so you're at the top, but having been in this case for more than a year, you probably have some understanding of the assets that the Debtor has, don't you?

A I do, but I'm not as facile with it as Mr. Seery, obviously.

Q Sure. Is it true, to your understanding, that the Debtor owns various equity interests in third-party companies?

A Either directly or indirectly. That's my understanding, yes.

Q Okay. Have you heard of an entity called Highland Select Equity Fund, LP?

A I have.

Q And is that a publicly-traded company?

A I'm not familiar with its nature there, no.

Q Do you know how much of the equity of that entity the Debtor owns?

A I don't know off the top of my head, no.

Q And again, these may be unfair questions because you're at

the top, so I'm not trying to make you look foolish. I'm just trying to see. Let me ask one more. Have you heard of Wright, W-R-I-G-H-T, Limited?

MR. MORRIS: Objection, Your Honor. Beyond the scope.

MR. RUKAVINA: Your Honor, I can recall him on my direct, then.

THE COURT: Yeah. I'll --

MR. RUKAVINA: But I'd just rather get it over with.

THE COURT: I'll allow it.

MR. MORRIS: All right. If we're going to get rid of --

THE COURT: Overruled.

MR. MORRIS: No, that's fine.

BY MR. RUKAVINA:

Q Have you heard of Wright, W-R-I-G-H-T, Limited?

A I think I have, but I just don't recall it, Mr. Rukavina. I'm sorry, Rukavina. Sorry.

Q It's okay. It's a --

A I'm looking at your chart here, at your name here, and it looks like Drukavina, so I really apologize.

Q Believe it or not, it's actually a very famous name in Croatia, although it means nothing here.

So, all of the entities that the Debtor owns equity in, I guess you probably, just because, again, you're not in the

weeds, you can't tell us how much of that equity the Debtor owns, can you?

A I can't individually, no. You know, Mr. Seery is our CEO and he's responsible for the day-to-day, you know, issues. So usually we look at it more on a consolidated basis and not in the, you know, down in the weeds, as you refer to it, unless something specific came up.

Q Well, would you remember whether, when Mr. Seery or the prior CRO would provide you, as the board member, financial reports, whether that included P&Ls and balance sheets and financial reports for the entities that the Debtor owned interests in?

A We might -- we would have seen certain consolidating reports that might -- that would be, you know, consolidating financial statements that would be P&Ls. Where we didn't consolidate them, I'm not sure we saw the actual individual-entity P&Ls on a regular basis. We might have seen them if there was a transaction taking place. But again, you know, I don't have -- I don't remember every single one of them, no.

Q And you would agree with me, sir, that the Pachulski law firm is an excellent restructuring, reorganization, insolvency law firm, wouldn't you?

A Yes, I would agree with you there.

Q Okay. And you would expect them to ensure that anything that has to be filed with Her Honor is timely filed, wouldn't

you?
A I would expect that they would follow the rules.
Q Okay. And you have the utmost of confidence, I take it, in your CRO, don't you?
A I have a tremendous amount of confidence in our CEO, who also happens to hold the title of CRO, yes, if that's what you're referring to as, Mr. Seery.
(Interruption.)
MR. RUKAVINA: John.
BY MR. RUKAVINA:
Q Okay, I think -- yeah, I think I heard that you have tremendous confidence in the CEO, who happens to be the CRO, right?
A Yes, that's the case.
MR. RUKAVINA: Thank you, Your Honor. I'll pass the witness.
THE COURT: All right. Any other cross of Mr. Dubel? All right. Mr. Morris, redirect?
MR. MORRIS: Yeah, just very briefly, Your Honor.

REDIRECT EXAMINATION

BY MR. MORRIS:
Q You were asked about that *Pacific Lumber* case, Mr. Dubel; do you remember that?
A I do remember being asked about it.
Q And you weren't familiar with that case, right?

A I'm not familiar with the name of the case, no.
Q But you did know that the exculpation and gatekeeping provisions were going to be included in the order; is that fair?
A I did.
Q And did you testify that you wouldn't have accepted the position without it?
A I did testify that way.
Q And if you knew that you couldn't get those provisions in the Fifth Circuit, would you ever accept a position as an independent director in the Fifth Circuit on a go-forward basis?
A Not in a situation such as this, no.
Q Okay. Okay.

MR. MORRIS: No further questions, Your Honor.

THE COURT: All right. Any recross on that narrow redirect?

All right. Well, Mr. Dubel, you are excused from the virtual witness stand.

THE WITNESS: Thank you, Your Honor.

THE COURT: All right. I want to go ahead and --

MR. DUBEL: Do you mind if I turn my video off?

THE COURT: I'm sorry, what?

MR. DUBEL: I said, do you mind if I turn my video off?

THE COURT: No, you may. That's fine.

MR. DUBEL: Thank you, Your Honor.

THE COURT: All right. I want to break now, unless there's any quick housekeeping matter. Anything?

MR. MORRIS: No, Your Honor, but I would just ask all parties to let me know by email if they have any objections to any of the exhibits on the witness list that was filed at Docket No. 1877, because I want to begin tomorrow by putting into evidence the balance of our exhibits.

MR. RUKAVINA: And Your Honor, I was responsible for this due to an internal mistake. The only ones I have an objection to are -- is that 7? John, is that 7, right, 7OO --

MR. MORRIS: Yes.

MR. RUKAVINA: Your Honor, I only have an objection to 7O and 7P, although I think -- think the Court has already admitted 7P, so my objection is moot.

THE COURT: I have.

MR. RUKAVINA: Okay.

THE COURT: So, what --

MR. RUKAVINA: Then it would just be --

THE COURT: Go ahead.

MR. RUKAVINA: I'm sorry. It would just be 7O. Septuple O or whatever the word is.

THE COURT: All right. So I will go ahead and admit 7F through 7Q, with the exception of 7O. Again, these appear

at Docket Entry 1877. And Mr. Morris, you can try to get in 7O the old-fashioned way if you want to.

MR. MORRIS: Yeah, I'll deal with 7O and the very limited number of other objections at the beginning of tomorrow's hearing.

THE COURT: All right.

(Debtor's Exhibits 7F through 7Q, with the exception of 7O, are received into evidence.)

THE COURT: So we will reconvene at 9:30 Central time tomorrow. I think we're going to hear from the Aon, the D&O broker, Mr. Tauber; is that correct?

MR. MORRIS: That's right. And that should be shorter than even Mr. Dubel.

THE COURT: All right. Well, we will see you at 9:30 in the morning. We are in recess.

MR. MORRIS: Thank you so much.

THE CLERK: All rise.

(Proceedings concluded at 5:09 p.m.)

--oOo--

CERTIFICATE

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/ Kathy Rehling **02/04/2021**

_____ _____

Kathy Rehling, CETD-444 Date
Certified Electronic Court Transcriber

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APPENDIX 10

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

In re: HIGHLAND CAPITAL MANAGEMENT, L.P.,[1] Debtor.	§	Chapter 11 Case No. 19-34054-sgj11
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. JAMES D. DONDERO, Defendant.	§	Adversary Proceeding No. No. 20-3190-sgj11

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

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PLAINTIFF'S MOTION FOR AN ORDER REQUIRING MR. JAMES DONDERO TO SHOW CAUSE WHY HE SHOULD NOT BE HELD IN CIVIL CONTEMPT FOR VIOLATING THE TRO

Highland Capital Management, L.P., the plaintiff in the above-captioned adversary proceeding (the "Adversary Proceeding") and the debtor and debtor-in-possession (the "Debtor" or "Highland") in the above-captioned chapter 11 case ("Bankruptcy Case"), by and through its undersigned counsel, files this motion (the "Motion") seeking entry of an order requiring Mr. James Dondero (hereinafter, "Mr. Dondero") to show cause why he should not be held in civil contempt for violating the Court's *Order Granting Debtor's Motion for a Temporary Restraining Order against James Dondero* (Adv. Pro. Docket No. 10) (the "TRO"). In support of the Motion, the Debtor respectfully states the following:

JURISDICTION AND VENUE

1. This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334(b). The Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (O).

2. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1409.

3. The predicates for the relief requested in the Motion are sections 105(a) and 362(a) of title 11 of the United States Code (the "Bankruptcy Code") and Rules 7065 and 7001 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

RELIEF REQUESTED

4. The Debtor requests that this Court issue the proposed form of order to show cause, attached hereto as **Exhibit A** (the "Proposed Order"), pursuant to sections 105(a) and 362(a) of the Bankruptcy Code and Rules 7001 and 7065 of the Bankruptcy Rules.

5. The evidence and arguments supporting the Motion are set forth in the Debtor's *Memorandum of Law in Support of Its Motion for an Order Requiring Mr. James Dondero to*

Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO (the "Memorandum of Law"), and the *Declaration of John A. Morris in Support of the Debtor's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO* (the "Morris Declaration"), and the exhibits annexed thereto, filed contemporaneously with this Motion. For the reasons set forth the Memorandum of Law, the Debtor requests that the Court (i) find and hold Mr. Dondero in contempt for violating the TRO; (ii) direct Mr. Dondero to produce to the Debtor and the UCC, within three days all financial statements and records of Dugaboy and Get Good for the last five years; (iii) direct Mr. Dondero to pay the Debtor's estate an amount of money equal to two times the Debtor's actual expenses incurred in bringing this Motion, payable within three calendar days of presentment of an itemized list of expenses; (iv) impose a penalty of three times the Debtor's actual expenses incurred in connection with any future violation of any order of this Court, and (v) grant the Debtor such other and further relief as the Court deems just and proper under the circumstances.

6. In accordance with Rule 7007-1 of the *Local Bankruptcy Rules of the United States Bankruptcy Court for the Northern District of Texas* (the "Local Rules"), contemporaneously herewith and in support of this Motion, the Debtor is filing: (a) its Memorandum of Law, (b) the Morris Declaration, and (c) the Debtor's *Motion for Expedited Hearing on Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO* (the "Motion to Expedite").

7. Based on the exhibits annexed to the Morris Declaration, and the arguments contained in the Memorandum of Law, the Debtor is entitled to the relief requested herein as set forth in the Proposed Order.

8. Notice of this Motion has been provided to Mr. Dondero. The Debtor submits that no other or further notice need be provided.

WHEREFORE, the Debtor respectfully requests that the Court (i) enter the Proposed Order substantially in the formed annexed hereto as **Exhibit A** granting the relief requested herein, and (ii) grant the Debtor such other and further relief as the Court may deem proper.

Dated: January 7, 2021.

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EXHIBIT A

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

In re: HIGHLAND CAPITAL MANAGEMENT, L.P.,[1] Debtor.	§	Chapter 11 Case No. 19-34054-sgj11
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. JAMES D. DONDERO, Defendant.	§	Adversary Proceeding No. No. 20-3190-sgj11

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

ORDER GRANTING PLAINTIFF'S MOTION FOR AN ORDER REQUIRING MR. JAMES DONDERO TO SHOW CAUSE WHY HE SHOULD NOT BE HELD IN CIVIL CONTEMPT FOR VIOLATING THE TRO

Having considered (a) the Debtor's *Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO* [Docket No. __] (the "Motion"); [2] (b) the *Debtor's Memorandum of Law in Support of Its Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO* [Docket No. __] (the "Memorandum of Law"); (c) the exhibits annexed to the *Declaration of John A. Morris in Support of the Debtor's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO* [Docket No. __] (the "Morris Declaration"); and (d) all prior proceedings relating to this matter, including the December 10, 2020 hearing on the *Debtor's Motion for a Temporary Restraining Order and Preliminary Injunction against James Dondero* [Docket No. 6] (the "TRO Hearing") and the hearing (the "Restriction Motion Hearing") on the *Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles* [Bankr. Case Docket No. 1528] that was brought by certain financial advisory firms and investment funds that are represented by the law firm K&L Gates (collectively, the "K&L Gates Clients"); and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that sanctions are warranted under sections 105(a) and 362(a) of the Bankruptcy Code and that the relief requested in the Motion is in the best interests of the

[2] Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

Debtor's estate, its creditors, and other parties-in-interest; and this Court having found that the Debtor's notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and that no other notice need be provided; and this Court having determined that the legal and factual bases set forth in the Motion establish good cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor and for the reasons set forth in the record on this Motion, it is **HEREBY ORDERED THAT**:

1. The Motion is **GRANTED** as set forth herein.

2. Mr. Dondero shall show cause before this Court on **Friday, January 8, 2021 at 9:30 a.m. (Central Time)** why an order should not be granted: (i) finding and holding Mr. Dondero in contempt for violating the TRO; (ii) directing Mr. Dondero to produce to the Debtor and the UCC within three days all financial statements and records of Dugaboy and Get Good for the last five years; (iii) directing Mr. Dondero to pay the Debtor's estate an amount of money equal to two times the Debtor's actual expenses incurred in bringing this Motion and addressing Mr. Dondero's conduct that lead to the imposition of the TRO and this Motion (*e.g.*, responding to the K&L Gates Clients' frivolous motion and related demands and threats and taking Mr. Dondero's deposition), payable within three (3) calendar days of presentment of an itemized list of expenses, (iv) imposing a penalty of three (3) times the Debtor's actual expenses incurred in connection with any future violation of any order of this Court, and (iv) granting the Debtor such other and further relief as the Court deems just and proper under the circumstances.

3. The Court shall retain exclusive jurisdiction with respect to all matters arising from or relating to the implementation, interpretation, and enforcement of this Order.

END OF ORDER

APPENDIX 11

Docket #0059 Date Filed: 1/12/2021

The following constitutes the ruling of the court and has the force and effect therein described.

Signed January 11, 2021

United States Bankruptcy Judge

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

In re:	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	§	Case No. 19-34054-sgj11
Debtor.	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	Adversary Proceeding No.
Plaintiff,	§	No. 20-03190-sgj
vs.	§	
JAMES D. DONDERO,	§	
Defendant.	§	

ORDER GRANTING DEBTOR'S MOTION FOR A PRELIMINARY INJUNCTION AGAINST JAMES DONDERO

This matter having come before the Court on *Plaintiff Highland Capital Management,*

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

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L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero [Adv. Pro. Docket No. 2] (the "Motion"), filed by Highland Capital Management, L.P., the debtor and debtor-in-possession (the "Debtor") in the above-captioned chapter 11 case (the "Bankruptcy Case"), and the plaintiff in the above-captioned adversary proceeding (the "Adversary Proceeding"); and this Court having considered (a) the Motion, (b) *Plaintiff Highland Capital Management, L.P.'s Verified Original Complaint for Injunctive Relief* [Adv. Pro. Docket No. 1] (the "Complaint"), (c) the arguments and law cited in the *Debtor's Amended Memorandum of Law in Support of its Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero* [Adv. Pro. Docket No. 3] (the "Memorandum of Law," and together with the Motion and Complaint, the "Debtor's Papers"), (d) *James Dondero's Response in Opposition to Debtor's Motion for a Preliminary Injunction* [Adv. Pro. Docket No. 52] (the "Opposition") filed by James Dondero, (e) the testimonial and documentary evidence admitted into evidence during the hearing held on January 8, 2021 (the "Hearing"), including assessing the credibility of Mr. James Dondero, (f) the arguments made during the Hearing, and (g) all prior proceedings relating to the Motion, including the December 10, 2020 hearing on the *Debtor's Motion for a Temporary Restraining Order and Preliminary Injunction against James Dondero* [Adv. Pro. Docket No. 6] (the "TRO Hearing"); and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that injunctive relief is warranted under sections 105(a) and 362(a) of the Bankruptcy Code and that the relief requested in the Motion is in the best interests of the Debtor's estate, its creditors, and other parties-in-interest;

and this Court having found that the Debtor's notice of the Motion and opportunity for a hearing on the Motion were appropriate and that no other notice need be provided; and this Court having determined that the legal and factual bases set forth in the Debtor's Papers, and the evidence submitted in support thereof, establish good cause for the relief granted herein, and that (1) such relief is necessary to avoid immediate and irreparable harm to the Debtor's estate and reorganization process; (2) the Debtor is likely to succeed on the merits of its underlying claim for injunctive relief; (3) the balance of the equities tip in the Debtor's favor; and (4) such relief serves the public interest; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor and for the reasons set forth in the record on this Motion, it is **HEREBY ORDERED THAT**:

1. The Motion is **GRANTED** as set forth herein.

2. James Dondero is preliminarily enjoined and restrained from (a) communicating (whether orally, in writing, or otherwise), directly or indirectly, with any Board member unless Mr. Dondero's counsel and counsel for the Debtor are included in any such communication; (b) making any express or implied threats of any nature against the Debtor or any of its directors, officers, employees, professionals, or agents, in whatever capacity they are acting; (c) communicating with any of the Debtor's employees, except as it specifically relates to shared services currently provided to affiliates owned or controlled by Mr. Dondero; (d) interfering with or otherwise impeding, directly or indirectly, the Debtor's business, including but not limited to the Debtor's decisions concerning its operations, management, treatment of claims, disposition of assets owned, controlled or managed by the Debtor, and the pursuit of the Plan or any

alternative to the Plan; and (e) otherwise violating section 362(a) of the Bankruptcy Code (collectively, the "Prohibited Conduct").[2]

3. James Dondero is further preliminarily enjoined and restrained from causing, encouraging, or conspiring with (a) any entity owned or controlled by him, and/or (b) any person or entity acting with him or on his behalf, to, directly or indirectly, engage in any Prohibited Conduct.

4. James Dondero is further preliminarily enjoined and restrained from communicating (in person, telephonically, by e-mail, text message or otherwise) with Scott Ellington and/or Isaac Leventon, unless otherwise ordered by the Court.

5. James Dondero is further preliminarily enjoined and restrained from physically entering, or virtually entering through the Debtor's computer, email, or information systems, the Debtor's offices located at Crescent Court in Dallas, Texas, or any other offices or facilities owned or leased by the Debtor, regardless of any agreements, subleases, or otherwise, held by the Debtor's affiliates or entities owned or controlled by Mr. Dondero, without the prior written permission of Debtor's counsel made to Mr. Dondero's counsel. If Mr. Dondero enters the Debtor's office or other facilities or systems without such permission, such entrance will constitute trespass.

6. James Dondero is ordered to attend all future hearings in this Bankruptcy Case by Webex (or whatever other video platform is utilized by the Court), unless otherwise ordered by the Court.

7. This Order shall remain in effect until the date that any plan of reorganization or liquidation resolving the Debtor's case becomes effective, unless otherwise ordered by the Court.

[2] For the avoidance of doubt, this Order does not enjoin or restrain Mr. Dondero from (1) seeking judicial relief upon proper notice or from objecting to any motion filed in this Bankruptcy Case, or (2) communicating with the committee of unsecured creditors (the "UCC") and its professionals regarding a pot plan.

8. All objections to the Motion are overruled in their entirety.

9. The Court shall retain exclusive jurisdiction with respect to all matters arising from or relating to the implementation, interpretation, and enforcement of this Order.

END OF ORDER

APPENDIX 12

SUMMARY OF DONDERO ENTITY LITIGATION*

In re Highland Capital Management, L.P., Case No. 19-34054-sgj11 (Bankr. N.D. Tex.)

9/23/20 **Acis Settlement Motion [D.I. 1087]**

Objectors:	Dondero [D.I. 1121]	Acis filed a claim for at least $75 million. Acis claim was the result of an involuntary bankruptcy initiated when the Debtor refused to pay an arbitration award and instead transferred assets to become judgment proof. Debtor settled claim for an allowed Class 8 claim of $23 million and approximately $1 million in cash payments. Dondero objected to the settlement alleging that it was unreasonable and constituted vote buying.	The Acis Settlement Motion was approved and Dondero's objection was overruled [D.I. 1302].	Dondero appealed [D.I. 1347]. The appeal is being briefed.

11/18/20 ***Motion of the Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363(b) for Authority to Enter into Sub-Servicer Agreements* [D.I. 1424]**

Objectors:	Dondero [D.I. 1447]	The Debtor filed a motion seeking to retain a sub-servicer to assist in its reorganization consistent with the proposed plan. Dondero alleged that the sub-servicer was not needed; was too expensive; and would not be subject to Bankruptcy Court jurisdiction [D.I. 1447].	Dondero withdrew his objection [D.I. 1460] after forcing the Debtor to incur costs responding [D.I. 1459]	N/A

11/19/20 ***James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside of the Ordinary Course* [D.I. 1439]**

Movant:	Dondero	Dondero alleged the Debtor sold significant assets in violation of 11 U.S.C. § 363 and without providing Dondero a chance to bid. Dondero requested an emergency hearing on this motion [D.I. 1443]. Dondero filed this motion despite having agreed to the Protocols governing such sales.	Dondero withdrew this motion [D.I. 1622] after the Debtor and the Committee were forced to incur costs responding and preparing for trial [D.I. 1546, 1551].	N/A

12/8/20 ***Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles* [D.I. 1522]**

Movants:	Advisors Funds	Movants argued that the Debtor should be precluded from causing the CLOs to sell assets without Movants' consent. Movants provided no support for this position which directly contradicted the terms of the CLO Agreements; and was filed notwithstanding the Protocols which governed such sales. Movants requested an emergency hearing on this motion [D.I. 1523].	The motion was denied [D.I. 1605] and was characterized as "frivolous."	N/A

* All capitalized terms used but not defined herein have the meanings given to them in *Debtor's Omnibus Response to Motions for Stay Pending Appeal of the Confirmation Order*.

The following is by way of summary only. Nothing herein shall be deemed or considered a waiver of any rights or an omission of fact. The Debtor reserves all rights that it may have whether in law, equity, or contract.

12/23/20	**HarbourVest Settlement Motion [D.I. 1625]**				
	Objectors:	Dondero [D.I. 1697] Trusts [D.I. 1706] CLO Holdco [D.I. 1707]	The HarbourVest Entities asserted claims in excess of $300 million in connection with an investment in a fund indirectly managed by the Debtor for, among other things, fraud and fraudulent inducement, concealment, and misrepresentation. Debtor settled for an allowed Class 8 claim of $45 million and an allowed Class 9 claim of $35 million. Dondero and the Trusts alleged that the settlement was unreasonable; was a windfall to the HarbourVest Entities; and constituted vote buying. CLO Holdco argued that the settlement could not be effectuated under the operative documents.	CLO Holdco withdrew its objection at the hearing. The settlement was approved and the remaining objections were overruled [D.I. 1788].	The Trusts appealed [D.I. 1870], and the appeal is being briefed. CLO Holdco recently filed a complaint alleging, among other things, that the settlement was a breach of fiduciary duty and a RICO violation.
1/14/21	***Motion to Appoint Examiner Pursuant to 11 U.S.C. § 1104(c)* [D.I. 1752]**				
	Movants:	Trusts Dondero [D.I. 1756]	Movants sought the appointment of an examiner 14 months after the Petition Date and commencement of Plan solicitation to assess the legitimacy of the claims against the various Dondero Entities and to avoid litigation. Movants requested an emergency hearing on this motion [D.I. 1748].	The motion was denied [D.I. 1960].	N/A
1/20/21	***James Dondero's Objection to Debtor's Proposed Assumption of Executory Contracts and Cure Amounts Proposed in Connection Therewith* [D.I. 1784]**				
	Objector:	Dondero	Dondero objected to the Debtor's proposed assumption of the limited partnership agreement governing the Debtor and MSCF [D.I. 1719].	Dondero withdrew his objection [D.I. 1876] after forcing the Debtor to incur the expense of responding (which included a statement that the Debtor limited partnership agreement was not being assumed).	N/A
1/22/20	***Objections to Fifth Amended Plan of Reorganization* [D.I. 1472]**				
	Objectors:[1] Dondero [D.I. 1661] Advisors & Funds[2] [D.I.	Trusts [D.I. 1667] Senior Employees	All objections to the Plan were consensually resolved prior to the confirmation hearing except for the objections of the Dondero Entities and the U.S. Trustee. The U.S. Trustee did not press its objection at confirmation.	All objections were overruled and the Confirmation Order was entered.	Dondero, the Trusts, the Advisors, and the Funds appealed [D.I. 1957, 1966, 1970, 1972]. The appeal is

[1] In addition to the Dondero Entities' objections, the following objections were filed: State Taxing Authorities [D.I. 1662]; Former Employees [D.I. 1666]; IRS [D.I. 1668]; US Trustee [D.I. 1671]; Daugherty [D.I. 1678]. These objections were either resolved prior to confirmation or not pressed at confirmation.

	1670]	[D.I. 1669]			being briefed.
	HCRE [D.I. 1673]	CLO Holdco [D.I. 1675]			
	NexBank Entities [D.I. 1676]				
1/24/21	***Application for Allowance of Administrative Expense Claim* [D.I. 1826]**				
	Movants:	Advisors	The Advisors seek an administrative expense claim for approximately $14 million they allege they overpaid to the Debtor during the bankruptcy case under the Shared Services Agreement. Notably, the Advisors have not paid $14 million to the Debtor during the bankruptcy.	This matter is currently being litigated.	N/A
2/3/21	***NexBank's Application for Allowance of Administrative Expense Claim* [D.I. 1888]**				
	Movant:	NexBank	NexBank seeks an administrative expense claim for reimbursement of $2.5 million paid to the Debtor under its Shared Services Agreement and investment advisory agreement. NexBank alleges that it did not receive the services.	This matter is currently being litigated.	N/A
2/8/21	***James Dondero Motion for Status Conference* [D.I. 1914]**				
	Movant:	Dondero	Dondero requested a chambers conference to convince the Court to delay confirmation of the Plan to allow for continued negotiation of the "pot plan."	The request was denied [D.I. 1929] after the Debtor and Committee informally objected.	N/A.
2/28/21	***Motions for Stay Pending Appeal***				
	Movants:		The only parties requesting a stay pending appeal were the Dondero Entities. They alleged a number of potential harms to the Dondero Entities if a stay was not granted and offered to post a $1 million bond.	Relief was denied [D.I. 2084, 2095] and a number of the Movants' arguments were found to be frivolous.	Movants sought a stay pending appeal from this Court.
	Dondero [D.I. 1973]	Advisors [D.I. 1955]			
	Funds [D.I. 1967]	Trusts [D.I. 1971]			

[2] In addition to the Funds, this objection was joined by: Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Healthcare Opportunities Fund, Highland Merger Arbitrate Fund, Highland Opportunistic Credit Fund, Highland Small-Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Real Estate Strategies Fund, NexPoint Real Estate Finance Inc., NexPoint Real Estate Capital, LLC, NexPoint Residential Trust, Inc., NexPoint Hospitality Trust, NexPoint Real Estate Partners, LLC, NexPoint Multifamily Capital Trust, Inc., VineBrook Homes Trust, Inc., NexPoint Real Estate Advisors, L.P., NexPoint Real Estate Advisors II, L.P., NexPoint Real Estate Advisors III, L.P., NexPoint Real Estate Advisors IV, L.P., NexPoint Real Estate Advisors V, L.P., NexPoint Real Estate Advisors VI, L.P., NexPoint Real Estate Advisors VII, L.P., and NexPoint Real Estate Advisors VIII, L.P. [D.I. 1677].

3/18/21 ***James Dondero, Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., The Dugaboy Investment Trust, The Get Good Trust, and NexPoint Real Estate Partners, LLC, f/k/a HCRE Partners, LLC, a Delaware Limited Liability Company's Motion to Recuse Pursuant to 28 U.S.C. § 455*** **[D.I. 2060]**

Movants:	Dondero Advisors Trusts HCRE	Dondero argued that Judge Jernigan should recuse herself as her rulings against him and his related entities were evidence of her bias.	Judge Jernigan denied the motion without briefing from any other party on March 23, 2021 [D.I. 2083].	The Movants appealed [D.I. 2149].

Highland Capital Management, L.P. v. James D. Dondero, Adv. Proc. No. 20-03190-sgj (Bankr. N.D. Tex.)

12/7/20 ***Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero*** **[D.I. 2]**

Movant:	Debtor	The Debtor commenced an adversary proceeding seeking an injunction against Dondero. Dondero actively interfered with the management of the estate. Seery had instructed Debtor employees to sell certain securities on behalf of the CLOs. Dondero disagreed with Seery's direction and intervened to prevent these sales from being executed. Dondero also threatened Seery via text message and sent threatening emails to other Debtor employees.	A TRO was entered on December 10 [D.I. 10], which prohibited Dondero from, among other things, interfering with the Debtor's estate and communicating with Debtor employees unless it related to the Shared Services Agreements. A preliminary injunction was entered on January 12 after an exhaustive evidentiary hearing [D.I. 59].	Dondero appealed to the District Court, which declined to hear the interlocutory appeal. Dondero is seeking a writ of mandamus from the Fifth Circuit.

1/7/21 ***Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO*** **[D.I. 48]**

Movant:	Debtor	In late December, the Debtor discovered that Dondero had violated the TRO in multiple ways, including by destroying his cell phone, his text messages, and conspiring with the Debtor's then general counsel and assistant general counsel[3] to coordinate offensive litigation against the Debtor. The hearing on this matter was delayed and there was litigation on evidentiary issues, among other things. An extensive evidentiary hearing was held on March 22.	The Court has this matter under advisement and is expected to rule shortly.	N/A

[3] As a result of this conduct, among other things, the Debtor terminated its general counsel and assistant general counsel for cause on January 5, 2021.

***Highland Capital Management, L.P. v. Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Highland Income Fund, NexPoint Strategic Opportunities Fund, NexPoint Capital, Inc., and CLO Holdco, Ltd.*, Adv. Proc. No. 21-03000-sgj (Bankr. N.D. Tex.)**

1/6/21 ***Plaintiff's Emergency Motion for a Temporary Restraining Order and Preliminary Injunction Against Certain Entities Owned and/or Controlled by Mr. James Dondero* [D.I. 2]**

Movant:	Debtor	In late December, the Debtor received a number of threatening letters from the Funds, the Advisors, and CLO Holdco regarding the Debtor's management of the CLOs. These letters reiterated the arguments made by these parties in their motion filed on December 8, which the Court concluded were "frivolous." The relief requested by the Debtor was necessary to prevent the Funds, Advisors, and CLO Holdco's improper interference in the Debtor's management of its estate.	The parties agreed to the entry of a temporary restraining order on January 13 [D.I. 20]. A hearing on a preliminary injunction began on January 26 and was continued to May 7. The TRO was further extended with the parties' consent [D.I. 64]. The Debtor reached an agreement with CLO Holdco and dismissed CLO Holdco from the adversary proceeding.	N/A

***Highland Capital Management, L.P. v. Highland Capital Management Fund Advisors, L.P. and NexPoint Advisors, L.P.*, Adv. Proc. No. 21-03010-sgj (Bankr. N.D. Tex.)**

2/17/21 ***Debtor's Emergency Motion for a Mandatory Injunction Requiring the Advisors to Adopt and Implement a Plan for the Transition of Services by February 28, 2021* [D.I. 2]**

Movant:	Debtor	The Debtor's Plan called for a substantial reduction in its work force. As part of this process, the Debtor terminated the Shared Services Agreements and began negotiating a transition plan with the Advisors that would enable them to continue providing services to the retail funds they managed without interruption. The Debtor was led to believe that without the Debtor's assistance the Advisors would not be able to provide services to their retail funds, and, although the Debtor had proceed appropriately, the Debtor was concerned it would be brought into any action brought by the SEC against the Advisors if they could not service the funds. The Debtor brought this action to force the Advisors to formulate a transition plan and to avoid exposure to the SEC, among others.	At a daylong hearing, the Advisors testified that they had a transition plan in place. An order was entered on February 24 [D.I. 25] making factual findings and ruling that the action was moot.	N/A

***Highland Capital Management, L.P. v. James Dondero*, Adv. Proc. No. 21-03003-sgj (Bankr. N.D. Tex.)**

1/22/21 ***Complaint for (i) Breach of Contract and (ii) Turnover of Property of the Debtor's Estate* [D.I. 1]**

Movant:	Debtor	Dondero borrowed $8.825 million from Debtor pursuant to a demand note. Dondero did not pay when the note was called and the Debtor was forced to file an adversary.	The parties are currently conducting discovery.	N/A

4/15/21 ***James Dondero's Motion and Memorandum of Law in Support to Withdraw the Reference* [D.I. 21]**

Movant:	Dondero	Three months after the complaint was filed Dondero filed a motion to withdraw the bankruptcy reference and a motion to stay the adversary pending resolution of his motion [D.I. 22].	The Debtor believes this motion is a delay tactic and will respond appropriately.	N/A

***Highland Capital Management, L.P. v. Highland Capital Management Fund Advisors, L.P.*, Adv. Proc. No. 21-03004-sgj (Bankr. N.D. Tex.)**

1/22/21 ***Complaint for (i) Breach of Contract and (ii) Turnover of Property of the Debtor's Estate* [D.I. 1]**

Movant:	Debtor	HCMFA borrowed $7.4 million from Debtor pursuant to a demand note. Dondero did not pay when the note was called and the Debtor was forced to file an adversary.	The parties are currently conducting discovery.	N/A

4/13/21 ***Defendants Motion to Withdraw the Reference* [D.I. 20]**

Movant:	HCMFA	Three months after the complaint was filed HCMFA filed a motion to withdraw the bankruptcy reference.	The Debtor believes this motion is a delay tactic and will respond appropriately.	N/A

***Highland Capital Management, L.P. v. NexPoint Advisors, L.P.*, Adv. Proc. No. 21-03005-sgj (Bankr. N.D. Tex.)**

1/22/21 ***Complaint for (i) Breach of Contract and (ii) Turnover of Property of the Debtor's Estate* [D.I. 1]**

Movant:	Debtor	NPA borrowed approximately $30.75 million under an installment note. NPA did not pay the note when and the Debtor was forced to file an adversary.	The parties are currently conducting discovery.	N/A

4/13/21 ***Defendants Motion to Withdraw the Reference* [D.I. 19]**

Movant:	NPA	Three months after the complaint was filed HCMFA filed a motion to withdraw the bankruptcy reference.	The Debtor believes this motion is a delay tactic and will respond appropriately.	N/A

***Highland Capital Management, L.P. v. Highland Capital Management Services, Inc.*, Adv. Proc. No. 21-03006-sgj (Bankr. N.D. Tex.)**

1/22/21 ***Complaint for (i) Breach of Contract and (ii) Turnover of Property of the Debtor's Estate* [D.I. 1]**

Movant:	Debtor	Highland Capital Management Services, Inc. ("HCMS"), borrowed $900,000 in demand notes and approximately $20.5 million in installment notes. HCMS did not pay the notes when due and the Debtor was forced to file an adversary.	The parties are currently conducting discovery.	N/A

***Highland Capital Management, L.P. v. HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC)*, Adv. Proc. No. 21-03007-sgj (Bankr. N.D. Tex.)**

1/22/21 ***Complaint for (i) Breach of Contract and (ii) Turnover of Property of the Debtor's Estate* [D.I. 1]**

Movant:	Debtor	HCRE borrowed $4.25 million in demand notes and approximately $6.05 million in installment notes. HCRE did not pay the notes when due and the Debtor was forced to file an adversary.	The parties are currently conducting discovery.	N/A

***Charitable DAF Fund, L.P., and CLO Holdco, Ltd., v. Highland Capital Management, L.P., Highland HCF Advisor, Ltd., and Highland CLO Funding, Ltd.*, Case No. Pending (N.D. Tex. April 12, 2021)**

4/12/21 ***Original Complaint* [D.I. 1]**

Movants:	DAF CLO Holdco	Movants allege that the Debtor and Seery violated SEC rules, breached fiduciary duties, engaged in self-dealing, and violated RICO in connection with its settlement with the HarbourVest Entities. The Movants brought this complaint despite CLO Holdco having objected to the HarbourVest settlement; never raised this issue; and withdrawn its objection. The Debtor believes the complaint is frivolous and represents a collateral attack on the order approving the HarbourVest settlement. The Debtor will take all appropriate actions.	The Complaint was recently filed and is currently in litigation.	N/A

APPENDIX 13

EXHIBIT R

CLAIMANT TRUST AGREEMENT

This Claimant Trust Agreement, effective as of _____ , 2021 (as may be amended, supplemented, or otherwise modified in accordance with the terms hereof, this "Agreement"), by and among Highland Capital Management, L.P. (as debtor and debtor-in-possession, the "Debtor"), as settlor, and James P. Seery, Jr., as trustee (the "Claimant Trustee"), and [____] as Delaware trustee (the "Delaware Trustee," and together with the Debtor and the Claimant Trustee, the "Parties") for the benefit of the Claimant Trust Beneficiaries entitled to the Claimant Trust Assets.

RECITALS

WHEREAS, on October 16, 2019, Highland Capital Management, L.P. filed with the United States Bankruptcy Court for the District of Delaware, a voluntary petition for relief under chapter 11 of the Bankruptcy Code, which case was subsequently transferred to the Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Bankruptcy Court") and captioned *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj11 (the "Chapter 11 Case");

WHEREAS, on November 24, 2020, the Debtor filed the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1472] (as may be amended, supplemented, or otherwise modified from time to time, the "Plan"),[1] which was confirmed by the Bankruptcy Court on _____, 2021, pursuant to the Findings of Fact and Order Confirming Plan of Reorganization for the Debtor [Docket No. •] (the "Confirmation Order");

WHEREAS, this Agreement, including all exhibits hereto, is the "Claimant Trust Agreement" described in the Plan and shall be executed on or before the Effective Date in order to facilitate implementation of the Plan; and

WHEREAS, pursuant to the Plan and Confirmation Order, the Claimant Trust Assets are to be transferred to the Claimant Trust (each as defined herein) created and evidenced by this Agreement so that (i) the Claimant Trust Assets can be held in a trust for the benefit of the Claimant Trust Beneficiaries entitled thereto in accordance with Treasury Regulation Section 301.7701-4(d) for the objectives and purposes set forth herein and in the Plan; (ii) the Claimant Trust Assets can be monetized; (iii) the Claimant Trust will transfer Estate Claims to the Litigation Sub-Trust to be prosecuted, settled, abandoned, or resolved as may be determined by the Litigation Trustee in accordance with the terms of the Litigation Sub-Trust Agreement, for the benefit of the Claimant Trust; (iv) proceeds of the Claimant Trust Assets, including Estate Claims, may be distributed to the Claimant Trust Beneficiaries[2] in accordance with the Plan; (v) the Claimant Trustee can resolve Disputed Claims as set forth herein and in the Plan; and

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[1] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Plan.

[2] For the avoidance of doubt, and as set forth in the Plan, Holders of Class A Limited Partnership Interests and Class B/C Limited Partnership Interests will be Claimant Trust Beneficiaries only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent applicable, post-petition interest in accordance with the terms and conditions set forth herein and in the Plan.

(vi) administrative services relating to the activities of the Claimant Trust and relating to the implementation of the Plan can be performed by the Claimant Trustee.

DECLARATION OF TRUST

NOW, THEREFORE, in order to declare the terms and conditions hereof, and in consideration of the premises and mutual agreements herein contained, the confirmation of the Plan and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Debtor, the Claimant Trustee, and the Delaware Trustee have executed this Agreement for the benefit of the Claimant Trust Beneficiaries entitled to share in the Claimant Trust Assets and, at the direction of such Claimant Trust Beneficiaries as provided for in the Plan.

TO HAVE AND TO HOLD unto the Claimant Trustee and his successors or assigns in trust, under and subject to the terms and conditions set forth herein and for the benefit of the Claimant Trust Beneficiaries, and for the performance of and compliance with the terms hereof and of the Plan; provided, however, that upon termination of the Claimant Trust in accordance with Article IX hereof, this Claimant Trust Agreement shall cease, terminate, and be of no further force and effect, unless otherwise specifically provided for herein.

IT IS FURTHER COVENANTED AND DECLARED that the Claimant Trust Assets are to be strictly held and applied by the Claimant Trustee subject to the specific terms set forth below.

ARTICLE I.
DEFINITION AND TERMS

1.1 Certain Definitions. Unless the context shall otherwise require and except as contained in this Section 1.1 or as otherwise defined herein, the capitalized terms used herein shall have the respective meanings assigned thereto in the "Definitions," Section 1.1 of the Plan or if not defined therein, shall have the meanings assigned thereto in the applicable Section of the Plan. For all purposes of this Agreement, the following terms shall have the following meanings:

(a) "Acis" means collectively, Acis Capital Management, L.P. and Acis Capital Management GP, LLP.

(b) "Bankruptcy Court" has the meaning set forth in the Recitals hereof.

(c) "Cause" means (i) a Person's willful failure to perform his material duties hereunder (which material duties shall include, without limitation, with respect to a Member, or to the extent applicable, the Claimant Trustee, regular attendance at regularly scheduled meetings of the Oversight Board), which is not remedied within 30 days of notice; (ii) a Person's commission of an act of fraud, theft, or embezzlement during the performance of his or her duties hereunder; (iii) a Person's conviction of a felony (other than a felony that does not involve fraud, theft, embezzlement, or jail time) with all appeals having been exhausted or appeal periods lapsed; or (iv) a Person's gross negligence, bad faith, willful misconduct, or knowing violation of law in the performance of his or her duties hereunder.

(d) "Claimant Trust Agreement" means this Agreement.

(e) "Claimant Trustee" means James P. Seery, Jr., as the initial "Claimant Trustee" hereunder and as defined in the Plan, and any successor Claimant Trustee that may be appointed pursuant to the terms of this Agreement.

(f) "Claimant Trust" means the "Highland Claimant Trust" established in accordance with the Delaware Statutory Trust Act and Treasury Regulation Section 301.7701-4(d) pursuant to this Agreement.

(g) "Claimant Trust Assets" means (i) other than the Reorganized Debtor Assets (which are expressly excluded from this definition), all other Assets of the Estate, including, but not limited to, all Causes of Action, Available Cash, any proceeds realized or received from such Assets, all rights of setoff, recoupment, and other defenses with respect, relating to, or arising from such Assets, (ii) any Assets transferred by the Reorganized Debtor to the Claimant Trust on or after the Effective Date, (iii) the limited partnership interests in the Reorganized Debtor, and (iv) the ownership interests in New GP LLC. For the avoidance of doubt, any Causes of Action that, for any reason, are not capable of being transferred to the Claimant Trust shall constitute Reorganized Debtor Assets.

(h) "Claimant Trust Beneficiaries" means the Holders of Allowed General Unsecured Claims, Holders of Allowed Subordinated Claims, and, only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent applicable, post-petition interest at the federal judgment rate in accordance with the terms and conditions set forth herein, Holders of Allowed Class B/C Limited Partnership Interests, and Holders of Allowed Class A Limited Partnership Interests.

(i) "Claimant Trust Expense Cash Reserve" means $[•] million in Cash to be funded pursuant to the Plan into a bank account of the Claimant Trust on or before the Effective Date for the purpose of paying Claimant Trust Expenses in accordance herewith.

(j) "Claimant Trust Expenses" means the costs, expenses, liabilities and obligations incurred by the Claimant Trust and/or the Claimant Trustee in administering and conducting the affairs of the Claimant Trust, and otherwise carrying out the terms of the Claimant Trust and the Plan on behalf of the Claimant Trust, including without any limitation, any taxes owed by the Claimant Trust, and the fees and expenses of the Claimant Trustee and professional persons retained by the Claimant Trust or Claimant Trustee in accordance with this Agreement.

(k) "Committee Member" means a Member who is/was also a member of the Creditors' Committee.

(l) "Conflicted Member" has the meaning set forth in Section 4.6(c) hereof.

(m) "Contingent Trust Interests" means the contingent interests in the Claimant Trust to be distributed to Holders of Class A Limited Partnership Interests and Class B/C Limited Partnership Interests in accordance with the Plan.

(n) "Creditors' Committee" means the Official Committee of Unsecured Creditors appointed pursuant to section 1102 of the Bankruptcy Code in the Chapter 11 Case, comprised of Acis, Meta-e Discovery, the Redeemer Committee and UBS.

(o) "Delaware Statutory Trust Act" means the Delaware Statutory Trust Act 12 Del C. §3801, et seq. as amended from time to time.

(p) "Delaware Trustee" has the meaning set forth in the introduction hereof.

(q) "Disability" means as a result of the Claimant Trustee's or a Member's incapacity due to physical or mental illness as determined by an accredited physician or psychologist, as applicable, selected by the Claimant Trustee or the Member, as applicable, the Claimant Trustee or such Member has been substantially unable to perform his or her duties hereunder for three (3) consecutive months or for an aggregate of 180 days during any period of twelve (12) consecutive months.

(r) "Disinterested Members" has the meaning set forth in Section 4.1 hereof.

(s) "Disputed Claims Reserve" means the reserve account to be opened by the Claimant Trust on or after the Effective Date and funded in an initial amount determined by the Claimant Trustee [(in a manner consistent with the Plan and with the consent of a simple majority of the Oversight Board)] to be sufficient to pay Disputed Claims under the Plan.

(t) "Employees" means the employees of the Debtor set forth in the Plan Supplement.

(u) "Employee Claims" means any General Unsecured Claim held by an Employee other than the Claims of the Senior Employees subject to stipulations (provided such stipulations are executed by any such Senior Employee of the Debtor prior to the Effective Date).

(v) "Estate Claims" has the meaning given to it in Exhibit A to the *Notice of Final Term Sheet* [Docket No. 354].

(w) "Equity Trust Interests" has the meaning given to it in Section 5.1(c) hereof.

(x) "Exchange Act" means the Securities Exchange Act of 1934, as amended.

(y) "General Unsecured Claim Trust Interests" means interests in the Claimant Trust to be distributed to Holders of Allowed Class 8 General Unsecured Claims (including Disputed General Unsecured Claims that are subsequently Allowed) in accordance with the Plan.

(z) "GUC Beneficiaries" means the Claimant Trust Beneficiaries who hold General Unsecured Claim Trust Interests.

(aa) "GUC Payment Certification" has the meaning given to it in Section 5.1(c) hereof.

(bb) "HarbourVest" means, collectively, HarbourVest 2017 Global Fund, L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment, L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners, L.P.

(cc) "Investment Advisers Act" means the Investment Advisers Act of 1940, as amended.

(dd) "Investment Company Act" means the Investment Company Act of 1940, as amended.

(ee) "Litigation Sub-Trust" means the sub-trust created pursuant to the Litigation Sub-Trust Agreement, which shall hold the Claimant Trust Assets that are Estate Claims and investigate, litigate, and/or settle the Estate Claims for the benefit of the Claimant Trust.

(ff) "Litigation Sub-Trust Agreement" means the litigation sub-trust agreement to be entered into by and between the Claimant Trustee and Litigation Trustee establishing and setting forth the terms and conditions of the Litigation Sub-Trust and governing the rights and responsibilities of the Litigation Trustee.

(gg) "Litigation Trustee" means Marc S. Kirschner, and any successor Litigation Trustee that may be appointed pursuant to the terms of the Litigation Sub-Trust Agreement, who shall be responsible for investigating, litigating, and settling the Estate Claims for the benefit of the Claimant Trust in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement.

(hh) "Managed Funds" means Highland Multi-Strategy Credit Fund, L.P., Highland Restoration Capital Partners, L.P., and any other investment vehicle managed by the Debtor pursuant to an Executory Contract assumed pursuant to the Plan; *provided, however,* that the Highland Select Equity Fund, L.P. (and its direct and indirect subsidiaries) will not be considered a Managed Fund for purposes hereof.

(ii) "Material Claims" means the Claims asserted by UBS, Patrick Hagaman Daugherty, Integrated Financial Associates, Inc., and the Employees.

(jj) "Member" means a Person that is member of the Oversight Board.

(kk) "New GP LLC" means the general partner of the Reorganized Debtor.

(ll) "Oversight Board" means the board comprised of five (5) Members established pursuant to the Plan and Article III of this Agreement to oversee the Claimant Trustee's performance of his duties and otherwise serve the functions set forth in this Agreement and those of the "Claimant Trust Oversight Committee" described in the Plan. Subject to the terms of this Agreement, the initial Members of the Oversight Board shall be: (i) Eric Felton, as representative of the Redeemer Committee; (ii) Josh Terry, as representative of Acis; (iii) Elizabeth Kozlowski, as representative of UBS; (iv) Paul McVoy, as representative of Meta-e Discovery; and (v) David Pauker.

(mm) "Plan" has the meaning set forth in the Recitals hereof.

(nn) "Privileges" means the Debtor's rights, title and interests in and to any privilege or immunity attaching to any documents or communications (whether written or oral) associated with any of the Estate Claims or Employee Claims, including, without limitation, to, attorney-client privilege and work-product privilege as defined in Rule 502(g) of the Federal Rules of Evidence; provided, however, that "Privileges" shall not include the work-product privilege of any non-Employee attorney or attorneys that has not been previously shared with the Debtor or any of its employees and the work-product privilege shall remain with the non-Employee attorney or attorneys who created such work product so long as it has not been previously shared with the Debtor or any of its employees, or otherwise waived.

(oo) "PSZJ" means Pachulski Stang Ziehl & Jones LLP.

(pp) "Redeemer Committee" means the Redeemer Committee of the Highland Crusader Fund.

(qq) "Registrar" has the meaning given to it in Section 5.3(a) hereof.

(rr) "Reorganized Debtor Assets" means any limited and general partnership interests held by the Debtor, the management of the Managed Funds and those Causes of Action (including, without limitation, claims for breach of fiduciary duty), that, for any reason, are not capable of being transferred to the Claimant Trust. For the avoidance of doubt, "Reorganized Debtor Assets" includes any partnership interests or shares of Managed Funds held by the Debtor but does not include the underlying portfolio assets held by the Managed Funds.

(ss) "Securities Act" means the Securities Act of 1933, as amended.

(tt) "Subordinated Beneficiaries" means the Claimant Trust Beneficiaries who hold Subordinated Claim Trust Interests.

(uu) "Subordinated Claim Trust Interests" means the subordinated interests in the Claimant Trust to be distributed to Holders of Allowed Class 9 Subordinated Claims in accordance with the Plan.

(vv) "TIA" means the Trust Indenture Act of 1939, as amended.

(ww) "Trust Interests" means collectively the General Unsecured Claim Trust Interests, Subordinated Claim Trust Interests, and Equity Trust Interests.

(xx) "Trust Register" has the meaning given to it in Section 5.3(b) hereof.

(yy) "Trustees" means collectively the Claimant Trustee and Delaware Trustee.

(zz) "UBS" means collectively UBS Securities LLC and UBS AG London Branch.

(aaa) "WilmerHale" Wilmer Cutler Pickering Hale & Dorr LLP.

1.2 General Construction. As used in this Agreement, the masculine, feminine and neuter genders, and the plural and singular numbers shall be deemed to include the others in all cases where they would apply. "Includes" and "including" are not limiting and "or" is not exclusive. References to "Articles," "Sections" and other subdivisions, unless referring specifically to the Plan or provisions of the Bankruptcy Code, the Bankruptcy Rules, or other law, statute or regulation, refer to the corresponding Articles, Sections and other subdivisions of this Agreement, and the words "herein," "hereafter" and words of similar import refer to this Agreement as a whole and not to any particular Article, Section, or subdivision of this Agreement. Amounts expressed in dollars or following the symbol "$" shall be deemed to be in United States dollars. References to agreements or instruments shall be deemed to refer to such agreements or instruments as the same may be amended, supplemented, or otherwise modified in accordance with the terms thereof.

1.3 Incorporation of the Plan. The Plan is hereby incorporated into this Agreement and made a part hereof by this reference.

ARTICLE II.
ESTABLISHMENT OF THE CLAIMANT TRUST

2.1 Creation of Name of Trust.

(a) The Claimant Trust is hereby created as a statutory trust under the Delaware Statutory Trust Act and shall be called the "Highland Claimant Trust." The Claimant Trustee shall be empowered to conduct all business and hold all property constituting the Claimant Trust Assets in such name in accordance with the terms and conditions set forth herein.

(b) The Trustees shall cause to be executed and filed in the office of the Secretary of State of the State of Delaware the Certificate of Trust and agree to execute, acting solely in their capacity as Trustees, such certificates as may from time to time be required under the Delaware Statutory Trust Act or any other Delaware law.

2.2 Objectives.

(a) The Claimant Trust is established for the purpose of satisfying Allowed General Unsecured Claims and Allowed Subordinated Claims (and only to the extent provided herein, Allowed Class A Limited Partnership Interests and Class B/C Limited Partnership Interests) under the Plan, by monetizing the Claimant Trust Assets transferred to it and making distributions to the Claimant Trust Beneficiaries. The Claimant Trust shall not continue or engage in any trade or business except to the extent reasonably necessary to monetize and distribute the Claimant Trust Assets consistent with this Agreement and the Plan and act as sole member and manager of New GP LLC. The Claimant Trust shall provide a mechanism for (i) the monetization of the Claimant Trust Assets and (ii) the distribution of the proceeds thereof, net of all claims, expenses, charges, liabilities, and obligations of the Claimant Trust, to the Claimant Trust Beneficiaries in accordance with the Plan. In furtherance of this distribution objective, the Claimant Trust will, from time to time, prosecute and resolve objections to certain Claims and Interests as provided herein and in the Plan.

(b) It is intended that the Claimant Trust be classified for federal income tax purposes as a "liquidating trust" within the meaning of section 301.7701-4(d) of the Treasury Regulations. In furtherance of this objective, the Claimant Trustee shall, in his business judgment, make continuing best efforts to (i) dispose of or monetize the Claimant Trust Assets and resolve Claims, (ii) make timely distributions, and (iii) not unduly prolong the duration of the Claimant Trust, in each case in accordance with this Agreement.

2.3 Nature and Purposes of the Claimant Trust.

(a) The Claimant Trust is organized and established as a trust for the purpose of monetizing the Claimant Trust Assets and making distributions to Claimant Trust Beneficiaries in a manner consistent with "liquidating trust" status under Treasury Regulation Section 301.7701-4(d). The Claimant Trust shall retain all rights to commence and pursue all Causes of Action of the Debtor other than (i) Estate Claims, which shall be assigned to and commenced and pursued by the Litigation Trustee pursuant to the terms of the Litigation Sub-Trust Agreement, and (ii) Causes of Action constituting Reorganized Debtor Assets, if any, which shall be commenced and pursued by the Reorganized Debtor at the direction of the Claimant Trust as sole member of New GP LLC pursuant to the terms of the Reorganized Limited Partnership Agreement. The Claimant Trust and Claimant Trustee shall have and retain, and, as applicable, assign and transfer to the Litigation Sub-Trust and Litigation Trustee, any and all rights, defenses, cross-claims and counter-claims held by the Debtor with respect to any Claim as of the Petition Date. On and after the date hereof, in accordance with and subject to the Plan, the Claimant Trustee shall have the authority to (i) compromise, settle or otherwise resolve, or withdraw any objections to Claims against the Debtor, provided, however, the Claimant Trustee shall only have the authority to compromise or settle any Employee Claim with the unanimous consent of the Oversight Board and in the absence of unanimous consent, any such Employee Claim shall be transferred to the Litigation Sub-Trust and be litigated, comprised, settled, or otherwise resolved exclusively by the Litigation Trustee and (ii) compromise, settle, or otherwise resolve any Disputed Claims without approval of the Bankruptcy Court, which authority may be shared with or transferred to the Litigation Trustee in accordance with the terms of the Litigation Sub-Trust Agreement. For the avoidance of doubt, the Claimant Trust,

pursuant to section 1123(b)(3)(B) of the Bankruptcy Code and applicable state trust law, is appointed as the successor-in-interest to, and representative of, the Debtor and its Estate for the retention, enforcement, settlement, and adjustment of all Claims other than Estate Claims, the Employee Claims, and those Claims constituting Reorganized Debtor Assets.

(b) The Claimant Trust shall be administered by the Claimant Trustee, in accordance with this Agreement, for the following purposes:

(i) to manage and monetize the Claimant Trust Assets in an expeditious but orderly manner with a view towards maximizing value within a reasonable time period;

(ii) to litigate and settle Claims in Class 8 and Class 9 (other than the Employee Claims, which shall be litigated and/or settled by the Litigation Trustee if the Oversight Board does not unanimously approve of any proposed settlement of such Employee Claim by the Claimant Trustee) and any of the Causes of Action included in the Claimant Trust Assets (including any cross-claims and counter-claims); provided, however, that Estate Claims transferred to the Litigation Sub-Trust shall be litigated and settled by the Litigation Trustee pursuant to the terms of the Litigation Sub-Trust Agreement;

(iii) to distribute net proceeds of the Claimant Trust Assets to the Claimant Trust Beneficiaries;

(iv) to distribute funds from the Disputed Claims Reserve to Holders of Trust Interests or to the Reorganized Debtor for distribution to Holders of Disputed Claims in each case in accordance with the Plan from time to time as any such Holder's Disputed Claim becomes an Allowed Claim under the Plan;

(v) to distribute funds to the Litigation Sub-Trust at the direction the Oversight Board;

(vi) to serve as the limited partner of, and to hold the limited partnership interests in, the Reorganized Debtor;

(vii) to serve as the sole member and manager of New GP LLC, the Reorganized Debtor's general partner;

(viii) to oversee the management and monetization of the Reorganized Debtor Assets pursuant to the terms of the Reorganized Limited Partnership Agreement, in its capacity as the sole member and manager of New GP LLC pursuant to the terms of the New GP LLC Documents, all with a view toward maximizing value in a reasonable time in a manner consistent with the Reorganized Debtor's fiduciary duties as investment adviser to the Managed Funds; and

(ix) to perform any other functions and take any other actions provided for or permitted by this Agreement and the Plan, and in any other agreement executed by the Claimant Trustee.

2.4 Transfer of Assets and Rights to the Claimant Trust; Litigation Sub-Trust.

(a) On the Effective Date, pursuant to the Plan, the Debtor shall irrevocably transfer, assign, and deliver, and shall be deemed to have transferred, assigned, and delivered, all Claimant Trust Assets and related Privileges held by the Debtor to the Claimant Trust free and clear of all Claims, Interests, Liens, and other encumbrances, and liabilities, except as provided in the Plan and this Agreement. To the extent certain assets comprising the Claimant Trust Assets, because of their nature or because such assets will accrue or become transferable subsequent to the Effective Date, and cannot be transferred to, vested in, and assumed by the Claimant Trust on such date, such assets shall be considered Reorganized Debtor Assets, which may be subsequently transferred to the Claimant Trust by the Reorganized Debtor consistent with the terms of the Reorganized Limited Partnership Agreement after such date.

(b) On or as soon as practicable after the Effective Date, the Claimant Trust shall irrevocably transfer, assign, and deliver, and shall be deemed to have transferred, assigned, and delivered, all Estate Claims and related Privileges held by the Claimant Trust to the Litigation Sub-Trust Trust free and clear of all Claims, Interests, Liens, and other encumbrances, and liabilities, except as provided in the Plan, this Agreement, and the Litigation Sub-Trust Agreement. Following the transfer of such Privileges, the Litigation Trustee shall have the power to waive the Privileges being so assigned and transferred.

(c) On or before the Effective Date, and continuing thereafter, the Debtor or Reorganized Debtor, as applicable, shall provide (i) for the Claimant Trustee's and Litigation Trustee's reasonable access to all records and information in the Debtor's and Reorganized Debtor's possession, custody or control, (ii) that all Privileges related to the Claimant Trust Assets shall transfer to and vest exclusively in the Claimant Trust (except for those Privileges that will be transferred and assigned to the Litigation Sub-Trust in respect of the Estate Claims), and (iii) subject to Section 3.12(c), the Debtor and Reorganized Debtor shall preserve all records and documents (including all electronic records or documents), including, but not limited to, the Debtor's file server, email server, email archiving system, master journal, SharePoint, Oracle E-Business Suite, Advent Geneva, Siepe database, Bloomberg chat data, and any backups of the foregoing, until such time as the Claimant Trustee, with the consent of the Oversight Board and, if pertaining to any of the Estate Claims, the Litigation Trustee, directs the Reorganized Debtor, as sole member of its general partner, that such records are no longer required to be preserved. For the purposes of transfer of documents, the Claimant Trust or Litigation Sub-Trust, as applicable, is an assignee and successor to the Debtor in respect of the Claimant Trust Assets and Estate Claims, respectively, and shall be treated as such in any review of confidentiality restrictions in requested documents.

(d) Until the Claimant Trust terminates pursuant to the terms hereof, legal title to the Claimant Trust Assets (other than Estate Claims) and all property contained therein shall be vested at all times in the Claimant Trust as a separate legal entity, except where applicable law in any jurisdiction requires title to any part of the Claimant Trust Assets to be vested in the Claimant Trustee, in which case title shall be deemed to be vested in the Claimant Trustee, solely in his capacity as Claimant Trustee. For purposes of such jurisdictions, the term Claimant Trust, as used herein, shall be read to mean the Claimant Trustee.

2.5 Principal Office. The principal office of the Claimant Trust shall be maintained by the Claimant Trustee at the following address:[_____].

2.6 Acceptance. The Claimant Trustee accepts the Claimant Trust imposed by this Agreement and agrees to observe and perform that Claimant Trust, on and subject to the terms and conditions set forth herein and in the Plan.

2.7 Further Assurances. The Debtor, Reorganized Debtor, and any successors thereof will, upon reasonable request of the Claimant Trustee, execute, acknowledge and deliver such further instruments and do such further acts as may be necessary or proper to transfer to the Claimant Trustee any portion of the Claimant Trust Assets intended to be conveyed hereby and in the Plan in the form and manner provided for hereby and in the Plan and to vest in the Claimant Trustee the powers, instruments or funds in trust hereunder.

2.8 Incidents of Ownership. The Claimant Trust Beneficiaries shall be the sole beneficiaries of the Claimant Trust and the Claimant Trustee shall retain only such incidents of ownership as are necessary to undertake the actions and transactions authorized herein.

ARTICLE III.
THE TRUSTEES

3.1 Role. In furtherance of and consistent with the purpose of the Claimant Trust, the Plan, and this Agreement, the Claimant Trustee, subject to the terms and conditions contained herein, in the Plan, and in the Confirmation Order, shall serve as Claimant Trustee with respect to the Claimant Trust Assets for the benefit of the Claimant Trust Beneficiaries and maintain, manage, and take action on behalf of the Claimant Trust.

3.2 Authority.

(a) In connection with the administration of the Claimant Trust, in addition to any and all of the powers enumerated elsewhere herein, the Claimant Trustee shall, in an expeditious but orderly manner, monetize the Claimant Trust Assets, make timely distributions and not unduly prolong the duration of the Claimant Trust. The Claimant Trustee shall have the power and authority and is authorized to perform any and all acts necessary and desirable to accomplish the purposes of this Agreement and the provisions of the Plan and the Confirmation Order relating to the Claimant Trust, within the bounds of this Agreement, the Plan, the Confirmation Order, and applicable law. The Claimant Trustee will monetize the Claimant Trust Assets with a view toward maximizing value in a reasonable time.

(b) The Claimant Trustee, subject to the limitations set forth in Section 3.3 of this Agreement shall have the right to prosecute, defend, compromise, adjust, arbitrate, abandon, estimate, or otherwise deal with and settle any and all Claims and Causes of Action that are part of the Claimant Trust Assets, other than the Estate Claims transferred to the Litigation Sub-Trust, as the Claimant Trustee determines is in the best interests of the Claimant Trust; provided, however, that if the Claimant Trustee proposes a settlement of an Employee Claim and does not obtain unanimous consent of the Oversight Board of such settlement, such Employee Claim shall be transferred to the Litigation Sub-Trust for the Litigation Trustee to litigate. To the extent that any action has been taken to prosecute, defend, compromise, adjust, arbitrate, abandon, or

otherwise deal with and settle any such Claims and Causes of Action prior to the Effective Date, on the Effective Date the Claimant Trustee shall be substituted for the Debtor in connection therewith in accordance with Rule 25 of the Federal Rules of Civil Procedure, made applicable by Rule 7025 of the Federal Rules of Bankruptcy Procedure, and the caption with respect to such pending action shall be changed to the following "[Claimant Trustee], not individually but solely as Claimant Trustee for the Claimant Trust, et al. v. [Defendant]".

(c) Subject in all cases to any limitations contained herein, in the Confirmation Order, or in the Plan, the Claimant Trustee shall have the power and authority to:

(i) solely as required by Section 2.4(c), hold legal title to any and all rights of the Claimant Trust and Beneficiaries in or arising from the Claimant Trust Assets, including collecting and receiving any and all money and other property belonging to the Claimant Trust and the right to vote or exercise any other right with respect to any claim or interest relating to the Claimant Trust Assets in any case under the Bankruptcy Code and receive any distribution with respect thereto;

(ii) open accounts for the Claimant Trust and make distributions of Claimant Trust Assets in accordance herewith;

(iii) as set forth in Section 3.11, exercise and perform the rights, powers, and duties held by the Debtor with respect to the Claimant Trust Assets (other than Estate Claims), including the authority under section 1123(b)(3) of the Bankruptcy Code, and shall be deemed to be acting as a representative of the Debtor's Estate with respect to the Claimant Trust Assets, including with respect to the sale, transfer, or other disposition of the Claimant Trust Assets;

(iv) settle or resolve any Claims in Class 8 and Class 9 other than the Material Claims and any Equity Interests;

(v) sell or otherwise monetize any publicly-traded asset for which there is a marketplace and any other assets (other than the Other Assets (as defined below)) valued less than or equal to $3,000,000 (over a thirty-day period);

(vi) upon the direction of the Oversight Board, fund the Litigation Sub-Trust on the Effective Date and as necessary thereafter;

(vii) exercise and perform the rights, powers, and duties arising from the Claimant Trust's role as sole member of New GP LLC, and the role of New GP LLC, as general partner of the Reorganized Debtor, including the management of the Managed Funds;

(viii) protect and enforce the rights to the Claimant Trust Assets by any method deemed appropriate, including by judicial proceedings or pursuant to any applicable bankruptcy, insolvency, moratorium or similar law and general principles of equity;

(ix) obtain reasonable insurance coverage with respect to any liabilities and obligations of the Trustees, Litigation Trustee, and the Members of the Oversight Board solely in their capacities as such, in the form of fiduciary liability insurance, a directors and

officers policy, an errors and omissions policy, or otherwise. The cost of any such insurance shall be a Claimant Trust Expense and paid by the Claimant Trustee from the Claimant Trust Assets;

(x) without further order of the Bankruptcy Court, but subject to the terms of this Agreement, employ various consultants, third-party service providers, and other professionals, including counsel, tax advisors, consultants, brokers, investment bankers, valuation counselors, and financial advisors, as the Claimant Trustee deems necessary to aid him in fulfilling his obligations under this Agreement; such consultants, third-party service providers, and other professionals shall be retained pursuant to whatever fee arrangement the Claimant Trustee deems appropriate, including contingency fee arrangements and any fees and expenses incurred by such professionals engaged by the Claimant Trustee shall be Claimant Trust Expenses and paid by the Claimant Trustee from the Claimant Trust Assets;

(xi) retain and approve compensation arrangements of an independent public accounting firm to perform such reviews and/or audits of the financial books and records of the Claimant Trust as may be required by this Agreement, the Plan, the Confirmation Order, and applicable laws and as may be reasonably and appropriate in Claimant Trustee's discretion. Subject to the foregoing, the Claimant Trustee may commit the Claimant Trust to, and shall pay, such independent public accounting firm reasonable compensation for services rendered and reasonable and documented out-of-pocket expenses incurred, and all such compensation and reimbursement shall be paid by the Claimant Trustee from Claimant Trust Assets;

(xii) prepare and file (A) tax returns for the Claimant Trust treating the Claimant Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a), (B) an election pursuant to Treasury Regulation 1.468B-9(c) to treat the Disputed Claims Reserve as a disputed ownership fund, in which case the Claimant Trustee will file federal income tax returns and pay taxes for the Disputed Claim Reserve as a separate taxable entity, or (C) any periodic or current reports that may be required under applicable law;

(xiii) prepare and send annually to the Beneficiaries, in accordance with the tax laws, a separate statement stating a Beneficiary's interest in the Claimant Trust and its share of the Claimant Trust's income, gain, loss, deduction or credit, and to instruct all such Beneficiaries to report such items on their federal tax returns;

(xiv) to the extent applicable, assert, enforce, release, or waive any attorney-client communication, attorney work product or other Privilege or defense on behalf of the Claimant Trust (including as to any Privilege that the Debtor held prior to the Effective Date), including to provide any information to insurance carriers that the Claimant Trustee deems necessary to utilize applicable insurance coverage for any Claim or Claims;

(xv) subject to Section 3.4, invest the proceeds of the Claimant Trust Assets and all income earned by the Claimant Trust, pending any distributions in short-term certificates of deposit, in banks or other savings institutions, or other temporary, liquid investments, such as Treasury bills;

(xvi) request any appropriate tax determination with respect to the Claimant Trust, including a determination pursuant to section 505 of the Bankruptcy Code;

(xvii) take or refrain from taking any and all actions the Claimant Trustee reasonably deems necessary for the continuation, protection, and maximization of the value of the Claimant Trust Assets consistent with purposes hereof;

(xviii) take all steps and execute all instruments and documents necessary to effectuate the purpose of the Claimant Trust and the activities contemplated herein and in the Confirmation Order and the Plan, and take all actions necessary to comply with the Confirmation Order, the Plan, and this Agreement and the obligations thereunder and hereunder;

(xix) exercise such other powers and authority as may be vested in or assumed by the Claimant Trustee by any Final Order;

(xx) evaluate and determine strategy with respect to the Claimant Trust Assets, and hold, pursue, prosecute, adjust, arbitrate, compromise, release, settle or abandon the Claimant Trust Assets on behalf of the Claimant Trust; and

(xxi) with respect to the Claimant Trust Beneficiaries, perform all duties and functions of the Distribution Agent as set forth in the Plan, including distributing Cash from the Disputed Claims Reserve, solely on account of Disputed Class 1 through Class 7 Claims that were Disputed as of the Effective Date, but become Allowed, to the Reorganization Debtor such that the Reorganized Debtor can satisfy its duties and functions as Distribution Agent with respect to Claims in Class 1 through Class 7 (the foregoing subparagraphs (i)-(xxi) being collectively, the "Authorized Acts").

(d) The Claimant Trustee and the Oversight Committee will enter into an agreement as soon as practicable after the Effective Date concerning the Claimant Trustee's authority with respect to certain other assets, including certain portfolio company assets (the "Other Assets").

(e) The Claimant Trustee has the power and authority to act as trustee of the Claimant Trust and perform the Authorized Acts through the date such Claimant Trustee resigns, is removed, or is otherwise unable to serve for any reason.

3.3 Limitation of Authority.

(a) Notwithstanding anything herein to the contrary, the Claimant Trust and the Claimant Trustee shall not (i) be authorized to engage in any trade or business, (ii) take any actions inconsistent with the management of the Claimant Trust Assets as are required or contemplated by applicable law, the Confirmation Order, the Plan, and this Agreement, (iii) take any action in contravention of the Confirmation Order, the Plan, or this Agreement, or (iv) cause New GP LLC to cause the Reorganized Debtor to take any action in contravention of the Plan, Plan Documents or the Confirmation Order.

(b) Notwithstanding anything herein to the contrary, and in no way limiting the terms of the Plan, the Claimant Trustee must receive the consent by vote of a simple majority

of the Oversight Board pursuant to the notice and quorum requirements set forth in Section 4.5 herein, in order to:

(i) terminate or extend the term of the Claimant Trust;

(ii) prosecute, litigate, settle or otherwise resolve any of the Material Claims;

(iii) except otherwise set forth herein, sell or otherwise monetize any assets that are not Other Assets, including Reorganized Debtor Assets (other than with respect to the Managed Funds), that are valued greater than $3,000,000 (over a thirty-day period);

(iv) except for cash distributions made in accordance with the terms of this Agreement, make any cash distributions to Claimant Trust Beneficiaries in accordance with Article IV of the Plan;

(v) except for any distributions made in accordance with the terms of this Agreement, make any distributions from the Disputed Claims Reserve to Holders of Disputed Claims after such time that such Holder's Claim becomes an Allowed Claim under the Plan;

(vi) reserve or retain any cash or cash equivalents in an amount reasonably necessary to meet claims and contingent liabilities (including Disputed Claims and any indemnification obligations that may arise under Section 8.2 of this Agreement), to maintain the value of the Claimant Trust Assets, or to fund ongoing operations and administration of the Litigation Sub-Trust;

(vii) borrow as may be necessary to fund activities of the Claimant Trust;

(viii) determine whether the conditions under Section 5.1(c) of this Agreement have been satisfied such that a certification should be filed with the Bankruptcy Court;

(ix) invest the Claimant Trust Assets, proceeds thereof, or any income earned by the Claimant Trust (for the avoidance of doubt, this shall not apply to investment decisions made by the Reorganized Debtor or its subsidiaries solely with respect to Managed Funds);

(x) change the compensation of the Claimant Trustee;

(xi) subject to ARTICLE X, make structural changes to the Claimant Trust or take other actions to minimize any tax on the Claimant Trust Assets; and

(xii) retain counsel, experts, advisors, or any other professionals; provided, however, the Claimant Trustee shall not be required to obtain the consent of the Oversight Board for the retention of (i) PSZJ, WilmerHale, or Development Specialists, Inc. and

(ii) any other professional whose expected fees and expenses are estimated at less than or equal to $200,000.

(c) [Reserved.]

3.4 Investment of Cash. The right and power of the Claimant Trustee to invest the Claimant Trust Assets, the proceeds thereof, or any income earned by the Claimant Trust, with majority approval of the Oversight Board, shall be limited to the right and power to invest in such Claimant Trust Assets only in Cash and U.S. Government securities as defined in section 29(a)(16) of the Investment Company Act; provided, however that (a) the scope of any such permissible investments shall be further limited to include only those investments that a "liquidating trust" within the meaning of Treasury Regulation Section 301.7701-4(d), may be permitted to hold, pursuant to the Treasury Regulations, or any modification in the Internal Revenue Service ("IRS") guidelines, whether set forth in IRS rulings, other IRS pronouncements, or otherwise, (b) the Claimant Trustee may retain any Claimant Trust Assets received that are not Cash only for so long as may be required for the prompt and orderly monetization or other disposition of such assets, and (c) the Claimant Trustee may expend the assets of the Claimant Trust (i) as reasonably necessary to meet contingent liabilities (including indemnification and similar obligations) and maintain the value of the assets of the Claimant Trust during the pendency of this Claimant Trust, (ii) to pay Claimant Trust Expenses (including, but not limited to, any taxes imposed on the Claimant Trust and reasonable attorneys' fees and expenses in connection with litigation), and (iii) to satisfy other liabilities incurred or assumed by the Claimant Trust (or to which the assets are otherwise subject) in accordance with the Plan or this Agreement).

3.5 Binding Nature of Actions. All actions taken and determinations made by the Claimant Trustee in accordance with the provisions of this Agreement shall be final and binding upon any and all Beneficiaries.

3.6 Term of Service. The Claimant Trustee shall serve as the Claimant Trustee for the duration of the Claimant Trust, subject to death, resignation or removal.

3.7 Resignation. The Claimant Trustee may resign as Claimant Trustee of the Claimant Trust by an instrument in writing delivered to the Bankruptcy Court and Oversight Board at least thirty (30) days before the proposed effective date of resignation. The Claimant Trustee shall continue to serve as Claimant Trustee after delivery of the Claimant Trustee's resignation until the proposed effective date of such resignation, unless the Claimant Trustee and a simple majority of the Oversight Board consent to an earlier effective date, which earlier effective date shall be no earlier than the date of appointment of a successor Claimant Trustee in accordance with Section 3.9 hereof becomes effective.

3.8 Removal.

(a) The Claimant Trustee may be removed by a simple majority vote of the Oversight Board for Cause for Cause immediately upon notice thereof, or without Cause upon 60 days' prior written notice. Upon the removal of the Claimant Trustee pursuant hereto, the Claimant Trustee will resign, or be deemed to have resigned, from any role or position he or she

may have at New GP LLC or the Reorganized Debtor effective upon the expiration of the foregoing 60 day period unless the Claimant Trustee and a simple majority of the Oversight Board agree otherwise.

(b) To the extent there is any dispute regarding the removal of a Claimant Trustee (including any dispute relating to any compensation or expense reimbursement due under this Agreement) the Bankruptcy Court shall retain jurisdiction to consider and adjudicate such dispute. Notwithstanding the foregoing, the Claimant Trustee will continue to serve as the Claimant Trustee after his removal until the earlier of (i) the time when a successor Claimant Trustee will become effective in accordance with Section 3.9 of this Agreement or (ii) such date as the Bankruptcy Court otherwise orders.

3.9 Appointment of Successor.

(a) Appointment of Successor. In the event of a vacancy by reason of the death or Disability (in the case of a Claimant Trustee that is a natural person), dissolution (in the case of a Claimant Trustee that is not a natural person), or removal of the Claimant Trustee, or prospective vacancy by reason of resignation, a successor Claimant Trustee shall be selected by a simple majority vote of the Oversight Board. If Members of the Oversight Board are unable to secure a majority vote, the Bankruptcy Court will determine the successor Claimant Trustee on motion of the Members. If a final decree has been entered closing the Chapter 11 Case, the Claimant Trustee may seek to reopen the Chapter 11 Case for the limited purpose of determining the successor Claimant Trustee, and the costs for such motion and costs related to re-opening the Chapter 11 Case shall be paid by the Claimant Trust. The successor Claimant Trustee shall be appointed as soon as practicable, but in any event no later than sixty (60) days after the occurrence of the vacancy or, in the case of resignation, on the effective date of the resignation of the then acting Claimant Trustee.

(b) Vesting or Rights in Successor Claimant Trustee. Every successor Claimant Trustee appointed hereunder shall execute, acknowledge, and deliver to the Claimant Trust, the exiting Claimant Trustee, the Oversight Board, and file with the Bankruptcy Court, an instrument accepting such appointment subject to the terms and provisions hereof. The successor Claimant Trustee, without any further act, deed, or conveyance shall become vested with all the rights, powers, trusts and duties of the exiting Claimant Trustee, except that the successor Claimant Trustee shall not be liable for the acts or omissions of the retiring Claimant Trustee. In no event shall the retiring Claimant Trustee be liable for the acts or omissions of the successor Claimant Trustee.

(c) Interim Claimant Trustee. During any period in which there is a vacancy in the position of Claimant Trustee, the Oversight Board shall appoint one of its Members to serve as the interim Claimant Trustee (the "Interim Trustee") until a successor Claimant Trustee is appointed pursuant to Section 3.9(a). The Interim Trustee shall be subject to all the terms and conditions applicable to a Claimant Trustee hereunder. Such Interim Trustee shall not be limited in any manner from exercising any rights or powers as a Member of the Oversight Board merely by such Person's appointment as Interim Trustee.

3.10 Continuance of Claimant Trust. The death, resignation, or removal of the Claimant Trustee shall not operate to terminate the Claimant Trust created by this Agreement or to revoke any existing agency (other than any agency of the Claimant Trustee as the Claimant Trustee) created pursuant to the terms of this Agreement or invalidate any action taken by the Claimant Trustee. In the event of the resignation or removal of the Claimant Trustee, the Claimant Trustee shall promptly (i) execute and deliver, by the effective date of resignation or removal, such documents, instruments, records, and other writings as may be reasonably requested by his successor to effect termination of the exiting Claimant Trustee's capacity under this Agreement and the conveyance of the Claimant Trust Assets then held by the exiting Claimant Trustee to the successor Claimant Trustee; (ii) deliver to the successor Claimant Trustee all non-privileged documents, instruments, records, and other writings relating to the Claimant Trust as may be in the possession or under the control of the exiting Claimant Trustee, provided, the exiting Claimant Trustee shall have the right to make and retain copies of such documents, instruments, records and other writings delivered to the successor Claimant Trustee and the cost of making such copies shall be a Claimant Trust Expense to be paid by the Claimant Trust; and (iii) otherwise assist and cooperate in effecting the assumption of the exiting Claimant Trustee's obligations and functions by his successor, provided the fees and expenses of such assistance and cooperation shall be paid to the exiting Claimant Trustee by the Claimant Trust. The exiting Claimant Trustee shall irrevocably appoint the successor Claimant Trustee as his attorney-in-fact and agent with full power of substitution for it and its name, place and stead to do any and all acts that such exiting Claimant Trustee is obligated to perform under this Section 3.10.

3.11 Claimant Trustee as "Estate Representative". The Claimant Trustee will be the exclusive trustee of the Claimant Trust Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code (the "Estate Representative") with respect to the Claimant Trust Assets, with all rights and powers attendant thereto, in addition to all rights and powers granted in the Plan and in this Agreement; provided that all rights and powers as representative of the Estate pursuant to section 1123(b)(3)(B) shall be transferred to the Litigation Trustee in respect of the Estate Claims and the Employee Claims. The Claimant Trustee will be the successor-in-interest to the Debtor with respect to any action pertaining to the Claimant Trust Assets, which was or could have been commenced by the Debtor prior to the Effective Date, except as otherwise provided in the Plan or Confirmation Order. All actions, claims, rights or interest constituting Claimant Trust Assets are preserved and retained and may be enforced, or assignable to the Litigation Sub-Trust, by the Claimant Trustee as an Estate Representative.

3.12 Books and Records.

(a) The Claimant Trustee shall maintain in respect of the Claimant Trust and the Claimant Trust Beneficiaries books and records reflecting Claimant Trust Assets in its possession and the income of the Claimant Trust and payment of expenses, liabilities, and claims against or assumed by the Claimant Trust in such detail and for such period of time as may be necessary to enable it to make full and proper accounting in respect thereof. Such books and records shall be maintained as reasonably necessary to facilitate compliance with the tax reporting requirements of the Claimant Trust and the requirements of Article VII herein. Except as otherwise provided herein, nothing in this Agreement requires the Claimant Trustee to file any

accounting or seek approval of any court with respect to the administration of the Claimant Trust, or as a condition for managing any payment or distribution out of the Claimant Trust Assets.

(b) The Claimant Trustee shall provide quarterly reporting to the Oversight Board and Claimant Trust Beneficiaries of (i) the status of the Claimant Trust Assets, (ii) the balance of Cash held by the Claimant Trust (including in each of the Claimant Trust Expense Reserve and Disputed Claim Reserve), (iii) the determination and any re-determination, as applicable, of the total amount allocated to the Disputed Claim Reserve, (iv) the status of Disputed Claims and any resolutions thereof, (v) the status of any litigation, including the pursuit of the Causes of Action, (vi) the Reorganized Debtor's performance, and (vii) operating expenses; provided, however, that the Claimant Trustee may, with respect to any Member of the Oversight Board or Claimant Trust Beneficiary, redact any portion of such reports that relate to such Entity's Claim or Equity Interest, as applicable and any reporting provided to Claimant Trust Beneficiaries may be subject to such Claimant Trust Beneficiary's agreement to maintain confidentiality with respect to any non-public information.

(c) The Claimant Trustee may dispose some or all of the books and records maintained by the Claimant Trustee at the later of (i) such time as the Claimant Trustee determines, with the unanimous consent of the Oversight Board, that the continued possession or maintenance of such books and records is no longer necessary for the benefit of the Claimant Trust, or (ii) upon the termination and winding up of the Claimant Trust under Article IX of this Agreement; provided, however, the Claimant Trustee shall not dispose of any books and records related to the Estate Claims or Employee Claims without the consent of the Litigation Trustee. Notwithstanding the foregoing, the Claimant Trustee shall cause the Reorganized Debtor and its subsidiaries to retain such books and records, and for such periods, as are required to be retained pursuant to Section 204-2 of the Investment Advisers Act or any other applicable laws, rules, or regulations.

3.13 Compensation and Reimbursement; Engagement of Professionals.

(a) Compensation and Expenses.

(i) Compensation. As compensation for any services rendered by the Claimant Trustee in connection with this Agreement, the Claimant Trustee shall receive compensation of $150,000 per month (the "Base Salary"). Within the first forty-five days following the Confirmation Date, the Claimant Trustee, on the one hand, and the Committee, if prior to the Effective Date, or the Oversight Board, if on or after the Effective Date, on the other, will negotiate go-forward compensation for the Claimant Trustee which will include (a) the Base Salary, (b) a success fee, and (c) severance.

(ii) Expense Reimbursements. All reasonable out-of-pocket expenses of the Claimant Trustee in the performance of his or her duties hereunder, shall be reimbursed as Claimant Trust Expenses paid by the Claimant Trust.

(b) Professionals.

(i) Engagement of Professionals. The Claimant Trustee shall engage professionals from time to time in conjunction with the services provided hereunder. The Claimant Trustee's engagement of such professionals shall be approved by a majority of the Oversight Board as set forth in Section 3.3(b) hereof.

(ii) Fees and Expenses of Professionals. The Claimant Trustee shall pay the reasonable fees and expenses of any retained professionals as Claimant Trust Expenses.

3.14 Reliance by Claimant Trustee. Except as otherwise provided herein, the Claimant Trustee may rely, and shall be fully protected in acting or refraining from acting, on any resolution, statement, certificate, instrument, opinion, report, notice, request, consent, order or other instrument or document that the Claimant Trustee has no reason to believe to be other than genuine and to have been signed or presented by the proper party or parties or, in the case of facsimiles, to have been sent by the proper party or parties, and the Claimant Trustee may conclusively rely as to the truth of the statements and correctness of the opinions or direction expressed therein. The Claimant Trustee may consult with counsel and other professionals, and any advice of such counsel or other professionals shall constitute full and complete authorization and protection in respect of any action taken or not taken by the Claimant Trustee in accordance therewith. The Claimant Trustee shall have the right at any time to seek instructions from the Bankruptcy Court, or any other court of competent jurisdiction concerning the Claimant Trust Assets, this Agreement, the Plan, or any other document executed in connection therewith, and any such instructions given shall be full and complete authorization in respect of any action taken or not taken by the Claimant Trustee in accordance therewith. The Claimant Trust shall have the right to seek Orders from the Bankruptcy Court as set forth in Article IX of the Plan.

3.15 Commingling of Claimant Trust Assets. The Claimant Trustee shall not commingle any of the Claimant Trust Assets with his or her own property or the property of any other Person.

3.16 Delaware Trustee. The Delaware Trustee shall have the power and authority, and is hereby authorized and empowered, to (i) accept legal process served on the Claimant Trust in the State of Delaware; and (ii) execute any certificates that are required to be executed under the Statutory Trust Act and file such certificates in the office of the Secretary of State of the State of Delaware, and take such action or refrain from taking such action under this Agreement as may be directed in a writing delivered to the Delaware Trustee by the Claimant Trustee; provided, however, that the Delaware Trustee shall not be required to take or to refrain from taking any such action if the Delaware Trustee shall believe, or shall have been advised by counsel, that such performance is likely to involve the Delaware Trustee in personal liability or to result in personal liability to the Delaware Trustee, or is contrary to the terms of this Agreement or of any document contemplated hereby to which the Claimant Trust or the Delaware Trustee is or becomes a party or is otherwise contrary to law. The Parties agree not to instruct the Delaware Trustee to take any action or to refrain from taking any action that is contrary to the terms of this Agreement or of any document contemplated hereby to which the Claimant Trust or the Delaware Trustee is or becomes party or that is otherwise contrary to law. Other than as

expressly provided for in this Agreement, the Delaware Trustee shall have no duty or power to take any action for or on behalf of the Claimant Trust.

ARTICLE IV.
THE OVERSIGHT BOARD

4.1 Oversight Board Members. The Oversight Board will be comprised of five (5) Members appointed to serve as the board of managers of the Claimant Trust, at least two (2) of which shall be disinterested Members selected by the Creditors' Committee (such disinterested members, the "Disinterested Members"). The initial Members of the Oversight Board will be representatives of Acis, the Redeemer Committee, Meta-e Discovery, UBS, and David Pauker. David Pauker and Paul McVoy, the representative of Meta-e Discovery, shall serve as the initial Disinterested Board Members; provided, however, that if the Plan is confirmed with the Convenience Class or any other convenience class supported by the Creditors' Committee, Meta-E Discovery and its representative will resign on the Effective Date or as soon as practicable thereafter and be replaced in accordance with Section 4.10 hereof..

4.2 Authority and Responsibilities.

(a) The Oversight Board shall, as and when requested by either of the Claimant Trustee and Litigation Trustee, or when the Members otherwise deem it to be appropriate or as is otherwise required under the Plan, the Confirmation Order, or this Agreement, consult with and advise the Claimant Trustee and Litigation Trustee as to the administration and management of the Claimant Trust and the Litigation Sub-Trust, as applicable, in accordance with the Plan, the Confirmation Order, this Agreement, and Litigation Sub-Trust Agreement (as applicable) and shall have the other responsibilities and powers as set forth herein. As set forth in the Plan, the Confirmation Order, and herein, the Oversight Board shall have the authority and responsibility to oversee, review, and govern the activities of the Claimant Trust, including the Litigation Sub-Trust, and the performance of the Claimant Trustee and Litigation Trustee, and shall have the authority to remove the Claimant Trustee in accordance with Section 3.7 hereof or the Litigation Trustee in accordance with the terms of the Litigation Sub-Trust Agreement; provided, however, that the Oversight Board may not direct either Claimant Trustee and Litigation Trustee to act inconsistently with their respective duties under this Agreement (including without limitation as set in Section 4.2(e) below), the Litigation Sub-Trust Agreement, the Plan, the Confirmation Order, or applicable law.

(b) The Oversight Board shall also (i) monitor and oversee the administration of the Claimant Trust and the Claimant Trustee's performance of his or her responsibilities under this Agreement, (ii) as more fully set forth in the Litigation Sub-Trust Agreement, approve funding to the Litigation Sub-Trust, monitor and oversee the administration of the Litigation Sub-Trust and the Litigation Trustee's performance of his responsibilities under the Litigation Sub-Trust Agreement, and (iii) perform such other tasks as are set forth herein, in the Litigation Sub-Trust Agreement, and in the Plan.

(c) The Claimant Trustee shall consult with and provide information to the Oversight Board in accordance with and pursuant to the terms of the Plan, the Confirmation Order, and this Agreement to enable the Oversight Board to meet its obligations hereunder.

(d) Notwithstanding any provision of this Agreement to the contrary, the Claimant Trustee shall not be required to (i) obtain the approval of any action by the Oversight Board to the extent that the Claimant Trustee, in good faith, reasonably determines, based on the advice of legal counsel, that such action is required to be taken by applicable law, the Plan, the Confirmation Order, or this Agreement or (ii) follow the directions of the Oversight Board to take any action the extent that the Claimant Trustee, in good faith, reasonably determines, based on the advice of legal counsel, that such action is prohibited by applicable law the Plan, the Confirmation Order, or this Agreement.

(e) Notwithstanding provision of this Agreement to the contrary, with respect to the activities of the Reorganized Debtor in its capacity as an investment adviser (and subsidiaries of the Reorganized Debtor that serve as general partner or in an equivalent capacity) to any Managed Funds, the Oversight Board shall not make investment decisions or otherwise participate in the investment decision making process relating to any such Managed Funds, nor shall the Oversight Board or any member thereof serve as a fiduciary to any such Managed Funds. It is agreed and understood that investment decisions made by the Reorganized Debtor (or its subsidiary entities) with respect to Managed Funds shall be made by the Claimant Trustee in his capacity as an officer of the Reorganized Debtor and New GP LLC and/or such persons who serve as investment personnel of the Reorganized Debtor from time to time, and shall be subject to the fiduciary duties applicable to such entities and persons as investment adviser to such Managed Funds.

4.3 Fiduciary Duties. The Oversight Board (and each Member in its capacity as such) shall have fiduciary duties to the Claimant Trust Beneficiaries consistent with the fiduciary duties that the members of the Creditors' Committee have to unsecured creditors and shall exercise its responsibilities accordingly; provided, however, that the Oversight Board shall not owe fiduciary obligations to any Holders of Class A Limited Partnership Interests or Class B/C Limited Partnership Interests until such Holders become Claimant Trust Beneficiaries in accordance with Section 5.1(c) hereof; provided, further, that the Oversight Board shall not owe fiduciary obligations to a Holder of an Equity Trust Interest if such Holder is named as a defendant in any of the Causes of Action, including Estate Claims, in their capacities as such, it being the intent that the Oversight Board's fiduciary duties are to maximize the value of the Claimant Trust Assets, including the Causes of Action. In all circumstances, the Oversight Board shall act in the best interests of the Claimant Trust Beneficiaries and in furtherance of the purpose of the Claimant Trust. Notwithstanding anything to the contrary contained in this Agreement, the foregoing shall not eliminate the implied contractual covenant of good faith and fair dealing.

4.4 Meetings of the Oversight Board. Meetings of the Oversight Board are to be held as necessary to ensure the operation of the Claimant Trust but in no event less often than quarterly. Special meetings of the Oversight Board may be held whenever and wherever called for by the Claimant Trustee or any Member; provided, however, that notice of any such meeting shall be duly given in writing no less than 48 hours prior to such meeting (such notice requirement being subject to any waiver by the Members in the minutes, if any, or other transcript, if any, of proceedings of the Oversight Board). Unless the Oversight Board decides otherwise (which decision shall rest in the reasonable discretion of the Oversight Board), the

Claimant Trustee, and each of the Claimant Trustee's designated advisors may, but are not required to, attend meetings of the Oversight Board.

4.5 Unanimous Written Consent. Any action required or permitted to be taken by the Oversight Board in a meeting may be taken without a meeting if the action is taken by unanimous written consents describing the actions taken, signed by all Members and recorded. If any Member informs the Claimant Trustee (via e-mail or otherwise) that he or she objects to the decision, determination, action, or inaction proposed to be made by unanimous written consent, the Claimant Trustee must use reasonable good faith efforts to schedule a meeting on the issue to be set within 48 hours of the request or as soon thereafter as possible on which all members of the Oversight Board are available in person or by telephone. Such decision, determination, action, or inaction must then be made pursuant to the meeting protocols set forth herein.

4.6 Manner of Acting.

(a) A quorum for the transaction of business at any meeting of the Oversight Board shall consist of at least three Members (including no less than one (1) Disinterested Member); provided that if the transaction of business at a meeting would constitute a direct or indirect conflict of interest for the Redeemer Committee, Acis, and/or UBS, at least two Disinterested Members must be present for there to be a quorum. Except as set forth in Sections 3.3(c), 4.9(a), 5.2, 5.4, 6.1, 9.1, and 10, herein, the majority vote of the Members present at a duly called meeting at which a quorum is present throughout shall be the act of the Oversight Board except as otherwise required by law or as provided in this Agreement. Any or all of the Members may participate in a regular or special meeting by, or conduct the meeting through the use of, conference telephone, video conference, or similar communications equipment by means of which all Persons participating in the meeting may hear each other, in which case any required notice of such meeting may generally describe the arrangements (rather than or in addition of the place) for the holding hereof. Any Member participating in a meeting by this means is deemed to be present in person at the meeting. Voting (including on negative notice) may be conducted by electronic mail or individual communications by the applicable Trustee and each Member.

(b) Any Member who is present and entitled to vote at a meeting of the Oversight Board when action is taken is deemed to have assented to the action taken, subject to the requisite vote of the Oversight Board, unless (i) such Member objects at the beginning of the meeting (or promptly upon his/her arrival) to holding or transacting business at the meeting; (ii) his/her dissent or abstention from the action taken is entered in the minutes of the meeting; or (iii) he/she delivers written notice (including by electronic or facsimile transmission) of his/her dissent or abstention to the Oversight Board before its adjournment. The right of dissent or abstention is not available to any Member of the Oversight Board who votes in favor of the action taken.

(c) Prior to a vote on any matter or issue or the taking of any action with respect to any matter or issue, each Member shall report to the Oversight Board any conflict of interest such Member has or may have with respect to the matter or issue at hand and fully disclose the nature of such conflict or potential conflict (including, without limitation, disclosing any and all financial or other pecuniary interests that such Member may have with respect to or

in connection with such matter or issue, other than solely as a holder of Trust Interests). A Member who, with respect to a matter or issue, has or who may have a conflict of interest whereby such Member's interests are adverse to the interests of the Claimant Trust shall be deemed a "Conflicted Member" who shall not be entitled to vote or take part in any action with respect to such matter or issue. In the event of a Conflicted Member, the vote or action with respect to such matter or issue giving rise to such conflict shall be undertaken only by Members who are not Conflicted Members and, notwithstanding anything contained herein to the contrary, the affirmative vote of only a majority of the Members who are not Conflicted Members shall be required to approve of such matter or issue and the same shall be the act of the Oversight Board.

(d) Each of Acis, the Redeemer Committee, and UBS shall be deemed "Conflicted Members" with respect to any matter or issue related to or otherwise affecting any of their respective Claim(s) (a "Committee Member Claim Matter"). A unanimous vote of the Disinterested Members shall be required to approve of or otherwise take action with respect to any Committee Member Claim Matter and, notwithstanding anything herein to the contrary, the same shall be the act of the Oversight Board.

4.7 Tenure of the Members of the Oversight Board. The authority of the Members of the Oversight Board will be effective as of the Effective Date and will remain and continue in full force and effect until the Claimant Trust is terminated in accordance with Article X hereof. The Members of the Oversight Board will serve until such Member's successor is duly appointed or until such Member's earlier death or resignation pursuant to Section 4.7 below, or removal pursuant to Section 4.8 below.

4.8 Resignation. A Member of the Oversight Board may resign by giving not less than 90 days prior written notice thereof to the Claimant Trustee and other Members. Such resignation shall become effective on the earlier to occur of (i) the day specified in such notice and (ii) the appointment of a successor in accordance with Section 4.9 below.

4.9 Removal. A majority of the Oversight Board may remove any Member for Cause or Disability. If any Committee Member has its Claim disallowed in its entirety the representative of such entity will immediately be removed as a Member without the requirement for a vote and a successor will be appointed in the manner set forth herein. Notwithstanding the foregoing, upon the termination of the Claimant Trust, any or all of the Members shall be deemed to have resigned.

4.10 Appointment of a Successor Member.

(a) In the event of a vacancy on the Oversight Board (whether by removal, death, or resignation), a new Member may be appointed to fill such position by the remaining Members acting unanimously; provided, however, that any vacancy resulting from the removal, resignation, or death of a Disinterested Member may only be filled by a disinterested Person unaffiliated with any Claimant or constituency in the Chapter 11 Case; provided, further, that if an individual serving as the representative of a Committee Member resigns from its role as representative, such resignation shall not be deemed resignation of the Committee Member itself and such Committee Member shall have the exclusive right to designate its replacement representative for the Oversight Board. The appointment of a successor Member will be further

evidenced by the Claimant Trustee's filing with the Bankruptcy Court (to the extent a final decree has not been entered) and posting on the Claimant Trustee's website a notice of appointment, at the direction of the Oversight Board, which notice will include the name, address, and telephone number of the successor Member.

(b) Immediately upon the appointment of any successor Member, the successor Member shall assume all rights, powers, duties, authority, and privileges of a Member hereunder and such rights and privileges will be vested in and undertaken by the successor Member without any further act. A successor Member will not be liable personally for any act or omission of a predecessor Member.

(c) Every successor Member appointed hereunder shall execute, acknowledge, and deliver to the Claimant Trustee and other Members an instrument accepting the appointment under this Agreement and agreeing to be bound thereto, and thereupon the successor Member without any further act, deed, or conveyance, shall become vested with all rights, powers, trusts, and duties of a Member hereunder.

4.11 Compensation and Reimbursement of Expenses. Unless determined by the Oversight Board, no Member shall be entitled to compensation in connection with his or her service to the Oversight Board; provided, however, that a Disinterested Member shall be compensated in a manner and amount initially set by the other Members and as thereafter amended from time to time by agreement between the Oversight Board and the Disinterested Member. Notwithstanding the foregoing, the Claimant Trustee will reimburse the Members for all reasonable and documented out-of-pocket expenses incurred by the Members in connection with the performance of their duties hereunder (which shall not include fees, costs, and expenses of legal counsel).

4.12 Confidentiality. Each Member shall, during the period that such Member serves as a Member under this Agreement and following the termination of this Agreement or following such Member's removal or resignation, hold strictly confidential and not use for personal gain any material, non-public information of or pertaining to any Person to which any of the Claimant Trust Assets relates or of which such Member has become aware in the Member's capacity as a Member ("Confidential Trust Information"), except as otherwise required by law. For the avoidance of doubt, a Member's Affiliates, employer, and employer's Affiliates (and collectively with such Persons' directors, officers, partners, principals and employees, "Member Affiliates") shall not be deemed to have received Confidential Trust Information solely due to the fact that a Member has received Confidential Trust Information in his or her capacity as a Member of the Oversight Board and to the extent that (a) a Member does not disclose any Confidential Trust Information to a Member Affiliate, (b) the business activities of such Member Affiliates are conducted without reference to, and without use of, Confidential Trust Information, and (c) no Member Affiliate is otherwise directed to take, or takes on behalf of a Member or Member Affiliate, any actions that are contrary to the terms of this Section 4.11.

ARTICLE V.
TRUST INTERESTS

5.1 Claimant Trust Interests.

(a) General Unsecured Claim Trust Interests. On the date hereof, or on the date such Claim becomes Allowed under the Plan, the Claimant Trust shall issue General Unsecured Claim Trust Interests to Holders of Allowed Class 8 General Unsecured Claims (the "GUC Beneficiaries"). The Claimant Trustee shall allocate to each Holder of an Allowed Class 8 General Unsecured Claim a General Unsecured Claim Trust Interest equal to the ratio that the amount of each Holder's Allowed Class 8 Claim bears to the total amount of the Allowed Class 8 Claims. The General Unsecured Claim Trust Interests shall be entitled to distributions from the Claimant Trust Assets in accordance with the terms of the Plan and this Agreement.

(b) Subordinated Claim Trust Interests. On the date hereof, or on the date such Claim becomes Allowed under the Plan, the Claimant Trust shall issue Subordinated Claim Trust Interests to Holders of Class 9 Subordinated Claims (the "Subordinated Beneficiaries"). The Claimant Trustee shall allocate to each Holder of an Allowed Class 9 Subordinated Claim a Subordinated Claim Trust Interest equal to the ratio that the amount of each Holder's Allowed Class 9 Claim bears to the total of amount of the Allowed Class 9. The Subordinated Trust Interests shall be subordinated in right and priority to the General Unsecured Claim Trust Interests. The Subordinated Beneficiaries shall only be entitled to distributions from the Claimant Trust Assets after each GUC Beneficiary has been repaid in full with applicable interest on account of such GUC Beneficiary's Allowed General Unsecured Claim, and all Disputed General Unsecured Claims have been resolved, in accordance with the terms of the Plan and this Agreement.

(c) Contingent Trust Interests. On the date hereof, or on the date such Interest becomes Allowed under the Plan, the Claimant Trust shall issue Contingent Interests to Holders of Allowed Class 10 Class B/C Limited Partnership Interests and Holders of Allowed Class 11 Class A Limited Partnership Interests (collectively, the "Equity Holders"). The Claimant Trustee shall allocate to each Holder of Allowed Class 10 Class B/C Limited Partnership Interests and each Holder of Allowed Class 11 Class A Limited Partnership Interests a Contingent Trust Interest equal to the ratio that the amount of each Holder's Allowed Class 10 or Class 11 Interest bears to the total amount of the Allowed Class 10 or Class 11 Interests, as applicable, under the Plan. Contingent Trust Interests shall not vest, and the Equity Holders shall not have any rights under this Agreement, unless and until the Claimant Trustee files with the Bankruptcy Court a certification that all GUC Beneficiaries have been paid indefeasibly in full, including, to the extent applicable, all accrued and unpaid post-petition interest consistent with the Plan and all Disputed Claims have been resolved (the "GUC Payment Certification"). Equity Holders will only be deemed "Beneficiaries" under this Agreement upon the filing of a GUC Payment Certification with the Bankruptcy Court, at which time the Contingent Trust Interests will vest and be deemed "Equity Trust Interests." The Equity Trust Interests shall be subordinated in right and priority to Subordinated Trust Interests, and distributions on account thereof shall only be made if and when Subordinated Beneficiaries have been repaid in full on account of such Subordinated Beneficiary's Allowed Subordinated Claim, in accordance with the terms of the Plan, the Confirmation Order, and this Agreement. The Equity Trust Interests distributed to Allowed Holders of Class A Limited Partnership Interests shall be subordinated to the Equity Trust Interests distributed to Allowed Holders of Class B/C Limited Partnership Interests.

5.2 Interests Beneficial Only. The ownership of the beneficial interests in the Claimant Trust shall not entitle the Claimant Trust Beneficiaries to any title in or to the Claimant

Trust Assets (which title shall be vested in the Claimant Trust) or to any right to call for a partition or division of the Claimant Trust Assets or to require an accounting. No Claimant Trust Beneficiary shall have any governance right or other wright to direct Claimant Trust activities.

5.3 Transferability of Trust Interests. No transfer, assignment, pledge, hypothecation, or other disposition of a Trust Interest may be effected until (i) such action is unanimously approved by the Oversight Board, (ii) the Claimant Trustee and Oversight Board have received such legal advice or other information that they, in their sole and absolute discretion, deem necessary to assure that any such disposition shall not cause the Claimant Trust to be subject to entity-level taxation for U.S. federal income tax purposes, and (iii) either (x) the Claimant Trustee and Oversight Board, acting unanimously, have received such legal advice or other information that they, in their sole and absolute discretion, deem necessary or appropriate to assure that any such disposition shall not (a) require the Claimant Trust to comply with the registration and/or reporting requirements of the Securities Act, the Exchange Act, the TIA, or the Investment Company Act or (b) cause any adverse effect under the Investment Advisers Act, or (y) the Oversight Board, acting unanimously, has determined, in its sole and absolute discretion, to cause the Claimant Trust to become a public reporting company and/or make periodic reports under the Exchange Act (provided that it is not required to register under the Investment Company Act or register its securities under the Securities Act) to enable such disposition to be made. In the event that any such disposition is allowed, the Oversight Board and the Claimant Trustee may add such restrictions upon such disposition and other terms of this Agreement as are deemed necessary or appropriate by the Claimant Trustee, with the advice of counsel, to permit or facilitate such disposition under applicable securities and other laws.

5.4 Registry of Trust Interests.

(a) Registrar. The Claimant Trustee shall appoint a registrar, which may be the Claimant Trustee (the "Registrar"), for the purpose of recording ownership of the Trust Interests as provided herein. The Registrar, if other than the Claimant Trustee, shall be an institution or person acceptable to the Oversight Board. For its services hereunder, the Registrar, unless it is the Claimant Trustee, shall be entitled to receive reasonable compensation from the Claimant Trust as a Claimant Trust Expense.

(b) Trust Register. The Claimant Trustee shall cause to be kept at the office of the Registrar, or at such other place or places as shall be designated by the Registrar from time to time, a registry of the Claimant Trust Beneficiaries and the Equity Holders (the "Trust Register"), which shall be maintained pursuant to such reasonable regulations as the Claimant Trustee and the Registrar may prescribe.

(c) Access to Register by Beneficiaries. The Claimant Trust Beneficiaries and their duly authorized representatives shall have the right, upon reasonable prior written notice to the Claimant Trustee, and in accordance with reasonable regulations prescribed by the Claimant Trustee, to inspect and, at the expense of the Claimant Trust Beneficiary make copies of the Trust Register, in each case for a purpose reasonable and related to such Claimant Trust Beneficiary's Trust Interest.

5.5 Exemption from Registration. The Parties hereto intend that the rights of the Claimant Trust Beneficiaries arising under this Claimant Trust shall not be "securities" under applicable laws, but none of the Parties represent or warrant that such rights shall not be securities or shall not be entitled to exemption from registration under the applicable securities laws. The Oversight Board, acting unanimously, and Claimant Trustee may amend this Agreement in accordance with Article IX hereof to make such changes as are deemed necessary or appropriate with the advice of counsel, to ensure that the Claimant Trust is not subject to registration and/or reporting requirements of the Securities Act, the Exchange Act, the TIA, or the Investment Company Act. The Trust Interests shall not have consent or voting rights or otherwise confer on the Claimant Trust Beneficiaries any rights similar to the rights of a shareholder of a corporation in respect of any actions taken or to be taken, or decisions made or to be made, by the Oversight Board and/or the Claimant Trustee under this Agreement.

5.6 Absolute Owners. The Claimant Trustee may deem and treat the Claimant Trust Beneficiary of record as determined pursuant to this Article 5 as the absolute owner of such Trust Interests for the purpose of receiving distributions and payment thereon or on account thereof and for all other purposes whatsoever.

5.7 Effect of Death, Incapacity, or Bankruptcy. The death, incapacity, or bankruptcy of any Claimant Trust Beneficiary during the term of the Claimant Trust shall not (i) entitle the representatives or creditors of the deceased Beneficiary to any additional rights under this Agreement, or (ii) otherwise affect the rights and obligations of any of other Claimant Trust Beneficiary under this Agreement.

5.8 Change of Address. Any Claimant Trust Beneficiary may, after the Effective Date, select an alternative distribution address by providing notice to the Claimant Trustee identifying such alternative distribution address. Such notification shall be effective only upon receipt by the Claimant Trustee. Absent actual receipt of such notice by the Claimant Trustee, the Claimant Trustee shall not recognize any such change of distribution address.

5.9 Standing. No Claimant Trust Beneficiary shall have standing to direct the Claimant Trustee to do or not to do any act or to institute any action or proceeding at law or in equity against any party upon or with respect to the Claimant Trust Assets. No Claimant Trust Beneficiary shall have any direct interest in or to any of the Claimant Trust Assets.

5.10 Limitations on Rights of Claimant Trust Beneficiaries.

(a) The Claimant Trust Beneficiaries shall have no rights other than those set forth in this Agreement, the Confirmation Order, or the Plan (including any Plan Supplement documents incorporated therein).

(b) In any action taken by a Claimant Trust Beneficiary against the Claimant Trust, a current or former Trustee, or a current or former Member, in their capacity as such, the prevailing party will be entitled to reimbursement of attorneys' fees and other costs; provided, however, that any fees and costs shall be borne by the Claimant Trust on behalf of any such Trustee or Member, as set forth herein.

(c) A Claimant Trust Beneficiary who brings any action against the Claimant Trust, a current or former Trustee, or a current or former Member, in their capacity as such, may be required by order of the Bankruptcy Court to post a bond ensuring that the full costs of a legal defense can be reimbursed. A request for such bond can be made by the Claimant Trust or by Claimant Trust Beneficiaries constituting in the aggregate at least 50% of the most senior class of Claimant Trust Interests.

(d) Any action brought by a Claimant Trust Beneficiary must be brought in the United States Bankruptcy Court for the Northern District of Texas. Claimant Trust Beneficiaries are deemed to have waived any right to a trial by jury

(e) The rights of Claimant Trust Beneficiaries to bring any action against the Claimant Trust, a current or former Trustee, or current or former Member, in their capacity as such, shall not survive the final distribution by the Claimant Trust.

ARTICLE VI.
DISTRIBUTIONS

6.1 Distributions.

(a) Notwithstanding anything to the contrary contained herein, the Claimant Trustee shall distribute to holders of Trust Interests at least annually the Cash on hand net of any amounts that (a) are reasonably necessary to maintain the value of the Claimant Trust Assets pending their monetization or other disposition during the term of the Claimant Trust, (b) are necessary to pay or reserve for reasonably incurred or anticipated Claimant Trust Expenses and any other expenses incurred by the Claimant Trust (including, but not limited to, any taxes imposed on or payable by the Claimant Trustee with respect to the Claimant Trust Assets), (c) are necessary to pay or reserve for the anticipated costs and expenses of the Litigation Sub-Trust, (d) are necessary to satisfy or reserve for other liabilities incurred or anticipated by the Claimant Trustee in accordance with the Plan and this Agreement (including, but not limited to, indemnification obligations and similar expenses in such amounts and for such period of time as the Claimant Trustee determines, in good faith, may be necessary and appropriate, which determination shall not be subject to consent of the Oversight Board, may not be modified without the express written consent of the Claimant Trustee, and shall survive termination of the Claimant Trustee), (e) are necessary to maintain the Disputed Claims Reserve, and (f) are necessary to pay Allowed Claims in Class 1 through Class 7. Notwithstanding anything to the contrary contained in this paragraph, the Claimant Trustee shall exercise reasonable efforts to make initial distributions within six months of the Effective Date, and the Oversight Board may not prevent such initial distributions unless upon a unanimous vote of the Oversight Board. The Claimant Trustee may otherwise distribute all Claimant Trust Assets on behalf of the Claimant Trust in accordance with this Agreement and the Plan at such time or times as the Claimant Trustee is directed by the Oversight Board.

(b) At the request of the Reorganized Debtor, subject in all respects to the provisions of this Agreement, the Claimant Trustee shall distribute Cash to the Reorganized Debtor, as Distribution Agent with respect to Claims in Class 1 through 7, sufficient to satisfy Allowed Claims in Class 1 through Class 7.

(c) All proceeds of Claimant Trust Assets shall be distributed in accordance with the Plan and this Agreement.

6.2 Manner of Payment or Distribution. All distributions made by the Claimant Trustee on behalf of the Claimant Trust to the Claimant Trust Beneficiaries shall be payable by the Claimant Trustee directly to the Claimant Trust Beneficiaries of record as of the twentieth (20th) day prior to the date scheduled for the distribution, unless such day is not a Business Day, then such date or the distribution shall be the following Business Day, but such distribution shall be deemed to have been completed as of the required date.

6.3 Delivery of Distributions. All distributions under this Agreement to any Claimant Trust Beneficiary shall be made, as applicable, at the address of such Claimant Trust Beneficiary (a) as set forth on the Schedules filed with the Bankruptcy Court or (b) on the books and records of the Debtor or their agents, as applicable, unless the Claimant Trustee has been notified in writing of a change of address pursuant to Section 5.6 hereof.

6.4 Disputed Claims Reserves. There will be no distributions under this Agreement or the Plan on account of Disputed Claims pending Allowance. The Claimant Trustee will maintain a Disputed Claims Reserve as set forth in the Plan and will make distributions from the Disputed Claims Reserve as set forth in the Plan.

6.5 Undeliverable Distributions and Unclaimed Property. All undeliverable distributions and unclaimed property shall be treated in the manner set forth in the Plan.

6.6 *De Minimis* Distributions. Distributions with a value of less than $100 will be treated in accordance with the Plan.

6.7 United States Claimant Trustee Fees and Reports. **After the Effective Date, the Claimant Trust shall pay as a Claimant Trust Expense, all fees incurred under 28 U.S.C. § 1930(a)(6) by reason of the Claimant Trust's disbursements until the Chapter 11 Case is closed. After the Effective Date, the Claimant Trust shall prepare and serve on the Office of the United States Trustee such quarterly disbursement reports for the Claimant Trust as required by the Office of the United States Trustee Office for as long as the Chapter 11 Case remains open.**

ARTICLE VII.
TAX MATTERS

7.1 Tax Treatment and Tax Returns.

(a) It is intended for the initial transfer of the Claimant Trust Assets to the Claimant Trust to be treated as a grantor trust for federal income tax purposes (and foreign, state, and local income tax purposes where applicable) as if the Debtor transferred the Claimant Trust Assets (other than the amounts set aside in the Disputed Claim Reserve, if the Claimant Trustee makes the election described below) to the Claimant Trust Beneficiaries and then, immediately thereafter, the Claimant Trust Beneficiaries transferred the Claimant Trust Assets to the Claimant Trust. Consistent with such treatment, (i) it is intended that the Claimant Trust will be treated as a grantor trust for federal income tax purposes (and foreign, state, and local income tax purposes

where applicable), (ii) it is intended that the Claimant Trust Beneficiaries will be treated as the grantors of the Claimant Trust and owners of their respective share of the Claimant Trust Assets for federal income tax purposes (and foreign, state, and local income tax purposes where applicable). The Claimant Trustee shall file all federal income tax returns (and foreign, state, and local income tax returns where applicable) for the Claimant Trust as a grantor trust pursuant to Treasury Regulation Section 1.671-4(a).

(b) The Claimant Trustee shall determine the fair market value of the Claimant Trust Assets as of the Effective Date and notify the applicable Beneficiaries of such valuation, and such valuation shall be used consistently by all parties for all federal income tax purposes.

(c) The Claimant Trustee may file an election pursuant to Treasury Regulation 1.468B-9(c) to treat the Disputed Claims Reserve as a disputed ownership fund, in which case the Claimant Trustee will file federal income tax returns and pay taxes for the Disputed Claim Reserve as a separate taxable entity.

7.2 Withholding. The Claimant Trustee may withhold from any amount distributed from the Claimant Trust to any Claimant Trust Beneficiary such sum or sums as are required to be withheld under the income tax laws of the United States or of any state or political subdivision thereof. Any amounts withheld pursuant hereto shall be deemed to have been distributed to and received by the applicable Beneficiary. As a condition to receiving any distribution from the Claimant Trust, the Claimant Trustee may require that the Beneficiary provide such holder's taxpayer identification number and such other information and certification as may be deemed necessary for the Claimant Trustee to comply with applicable tax reporting and withholding laws. If a Beneficiary fails to comply with such a request within one year, such distribution shall be deemed an unclaimed distribution and treated in accordance with Section 6.5(b) of this Agreement.

ARTICLE VIII.
STANDARD OF CARE AND INDEMNIFICATION

8.1 Standard of Care. None of the Claimant Trustee, acting in his capacity as the Claimant Trustee or in any other capacity contemplated by this Agreement or the Plan, the Delaware Trustee, acting in its capacity as Delaware Trustee, the Oversight Board, or any current or any individual Member, solely in their capacity as Members of the Oversight Board, shall be personally liable to the Claimant Trust or to any Person (including any Claimant Trust Beneficiary) in connection with the affairs of the Claimant Trust, unless it is ultimately determined by order of the Bankruptcy Court or, if the Bankruptcy Court either declines to exercise jurisdiction over such action, or cannot exercise jurisdiction over such action, such other court of competent jurisdiction that the acts or omissions of any such Claimant Trustee, Delaware Trustee, Oversight Board, or Member constituted fraud, willful misconduct, or gross negligence. The employees, agents and professionals retained by the Claimant Trust, the Claimant Trustee, Delaware Trustee, Oversight Board, or individual Member shall not be personally liable to the Claimant Trust or any other Person in connection with the affairs of the Claimant Trust, unless it is ultimately determined by order of the Bankruptcy Court or, if the Bankruptcy Court either declines to exercise jurisdiction over such action, or cannot exercise

jurisdiction over such action, such other court of competent jurisdiction that such acts or omissions by such employee, agent, or professional constituted willful fraud, willful misconduct or gross negligence. None of the Claimant Trustee, Delaware Trustee, Oversight Board, or any Member shall be personally liable to the Claimant Trust or to any Person for the acts or omissions of any employee, agent or professional of the Claimant Trust or Claimant Trustee taken or not taken in good faith reliance on the advice of professionals or, as applicable, with the approval of the Bankruptcy Court, unless it is ultimately determined by order of the Bankruptcy Court or, if the Bankruptcy Court either declines to exercise jurisdiction over such action, or cannot exercise jurisdiction over such action, such other court of competent jurisdiction that the Claimant Trustee, Delaware Trustee, Oversight Board, or Member acted with gross negligence or willful misconduct in the selection, retention, or supervision of such employee, agent or professional of the Claimant Trust.

8.2 Indemnification. The Claimant Trustee (including each former Claimant Trustee), Delaware Trustee, Oversight Board, and all past and present Members (collectively, in their capacities as such, the "Indemnified Parties") shall be indemnified by the Claimant Trust against and held harmless by the Claimant Trust from any losses, claims, damages, liabilities or expenses (including, without limitation, attorneys' fees, disbursements, and related expenses) to which the Indemnified Parties may become subject in connection with any action, suit, proceeding or investigation brought or threatened against any of the Indemnified Parties in their capacity as Claimant Trustee, Delaware Trustee, Oversight Board, or Member, or in connection with any matter arising out of or related to the Plan, this Agreement, or the affairs of the Claimant Trust, unless it is ultimately determined by order of the Bankruptcy Court or other court of competent jurisdiction that the Indemnified Party's acts or omissions constituted willful fraud, willful misconduct, or gross negligence. If the Indemnified Party becomes involved in any action, proceeding, or investigation in connection with any matter arising out of or in connection with the Plan, this Agreement or the affairs of the Claimant Trust for which an indemnification obligation could arise, the Indemnified Party shall promptly notify the Claimant Trustee and/or Oversight Board, as applicable; provided, however, that the failure of an Indemnified Party to promptly notify the Claimant Trustee and/or Oversight Board of an indemnification obligation will not excuse the Claimant Trust from indemnifying the Indemnified Party unless such delay has caused the Claimant Trust material harm. The Claimant Trust shall pay, advance or otherwise reimburse on demand of an Indemnified Party the Indemnified Party's reasonable legal and other defense expenses (including, without limitation, the cost of any investigation and preparation and attorney fees, disbursements, and other expenses related to any claim that has been brought or threatened to be brought) incurred in connection therewith or in connection with enforcing his or her rights under this Section 8.2 as a Claimant Trust Expense, and the Claimant Trust shall not refuse to make any payments to the Indemnified Party on the assertion that the Indemnified Party engaged in willful misconduct or acted in bad faith; provided that the Indemnified Party shall be required to repay promptly to the Claimant Trust the amount of any such advanced or reimbursed expenses paid to the Indemnified Party to the extent that it shall be ultimately determined by Final Order that the Indemnified Party engaged in willful fraud, misconduct, or negligence in connection with the affairs of the Claimant Trust with respect to which such expenses were paid; provided, further, that any such repayment obligation shall be unsecured and interest free. The Claimant Trust shall indemnify and hold harmless the employees, agents and professionals of the Claimant Trust and Indemnified Parties to the same extent as provided in this Section 8.2 for the Indemnified Parties.

For the avoidance of doubt, the provisions of this Section 8.2 shall remain available to any former Claimant Trustee, Delaware Trustee, or Member or the estate of any decedent Claimant Trustee or Member, solely in their capacities as such. The indemnification provided hereby shall be a Claimant Trust Expense and shall not be deemed exclusive of any other rights to which the Indemnified Party may now or in the future be entitled to under the Plan or any applicable insurance policy. The failure of the Claimant Trust to pay or reimburse an Indemnified Party as required under this Section 8.2 shall constitute irreparable harm to the Indemnified Party and such Indemnified Party shall be entitled to specific performance of the obligations herein.

8.3 No Personal Liability. Except as otherwise provided herein, neither of the Trustees nor Members of the Oversight Board shall be subject to any personal liability whatsoever, whether in tort, contract, or otherwise, to any Person in connection with the affairs of the Claimant Trust to the fullest extent provided under Section 3803 of the Delaware Statutory Trust Act, and all Persons asserting claims against the Claimant Trustee, Litigation Trustee, or any Members, or otherwise asserting claims of any nature in connection with the affairs of the Claimant Trust, shall look solely to the Claimant Trust Assets for satisfaction of any such claims.

8.4 Other Protections. To the extent applicable and not otherwise addressed herein, the provisions and protections set forth in Article IX of the Plan will apply to the Claimant Trust, the Claimant Trustee, the Litigation Trustee, and the Members.

ARTICLE IX.
TERMINATION

9.1 Duration. The Trustees, the Claimant Trust, and the Oversight Board shall be discharged or dissolved, as the case may be, at such time as: (a) the Litigation Trustee determines that the pursuit of Estate Claims is not likely to yield sufficient additional proceeds to justify further pursuit of such Estate Claims, (b) the Claimant Trustee determines that the pursuit of Causes of Action (other than Estate Claims) is not likely to yield sufficient additional proceeds to justify further pursuit of such Causes of Action, (c) the Clamant Trustee determines that the pursuit of sales of other Claimant Trust Assets is not likely to yield sufficient additional proceeds to justify further pursuit of such sales of Claimant Trust Assets, (d) all objections to Disputed Claims and Equity Interests are fully resolved, (e) the Reorganized Debtor is dissolved, and (f) all Distributions required to be made by the Claimant Trustee to the Claimant Trust Beneficiaries under the Plan have been made, but in no event shall the Claimant Trust be dissolved later than three years from the Effective Date unless the Bankruptcy Court, upon motion made within the six-month period before such third anniversary (and, in the event of further extension, by order of the Bankruptcy Court, upon motion made at least six months before the end of the preceding extension), determines that a fixed period extension (not to exceed two years, together with any prior extensions) is necessary to facilitate or complete the recovery on, and liquidation of, the Claimant Trust Assets.

9.2 Distributions in Kind. Upon dissolution of the Claimant Trust, any remaining Claimant Trust Assets that exceed the amounts required to be paid under the Plan will be transferred (in the sole discretion of the Claimant Trustee) in Cash or in-kind to the Holders of the Claimant Trust Interests as provided in the Claimant Trust Agreement.

9.3 Continuance of the Claimant Trustee for Winding Up. After dissolution of the Claimant Trust and for purpose of liquidating and winding up the affairs of the Claimant Trust, the Claimant Trustee shall continue to act as such until the Claimant Trustee's duties have been fully performed. Prior to the final distribution of all remaining Claimant Trust Assets, the Claimant Trustee shall be entitled to reserve from such assets any and all amounts required to provide for the Claimant Trustee's own costs and expenses, including a reserve to fund any potential indemnification or similar obligations of the Claimant Trust, until such time as the winding up of the Claimant Trust is completed. Upon the dissolution of the Claimant Trust and completion of the winding up of the assets, liabilities and affairs of the Claimant Trust pursuant to the Delaware Statutory Trust Act, the Claimant Trustee shall file a certificate of cancellation with the State of Delaware to terminate the Claimant Trust pursuant to Section 3810 of the Delaware Statutory Trust Act (such date upon which the certificate of cancellation is filed shall be referred to as the "Termination Date"). Upon the Termination date, the Claimant Trustee shall retain for a period of two (2) years, as a Claimant Trust Expense, the books, records, Claimant Trust Beneficiary lists, and certificated and other documents and files that have been delivered to or created by the Claimant Trustee. At the Claimant Trustee's discretion, all of such records and documents may, but need not, be destroyed at any time after two (2) years from the Termination Date.

9.4 Termination of Duties. Except as otherwise specifically provided herein, upon the Termination Date of the Claimant Trust, the Claimant Trustee, the Oversight Board and its Members shall have no further duties or obligations hereunder.

9.5 No Survival. The rights of Claimant Trust Beneficiaries hereunder shall not survive the Termination Date, provided that such Claimant Trust Beneficiaries are provided with notice of such Termination Date.

ARTICLE X.
AMENDMENTS AND WAIVER

The Claimant Trustee, with the consent of a simple majority of the Oversight Board, may amend this Agreement to correct or clarify any non-material provisions. This Agreement may not otherwise be amended, supplemented, otherwise modified, or waived in any respect except by an instrument in writing signed by the Claimant Trustee and with the unanimous approval of the Oversight Board, and the approval of the Bankruptcy Court, after notice and a hearing; provided that the Claimant Trustee must provide the Oversight Board with prior written notice of any non-material amendments, supplements, modifications, or waivers of this Agreement.

ARTICLE XI.
MISCELLANEOUS

11.1 Trust Irrevocable. Except as set forth in this Agreement, establishment of the Claimant Trust by this Agreement shall be irrevocable and shall not be subject to revocation, cancellation or rescission by the Claimant Trust Beneficiaries.

11.2 Bankruptcy of Claimant Trust Beneficiaries. The dissolution, termination, bankruptcy, insolvency or other similar incapacity of any Claimant Trust Beneficiary shall not

permit any creditor, trustee, or any other Claimant Trust Beneficiary to obtain possession of, or exercise legal or equitable remedies with respect to, the Claimant Trust Assets.

11.3 Claimant Trust Beneficiaries have No Legal Title to Claimant Trust Assets. No Claimant Trust Beneficiary shall have legal title to any part of the Claimant Trust Assets.

11.4 Agreement for Benefit of Parties Only. Nothing herein, whether expressed or implied, shall be construed to give any Person other than the Claimant Trustee, Oversight Board, and the Claimant Trust Beneficiaries any legal or equitable right, remedy or claim under or in respect of this Agreement. The Claimant Trust Assets shall be held for the sole and exclusive benefit of the Claimant Trust Beneficiaries.

11.5 Notices. All notices, directions, instructions, confirmations, consents and requests required or permitted by the terms hereof shall, unless otherwise specifically provided herein, be in writing and shall be sent by first class mail, facsimile, overnight mail or in the case of mailing to a non-United States address, air mail, postage prepaid, addressed to:

(a) If to the Claimant Trustee:

Claimant Trustee
c/o **[insert contact info for Claimant Trustee]**

With a copy to:

Pachulski Stang Ziehl & Jones LLP
10100 Santa Monica Blvd, 13th Floor
Los Angeles, CA 90067
Attn: Jeffrey Pomerantz (jpomerantz@pszjlaw.com)
Ira Kharasch (ikharasch@pszjlaw.com)
Gregory Demo (gdemo@pszjlaw.com)

Notice mailed shall be effective on the date mailed or sent. Any Person may change the address at which it is to receive notices under this Agreement by furnishing written notice pursuant to the provisions of this Section 11.5 to the entity to be charged with knowledge of such change.

11.6 Severability. Any provision hereof which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in another jurisdiction.

11.7 Counterparts. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

11.8 Binding Effect, etc. All covenants and agreements contained herein shall be binding upon, and inure to the benefit of, the Claimant Trust, the Claimant Trustee, and the

Claimant Trust Beneficiaries, and their respective successors and assigns. Any notice, direction, consent, waiver or other instrument or action by any Claimant Trust Beneficiary shall bind its successors and assigns.

11.9 Headings; References. The headings of the various Sections herein are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

11.10 Governing Law. This Agreement shall in all respects be governed by, and construed in accordance with the laws of the State of Delaware, including all matters of constructions, validity and performance.

11.11 Consent to Jurisdiction. Each of the parties hereto, each Member (solely in their capacity as Members of the Oversight Board), and each Claimant Trust Beneficiary consents and submits to the exclusive jurisdiction of the Bankruptcy Court for any action or proceeding instituted for the enforcement and construction of any right, remedy, obligation, or liability arising under or by reason of this Agreement, the Plan or any act or omission of the Claimant Trustee (acting in his capacity as the Claimant Trustee or in any other capacity contemplated by this Agreement or the Plan), Litigation Trustee (acting in his capacity as the Litigation Trustee or in any other capacity contemplated by this Agreement or the Plan), the Oversight Board. or any individual Member (solely in their capacity as Members of the Oversight Board); *provided, however*, that if the Bankruptcy Court either declines to exercise jurisdiction over such action or cannot exercise jurisdiction over such action, such action may be brought in the state or federal courts located in the Northern District of Texas.

11.12 Transferee Liabilities. The Claimant Trust shall have no liability for, and the Claimant Trust Assets shall not be subject to, any claim arising by, through or under the Debtor except as expressly set forth in the Plan or in this Agreement. In no event shall the Claimant Trustee or the Claimant Trust Beneficiaries have any personal liability for such claims. If any liability shall be asserted against the Claimant Trust or the Claimant Trustee as the transferee of the Claimant Trust Assets on account of any claimed liability of, through or under the Debtor or Reorganized Debtor, the Claimant Trustee may use such part of the Claimant Trust Assets as may be necessary to contest any such claimed liability and to pay, compromise, settle or discharge same on terms reasonably satisfactory to the Claimant Trustee as a Claimant Trust Expense.

[Remainder of Page Intentionally Blank]

IN WITNESS HEREOF, the parties hereto have caused this Claimant Trust Agreement to be duly executed by their respective officers thereunto duly authorized on the day and year first written above.

Highland Capital Management, L.P.

By: _____
James P. Seery, Jr.
Chief Executive Officer and
Chief Restructuring Officer

Claimant Trustee

By: _____
James P. Seery, Jr., not individually but solely in his capacity as the Claimant Trustee

APPENDIX 14

PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz (CA Bar No.143717) (*admitted pro hac vice*)
Ira D. Kharasch (CA Bar No. 109084) (*admitted pro hac vice*)
John A. Morris (NY Bar No. 2405397) (*admitted pro hac vice*)
Gregory V. Demo (NY Bar No. 5371992) (*admitted pro hac vice*)
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Counsel for Highland Capital Management, L.P.

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

In re:	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	§	Case No. 19-34054-sgj11
Debtor.	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	Adversary Proceeding No.
Plaintiff,	§	
vs.	§	
HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P., NEXPOINT ADVISORS, L.P.,	§	

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

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HIGHLAND INCOME FUND, NEXPOINT STRATEGIC OPPORTUNITIES FUND, NEXPOINT CAPITAL, INC., AND CLO HOLDCO, LTD.,	§ § § §
Defendants.	

PLAINTIFF HIGHLAND CAPITAL MANAGEMENT, L.P.'S VERIFIED ORIGINAL COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiff Highland Capital Management, L.P., the above-captioned debtor and debtor-in-possession ("Plaintiff" or the "Debtor"), by its undersigned counsel, files this *Original Complaint for Declaratory and Injunctive Relief* (the "Complaint") against defendants Highland Capital Management Fund Advisors, L.P. ("HCMFA"), NexPoint Advisors, L.P. ("NPA," and together with HCMFA, the "Advisors"), Highland Income Fund, NexPoint Strategic Opportunities Fund, NexPoint Capital, Inc. (collectively, the "Funds"), and CLO Holdco, Ltd. ("CLO Holdco" and together with the Advisors and the Funds, the "Defendants") seeking declaratory and injunctive relief pursuant to sections 105(a) and 362 of title 11 of the United States Code (the "Bankruptcy Code") and Rules 7001(7) and 7065 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"). In support of its Complaint, the Debtor alleges upon knowledge of its own actions and upon information and belief as to other matters as follows:

PRELIMINARY STATEMENT

1. Mr. James Dondero ("Mr. Dondero") directly or indirectly owns and/or controls each of the Defendants. The Defendants have interfered with, and impeded, the Debtor's business, and they have threatened to initiate a process aimed at removing the Debtor as the portfolio manager of certain collateralized loan obligation vehicles ("CLOs") – although they have refused to actually bring a motion to lift the automatic stay for that purpose, thereby

contributing to the necessity of these proceedings. The Funds invested in certain of the CLOs at the direction of the Advisors. CLO Holdco also invested in the CLOs.

2. As alleged below, the Defendants have damaged the Debtor and threaten to upset the status quo by interfering with the Debtor's contractual rights.

3. Thus, the Debtor seeks damages, declaratory relief, and an order preliminarily and permanently enjoining the Defendants from: (a) interfering with or otherwise impeding, directly or indirectly, the Debtor's business, including but not limited to the Debtor's (i) management of the CLOs, (ii) decisions concerning the purchase or sale of any assets on behalf of the CLOs, or (iii) contractual right to serve as the portfolio manager (or other similar title) of the CLOs; (b) otherwise violating section 362(a) of the Bankruptcy Code; (c) seeking to terminate the portfolio management agreements and/or servicing agreements between the Debtor and the CLOs ((a)-(c), the "Prohibited Conduct"), (d) conspiring, colluding, or collaborating with (x) Mr. Dondero, (y) any entity owned and/or controlled by Mr. Dondero, and/or (z) any person or entity acting on behalf of Mr. Dondero or any entity owned and/or controlled by him, to, directly or indirectly, engage in any Prohibited Conduct, and (e) engaging in any Prohibited Conduct with respect to any of the Successor Parties (as that term is defined below).

JURISDICTION AND VENUE

4. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157 and § 1334(b). This adversary proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (O).

5. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1409.

6. This adversary proceeding is commenced pursuant to Bankruptcy Rules 7001 and 7065, Bankruptcy Code sections 105(a) and 362, 28 U.S.C. §§ 2201 and 2202, and applicable Delaware law.

THE PARTIES

7. Plaintiff is a limited liability partnership formed under the laws of Delaware with a business address at 300 Crescent Court, Suite 700, Dallas, Texas 75201.

8. Upon information and belief, HCMFA is a limited partnership with offices located in Dallas, Texas.

9. Upon information and belief, NPA is a limited partnership with offices located in Dallas, Texas.

10. Upon information and belief, Highland Income Fund is an investment fund managed by HCMFA in Dallas, Texas.

11. Upon information and belief, NexPoint Strategic Opportunities Fund is an investment fund managed by NPA in Dallas, Texas.

12. Upon information and belief, NexPoint Capital, Inc. is an investment fund managed by NPA in Dallas, Texas

13. Upon information and belief, CLO Holdco is a holding company that is directly or indirectly owned and/or managed by Mr. Dondero and others acting on his behalf in Dallas, Texas.

CASE BACKGROUND

14. On October 16, 2019 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the

District of Delaware (the "Delaware Court"), Case No. 19-12239 (CSS) (the "Highland Bankruptcy Case").

15. On October 29, 2019, the U.S. Trustee in the Delaware Court appointed an Official Committee of Unsecured Creditors (the "Committee") with the following members: (a) Redeemer Committee of Highland Crusader Fund, (b) Meta-e Discovery, (c) UBS Securities LLC and UBS AG London Branch (collectively, "UBS"), and (d) Acis Capital Management, L.P. and Acis Capital Management GP LLC (collectively, "Acis").

16. On December 4, 2019, the Delaware Court entered an order transferring venue of the Highland Bankruptcy Case to this Court [Docket No. 186].[2]

17. The Debtor has continued to operate and manage its business as a debtor-in-possession pursuant to Bankruptcy Code sections 1107(a) and 1108. No trustee or examiner has been appointed in this chapter 11 case.

18. On November 24, 2020, the Debtor filed the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1472] (the "Plan"). The Court has scheduled a confirmation hearing on the Plan for January 13, 2021. If confirmed, the Debtor will be succeeded by the Reorganized Debtor and Plan will create a Claimant Trust and a Litigation Sub-Trust (as those terms are defined in the Plan) (the Reorganized Debtor, the Claimant Trust, and the Litigation Sub-Trust are collectively referred to herein as the "Successor Entities," and together with the Successor Entities' directors, officers, employees, professionals, and agents, including but not limited to the Claimant Trustee and the Litigation Trustee (as those terms are defined in the Plan), and any professionals engaged by the Claimant Trustee and Litigation Trustee, the "Successor Parties").

[2] All docket numbers refer to the main docket for the Highland Bankruptcy Case maintained by this Court.

STATEMENT OF FACTS

A. Mr. James Dondero Owns and/or Controls Each of the Defendants

19. Mr. Dondero directly or indirectly owns and/or effectively controls each of the Defendants.

The Advisors and the Funds

20. On December 16, 2020, Mr. Dustin Norris ("Mr. Norris") testified under oath in support of the *Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles* [Docket No. 1528] that was brought by the Advisors and Funds (the "Restriction Motion").

21. Mr. Norris is the Executive Vice President of each the Advisors and each of the Funds.

22. During the hearing on the Restriction Motion (the "Hearing"), Mr. Norris testified that Mr. Dondero (a) directly or indirectly owns and controls each of the Advisors, and (b) is the portfolio manager of each of the Funds, each of which is advised by one of the Advisors.

23. Mr. Norris's testimony is corroborated by, among other things, (a) the Funds' public filings with the Securities and Exchange Commission in which each of the Funds disclosed that the Advisors were owned and controlled by Mr. Dondero, and that Mr. Dondero was the portfolio manager for each of the Funds, and (b) the assertion in a letter dated December 31, 2020, sent on behalf of the Advisors and the Funds, that "Mr. Dondero is the lead (and in some cases the sole) portfolio manager for certain of the Funds. He is intimately involved in the day-to-day operations and investment decisions regarding those Funds and the operations of the Advisors."

CLO Holdco

24. CLO Holdco is a wholly-owned and controlled subsidiary of the DAF. On information and belief, the DAF is managed by the Charitable DAF Holdco, Ltd. ("DAF Holdco"), which is the managing member of the DAF.

25. On information and belief, DAF Holdco is owned by three different charitable foundations: Highland Dallas Foundation, Inc., Highland Santa Barbara Foundation, Inc., and Highland Kansas City Foundation, Inc. (collectively, the "Highland Foundations"). On information and belief, Mr. Dondero is the president and one of the three directors of each of the Highland Foundations. On information and belief, Mr. Grant Scott ("Mr. Scott"), is an intellectual property lawyer based in Raleigh, North Carolina, Mr. Dondero's college roommate, is also an officer and director of each of the Highland Foundations.

26. Although the Debtor is the non-discretionary investment advisor to the DAF, the Debtor does not have the right or ability to control or direct the DAF or CLO Holdco. Instead, on information and belief, the DAF takes and considers investment and payment advice from the Debtor, but ultimate decisions are in the control of Mr. Scott who acts substantially at Mr. Dondero's direction.

B. This Court has Entered Two Orders that are Implicated by the Defendants' Actions and Threatened Actions

27. This Court has entered two Orders that are relevant to the injunctive relief sought by the Debtor.

28. On December 27, 2019, the Debtor filed that certain *Motion of the Debtor for Approval of Settlement with the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course* [Docket No. 281] (the "Settlement Motion"). On January 9, 2019, this Court entered an Order granting the Settlement Motion [Docket No. 339] (the "Settlement Order").

29. As part of the Settlement Order, this Court also approved a term sheet (the "Term Sheet") [Docket No. 354-1] between the Debtor and the Official Committee of Unsecured Creditors (the "Committee") pursuant to which Mr. John S. Dubel, Mr. Russell Nelms, and Mr. Seery were appointed to the Board.

30. As required by the Term Sheet, on January 9, 2020, Mr. James Dondero resigned from his roles as an officer and director of Strand and as the Debtor's President and Chief Executive Officer.

31. Among other things, the Settlement Order directed Mr. Dondero not to "cause any Related Entity to terminate any agreements with the Debtor."

32. Each of the Defendants is a "Related Entity" as defined in the Term Sheet because each of the Defendants is directly or indirectly owned and/or controlled by Mr. Dondero and/or Mr. Scott.

33. Defendants' actions and threatened actions also implicate the *Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero* [Adv. Pro. No. 20-03190-sgj, Docket No. 10], entered on December 10, 2020 (the "TRO" and together with the Settlement Order, the "Orders").

34. Pursuant to the TRO, the Court temporarily enjoined and restrained Mr. Dondero from, among other things, "interfering with or otherwise impeding, directly or indirectly, the Debtor's business" and from "causing, encouraging, or conspiring with (a) any entity owned or controlled by [Mr. Dondero], and/or (b) any person or entity acting on his behalf, from, directly or indirectly, engaging in any Prohibited Conduct [as defined in the TRO]," including interfering or impeding the Debtor's business.

C. Defendants Interfere with and Impede the Debtor's Business and Threaten to Terminate the Debtor's Management Contracts

35. In addition to filing the Restriction Motion, on at least four separate occasions the Defendants have either interfered with and impeded the Debtor's business or have threatened to do so by initiating the process for removing the Debtor as the portfolio manager of the CLOs. Such conduct violates the Orders and flouts the Court's decision on the Restriction Motion and the Court's observations made at the Hearing.

36. ***First***, on December 22, 2020, employees of NPA and HCMFA interfered with and impeded the Debtor's business by refusing to settle the CLOs' sale of AVYA and SKY securities that Mr. Seery had personally authorized. The Advisors engaged in this conduct notwithstanding (a) the denial of the Restriction Motion and the Court's pointed comments during that Hearing on the Restriction Motion, and (b) Mr. Norris's sworn acknowledgments on behalf of the Advisors and Funds during the Hearing that (i) the Debtor's management of the CLOs is governed by written contracts as to which none of the Advisors or Funds are parties; (ii) the Debtor has the exclusive duty and responsibility to buy and sell assets on behalf of the CLOs; and (iii) as the Advisors knew when they invested in the CLOs on behalf of the Funds, that holders of preference shares (such as the Funds) have no right to make investment decisions on behalf of the CLOs.

37. Notably, the Advisors' interference with trades that Mr. Seery authorized on behalf of the CLOs is the same type of conduct that led the Court to impose the TRO against Mr. Dondero. *See Declaration of Mr. James P. Seery, Jr. in Support of Debtor's Motion for a Temporary Restraining Order Against Mr. James Dondero* [Adv. Pro. No. Docket No. 4] ¶¶21-23, Ex. 8.

38. ***Second***, also on December 22, 2020, the Defendants wrote to the Debtor and renewed their "request" that the Debtor refrain from selling any assets on behalf of the CLOs until the confirmation hearing (the "December 22 Letter"). In support of their "request," the Debtor re-asserted almost verbatim the arguments advanced in connection with the Restriction Motion – all of which were soundly rejected by the Court.

39. The Debtor responded on December 24, 2020, demanding that Defendants withdraw their December 22 Letter and confirm that neither the Defendants nor anyone acting on their behalf will take any further steps to interfere with the Debtor's directions as the CLOs' portfolio manager by the close of business on December 28, 2020. The Defendants failed to comply with the Debtor's demands.

40. ***Third***, the Defendants threatened to seek to remove the Debtor as the portfolio manager of the CLOs. Specifically, in a letter dated December 23, 2020 (the "December 23 Letter"), the Defendants informed the Debtor that one or more of them "intend to notify the relevant trustee and/or issuers that the process of removing the Debtor as fund manager should be initiated, subject to and with due deference for the applicable provisions of the United State Bankruptcy Code, including the automatic stay of Section 362."

41. The Debtor responded to the December 23 Letter the next day and advised the Defendants that the Settlement Order prohibited the termination of the Debtor's management agreements with the CLOs, and that there was no factual, legal, or contractual basis to remove the Debtor as the CLOs' portfolio manager in any event. The Debtor demanded that the Defendants withdraw their December 23 Letter and commit not to take any actions, directly or indirectly, to terminate the CLO management agreements, by the close of business on December 28, 2020. The Defendants failed to comply with the Debtor's demands.

42. Because Mr. Dondero owns and/or effectively controls the Defendants, the Debtor forwarded the correspondence between the Debtor and the Defendants, including the Defendant's Letters, to Mr. Dondero's counsel. In response, Mr. Dondero's counsel contended that "[w]hile there are relationships between my client and some of the movants, I believe they are separate entities and should be treated as such."

43. On December 30, 2020, the Debtor specifically requested that the Defendants promptly bring the matters to the Court for resolution by bringing a motion to terminate the CLO management agreements and for related relief, or the Debtors would be forced to commence an action for declaratory relief and bring this Motion in order to bring clarity to the Debtor's contractual rights. In response, Defendants' counsel would not commit to bring any motion, only that they would file an objection to Debtor's plan of reorganization. The Debtor believes that its disputes with the Defendants can and must be promptly resolved.

44. ***Finally,*** because Mr. Dondero continues to interfere with the Debtor's business and engage in disruptive behavior, the Debtor gave notice to Mr. Dondero on December 23, 2020, that the Debtor would evict him and terminate all services provided to him, as of December 30, 2020. On December 31, 2020, counsel to the Advisors and the Funds sent a letter to Debtor's counsel (the "December 31 Letter" and together with the December 22 Letter and December 23 Letter, the "Defendants' Letters") contending that the Debtor's decision to remove Mr. Dondero from the Debtor's offices and services was damaging the Advisors and the Funds and implied that the Debtor would be economically responsible for such damage.

45. On January 4, 2021, the Debtor responded to the December 31 Letter by noting that (a) Mr. Dondero did not seek judicial relief, make any of the contentions the advanced in the December 31 Letter, or even complain to the Debtor, (b) no action was taken against Entities,

only against Mr. Dondero, (c) Mr. Dondero was given reasonable notice of his eviction and the termination of the Debtor's services to him, such that he could have and should have made alternative arrangements to avoid any disruption, and (d) nothing prevents Mr. Dondero from continuing to work on behalf of the Entities. The Debtor also noted that it will take all steps to protect its interests against any further frivolous claims and threats made by the Defendants.

46. Upon information and belief, Mr. Dondero has taken no steps to cause the Defendants – entities that he owns and/or effectively controls and that are each a "Related Entity" under the Term Sheet – to comply with the Debtor's demands made in response to the Defendants' Letters.

FIRST CLAIM FOR RELIEF

(For Declaratory Relief: -- 11 U.S.C. § 105(a) and Fed. R. Bankr. P. 7001)

47. The Debtor repeats and realleges each of the allegations in each of the foregoing paragraphs as though fully set forth herein.

48. A bona fide, actual, present dispute exists between the Plaintiff and the Defendants concerning their respective rights and obligations concerning the CLOs.

49. A judgment declaring the parties' respective rights and obligations will resolve their disputes.

50. Pursuant to Bankruptcy Rule 7001, the Debtor specifically seeks declarations that:

- Each of the Defendants is directly or indirectly controlled by Mr. Dondero;
- Each of the Defendants is an "affiliate" of the Debtor for purposes of the CLO Management Agreements;
- The Plaintiff has the exclusive contractual right to manage the CLOs;
- The Plaintiff has the exclusive duty and responsibility to buy and sell assets on behalf of the CLOs;

- Holders of preference shares have no right to make investment decisions on behalf of the CLOs;

- The Debtor's decision to evict Mr. Dondero from the Debtor's offices, and to terminate the provision of services to him, did not violate any contract with, or duty owed to, any of the Defendants; and

- The demands and requests set forth in Defendants' Letters constitute interference with the Plaintiff's business and management of the CLOs.

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SECOND CLAIM FOR RELIEF

(Violation of the automatic stay under section § 362(a) of the Bankruptcy Code)

51. The Debtor repeats and realleges each of the allegations in each of the foregoing paragraphs as though fully set forth herein.

52. The Defendants' interference with the Plaintiff's contractual rights and course of dealing violates the automatic stay pursuant to § 362(a) of the Bankruptcy Code.

53. To the extent Defendants engaged in such conduct after the entry of the Court's Order on the Restriction Motion, such conduct was willful.

54. The Plaintiff is entitled to damages in an amount to be determined at trial arising from, and related to, the Defendants' violation of the automatic stay.

THIRD CLAIM FOR RELIEF

(Tortious Interference with Contract)

55. The Debtor repeats and realleges each of the allegations in each of the foregoing paragraphs as though fully set forth herein.

56. Since November 2020, Defendants have tortuously interfered with the Debtor's CLO management contracts.

57. The Debtors' CLO management contracts constitute are valid contracts, and, upon information and belief, the Debtor knows of the terms and conditions of such contracts because they were prepared and executed at Mr. Dondero's direction.

58. The Defendants have willfully and intentionally impeded the Debtor's ability to fulfill its contractual duties and obligations pursuant to its CLO management contracts, by, among other things, (1) hindering the Debtor's ability to sell certain CLO assets, (2) threatening to initiate the process for removing the Debtor as the portfolio manager of the CLOs, and (3) otherwise attempting to influence and interfere with the Debtor's decisions concerning the purchase or sale of any assets on behalf of the CLOs.

59. Defendants' conduct has proximately caused, and will continue to cause, damage and loss to the Debtor's estate.

60. The Plaintiff is entitled to damages in an amount to be determined at trial arising from, and related to, the Defendants' tortious interference with its CLO management contracts.

FOURTH CLAIM FOR RELIEF

(For Injunctive Relief -- 11 U.S.C. § 105(a) and Fed. R. Bankr. P. 7065)

61. The Debtor repeats and realleges the allegations in each of the foregoing paragraphs as though fully set forth herein.

62. Pursuant to Bankruptcy Code section 105(a) and Bankruptcy Rule 7065, the Debtor seeks a preliminary and permanent injunction enjoining Defendants from (1) engaging in any Prohibited Conduct, and (2) conspiring, colluding, or collaborating with (a) Mr. Dondero, (b) any entity owned and/or controlled by Mr. Dondero, and/or (c) any person or entity acting on behalf of Mr. Dondero or any entity owned and/or controlled by him, to, directly or indirectly, engage in any Prohibited Conduct.

63. Bankruptcy Code section 105(a) authorizes the Court to issue "any order, process or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. §105(a).

64. Bankruptcy Rule 7065 incorporates by reference rule 65 of the Federal Rules of Civil Procedure and authorizes the Court to issue injunctive relief in adversary proceedings.

65. The interference and threats described herein are embodied in written communications and are without any justification, and constitute willful and intentional interferences with the Debtor's management contracts that, if not prohibited, will cause the Debtor irreparable damages; the Debtor is therefore likely to prevail on its underlying claim for tortious interference with contract.

66. In the absence of injunctive relief, the Debtor will be irreparably harmed because Defendants are likely to engage in some or all of the Prohibited Conduct, thereby interfering with the Debtor's operations, management of assets, and contractual obligations, all to the detriment of the Debtor, its estate, its creditors and the creditors and stakeholders of the Successor Entities.

67. In light of, among other things, (a) the Debtor's status as a debtor in bankruptcy subject to the jurisdiction of this Court, (b) the Settlement Order and Term Sheet, (c) Mr. Dondero's resignations as the Debtor's President and CEO and later as portfolio manager and an employee, (d) the authority vested in the Board and Mr. Seery, as CEO and CRO, (e) the TRO, (f) Mr. Norris's testimony during the Hearing, and (g) the Court's denial of the Restriction Motion, there is no legal or equitable basis for Defendants to engage in any of the Prohibited Conduct, and the balance of the equities strongly favors the Debtor in the request to enjoin Defendants from engaging in any Prohibited Conduct.

68. Injunctive relief would serve the public interest by re-enforcing the implicit mandate in the Bankruptcy Code that debtors and their successors are to be managed and controlled only by court-authorized representatives, free from threats and coercion.

69. Based on the foregoing, the Debtor requests that the Court preliminarily and permanently enjoin Defendants from engaging in any Prohibited Conduct or from causing, encouraging, or conspiring with Mr. Dondero, or any entity controlled by Mr. Dondero or agent acting on Mr. Dondero' s behalf, from engaging in any Prohibited Conduct.

PRAYER

WHEREFORE, the Debtor prays for judgment as follows:

(a) On the First Cause of Action, a judgment declaring that: (i) each of the Defendants is directly or indirectly controlled by Mr. Dondero, (ii) each of the Defendants is an "affiliate" of the Debtor for purposes of the CLO Management Agreements; (iii) the Plaintiff has the exclusive contractual right to manage the CLOs; (iv) the Plaintiff has the exclusive duty and responsibility to buy and sell assets on behalf of the CLOs; (v) holders of preference shares have no right to make investment decisions on behalf of the CLOs; (vi) the Debtor's decision to evict Mr. Dondero from the Debtor's offices, and to terminate the provision of services to him, did not violate any contract with, or duty owed to, any of the Defendants; and (vii) the demands and requests set forth in Defendants' Letters constitute interference with the Plaintiff's business and management of the CLOs;

(b) On the Second Cause of Action, damages in an amount to be determined at trial arising from Defendants' violation of the automatic stay;

(c) On the Third Cause of Action, damages in an amount to be determined at trial arising from the Defendants' tortious interference with the Plaintiff's CLO management contracts;

(d) On the Fourth Cause of Action, a preliminary and permanent injunction enjoining Defendants from conspiring, colluding, or collaborating with (a) Mr. Dondero, (b) any entity owned and/or controlled by Mr. Dondero, and/or (c) any person or entity acting on behalf of Mr. Dondero or any entity owned and/or controlled by him, to, directly or indirectly, engage in any Prohibited Conduct;

(h) For such other and further relief as this Court deems just and proper.

Dated: January 6, 2021.

PACHULSKI STANG ZIEHL & JONES LLP

Jeffrey N. Pomerantz (CA Bar No.143717)
Ira D. Kharasch (CA Bar No. 109084)
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Counsel for Plaintiff Highland Capital Management, L.P.

VERIFICATION

I have read the foregoing VERIFIED COMPLAINT FOR INJUNCTIVE RELIEF and know its contents.

☐ I am a party to this action. The matters stated in it are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

☒ I am the Chief Executive Officer and Chief Restructuring Officer of Highland Capital Management, L.P., the Plaintiff in this action, and am authorized to make this verification for and on behalf of the Plaintiff, and I make this verification for that reason. I have read the foregoing document(s). I am informed and believe and on that ground allege that the matters stated in it are true.

☐ I am one of the attorneys of record for _____, a party to this action. Such party is absent from the county in which I have my office, and I make this verification for and on behalf of that party for that reason. I have read the foregoing document(s). I am informed and believe and on that ground allege that the matters stated in it are true.

I certify and declare under penalty of perjury under the laws of the United States that the foregoing is true and correct as of this 6th day of January 2021.

/s/ James P. Seery, Jr.
James P. Seery, Jr.

B1040 (FORM 1040) (12/15)

ADVERSARY PROCEEDING COVER SHEET (Instructions on Reverse)	**ADVERSARY PROCEEDING NUMBER** (Court Use Only)

PLAINTIFFS	**DEFENDANTS**
Highland Capital Management, L.P.	Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Highland Income Fund, NexPoint Strategic Opportunities Fund, NexPoint Capital, Inc., and CLO Holdco, Ltd.
ATTORNEYS (Firm Name, Address, and Telephone No.) Hayward PLLC 10501 N. Central Expressway, Suite 106, Dallas, TX 75231 Tel.: (972) 755-7100	**ATTORNEYS** (If Known)
PARTY (Check One Box Only) ☑ Debtor ☐ U.S. Trustee/Bankruptcy Admin ☐ Creditor ☐ Other ☐ Trustee	**PARTY** (Check One Box Only) ☐ Debtor ☐ U.S. Trustee/Bankruptcy Admin ☐ Creditor ☑ Other ☐ Trustee

CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED)

Count 1: Declaratory relief pursuant to 11 U.S.C. 105(a) and Fed. R. Bankr. P. 7001; Count 2: Violation of the automatic stay under 11 U.S.C. 362(a); Count 3: Tortious interference with contract; Count 4: Injunctive relief pursuant to 11 U.S.C. 105(a) and Fed. R. Bankr. P. 7065

NATURE OF SUIT

(Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)

FRBP 7001(1) – Recovery of Money/Property
- ☐ 11-Recovery of money/property - §542 turnover of property
- ☐ 12-Recovery of money/property - §547 preference
- ☐ 13-Recovery of money/property - §548 fraudulent transfer
- ☐ 14-Recovery of money/property - other

FRBP 7001(2) – Validity, Priority or Extent of Lien
- ☐ 21-Validity, priority or extent of lien or other interest in property

FRBP 7001(3) – Approval of Sale of Property
- ☐ 31-Approval of sale of property of estate and of a co-owner - §363(h)

FRBP 7001(4) – Objection/Revocation of Discharge
- ☐ 41-Objection / revocation of discharge - §727(c),(d),(e)

FRBP 7001(5) – Revocation of Confirmation
- ☐ 51-Revocation of confirmation

FRBP 7001(6) – Dischargeability
- ☐ 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims
- ☐ 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud
- ☐ 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny

(continued next column)

FRBP 7001(6) – Dischargeability (continued)
- ☐ 61-Dischargeability - §523(a)(5), domestic support
- ☐ 68-Dischargeability - §523(a)(6), willful and malicious injury
- ☐ 63-Dischargeability - §523(a)(8), student loan
- ☐ 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support)
- ☐ 65-Dischargeability - other

FRBP 7001(7) – Injunctive Relief
- ☐ 71-Injunctive relief – imposition of stay
- ☑ 72-Injunctive relief – other

FRBP 7001(8) Subordination of Claim or Interest
- ☐ 81-Subordination of claim or interest

FRBP 7001(9) Declaratory Judgment
- ☑ 91-Declaratory judgment

FRBP 7001(10) Determination of Removed Action
- ☐ 01-Determination of removed claim or cause

Other
- ☐ SS-SIPA Case – 15 U.S.C. §§78aaa *et.seq.*
- ☑ 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)

☐ Check if this case involves a substantive issue of state law	☐ Check if this is asserted to be a class action under FRCP 23
☐ Check if a jury trial is demanded in complaint	Demand $ Damages in amount to be determined at trial

Other Relief Sought Declaratory judgment and injunctive relief

B1040 (FORM 1040) (12/15)

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR Highland Capital Management, L.P.	BANKRUPTCY CASE NO. 19-34054-sgj11	
DISTRICT IN WHICH CASE IS PENDING Northern District of Texas	DIVISION OFFICE Dallas	NAME OF JUDGE Stacey G. C. Jernigan
RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISION OFFICE	NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF) 		
DATE January 6, 2021	PRINT NAME OF ATTORNEY (OR PLAINTIFF) Zachery Z. Annable	

INSTRUCTIONS

The filing of a bankruptcy case creates an "estate" under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor's discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also must complete and file Form 1040, the Adversary Proceeding Cover Sheet, unless the party files the adversary proceeding electronically through the court's Case Management/Electronic Case Filing system (CM/ECF). (CM/ECF captures the information on Form 1040 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

Plaintiffs and **Defendants.** Give the names of the plaintiffs and defendants exactly as they appear on the complaint.

Attorneys. Give the names and addresses of the attorneys, if known.

Party. Check the most appropriate box in the first column for the plaintiffs and the second column for the defendants.

Demand. Enter the dollar amount being demanded in the complaint.

Signature. This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.

APPENDIX 15

EXECUTION COPY

SERVICING AGREEMENT

This Servicing Agreement, dated as of December 20, 2007 is entered into by and among GREENBRIAR CLO, LTD., an exempted company incorporated with limited liability under the laws of the Cayman Islands, with its registered office located at P.O. Box 1093GT, Queensgate House, South Church Street, George Town, Grand Cayman, Cayman Islands (together with successors and assigns permitted hereunder, the "Issuer"), and HIGHLAND CAPITAL MANAGEMENT, L.P., a Delaware limited partnership, with its principal offices located at Two Galleria Tower, 13455 Noel Road, Suite 1300, Dallas, Texas 75240, as servicer ("Highland" or, in such capacity, the "Servicer").

WITNESSETH:

WHEREAS, the Issuer and GREENBRIAR CLO CORP. (the "Co-Issuer" and together with the Issuer, the "Co-Issuers") intend to issue U.S.$730,000,000 of their Class A Floating Rate Senior Secured Extendable Notes due November 2021 (the "Class A Notes"), U.S.$60,000,000 of their Class B Floating Rate Senior Secured Extendable Notes due November 2021 (the "Class B Notes"), U.S.$50,000,000 of their Class C Floating Rate Senior Secured Deferrable Interest Extendable Notes due November 2021 (the "Class C Notes"), U.S.$40,000,000 of their Class D Floating Rate Senior Secured Deferrable Interest Extendable Notes due November 2021 (the "Class D Notes"), and the Issuer intends to issue U.S.$40,000,000 of its Class E Floating Rate Senior Secured Deferrable Interest Extendable Notes due November 2021 (the "Class E Notes" and together with the Class A Notes, Class B Notes, Class C Notes and Class D Notes, the "Notes") pursuant to the Indenture dated as of December 20, 2007 (the "Indenture"), among the Co-Issuers and State Street Bank and Trust Company, as trustee (the "Trustee") and the Issuer intends to issue 20,000 Class I Preference Shares, $0.01 par value (the "Class I Preference Shares") and 60,000 Class II Preference Shares, $0.01 par value (the "Class II Preference Shares" and, together with the Class I Preference Shares, the "Preference Shares" and, together with the Notes, the "Securities") pursuant to the Preference Shares Paying Agency Agreement dated as of December 20, 2007 (the "Preference Shares Paying Agency Agreement") between the Issuer and State Street Bank and Trust Company, as the Preference Shares Paying Agent, and pursuant to the Issuer's amended and restated memorandum and articles of association (the "Memorandum and Articles of Association") and certain resolutions of the board of directors of the Issuer;

WHEREAS, the Issuer intends to pledge certain Collateral Obligations, Eligible Investments and Cash (all as defined in the Indenture) and certain other assets (all as set forth in the Indenture) (collectively, the "Collateral") to the Trustee as security for the Notes;

WHEREAS, the Issuer wishes to enter into this Servicing Agreement, pursuant to which the Servicer agrees to perform, on behalf of the Issuer, certain duties with respect to the Collateral in the manner and on the terms set forth herein; and

WHEREAS, the Servicer has the capacity to provide the services required hereby and in the applicable provisions of the other Transaction Documents and is prepared to perform such services upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual agreements herein set forth, the parties hereto agree as follows:

1. Definitions.

Terms used herein and not defined below shall have the meanings set forth in the Indenture.

"Agreement" shall mean this Servicing Agreement, as amended from time to time.

"Governing Instruments" shall mean the memorandum, articles or certificate of incorporation or association and by-laws, if applicable, in the case of a corporation; the certificate of formation, if applicable, or the partnership agreement, in the case of a partnership; or the certificate of formation, if applicable, or the limited liability company agreement, in the case of a limited liability company.

"HFP" shall mean Highland Financial Partners, L.P. (which includes, for the avoidance of doubt, any subsidiary thereof).

"Offering Memorandum" shall mean the Offering Memorandum of the Issuer dated December 18, 2007 prepared in connection with the offering of the Securities.

"Servicer Breaches" shall have the meaning specified in Section 10(a).

"Servicing Fee" shall mean, collectively, the Senior Servicing Fee, the Subordinated Servicing Fee and the Supplemental Servicing Fee.

"Transaction Documents" shall mean the Indenture, the Preference Shares Paying Agency Agreement, the Servicing Agreement and the Collateral Administration Agreement.

2. General Duties of the Servicer.

(a) The Servicer shall provide services to the Issuer as follows:

(i) Subject to and in accordance with the terms this Agreement and the other Transaction Documents, the Servicer shall supervise and direct the administration, acquisition and disposition of the Collateral, and shall perform on behalf of the Issuer those duties and obligations of the Servicer required by the Indenture and the other Transaction Documents, and including the furnishing of Issuer Orders, Issuer Requests and officer's certificates, and such certifications as are required of the Servicer under the Indenture with respect to permitted purchases and sales of the Collateral Obligations, Eligible Investments and other assets, and other matters, and, to the extent necessary or appropriate to perform such duties, the Servicer shall have the power to execute and deliver all necessary and appropriate documents and instruments on behalf of the Issuer with respect thereto. The Servicer shall, subject to the terms and conditions of this Agreement and the other Transaction Documents, perform its obligations hereunder and thereunder with reasonable care, using a degree of skill and attention no less than that which the Servicer exercises with respect to comparable assets that it services or manages for others having similar objectives and restrictions, and in a manner consistent with practices and procedures followed by institutional servicers or managers of national standing relating to assets of the nature and character of the Collateral for clients having

similar objectives and restrictions, except as expressly provided otherwise in this Agreement and/or the other Transaction Documents. To the extent not inconsistent with the foregoing, the Servicer shall follow its customary standards, policies and procedures in performing its duties under the Indenture and hereunder. The Servicer shall comply with all terms and conditions of the other Transaction Documents affecting the duties and functions to be performed hereunder. The Servicer shall not be bound to follow any amendment to any Transaction Document until it has received written notice thereof and until it has received a copy of the amendment from the Issuer or the Trustee; provided, however, that the Servicer shall not be bound by any amendment to any Transaction Document that affects the rights, powers, obligations or duties of the Servicer unless the Servicer shall have consented thereto in writing. The Issuer agrees that it shall not permit any amendment to the Indenture that (x) affects the rights, powers, obligations or duties of the Servicer or (y) affects the amount or priority of any fees payable to the Servicer to become effective unless the Servicer has been given prior written notice of such amendment and consented thereto in writing;

(ii) the Servicer shall select any Collateral which shall be acquired by the Issuer pursuant to the Indenture in accordance with the Collateral criteria set forth herein and in the Indenture;

(iii) the Servicer shall monitor the Collateral on an ongoing basis and provide to the Issuer all reports, certificates, schedules and other data with respect to the Collateral which the Issuer is required to prepare and deliver under the Indenture, in the form and containing all information required thereby and in reasonable time for the Issuer to review such required reports, certificates, schedules and data and to deliver them to the parties entitled thereto under the Indenture; the Servicer shall undertake to determine to the extent reasonably practicable whether a Collateral Obligation has become a Defaulted Collateral Obligation;

(iv) the Servicer, subject to and in accordance with the provisions of the Indenture may, at any time permitted under the Indenture, and shall, when required by the Indenture, direct the Trustee (x) to dispose of a Collateral Obligation, Equity Security or Eligible Investment or other securities received in respect thereof in the open market or otherwise, (y) to acquire, as security for the Notes in substitution for or in addition to any one or more Collateral Obligations or Eligible Investments included in the Collateral, one or more substitute Collateral Obligations or Eligible Investments, or (z) direct the Trustee to take the following actions with respect to a Collateral Obligation or Eligible Investment:

(1) retain such Collateral Obligation or Eligible Investment; or

(2) dispose of such Collateral Obligation or Eligible Investment in the open market or otherwise; or

(3) if applicable, tender such Collateral Obligation or Eligible Investment pursuant to an Offer; or

(4) if applicable, consent to any proposed amendment, modification or waiver pursuant to an Offer; or

(5) retain or dispose of any securities or other property (if other than cash) received pursuant to an Offer; or

(6) waive any default with respect to any Defaulted Collateral Obligation; or

(7) vote to accelerate the maturity of any Defaulted Collateral Obligation; or

(8) exercise any other rights or remedies with respect to such Collateral Obligation or Eligible Investment as provided in the related Underlying Instruments, including in connection with any workout situations, or take any other action consistent with the terms of the Indenture which is in the best interests of the Holders of the Securities; and

(v) the Servicer shall (a) on or prior to any day which is a Redemption Date, direct the Trustee to enter into contracts to dispose of the Collateral Obligation and any other Collateral pursuant to the Indenture and otherwise comply with all redemption procedures and certification requirements in the Indenture in order to allow the Trustee to effect such redemption and (b) conduct auctions in accordance with the terms of the Indenture.

(b) In performing its duties hereunder, the Servicer shall seek to preserve the value of the Collateral for the benefit of the Holders of the Securities taking into account the Collateral criteria and limitations set forth herein and in the Indenture and the Servicer shall use reasonable efforts to select and service the Collateral in such a way that will permit a timely performance of all payment obligations by the Issuer under the Indenture; provided, that the Servicer shall not be responsible if such objectives are not achieved so long as the Servicer performs its duties under this Agreement in the manner provided for herein, and provided, further, that there shall be no recourse to the Servicer with respect to the Notes or the Preference Shares. The Servicer and the Issuer shall take such other action, and furnish such certificates, opinions and other documents, as may be reasonably requested by the other party hereto in order to effectuate the purposes of this Agreement and to facilitate compliance with applicable laws and regulations and the terms of this Agreement.

(c) The Servicer hereby agrees to the following:

(i) The Servicer agrees not to cause the filing of a petition in bankruptcy against the Issuer or the Co-Issuer until the payment in full of all Notes issued under the Indenture and the payment to the Preference Shares Paying Agent of all amounts payable with respect to the Preference Shares in accordance with the Priority of Payments and the expiration of a period equal to the greater of (A) the applicable preference period plus one day or (B) one year and one day following the payment. Notwithstanding the foregoing, the Servicer may commence any legal action that is not a bankruptcy, insolvency, liquidation or similar proceeding against the Issuer or the Co-Issuer or any of their properties and may take any action it deems appropriate at any time in any bankruptcy, insolvency, liquidation or similar proceeding and any other Proceeding voluntarily commenced by the Issuer or the Co-Issuer or involuntarily commenced against the Issuer or the Co-Issuer by anyone other than the Servicer or any Affiliate of the Servicer. The provisions of this Section 2(c)(i) shall survive termination of this Agreement.

(ii) The Servicer shall cause each sale or purchase of any Collateral Obligation or Eligible Investment to be conducted on an arm's-length basis.

(d) The Servicer shall not act for the Issuer in any capacity except as provided in this Section 2. In providing services hereunder, the Servicer may employ third parties, including its Affiliates, to render advice (including advice with respect to the servicing of the Collateral) and assistance; provided, however, that the Servicer shall not be relieved of any of its duties or liabilities hereunder regardless of the performance of any services by third parties. Notwithstanding any other provision of this Agreement, the Servicer shall not be required to take any action required of it pursuant to this Agreement or the Indenture if such action would constitute a violation of any law.

(e) Notwithstanding any other provision of this Agreement or the Indenture, (i) any granted signatory powers or authority granted to the Servicer on behalf of the Issuer with respect to the Special Procedures Obligations (as defined in Annex 1) shall be conditioned upon the prior written approval of the Independent Advisor (as defined in Annex 1) and (ii) neither the Servicer nor any Affiliate of the Servicer shall have any authority to enter into agreements, or take any action, on behalf of the Issuer with respect to the Special Procedures Obligations without the prior written approval of the Independent Advisor.

(f) Except as otherwise provided in the Indenture and herein, subject to the resignation rights of the Servicer pursuant to Section 12 of this Agreement, the Servicer shall continue to serve as Servicer under this Agreement notwithstanding that the Servicer shall not have received amounts due it under this Agreement because sufficient funds were not then available under the Indenture to pay the amounts owed to the Servicer pursuant to the Priority of Payments.

(g) The Servicer agrees that on the Closing Date, (i) HFP and/or one or more of its subsidiaries will purchase all of the Class II Preference Shares and all of the Class E Notes and (ii) the Servicer or one or more of its Affiliates is expected to purchase all of the Class I Preference Shares.

3. Brokerage.

The Servicer shall seek to obtain the best prices and execution for all orders placed with respect to the Collateral, considering all reasonable circumstances. Subject to the objective of obtaining best prices and execution, the Servicer may take into consideration research and other brokerage services furnished to the Servicer or its Affiliates by brokers and dealers which are not Affiliates of the Servicer. Such services may be used by the Servicer or its Affiliates in connection with its other servicing or advisory activities or operations. The Servicer may aggregate sales and purchase orders of securities placed with respect to the Collateral with similar orders being made simultaneously for other accounts serviced or managed by the Servicer or with accounts of the Affiliates of the Servicer, if in the Servicer's reasonable judgment such aggregation shall result in an overall economic benefit to the Issuer, taking into consideration the advantageous selling or purchase price, brokerage commission and other expenses. In the event that a sale or purchase of a Collateral Obligation or Eligible Investment (in accordance with the terms of the Indenture) occurs as part of any aggregate sales or purchase orders, the objective of the Servicer (and any of its Affiliates involved in such transactions) shall be to allocate the executions among the accounts in an equitable manner and consistent with its obligations hereunder and under applicable law.

In addition to the foregoing and subject to the provisions of Section 2 and the limitations of Section 5, the objective of obtaining best prices and execution and to the extent permitted by applicable law, the Servicer may, on behalf of the Issuer, direct the Trustee to acquire any and all of the Eligible

Investments or other Collateral from, or sell Collateral Obligations or other Collateral to, the Initial Purchaser, the Trustee or any of their respective Affiliates, or any other firm.

4. Additional Activities of the Servicer.

Nothing herein shall prevent the Servicer or any of its Affiliates from engaging in other businesses, or from rendering services of any kind to the Trustee, the Holders of the Securities, or any other Person or entity to the extent permitted by applicable law. Without prejudice to the generality of the foregoing, the Servicer and partners, directors, officers, employees and agents of the Servicer or its Affiliates may, among other things, and subject to any limits specified in the Indenture:

(a) serve as directors (whether supervisory or managing), officers, partners, employees, agents, nominees or signatories for any issuer of any obligations included in the Collateral or their respective Affiliates, to the extent permitted by their Governing Instruments, as from time to time amended, or by any resolutions duly adopted by the Issuer, its Affiliates or any issuer of any obligations included in the Collateral or their respective Affiliates, pursuant to their respective Governing Instruments; provided, that in the reasonable judgment of the Servicer, such activity shall not have a material adverse effect on the enforceability of Collateral or the ability of the Issuer to comply with each Overcollateralization Ratio and each Interest Coverage Test; provided, further, that nothing in this paragraph shall be deemed to limit the duties of the Servicer set forth in Section 2 hereof;

(b) receive fees for services of any nature rendered to the issuer of any obligations included in the Collateral or their respective Affiliates; provided, that in the reasonable judgment of the Servicer, such activity shall not have a material adverse effect on the enforceability of Collateral or the ability of the Issuer to comply with each Coverage Test; and provided, further, that if any portion of such services are related to the purchase by the Issuer of any obligations included in the Collateral, the portion of such fees relating to such obligations shall be applied to the purchase price of such obligations; and

(c) be a secured or unsecured creditor of, or hold an equity interest in, the Issuer, its Affiliates or any issuer of any obligation included in the Collateral; provided, that in the reasonable judgment of the Servicer, such activity shall not have a material adverse effect on the enforceability of Collateral or the ability of the Issuer to comply with each Coverage Test; provided, further, that nothing in this paragraph shall be deemed to limit the duties of the Servicer set forth in Section 2 hereof.

It is understood that the Servicer and any of its Affiliates may engage in any other business and furnish servicing, investment management and advisory services to others, including Persons which may have policies similar to those followed by the Servicer with respect to the Collateral and which may own securities of the same class, or which are the same type, as the Collateral Obligations or other securities of the issuers of Collateral Obligations. The Servicer shall be free, in its sole discretion, to make recommendations to others, or effect transactions on behalf of itself or for others, which may be the same as or different from those effected with respect to the Collateral.

Unless the Servicer determines in its reasonable judgment that such purchase or sale is appropriate, the Servicer may refrain from directing the purchase or sale hereunder of securities issued by (i) Persons of which the Servicer, its Affiliates or any of its or their officers, directors or employees are directors or officers, (ii) Persons for which the Servicer or its Affiliates act as financial adviser or underwriter or (iii) Persons about which the Servicer or any of its Affiliates have information which the Servicer deems confidential or non-public or otherwise might prohibit it from trading such securities in

accordance with applicable law. The Servicer shall not be obligated to have or pursue any particular strategy or opportunity with respect to the Collateral.

5. Conflicts of Interest.

(a) The Servicer shall not direct the Trustee to acquire an obligation to be included in the Collateral from the Servicer or any of its Affiliates as principal or to sell an obligation to the Servicer or any of its Affiliates as principal unless (i) the Issuer shall have received from the Servicer such information relating to such acquisition or sale as it may reasonably require and shall have approved such acquisition, which approval shall not be unreasonably withheld, (ii) in the judgment of the Servicer, such transaction is on terms no less favorable than would be obtained in a transaction conducted on an arm's length basis between third parties unaffiliated with each other and (iii) such transaction is permitted by the United States Investment Advisers Act of 1940, as amended.

(b) The Servicer shall not direct the Trustee to acquire an obligation to be included in the Collateral directly from any account or portfolio for which the Servicer serves as servicer or investment adviser, or direct the Trustee to sell an obligation directly to any account or portfolio for which the Servicer serves as servicer or investment adviser unless such acquisition or sale is (i) in the judgment of the Servicer, on terms no less favorable than would be obtained in a transaction conducted on an arm's length basis between third parties unaffiliated with each other and (ii) permitted by the United States Investment Advisers Act of 1940, as amended.

(c) In addition, the Servicer shall not undertake any transaction described in this Section 5 unless such transaction is exempt from the prohibited transaction rules of ERISA and the Code.

6. Records; Confidentiality.

The Servicer shall maintain appropriate books of account and records relating to services performed hereunder, and such books of account and records shall be accessible for inspection by a representative of the Issuer, the Trustee, the Collateral Administrator, the Holders of the Securities and the Independent accountants appointed by the Issuer pursuant to the Indenture at a mutually agreed time during normal business hours and upon not less than three Business Days' prior notice. At no time shall the Servicer make a public announcement concerning the issuance of the Notes or the Preference Shares, the Servicer's role hereunder or any other aspect of the transactions contemplated by this Agreement and the other Transaction Documents. The Servicer shall keep confidential any and all information obtained in connection with the services rendered hereunder and shall not disclose any such information to non-affiliated third parties except (i) with the prior written consent of the Issuer, (ii) such information as either Rating Agency shall reasonably request in connection with the rating of any Class of Securities, (iii) as required by law, regulation, court order or the rules or regulations of any self regulating organization, body or official having jurisdiction over the Servicer, (iv) to its professional advisers, (v) such information as shall have been publicly disclosed other than in violation of this Agreement, or (vi) such information that was or is obtained by the Servicer on a non-confidential basis; provided, that the Servicer does not know or have reason to know of any breach by such source of any confidentiality obligations with respect thereto. For purposes of this Section 6, the Trustee, the Collateral Administrator and the Holders of the Securities shall in no event be considered "non-affiliated third parties."

Notwithstanding anything in this Agreement or the Indenture to the contrary, the Servicer, the Co-Issuers, the Trustee and the Holders of the Securities (and the beneficial owners thereof) (and each of their respective employees, representatives or other agents) may disclose to any and all Persons, without limitation of any kind, the U.S. tax treatment and U.S. tax structure of the transactions

contemplated by this Agreement and all materials of any kind (including opinions or other tax analyses) that are provided to them relating to such U.S. tax treatment and U.S. tax structure, as such terms are defined under U.S. federal, state or local tax law.

7. Obligations of Servicer.

Unless otherwise specifically required by any provision of the Indenture or this Agreement or by applicable law, the Servicer shall use its best reasonable efforts to ensure that no action is taken by it, and shall not intentionally or with reckless disregard take any action, which would (a) materially adversely affect the Issuer or the Co-Issuer for purposes of Cayman Islands law, United States federal or state law or any other law known to the Servicer to be applicable to the Issuer or the Co-Issuer, (b) not be permitted under the Issuer's Memorandum and Articles of Association or the Co-Issuer's Certificate of Incorporation or By-Laws, (c) violate any law, rule or regulation of any governmental body or agency having jurisdiction over the Issuer or the Co-Issuer including, without limitation, any Cayman Islands or United States federal, state or other applicable securities law the violation of which has or could reasonably be expected to have a material adverse effect on the Issuer, the Co-Issuer or any of the Collateral, (d) require registration of the Issuer, the Co-Issuer or the pool of Collateral as an "investment company" under the Investment Company Act, (e) cause the Issuer or the Co-Issuer to violate the terms of the Indenture, including, without limitation, any representations made by the Issuer or Co-Issuer therein, or any other agreement contemplated by the Indenture or (f) not be permitted by Annex 1 hereto and would subject the Issuer to U.S. federal or state income or franchise taxation or cause the Issuer to be engaged in a trade or business in the United States for U.S. federal income tax purposes. The Servicer covenants that it shall comply in all material respects with all laws and regulations applicable to it in connection with the performance of its duties under this Agreement and the Indenture. Notwithstanding anything in this Agreement to the contrary, the Servicer shall not be required to take any action under this Agreement or the Indenture if such action would violate any applicable law, rule, regulation or court order.

8. Compensation.

(a) The Issuer shall pay to the Servicer, for services rendered and performance of its obligations under this Agreement, the Servicing Fee, which shall be payable in such amounts and at such times as set forth in the Indenture. The provisions of the Indenture which relate to the amount and payment of the Servicing Fee shall not be amended without the written consent of the Servicer. If on any Payment Date there are insufficient funds to pay the Servicing Fee (and/or any other amounts due and payable to the Servicer) in full, the amount not so paid shall be deferred and shall be payable on such later Payment Date on which funds are available therefor as provided in the Indenture.

With respect to any Payment Date after February 3, 2008, the Servicer may, in its sole discretion, at any time waive a portion (or all) of its Servicing Fees then due and payable. All waived amounts will be paid to the Class II Preference Shares as Class II Preference Share Special Payments pursuant to the Indenture; provided that with respect to the Payment Date in August 2008, such Class II Preference Share Special Payments will, at a minimum, include amounts that otherwise constitute a portion (representing the Class II Preference Share Percentage) of the Servicing Fees that have accrued from the Closing Date through February 3, 2008. For purposes of any calculation under this Agreement and the Indenture, the Servicer shall be deemed to have received the Servicing Fee in an amount equal to the sum of the Servicing Fee actually paid to the Servicer and the amount distributed to the Holders of the Class II Preference Shares as Class II Preference Share Special Payments.

In addition, notwithstanding anything set out above, the Servicer may, in its sole discretion waive all or any portion of the Subordinated Servicing Fee or Supplemental Servicing Fee, any

funds representing the waived Subordinated Servicing Fees and Supplemental Servicing Fees to be retained in the Collection Account for distribution as either Interest Proceeds or Principal Proceeds (as determined by the Servicer) pursuant to the Priority of Payments.

(b) The Servicer shall be responsible for the ordinary expenses incurred in the performance of its obligations under this Agreement, the Indenture and the other Transaction Documents; provided, however, that any extraordinary expenses incurred by the Servicer in the performance of such obligations (including, but not limited to, any fees, expenses or other amounts payable to the Rating Agencies, the Collateral Administrator, the Trustee and the accountants appointed by the Issuer, the reasonable expenses incurred by the Servicer to employ outside lawyers or consultants reasonably necessary in connection with the evaluation, transfer or restructuring of any Collateral Obligation or other unusual matters arising in the performance of its duties under this Agreement and the Indenture, any reasonable expenses incurred by the Servicer in obtaining advice from outside counsel with respect to its obligations under this Agreement, brokerage commissions, transfer fees, registration costs, taxes and other similar costs and transaction related expenses and fees arising out of transactions effected for the Issuer's account and the portion allocated to the Issuer of any other fees and expenses that the Servicer customarily allocates among all of the funds or portfolios that it services or manages, including reasonable expenses incurred with respect to any compliance requirements, including, but not limited to, compliance with the requirements of the Sarbanes-Oxley Act, related solely to the ownership or holding of any Securities by HFP or any of its subsidiaries) shall be reimbursed by the Issuer to the extent funds are available therefor in accordance with and subject to the Priority of Payments and other limitations contained in the Indenture.

(c) If this Agreement is terminated pursuant to Section 12, Section 14 or otherwise, the fees payable to the Servicer shall be prorated for any partial periods between Payment Dates during which this Agreement was in effect and shall be due and payable on the first Payment Date following the date of such termination and on any subsequent Payment Dates to the extent remaining unpaid and in accordance with, and to the extent provided in, the Indenture.

9. Benefit of the Agreement.

The Servicer agrees that its obligations hereunder shall be enforceable at the instance of the Issuer, the Trustee, on behalf of the Noteholders, or the requisite percentage of Noteholders or the Holders of the Preference Shares, as applicable, as provided in the Indenture.

10. Limits of Servicer Responsibility; Indemnification.

(a) The Servicer assumes no responsibility under this Agreement other than to render the services called for hereunder and under the terms of the other Transaction Documents made applicable to it pursuant to the terms of this Agreement in good faith and, subject to the standard of liability described in the next sentence, shall not be responsible for any action of the Issuer or the Trustee in following or declining to follow any advice, recommendation or direction of the Servicer. The Servicer, its directors, officers, stockholders, partners, agents and employees, and its Affiliates and their directors, officers, stockholders, partners, agents and employees, shall not be liable to the Issuer, the Co-Issuer, the Trustee, the Preference Shares Paying Agent, the Holders of the Securities or any other person, for any losses, claims, damages, judgments, assessments, costs or other liabilities (collectively, "Liabilities") incurred by the Issuer, the Co-Issuer, the Trustee, the Preference Shares Paying Agent, the Holders of the Securities or any other person, that arise out of or in connection with the performance by the Servicer of its duties under this Agreement and under the terms of the other Transaction Documents made applicable to it pursuant to the terms of this Agreement, except by reason of (i) acts or omissions constituting bad faith, willful misconduct, gross negligence or breach of fiduciary duty in the

performance, or reckless disregard, of the obligations of the Servicer hereunder and under the terms of the other Transaction Documents made applicable to it pursuant to the terms of this Agreement or (ii) with respect to any information included in the Offering Memorandum in the sections entitled "The Servicer" and "Risk Factors–Relating to Certain Conflicts of Interest–The Issuer Will Be Subject to Various Conflicts of Interest Involving the Servicer" that contains any untrue statement of material fact or omits to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading (the preceding clauses (i) and (ii) collectively being the "Servicer Breaches"). The Servicer shall be liable for any non-waivable breaches of applicable securities laws. For the avoidance of doubt, the Servicer shall have no duty to independently investigate any laws not otherwise known to it in connection with its obligations under this Agreement, the Indenture and the other Transaction Documents. The Servicer shall be deemed to have satisfied the requirements of the Indenture and this Agreement relating to not causing the Issuer to be treated as engaged in a trade or business in the United States for U.S. federal income tax purposes (including as those requirements relate to the acquisition (including manner of acquisition), ownership, enforcement, and disposition of Collateral) to the extent the Servicer complies with the requirements set forth in Annex 1 hereto (unless the Servicer knows that as a result of a change in law the investment restrictions set forth in Annex 1 may no longer be relied upon).

(b) The Issuer shall indemnify and hold harmless (the Issuer in such case, the "Indemnifying Party") the Servicer, its directors, officers, stockholders, partners, agents and employees (such parties collectively in such case, the "Indemnified Parties") from and against any and all Liabilities, and shall reimburse each such Indemnified Party for all reasonable fees and expenses (including reasonable fees and expenses of counsel) (collectively, the "Expenses") as such Expenses are incurred in investigating, preparing, pursuing or defending any claim, action, proceeding or investigation with respect to any pending or threatened litigation (collectively, the "Actions"), caused by, or arising out of or in connection with, the issuance of the Securities, the transactions contemplated by the Offering Memorandum, the Indenture or this Agreement, and/or any action taken by, or any failure to act by, such Indemnified Party; provided, however, that no Indemnified Party shall be indemnified for any Liabilities or Expenses it incurs as a result of any acts or omissions by any Indemnified Party constituting Servicer Breaches. Notwithstanding anything contained herein to the contrary, the obligations of the Issuer under this Section 10 shall be payable solely out of the Collateral in accordance with, and subject to, the Priority of Payments and shall survive termination of this Agreement.

(c) With respect to any claim made or threatened against an Indemnified Party, or compulsory process or request or other notice of any loss, claim, damage or liability served upon an Indemnified Party, for which such Indemnified Party is or may be entitled to indemnification under this Section 10, such Indemnified Party shall (or with respect to Indemnified Parties that are directors, officers, stockholders, agents or employees of the Servicer, the Servicer shall cause such Indemnified Party to):

(i) give written notice to the Indemnifying Party of such claim within ten (10) days after such Indemnified Party's receipt of actual notice that such claim is made or threatened, which notice to the Indemnifying Party shall specify in reasonable detail the nature of the claim and the amount (or an estimate of the amount) of the claim; provided, however, that the failure of any Indemnified Party to provide such notice to the Indemnifying Party shall not relieve the Indemnifying Party of its obligations under this Section 10 unless the Indemnifying Party is materially prejudiced or otherwise forfeits rights or defenses by reason of such failure;

(ii) at the Indemnifying Party's expense, provide the Indemnifying Party such information and cooperation with respect to such claim as the Indemnifying

Party may reasonably require, including, but not limited to, making appropriate personnel available to the Indemnifying Party at such reasonable times as the Indemnifying Party may request;

(iii) at the Indemnifying Party's expense, cooperate and take all such steps as the Indemnifying Party may reasonably request to preserve and protect any defense to such claim;

(iv) in the event suit is brought with respect to such claim, upon reasonable prior notice, afford to the Indemnifying Party the right, which the Indemnifying Party may exercise in its sole discretion and at its expense, to participate in the investigation, defense and settlement of such claim;

(v) neither incur any material expense to defend against nor release or settle any such claim or make any admission with respect thereto (other than routine or incontestable admissions or factual admissions the failure to make which would expose such Indemnified Party to unindemnified liability) nor permit a default or consent to the entry of any judgment in respect thereof, in each case without the prior written consent of the Indemnifying Party; and

(vi) upon reasonable prior notice, afford to the Indemnifying Party the right, in its sole discretion and at its sole expense, to assume the defense of such claim, including, but not limited to, the right to designate counsel reasonably acceptable to the Indemnified Party and to control all negotiations, litigation, arbitration, settlements, compromises and appeals of such claim; provided, that if the Indemnifying Party assumes the defense of such claim, it shall not be liable for any fees and expenses of counsel for any Indemnified Party incurred thereafter in connection with such claim except that if such Indemnified Party reasonably determines that counsel designated by the Indemnifying Party has a conflict of interest in connection with its representation of such Indemnified Party, such Indemnifying Party shall pay the reasonable fees and disbursements of one counsel (in addition to any local counsel) separate from its own counsel for all Indemnified Parties in connection with any one action or separate but similar or related actions in the same jurisdiction arising out of the same general allegations or circumstances; provided, further, that prior to entering into any final settlement or compromise, such Indemnifying Party shall seek the consent of the Indemnified Party and use its commercially reasonable efforts in the light of the then prevailing circumstances (including, without limitation, any express or implied time constraint on any pending settlement offer) to obtain the consent of such Indemnified Party as to the terms of settlement or compromise. If an Indemnified Party does not consent to the settlement or compromise within a reasonable time under the circumstances, the Indemnifying Party shall not thereafter be obligated to indemnify the Indemnified Party for any amount in excess of such proposed settlement or compromise.

(d) In the event that any Indemnified Party waives its right to indemnification hereunder, the Indemnifying Party shall not be entitled to appoint counsel to represent such Indemnified Party nor shall the Indemnifying Party reimburse such Indemnified Party for any costs of counsel to such Indemnified Party.

(e) The U.S. federal securities laws impose liabilities under certain circumstances on persons who act in good faith; accordingly, notwithstanding any other provision of this

Agreement, nothing herein shall in any way constitute a waiver or limitation of any rights which the Issuer or the Holders of the Securities may have under any U.S. federal securities laws.

11. No Partnership or Joint Venture.

The Issuer and the Servicer are not partners or joint venturers with each other and nothing herein shall be construed to make them such partners or joint venturers or impose any liability as such on either of them. The Servicer's relation to the Issuer shall be deemed to be that of an independent contractor.

12. Term; Termination.

(a) This Agreement shall commence as of the date first set forth above and shall continue in force and effect until the first of the following occurs: (i) the payment in full of the Notes, the termination of the Indenture in accordance with its terms and the redemption in full of the Preference Shares; (ii) the liquidation of the Collateral and the final distribution of the proceeds of such liquidation to the Holders of the Securities; or (iii) the termination of this Agreement in accordance with subsection (b), (c), (d) or (e) of this Section 12 or Section 14 of this Agreement.

(b) Subject to Section 12(e) below, the Servicer may resign, upon 90 days' written notice to the Issuer (or such shorter notice as is acceptable to the Issuer). If the Servicer resigns, the Issuer agrees to appoint a successor servicer to assume such duties and obligations in accordance with Section 12(e).

(c) This Agreement shall be automatically terminated in the event that the Issuer determines in good faith that the Issuer or the pool of Collateral has become required to be registered under the provisions of the Investment Company Act, and the Issuer notifies the Servicer thereof.

(d) If this Agreement is terminated pursuant to this Section 12, neither party shall have any further liability or obligation to the other, except as provided in Sections 2(c)(i), 8, 10 and 15 of this Agreement.

(e) No removal or resignation of the Servicer shall be effective unless:

(i) (A) the Issuer appoints a successor servicer at the written direction of a Majority of the Preference Shares (excluding any Preference Shares held by the retiring Servicer, any of its Affiliates or any account over which the retiring Servicer or its Affiliates have discretionary voting authority other than, with respect to the Class II Preference Shares, HFP; provided that, with respect to the voting authority of Class II Preference Shares owned by HFP or any of its subsidiaries, such vote shall not be excluded only if such vote is determined by a vote of the majority of the "independent directors" (determined in accordance with the governing documents of HFP or such subsidiaries and certified in writing to the Preference Shares Paying Agent by any of the "independent directors" of HFP) of HFP or such subsidiaries) (each such non-excluded Preference Share, a "Voting Preference Share"), (B) such successor servicer has agreed in writing to assume all of the retiring Servicer's duties and obligations pursuant to this Agreement and the Indenture and (C) such successor servicer is not objected to within 30 days after notice of such succession by either (x) a Super Majority of the Controlling Class of Notes (excluding any Notes held by the retiring Servicer, its Affiliates or any account over which the retiring Servicer or its Affiliates have discretionary voting

authority other than HFP; provided that, with respect to the voting authority of Notes owned by HFP or any of its subsidiaries, such vote shall not be excluded only if such vote is determined by a vote of the majority of the "independent directors" (determined in accordance with the governing documents of HFP or such subsidiaries and certified in writing to the Trustee by any of the "independent directors" of HFP) of HFP or such subsidiaries) (each such non-excluded Note, a "Voting Note") or (y) a Majority in Aggregate Outstanding Amount of the Voting Notes (voting as a single class); or

(ii) if a Majority of the Voting Preference Shares has nominated two or more successor servicers that have been objected to pursuant to the preceding clause (i)(C) or has failed to appoint a successor servicer that has not been objected to pursuant to the preceding clause (i)(C) within 60 days of the date of notice of such removal or resignation of the Servicer, (A) the Issuer appoints a successor servicer at the written direction of a Super Majority of the Controlling Class of Notes (excluding any Notes that are not Voting Notes), (B) such successor servicer has agreed in writing to assume all of the retiring Servicer's duties and obligations pursuant to this Agreement and the Indenture and (C) such successor servicer is not objected to within 30 days after notice of such succession by either (x) a Majority of the Voting Preference Shares (voting as a single class) or (y) a Majority in Aggregate Outstanding Amount of the Voting Notes (voting as a single class); provided, that if a Majority of the Voting Preference Shares and a Super Majority of the Controlling Class (excluding any Notes that are not Voting Notes) have each nominated two or more successor servicers that have been objected to pursuant to the preceding clauses (i)(C) and (ii)(C) or have otherwise failed to appoint a successor servicer that has not been objected to pursuant to the preceding clause (i)(C) or (ii)(C) within 120 days of the date of notice of such removal or resignation of the Servicer, (A) any Holder of the Controlling Class (excluding any Notes that are not Voting Notes), any Holder of Voting Preference Shares or the Trustee petitions a court of competent authority to appoint a successor servicer, (B) such court appoints a successor servicer and (C) such successor servicer has agreed in writing to assume all of the retiring Servicer's duties and obligations pursuant to this Agreement and the Indenture.

In addition, any successor servicer must be an established institution which (i) has demonstrated an ability to professionally and competently perform duties similar to those imposed upon the Servicer hereunder, (ii) is legally qualified and has the capacity to act as Servicer hereunder, as successor to the Servicer under this Agreement in the assumption of all of the responsibilities, duties and obligations of the Servicer hereunder and under the applicable terms of the Indenture, (iii) shall not cause the Issuer or the pool of Collateral to become required to register under the provisions of the Investment Company Act, (iv) shall perform its duties as successor servicer under this Agreement and the Indenture without causing the Issuer, the Co-Issuer or any Holder of Preference Shares to become subject to tax in any jurisdiction where such successor servicer is established as doing business and (v) each Rating Agency has confirmed that the appointment of such successor servicer shall not cause its then-current rating of any Class of Notes to be reduced or withdrawn. No compensation payable to a successor servicer from payments on the Collateral shall be greater than that paid to the retiring Servicer without the prior written consent of a Super Majority of the Controlling Class of Notes, a Majority of the Noteholders and a Majority of the Preference Shares. The Issuer, the Trustee and the successor servicer shall take such action (or cause the retiring Servicer to take such action) consistent with this Agreement and the terms of the Indenture applicable to the Servicer, as shall be necessary to effectuate any such succession.

(f) In the event of removal of the Servicer pursuant to this Agreement, the Issuer shall have all of the rights and remedies available with respect thereto at law or equity, and, without limiting the foregoing, the Issuer or, to the extent so provided in the Indenture, the Trustee may by notice

in writing to the Servicer as provided under this Agreement terminate all the rights and obligations of the Servicer under this Agreement (except those that survive termination pursuant to Section 12(d) above). Upon expiration of the applicable notice period with respect to termination specified in this Section 12 or Section 14 of this Agreement, as applicable, all authority and power of the Servicer under this Agreement, whether with respect to the Collateral or otherwise, shall automatically and without further action by any person or entity pass to and be vested in the successor servicer upon the appointment thereof.

13. Delegation; Assignments.

This Agreement, and any obligations or duties of the Servicer hereunder, shall not be delegated by the Servicer, in whole or in part, except to any entity that (i) is controlled by any of James Dondero, Mark Okada and Todd Travers and (ii) is one in which any of James Dondero, Mark Okada and Todd Travers is involved in the day to day management and operations (and in any such case pursuant to an instrument of delegation in form and substance satisfactory to the Issuer), without the prior written consent of the Issuer, a Super Majority of the Controlling Class of Notes (excluding any Notes that are not Voting Notes) and a Majority of the Voting Preference Shares and, notwithstanding any such consent, no delegation of obligations or duties by the Servicer (including, without limitation, to an entity described above) shall relieve the Servicer from any liability hereunder.

Subject to Section 12, any assignment of this Agreement to any Person, in whole or in part, by the Servicer shall be deemed null and void unless (i) such assignment is consented to in writing by the Issuer, a Majority of Noteholders and the Holders of a Majority of the Preference Shares (excluding Notes and Preference Shares held by the Servicer or any of its Affiliates other than HFP) and (ii) the Rating Condition is satisfied with respect to any such assignment. Any assignment consented to by the Issuer, a Majority of Noteholders and the Holders of Preference Shares shall bind the assignee hereunder in the same manner as the Servicer is bound. In addition, the assignee shall execute and deliver to the Issuer and the Trustee a counterpart of this Agreement naming such assignee as Servicer. Upon the execution and delivery of such a counterpart by the assignee and consent thereto by the Issuer, a Majority of Noteholders and the Holders of the Preference Shares, the Servicer shall be released from further obligations pursuant to this Agreement, except with respect to its obligations arising under Section 10 of this Agreement prior to such assignment and except with respect to its obligations under Sections 2(c)(i) and 15 hereof. This Agreement shall not be assigned by the Issuer without the prior written consent of the Servicer and the Trustee, except in the case of assignment by the Issuer to (i) an entity which is a successor to the Issuer permitted under the Indenture, in which case such successor organization shall be bound hereunder and by the terms of said assignment in the same manner as the Issuer is bound thereunder or (ii) the Trustee as contemplated by the Indenture. In the event of any assignment by the Issuer, the Issuer shall cause its successor to execute and deliver to the Servicer such documents as the Servicer shall consider reasonably necessary to effect fully such assignment. The Servicer hereby consents to the matters set forth in Article 15 of the Indenture.

14. Termination by the Issuer for Cause.

Subject to Section 12(e) above, this Agreement shall be terminated and the Servicer shall be removed by the Issuer for cause upon 10 days' prior written notice to the Servicer and upon written notice to the Holders of the Securities as set forth below, but only if directed to do so by the Trustee acting at the direction of (1) a Super Majority of the Controlling Class of Notes (excluding any Notes that are not Voting Notes) or (2) a Majority of the Voting Preference Shares (excluding any Preference Shares that are not Voting Preference Shares). For purposes of determining "cause" with respect to any such termination of this Agreement, such term shall mean any one of the following events:

(a) the Servicer willfully breaches in any respect, or takes any action that it knows violates in any respect, any provision of this Agreement or any terms of the Indenture applicable to it;

(b) the Servicer breaches in any material respect any provision of this Agreement or any terms of the Indenture or the Collateral Administration Agreement applicable to it, or any representation, warranty, certification or statement given in writing by the Servicer shall prove to have been incorrect in any material respect when made or given, and the Servicer fails to cure such breach or take such action so that the facts (after giving effect to such action) conform in all material respects to such representation, warranty, certificate or statement, in each case within 30 days of becoming aware of, or receiving notice from, the Trustee of, such breach or materially incorrect representation, warranty, certificate or statement;

(c) the Servicer is wound up or dissolved (other than a dissolution in which the remaining members elect to continue the business of the Servicer in accordance with its Governing Instruments) or there is appointed over it or a substantial portion of its assets a receiver, administrator, administrative receiver, trustee or similar officer, or the Servicer (i) ceases to be able to, or admits in writing its inability to, pay its debts as they become due and payable, or makes a general assignment for the benefit of or enters into any composition or arrangement with, its creditors generally; (ii) applies for or consents (by admission of material allegations of a petition or otherwise) to the appointment of a receiver, trustee, assignee, custodian, liquidator or sequestrator (or other similar official) of the Servicer or of any substantial part of its properties or assets, or authorizes such an application or consent, or proceedings seeking such appointment are commenced without such authorization, consent or application against the Servicer and continue undismissed for 60 days; (iii) authorizes or files a voluntary petition in bankruptcy, or applies for or consents (by admission of material allegations of a petition or otherwise) to the application of any bankruptcy, reorganization, arrangement, readjustment of debt, insolvency or dissolution, or authorizes such application or consent, or proceedings to such end are instituted against the Servicer without such authorization, application or consent and are approved as properly instituted and remain undismissed for 60 days or result in adjudication of bankruptcy or insolvency; or (iv) permits or suffers all or any substantial part of its properties or assets to be sequestered or attached by court order and the order remains undismissed for 60 days;

(d) the occurrence of any Event of Default under the Indenture that results from any breach by the Servicer of its duties under the Indenture or this Agreement, which breach or default is not cured within any applicable cure period; or

(e) (x) the occurrence of an act by the Servicer related to its activities in any servicing, securities, financial advisory or other investment business that constitutes fraud, (y) the Servicer being indicted, or any of its principals being convicted, of a felony criminal offense related to its activities in any servicing, securities, financial advisory or other investment business or (z) the Servicer

being indicted for, adjudged liable in a civil suit for, or convicted of a violation of the Securities Act or any other United States Federal securities law or any rules or regulations thereunder.

If any of the events specified in this Section 14 shall occur, the Servicer shall give prompt written notice thereof to the Issuer, the Trustee and the Holders of all outstanding Notes and Preference Shares upon the Servicer's becoming aware of the occurrence of such event.

15. Action Upon Termination.

(a) From and after the effective date of termination of this Agreement, the Servicer shall not be entitled to compensation for further services hereunder, but shall be paid all compensation accrued to the date of termination, as provided in Section 8 hereof, and shall be entitled to receive any amounts owing under Section 10 hereof. Upon the effective date of termination of this Agreement, the Servicer shall as soon as practicable:

(i) deliver to the Issuer all property and documents of the Trustee or the Issuer or otherwise relating to the Collateral then in the custody of the Servicer; and

(ii) deliver to the Trustee and the Preference Shares Paying Agent an accounting with respect to the books and records delivered to the Trustee and the Preference Shares Paying Agent or the successor servicer appointed pursuant to Section 12(e) hereof.

Notwithstanding such termination, the Servicer shall remain liable to the extent set forth herein (but subject to Section 10 hereof) for its acts or omissions hereunder arising prior to termination and for any expenses, losses, damages, liabilities, demands, charges and claims (including reasonable attorneys' fees) in respect of or arising out of a breach of the representations and warranties made by the Servicer in Section 16(b) hereof or from any failure of the Servicer to comply with the provisions of this Section 15.

(b) The Servicer agrees that, notwithstanding any termination of this Agreement, it shall reasonably cooperate in any Proceeding arising in connection with this Agreement, the Indenture or any of the Collateral (excluding any such Proceeding in which claims are asserted against the Servicer or any Affiliate of the Servicer) upon receipt of appropriate indemnification and expense reimbursement.

16. Representations and Warranties.

(a) The Issuer hereby represents and warrants to the Servicer as follows:

(i) The Issuer has been duly incorporated and is validly existing under the laws of the Cayman Islands, has full power and authority to own its assets and the securities proposed to be owned by it and included in the Collateral and to transact the business in which it is presently engaged and is duly qualified under the laws of each jurisdiction where its ownership or lease of property or the conduct of its business requires, or the performance of its obligations under this Agreement, the Indenture or the Securities would require, such qualification, except for failures to be so qualified, authorized or licensed that would not in the aggregate have a material adverse effect on the business, operations, assets or financial condition of the Issuer.

(ii) The Issuer has full power and authority to execute, deliver and perform its obligations pursuant to this Agreement, the other Transaction Documents and the Securities and all obligations required hereunder and thereunder and has taken all necessary action to authorize this Agreement, the other Transaction Documents and the Securities on the terms and conditions hereof and thereof and the execution by the Issuer, delivery and performance of its obligations pursuant to this Agreement, the other Transaction Documents and the Securities and the performance of all obligations imposed upon it hereunder and thereunder. No consent of any other person including, without limitation, shareholders and creditors of the Issuer, and no license, permit, approval or authorization of, exemption by, notice or report to, or registration, filing or declaration with, any governmental authority, other than those that may be required under state securities or "blue sky" laws and those that have been or shall be obtained in connection with the other Transaction Documents and the Securities is required by the Issuer in connection with this Agreement, the other Transaction Documents and the Securities or the execution, delivery, performance, validity or enforceability of this Agreement, the other Transaction Documents and the Securities or the obligations imposed upon it hereunder or thereunder. This Agreement constitutes, and each instrument or document required hereunder, when executed and delivered hereunder, shall constitute, the legally valid and binding obligation of the Issuer enforceable against the Issuer in accordance with its terms, subject to (a) the effect of bankruptcy, insolvency or similar laws affecting generally the enforcement of creditors' rights and (b) general equitable principles.

(iii) The execution by the Issuer, delivery and performance of this Agreement and the documents and instruments required hereunder shall not violate any provision of any existing law or regulation binding on the Issuer, or any order, judgment, award or decree of any court, arbitrator or governmental authority binding on the Issuer, or the Governing Instruments of, or any securities issued by, the Issuer or of any mortgage, indenture, lease, contract or other agreement, instrument or undertaking to which the Issuer is a party or by which the Issuer or any of its assets may be bound, the violation of which would have a material adverse effect on the business, operations, assets or financial condition of the Issuer, and shall not result in or require the creation or imposition of any lien on any of its property, assets or revenues pursuant to the provisions of any such mortgage, indenture, lease, contract or other agreement, instrument or undertaking (other than the lien of the Indenture).

(iv) The Issuer is not in violation of its Governing Instruments or in breach or violation of or in default under the Indenture or any contract or agreement to which it is a party or by which it or any of its assets may be bound, or any applicable statute or any rule, regulation or order of any court, government agency or body having jurisdiction over the Issuer or its properties, the breach or violation of which or default under which would have a material adverse effect on the validity or enforceability of this Agreement or the performance by the Issuer of its duties hereunder.

(v) True and complete copies of the Indenture and the Issuer's Governing Instruments have been delivered to the Servicer.

The Issuer agrees to deliver a true and complete copy of each amendment to the documents referred to in Section 16(a)(v) above to the Servicer as promptly as practicable after its adoption or execution.

(b) The Servicer hereby represents and warrants to the Issuer as follows:

(i) The Servicer is a limited partnership duly organized and validly existing and in good standing under the laws of the State of Delaware, has full power and authority to own its assets and to transact the business in which it is currently engaged and is duly qualified and in good standing under the laws of each jurisdiction where its ownership or lease of property or the conduct of its business requires, or the performance of this Agreement would require such qualification, except for those jurisdictions in which the failure to be so qualified, authorized or licensed would not have a material adverse effect on the business, operations, assets or financial condition of the Servicer or on the ability of the Servicer to perform its obligations under, or on the validity or enforceability of, this Agreement and the provisions of the other Transaction Documents applicable to the Servicer.

(ii) The Servicer has full power and authority to execute, deliver and perform this Agreement and all obligations required hereunder and under the provisions of the other Transaction Documents applicable to the Servicer, and has taken all necessary action to authorize this Agreement on the terms and conditions hereof and the execution, delivery and performance of this Agreement and all obligations required hereunder and under the terms of the other Transaction Documents applicable to the Servicer. No consent of any other person, including, without limitation, creditors of the Servicer, and no license, permit, approval or authorization of, exemption by, notice or report to, or registration, filing or declaration with, any governmental authority is required by the Servicer in connection with this Agreement or the execution, delivery, performance, validity or enforceability of this Agreement or the obligations required hereunder or under the terms of the other Transaction Documents applicable to the Servicer. This Agreement has been, and each instrument and document required hereunder or under the terms of the other Transaction Documents applicable to the Servicer shall be, executed and delivered by a duly authorized partner of the Servicer, and this Agreement constitutes, and each instrument and document required hereunder or under the terms of the other Transaction Documents applicable to the Servicer when executed and delivered by the Servicer hereunder or under the terms of the other Transaction Documents applicable to the Servicer shall constitute, the valid and legally binding obligations of the Servicer enforceable against the Servicer in accordance with their terms, subject to (a) the effect of bankruptcy, insolvency or similar laws affecting generally the enforcement of creditors' rights and (b) general equitable principles.

(iii) The execution, delivery and performance of this Agreement and the terms of the other Transaction Documents applicable to the Servicer and the documents and instruments required hereunder or under the terms of the other Transaction Documents applicable to the Servicer shall not violate or conflict with any provision of any existing law or regulation binding on or applicable to the Servicer, or any order, judgment, award or decree of any court, arbitrator or governmental authority binding on the Servicer, or the Governing Instruments of, or any securities issued by the Servicer or of any mortgage, indenture, lease, contract or other agreement, instrument or undertaking to which the Servicer is a party or by which the Servicer or any of its assets may be bound, the violation of which would have a material adverse effect on the business, operations, assets or financial condition of the Servicer or its ability to perform its obligations under this Agreement and the provisions of the other Transaction Documents applicable to the Servicer, and shall not result in or require the creation or imposition of any lien on any of its material property, assets or revenues pursuant to the

provisions of any such mortgage, indenture, lease, contract or other agreement, instrument or undertaking.

(iv) There is no charge, investigation, action, suit or proceeding before or by any court pending or, to the best knowledge of the Servicer, threatened that, if determined adversely to the Servicer, would have a material adverse effect upon the performance by the Servicer of its duties under, or on the validity or enforceability of, this Agreement and the provisions of the other Transaction Documents applicable to the Servicer.

(v) The Servicer is a registered investment adviser under the Investment Advisers Act.

(vi) The Servicer is not in violation of its Governing Instruments or in breach or violation of or in default under any contract or agreement to which it is a party or by which it or any of its property may be bound, or any applicable statute or any rule, regulation or order of any court, government agency or body having jurisdiction over the Servicer or its properties, the breach or violation of which or default under which would have a material adverse effect on the validity or enforceability of this Agreement or the provisions of the other Transaction Documents applicable to the Servicer, or the performance by the Servicer of its duties hereunder.

17. Notices.

Unless expressly provided otherwise herein, all notices, requests, demands and other communications required or permitted under this Agreement shall be in writing (including by telecopy) and shall be deemed to have been duly given, made and received when delivered against receipt or upon actual receipt of registered or certified mail, postage prepaid, return receipt requested, or, in the case of telecopy notice, when received in legible form, addressed as set forth below:

(a) If to the Issuer:

Greenbriar CLO, Ltd.
c/o Maples Finance Limited
P.O. Box 1093GT
Boundary Hall
Cricket Square
George Town, Grand Cayman, Cayman Islands
Telephone: (345) 945-7099
Telecopy: (345) 945-7100
Attention: The Directors

(b) If to the Servicer:

Highland Capital Management, L.P.
Two Galleria Tower
13455 Noel Road, Suite 1300
Dallas, Texas 75240
Telephone: (972) 628-4100
Telecopy: (972) 628-4147
Attention: James Dondero

(c) If to the Trustee:

State Street Bank and Trust Company
200 Clarendon Street
Mailcode: EUC-108
Boston, Massachusetts 02116
Telecopy: (617) 351-4358
Attention: CDO Services Group

(d) If to the Noteholders:

In accordance with Section 14.3 of the Indenture, at their respective addresses set forth on the Note Register.

(e) If to the Holders of the Preference Shares:

In accordance with Section 14.3 of the Indenture, to the Preference Shares Paying Agent at the address identified therein.

(f) if to the Rating Agencies:

In accordance with Section 14.3 of the Indenture, to the Rating Agencies at the address identified therein.

Any party may alter the address or telecopy number to which communications or copies are to be sent by giving notice of such change of address in conformity with the provisions of this Section 17 for the giving of notice.

18. Binding Nature of Agreement; Successors and Assigns.

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and permitted assigns as provided herein. The Servicer hereby consents to the collateral assignment of this Agreement as provided in the Indenture and further agrees that the Trustee may enforce the Servicer's obligations hereunder.

19. Entire Agreement.

This Agreement contains the entire agreement and understanding among the parties hereto with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements, understandings, inducements and conditions, express or implied, oral or written, of any

nature whatsoever with respect to the subject matter hereof. The express terms hereof control and supersede any course of performance and/or usage of the trade inconsistent with any of the terms hereof. This Agreement may not be modified or amended other than by an agreement in writing executed by the parties hereto and in accordance with the terms of Section 15.1(h) of the Indenture.

20. Conflict with the Indenture.

Subject to the last two sentences of Section 2(a)(i), in the event that this Agreement requires any action to be taken with respect to any matter and the Indenture requires that a different action be taken with respect to such matter, and such actions are mutually exclusive, the provisions of the Indenture in respect thereof shall control.

21. Priority of Payments.

The Servicer agrees that the payment of all amounts to which it is entitled pursuant to this Agreement and the Indenture shall be due and payable only in accordance with the priorities set forth in the Indenture and only to the extent funds are available for such payments in accordance with such priorities.

22. Governing Law.

THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK, WITHOUT REFERENCE TO ITS PROVISIONS THAT WOULD RESULT IN THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.

The Servicer irrevocably submits to the non-exclusive jurisdiction of any New York State or federal court sitting in the Borough of Manhattan in The City of New York in any action or proceeding arising out of or relating to the Notes, the Preference Shares or the Indenture, and the Servicer irrevocably agrees that all claims in respect of the action or proceeding may be heard and determined in the New York State or federal court. The Servicer irrevocably waives, to the fullest extent it may legally do so, the defense of an inconvenient forum to the maintenance of the action or proceeding. The Servicer irrevocably consents to the service of all process in any action or proceeding by the mailing or delivery of copies of the process to it the address provided for in Section 14.3 of the Indenture. The Servicer agrees that a final and non-appealable judgment by a court of competent jurisdiction in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

23. Indulgences Not Waivers.

Neither the failure nor any delay on the part of any party hereto to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege, nor shall any waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the party asserted to have granted such waiver.

24. Costs and Expenses.

Except as may otherwise be agreed in writing, the costs and expenses (including the fees and disbursements of counsel and accountants) incurred by each party in connection with the negotiation and preparation of and the execution of this Agreement, and all matters incident thereto, shall be borne by such party.

25. Titles Not to Affect Interpretation.

The titles of paragraphs and subparagraphs contained in this Agreement are for convenience only, and they neither form a part of this Agreement nor are they to be used in the construction or interpretation hereof.

26. Execution in Counterparts.

This Agreement may be executed in any number of counterparts by facsimile or other written form of communication, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which shall together constitute one and the same instrument. This Agreement shall become binding when one or more counterparts hereof, individually or taken together, shall bear the signatures of all of the parties reflected hereon as the signatories.

27. Provisions Separable.

In case any provision in this Agreement shall be invalid, illegal or unenforceable as written, such provision shall be construed in the manner most closely resembling the apparent intent of the parties with respect to such provision so as to be valid, legal and enforceable; provided, however, that if there is no basis for such a construction, such provision shall be ineffective only to the extent of such invalidity, illegality or unenforceability and, unless the ineffectiveness of such provision destroys the basis of the bargain for one of the parties to this Agreement, the validity, legality and enforceability of the remaining provisions hereof or thereof shall not in any way be affected or impaired thereby.

28. Number and Gender.

Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context requires.

29. Written Disclosure Statement.

The Issuer and the Trustee acknowledge receipt of Part II of the Servicer's Form ADV filed with the Securities and Exchange Commission, as required by Rule 204-3 under the Investment Advisers Act, more than 48 hours prior to the date of execution of this Agreement.

30. Miscellaneous.

(a) In the event that any vote is solicited with respect to any Collateral Obligation, the Servicer, on behalf of the Issuer, shall vote or refrain from voting any such security in any manner permitted by the Indenture that the Servicer has determined in its reasonable judgment shall be in the best interests of the Holders of the Securities. In addition, with respect to any Defaulted Collateral Obligation, the Servicer, on behalf of the Issuer, may instruct the trustee for such Defaulted Collateral Obligation to enforce the Issuer's rights under the Underlying Instruments governing such Defaulted

Collateral Obligation and any applicable law, rule or regulation in any manner permitted under the Indenture that the Servicer has determined in its reasonable judgment shall be in the best interests of the Holders of the Securities. In the event any Offer is made with respect to any Collateral Obligation, the Servicer, on behalf of the Issuer, may take such action as is permitted by the Indenture and that the Servicer has determined in its reasonable judgment shall be in the best interests of the Holders of the Securities.

(b) In connection with taking or omitting any action under the Indenture or this Agreement, the Servicer may consult with counsel and may rely in good faith on the advice of such counsel or any opinion of counsel.

Any corporation, partnership or limited liability company into which the Servicer may be merged or converted or with which it may be consolidated, or any corporation, partnership or limited liability company resulting from any merger, conversion or consolidation to which the Servicer shall be a party, or any corporation, partnership or limited liability company succeeding to all or substantially all of the asset servicing and collateral management business of the Servicer, shall be the successor to the Servicer without any further action by the Servicer, the Co-Issuers, the Trustee, the Preference Shares Paying Agent , the Holders of the Securities or any other person or entity.

31. Limitation of Liabilities.

The Issuer's obligations hereunder are solely the corporate obligations of the Issuer and the Servicer shall not have any recourse to any of the directors, officers, shareholders, members or incorporators of the Issuer with respect to any claims, losses, damages, liabilities, indemnities or other obligations in connection with any transactions contemplated hereby. The obligations of the Issuer hereunder shall be limited to the net proceeds of the Collateral, if any, and following realization of the Collateral and its application in accordance with the Indenture, any outstanding obligations of the Issuer hereunder shall be extinguished and shall not thereafter revive. The provisions of this section shall survive termination of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

HIGHLAND CAPITAL MANAGEMENT, L.P.,
as Servicer

BY: STRAND ADVISORS, INC.,
as General Partner

By:_____
Name: Todd Travers, Assisant Secretary
Title: Strand Advisors, Inc., General Partner of Highland Capital Management, L.P.

GREENBRIAR CLO, LTD.,
as Issuer

By:_____
Name:
Title:

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

HIGHLAND CAPITAL MANAGEMENT, L.P.,
as Servicer

BY: STRAND ADVISORS, INC.,
as General Partner

By:_____
Name:
Title:

GREENBRIAR CLO, LTD.,
as Issuer

By:_____
Name: Chris Marett
Title: DIRECTOR

ANNEX 1

Certain Asset Acquisition Provisions

Unless otherwise noted, references to the Issuer in this Annex 1 include the Servicer and any other person acting on the Issuer's behalf. Capitalized terms used but not defined herein will have the meanings ascribed to them in the Indenture.

For purposes of this Annex 1,

"Affiliate" means, with respect to a specified Person, (a) any other Person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the specified Person and (b) any Person that is a member, director, officer or employee of (i) the specified Person or (ii) a Person described in clause (a) of this definition; and

"Person" means an individual, a corporation, a limited liability company, a partnership, an association, a trust or any other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

Section I. General Investment Restrictions.

Except as may otherwise be provided in this Annex 1, the Issuer (and the Servicer acting on the Issuer's behalf) shall only purchase debt securities, interests in loans and other assets (each a "Portfolio Obligation") only in secondary-market transactions and shall not engage in any lending or underwriting activities or otherwise participate in the structuring or origination of any Portfolio Obligation.

A. Communications and Negotiations.

1. The Issuer will not have any communications or negotiations with the obligor of a Portfolio Obligation or a Reference Obligation (directly or indirectly through an intermediary such as the seller of such Portfolio Obligation or the Synthetic Security) in connection with the issuance or funding of such Portfolio Obligation or Reference Obligation or commitments with respect thereto, except for communications of an immaterial nature or customary due diligence communications; provided, that the Servicer may provide comments as to mistakes or inconsistencies in loan documents (including with respect to any provisions that are inconsistent with the terms and conditions of purchase of the loan by the Issuer).

2. By way of example, permitted due diligence activities may include, but are not limited to, (a) attendance at an obligor's general "roadshow" or other presentations to investment professionals, (b) direct private discussions with personnel of the obligor, arranged by a sponsor, lead bank or other arranger, and (c) other due diligence activities of the kind customarily performed by offerees of the type of Portfolio Obligation being offered, but in each case may not include any

negotiations with the obligor, employees or agents of the obligor of any terms or conditions of the Portfolio Obligation being offered.

3. Negotiations between the Servicer and the underwriter, placement agent or broker of a Portfolio Obligation are permitted solely to the extent that they are limited to responses to customary pre-offering period and offering period inquiries by the underwriter or placement agent (e.g., "If we offered you 10-year senior subordinated bonds of XYZ company, what spread would it require to interest you?" or "If you will not buy the bonds as offered, would you buy if we convinced the obligor to add a fixed charge coverage test?"). For purposes of this Section I.A., "negotiations" shall not include (i) commenting on offering documents to an unrelated underwriter or placement agent when the ability to comment was generally available to other offerees, or (ii) communicating certain objective criteria (such as the minimum yield or maturity) the Issuer generally uses in purchasing the relevant type of Portfolio Obligation.

4. The Issuer may consent or otherwise act with respect to amendments, supplements or other modifications of the terms of any Portfolio Obligation (other than a Subsidiary Obligation (as defined in Section III)) requiring consent or action after the date on which any such Portfolio Obligation is acquired by the Issuer if (a) such amendment, supplement or modification would not constitute a Significant Modification (as defined below), (b) (i) in the reasonable judgment of the Servicer, the obligor is in financial distress and such change in terms is desirable to protect the Issuer's interest and (ii) the Portfolio Obligation is described in clause 5(b) of this Section I.A., (c) the amendment or modification would not be treated as the acquisition of a new Portfolio Obligation under paragraph 5 of this Section I.A., or (d) otherwise, if it has received advice of counsel that its involvement in such amendment, supplement or modification will not cause the Issuer to be treated as engaged in a trade or business within the United States.

A "Significant Modification" means any amendment, supplement or other modification that involves (a) a change in the stated maturity or a change in the timing of any material payment of any Portfolio Obligation (including deferral of an interest payment), that would materially alter the weighted average life of the Portfolio Obligation, (b) any change (whether positive or negative) in the yield on the Portfolio Obligation immediately prior to the modification in excess of the greater of (i) 25 basis points or (ii) 5 percent of such unmodified yield, (c) any change involving a material new extension of credit, (d) a change in the obligor of any Portfolio Obligation (as determined for purposes of section 1001 of the Code), or (e) a material change in the collateral or security for any Portfolio Obligation, including the addition or deletion of a co-obligor or guarantor that results in a material change in payment expectations.

5. In the event the Issuer owns an interest in a Portfolio Obligation the terms of which are subsequently amended or modified, or in the case of a workout situation not described in Section III hereof, which Portfolio Obligation is

subsequently exchanged for new obligations or other securities of the obligor of the Portfolio Obligation, such amendments or modifications or exchange will not be treated as the acquisition of an interest in a new Portfolio Obligation for purposes of this Annex 1, provided, that (a) the Issuer does not, directly or indirectly (through the Servicer or otherwise), seek the amendments or modifications or the exchange, or participate in negotiating the amendments or modifications or the exchange, (b) at the time of original acquisition of the interest in the Portfolio Obligation, it was not reasonably anticipated that the terms of the Portfolio Obligation would, pursuant to a workout or other negotiation, subsequently be amended or modified and (c) the Issuer does not advance any additional funds except to maintain or protect its existing interest in the Portfolio Obligation.

B. Fees. The Issuer will not earn or receive from any Person any fee or other compensation for services, however denominated, in connection with its purchase or sale of a Portfolio Obligation or entering into a Synthetic Security; the foregoing prohibition shall not be construed to preclude the Issuer from receiving (i) commitment fees, facility maintenance fees or other similar fees that are received by the Issuer in connection with revolving or delayed drawdown Loans or synthetic or pre-funded letter of credit Loans; (ii) yield maintenance and prepayment penalty fees; (iii) fees on account of the Issuer's consenting to amendments, waivers or other modifications of the terms of any Portfolio Obligations; (iv) fees from permitted securities lending; or (v) upfront payments in lieu of periodic payments under a Synthetic Security. The Issuer will not provide services to any Person; the foregoing prohibition shall not be construed to preclude the Issuer from activities relating to the receipt of income described in (i) through (v) of the preceding sentence.

Section II. Loans and Forward Purchase Commitments.

A. Any understanding or commitment to purchase a loan, a participation, or a loan subparticipation (collectively, "Loans") from a seller before completion of the closing and full funding of the Loan by such seller shall only be made pursuant to a forward sale agreement at an agreed price (stated as a dollar amount or as a percentage) (a "Forward Purchase Commitment"), unless such an understanding or commitment is not legally binding and neither the Issuer nor the Servicer is economically compelled (e.g., would otherwise be subject to a significant monetary penalty) to purchase the Loan following the completion of the closing and full funding of the Loan (i.e., the Servicer will make an independent decision whether to purchase such Loan on behalf of the Issuer after completion of the closing of the Loan) (a "Non-Binding Agreement").

B. No Forward Purchase Commitment or Non-Binding Agreement shall be made until after the seller (or a transferor to such seller of such Loan) has made a legally binding commitment to fully fund such Loan to the obligor thereof (subject to customary conditions), which commitment cannot be conditioned on the Issuer's ultimate purchase of such Loan from such seller.

C. In the event of any reduced or eliminated funding, the Issuer shall not receive any premium, fee, or other compensation in connection with having entered into the Forward Purchase Commitment or Non-Binding Agreement.

D. The Issuer shall not close any purchase of a Loan subject to a Forward Purchase Commitment or a Non-Binding Agreement earlier than 48 hours after the time of the closing of the Loan (i.e., execution of definitive documentation), and, in the case of a Forward Purchase Commitment, the Issuer's obligation to purchase such Loan is subject to the condition that no material adverse change has occurred in the financial condition of the Loan's obligor or the relevant market on or before the relevant purchase date.

E. The Issuer cannot have a contractual relationship with the obligor with respect to a Loan until the Issuer actually purchases the Loan.

F. The Issuer cannot be a signatory on the original lending agreement, and cannot be obligated to fund an assignment of or a participation in a Loan, prior to the time specified in subsection D above.

G. In addition to the restrictions otherwise applicable to Loans, the Issuer shall not acquire any synthetic or pre-funded letter of credit Loan unless (1) the cash collateral deposit with respect to such Loan was fully funded by a predecessor in interest with respect to such Loan; (2) the Loan is part of a credit facility that includes another Loan (other than a synthetic or pre-funded letter of credit Loan) to the same obligor, and is being acquired in connection with the acquisition of such other Loan and from the same seller as such other Loan, with the intent to hold both parts and with the amount of the other Loan being significantly in excess of the amount of the synthetic or pre-funded letter of credit Loan; (3) such synthetic or pre-funded letter of credit Loan satisfies the requirements set forth in Section VI.B., treating the synthetic or pre-funded letter of credit Loan, for this purpose, as though it were a delayed drawdown or revolving Loan; and (4) at no time may more than 5% of the aggregate principal amount of Portfolio Obligations consist of synthetic or pre-funded letter of credit Loans and, if a Loan requires the Issuer to participate in letter of credit issued or to be issued to a borrower other than in a synthetic or pre-funded letter of credit Loan, such Loan will only be acquired and held in connection with an interest in a related term Loan where the amount of such interest in the term Loan is at least as large as the Issuer's potential exposure under the letter of credit and all of the terms of any letter of credit in which the Issuer acquires an interest have been fully negotiated no later than the original legal document closing of such credit facility.

Section III. Distressed Debt

A. The Issuer may only purchase a Debt Instrument that is a Potential Workout Obligation to the extent permitted by this Section III.

B. Neither the Issuer nor the Servicer on behalf of the Issuer shall purchase a Subsidiary Obligation from any Issuer Subsidiary.

C. Special Procedures for Subsidiary Obligations.

1. Potential Workout Obligations. On or prior to the date of acquisition, the Servicer on behalf of the Issuer shall identify each Portfolio Obligation that is a Potential Workout Obligation.

2. Transfer of Subsidiary Obligations. From and after the occurrence of a Workout Determination Date with respect to a Subsidiary Obligation, neither the Issuer nor the Servicer on behalf of the Issuer shall knowingly take any action in respect of such Subsidiary Obligation that may result in the Issuer being engaged, or deemed to be engaged, in a trade or business within the United States for United States federal income tax purposes. As soon as practicable, but in any event within 30 calendar days following a Workout Determination Date, the Servicer shall cause the Issuer either (i) to sell or dispose of any Subsidiary Obligation identified on such Workout Determination Date to a Person that is not an Affiliate of the Issuer or Servicer or (ii) to assign any Subsidiary Obligation identified on such Workout Determination Date to an Issuer Subsidiary.

For purposes of this Annex 1, an "Issuer Subsidiary" means any wholly-owned corporate subsidiary of the Issuer to which a Special Workout Obligation may be transferred in accordance with this Annex 1.

3. Consideration for Assignment of Subsidiary Obligations. Consideration given by an Issuer Subsidiary for the assignment to it of Subsidiary Obligations may be in the form of cash or in the form of indebtedness of, or equity interests in, such Issuer Subsidiary.

4. Classification of Issuer Subsidiaries. Each Issuer Subsidiary shall be an entity treated as a corporation for United States federal income tax purposes.

As used herein:

"Potential Workout Obligation" means any debt instrument (any such instrument, including an interest in a Loan, a "Debt Instrument") which, as of the date of acquisition by the Issuer or an Issuer Subsidiary, based on information specific to such Debt Instrument or the circumstances of the obligor thereof, is a Workout Obligation or, in the reasonable determination of the Servicer, has a materially higher likelihood of becoming a Workout Obligation as compared to debt obligations that par or other non-distressed debt purchasers or funds relating to that asset type customarily purchase and expect to hold to maturity.

"Subsidiary Obligation" means any Potential Workout Obligation (a) as to which the Issuer on any Workout Determination Date either (i) owns more than 40% of the aggregate principal amount of such class of Potential Workout Obligation outstanding or (ii) is one of the two largest holders of any class of debt of the obligor of such Potential Workout Obligation (based on the outstanding principal amount of such class of debt owned by the Issuer as a percentage of the aggregate outstanding principal amount of such class of debt) unless not fewer than three other holders and the Issuer collectively own at least 65% of such class of

debt and, if the Issuer is the largest holder of such class, the Issuer's percentage of such class does not exceed the percentage held by the next largest holder of the debt by more than 5% of such class or (b) that would, upon foreclosure or exercise of similar legal remedies, result in the Issuer directly owning assets (other than securities treated as debt, equity in a partnership not engaged in a trade or business within the United States, or corporate equity for United States federal income tax purposes, provided in the case of corporate equity that the corporation is not a "United States real property holding corporation" within the meaning of section 897 of the Code) which (1) are "United States real property interests" within the meaning of section 897 of the Code or partnership or grantor trust interests for U.S. federal income tax purposes in entities engaged or that may be engaged in a United States trade or business or (2) the Servicer reasonably expects it would, on behalf of the Issuer, be required to actively manage to preserve the value of the Issuer's interest therein; provided that a Potential Workout Obligation shall not be treated as a Subsidiary Obligation if the Issuer obtains a Tax Opinion that, based on all the surrounding circumstances, the activities in which the Issuer intends to engage with respect to such Potential Workout Obligation will not cause the Issuer to be treated as engaged in a trade or business for United States federal income tax purposes.

"Workout Determination Date" means any date on which, in connection with the occurrence of any event described in clauses (a) through (c), inclusive, of the definition of Workout Obligation, either (a) any material action by the Issuer is required to be taken, (b) the Servicer receives written notice that such material action shall be required or (c) the Servicer reasonably determines that the taking of such material action is likely to be required.

"Workout Obligation" means any Debt Instrument as to which the Servicer on behalf of the Issuer (a) consents to a Significant Modification in connection with the workout of a defaulted Portfolio Obligation, (b) participates in an official or unofficial committee or similar official or unofficial body in connection with a bankruptcy, reorganization, restructuring or similar proceeding, or (c) exercises, or has exercised on its behalf, rights of foreclosure or similar judicial remedies.

Section IV. Purchases from the Servicer or its Affiliates.

A. If the Servicer or an Affiliate of the Servicer acted as an underwriter, placement or other agent, arranger, negotiator or structuror, or received any fee for services (it being understood that receipts described in clauses (i) through (v) of Section I.B. are not construed as so treated), in connection with the issuance or origination of a Portfolio Obligation or was a member of the original lending syndicate with respect to the Portfolio Obligation (any such Portfolio Obligation, a "Special Procedures Obligation"), the Issuer will not acquire any interest in such Special Procedures Obligation (including entering into a commitment or agreement, whether or not legally binding or enforceable, to acquire such obligation directly or synthetically), from the Servicer, an Affiliate of the Servicer, or a fund managed by the Servicer, unless (i) the Special Procedures Obligation has been outstanding for at least 90 days, (ii) the holder of the Special Procedures Obligation did not identify the obligation or security as intended for sale to the Issuer within 90 days of its

issuance, (iii) the price paid for such Special Procedures Obligation by the Issuer is its fair market value at the time of acquisition by the Issuer, and (iv) the transaction is proposed to, and the ultimate purchase is approved on behalf of the Issuer by, one or more Independent Advisors to the Issuer in accordance with the provisions of Section IV.B. below. The Issuer will not acquire any Special Procedures Obligation if, immediately following such acquisition, the fair market value of all Special Procedures Obligations owned by the Issuer would constitute more than 49% of the fair market value of all of the Issuer's assets at such time.

B. An "Independent Advisor" is a Person who is not an Affiliate of the Issuer, the Servicer or any fund managed by the Servicer.

1. The Issuer may not purchase or commit to enter into any such Special Procedures Obligation without prior approval by an Independent Advisor. If the Independent Advisor declines to approve a proposed Special Procedures Obligation, at least three months must elapse before any proposal with respect to the acquisition of debt or other obligations of the same obligor are proposed or considered.

2. The Issuer shall engage the Independent Advisor in an agreement the terms of which shall in substantial form set forth:

(a) the representation of the Independent Advisor, which the Servicer shall not know to be incorrect, that it has significant financial and commercial expertise, including substantial expertise and knowledge in and of the loan market and related investment arenas;

(b) the agreement between the Independent Advisor, the Issuer and the Servicer generally to the effect that (i) the Independent Advisor will operate pursuant to procedures consistent with maintaining his or her independence from the Servicer and its Affiliates, (ii) the Independent Advisor will have the sole authority and discretion to approve or reject purchase proposals made by the Servicer with respect to any Special Procedures Obligation, (iii) all proposals for the Issuer to acquire any Special Procedures Obligation will be first submitted to the Independent Advisor, (iii) the Servicer will prepare the materials it deems necessary to describe the Special Procedures Obligation to the Independent Advisor, (iv) the Investment Advisor will not be required to make any decision to accept or decline a Special Procedures Obligation at the price offered prior to its review of the materials prepared, plus any additional information requested by the Independent Advisor, and (v) no Independent Advisor may be proposed to be replaced by the Servicer, unless for cause or in the event of a resignation of such Independent Advisor; and

(c) such other commercially reasonable terms and conditions, including terms and conditions to the effect that (i) the Independent Advisor will be paid a reasonable fee for its services plus reimbursement of any reasonable

expenses incurred in performance of his or her responsibilities, (ii) the Independent Advisor may be removed or replaced only by a majority (whether by positive act or failure to object) of the probable equity owners (as determined for United States federal income tax purposes) of the Issuer, (iii) if at any time there is more than one Independent Advisor to the Issuer, a majority of such Independent Advisors must approve any Special Procedures Obligation subject to Independent Advisor approval, (iv) an Independent Advisor may not engage, directly or indirectly, in the negotiation of the terms of any Special Procedures Obligation to be acquired by the Issuer (provided however, that an Independent Advisor may negotiate with the Servicer or the seller with respect to the price and terms of the Issuer's purchase of the Special Procedures Obligation, provided further that the Independent Advisor will not make suggestions to the Servicer or any other person about alternative or modified terms of the underlying Special Procedures Obligation on which they might be willing to approve such a Special Procedures Obligation).

3. Any servicing agreement or other document under which the Servicer is granted signatory powers or other authority on behalf of the Issuer will provide that such powers or authority with respect to Special Procedures Obligations are conditioned upon the prior written approval of the Independent Advisor

4. No Special Procedures Obligation will be presented to an Independent Advisor until at least 90 days have elapsed since the later of (a) the execution of final documentation and (b) the funding in whole or part of the Special Procedures Obligation and there will have been no commitment or arrangement prior to that time that the Issuer will acquire any such Special Procedures Obligation; provided, further, that the Special Procedures Obligation will not be treated as outstanding for any day on which the Issuer enjoys the benefits and burdens of ownership (for example, because any Person has hedged its credit exposure to the Special Procedures Obligation with the Issuer).

5. The Issuer will have no obligation to, or understanding that it will refund, reimburse or indemnify any person (including an Affiliate of the Servicer), directly or indirectly, for "breakage" costs or other costs or expenses incurred by such person if the Independent Advisor determines that the Issuer should decline to purchase any Special Procedures Obligation.

6. Neither the Servicer nor any Affiliate of the Servicer will have any authority to enter into agreements, or take any action, on behalf of the Issuer with respect to Special Procedures Obligations without the prior written approval of an Independent Advisor. Except as may be conditioned upon such prior written approval, neither the Servicer nor any Affiliate of the Servicer may hold itself out as having signatory powers on behalf of the Issuer or authority to enter into agreements with respect to Special Procedures Obligations on behalf of the Issuer.

Section V. Synthetic Securities.

A. The Issuer shall not (i) acquire or enter into any Synthetic Security with respect to any Reference Obligation the direct acquisition of which would violate any provision of this Annex 1 or (ii) use Synthetic Securities as a means of making advances to the Synthetic Security Counterparty following the date on which the Synthetic Security is acquired or entered into (for the avoidance of doubt, the establishment of Synthetic Security collateral accounts and the payment of Synthetic Security Counterparties from the amounts on deposit therein, shall not constitute the making of advances).

B. With respect to each Synthetic Security, the Issuer will not acquire or enter into any Synthetic Security that does not satisfy all of the following additional criteria unless the Servicer has first received advice of counsel that the ownership and disposition of such Synthetic Security would not cause the Issuer to be engaged in a trade or business within the United States for United States federal income tax purposes:

1. the criteria used to determine whether to enter into any particular Synthetic Security was similar to the criteria used by the Servicer in making purchase decisions with respect to debt securities;

2. the Synthetic Security is acquired by or entered into by the Issuer for its own account and for investment purposes with the expectation of realizing a profit from income earned on the securities (and any potential rise in their value) during the interval of time between their purchase and sale or hedging purposes and not with an intention to trade or to sell for a short-term profit;

3. the Issuer enters into the Synthetic Security with a counterparty that is not a special purpose vehicle and is a broker-dealer or that holds itself out as in the business of entering into such contracts and is not an insurance company;

4. neither the Issuer nor any Person acting on behalf of the Issuer advertises or publishes the Issuer's ability to enter into Synthetic Securities;

5. except with respect to (x) credit-linked notes or similar Synthetic Securities and (y) any other Synthetic Securities where standard form ISDA documentation is not applicable, the Synthetic Security is written on standard form ISDA documentation;

6. the net payment from the Issuer to the Synthetic Security Counterparty is not determined based on an actual loss incurred by the Synthetic Security Counterparty or any other designated person;

7. there exists no agreement, arrangement or understanding that (i) the Synthetic Security Counterparty is required to own or hold the related Reference Obligation while the Synthetic Security remains in effect or (ii) the Synthetic Security Counterparty is economically or practically compelled to own or hold the

related physical Reference Obligation while the Synthetic Security remains in effect;

8. the Synthetic Security provides for (i) all cash settlement, (ii) all physical settlement or (iii) the option to either cash settle or physically settle; provided that, in the latter two cases, physical settlement provides the settling party the right to settle the Synthetic Security by delivering deliverable obligations which *may* include the Reference Obligation and the settling party must not be required to deliver the related Reference Obligation upon the settlement of such Synthetic Security.

Notwithstanding the preceding paragraph, a Synthetic Security providing for physical settlement may require a party to deliver the related Reference Obligation if either:

(i) at the time the Issuer enters into such Synthetic Security, such Reference Obligation is readily available to purchasers generally in a liquid market; or

(ii) the advice of both United States federal income tax and insurance counsel of nationally recognized standing in the United States experienced in such matters is that, under the relevant facts and circumstances with respect to such Synthetic Security, the acquisition of such Synthetic Security will not cause the Issuer to be engaged, or deemed to be engaged, in a trade or business within the United States for United States federal income tax purposes or otherwise to be subject to United States federal income tax on a net basis and should not cause the Issuer to be treated as writing insurance in the United States under the law of the state in which the Synthetic Security Counterparty is organized.

9. the Synthetic Security is not treated by the Issuer as insurance or a financial guarantee sold by the Issuer for United States or Cayman Islands regulatory purposes.

As used herein:

"Reference Obligation" means a debt security or other obligation upon which a Synthetic Security is based.

"Synthetic Security" means any swap transaction or security, other than a participation interest in a Loan, that has payments associated with either payments of interest and/or principal on a Reference Obligation or the credit performance of a Reference Obligation.

"Synthetic Security Counterparty" means an entity (other than the Issuer) required to make payments on a Synthetic Security (including any guarantor).

Section VI. Other Types of Assets.

A. Equity Restrictions. The Issuer will not purchase any asset (directly or synthetically) that is:

1. not treated for U.S. federal income tax purposes as debt if the issuing entity is a "partnership"(within the meaning of Section 7701(a)(2) of the Code) unless such entity is not engaged in a trade or business within the United States, or

2. a "United States real property interest" as defined in section 897 of the Code and the Treasury Regulations promulgated thereunder.

The Issuer may cause an Issuer Subsidiary to acquire assets set forth in clause (i) or (ii) above (each, an "ETB/897 Asset") in connection with the workout of defaulted Portfolio Obligations, so long as the acquisition of ETB/897 Assets by such Issuer Subsidiary will not cause the stock of such Issuer Subsidiary to be deemed to be an ETB/897 Asset.

B. Revolving Loans and Delayed Drawdown Loans. All of the terms of any advance required to be made by the Issuer under any revolving or delayed drawdown Loan will be fixed as of the date of the Issuer's purchase thereof (or will be determinable under a formula that is fixed as of such date), and the Issuer and the Servicer will not have any discretion (except for consenting or withholding consent to amendments, waivers or other modifications or granting customary waivers upon default) as to whether to make advances under such revolving or delayed drawdown Loan.

C. Securities Lending Agreements. The Issuer will not purchase any Portfolio Obligation primarily for the purpose of entering into a securities lending agreement with respect thereto.

D. Exception From Secondary Market Rule for Debt Securities. Any purchase of a Portfolio Obligation other than a Loan (a "Debt Security") pursuant to a commitment, arrangement or other understanding made before or contemporaneously with completion of the closing and funding of such Debt Security issuance shall be made only in connection with one of the following:

(i) an underwriting of a registered public offering in which the seller has made a firm underwriting commitment to the issuer of such Debt Security where none of the Servicer or any Affiliate thereof acted as an underwriter or placement agent or participated in negotiating or structuring the terms of the Debt Security (other than to comment on offering documents to an unrelated underwriter or placement agent where the ability to comment was generally available to investors and to undertake due diligence of the kind customarily performed by investors in securities),

(ii) a private placement to qualified investors (pursuant to Rule 144A or Section 4(2) under the Securities Act or other similar arrangement) in which such Debt Security was originally issued pursuant to an offering circular, private placement memorandum, or similar offering document and none of the Servicer or any Affiliate thereof acted as a placement agent or underwriter or participated in

negotiating or structuring the terms of the Debt Security (other than to comment on offering documents to an unrelated underwriter or placement agent where the ability to comment was generally available to investors and to undertake due diligence of the kind customarily performed by investors in securities), or

(iii) an acquisition of or entry into a Synthetic Obligation in accordance with Section V. above;

If an Affiliate of the Servicer is acting as an underwriter or placement agent or an Affiliate of the Servicer or an employee of an Affiliate of the Servicer participated in the structuring of an issuance otherwise described in clause (i) or clause (ii) of this paragraph D, one of the following additional conditions must be met:

(x) the Servicer did not participate in negotiating or structuring the terms of the obligation or security (other than to comment on offering documents to an unrelated underwriter or placement agent where the ability to comment was generally available to investors and to undertake due diligence of the kind customarily performed by investors in securities) and the Issuer purchases no more than 33% of the aggregate principal amount of the tranche of securities (or other instruments) of which such Debt Security is a part and more than 50% of the aggregate principal amount of such tranche is substantially contemporaneously sold to one or more Persons unrelated to the Servicer (and who have not given the Servicer discretionary trading authority) on terms and conditions substantially the same as those on which the Issuer is to purchase,

(y) the Servicer did not participate in negotiating or structuring the terms of the obligation or security (other than to comment on offering documents to an unrelated underwriter or placement agent where the ability to comment was generally available to investors and to undertake due diligence of the kind customarily performed by investors in securities) and the Issuer purchases less than 33% of the aggregate principal amount of all tranches issued as part of the transaction in which the Debt Security was issued and more than 50% of the aggregate principal amount of such tranches are substantially contemporaneously sold to one or more Persons unrelated to the Servicer (and who have not given the Servicer discretionary trading authority) on terms and conditions substantially the same as those on which the Issuer is to purchase, or

(z) such security or obligation satisfies the requirements and procedures applicable to Special Procedures Obligations in Section IV as though it were a Loan;

provided, however, in either of (x) or (y), the Affiliate of the Servicer was (or the employees of the Affiliate of the Servicer were) acting as an underwriter or placement agent (or otherwise participated in the structuring of such issuance) solely as, or solely as an employee of, a Permitted Affiliate (as defined below); and provided further, that for purposes of calculating the total principal amount sold to related parties under this paragraph D, purchases by Affiliates will be considered purchases by persons unrelated to

the Servicer so long as the Servicer has no knowledge of such purchases and has no reason to know of such purchases.

"Permitted Affiliate" means any Affiliate (i) that is a separate legal entity that is operated independently of the Servicer, (ii) whose personnel are not managed by and who do not report to the personnel of the Servicer, and (iii) whose personnel are not compensated based upon the performance of the Servicer.

Section VII. General Restrictions on the Issuer. The Issuer itself shall not:

A. hold itself out, through advertising or otherwise, as originating Loans, lending funds, or making a market in or dealing in Loans or other assets;

B. register as, hold itself out as, or become subject to regulatory supervision or other legal requirements under the laws of any country or political subdivision thereof as, a broker-dealer, a bank, an insurance company, financial guarantor, a surety bond issuer, or a company engaged in Loan origination;

C. knowingly take any action causing it to be treated as a bank, insurance company, or company engaged in Loan origination for purposes of any tax, securities law or other filing or submission made to any governmental authority;

D. hold itself out, through advertising or otherwise, as originating, funding, guaranteeing or insuring debt obligations or as being willing and able to enter into transactions (either purchases or sales of debt obligations or entries into, assignments or terminations of hedging or derivative instruments, including Synthetic Securities) at the request of others;

E. treat Synthetic Securities as insurance, reinsurance, indemnity bonds, guaranties, guaranty bonds or suretyship contracts for any purpose;

F. allow any non-U.S. bank or lending institution who is a holder of a Security to control or direct the Servicer's or Issuer's decision to acquire a particular asset except as otherwise allowed to such a holder, acting in that capacity, under the related indenture or acquire a Portfolio Obligation conditioned upon a particular person or entity holding Securities;

G. acquire any asset the holding or acquisition of which the Servicer knows would cause the Issuer to be subject to income tax on a net income basis;

H. hold any security as nominee for another person; or

I. buy securities with the intent to subdivide them and sell the components or to buy securities and sell them with different securities as a package or unit.

Section VIII. Tax Opinion; Amendments.

A. In furtherance and not in limitation of this Annex 1, the Servicer shall comply with all of the provisions set forth in this Annex 1, unless, with respect to a particular transaction, the Servicer acting on behalf of the Issuer and the Trustee shall have received written advice of McKee Nelson LLP, Skadden, Arps, Slate, Meagher & Flom LLP or Orrick, Herrington & Sutcliffe LLP or an opinion of other counsel of nationally recognized standing in the United States experienced in such matters (a "Tax Opinion"), that, under the relevant facts and circumstances with respect to such transaction, the Servicer's failure to comply with one or more of such provisions will not cause the Issuer to be engaged, or deemed to be engaged, in a trade or business within the United States for United States federal income tax purposes or otherwise to be subject to United States federal income tax on a net basis.

B. The provisions set forth in the Annex 1 may be amended, eliminated or supplemented by the Servicer if the Issuer, the Servicer and the Trustee shall have received a Tax Opinion that the Servicer's compliance with such amended provisions or supplemental provisions or the failure to comply with such provisions proposed to be eliminated, as the case may be, will not cause the Issuer to be engaged, or deemed to be engaged, in a trade or business within the United States for United States federal income tax purposes or otherwise to be subject to United States federal income tax on a net basis.

APPENDIX 16

I. **Definitions**

A. "Court" means the United States Bankruptcy Court for the Northern District of Texas.

B. "NAV" means (A) with respect to an entity that is not a CLO, the value of such entity's assets less the value of its liabilities calculated as of the month end prior to any Transaction; and (B) with respect to a CLO, the CLO's gross assets less expenses calculated as of the quarter end prior to any Transaction.

C. "Non-Discretionary Account" means an account that is managed by the Debtor pursuant to the terms of an agreement providing, among other things, that the ultimate investment discretion does not rest with the Debtor but with the entity whose assets are being managed through the account.

D. "Related Entity" means collectively (A)(i) any non-publicly traded third party in which Mr. Dondero, Mr. Okada, or Mr. Grant Scott, or Mr. John Honis (with respect to Messrs. Okada, Scott and Honis, only to the extent known by the Debtor) has any direct or indirect economic or ownership interest, including as a beneficiary of a trust; (ii) any entity controlled directly or indirectly by Mr. Dondero, Mr. Okada, Mr. Grant Scott, or Mr. John Honis (with respect to Messrs. Okada, Scott and Honis, only to the extent known by the Debtor); (iii) MGM Holdings, Inc.; (iv) any publicly traded company with respect to which the Debtor or any Related Entity has filed a Form 13D or Form 13G; (v) any relative (as defined in Section 101 of the Bankruptcy Code) of Mr. Dondero or Mr. Okada each solely to the extent reasonably knowable by the Debtor; (vi) the Hunter Mountain Investment Trust and Dugaboy Investment Trust; (vii) any entity or person that is an insider of the Debtor under Section 101(31) the Bankruptcy Code, including any "non-statutory" insider; and (viii) to the extent not included in (A)(i)-(vii), any entity included in the listing of related entities in **Schedule B** hereto (the "Related Entities Listing"); and (B) the following Transactions, (x) any intercompany Transactions with certain affiliates referred to in paragraphs 16.a through 16.e of the Debtor's cash management motion [Del. Docket No. 7]; and (y) any Transactions with Charitable DAF Fund, L.P. (provided, however, that additional parties may be added to this subclause (y) with the mutual consent of the Debtor and the Committee, such consent not to be unreasonably withheld).

E. "Stage 1" means the time period from the date of execution of a term sheet incorporating the protocols contained below the ("Term Sheet") by all applicable parties until approval of the Term Sheet by the Court.

F. "Stage 2" means the date from the appointment of a Board of Independent Directors at Strand Advisors, Inc. until 45 days after such appointment, such appointment being effective upon Court approval.

G. "Stage 3" means any date after Stage 2 while there is a Board of Independent Directors at Strand Advisors, Inc.

H. "Transaction" means (i) any purchase, sale, or exchange of assets, (ii) any lending or borrowing of money, including the direct payment of any obligations of another entity, (iii) the satisfaction of any capital call or other contractual

requirement to pay money, including the satisfaction of any redemption requests, (iv) funding of affiliates and (v) the creation of any lien or encumbrance.

I. "Ordinary Course Transaction" means any transaction with any third party which is not a Related Entity and that would otherwise constitute an "ordinary course transaction" under section 363(c) of the Bankruptcy Code.

J. "Notice" means notification or communication in a written format and shall include supporting documents necessary to evaluate the propriety of the proposed transaction.

K. "Specified Entity" means any of the following entities: ACIS CLO 2017-7 Ltd., Brentwood CLO, Ltd., Gleneagles CLO, Ltd., Greenbriar CLO, Ltd., Highland CLO 2018-1, Ltd., Highland Legacy Limited, Highland Loan Funding V Ltd., Highland Park CDO I, Ltd., Pam Capital Funding LP, PamCo Cayman Ltd., Rockwall CDO II Ltd., Rockwall CDO Ltd., Southfork CLO Ltd., Stratford CLO Ltd., Westchester CLO, Ltd., Aberdeen Loan Funding, Ltd., Bristol Bay Funding Ltd. Eastland CLO, Ltd., Grayson CLO, Ltd., Highland Credit Opportunities CDO Ltd., Jasper CLO, Ltd., Liberty Cayman Holdings, Ltd., Liberty CLO, Ltd., Red River CLO, Ltd., Valhalla CLO, Ltd.

II. Transactions involving the (i) assets held directly on the Debtor's balance sheet or the balance sheet of the Debtor's wholly-owned subsidiaries, including Jefferies Prime Account, and (ii) the Highland Select Equity Fund, L.P., Highland Multi Strategy Credit Fund, L.P., and Highland Restoration Capital Partners

A. **Covered Entities**: N/A (See entities above).

B. **Operating Requirements**

1. Ordinary Course Transactions do not require Court approval (All Stages).

a) Stage 1 and Stage 2: ordinary course determined by the CRO.

b) Stage 3: ordinary course determined by the Debtor.

2. Related Entity Transactions

a) Stage 1 and Stage 2: Transactions with Related Entities require prior approval of CRO and five business days advance notice to the Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

b) Stage 3:

(1) Transactions with Related Entities greater than $1,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require five business days advance notice to the Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

(2) Transactions with Related Entities greater than $2,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require Court approval, which the Committee agrees may be sought on an expedited basis.

3. Third Party Transactions (All Stages)

a) Except as set forth in (b) and (c) below, Transactions in excess of $2,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require three business days advance notice to Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

b) The Debtor may satisfy any redemption requests from entities that are not Related Entities without advance notice so long as the Debtor provides notice of such Transactions to the Committee as soon as reasonably practicable. The Debtor will provide the Committee with five business days advance notice of any redemption requests made by and payable to a Related Entity, and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

c) The Debtor may satisfy margin calls and short covers without providing the Committee advance notice if the exigencies do not allow advance notice so long as the Debtor provides notice of such Transactions to the Committee as soon as reasonably practicable.

C. **Weekly Reporting**: The Debtor will provide the Committee with weekly reports showing all Transactions under this category.

III. Transactions involving entities the Debtor manages and in which the Debtor holds a direct or indirect interest (other than the entities discussed in Section I above)

A. **Covered Entities**: See **Schedule A** hereto. **Schedule A** includes or will include all entities the Debtor manages and in which the Debtor holds a direct or indirect interest (other than the entities discussed in Section I above).[1]

B. **Operating Requirements**

1. Ordinary Course Transactions do not require Court approval (All Stages).

a) Stage 1 and Stage 2: ordinary course determined by the CRO.

b) Stage 3: ordinary course determined by the Debtor.

2. Related Entity Transactions

[1] The Debtor is continuing to review the Related Entities List and to determine whether any additional parties or entities should be included on Schedule A. The Debtor will update Schedule A as soon as reasonably practicable to the extent necessary.

a) Stage 1 and Stage 2: Transactions with Related Entities require prior approval of CRO and five business days advance notice to the Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

b) Stage 3:

(1) Transactions with Related Entities greater than $1,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require five business days advance notice to the Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

(2) Transactions with Related Entities greater than $2,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require Court approval, which the Committee agrees may be sought on an expedited basis.

3. Third Party Transactions (All Stages)

a) Except as set forth in (b) and (c) below, Transactions in excess of $2,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require three business days advance notice to Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

b) The Debtor may satisfy any redemption requests from entities that are not Related Entities without advance notice so long as the Debtor provides notice of such Transactions to the Committee as soon as reasonably practicable. The Debtor will provide the Committee with five business days advance notice of any redemption requests made by and payable to a Related Entity, and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

c) The Debtor may satisfy margin calls and short covers without providing the Committee advance notice if the exigencies do not allow advance notice so long as the Debtor provides notice of such Transactions to the Committee as soon as reasonably practicable.

C. **Weekly Reporting**: The Debtor will provide the Committee with weekly reports showing all Transactions under this category.

IV. Transactions involving entities that the Debtor manages but in which the Debtor does not hold a direct or indirect interest

A. **Covered Entities**: See **Schedule A** hereto. **Schedule A** includes or will include all entities that the Debtor manages but in which the Debtor does not hold a direct or indirect interest.[2]

B. **Operating Requirements**

1. Ordinary Course Transactions do not require Court approval (All Stages).

a) Stage 1 and Stage 2: ordinary course determined by the CRO.

b) Stage 3: ordinary course determined by the Debtor.

2. Related Entity Transactions

a) Stage 1 and Stage 2: Transactions with Related Entities require prior approval of CRO and five business days advance notice to the Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

b) Stage 3:

(1) Transactions with Related Entities greater than $1,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require five business days advance notice to the Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

(2) Transactions with Related Entities greater than $2,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require Court approval, which the Committee agrees may be sought on an expedited basis.

3. Third Party Transactions (All Stages):

a) Except (x) as set forth in (b) and (c) below and (y) for any Transaction involving a Specified Entity and the sale or purchase by such Specified Entity of an asset that is not an obligation or security issued or guaranteed by any of the Debtor, a Related Entity or a fund, account, portfolio company owned, controlled or managed by the Debtor or a Related Entity, where such Transaction is effected in compliance with the collateral management agreement to which such Specified Entity is party, any Transaction that decreases the NAV of an entity managed by the Debtor in excess of the greater of (i) 10% of NAV or (ii) $3,000,000 requires five business days advance notice to

[2] The Debtor is continuing to review the Related Entities List and to determine whether any additional parties or entities should be included on Schedule A. The Debtor will update Schedule A as soon as reasonably practicable to the extent necessary.

Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

b) The Debtor may satisfy any redemption requests from entities that are not Related Entities without advance notice so long as the Debtor provides notice of such Transactions to the Committee as soon as reasonably practicable. The Debtor will provide the Committee with five business days advance notice of any redemption requests made by and payable to a Related Entity, and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

c) The Debtor may take such steps as may be reasonably necessary to winddown any managed entity and make distributions as may be required in connection with such winddown to any required parties. The Debtor will provide the Committee with five business days advance notice of any distributions to be made to a Related Entity, and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

C. **Weekly Reporting**: The Debtor will provide the Committee with weekly reports showing all Transactions under this category. Such reports will include Transactions involving a Specified Entity unless the Debtor is prohibited from doing so under applicable law or regulation or any agreement governing the Debtor's relationship with such Specified Entity.

V. Transactions involving entities that the Debtor does not manage but in which the Debtor holds a direct or indirect interest

A. Covered Entities: See **Schedule A** hereto. **Schedule A** includes or will include all entities that the Debtor does not manage but in which the Debtor holds a direct or indirect interest.[3]

B. Ordinary Course Transactions (All Stages): N/A

C. Operating Requirements: N/A

D. Weekly Reporting: Debtor will provide weekly reports of all cross-held asset Transactions, i.e. Transactions in which the Debtor or a Related Entity also holds a direct or indirect interest.

[3] The Debtor is continuing to review the Related Entities List and to determine whether any additional parties or entities should be included on Schedule A. The Debtor will update Schedule A as soon as reasonably practicable to the extent necessary.

VI. Transactions involving entities that the Debtor does not manage and in which the Debtor does not hold a direct or indirect interest

A. Covered Entities: See **Schedule A** hereto. **Schedule A** includes or will include all entities that the Debtor does not manage and in which the Debtor does not hold a direct or indirect interest.[4]

B. Ordinary Course Transactions (All Stages): N/A

C. Operating Requirements: N/A

D. Weekly Reporting: Debtor will provide weekly reports of all cross-held asset Transactions, i.e. Transactions in which the Debtor or a Related Entity also holds a direct or indirect interest.

VII. Transactions involving Non-Discretionary Accounts

A. Covered Entities: See **Schedule A** hereto. **Schedule A** includes or will include all non-discretionary accounts.[5]

B. Ordinary Course Transactions (All Stages): N/A

C. Operating Requirements: N/A

D. Weekly Reporting: Debtor will provide weekly reports of all cross-held asset Transactions, i.e. Transactions in which the Debtor or a Related Entity also holds a direct or indirect interest.

VIII. Additional Reporting Requirements – All Stages (to the extent applicable)

A. DSI will provide detailed lists and descriptions of internal financial and operational controls being applied on a daily basis for a full understanding by the Committee and its professional advisors three (3) business days in advance of the hearing on the approval of the Term Sheet and details of proposed amendments to said financial and operational controls no later than seven (7) days prior to their implementation.

B. The Debtor will continue to provide weekly budget to actuals reports referencing their 13-week cash flow budget, such reports to be inclusive of all Transactions with Related Entities.

IX. Shared Services

A. The Debtor shall not modify any shared services agreement without approval of the CRO and Independent Directors and seven business days' advance notice to counsel for the Committee.

B. The Debtor may otherwise continue satisfying its obligations under the shared services agreements.

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[4] The Debtor is continuing to review the Related Entities List and to determine whether any additional parties or entities should be included on Schedule A. The Debtor will update Schedule A as soon as reasonably practicable to the extent necessary.

[5] The Debtor is continuing to review the Related Entities List and to determine whether any additional parties or entities should be included on Schedule A. The Debtor will update Schedule A as soon as reasonably practicable to the extent necessary.

X. Representations and Warranties

A. The Debtor represents that the Related Entities Listing included as **Schedule B** attached hereto lists all known persons and entities other than natural persons included in the definitions of Related Entities covered by Section I.D parts A(i)-(vii) above at the time of the execution of the Term Sheet.

B. The Debtor represents that the list included as **Schedule C** attached hereto lists all known natural persons included in the definitions of Related Entities covered by Section I.D parts A(i)-(vii) above at the time of the execution of the Term Sheet.

C. The Debtor represents that, if at any time the Debtor becomes aware of any person or entity, including natural persons, meeting the definition of Related Entities covered by Section I.D parts A(1)-(vii) above that is not included in the Related Entities Listing or Schedule C, the Debtor shall update the Related Entities Listing or Schedule C, as appropriate, to include such entity or person and shall give notice to the Committee thereof.

Schedule A[6]

Entities the Debtor manages and in which the Debtor holds a direct or indirect interest

1. Highland CLO Funding, Ltd. (0.63% Ownership Interest)
2. Dynamic Income Fund (0.26% Ownership Interest)

Entities that the Debtor manages but in which the Debtor does not hold a direct or indirect interest

1. Highland Prometheus Master Fund L.P.
2. NexAnnuity Life Insurance Company
3. PensionDanmark
4. Highland Argentina Regional Opportunity Fund
5. Longhorn A
6. Longhorn B
7. Collateralized Loan Obligations
   a) Rockwall II CDO Ltd.
   b) Grayson CLO Ltd.
   c) Eastland CLO Ltd.
   d) Westchester CLO, Ltd.
   e) Brentwood CLO Ltd.
   f) Greenbriar CLO Ltd.
   g) Highland Park CDO Ltd.
   h) Liberty CLO Ltd.
   i) Gleneagles CLO Ltd.
   j) Stratford CLO Ltd.
   k) Jasper CLO Ltd.
   l) Rockwall DCO Ltd.
   m) Red River CLO Ltd.
   n) Hi V CLO Ltd.
   o) Valhalla CLO Ltd.
   p) Aberdeen CLO Ltd.
   q) South Fork CLO Ltd.
   r) Legacy CLO Ltd.
   s) Pam Capital
   t) Pamco Cayman

Entities that the Debtor does not manage but in which the Debtor holds a direct or indirect interest

1. Highland Opportunistic Credit Fund
2. Highland Healthcare Opportunities Fund f/k/a Highland Long/Short Healthcare Fund
3. NexPoint Real Estate Strategies Fund
4. Highland Merger Arbitrage Fund
5. NexPoint Strategic Opportunities Fund
6. Highland Small Cap Equity Fund
7. Highland Global Allocation Fund

[6] NTD: Schedule A is work in process and may be supplemented or amended.

8. Highland Socially Responsible Equity Fund
9. Highland Income Fund
10. Stonebridge-Highland Healthcare Private Equity Fund ("Korean Fund")
11. SE Multifamily, LLC

Entities that the Debtor does not manage and in which the Debtor does not hold a direct or indirect interest

1. The Dugaboy Investment Trust
2. NexPoint Capital LLC
3. NexPoint Capital, Inc.
4. Highland IBoxx Senior Loan ETF
5. Highland Long/Short Equity Fund
6. Highland Energy MLP Fund
7. Highland Fixed Income Fund
8. Highland Total Return Fund
9. NexPoint Advisors, L.P.
10. Highland Capital Management Services, Inc.
11. Highland Capital Management Fund Advisors L.P.
12. ACIS CLO Management LLC
13. Governance RE Ltd
14. PCMG Trading Partners XXIII LP
15. NexPoint Real Estate Partners, LLC f/k/a HCRE Partners LLC
16. NexPoint Real Estate Advisors II LP
17. NexPoint Healthcare Opportunities Fund
18. NexPoint Securities
19. Highland Diversified Credit Fund
20. BB Votorantim Highland Infrastructure LLC
21. ACIS CLO 2017 Ltd.

Transactions involving Non-Discretionary Accounts

1. NexBank SSB Account
2. Charitable DAF Fund LP

Schedule B

Related Entities Listing (other than natural persons)

Schedule C

1. James Dondero
2. Mark Okada
3. Grant Scott
4. John Honis
5. Nancy Dondero
6. Pamela Okada
7. Thomas Surgent
8. Scott Ellington
9. Frank Waterhouse
10. Lee (Trey) Parker

EXHIBIT "B"

I. **Definitions**

A. "Court" means the United States Bankruptcy Court for the Northern District of Texas.

B. "NAV" means (A) with respect to an entity that is not a CLO, the value of such entity's assets less the value of its liabilities calculated as of the month end prior to any Transaction; and (B) with respect to a CLO, the CLO's gross assets less expenses calculated as of the quarter end prior to any Transaction.

C. "Non-Discretionary Account" means an account that is managed by the Debtor pursuant to the terms of an agreement providing, among other things, that the ultimate investment discretion does not rest with the Debtor but with the entity whose assets are being managed through the account.

D. "Related Entity" means collectively (A)(i) any non-publicly traded third party in which Mr. Dondero, Mr. Okada, or Mr. Grant Scott, or Mr. John Honis (with respect to Messrs. Okada, Scott and Honis, only to the extent known by the Debtor) has any direct or indirect economic or ownership interest, including as a beneficiary of a trust; (ii) any entity controlled directly or indirectly by Mr. Dondero, Mr. Okada, Mr. Grant Scott, or Mr. John Honis (with respect to Messrs. Okada, Scott and Honis, only to the extent known by the Debtor); (iii) MGM Holdings, Inc.; (iv) any publicly traded company with respect to which the Debtor or any Related Entity has filed a Form 13D or Form 13G; (v) any relative (as defined in Section 101 of the Bankruptcy Code) of Mr. Dondero or Mr. Okada each solely to the extent reasonably knowable by the Debtor; (vi) the Hunter Mountain Investment Trust and Dugaboy Investment Trust; (vii) any entity or person that is an insider of the Debtor under Section 101(31) the Bankruptcy Code, including any "non-statutory" insider; and (viii) to the extent not included in (A)(i)-(vii), any entity included in the listing of related entities in **Schedule B** hereto (the "Related Entities Listing"); and (B) the following Transactions, (x) any intercompany Transactions with certain affiliates referred to in paragraphs 16.a through 16.e of the Debtor's cash management motion [Del. Docket No. 7]; and (y) any Transactions with Charitable DAF Fund, L.P. (provided, however, that additional parties may be added to this subclause (y) with the mutual consent of the Debtor and the Committee, such consent not to be unreasonably withheld).

E. "Stage 1" means the time period from the date of execution of a term sheet incorporating the protocols contained below the ("Term Sheet") by all applicable parties until approval of the Term Sheet by the Court.

F. "Stage 2" means the date from the appointment of a Board of Independent Directors at Strand Advisors, Inc. until 45 days after such appointment, such appointment being effective upon Court approval.

G. "Stage 3" means any date after Stage 2 while there is a Board of Independent Directors at Strand Advisors, Inc.

H. "Transaction" means (i) any purchase, sale, or exchange of assets, (ii) any lending or borrowing of money, including the direct payment of any obligations of another entity, (iii) the satisfaction of any capital call or other contractual

requirement to pay money, including the satisfaction of any redemption requests, (iv) funding of affiliates and (v) the creation of any lien or encumbrance.

I. "Ordinary Course Transaction" means any transaction with any third party which is not a Related Entity and that would otherwise constitute an "ordinary course transaction" under section 363(c) of the Bankruptcy Code.

J. "Notice" means notification or communication in a written format and shall include supporting documents necessary to evaluate the propriety of the proposed transaction.

K. "Specified Entity" means any of the following entities: ACIS CLO 2017-7 Ltd., Brentwood CLO, Ltd., Gleneagles CLO, Ltd., Greenbriar CLO, Ltd., Highland CLO 2018-1, Ltd., Highland Legacy Limited, Highland Loan Funding V Ltd., Highland Park CDO I, Ltd., Pam Capital Funding LP, PamCo Cayman Ltd., Rockwall CDO II Ltd., Rockwall CDO Ltd., Southfork CLO Ltd., Stratford CLO Ltd., Westchester CLO, Ltd., Aberdeen Loan Funding, Ltd., Bristol Bay Funding Ltd. Eastland CLO, Ltd., Grayson CLO, Ltd., Highland Credit Opportunities CDO Ltd., Jasper CLO, Ltd., Liberty Cayman Holdings, Ltd., Liberty CLO, Ltd., Red River CLO, Ltd., Valhalla CLO, Ltd.

II. Transactions involving the (i) assets held directly on the Debtor's balance sheet or the balance sheet of the Debtor's wholly-owned subsidiaries, including Jefferies Prime Account, and (ii) the Highland Select Equity Fund, L.P., Highland Multi Strategy Credit Fund, L.P., and Highland Restoration Capital Partners

A. **Covered Entities**: N/A (See entities above).

B. **Operating Requirements**

1. Ordinary Course Transactions do not require Court approval (All Stages).

a) Stage 1 and Stage 2: ordinary course determined by the CRO.

b) Stage 3: ordinary course determined by the Debtor.

2. Related Entity Transactions

a) Stage 1 and Stage 2: Transactions with Related Entities require prior approval of CRO and five business days advance notice to the Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

b) Stage 3:

(1) Transactions with Related Entities greater than $1,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require five business days advance notice to the Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

(2) Transactions with Related Entities greater than $2,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require Court approval, which the Committee agrees may be sought on an expedited basis.

3. Third Party Transactions (All Stages)

a) Except as set forth in (b) and (c) below, Transactions in excess of $2,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require three business days advance notice to Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

b) The Debtor may satisfy any redemption requests from entities that are not Related Entities without advance notice so long as the Debtor provides notice of such Transactions to the Committee as soon as reasonably practicable. The Debtor will provide the Committee with five business days advance notice of any redemption requests made by and payable to a Related Entity, and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

c) The Debtor may satisfy margin calls and short covers without providing the Committee advance notice if the exigencies do not allow advance notice so long as the Debtor provides notice of such Transactions to the Committee as soon as reasonably practicable.

C. **Weekly Reporting**: The Debtor will provide the Committee with weekly reports showing all Transactions under this category.

III. Transactions involving entities the Debtor manages and in which the Debtor holds a direct or indirect interest (other than the entities discussed in Section I above)

A. **Covered Entities**: See **Schedule A** hereto. **Schedule A** includes or will include all entities the Debtor manages and in which the Debtor holds a direct or indirect interest (other than the entities discussed in Section I above).[1]

B. **Operating Requirements**

1. Ordinary Course Transactions do not require Court approval (All Stages).

a) Stage 1 and Stage 2: ordinary course determined by the CRO.

b) Stage 3: ordinary course determined by the Debtor.

2. Related Entity Transactions

[1] The Debtor is continuing to review the Related Entities List and to determine whether any additional parties or entities should be included on Schedule A. The Debtor will update Schedule A as soon as reasonably practicable to the extent necessary.

a) Stage 1 and Stage 2: Transactions with Related Entities require prior approval of CRO and five business days advance notice to the Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

b) Stage 3:

(1) Transactions with Related Entities greater than $1,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require five business days advance notice to the Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

(2) Transactions with Related Entities greater than $2,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require Court approval, which the Committee agrees may be sought on an expedited basis.

3. Third Party Transactions (All Stages)

a) Except as set forth in (b) and (c) below, Transactions in excess of $2,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require three business days advance notice to Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

b) The Debtor may satisfy any redemption requests from entities that are not Related Entities without advance notice so long as the Debtor provides notice of such Transactions to the Committee as soon as reasonably practicable. The Debtor will provide the Committee with five business days advance notice of any redemption requests made by and payable to a Related Entity, and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

c) The Debtor may satisfy margin calls and short covers without providing the Committee advance notice if the exigencies do not allow advance notice so long as the Debtor provides notice of such Transactions to the Committee as soon as reasonably practicable.

C. **Weekly Reporting**: The Debtor will provide the Committee with weekly reports showing all Transactions under this category.

IV. Transactions involving entities that the Debtor manages but in which the Debtor does not hold a direct or indirect interest

A. **Covered Entities**: See **Schedule A** hereto. **Schedule A** includes or will include all entities that the Debtor manages but in which the Debtor does not hold a direct or indirect interest.[2]

B. **Operating Requirements**

1. Ordinary Course Transactions do not require Court approval (All Stages).

   a) Stage 1 and Stage 2: ordinary course determined by the CRO.

   b) Stage 3: ordinary course determined by the Debtor.

2. Related Entity Transactions

   a) Stage 1 and Stage 2: Transactions with Related Entities require prior approval of CRO and five business days advance notice to the Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

   b) Stage 3:

      (1) Transactions with Related Entities greater than $1,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require five business days advance notice to the Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

      (2) Transactions with Related Entities greater than $2,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require Court approval, which the Committee agrees may be sought on an expedited basis.

3. Third Party Transactions (All Stages):

   a) Except (x) as set forth in (b) and (c) below and (y) for any Transaction involving a Specified Entity and the sale or purchase by such Specified Entity of an asset that is not an obligation or security issued or guaranteed by any of the Debtor, a Related Entity or a fund, account, portfolio company owned, controlled or managed by the Debtor or a Related Entity, where such Transaction is effected in compliance with the collateral management agreement to which such Specified Entity is party, any Transaction that decreases the NAV of an entity managed by the Debtor in excess of the greater of (i) 10% of NAV or (ii) $3,000,000 requires five business days advance notice to Committee and if the Committee objects, the burden is on the

[2] The Debtor is continuing to review the Related Entities List and to determine whether any additional parties or entities should be included on Schedule A. The Debtor will update Schedule A as soon as reasonably practicable to the extent necessary.

Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

b) The Debtor may satisfy any redemption requests from entities that are not Related Entities without advance notice so long as the Debtor provides notice of such Transactions to the Committee as soon as reasonably practicable. The Debtor will provide the Committee with five business days advance notice of any redemption requests made by and payable to a Related Entity, and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

c) The Debtor may take such steps as may be reasonably necessary to winddown any managed entity and make distributions as may be required in connection with such winddown to any required parties. The Debtor will provide the Committee with five business days advance notice of any distributions to be made to a Related Entity, and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

C. **Weekly Reporting**: The Debtor will provide the Committee with weekly reports showing all Transactions under this category. Such reports will include Transactions involving a Specified Entity unless the Debtor is prohibited from doing so under applicable law or regulation or any agreement governing the Debtor's relationship with such Specified Entity.

V. Transactions involving entities that the Debtor does not manage but in which the Debtor holds a direct or indirect interest

A. Covered Entities: See **Schedule A** hereto. **Schedule A** includes or will include all entities that the Debtor does not manage but in which the Debtor holds a direct or indirect interest.[3]

B. Ordinary Course Transactions (All Stages): N/A

C. Operating Requirements: N/A

D. Weekly Reporting: Debtor will provide weekly reports of all cross-held asset Transactions, i.e. Transactions in which the Debtor or a Related Entity also holds a direct or indirect interest.

VI. Transactions involving entities that the Debtor does not manage and in which the Debtor does not hold a direct or indirect interest

[3] The Debtor is continuing to review the Related Entities List and to determine whether any additional parties or entities should be included on Schedule A. The Debtor will update Schedule A as soon as reasonably practicable to the extent necessary.

A. Covered Entities: See **Schedule A** hereto. **Schedule A** includes or will include all entities that the Debtor does not manage and in which the Debtor does not hold a direct or indirect interest.[4]

B. Ordinary Course Transactions (All Stages): N/A

C. Operating Requirements: N/A

D. Weekly Reporting: Debtor will provide weekly reports of all cross-held asset Transactions, i.e. Transactions in which the Debtor or a Related Entity also holds a direct or indirect interest.

VII. Transactions involving Non-Discretionary Accounts

A. Covered Entities: See **Schedule A** hereto. **Schedule A** includes or will include all non-discretionary accounts.[5]

B. Ordinary Course Transactions (All Stages): N/A

C. Operating Requirements: N/A

D. Weekly Reporting: Debtor will provide weekly reports of all cross-held asset Transactions, i.e. Transactions in which the Debtor or a Related Entity also holds a direct or indirect interest.

VIII. Additional Reporting Requirements – All Stages (to the extent applicable)

A. DSI will provide detailed lists and descriptions of internal financial and operational controls being applied on a daily basis for a full understanding by the Committee and its professional advisors three (3) business days in advance of the hearing on the approval of the Term Sheet and details of proposed amendments to said financial and operational controls no later than seven (7) days prior to their implementation.

B. The Debtor will continue to provide weekly budget to actuals reports referencing their 13-week cash flow budget, such reports to be inclusive of all Transactions with Related Entities.

IX. Shared Services

A. The Debtor shall not modify any shared services agreement without approval of the CRO and Independent Directors and seven business days' advance notice to counsel for the Committee.

B. The Debtor may otherwise continue satisfying its obligations under the shared services agreements.

[4] The Debtor is continuing to review the Related Entities List and to determine whether any additional parties or entities should be included on Schedule A. The Debtor will update Schedule A as soon as reasonably practicable to the extent necessary.

[5] The Debtor is continuing to review the Related Entities List and to determine whether any additional parties or entities should be included on Schedule A. The Debtor will update Schedule A as soon as reasonably practicable to the extent necessary.

X. Representations and Warranties

A. The Debtor represents that the Related Entities Listing included as **Schedule B** attached hereto lists all known persons and entities other than natural persons included in the definitions of Related Entities covered by Section I.D parts A(i)-(vii) above at the time of the execution of the Term Sheet.

B. The Debtor represents that the list included as **Schedule C** attached hereto lists all known natural persons included in the definitions of Related Entities covered by Section I.D parts A(i)-(vii) above at the time of the execution of the Term Sheet.

C. The Debtor represents that, if at any time the Debtor becomes aware of any person or entity, including natural persons, meeting the definition of Related Entities covered by Section I.D parts A(1)-(vii) above that is not included in the Related Entities Listing or Schedule C, the Debtor shall update the Related Entities Listing or Schedule C, as appropriate, to include such entity or person and shall give notice to the Committee thereof.

Schedule A[6]

Entities the Debtor manages and in which the Debtor holds a direct or indirect interest

1. Highland CLO Funding, Ltd. (0.63% Ownership Interest)
2. Dynamic Income Fund (0.26% Ownership Interest)

Entities that the Debtor manages but in which the Debtor does not hold a direct or indirect interest

1. Highland Prometheus Master Fund L.P.
2. NexAnnuity Life Insurance Company
3. PensionDanmark
4. Highland Argentina Regional Opportunity Fund
5. Longhorn A
6. Longhorn B
7. Collateralized Loan Obligations
   a) Rockwall II CDO Ltd.
   b) Grayson CLO Ltd.
   c) Eastland CLO Ltd.
   d) Westchester CLO, Ltd.
   e) Brentwood CLO Ltd.
   f) Greenbriar CLO Ltd.
   g) Highland Park CDO Ltd.
   h) Liberty CLO Ltd.
   i) Gleneagles CLO Ltd.
   j) Stratford CLO Ltd.
   k) Jasper CLO Ltd.
   l) Rockwall DCO Ltd.
   m) Red River CLO Ltd.
   n) Hi V CLO Ltd.
   o) Valhalla CLO Ltd.
   p) Aberdeen CLO Ltd.
   q) South Fork CLO Ltd.
   r) Legacy CLO Ltd.
   s) Pam Capital
   t) Pamco Cayman

Entities that the Debtor does not manage but in which the Debtor holds a direct or indirect interest

1. Highland Opportunistic Credit Fund
2. Highland Healthcare Opportunities Fund f/k/a Highland Long/Short Healthcare Fund
3. NexPoint Real Estate Strategies Fund
4. Highland Merger Arbitrage Fund
5. NexPoint Strategic Opportunities Fund
6. Highland Small Cap Equity Fund
7. Highland Global Allocation Fund

[6] NTD: Schedule A is work in process and may be supplemented or amended.

8. Highland Socially Responsible Equity Fund
9. Highland Income Fund
10. Stonebridge-Highland Healthcare Private Equity Fund ("Korean Fund")
11. SE Multifamily, LLC

Entities that the Debtor does not manage and in which the Debtor does not hold a direct or indirect interest

1. The Dugaboy Investment Trust
2. NexPoint Capital LLC
3. NexPoint Capital, Inc.
4. Highland IBoxx Senior Loan ETF
5. Highland Long/Short Equity Fund
6. Highland Energy MLP Fund
7. Highland Fixed Income Fund
8. Highland Total Return Fund
9. NexPoint Advisors, L.P.
10. Highland Capital Management Services, Inc.
11. Highland Capital Management Fund Advisors L.P.
12. ACIS CLO Management LLC
13. Governance RE Ltd
14. PCMG Trading Partners XXIII LP
15. NexPoint Real Estate Partners, LLC f/k/a HCRE Partners LLC
16. NexPoint Real Estate Advisors II LP
17. NexPoint Healthcare Opportunities Fund
18. NexPoint Securities
19. Highland Diversified Credit Fund
20. BB Votorantim Highland Infrastructure LLC
21. ACIS CLO 2017 Ltd.

Transactions involving Non-Discretionary Accounts

1. NexBank SSB Account
2. Charitable DAF Fund LP

Schedule B

Related Entities Listing (other than natural persons)

Schedule C

1. James Dondero
2. Mark Okada
3. Grant Scott
4. John Honis
5. Nancy Dondero
6. Pamela Okada
7. Thomas Surgent
8. Scott Ellington
9. Frank Waterhouse
10. Lee (Trey) Parker

Summary report: **Litéra® Change-Pro TDC 10.1.0.300 Document comparison done on 2/3/2020 1:05:23 PM**	
Style name: Sidley Default	
Intelligent Table Comparison: Active	
Original filename: DOCS_NY-#39943-v15-Highland_-_Discussion_Outline_for_Protocols.docx	
Modified filename: DOCS_NY-#39943-v15-Highland_-_Discussion_Outline_for_Protocols_2.docx	
Changes:	
Add	5
~~Delete~~	0
~~Move From~~	0
Move To	0
Table Insert	0
~~Table Delete~~	0
Table moves to	0
~~Table moves from~~	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
Total Changes:	5

APPENDIX 17

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

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

SUPPLEMENTAL CERTIFICATION OF PATRICK M. LEATHEM WITH RESPECT TO THE TABULATION OF VOTES ON THE FIFTH AMENDED PLAN OF REORGANIZATION OF HIGHLAND CAPITAL MANAGEMENT, L.P.

I, Patrick M. Leathem, depose and say under the penalty of perjury:

1. I am a Senior Consultant in Corporate Restructuring Services, employed by Kurtzman Carson Consultants LLC ("**KCC**"), located at 222 N. Pacific Coast Highway, 3rd Floor, El Segundo, California 90245. I am over the age of 18 and not a party to this action.

2. On October 18, 2019, the United States Bankruptcy Court for the District of Delaware Court entered the *Order Appointing Kurtzman Carson Consultants as Claims and Noticing Agent for the Debtor Pursuant to 28 U.S.C. § 156(c), 11 U.S.C. § 105(a) and Local Rule 2002-1(f)* (Docket No. 43), prior to a venue transfer to this District.

3. On January 19, 2021, the Debtor filed the *Certification of Patrick M. Leathem with Respect to the Tabulation of Votes on the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* (Docket No. 1772) (the "**Original Voting Certification**"). This certification supplements the Original Voting Certification to reflect the updated tabulation of votes for Class 7 and Class 8.

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

4. KCC has considerable experience in soliciting and tabulating votes to accept or reject proposed chapter 11 plans. Except as otherwise stated, I could and would testify to the following based upon my personal knowledge. I am authorized to submit this Certification on behalf of KCC.

5. Pursuant to the terms of the settlement between the Debtor and the Senior Employees and the Debtor's settlement with Patrick Daugherty, the updated tabulation of votes reflecting the settlements is attached hereto as **Exhibit A**. The detailed ballot reports for the affected classes (Voting Classes 7 and 8) are attached to this Certification as **Exhibits A-2** and **A-3**, along with a summary[2] provided to KCC by the Debtor with respect to the Debtor's position with respect to the tabulation and classification of votes in the Voting Classes pursuant to the Settlement, Disclosure Statement Order, Plan and applicable law.

Conclusion

To the best of my knowledge, information and belief, the foregoing information concerning the distribution, submission and tabulation of Ballots in connection with the Plan is true. The Ballots received by KCC are stored at KCC's office and are available for inspection by or submission to this Court.

Dated: February 3, 2021

/s/ Patrick M. Leathem
Patrick M. Leathem

[2] Please see footnotes on the detailed ballot reports with respect to tabulation of certain ballots in Class 7 and Class 8. The changes reflecting the voting tabulation with respect to the Debtor's settlement with the Senior Employees and with Mr. Daugherty are highlighted in the Exhibits to this Supplemental Certification. The voting summaries and tabulations remain as set forth in the Original Voting Certification, except to the extent modified by this Supplemental Certification.

EXHIBIT A

Revised Ballot Tabulation Summary

Class	Ballots Not Tabulated[1]	Number Accepting	Number Rejecting	Amount Accepting	Amount Rejecting	Voting Result
Class 2 - Frontier Secured Claim	0	1 100.00%	0 0.00%	$5,209,963.62 100.00%	$0.00 0.00%	Accepted in Number Accepted in Dollar
Class 7 - Convenience Claims	0	16 100.00%	0 0.00%	$4,155,683.51 100.00%	$0.00 0.00%	Accepted in Number Accepted in Dollar
Class 8 - General Unsecured Claims	1	17 38.64%	27 61.36%	$324,578,303.49 99.80%	$650,025.00 0.20%	Rejected in Number Accepted in Dollar
Class 9 - Subordinated Claims	0	5 100.00%	0 0.00%	$35,000,000.00 100.00%	$0.00 0.00%	Accepted in Number Accepted in Dollar

Class	Ballots Not Tabulated	Number Accepting	Number Rejecting	Amount of Interests Accepting	Amount of Interests Rejecting	Voting Result
Class 10 - Class B/C Limited Partnership Interests	0	0 0.00%	0 0.00%	0.00 0.00%	0.00 0.00%	No Votes No Votes
Class 11 - Class A Limited Partnership Interests	0	0 0.00%	1 100.00%	0.00 0.00%	37.37% Interests 100.00%	Rejected in Number Rejected in Amount

[1] The only vote not tabulated was Class 8 Ballot No. 15 of HarbourVest Partners L.P. on behalf of funds and accounts under management, that cast a vote under Bankruptcy Rule 3018 which was not allocated a voting amount under the HarbourVest settlement.

Exhibit A-2

Revised Class 7 Ballot Detail

Convenience Claims

Creditor Name[1]	Ballot No.	Voting Amount	Date Filed	Vote
Argo Partners	3	$10,000.00	12/08/2020	Accept
CBIZ Valuation Group, LLC	48	$8,269.26	01/05/2021	Accept
Contrarian Funds, LLC	1	$268,095.08	12/04/2020	Accept
Crescent TC Investors, L.P.	41	$27,480.67	01/04/2021	Accept
Daniel Sheehan & Associates, PLLC	6	$32,433.75	12/21/2020	Accept
Department of the Treasury - Internal Revenue Service	39	$85,281.32	01/04/2021	Accept
Katten Muchin Rosenman LLP	4	$16,695.00	12/10/2020	Accept
MCS Capital LLC c/o STC, Inc.	8	$507,430.34	12/21/2020	Accept
Meta-e Discovery, LLC	9	$779,969.84	12/22/2020	Accept
Parmentier, Andrew	51	$136,350.00	01/05/2021	Accept
Pivotal Research Group LLC	11	$2,500.00	12/29/2020	Accept
Ryan P. Newell (Connolly Gallagher LLP)	12	$166,062.22	12/31/2020	Accept
Siepe Services, LLC	64	$80,183.88	01/05/2021	Accept
Stinson Leonard Street LLP	65	$645,155.15	01/14/2021	Accept
Isaac Leventon	61	$598,198.00	01/05/2021	Accept
Frank Waterhouse	59	$791,579.00	01/05/2021	Accept
Total Class Members	16	$4,155,683.51		
Accepting	16	$4,155,683.51		100%
Rejecting	0	$0.00		0%

[1] The Debtor has advised that pursuant to the terms of the Settlement between the Debtor and the Senior Employees, Waterhouse shall have a Class 7 Claim in the amount of $791,579.00 and vote to accept the Plan, with such claim to be treated pursuant to the terms of the Settlement; and (ii) Leventon will have a Class 7 Claim in the amount of $598,198.00 and vote to accept the Plan, with such claim to be treated in accordance with the terms of the Settlement.

Exhibit C-3

Revised Class 8 Ballot Detail

General Unsecured Claims

Creditor Name[1]	Ballot No.	Voting Amount	Date Filed	Vote
Acis Capital Management L.P. and Acis Capital Management GP, LLC	45	$23,000,000.00	01/05/2021	Accept
Charlotte Investor IV, L.P.	19	$1.00	12/31/2020	Accept
Contrarian Funds, LLC[3]	20	$1,318,730.36	01/04/2021	Accept
Ellington, Scott	56	$7,604,375.00	01/05/2021	Accept
Employee 01	50	$1.00	01/05/2021	Reject
Employee 02	52	$1.00	01/05/2021	Reject
Employee 03	2	$1.00	12/07/2020	Accept
Employee 04	26	$1.00	01/04/2021	Reject
Employee 06	32	$1.00	01/04/2021	Reject
Employee 08	28	$1.00	01/04/2021	Reject
Employee 09	40	$1.00	01/04/2021	Reject
Employee 11	24	$1.00	01/04/2021	Reject
Employee 12	29	$1.00	1/4/2021	Reject
Employee 13	25	$1.00	01/04/2021	Reject
Employee 14	27	$1.00	01/04/2021	Reject
Employee 15	30	$1.00	01/04/2021	Reject
Employee 16	43	$1.00	01/04/2021	Reject
Employee 17	47	$1.00	01/05/2021	Reject
Employee 18	34	$1.00	01/04/2021	Reject
Employee 19	38	$1.00	01/04/2021	Reject
Employee 20	49	$1.00	01/05/2021	Reject
Employee 22	44	$1.00	01/05/2021	Reject
Employee 23	23	$1.00	01/04/2021	Reject
Employee 25	33	$1.00	01/04/2021	Reject
Employee 26	31	$1.00	01/04/2021	Reject
Employee 27	36	$1.00	01/04/2021	Reject
Employee 28	46	$1.00	01/05/2021	Reject
Employee 29	21	$1.00	01/04/2021	Reject
Employee 30	37	$1.00	01/04/2021	Reject
HarbourVest 2017 Global AIF L.P.	18	$4,366,125.00	12/31/2020	Accept
HarbourVest 2017 Global Fund L.P.	17	$2,183,085.00	12/31/2020	Accept
HarbourVest Dover Street IX Investment L.P.	16	$31,954,320.00	12/31/2020	Accept
HarbourVest Skew Base AIF L.P.	13	$648,990.00	12/31/2020	Accept
Highland Crusader Offshore Partners, L.P., et al.	10	$50,000.00	12/28/2020	Accept
Hunter Covitz	35	$250,000.00	01/04/2021	Reject

Exhibit C-3

Revised Class 8 Ballot Detail

General Unsecured Claims

Creditor Name[1]	Ballot No.	Voting Amount	Date Filed	Vote
HV International VIII Secondary L.P.	14	$5,847,480.00	12/31/2020	Accept
Jean Paul Sevilla	63	$400,000.00	01/05/2021	Reject
Leventon, Isaac	58	$744,181.00	01/05/2021	Accept
Patrick Hagaman Daugherty	42	$9,134,019.00	01/04/2021	Accept
Raymond Joseph Dougherty	62	$1.00	01/05/2021	Reject
Redeemer Commttee Highland Crusader Fund	5	$137,696,610.00	12/16/2020	Accept
Surgent, Thomas	57	$3,958,628.14	01/05/2021	Accept
UBS Securities LLC	22	$94,761,076.00	01/04/2021	Accept
Waterhouse, Frank	59	$1,310,681.99	01/05/2021	Accept
	Number	**Amount**		
Total Class Members	**44**	**$325,228,328.49**		
Accepting	**17 (38.64%)**	**$324,578,303.49 (99.80%)**		
Rejecting	**27 (61.36%)**	**$650,025.00 (0.20%)**		

[1] The Debtor has advised that pursuant to the Settlement agreed to by and between the Debtor, on the one hand, and Ellington, Waterhouse, Surgent and Leventon (the "Settlement"), the parties agreed that: (i) Ellington shall vote his entire Class 8 Claim in the amount of $7,604,375.00 to accept the Plan, of which amount $1,367,197.00 will receive the treatment provided for Class 7 Convenience Claims in accordance with the terms of the Settlement; (ii) Surgent shall vote his entire Class 8 Claim in the amount of $3,958,628.14 to accept the Plan, of which $1,191,748.00 will receive the treatment provided for Class 7 Convenience Claims in accordance with the terms of the Settlement; (iii) Leventon will reduce his Class 8 Claim by $598,198 from $1,342,379 to $744,181 and vote to accept the Plan. Leventon will have a Class 7 Claim in the amount of $598,198.00 and receive the treatment provided to Class 7 Convenience Claims in accordance with the terms of the Settlement; and (iv) Waterhouse will reduce his Class 8 Claim by $791,579.00 from $2,102,260.99 to $1,310,681.99. Waterhouse will have a a Class 7 Claim in the voting amount of $791,579.00 and receive the treatment provided to Class 7 Convenience Claims in accordance with the terms of the Settlement. In addition, Daugherty has agreed to change his vote to accept the Plan.

APPENDIX 18

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

In Re:	**Case No. 19-34054-sgj-11**
	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,	Dallas, Texas
	Wednesday, February 3, 2021
	9:30 a.m. Docket
Debtor.	
	CONFIRMATION HEARING [1808]
	AGREED MOTION TO ASSUME [1624]
	Continued from 02/02/2021

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

WEBEX APPEARANCES:

For the Debtor:	Jeffrey Nathan Pomerantz PACHULSKI STANG ZIEHL & JONES, LLP 10100 Santa Monica Blvd., 13th Floor Los Angeles, CA 90067-4003 (310) 277-6910
For the Debtor:	John A. Morris PACHULSKI STANG ZIEHL & JONES, LLP 780 Third Avenue, 34th Floor New York, NY 10017-2024 (212) 561-7700
For the Debtors:	Ira D. Kharasch PACHULSKI STANG ZIEHL & JONES, LLP 10100 Santa Monica Blvd., 13th Floor Los Angeles, CA 90067-4003 (310) 277-6910
For the Official Committee of Unsecured Creditors:	Matthew A. Clemente SIDLEY AUSTIN, LLP One South Dearborn Street Chicago, IL 60603 (312) 853-7539

APPEARANCES, cont'd.:

For James Dondero:	Clay M. Taylor BONDS ELLIS EPPICH SCHAFER JONES, LLP 420 Throckmorton Street, Suite 1000 Fort Worth, TX 76102 (817) 405-6900
For Get Good Trust and Dugaboy Investment Trust:	Douglas S. Draper HELLER, DRAPER & HORN, LLC 650 Poydras Street, Suite 2500 New Orleans, LA 70130 (504) 299-3300
For Certain Funds and Advisors:	Davor Rukavina Julian Vasek MUNSCH, HARDT, KOPF & HARR 500 N. Akard Street, Suite 3800 Dallas, TX 75201-6659 (214) 855-7587
For the NexPoint Parties:	Lauren K. Drawhorn WICK PHILLIPS 3131 McKinney Avenue, Suite 100 Dallas, TX 75204 (214) 692-6200
For the U.S. Trustee:	Lisa L. Lambert OFFICE OF THE UNITED STATES TRUSTEE 1100 Commerce Street, Room 976 Dallas, TX 75242 (214) 767-8967
For Scott Ellington, Isaac Leventon, Thomas Surgent, and Frank Waterhouse:	Debra A. Dandeneau BAKER & MCKENZIE, LLP 452 Fifth Avenue New York, NY 10018 (212) 626-4875
For Certain Funds and Advisors:	A. Lee Hogewood, III K&L GATES, LLP 4350 Lassiter at North Hills Avenue, Suite 300 Raleigh, NC 27609 (919) 743-7306

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311 Paradise Cove
Shady Shores, TX 76208
(972) 786-3063

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

DALLAS, TEXAS - FEBRUARY 3, 2021 - 9:38 A.M.

THE CLERK: All rise. The United States Bankruptcy Court for the Northern District of Texas, Dallas Division, is now in session, the Honorable Stacey Jernigan presiding.

THE COURT: Good morning. Please be seated. All right. We are ready for Day Two of the confirmation hearing in Highland Capital Management, LP, Case No. 19-34054. I'll just make sure we've got the key parties at the moment. Do we have Mr. Pomerantz, Mr. Morris, for the Debtor team?

MR. POMERANTZ: Yes. Good morning, Your Honor. Jeff Pomerantz for the Debtors.

MR. MORRIS: And I'm here as well, Your Honor.

THE COURT: All right. Good.

All right. For our objecting parties, do we have Mr. Taylor and your crew for Mr. Dondero?

MR. TAYLOR: Yes, Your Honor.

THE COURT: Good morning.

All right. For Dugaboy Trust and Get Good Trust, do we have Mr. Draper? (No response.) All right. I do see Mr. Draper. I didn't hear an appearance. You must be on mute.

MR. DRAPER: I'm present, --

THE COURT: Okay.

MR. DRAPER: -- Your Honor.

THE COURT: Okay. Good morning.

MR. DRAPER: I'm present, Your Honor.

THE COURT: Good morning. I heard you that time. Thank you.

All right. And now for what I'll call the Funds and Advisors Objectors, do we have Ms. Rukavina present?

MR. RUKAVINA: Yes, Your Honor. Good morning.

THE COURT: Good morning. All right. And I will check. Do we have Mr. Clemente or your team there?

MR. CLEMENTE: Yes. Good morning, Your Honor. Matt Clemente from Sidley Austin on behalf of the Committee.

THE COURT: All right. Ms. Drawhorn, do we have you there for the NexPoint Real Estate Partners and related funds?

MS. DRAWHORN: Yes, Your Honor. Good morning.

THE COURT: Good morning. All right. Did I miss -- I think that captured all of our Objectors. Anyone who I've missed?

All right. Well, when we recessed yesterday, Mr. Morris, I think you were about to call your third witness; is that correct?

MR. MORRIS: It is, Your Honor. But if I may, I'd like to just address the objections to the remaining exhibits, since I hope that won't take too long.

THE COURT: All right. You may.

MR. POMERANTZ: Actually, Your Honor, before we go there, we filed the supplemental declaration of Patrick Leatham, as we indicated we would do yesterday. We just

wanted to get confirmation again that nobody intends to cross-examine him, so that he doesn't have to sit through the festivities today.

THE COURT: All right. Well, I did see that you filed that.

Does anyone anticipate wanting to cross-examine Mr. Leatham, the balloting agent?

MR. RUKAVINA: Your Honor, I take it that that declaration is part of the record. As long as the Court confirms that, I do not intend to call the gentlemen.

THE COURT: All right. Well, I will take judicial notice of it and make it part of the record. It appears at Docket Entry No. 1887. Again, it was filed -- well, it was actually filed early this morning, I think. So, all right. So, with --

MR. MORRIS: And to avoid --

THE COURT: Go ahead.

MR. MORRIS: To -- I was just going to say, to avoid any ambiguity, Your Honor, the Debtor respectfully moves that document into the evidentiary record.

THE COURT: All right. The Court will --

(Interruption.)

THE COURT: Someone needs to put their phone on mute, perhaps. Unless someone was intentionally speaking.

All right. So, I will grant that request. Docket Entry

No. 1887 will be part of the confirmation evidence of this hearing.

(Debtor's Patrick Leatham Declaration at Docket 1887 is received into evidence.)

THE COURT: All right. Anything else? There were other exhibits I think you were going to talk about?

MR. MORRIS: Yeah. Let me just go through them one at a time, if I may, Your Honor.

THE COURT: Okay.

MR. MORRIS: All right. So, I'm going to deal with the transcripts that have been objected to one at a time. And I'll just take them in order. The first one can be found at Exhibit B. It is on Docket No. 1822.

THE COURT: Okay.

MR. MORRIS: Exhibit B is the deposition transcript from the December 16, 2020 hearing on the Advisor and the Funds' motion for an order restricting the Debtor from engaging in certain CLO-related transactions.

During that hearing, the Court heard the testimony of Dustin Norris. Mr. Norris is an executive vice president for each of the Funds and each of the Advisors.

We would be offering the transcript for the limited purposes of establishing Mr. Dondero's ownership and control over the Advisors.

Mr. Norris also gave some pretty substantial testimony

concerning the so-called independent board of the Funds.

And as a general matter, Your Honor, to the extent that the objection is on hearsay grounds, the transcript -- at least the portions relating to Mr. Norris's testimony -- simply are not hearsay under Evidentiary Rule 801(d)(2). These are statements of an opposing party, and I think we fall well within that.

So, we would respectfully request that the Court admit into the record the transcript from December 16th, at least the portions of which are Mr. Norris's testimony.

THE COURT: All right. And, again, these appear at -- I think I heard you say B and then E. Is that correct?

MR. MORRIS: Just B. Just B at the moment. B as in boy.

THE COURT: Okay. Just B at the moment?

All right. Any objections to that?

MR. RUKAVINA: Your Honor, I had objected, but now that it's offered for that limited purpose, I withdraw my objection.

THE COURT: All right. Then B -- I'm sorry. Was there anyone else speaking?

B will be admitted. And, again, it appears at Docket Entry 1822.

(Debtor's Exhibit B, Docket Entry 1822, is received into evidence.)

MR. MORRIS: Okay. Next, the next transcript can be found at Exhibit 6R, and that's Docket 1866. Exhibit 6R is the transcript of the January 9, 2020 hearing where the Court approved the corporate governance settlement. We think that that transcript is highly relevant, Your Honor, because it reflects not only Mr. Dondero's notice and active participation in the consummation of the corporate governance agreement, but it also reflects the Court and the parties' views and expectations that were established at that time, such that if anybody contends that there's any ambiguity about any aspect of the order, I believe that that would be the best evidence to resolve any such disputes.

So, for the purpose of establishing Mr. Dondero's notice, Mr. Dondero's participation, and the parties' discussions and expectations with regard to every aspect of the corporate governance settlement, including Mr. Dondero's stipulation, the order that emerged from it, and the term sheet, we think that that's properly into evidence.

THE COURT: Any objection?

All right. 6R will be admitted. Again, at Docket Entry 1822.

(Debtor's Exhibit 6R, Docket Entry 1822, is received into evidence.)

MR. MORRIS: Next, Your Honor, we've got Exhibits 6S as in Sam and 6T as in Thomas. They're companions. And they

can be found at Docket 1866. And those are the transcripts. The first one is from the October 27th disclosure statement hearing, and the second one actually is from the Patrick Daugherty, I believe, lift stay motion.

I'll deal with the first one first, Your Honor. We believe that the transcript of the October 27th hearing goes to the good faith nature of the Debtor's proposed plan. It shows that the Debtor and the Committee were not always aligned on every interest. It shows that the Committee, in fact, strenuously objected to certain aspects of the then-proposed plan by the Debtors. And we just think it goes to the heart of the good faith argument.

The transcript for the 28th, we would propose to offer for the limited purpose of the commentary that you offered at the end of that hearing, where Your Honor made it clear that employee releases would not be -- would not likely be acceptable to the Court unless there was some consideration paid.

And it was really, frankly, Your Honor's comments that helped spur the Committee and the Debtor to discuss over the next few weeks the resolution of the issues concerning the employee releases.

So we're not offering Exhibit 6T for anything having to do with Mr. Daugherty or his claim, but just the latter portion relating to the discussion about the employee releases. And,

with that, we'd move those transcripts into evidence.

THE COURT: Any objection?

MR. RUKAVINA: Your Honor, yes, I do object. 6S is hearsay, and under Rule 804(b)(1) it's admissible only if the witnesses are unavailable to be called. There's been no suggestion that they're not.

As far as 6T, what Your Honor says is not hearsay, so as long as it's just what Your Honor was saying, I do not object to 6T. I object to the balance of it.

THE COURT: Okay. What about that objection on 6S?

MR. MORRIS: Yeah. One second, Your Honor. I would go to the residual exception to the hearsay rule under 807. 807 specifically applies if the statement being offered is supported by sufficient guarantees of trustworthiness and it's more probative on the point -- and the point here is simply to help buttress the Debtor's good faith argument -- and it's more probative on the point than any other evidence. And I'm not sure what better evidence there would be than an on-the-record discussion between the Debtor and the Committee as to the disputes they were having on the disclosure statement.

THE COURT: All right. I'm going to overrule the objection and accept that 807 exception as being valid here. So, I am admitting both 6S and 6T. And for the record, I think you said they appeared at 1866. They actually appear at 1822.

MR. MORRIS: Okay, Your Honor. I am corrected. It is 6S and 6T, and they are indeed at 1822. Forgive me.

THE COURT: Okay.

(Debtor's Exhibits 6S and 6T, Docket Entry 1822, is received into evidence.)

MR. MORRIS: The next transcript and the last one is 6U, which is also at 1822. 6U is the transcript from the December 10th hearing on the Debtor's motion for a TRO against Mr. Dondero. We believe the entirety of that transcript is highly relevant, and it relates specifically to the Debtor's request for the exculpation, gatekeeper, and injunction provisions of their plan. And on that basis, we would offer that into evidence.

THE COURT: Any objection?

MR. TAYLOR: Yes, Your Honor. This is Clay Taylor on behalf of Mr. Dondero.

We do object, on the same basis that it is hearsay. There has certainly been plenty of testimony before this Court and on the record as to why the Debtor believes that its plan provisions are appropriate and allowable, and there's no need to allow hearsay in for that. All of the witnesses were available to be called by the Debtor. The Debtor is in the midst of its case and can call whoever else it needs to call to get these into evidence or to get those docs into evidence. And therefore, we don't believe that any residual exception

should apply.

THE COURT: Mr. Morris, your response?

MR. MORRIS: First, Your Honor, any statements made by or on behalf of Mr. Dondero would not be hearsay under 801(d)(2).

And secondly, there is no other evidence of the Debtor's motion of the -- of the argument that was had. There is no other evidence, let alone better evidence, than the transcript itself. And I believe 807 is certainly the best rule to capture that.

It is a statement that's supported by sufficient guarantees of trustworthiness. Again, these are the litigants appearing before Your Honor. It may not be sworn testimony, but I would hope that everybody is doing their best to comply with the guarantee of trustworthiness in that regard, putting aside advocacy.

And it is more probative on the point for which we're offering -- and that is on the very issues of exculpation, gatekeeper, and injunction -- than anything else we can offer in that regard.

THE COURT: All right. I overrule the objection and I will admit 6U. Okay.

(Debtor's Exhibit 6U, Docket Entry 1822, is received into evidence.)

MR. MORRIS: All right. Going back to the top, Your

Honor, Companions Exhibit D as in David and E as in Edward, which are at Docket 1822.

Exhibit D is an email string that relates to the Debtor's communications with the Creditors' Committee concerning a transaction known as SSP, which stands for Steel Products -- Structural and Steel Products. So that was an asset that the Debtor was selling, trying to sell at a particular point in time. And Exhibit E is a deck that the Debtor had prepared for the benefit of the UCC.

And if we looked that those documents, Your Honor, you'd see that the Debtor was properly following the protocols that were put in place in connection with the January 9th corporate governance settlement. And the Committee is being informed by the Debtor of what the Debtor intends to do with that particular asset.

And the reason that it's particularly relevant here, Your Honor, is Dustin Norris had submitted a declaration in support of their motion that was heard on September -- on December 16th. That declaration is an exhibit to what is Exhibit A on Docket 1822. Exhibit A on the docket is the Advisor and the Funds' motion. Okay? So, Exhibit A is the motion. Attached to that Exhibit A is an exhibit, which is Mr. Norris's declaration.

At Paragraph 9 of Mr. Norris's declaration, he takes issue with the Debtor's process for the sale of that particular

asset.

And so, having admitted already into the record Mr. Norris's declaration, we believe that these documents rebut the statements made in Mr. Norris's declaration, and indeed, were part of the transcript that has now already been admitted into evidence. So we think the documents are needed because they were exhibits during that hearing.

THE COURT: All right. Any objection?

MR. RUKAVINA: Your Honor, yes, I object based on authenticity. This document has not been authenticated, nor has the attachment. And on hearsay. And I don't think that the Debtor can introduce one exhibit just to introduce another to rebut the first.

THE COURT: Your response?

MR. MORRIS: You know, in all honesty, I wish that the authenticity objection had been made yesterday and I might have been able to deal with that.

These documents have already been admitted by the Court against these very same parties. I think it would be a little unfair for them now to exclude the document that they had no objection to the first time around. They clearly relate to Paragraph 9 of Mr. Norris's declaration, which was admitted into evidence in this case without objection.

THE COURT: All right. I overrule the objection. D and E are admitted.

(Debtor's Exhibits D and E, Docket Entry 1822, is received into evidence.)

MR. MORRIS: Next, Your Honor, we have Exhibits 4D as in David, 4E as in Edward, and 4G as in Gregory. And those can all be found on Docket 1822. And to just cut to the chase, Your Honor, these are the K&L Gates letter that were sent in late December and my firm's responses to those letters.

Those letters are being offered, again, to support -- well, the Debtor contends that, in the context of this case, and at the time and under the circumstances, the letters constituted interference and evinces a disregard for the January 9th order, for Mr. Dondero's TRO, and for the Court's comments at the December 16th hearing. And they go specifically to the Debtor's request for the gatekeeper, exculpation, and injunction provisions.

To the extent that those exhibits contain the letters that were sent on behalf of the Funds and on behalf of the Advisors, they would simply not be hearsay under 801(d)(2). And to the extent the objection goes to my firm's response, I think just as a matter of completeness the Court -- I won't offer them for the truth of the matter asserted. I'll simply offer the Pachulski responses at those exhibits for the purpose of stating the Debtor's position, without regard to the truth of the matter asserted.

THE COURT: All right. Any objection?

MR. RUKAVINA: Your Honor, with that understanding, I'll withdraw my objection to these exhibits.

THE COURT: All right. So, 4D, 4E, and 4G are admitted.

(Debtor's Exhibits 4D, 4E, and 4G, Docket Entry 1822, are received into evidence.)

MR. MORRIS: Next, Your Honor, we've got Exhibit 5T as in Thomas. That document can be found at Docket No. 1822. Your Honor, that document is a schedule of a long list of promissory notes that are owed to the Debtor by the Advisors, Dugaboy, and Mr. Dondero. But I think that, upon reflection, I'll withdraw that exhibit.

THE COURT: All right.

(Debtor's Exhibit 5T is withdrawn.)

MR. MORRIS: And then, finally, just one last one. I think Mr. Rukavina objected to Exhibit 7O as in Oscar, which can be found at Docket No. 1877. Exhibit 7O are the documents that were admitted in the January 21st hearing, and I believe that they all go -- they're being offered to support the Debtor's application for the gatekeeper, exculpation, and injunction provisions.

THE COURT: All right. 7O is being offered. Any objection?

MR. RUKAVINA: Yes, Your Honor. I do object. Those

are exhibits from a separate adversary proceeding that has not been concluded. In fact, my witness is still on the stand in that.

And I'll note that that's another 20,000 pages that's very duplicative of the current record, and we already are going to have an unwieldy record. So I question why Mr. Norris -- why Mr. Morris would even need this.

So that's my objection, Your Honor.

MR. MORRIS: You know what? That's a fair point, Your Honor. And -- that is a fair point, and I guess what I'd like to do is at some point this morning see if I can single out documents that are not duplicative and come back to you with very specific documents. I think that's a very fair point.

THE COURT: All right.

MR. MORRIS: And with that, Your Honor, I think we've now addressed every single document that the Debtor has offered into evidence, and I believe, other than the withdrawal of --

THE COURT: 5T.

MR. MORRIS: -- 5T --

THE COURT: Uh-huh.

MR. MORRIS: -- and the open question on 7O, I believe every single document at Docket 1822, 1866, and 1877 has been admitted. Do I have that right?

THE COURT: All right. Yes, because I did admit yesterday 7F through 7Q, minus 7O, at 1877. So, yes, I agree with what you just said.

MR. RUKAVINA: Your Honor, I apologize. And Mr. Morris. I have that 5S -- or six -- that 5S and 6C, Legal Entities List, have not been admitted. But if I'm wrong on that, then I apologize.

THE COURT: Okay. 5S was part of 1866, which I admitted entirely.

And what was the other thing?

MR. RUKAVINA: I'm counting letters, Your Honor. One, two, three, four. 6D, Legal Entities List, Redacted.

THE COURT: Okay. 6B would have been --

MR. RUKAVINA: D, Your Honor, as in dog. I'm sorry. 6-dog.

THE COURT: Okay. 6D, yeah, that was part of 1822 that I admitted *en masse* yesterday.

MR. MORRIS: Yeah, I didn't hear an objection to that one yesterday, and I agree, Your Honor. My records show that it was already admitted.

MR. RUKAVINA: Then I apologize to the Court.

THE COURT: All right. Any --

MR. MORRIS: No worries. Let's get --

THE COURT: Any other housekeeping matters before we go to the next witness?

MR. MORRIS: No, Your Honor. Not from the Debtor.

THE COURT: Anyone else?

All right. Well, let's hear from the next witness.

MR. MORRIS: All right, Your Honor. The Debtor calls as its next and last witness Marc Tauber.

THE COURT: All right. Mr. --

MR. MORRIS: Mr. Tauber, if you're on the phone, please identify yourself.

(No response.)

THE COURT: Mr. Tauber, we're not hearing you. Perhaps you are on mute. Could you unmute your device?

(No response.)

THE COURT: All right. If it's a phone, you need to hit *6.

Hmm. Any -- do you know which caller he is?

THE CLERK: I'm trying to find out.

THE COURT: All right. We've got well over a hundred people, so we can't easily identify where he is at the moment.

All right. Mr. Tauber, Marc Tauber? This is Judge Jernigan. We cannot hear you, so -- all right. Well, maybe we can --

MR. MORRIS: Can we just take a three-minute break and let me see if I can track him down?

THE COURT: Yes. Why don't you do that? So let's take a three-minute break.

MR. MORRIS: Thank you, Your Honor.

THE COURT: Okay.

(A recess ensued from 10:02 a.m. until 10:04 a.m.)

MR. MORRIS: Your Honor, if we may, he'll be dialing in in a moment. But I've been reminded that there is one more exhibit. It's the exhibit I used on rebuttal yesterday with Mr. Seery. There was the one document that was on the docket, and that was the Debtor's omnibus reply to the plan objections, where we looked at Paragraph 135, I believe. And we would offer that into evidence for the purpose of just establishing that the Debtor had given notice no later than January 22nd of its agreement in principle to assume the CLO management contracts.

And then the second exhibit that we had offered that I think I suggested could be marked as Exhibit 10A was the email string between my firm and counsel for the CLO Issuers where they agreed to the agreement in principle for the Debtor's assumption of the CLO management contracts.

And we would offer both of those documents into evidence as well.

THE COURT: All right. Any objections?

All right. Well, I will admit them.

As far as this email string with the CLO Issuers that you called 10A, does that appear on the docket? I remember you putting it on the screen, but, if not, you'll need to file a

supplement to the record, a supplemental exhibit.

MR. MORRIS: We will, Your Honor. We'll do that for both of those exhibits.

THE COURT: And then as -- okay, for both? Because I -- I've read that reply, and I could reference the docket number if we need to.

MR. MORRIS: We'll clean that up, Your Honor.

THE COURT: Okay.

(Debtor's Exhibit 10A is received into evidence.)

(Clerk advises Court re new caller.)

THE COURT: Oh, okay. Just a minute. I was looking up something.

(Pause.)

THE COURT: All right. Well, you're going to file -- hmm, I really wanted to just reference where that reply brief appears on the record. There were a heck of a lot of things filed on January 22nd.

(Interruption.)

THE COURT: Okay. We'll --

MR. MORRIS: All right. We're just going to need one more minute with Mr. Tauber. It's my fault, Your Honor.

THE COURT: Okay.

MR. MORRIS: I didn't send him easily-digestible dial-in instructions. He'll be just a moment.

THE COURT: Okay.

(Court confers with Clerk regarding exhibit.)

THE COURT: Oh, it's at 1807? Okay. So, the reply brief that we talked about Paragraph 35, that is at Docket No. 1807. Okay? All right.

(Debtor's Omnibus Reply to Plan Objections, Docket 1807, is received into evidence.)

(Pause.)

MR. TAUBER: Hi. It's Marc Tauber.

THE COURT: All right.

MR. MORRIS: Excellent.

THE COURT: Mr. Tauber, this is Judge Jernigan. I can hear you, but I can't see you. Do you have a video --

MR. TAUBER: Yeah, I don't know why it's not working.

THE COURT: Hmm.

MR. TAUBER: I'm on WebEx all day. Usually it works no problem.

THE COURT: Okay. Well, do you want to give it another try or two?

MR. TAUBER: Yeah. It looks like it's starting to come up. It's all -- pictures, so --

THE COURT: Okay.

MR. TAUBER: -- hopefully you'll be able to see me in a second.

THE COURT: Okay. The first thing I'm going to need to do is swear you in, so we'll see if the video comes up here

in a minute.

MR. TAUBER: Okay.

THE COURT: Can you see us, Mr. Tauber?

MR. TAUBER: I can see four people. The rest are just names still.

THE COURT: Okay.

MR. TAUBER: I can go out and try to come back in, if you think that's --

THE COURT: I'm afraid of losing you. So, your audio, is it on your phone or is it on --

MR. TAUBER: No.

THE COURT: -- a computer?

MR. TAUBER: On the computer. Yeah.

THE COURT: Okay. So you're coming through loud and clear on your computer.

MR. TAUBER: Yeah. Like I said, we use WebEx for work, so I have them on all day long without any issues, typically.

THE COURT: Okay.

(Court confers with Clerk.)

THE COURT: Okay. Our court reporter thinks it's a bandwidth issue on your end, so I don't --

MR. TAUBER: There's only two of us here at home on the line right now, so I don't know why. It looks like it's trying to come in, and then just keeps --

THE COURT: I at least see your name on the screen now, which I did not before.

MR. TAUBER: Yeah.

THE COURT: So hopefully we're going to -- ah. We got you.

MR. TAUBER: There it is.

THE COURT: All right.

MR. TAUBER: Yeah.

MR. MORRIS: There we go.

MR. TAUBER: I might lose you, though. Give me one second, because I have a thing saying the WebEx meeting has stopped working. Let me close that.

THE COURT: Okay. We've still got you. Please raise your right hand.

MR. TAUBER: Okay.

MARC TAUBER, DEBTOR'S WITNESS, SWORN

THE COURT: All right. Thank you. Mr. Morris?

MR. MORRIS: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. MORRIS:

Q Good morning, Mr. Tauber.

A Good morning.

Q I apologize for the delay in getting you the information. Are you currently employed, sir?

A Yes, sir.

Q By whom?
A Aon Financial Services.
Q And does Aon Financial Services provide insurance brokerage services among its services?
A Yes.
Q And what position do you currently hold?
A Vice president.
Q How long have you been a vice president at Aon?
A Since October of 2019.
Q Can you just describe for the Court generally your professional background?
A Sure. I spent about 20 years on Wall Street, working in a variety of jobs, in research, trading, and as the COO of a hedge fund. And then in 2010 I switched to the insurance world. I was an underwriter for ten-plus years for Zurich and QBE. And then in 2019 switched to the brokering side for Aon.
Q And what are your duties and responsibilities as a vice president at Aon?
A Well, we're responsible or my team and I are responsible for creating bespoke insurance programs, focusing on D&O and E&O insurance for our insureds.
Q And what is, for the benefit of the record, what do you mean by bespoke insurance program?
A Well, each client is different, so the programs and the policies that we put in place might be off-the-shelf policies,

but we endorse and amend them as needed to meet the needs of the individual client.

Q And during your work, both as an underwriter and now as a broker, have you familiarized yourself with the market for D&O and E&O insurance policies?

A Yes.

Q All right. Let's talk about the early part of this case. Did there come a time in early 2020 when Aon was asked to place insurance on behalf of the board of Strand Advisors?

A Yes.

Q Can you describe for the Court how that came about?

A Sure. One of our account executives, a man by the name of Jim O'Neill, had a relationship with a man named John Dubel, who was one of the appointees to serve on -- as a member of Strand, which was being appointed, as we understood it, to be the general partner of Highland Capital Management by the Bankruptcy Court. And they -- we had done -- or, Jim and John had a longstanding relationship. I had actually underwritten an account for a previous appointment of John's when I was an underwriter, so I had some familiarity with John as well, and actually brokered a subsequent deal for John at Aon.

So I had, again, some familiarity with John, and we were, you know, tasked with going out and finding a program for Strand.

Q Can you describe what happened next? How did you go about

accomplishing that task?

A So, there are a number of markets or insurance companies that provide management liability insurance, which this was a management liability-type policy. D&O is a synonym for management liability, I guess you'd say. And we approached the, I think, 14 or 15 markets that we knew to provide insurance in this space and that would be willing to buy the type of policy we were seeking and have interest in a risk like this, which had a little hair on it. Obviously, there was the Dondero involvement, as well as the bankruptcy.

Q As part of that process, did you and your firm put together a package of information for prospective interested parties?

A Yes.

Q Can you describe for the Court what was contained in the package?

A Had the *C.V.s*, some relevant pleadings from the case, court order. I'd have to go back and look exactly. But sort of just general, you know, general information that was available about the situation at hand and Strand's appointment.

Q And the court order that you just mentioned, is that the one that had that gatekeeper provision in it?

A Correct.

Q And can you explain to the Court why you and your team

decided to include the order with the gatekeeper provision in the package that you were delivering to prospective carriers?

A Sure. In our initial conversations to discuss our engagement, the gatekeeper function was explained to us by John. And I'm not sure who else was on the initial call. And, but it was explained to us that I guess Judge Jernigan would sit as the gatekeeper between any potential claimant against the insureds and, you know, would basically have to approve any claim that would be made against (indecipherable), which would thereby prevent any frivolous claims from happening.

Q All right. Let's just talk for a moment. How did you and your firm decide which underwriters to present the package to?

A Again, you know, I -- my background, or my Wall Street background, obviously, sort of made me have a -- it was very unique for the insurance world when I switched over, so I had sort of risen to a certain level of expertise within the space. And, you know, our team also is very experienced, and decades of experience in the insurance world. So we're very familiar with the markets that are willing to provide these types of policies and the markets that would be likely to take a look at a risk such as this.

Q Okay. You mentioned that there was -- I think your words were a little hair on this, and one of the things you mentioned was bankruptcy. How did the fact that Strand was

the general partner of a debtor in bankruptcy impact your ability to solicit D&O insurance?

A Well, it's just not a plain vanilla situation, so people are somewhat, you know, are -- I think -- so, the type of insurance, D&O insurance, that we write is very different from auto insurance, as an example. Auto insurance, people expect there to be a certain amount of claims, and they expect the premiums to cover the claims plus the expenses and then provide them a reasonable profit on top of that.

Our insurance is really much more by binary. The expectation for underwriters is that they will be completing ignoring -- or, avoiding risk at all costs, wherever possible. So anytime there is a situation that looks a little risky, so the premium might be a little higher, the deductible might be a little higher, but, again, the underwriters are really making a bet that they will not have a claim. Because the premiums pale in comparison to the limits that are available to the policyholder.

Q And so --

A So, -- I'm sorry. What were you going to say?

Q I didn't mean to interrupt.

A Yeah.

Q Have you finished your answer?

A Sure.

Q Okay. So, were some of the 14 or 15 markets that you

contacted reluctant to underwrite because there was a bankruptcy ongoing?

A Well, I think that probably -- I mean, there are certain markets that we didn't go to in the beginning because they would be very reluctant to write a risk that had that kind of hair on it, based on our experience from dealing with them. And, you know, I think the bankruptcy was certainly a little bit of an issue. And then, obviously, as people did their research and -- or if they weren't already familiar with Highland and got to know, you know, got -- I will just say for a simple Google search and learned a little bit about Mr. Dondero, I think there was definitely some significant reluctance to write this program.

Q Was the fact that the Debtor -- was the fact that the Debtor is a partnership an issue that came up, in your -- in your process?

A There are certainly some carriers who won't write what's known as general partnership liability insurance. So, yes, that is part of that. It was part of the limiting factor in terms of who we went to.

Q Okay. And, finally, you mentioned Mr. Dondero. What role did he play in your ability to obtain insurance for the Strand board?

A Well, that's a very significant role. As, you know, as mentioned, the underwriters are very risk-averse, so the

litigiousness of Mr. Dondero is a very strong red flag prohibiting a number of people from writing the insurance at all. And the ones that were writing, that were willing to provide options, were looking for protections from Mr. Dondero.

Q And what kind of protections were they looking for?

A Well, the gatekeeper function was a key factor. That was really the only way we could even start a conversation with any of the people that we were able to engage. And in addition, they wanted a, you know, sort of a belts and suspenders additional protection of having an exclusion preventing any litigation brought by or on behalf of Mr. Dondero.

Q Were you able to identify any carrier who was prepared to underwrite D&O insurance for Strand without the gatekeeper provision or without a Dondero exclusion?

A We were not.

Q Okay. Let's fast-forward now. Has your firm been requested to obtain professional management insurance for the contemplated post-confirmation debtor entities and individuals associated with those entities?

A Yes.

Q Okay. So let's just talk about the entities first, the Claimant Trust and the Litigation Trust. In response to that request, have you and your team gone out into the marketplace

to try to find an underwriter willing to underwrite a policy for those entities?

A Yes.

Q And have you been able to find any carrier who's willing to provide coverage for the Claimant Trust and the Litigation Trust?

A Yes.

Q And how many -- how many have expressed a willingness to do that?

A Two.

Q And have those two carriers indicated that there would be conditions to coverage for the entities?

A Both will require a -- the continuation of the gatekeeper function, as well as a Dondero exclusion.

Q Okay. Have you also been tasked with the responsibility of trying to find coverage for the individuals associated with the Claimant Trust and the Litigation Trust, meaning the Claimant Trustee, the Litigation Trustee, and the Oversight Board?

A Yes. So we did it concurrently.

Q Okay. So, are the two firms that you just mentioned willing to provide insurance for the individuals as well as the entities?

A Correct. With the same stipulations.

Q They require -- they both require the gatekeeper and the

Dondero exclusion?

A That's correct.

Q Is there any other firm who has indicated a willingness to consider providing D&O insurance for the individuals?

A There is one that is willing to do so, as long as the gatekeeper function remains in place. They have indicated that if the gatekeeper function was to be removed, that they would then add a Dondero exclusion to their coverage.

Q So is there any insurance carrier that you're aware of who is prepared to insure either the individuals or the entities without a gatekeeper provision?

A No.

Q And that last company, I just want to make sure the record is clear: If the gatekeeper provision is overturned on appeal or is otherwise not effective, do you have an understanding as to what happens to the insurance coverage?

A They will either add an exclusion for any claims brought by or on behalf of Mr. Dondero or cancel the coverage altogether.

MR. MORRIS: I have no further questions, Your Honor.

THE COURT: All right. Cross of this witness?

CROSS-EXAMINATION

BY MR. RUKAVINA:

Q Mr. Tauber, I'm a little confused. So, the insurance that's being written now for the post-bankruptcy entities, did

I hear you say that there is one carrier that would give that insurance subject to having a Dondero exclusion?

A So, first of all, there's nothing currently being written. We have solicited quotes. So, just to make sure that that -- I want to make sure that's clear.

We have three carriers that are willing to provide varying levels of coverage. All three will only do so with the existence of the gatekeeper function continuing to be in place. One of the three has -- two of those three will also provide the coverage with -- even with the gatekeeper function and the Dondero exclusion. The third one was not requiring a Dondero exclusion unless the gatekeeper function goes away.

Q Okay. So the third one, you believe, will, whatever the term is, write the insurance or provide the coverage without a gatekeeper, as long as there is a strong Dondero exclusion?

A No. Their initial requirement is that the gatekeeper function remains in place. That is their preferred option. If the gatekeeper function is removed, then they will add a Dondero exclusion in place of the gatekeeper exclusion. In addition, that carrier is only willing to provide coverage for the individuals, not for the entities.

Q Okay. Thank you.

MR. RUKAVINA: I'll pass the witness, Your Honor.

THE COURT: All right. Other cross?

MR. TAYLOR: Clay Taylor on behalf of Mr. Dondero.

THE COURT: Okay.

CROSS-EXAMINATION

BY MR. TAYLOR:

Q Good morning, Mr. Tauber.

A Good morning.

Q Are you generally familiar with placing D&O insurance at distressed debt level private equity firms?

A I am familiar with it probably more from the underwriting side, and I also worked at a fund that was distressed and had to be liquidated, so I -- as the COO, so I have a fair amount of familiarity, yes.

Q Okay. Before taking this to market for the first time for the pre-confirmation policies that you have in place, did your firm conduct any due diligence or analysis of comparing the amount of litigation the Highland entities and Mr. Dondero were involved in as compared to other comparable firms in the marketplace? Say, you know, Apollo, Fortress, Cerberus, other similar market participants?

A Well, it wouldn't really be our role as the broker. That's the role of the underwriter.

Q Are you familiar if any of the underwriters undertook any such analysis?

A I would assume that they did, since they all had concerns about Mr. Dondero almost immediately.

Q Do you have any -- you didn't conduct any personal due

diligence on comparing the amount of litigation that the Highland entities were involved in as compared to, say, Fortress, do you?

A Well, again, that wouldn't really be my role as the broker. But I will say that I used to write the primary insurance for Fortress Investment Group when I was at Zurich. So I'm extremely familiar with Fortress, to use your example, and I would say that the level of litigation at Fortress was much, just out of personal knowledge, was significantly less than I had encountered or than I had read about at Highland.

Q That you have read about? Is that based upon a number of cases where Fortress was a plaintiff as compared to Highland was a plaintiff? Over what time period?

A Again, not my role. Not something that I've done. I'm just generally familiar with Fortress and I'm generally familiar with Highland.

Q All right. So you're generally familiar and you say that -- you're telling me and this Court that Fortress is involved in less litigation. Could you quantify that for me, please?

A No, but it's really irrelevant to the situation at hand. The issue is not my feelings whatsoever. The issue is the underwriters' feelings and their concern with Mr. Dondero, not mine or anybody else's.

Q So, I appreciate your answer and thank you for that, but I believe the question that was before you is, have you

quantitatively -- do you have any quantitative analysis by which you can back up the statement that Fortress is less litigious than Highland?

A I wouldn't even try, no.

Q Okay. Do you have any quantitative analysis for -- that Cerberus is any less litigious than Highland?

A I don't have any real knowledge of Cerberus's litigiousness.

Q Same question as to Apollo.

A Again, the Fortress, you just happened to mention Fortress, which was a special case because I used to be their primary underwriter. I don't have any specific -- I'm not a claims attorney. I don't have any specific knowledge of the level of litigiousness.

And, again, it's not up to me, my decision. It's the underwriters' decision of whether or not they're willing to write the coverage, not mine.

Q You mentioned that the -- when you took this out to market, it had a little hair on it. Correct?

A Correct.

Q And you put together a package of materials that you sent out to 14 or 15 market participants; is -- did I get that correct?

A Yes.

Q And in that package, you had certain pleadings, including

the court order, correct?
A Yes. I believe that's correct.
Q And that was after your initial conversation with John and -- where he pointed out the gatekeeper role. Correct?
A Correct.
Q And so when you went out to market, presumably you highlighted the gatekeeper role to all the people you solicited offers from because you thought it included less risk, correct?
A It offered a level of protection that was not -- that's not common. So it's, yes, it's a huge selling point for the risk.
Q Okay. So, to be clear, you never went out to the market to even see if you could get underwriting the first time without the gatekeeper function; is that correct?
A Well, it's my job as a broker to present the risk in the best possible light. So if we have a fact that makes the risk a better write for the underwriters, we, of course, will highlight it. So, no, I did not do that.
Q Okay. So, the quick answer to the question is no, you did not go out and solicit any bids without the gatekeeper function?
A Correct.
Q When you have approached the market for the post-confirmation potential coverage, did you approach the same 14

or 15 parties that you did before?
A I don't have the two lists in front of me. They would have been vastly similar, yes.
Q Okay. And so, again, all of the 14 or 15 parties or the lists that you solicited were already familiar with the gatekeeper function, correct?
A Yes.
Q And so therefore they already had that right; they're not going to trade against themselves and therefore say that, without it, we'll go ahead and write coverage. Correct?
A I -- I -- it'd be hard to answer that question. I don't know.
Q Okay. Because you didn't try that, did you?
A I would have had no reason to, no.
Q Okay. So you don't know if a market exists without the gatekeeper function because you haven't asked, have you?
A I guess that's fair, yeah.
MR. TAYLOR: I have no further questions.
THE COURT: All right. Any other Objectors with cross-examination?
MR. DRAPER: I have no questions for the witness, Your Honor.
THE COURT: All right. Anyone else? Mr. Morris, redirect?
MR. MORRIS: Just one.

REDIRECT EXAMINATION

BY MR. MORRIS:

Q One question, Mr. Tauber. Is there any -- do all underwriters -- any underwriters for Fortress require, as a condition to underwriting the D&O insurance, require a gatekeeping provision?

A In my, you know, 11, 12 years of experience in this industry, in this space, I have never seen that gatekeeper function be available, as an underwriter or as a broker. So, no.

MR. MORRIS: No further questions, Your Honor.

THE COURT: Any recross on that redirect?

All right. Well, Mr. Tauber, you are excused. We thank you for your testimony today. So you can log off.

THE WITNESS: Thank you.

THE COURT: Okay.

(The witness is excused.)

THE COURT: Mr. Morris, does the Debtor rest?

MR. MORRIS: The Debtor does rest, Your Honor.

THE COURT: All right. Well, what are we going to have from the Objectors as far as evidence?

MR. RUKAVINA: Your Honor, I will be very short. I will call Mr. Seery for less than ten minutes. I will call Mr. Post for less than ten minutes. I will have one exhibit. And I think that that's it for all the Objectors, unless I'm

mistaken, gentlemen.

MR. TAYLOR: Your Honor, I had one witness, Mr. Sevilla, under subpoena to testify, and needed a brief moment to discuss with my colleagues whether we're going to call him, and if so, put him on notice that he would be coming up probably about -- I don't know your schedule, Your Honor, but probably, I'm guessing, either before lunch or after, and I need to let him know that also.

So I do need a brief three to five minutes to confer with my colleagues and some direction from the Court to, if we decide to call him, as to when we would tell him to be available.

THE COURT: All right. Well, before I get to that, Mr. Draper, do you have any witnesses?

MR. DRAPER: I do not.

THE COURT: All right. Well, let's see. It's 10:34. We're making good time this morning. If Seery is truly ten minutes of direct, and Post is truly ten minutes of direct, and I don't know how long the documentary exhibits are going to take, it sounds to me like we are very likely to get to Mr. Sevilla before a lunch break.

So if you want to -- you know, I don't know what that involves, you sending text messages or making a quick phone call. Do you need a five-minute break for that?

MR. TAYLOR: Yes, Your Honor. It involves a phone

call and an email. Just a confirmatory phone call just to make sure that the guy -- just so you know who he is, he is actually a Highland employee, but he's represented by separate counsel, and so we do need to go through him just because that's the right thing to do.

THE COURT: All right. Well, again, I mean, I never know how long cross is going to take, but I'm guessing, you know, we're going to get to him in an hour or so, if not sooner, it sounds like. So, all right. So, do we need a five-minute break?

MR. RUKAVINA: And Your Honor, it might make more sense to make it a ten-minute break. I suspect that Mr. Taylor will be able to release his witness if he and I will just be able to talk. So I would ask the Court's indulgence for a ten-minuter.

THE COURT: Okay. We'll take a ten-minute break. We'll come back at 10:46 Central time.

THE CLERK: All rise.

(A recess ensued from 10:36 a.m. until 10:46 a.m.)

THE CLERK: All rise.

THE COURT: Please be seated. We're going back on the record in the Highland confirmation hearing. Are the Objectors ready to proceed?

MR. RUKAVINA: Your Honor, Davor Rukavina. We are.

THE COURT: All right. Well, Mr. Rukavina, are you

going to call your witnesses first?

MR. RUKAVINA: Yes, I will. Before that, if it might help the Court and Mr. Morris: Mr. Morris, with respect to that last exhibit, I do not object to the admission of any of the exhibits that were admitted at that PI hearing.

But I do think, Your Honor, for the record, that -- and I would ask Mr. Morris that he should refile those exhibits here in this case, except for those that are duplicative. Because, again, there's 10,000 pages of indentures, et cetera.

MR. MORRIS: Thank you very much, sir.

Your Honor, if that's acceptable to you, we'll do that as soon as possible.

THE COURT: All right. And let me make sure the record is clear. Are we talking about what you've described as 7O? I'm getting mixed up now. Am I --

MR. MORRIS: Yes, Your Honor.

THE COURT: Okay.

MR. MORRIS: It's 7O, which is the documents that were introduced into evidence in the prior hearing. And Mr. Rukavina is exactly right, that there is substantial overlap between that and other documents that have already been admitted in the record in this case. So we'll just file an abridged version of Exhibit O that only includes non-duplicative documents.

THE COURT: All right. So that will be admitted, and

we'll look for your filed abridged version to show up on the docket. 70.

(Debtor's Exhibit 70 is received into evidence as specified.)

THE COURT: All right. What's next?

MR. RUKAVINA: Your Honor, Jim Seery, please. Mr. James Seery.

THE COURT: All right. Mr. Seery, welcome back. Please raise your right hand.

MR. SEERY: Can you -- can you hear me, Your Honor?

THE COURT: I can now.

JAMES P. SEERY, CERTAIN FUNDS AND ADVISORS' WITNESS, SWORN

THE COURT: All right. Thank you.

Mr. Rukavina, go ahead.

DIRECT EXAMINATION

BY MR. RUKAVINA:

Q Mr. Seery, --

MR. RUKAVINA: Thank you.

BY MR. RUKAVINA:

Q Mr. Seery, good morning.

MR. RUKAVINA: Mr. Vasek, if you'll please pull up the schedules.

What we have here, Your Honor, is Docket 247, the Debtor's schedules. I'd ask the Court to take judicial notice of it.

THE COURT: All right. The Court will do so.

BY MR. RUKAVINA:

Q Mr. Seery, are you familiar with these entities listed here on the Debtor's schedules?

A Generally. Each one a little bit different.

Q Okay. Do you agree that the Debtor still owns equity interests in these entities?

A I believe it does, yes.

Q Okay. Is it true that none of these entities are publicly traded?

A I don't believe any of these are publicly-traded entities, no.

Q Okay. And none of these, to your knowledge, are debtors in this bankruptcy case, right?

A No. We only have one debtor in the case.

Q Okay. So, Highland Select Equity Fund, LP, the Debtor owns more than 20 percent of the equity in that entity, right?

A I believe the Debtor owns the majority of that entity. That is a fund with an on- and offshore feeder. And I, off the top of my head, don't recall exactly how the allocations of equity work. But I believe we do.

Q Does 67 percent refresh your memory? Are you prepared to say that the Debtor owns 67 percent of that equity?

A I'm not prepared to say that, no.

Q Okay. Wright, Ltd. Does the Debtor own more than 20 percent of that equity?

A There's about -- I don't recall. There's about at least 25 artist, designers, or designs. Wright, AMES, Hockney, Rothco, all own in different places, and they all own in turn some other thing. So I don't know what each of them, off the top of my head, own. There's -- they're part of a myriad of corporate structures here.

Q Strak, Ltd. Do you know whether the Debtor owns more than 20 percent of the equity of that entity?

A Stark? I don't know.

Q Okay. I don't know how to pronounce the next one. Eamis (phonetic) Ltd. Do you know whether the Debtor owns more than 20 percent of that equity?

A Off the top of my head, I don't recall.

Q What about Maple Avenue Holdings, LLC?

A I believe, I don't know if it's directly or indirectly, that we own a hundred percent of that entity. But I'm not sure.

Q What about Highland Capital Management Korea, Ltd.?

A Effectively, Highland Capital Management is owned a hundred percent.

Q What about Highland Capital Management Singapore Pte. Ltd.?

A We are in the process of shutting it down, so I don't know that -- what the equity percentages are. It's really just a question -- it's -- it's dissolved save for a signature from a

Singaporean.

Q Okay. But did the Debtor own more than 20 percent of that entity?

A I don't know the specific allocations of equity ownership.

Q Okay. What about Pennant (phonetic) Management, LP? Do you know whether the Debtor owns or owned more than 20 percent of that entity?

A I don't recall, no.

MR. RUKAVINA: You can take that exhibit down, Mr. Vasek.

BY MR. RUKAVINA:

Q Mr. Seery, very quick, are you familiar with Bankruptcy Rule 2015.3?

A I am, yes.

Q Okay. Has the Debtor filed any Rule 2015.3 statements in this case?

A I don't believe we have.

Q Okay.

MR. RUKAVINA: Thank you, Your Honor. I'll pass the witness.

THE COURT: All right. Any other Objector questioning? None from Mr. Taylor, none from Mr. Draper, none from Ms. Drawhorn?

All right. Any cross -- any examination from you, Mr. Morris?

MR. MORRIS: Just one question.

THE COURT: Go ahead.

CROSS-EXAMINATION

BY MR. MORRIS:

Q Mr. Seery, do you know why the Debtor has not yet filed the 2015.3 statement?

A I have a recollection of it, yes.

Q Can you just describe that for the Court?

A When we -- when we initially filed, when the Debtor filed and it was transferred over, we started trying to get all the various rules completed. There are, as the Court is aware, at least a thousand and maybe more, more like three thousand, entities in the total corporate structure.

We pushed our internal counsel to try to get that done, and were never able to really get it completed. We did not have -- we were told we didn't have separate consolidating statements for every entity, and it would be difficult. And just in the rush of things that happened from the first quarter into the COVID into the year, we just didn't complete that filing. There was no reason for it other than we didn't get it done initially and I think it fell through the cracks.

MR. MORRIS: Nothing further, Your Honor.

THE COURT: All right. Anything further, Mr. Rukavina?

REDIRECT EXAMINATION

BY MR. RUKAVINA:

Q Mr. Seery, I appreciate that answer. But you never sought leave from the Bankruptcy Court to postpone the deadlines for filing 2015.3, did you?

A No. If it hadn't fallen through the cracks, it would have been something we recalled and we would have done something with it. But, frankly, it just fell off the -- through the cracks. We didn't deal with it.

Q Okay.

MR. RUKAVINA: Thank you, Your Honor. Thank you, Mr. Seery.

THE COURT: All right. Any other Objector examination?

Mr. Morris, anything further on that point?

MR. MORRIS: No, thank you, Your Honor. No further questions.

THE COURT: All right. Mr. Seery, thank you. You're excused once again from the witness stand.

(The witness is excused.)

THE COURT: Your next witness?

MR. SEERY: Thank you, Your Honor.

THE COURT: Uh-huh.

MR. RUKAVINA: Your Honor, I'll call Jason Post. Mr. Post, if you're listening, which I believe you are, if you'll please activate your camera.

THE COURT: Mr. Post, we do not see or hear you yet.

MR. RUKAVINA: Talk, Mr. Post, and I think it'll focus on you.

MR. POST: Yes. Can you hear me now?

THE COURT: We can hear you. We cannot see you yet. Could you say, "Testing, one, two; testing, one, two"?

MR. POST: Testing, one, two. Testing, one, two.

THE COURT: There you are. Okay. Please raise your right hand.

JASON POST, CERTAIN FUNDS AND ADVISORS' WITNESS, SWORN

THE COURT: All right. Thank you. You may proceed.

DIRECT EXAMINATION

BY MR. RUKAVINA:

Q Mr. Post, good morning. State your name for the record, please.

A Robert Jason Post.

Q How are you employed?

A I'm employed by NexPoint Advisors, LP.

Q What is your title?

A Chief compliance officer.

Q Were you ever employed by the Debtor here?

A Yes.

Q Between when and when? Approximately?

A I believe it was July of '08 through October of 2020.

Q What was your last title while you were employed at the

Debtor?
A Still chief compliance officer. For the retail funds.
Q Okay. Very, very quickly, what does a chief compliance officer do? Or what do you do?
A It's multiple things. Interaction with the regulators. Adherence to prospectus and SAI limitations for the funds. And then establishment of written policies and procedures to prevent and detect violations of the federal securities laws and then testing those on a frequent basis.
Q And I believe you mentioned you're the CCO for NexPoint Advisors and Highland Capital Management Fund Advisors. Are you also the CCO for any funds that they advise?
A Yes. For all the funds that they advise.
Q Okay. Does that include so-called retail funds?
A Yes. They're all retail funds.
Q What is a retail fund?
A It typically constitutes funds that are subject to the Investment Company Act of 1940, such as open-end mutual funds, closed-end funds, ETFs.
Q Obviously, you know who my clients are. Are any of my clients so-called retail funds that you just described?
A Yes.
Q Name them, please.
A You've got NexPoint Capital, Inc., Highland Income Fund, and NexPoint Strategic Opportunities Fund.

Q Do those three retails funds hold any voting preference shares in the CLOs that the Debtor manages?

A Yes.

MR. RUKAVINA: Mr. Vasek, if you'll please pull up Exhibit 2.

Your Honor, I believe I have a stipulation with Mr. Morris that this exhibit can be admitted, so I'll move for its admission.

MR. MORRIS: No objection, Your Honor.

THE COURT: All right. Exhibit 2 will be admitted. And let's be clear. That appears at -- is it Docket No. -- let's see. Is it 1673 that you have your -- no, no, no, no. 1670? Is that where your exhibits are?

MR. RUKAVINA: No, Your Honor. It's 1863. I think we did an amended one because we numbered our exhibits instead of having seventeen Os and Ps. So it's 1863.

THE COURT: 1863? Okay. All right. There it is. Okay. Again, this is -- I'm sorry. I got sidetracked. What exhibit? It's Exhibit 2, is admitted. Okay.

MR. RUKAVINA: Thank you, Your Honor.

(Certain Funds and Advisors' Exhibit 2 is received into evidence.)

BY MR. RUKAVINA:

Q Real quick, Mr. Seery. What do these HIF, NSOF, NC, what do they stand for? Do they stand for the retail funds you

just named?

MR. SEERY: I don't think he meant me.

THE WITNESS: Yeah.

BY MR. RUKAVINA:

Q I'm sorry, Mr. Post. I didn't hear you.

A You addressed me as Mr. Seery.

Q Oh. I apologize. What do those initials stand for?

A The names of the funds that I mentioned.

Q Okay. And what do these percentages show?

A The percentages show the amount of shares outstanding and the preference shares that each of the respective funds hold of the named CLOs.

Q And those CLOs on the left there, those are the CLOs that the Debtor manages pursuant to agreements, correct?

A Yes. Those are some of them, correct.

Q Yes. The ones that the retail funds you mentioned have interests in, correct?

A Correct.

Q And what does the far-right column summarize or show?

A That would be the aggregate across the three retail funds.

Q In each of those CLOs?

A Correct.

Q Thank you.

MR. RUKAVINA: Mr. Vasek, you may pull this down.

BY MR. RUKAVINA:

Q Mr. Post, in the aggregate, how much do those three retail funds have invested in those CLOs, ballpark?
A I believe it's approximately $130 million, give or take.
Q Is it closer to 140 or 130?
A A hundred -- I think it's 140, actually.
Q Okay. Thank you. Who controls those three retail funds?
A Ultimately, the board --
Q And what --
A -- of the funds.
Q What is -- what do you mean by the board? Do they have independent boards?
A Yes. They have a majority independent board, the funds do.
Q Do you report to that board?
A Yes.
Q Does Mr. Dondero sit on those boards?
A He does not.
Q Okay.

MR. RUKAVINA: I'll pass the witness, Your Honor. Thank you, Mr. Post.

THE COURT: All right. Any other Objector examination of Mr. Post?

All right. Mr. Morris, do you have cross?

MR. MORRIS: Yes, Your Honor, I do.

THE COURT: Okay.

CROSS-EXAMINATION

BY MR. MORRIS:

Q Mr. Post, can you hear me okay, sir?

A Yes, I can hear you.

Q Okay. Nice to see you again. When did you first join Highland?

A I believe it was July of '08.

Q So you've worked with the Highland family of companies for about a dozen years now; is that right?

A Yes.

Q And you were actually employed by the Debtor from 2008 until October 2020; is that right?

A Correct.

Q And you left at that time and went to join Mr. Dondero as the chief compliance office of the Advisors; do I have that right?

A Yes. I transitioned to NexPoint Advisors shortly, I believe, after Mr. Dondero left, but I was already the named CCO for that entity.

Q Right, but your employment status changed from being an employee of the Debtor to being an employee of NexPoint; is that right?

A Correct.

Q And that happened shortly after Mr. Dondero resigned from the Debtor and went to NexPoint Advisors, correct?

A Correct.
Q Okay. You mentioned that the funds are controlled by independent boards; do I have that right?
A It's a majority independent board, correct.
Q Okay. There's no independent board member testifying in this hearing, is there?
A I --
MR. RUKAVINA: Your Honor, Mr. Post wouldn't know that, but I'll stipulate to that as a fact.
THE COURT: All right.
MR. MORRIS: Okay.
BY MR. MORRIS:
Q Did you -- do you speak with the board members from time to time?
A Yes.
Q Did you tell them that it might be best if they came and identified themselves and helped persuade the Court that they were, in fact, independent?
A They have counsel to assist them with that determination. I never mentioned anything along those line to them.
Q Okay. Can you tell me who the board members are?
A Yes. Ethan Powell, Bryan Ward, Dr. Bob Froehlich, John Honis, and then Ed Constantino. He is only a board member, though, for NSOF. NexPoint Strategic Opportunities Fund.
Q All right. Mr. Honis, is he -- has he been determined to

be an interested director, for purposes of the securities laws?

A Yes.

Q Okay. Mr. Froeh..., do you know much about his background?

A I believe he worked at Deutsche Bank and a couple of the other -- or maybe a couple of other investment firms in the past. And he also owns a minor league baseball team.

Q Do you know how long he served as a director of the funds?

A I don't know, approximately. I think maybe seven -- six, seven years.

Q Okay. How about Mr. Ward? Did Mr. Froehlich ever work for Highland?

A Not that I can recall.

Q Did Mr. Ward ever work for Highland?

A Not that I can recall.

Q Do you recall how long he's been serving as a director of the funds?

A Mr. Ward?

Q Yes.

A I believe -- I'd be -- I don't recall specifically. I think it's been, you know, 10 to 12 years, give or take.

Q He was a director when you got to Highland; isn't that right?

A He was on the board of directors.

Q Yeah. So fair to say that Mr. Ward has been a director since at least the mid to late oughts? 2005 to 2008?
A I'm sorry, you cut out. Late what?
Q The late oughts. Withdrawn. Is it fair to say that Mr. Ward's been a director of the funds since somewhere between 2005 and 2008?
A Again, I don't recall specifically. You know, I joined the complex, the retail complex as the named CCO in 2015, and he had been serving in that role prior to that, and I believe it was for probably a period of five to seven years, so that sounds in line.
Q Did you have a chance to review Dustin Norris's testimony from the December 16th hearing?
A I did not.
Q Do you know -- are you aware that he testified at some length regarding the relationship of each of these directors to Mr. Dondero and Highland?
A I didn't review anything, so I don't know what he said or how long it took.
Q Do you know if Mr. Powell's ever worked for Highland?
A He has.
Q Do you know in what capacity and during what time periods?
A He was -- I think his last title was -- I believe was chief product strategist, I believe. And he was also the named PM for one of -- or, a suite of ETF funds. I think he

was last employed maybe --from my recollection, 2014, possibly. Or 2015. Somewhere around in there.

Q Okay. And to the best of your knowledge, did Mr. Dondero appoint Mr. Powell to be the chief product strategist?

A I don't -- I don't know. I wasn't involved in the decision for his appointment. I don't know how he attained that role.

Q To the best of your knowledge, did Mr. Dondero appoint Mr. Powell as the PM of the ETF funds?

A Again, I wasn't involved in that determination, but he probably would have had a role in making the determination on who was the PM, along with probably some other investment professionals.

Q Okay. And did Mr. Powell join the board of the funds before or after he left Highland around 2015?

A I can't recall specifically if he was already on the board or was an interested member, but I believe he, you know, I believe he joined shortly after he left.

Q Okay. So he went from being an employee and being a portfolio manager at Highland to being on the board of these funds. Do I have that right?

A Again, I can't recall specifically. He may have already been on the board as an interested board member. But, you know, I believe, you know, if that wasn't the case, he would have joined the board shortly after leaving.

Q And Mr. Ward, I think you said, has been on the funds' board since somewhere between 2005 and 2008. Does that sound right?

A I think that was a time frame you referenced, and I think that was kind of in line, walking it back. But I don't recall specifically when he joined.

Q And to the best of your knowledge, have the Advisors for which you serve as the chief compliance officer managed the Funds for which Mr. Ward has served as a director since the time he became a director?

A I'm sorry. Can you repeat the question?

Q Yeah. I'm just trying to understand if the advisors -- withdrawn. The Advisors manage the Funds; do I have that right?

A They provide investment advice on behalf of the Funds.

Q And they do that pursuant to written agreements; do I have that right?

A Correct.

Q And is it your understanding that, for the entire time that Mr. Ward has served as a member of the board of the Funds, the Advisors have provided the investment advice to each of those Funds?

A Yes, in one form or fashion. I believe at one period in time, historically, the Advisor may have changed its name, but it would have been, you know, at the end of the day, one or

more -- one of either NexPoint Advisors or Highland Capital Management Fund Advisors would have advised those Funds.

Q Is it fair to say that each of the Advisors for which you serve as the chief compliance officer has always been managed by an Advisor owned and controlled by Mr. Dondero?

A I believe so, yes.

MR. MORRIS: I have no further questions, Your Honor.

THE COURT: All right. Any redirect?

MR. RUKAVINA: Yes.

THE COURT: Okay. Mr. Rukavina?

MR. RUKAVINA: Your Honor, was I on mute? I apologize.

THE COURT: Yes.

REDIRECT EXAMINATION

BY MR. RUKAVINA:

Q Mr. Post, why did you leave Highland?

A It -- because I was a HCMLP employee and it was -- basically, there was conflicts that were created by being an employee of the Debtor and by also serving as the CCO to the named Funds and the Advisors, and it coincided with Jim toggling over from HCMLP to NexPoint. It just made sense more functionally and from a silo perspective for me to be the named CCO for that entity since he was no longer an employee of HCMLP.

Q And by Jim, you mean Jim Dondero?

A Yes, sorry. Jim Dondero.
Q You're not some kind of lackey for Mr. Dondero, where you go wherever he goes, are you?
MR. MORRIS: Objection to the question.
THE WITNESS: No.
THE COURT: Overruled. He can answer.
MR. RUKAVINA: Okay.
THE WITNESS: No.
MR. RUKAVINA: Okay. Thank you, Your Honor. I'll pass the witness.
THE COURT: Any other Objector examination?
All right. Any recross, Mr. Morris?

RECROSS-EXAMINATION

BY MR. MORRIS:
Q Just one question, sir. The conflicts that you just mentioned, they were in existence for the one-year period between the petition date and the date you left; isn't that right?
A I think -- I believe so, and I think they became more evident as, you know, time progressed.
Q Okay. But they existed on day one of the bankruptcy proceeding; isn't that right?
A Yes, I believe so.
Q All right.
MR. MORRIS: No further questions, Your Honor.

THE COURT: All right. Thank you, Mr. Post. You're excused from the virtual witness stand.

(The witness is excused.)

THE COURT: All right. Your next witness?

MR. RUKAVINA: Your Honor, my exhibit has been admitted, I promised I'd be short, and my evidentiary presentation is done. Thank you.

THE COURT: All right. Well, Mr. Taylor, your evidence?

MR. TAYLOR: First of all, given the testimony that we have received just recently, we have released Mr. Sevilla from his subpoena and are not going to call him.

With that being said, we do have some documents that we would like to get into evidence. We filed our witness and exhibit list at Docket No. 1874. I don't believe any of these are controversial. I'm trying to keep from duplicating those that are already into evidence by the Debtor. And therefore I would like to offer into evidence Exhibits No. 6 through 12 and 17. And that is it, Your Honor.

THE COURT: Okay. Is there any objection to Dondero Exhibits 6 through 12 and 17, appearing at Docket 1874?

MR. MORRIS: I just want to be clear that Exhibits 6 and 7, which are letters, I believe, from Mr. Lee (phonetic) are not being offered for the truth of the matter asserted in either letter.

MR. TAYLOR: That is correct, Your Honor. Just merely that those requests and the words that were stated in there were indeed sent on those dates.

MR. MORRIS: And the same comment, Your Honor, with respect to Exhibits 9 through 12, that those documents are not being offered for the truth of the matter asserted.

MR. TAYLOR: Again, just that those requests were sent and those responses as stated were sent.

And I apologize. I missed one, Your Honor. Also No. 15. 6 through 12, 15, and 17.

MR. MORRIS: Your Honor, the Debtor has no objection to Exhibits 15, 16, and 17.

THE COURT: All right. So, so they are all admitted with the representation that 6 and 9 through 12 are not being offered for the truth of the matter asserted. With that representation, you have no objection, Mr. Morris?

MR. MORRIS: That's right. I do just want to get confirmation that Exhibits 1 through 5 and 13 through 16 -- 13 and 14 are not being offered at all.

THE COURT: Mr. Taylor?

MR. TAYLOR: So, that -- that is correct. 1 through 5 would be duplicative of what has already been introduced into the record by Mr. Morris, so I am not offering those. And do not believe that 13 and 14 are relevant anymore, and so therefore did not offer those.

THE COURT: Okay. So, with that, I have admitted 6 through 12, 15, 16, and 17 at Docket Entry 1874.

(Dondero Exhibits 6 through 12 and 15 through 17 are received into evidence.)

THE COURT: All right. Anything else, Mr. Taylor?

MR. TAYLOR: No, Your Honor. We are not calling any witnesses.

THE COURT: All right. Mr. Draper, what about you? Any evidence?

MR. DRAPER: No evidence or witnesses. The evidence that's been introduced by Mr. Taylor and Mr. Rukavina are sufficient for me.

THE COURT: All right. Ms. Drawhorn, anything from you?

MS. DRAWHORN: No additional evidence, Your Honor.

THE COURT: All right. Well, then, Mr. Morris, did you have anything in rebuttal?

MR. MORRIS: No, Your Honor. I think we can proceed to closing statements. I would just appreciate confirmation by the Objecting Parties that they rest.

THE COURT: All right. Well, I guess we'll get that clear if it is isn't clear. All of the Objectors rest. Confirm, yes, Mr. Rukavina?

MR. RUKAVINA: Confirm.

THE COURT: And Mr. Taylor?

MR. TAYLOR: Confirmed, Your Honor.

THE COURT: Okay. And Draper and Drawhorn?

MR. DRAPER: Yes, Your Honor.

MS. DRAWHORN: Confirmed, Your Honor.

THE COURT: All right. By the way, I assume Mr. Dondero has been participating this morning. I didn't actually get that clarification before we started. Mr. Taylor, is he there with you this morning?

MR. TAYLOR: Your Honor, he is. He has been participating. He is sitting directly to my left about slightly more than six feet apart.

THE COURT: Okay. All right. Good.

All right. Well, let's talk about our closing arguments and let me figure out, do we have -- should we break a bit before starting? I have an idea in my brain about a time limitation, but before I do that, let me ask. Mr. Morris, first I'll ask you. How much time do you think you need for a closing argument?

MR. MORRIS: Your Honor, --

MR. POMERANTZ: Your Honor?

MR. MORRIS: -- I'll defer to Mr. Pomerantz, who's going to deliver that portion of our presentation today.

THE COURT: All right. Mr. Pomerantz?

MR. POMERANTZ: Your Honor, I will be making -- yes, Your Honor. I will be making the majority portion of the

argument. Mr. Kharasch will be making the portion of the argument dealing with the Advisor and Funds' objection. But I expect my closing to be quite lengthy, given the 1129 requirements, all the legal issues, which I plan to spend a fair amount of time. So I would anticipate a range of an hour and 45 minutes.

THE COURT: An hour and 45 minutes? All right. Well, --

MR. POMERANTZ: Correct.

THE COURT: I'm getting an echo.

MR. CLEMENTE: Your Honor, it's Matt Clemente on behalf on the Committee. I'll have 15 minutes or less, Your Honor. Just some things I would like to touch on.

THE COURT: All right. So, two hours. If I were to --

MR. POMERANTZ: And then you need, Your Honor, to add Mr. Kharasch. I think he's on. He can indicate how long his part of the closing will be.

THE COURT: Mr. Kharasch?

MR. KHARASCH: Yes. I would figure my argument would probably be about 20 minutes to 30 minutes.

THE COURT: Okay.

MR. RUKAVINA: Your Honor, let me interject something that I think will help everyone out. With the CLOs having consented through their counsel to the assumption, the bulk of

my objection is now moot. We no longer can and will argue that the contracts are unassignable under 365(b) or (c) because we do have now their consent. So that will hopefully help the Debtor on that issue.

MR. KHARASCH: Your Honor, Ira Kharasch again. I was not anticipating that. I believe that that will take away the bulk of my argument. I'm still going to be dealing with some of the other non-assumption-type arguments raised by the CLO Objectors, kind of dovetailing with Mr. Pomerantz's arguments on the injunction. But that will greatly reduce, Your Honor, my argument.

THE COURT: All right. So if I say two hours of argument for the Debtor and Creditors' Committee, Rukavina, Taylor and Draper and Drawhorn, can you collectively manage to share that two hours? Have a two-hour argument in the aggregate? That seems fair to me.

MR. RUKAVINA: Your Honor, I think -- I think that's fine, Your Honor.

THE COURT: All right. And I guess I'll --

MR. TAYLOR: This is Mr. Taylor. And yes, I agree.

THE COURT: Okay. And Mr. Draper?

MR. DRAPER: This is Douglas Draper. I agree. I agree also, Your Honor.

THE COURT: All right. And I'm going to ask --

MR. POMERANTZ: Your Honor, I --

THE COURT: Go ahead.

MR. POMERANTZ: Your Honor, we -- I think we may need like two hours and ten minutes, because mine was 1:45, Mr. Clemente was 15, and then Mr. Kharasch. But we'll be around that. And I tend to speak fast, so I might even shorten mine.

THE COURT: Okay. You negotiated me up to two hours and ten minutes, Debtors/Objectors, each.

I'm going to ask one more time. The U.S. Trustee lobbed a written objection, but we've not heard anything from the U.S. Trustee. Are you out there wanting to make an oral argument?

MS. LAMBERT: Yes, Your Honor. The United States Trustee is on the line. And we've been listening to the hearing. I can turn my video on. I think you're --

THE COURT: Yes. I can hear you. I can't see you.

MS. LAMBERT: Okay. All right. And so the U.S. Trustee feels that the issues about the releases have been adequately joined and raised by the other parties and that it's an issue of law. The U.S. Trustee does not feel that we can add to that dialogue by, you know, wasting more of the Court's time. I think it's been adequately briefed and it's been adequately argued here today.

THE COURT: Okay.

MS. LAMBERT: And we do have an agreement to include governmental release language in the order. I understand that agreement is still being honored. That's a separate agreement

than the issue of whether the releases are precluded. But we're going to let the other people carry the water on that.

THE COURT: Okay.

MR. POMERANTZ: Yeah. And that is correct. That is correct, Your Honor. They asked for some information -- a provision on government releases. They also asked for a provision regarding joint and several liability for Trustee fees.

As I mentioned previously, the IRS has asked for a provision in the confirmation order, as have the Texas Taxing Authorities.

We have not uploaded a proposed confirmation order, but I will state right now on the record that, before we do so, we will, of course, give Ms. Lambert, Mr. Adams, and the Texas Taxing Authorities the opportunity to review. We expect there won't be any issue because the language has already been agreed to.

THE COURT: All right. Well, how about this. It's 11:23 Central time. Let's break until 12:00 noon Central time, okay, so that gives everyone a little over 30 minutes to have a snack and get their notes together, and we'll start with closing arguments at 12:00 noon. All right? So we're in recess until then.

THE CLERK: All rise.

(A recess ensued from 11:24 a.m. until 12:05 p.m.)

THE COURT: All right. Please be seated. All right. This is Judge Jernigan. We are back on the record in Highland. Let me make sure we have the people we need. Do we have the Pachulski team there? Mr. Pomerantz, Mr. Kharasch?

MR. POMERANTZ: Yes, you do, Your Honor.

THE COURT: All right. For our Objectors, Mr. Taylor, are you there?

MR. TAYLOR: Yes, Your Honor, I am.

THE COURT: All right. I see Mr. Draper there on the video. You're there.

MR. DRAPER: I'm here. Can you hear me?

THE COURT: I can hear you loud and clear, yes.

MR. DRAPER: Great, because I didn't -- I'm not hearing, something so I apologize.

THE COURT: All right. So we have Mr. Rukavina, and I think I see Mr. Hogewood there as well. Is that correct? You're ready to go forward?

MR. RUKAVINA: Yes, Your Honor.

THE COURT: All right.

MR. RUKAVINA: Yes, Your Honor. Good afternoon.

THE COURT: All right. And Ms. Drawhorn, you're there?

MS. DRAWHORN: Yes, Your Honor.

THE COURT: Okay. Committee. Mr. Clemente, are you there?

MR. CLEMENTE: Yes, Your Honor. I'm here, Your Honor.

THE COURT: Okay. Very good. All right. So, let me reiterate. We've given two-hour and 10-minute time limitations for the Debtor, and that'll be both any time you reserve for rebuttal and your closing, initial closing argument. Mr. Clemente, you're going to be in that time frame as well. Okay?

MR. CLEMENTE: Yes, Your Honor.

THE COURT: And so, as supporters of the plan. And then, of course, the Objectors, they have collectively two hours and ten minutes.

A couple of things. I'm going to have my law clerk, Nate, who you can't see but he's to my right, he's going to keep time. I promise I won't be a jerk and cut anyone off midsentence, but please don't push the limit if I say, you know, "Time."

The other thing I will tell you is I'll probably have some questions here or there. And I've told Nate, cut off the timer if we're in a question-answer session. I won't count that as part of the two hours and ten minutes.

All right. So, with that, Mr. Pomerantz, you may begin.

CLOSING STATEMENT ON BEHALF OF THE DEBTOR

MR. POMERANTZ: Thank you, Your Honor. As Your Honor is aware, the Debtor has been able to resolve all objections

to confirmation other than the objection by Mr. Dondero or his entities and the United States Trustee.

Your Honor, I have a very lengthy closing argument, given the number of issues that are raised in the objections, and I want to make a complete record, since I understand that there's a good likelihood that (garbled) appeal.

With that in mind, Your Honor, I'm prepared to go through each and every confirmation requirement in Section 1129. However, as an alternative, I might propose that I can go through each of the Section 1129 requirements that are the subject of pending objections or otherwise depend upon evidence that Your Honor has heard.

THE COURT: Okay.

MR. POMERANTZ: And of course, I'll be happy to answer any questions that you have in the process.

THE COURT: Okay.

MR. POMERANTZ: And after my closing argument, I will turn it over to Mr. Kharasch to address the Advisor and Funds' objections.

THE COURT: Okay.

MR. POMERANTZ: Before I walk the Court through the confirmation requirements, I did want to note for the Court, as I did previously, that we filed an updated ballot summary at Docket No. 1887. And as reflected in the summary, Classes 2 and 7 have voted to accept the plan with the respective

numerosity and amounts required. In fact, the votes are a hundred percent.

Class 8, however, has voted to reject the plan. Seventeen creditors in Class 8 voted yes and 24 objectors, which are, I think, all but one the employees with one-dollar claims for voting purposes, voted against.

In dollar amount, Class 8 has accepted the plan by 99.8 percent of the claims. And I will address the issues of the cram-down over that class a little bit later on.

Lastly, during the course of my presentation, I will identify for the Court certain modifications we have made to address the objections that were filed on January 22nd and then also on February 1st. And at the end of my presentation, I will raise a couple of other modifications that I won't get to during my presentation and will explain to the Court why all the modifications do not require resolicitation and are otherwise appropriate under Section 1127.

Your Honor, as Your Honor is aware, Section 1129 requires the Debtors to demonstrate to the court that the plan satisfies a number of statutory requirements. 1129(a)(1) provides that the plan requires -- complies with all statutory provisions of Title 11, and courts interpreted this provision as requiring the debtor to demonstrate it complies with Section 1122 and 1123.

With respect to classification, Your Honor, there has been

one objection that was raised to essentially a classification, and that was raised by Mr. Dondero to Article 3C of the plan on the grounds that it purports to eliminate a class that did not have any claims in it as of the effective date but which may later have a claim in that class.

I think he was primarily concerned about Class 9 subordinated claims. But Mr. Dondero misunderstands the provision. It only eliminates a claim for voting purposes, and if there's later a claim in that class, it will be treated as the plan provides the treatment.

In any event, Class 9, as we know now, will be populated by the HarbourVest claims, as well as the UBS claims and the Patrick Daugherty claims, if the Court approves the settlement approving those claims.

Next, Your Honor, Section 1123(a) contains seven mandatory requirements that a plan must include. Sections 1, 2, and 3 of 1123(a) apply to the classification of claims and where they're impaired and treatment. The plan does that.

There has been an objection to 1123(a)(3) raised by several parties with respect to the classification and treatment of subordinated claims. The concerns stem from the mistaken belief that the Debtor reserved the right to subordinate claims without providing parties with notice and without obtaining a court order.

The Debtor never intended to have unilateral ability to

subordinate claims without affording parties due process rights, and we've added some clarificatory language to so provide.

We made changes to the plan on January 22nd, and then on February 1st, and the plan addresses all those issues in Article 3(j) and it talks about when a claim is going to be subordinated as a non-creditor. We've also redefined the definition of subordinated claims to make clear that a claim is only subordinated upon entry of an order subordinating that claim.

Mr. Dondero also objected on the grounds that the plan did not contain a deadline pursuant to which the Debtor would be required to seek any subordination, and we have revised Article 7(b) of the plan to provide that any request to subordinate a claim would have to be made on or before the claim objection deadline, which is 180 days after the effective date.

Lastly, certain former employees, Mr. Yang and Borud, objection also joined by Mr. Deadman, Travers, and Kauffman, objected to the inclusion of language in the definition of "Subordinated Claims" that a claims arising from a Class A, B, or C limited partnership is deemed automatically subordinated. The concerns were that the language could broadly apply to any potential claims by a former partner, and could be also read to encompass claims outside the statutory scope of 510(b) or

otherwise relating to limited partnership interests.

While the Debtor does reserve the right to seek to subordinate the claims on any basis, we have modified the plan to address that concern and to address the concern that we're not attempting to create any new causes of action for subordination that don't otherwise exist under applicable law, but it just preserves the parties' rights with respect to subordination and deals with that at a later date.

Next, Your Honor, Section 1123(a)(5). I skipped over 1123(a)(4) because there are no objections to that provision.

THE COURT: Okay.

MR. POMERANTZ: Section 1123(a)(5), a plan must provide for adequate means of implementation. And the plan provides a detailed structure and blueprint how the Debtor's operations will continue, how the assets will be monetized, including the establishment of the Claimant Trust, establishment of the Litigation Sub-Trust, the Reorganized Debtor, the Claimant Trust Oversight Board. And the documents precisely describing how this will occur were filed as part of the various plan supplements.

1123(a)(7), Your Honor, requires that the plan only contain provisions that are consistent with the interest of equity holders and creditors with respect to the manner, selection, and -- of any director, officer, or trustee under the plan. And as discussed in the plan, at the disclosure

statement, and as testified to by Mr. Seery, the Committee and the Debtor had arm's-length negotiations regarding the post-effective date corporate governance and believe that the selection of the claimant Trustee, the Litigation Sub-Trustee, and the Claimant Trust Oversight Board are in the best interest of stakeholders.

HCMFA has raised a particular objection, I think, to these issues, but I will address it in the context of the requirement under Section 1129(a)(5).

Your Honor, Section 1129(a)(2) requires that the plan comply with the disclosure and solicitation requirements under the plan. Section 1125 requires that the Debtor only solicit with a court-approved disclosure statement. The Court approved the disclosure statement on November 23rd, and pursuant to the proofs of service on file, the plan and disclosure statement were mailed, along with solicitation materials that the court approved.

Now, there has been an objection raised by Dugaboy, and also alluded to by Mr. Taylor in some of his comments before, that the plan does violate 1129(a)(2) because the Debtor's disclosure statement was deficient.

In support of that argument, Dugaboy points to the reduction in the anticipated distribution to creditors from the November plan analysis to the January plan analysis, and argues that that reduction requires resolicitation. However,

those arguments are not well-taken.

First, none of the people making these objections were solicited for their vote on the plan, or if they had been, they didn't vote or decided to reject the plan. And to the extent that Class 8 creditors, the distribution has gone down -- that's the class that Mr. Taylor and Mr. Draper are concerned about -- you don't hear the Committee, Acis, Redeemer, UBS, HarbourVest, Daugherty, or the Senior Employees making their argument, this argument, and they represent over 99 percent of the claims in that class. And in fact, of the 17 Class 8 creditors that have accepted the plan, 15 are represented by the parties I just mentioned.

So who are the two creditors that they're so concerned about? One is Contrarian, which is a claims trader that actually elected to be treated in Class 7, and one is one of the employees who voted to accept the plan.

Second, Your Honor, the argument conflates the difference between adverse change to the treatment of a claim or interest that would require a resolicitation under Section 1127 and a change to the distribution that would not.

More importantly, Your Honor, the argument is specious. As Mr. Seery testified yesterday, the material differences between the analysis contained on November and late January and the one we filed on February 1st were based on three types of changes: an update regarding the increased value of assets

based upon events that had transpired during this period, which included an increase in asset value, no recoveries, and revenues expected to be generated by the CLO management agreements; an update to the expected costs of the Reorganized Debtor and the Claimant Trust as a result of the continued evaluation of staffing needs, operational expenses, and professional fees; and an update to reflect resolution of the HarbourVest and UBS claims.

In the filing Monday, Your Honor, we updated the plan projection, a liquidation analysis which revised the unsecured claims based upon the UBS settlement that I was able to disclose to Your Honor. And in the filing, the distribution now revised to Class 8 creditors is now 71 percent, compared to the 87 percent that was in the disclosure statement that went out for solicitation.

Your Honor, there can be no serious argument that the creditors in this case were not fully aware of the potential for the UBS and HarbourVest creditors receiving claims. Your Honor's UBS 3018 order granting its claim for voting purposes was entered right around the time that the disclosure statement was approved. And, in fact, a last-minute addition to the disclosure statement disclosed the 3018 amount, although the amount did not make it to the attachment to the disclosure statement. And that reference, Your Honor, to the UBS claim being allowed for voting purposes can be found at

Page 41 of Docket No. 1473.

And the HarbourVest settlement was filed on about December 23, two weeks before the voting deadline, sufficient time for people to take that into consideration.

And as Your Honor surely knows, the hearings in this case have been very well-attended by the major parties, and I believe that if we went back and looked at the records of who was on the WebEx system during the HarbourVest and UBS hearings, you would find that representatives of basically every creditor, every major creditor in this case in Class 8 participated.

Moreover, Your Honor, creditors were not guaranteed any percentage recovery under the plan and disclosure statement, which clearly identified the size of the claims pool as a material risk.

Article 4(a)(7) of the disclosure statement, which is at Docket 1473, is entitled "Claims Estimation" and warns creditors that there can be no assurances that the Debtor's claims estimates will prove correct, and that the actual amount of the allowed claims may vary materially.

And if Dugaboy is arguing it was misled as the holder of a disputed administrative claim and general unsecured claim, that argument is simply preposterous.

Dugaboy cites several cases for the proposition that deficient disclosure may warrant resolicitation, and the

Debtor agrees with the proposition as a general matter. But if one looks at the cases that were filed -- that Dugaboy cited to, it will see that they are clearly inapposite and distinguishable.

In re Michaelson, the Bankruptcy Court for the Eastern District of California, revoked confirmation because the debtor failed to disclose in the disclosure statement a mail fraud indictment of the turnaround specialist who was to lead the reorganization effort and a prior Chapter 7 company he drove into the ground.

In *In re Brotby*, the Ninth Circuit BAP affirmed a decision of the Bankruptcy Court that the individual debtor's decision to modify its financial projections on the eve of confirmation did not require a resolicitation. And there, the financial projections were off by 75 percent.

And in *Renegade Holdings*, the Bankruptcy Court granted a motion by a group of states to revoke confirmation by the debtors, who manufactured and distributed tobacco products, because the debtors failed to disclose in its disclosure statement that the debtor and its principals were under criminal investigation for unlawful trafficking in cigarettes, which was not disclosed to creditors.

Your Honor, none of these cases are remotely analogous to this case, and they certainly do not stand for the proposition that the Debtor was required to resolicit.

Next, Your Honor, the next requirement is 1129(a)(3), which requires that any plan be proposed in good faith. As Mr. Seery testified at length, and the Court has personal knowledge of, having presided over this case for a year, the plan is the result of substantial arm's-length negotiations with the Committee over a period of several months.

Mr. Seery testified yesterday that, soon after the board was appointed, the Committee wanted to immediately pursue down the path of an asset monetization plan. However, as Mr. Seery testified, the board decided that it was inappropriate to rush to judgment and that it should consider all potential restructuring alternatives for the Debtor. And Mr. Seery testified what those alternatives were: a traditional restructuring and continuation of the Debtor's business; a potential sale of the Debtor's assets in one or more transactions; an asset monetization plan like the one before the Court today; and, last but not least, a grand bargain plan that would involve Mr. Dondero sponsoring the plan with a substantial equity infusion.

As Mr. Seery testified, by the early summer of 2020, the Debtor decided that it was appropriate to start moving down the path of an asset monetization plan while it continued to work on the grand bargain plan. Accordingly, Mr. Seery testified that the Debtor commenced good-faith negotiations with the Committee regarding the asset monetization plan, and

that those negotiations took several months, were hard-fought and at arm's-length, and involved substantial analysis of the appropriate post-confirmation corporate structure, governance, operational, regulatory, and tax issues. And on August 12th, Your Honor, the plan was filed with the Court.

And although the Debtor at that time had not reached an agreement with the Committee on some of the most significant issues, Mr. Seery testified that the independent board believed that it was important to file that plan at that time, a proverbial stake in the ground to act as a catalyst for reaching a consensual plan with the Committee or others, which it has done.

As Mr. Seery testified, he continued to work with Mr. Dondero to try to achieve a grand bargain plan, while at the same time proceeding down the path of the filed plan.

He testified that the parties participated in mediation at the end of August and early September to try to reach an agreement on a grand bargain plan, but were unsuccessful. And the Debtor proceeded on the path of the August 12th plan and sought approval of its disclosure statement on August 27th, 2020.

Mr. Seery testified that, at that time, the Debtor still had not reached an agreement with the Committee on certain significant issues involving post-confirmation governance and the scope of releases. And as a result, after a contested

hearing, Your Honor, Your Honor did not approve the disclosure statement on October 27th, but asked us to go back again to try to work out the issues, and we came back on November 23rd.

Mr. Seery testified that the Debtor continued to negotiate with the Committee to resolve the material disputes leading -- which led up to the November 23rd hearing, where we came in with the support of the Committee. But as Mr. Seery has also testified, he has continued to try to reach a consensus on a global plan, notwithstanding the approval of the disclosure statement. And he spent personally several hundred hours since his appointment trying to build consensus.

As part of this process, Mr. Seery testified that Mr. Dondero received access to substantial information regarding the Debtor's assets and liabilities, most recently in connection with a series of informal document requests which were made at the end of December.

And after the Court asked the parties to again reengage in efforts to try to reach a global hearing after the Debtor's preliminary injunction motion, Mr. Seery testified that he and the board participated in calls with Mr. Dondero and his advisors and the Committee to see if common ground could be attained.

Unfortunately, as Mr. Seery testified, the Committee and Mr. Dondero were not able to reach an agreement.

Accordingly, Your Honor, the testimony unequivocally and

overwhelmingly demonstrates that the plan was proposed in good faith.

I expect the Objectors may argue in closing that they have filed a plan under seal that is a better alternative than that being proposed by the plan that the Debtor seeks to confirm. Your Honor, as a threshold matter, yesterday I said any mention of the specifics of the recent plan would be inappropriate. We are not here today to debate the merits of Mr. Dondero's plan, which the Court permitted him to file under seal. He had ample opportunity to file this plan after exclusivity was terminated, seek approval of a disclosure statement, and, if approved, solicit votes in connection with a confirmation hearing, but he failed to do so.

What matters today, Your Honor, is whether the Debtor's plan, the plan that has been accepted by 99.8 percent of the amount of creditors, and opposed only by Mr. Dondero, his related entities, and certain employees, meets the confirmation requirements of Section 1129, which we most certainly argue it does.

And perhaps most importantly, Your Honor, the Court remarked at the last hearing that, without the Committee's support for a competing plan, Mr. Dondero's plan would be dead on arrival. And as you have heard from Mr. Clemente, Mr. Dondero does not yet have the Committee's support.

Next, Your Honor, is Section 1129(a)(5). That requires

that the plan disclose the identity of any director, affiliate, officer, or insider of the debtor, and such appointment be consistent with the best interest of creditors and equity holders. Courts have held that this section requires the disclosure of the post-confirmation governance of the reorganized entity.

HCMFA objects to the plan, arguing that it did not comply with Section 1129(a)(5) because it didn't disclose the people who would control and manage the Reorganized Debtor and who might be a sub-servicer. HCMFA's objection is off-base. Under the plan, Mr. Seery will be the claimant Trustee and Marc Kirschner will be the Litigation Trustee. Mr. Seery testified extensively about his background, and he has appeared before the Court many times and the Court is familiar with him. We have also introduced his *C.V.* into evidence.

As he testified, he will be paid $150,000 per month, subject to further negotiations with the Claimant Trust Oversight Committee regarding the monthly amount and any success fee and severance fee, which negotiation is expected to be completed within the 45 days following the effective date.

Mr. Seery also testified regarding the names of the members of the Claimant Trust Oversight Committee, which information was also contained in the plan supplement and it generally includes the four members of the Committee and David

Pauker, a restructuring professional with decades of restructuring experience.

The members of the Oversight Committee will serve without compensation, except for Mr. Pauker, who Mr. Seery testified will receive $250,000 in the first year and $150,000 for subsequent years.

As set forth in the Claimant Trust agreement, if at any time there is a vacant seat to be filled by another independent member, their compensation will be negotiated by and between the Claimant Trust Oversight Board and them.

Mr. Seery has also testified that he believed the Claimant Trust will have sufficient personnel to manage its business. Specifically, he has testified that he intends to employ approximately ten of the Debtor's employees, who will be sufficient to enable him to continue to operate the Debtor's business, including as an advisor to the managed funds and the CLOs, until the Claimant Trust is able to effectively and efficiently monetize its assets for fair value, whether that takes two years or whether that takes 18 months or whether that takes longer.

Mr. Seery further testified that he believes that the operations can be best conducted by the Debtor's employees. And while he did consider the retention of a sub-servicer, he ultimately decided, in consultation with the Committee, that the monetization would be a lot more effective if done with a

subset of the Debtor's current employees.

The proposed corporate governance is also consistent with the interests of the Debtor and its stakeholders. The Court is very familiar with Mr. Seery and the Debtor, and I believe that Mr. Clemente, when he comments, will say the Committee can think of no better person to continue managing the Claimant Trust than Mr. Seery.

Mr. Kirschner is also well qualified to be the Litigation Trustee. His *C.V.* is part of the evidence that's been admitted and contains additional information regarding his background. And he will receive $40,000 a month for the first three months and $20,000 a month thereafter, plus a to-be-negotiated success fee.

There just simply can be no challenge to Mr. Seery's or Mr. Kirschner's qualifications or abilities to act in a manner contemplated by the plan or that their involvement is not in the best interest of the estate and its creditors.

Your Honor, the next requirement that is objected to is Section 1129(a)(7). That, of course, requires the Debtor to demonstrate that creditors will receive not less under the plan than they would receive if the Debtor was to be liquidated in Chapter 7. And on February 1st, Your Honor, we filed our updated liquidation analysis, which contains the latest-and-greatest evidence to support that.

These documents, the updated documents, in connection with

the prior analysis, was provided to objecting parties in advance of the January 29th deposition, and Your Honor has heard the differences between the January 29th and the February 1st documents being very minimal.

The Court heard extensive evidence and testimony from Mr. Seery regarding the assumptions that went into the preparation of the liquidation analysis and the differences of what creditors are projected to receive under the plan as compared to what they are projected to receive in a Chapter 7.

Such testimony also included a comparison between the liquidation analysis that was filed with the plan in November, the updated liquidation analysis filed on the -- or, provided to parties on January 28th, and the last version, filed on February 1st.

Mr. Seery testified that, on the revenue side, the liquidation analysis was updated to include the HCLOF interest, which was required as part of the settlement with HarbourVest; the increase in value of certain assets, including Trussway; revenue expected to be generated from continued management of the CLOs; and increased recovery on notes as a result of the acceleration of certain related notes.

On the expense side, Mr. Seery testified regarding his best estimate of the likely expenses to be incurred by a Chapter 7 trustee -- by the Claimant Trust, including

personnel costs; professional costs, which increase because of the litigious nature this case has become; and operating expenses.

And lastly, on the claim side, Your Honor, Mr. Seery testified that the claims numbers have been updated to include the settlement from HarbourVest and initially the amount approved to UBS pursuant to the 3018 order and then the reduction at $50 million based upon the settlement announced. And like the prior liquidation analysis, the current analysis demonstrates that creditors will fare substantially better under in Chapter -- under the plan than in Chapter 7. In fact, the projected recovery under the plan is 85 percent for Class 7 creditors and 71.32 percent for Class 8 creditors, as compared to 54.96 percent for all unsecured creditors in a Chapter 7.

Mr. Seery also testified that expenses are expected to be more under Chapter 11 than under Chapter 7, but he also testified that the tens of millions of dollars in greater revenue and asset recoveries under the plan will more than offset the additional expenses.

As a result, the Court has more than sufficient evidentiary basis to conclude that the Debtor has carried its burden to prove that it meets the best interest of creditors best.

But Mr. Dondero's counsel spent a lot of time crossing --

cross-examining Mr. Seery, in a vain attempt to demonstrate to the Court that a Chapter 7 actually would be much better for creditors. And this argument has also been made by Dugaboy and the Advisors and the Funds.

Before I address these arguments on its merits, Your Honor, I just wanted to remind the Court of the Objectors -- these Objectors' interest in this case. Mr. Dondero owns no equity in the Debtor. He owns a general partner. Strand, in turn, owns a quarter-percent -- a quarter of one percent of the total equity in the Debtor. And Mr. Dondero's claim, it's only a claim for indemnification. Dugaboy asserts two claims: a frivolous administrative claim relating to the postpetition management of a Multi-Strat, which, as an administrative claim, if it's valid, would not even be affected by the best interest of creditors test, because it would have to be paid in full. And he also asserts a claim that the Debtor's subsidiary -- against the Debtor's subsidiary for which it tries to pierce the corporate veil.

Just think about it. Dugaboy, Mr. Dondero's entity, is arguing that he should be able to pierce the corporate veil to get at the entity that was his before the bankruptcy.

Dugaboy's only other interest in this case relates to a -- a one -- point eighteen and several-hundredths percent of the equity interest of the Debtor, and that is out of the money.

And as I mentioned previously, Your Honor, Mr. Rukavina's

clients either didn't file any general unsecured claims or filed them and withdrew them. Their only claim is a disputed administrative claim against the Debtor that was filed a week ago and which, at the appropriate time, the Debtor will demonstrate is without merit.

And I understand that, just today, NexPoint Advisors also filed administrative claim.

So I'm not going to argue to Your Honor that these parties do not have standing, although their standing is tenuous, at best, to assert this argument. The Court should keep their relative interests in mind when evaluating the merits and the good faith of this objection.

The principal objection, as I said, is that creditors will do better in a Chapter 7. Essentially, they argue that a Chapter 7 trustee can liquidate the assets just as well as Mr. Seery can and not require the cost structure that is included in the Debtor's plan projections. Yes, they argue that a Chapter 7 will be more efficient.

Mr. Seery's testimony, the only testimony on the topic, however, establishes that this preposterous proposition has no basis in reality. Mr. Seery testified that a Chapter 7 trustee's mandate would be to reduce Debtor's assets as fast as possible, while he will monetize assets as and when appropriate to maximize the value.

But even if you can assume that the Chapter 7 trustee

could get court authority in a Chapter 7 to operate, there are several reasons Mr. Seery testified why a liquidation by a Chapter 7 trustee would be far worse than the plan.

First, Your Honor, no matter how competent the Chapter 7 trustee is -- and Mr. Seery did not say he is more competent than anyone else out there -- the lack of a learning curve that Mr. Seery established through the 13 months in this case puts Mr. Seery at such a major advantage compared to a Chapter 7 trustee.

Second, Mr. Seery questioned whether the Chapter 7 trustee would be able to retain the Debtor's existing professionals, even assuming they were willing to be retained. I'm not sure what's the Court's practice or the practice in the Northern District, but in many districts around the country debtor's counsel and professionals cannot be retained by Chapter 7 trustee, as general counsel, at least.

And I could just imagine, Your Honor, Mr. Dondero's position if the Chapter 7 trustee actually sought to hire Pachulski Stang and DSI.

Third, Your Honor, regardless of whether the Chapter 7 trustee obtained some operating authority, the market perception will be that a Chapter 7 trustee will sell assets for less value than would Mr. Seery as claimant Trustee. Mr. Seery testified to that.

The argument that the Objectors make that a Chapter 7

process, whereby the trustee would seek court approval of assets, is better for value than a process overseen by the Claimant Trust Board lacks any evidentiary basis and also is contradicted by Mr. Seery's testimony.

In fact, Mr. Seery testified that the Chapter 7 process, the public process of it, would very likely result in less recovery than a sale conducted in the Claimant Trust.

And lastly, Mr. Seery testified that it's unlikely that the ten or so valuable employees who Mr. Seery is planning to heavily rely on to assist him with post-confirmation would agree to a work for Chapter 7 trustee. Your Honor is all too familiar with the fights in the *Acis* case and Chapter 7 trustee, and it's just hard to believe that any of the Highland employees would go work for the Chapter 7 trustee.

So why is Mr. Dugaboy -- why is Dugaboy and Mr. Dondero actually making this objection and advocating for a Chapter 7? It's because they would expect to buy the Debtor's assets on the cheap from a Chapter 7 trustee, exactly what they've been trying to do in this case.

Your Honor, moving right now to Section 1129(a)(11), that requires the debtor to demonstrate that the plan is feasible. In other words, it's not likely to be followed by a further liquidation or restructuring. Under the Fifth Circuit law, the debtor need only demonstrate that the plan will have a reasonable probability of success to satisfy the feasibility

requirement, and the Debtor has easily met this standard.

As Mr. Seery testified, the Debtor's plan contemplates continued operations through which time the assets will be monetized for the benefit of creditors. The plan contemplates that Class 7 creditors will be paid off shortly after the effective date. Class 8 creditors are not guaranteed any recovery but will receive pro rata distributions over a period of time. Class 2, Frontier secured claim, will be paid off over time, and the projections demonstrate that it will -- the Debtor will have money to do so.

Mr. Seery testified at length regarding the assumptions that went into the preparation of the projections most recently filed on February 1, and based on that testimony, the Debtor has clearly demonstrated that the plan is feasible.

Your Honor, I think that brings us to Section 1129(b). Of course, again, Your Honor, if Your Honor has any other questions with the sections I'm skipping over. I believe we've adequately covered them in the briefs and I don't think there's any objection.

But as I mentioned before, we have three classes that have voted to reject the plan. Class 8 is the general unsecured claims. They voted to reject the plan. Yes. Even though, based upon the ballot summary, 99 percent of the amount of claims in that class voted to accept the plan, approximately 24 employees voted to reject the plan. And accordingly, the

Debtor cannot satisfy the numerosity requirement of Section 1126(c).

I do want to briefly recount for Your Honor Mr. Seery's testimony regarding the nature of the claims of the 24 employees who voted to reject the plan. And I'm not doing this to argue that the votes from these contingent creditors are not valid or that the Debtor doesn't need to satisfy the cram-down requirements. The Debtor understands it needs to demonstrate to the Court that Section 1129(b) is satisfied for the Court to confirm the plan.

Rather, why I do this, Your Honor, is to provide the Court with context about the nature and extent of the creditors in this class as the Court determines whether the plan is, in fact, fair and equitable and can be crammed down to a dissenting vote.

Mr. Seery testified that these employees originally had claims under the annual bonus plan and the deferred compensation plan. And as he testified, in order for claims under each of those plans to vest -- I think he referred to them as be-in-the-seat plans -- the employee was required to remain employed as of that date.

Mr. Seery testified that the Debtor terminated the annual bonus plan in the middle of January and replaced it with the key employee retention plan that the Court previously approved.

Accordingly, Mr. Seery testified that no employee who voted to reject the plan anymore has a claim on the annual bonus plan. He also testified that, with respect to the deferred compensation plan, people have contingent claims under that plan and that no payments are due until May 20 -- 2021.

As Mr. Seery testified, if the employees who would be entitled to receive payments under the deferred compensation plan do not agree to enter into a separation agreement that was approved by the Court, they will be terminated before May and there will no -- not longer be any deferred compensation due.

Accordingly, while the 24 employees who voted to reject the plan do technically have claims at this time they have voted, Mr. Seery testified the claims will go away soon.

I do want to point out something that's obviously painfully obvious at this point, that while Class 8 voted to reject the plan, the Committee, the statutory fiduciary for all unsecured creditors, supports the plan enthusiastically and I believe it does so unanimously.

The other classes to reject the plan, Your Honor, are Class 11, the A limited partnerships, and none of the holders in Class B and C limited partnerships voted on the plan, so cram-down is required over those classes as well. So Your Honor is able to confirm the plan pursuant to the cram-down

procedures under 1129(b) if the Court determines that the plan is fair and equitable and does not discriminate unfairly against the rejecting classes.

Let's first turn to the fair and equitable requirement. A plan is fair and equitable if it follows the absolute priority rule, meaning that if a class does not receive payment in full, no junior class will receive anything under the plan. With respect to Class 8, no junior class -- junior class to Class 8 will receive payment, and here is the key point, unless Class 8 is paid in full, with appropriate interest. NPA and Dugaboy -- Dugaboy in a brief filed on Monday -- argue that the plan does not satisfy the absolute priority rule because Class 10 and Class Equity Interests have a contingent right to receive property under the plan.

Your Honor, this argument misunderstands the absolute priority rule. Class 10 and Class Creditors will only receive payment after distribution to 8 and 9, the unsecured claims and the subordinated claims, are all paid in full, plus interest.

And, in fact, Dugaboy, in its brief, to its credit, admits that the argument is contrary to the Bankruptcy Court's decision of Judge Gargotta in the Western District case of *In re Introgen Therapeutics*. There, the Court was faced with a similar argument by a group of unsecured creditors who argued that the debtor's plan violated the absolute priority rule

because equity was retaining a contingent interest that would only be payable if general unsecured claims were paid in full.

In rejecting the argument, the Court reasoned, and I quote, "The only way Class 4 will receive anything is if Class 3, in fact, gets paid in full, in satisfaction of 1129(b)(2)(B)(i)," meaning that the absolute priority rule would not be an issue. If Class 3 is not paid in full, Class 4's property interest is not -- is just -- is not just valueless, it just doesn't exist.

Your Honor, this is precisely the situation in this case. Equity interests will only receive a recovery if Class 8 and 9 are paid in full.

But Dugaboy attempts to escape the logical reading of the absolute priority rule by claiming that *Introgen* was wrongly decided and goes against the Supreme Court's decision in *Ellers* (phonetic). Dugaboy argues that because the Supreme Court decided that property given to a junior class without paying a senior class in full is property, even if it's worthless.

But Dugaboy misses the point. Like the debtor in the *Introgen*, the Debtor here is not arguing that the property -- the absolute priority rule is not violated because the contingent trust is worthless. Rather, the argument is that the absolute priority rule is not violated; it's, in order to receive anything on account of the junior -- of the equity,

the senior creditors have to be paid a hundred percent plus interest.

In fact, Your Honor, if the plan just didn't give any recovery to the equity Class 10 and 11, I bet you Dugaboy and Mr. Dondero would be arguing that it violated the absolute priority rule because senior classes, unsecured creditors, could potentially receive more than a hundred percent of their interest. And there's a case in the Southern District of Texas, *In re MCorp*, where the Bankruptcy Court said that for a plan to be confirmed, its stockholders eliminated, creditors must not receive more than payment in full.

Excess proceeds, Your Honor, if any, have to go somewhere. They can't go to creditors, so they have to go to equity. And the absolute priority rule is not violated.

And how is Dugaboy harmed? They say they may want to buy the contingent interests, and the lack of a marketing effort violates the *LaSalle* opinion as well. And who holds the Class B and Class C partnership interests that come before Dugaboy that Dugaboy is concerned may have this opportunity rather than them? Yes, it's Hunter Mountain, Your Honor, an entity, like Dugaboy, that's owned and controlled by Mr. Dondero.

Accordingly, the argument that the plan violates the absolute priority rule is actually a frivolous argument.

Turning now to unfair discrimination, Your Honor, Dugaboy argued in its brief Monday that because the projected

distribution to unsecured creditors has gone down in the recent plan projections, the discrepancy between Class 7 and Class 8 is so large that that amounts to unfair discrimination.

Again, the Court should first ask why is Dugaboy even the right party to be making the objection. Its claim against the Debtor to pierce the corporate veil, as I mentioned, is frivolous. It's subject to objection. It didn't even bother to have the claim temporarily allowed for voting purposes, as did other creditors who thought they had a valid claim. Yet this is another example of Mr. Dondero, through Dugaboy, trying to throw as many roadblocks in front of confirmation as he can.

But this argument, like the other ones, fails as well. Class 8 contains the general unsecured creditor claims, predominately litigation claims that have been pending against the Debtor for years. The Debtor was justified in treating the other unsecured creditors differently.

Class 6 consists of the PTO claims in excess of the cap, which are of different quality and nature than the other claims.

Class 7 consists of the convenience class. And it's appropriate to bribe convenience class creditors with a discount option for smaller claims to be cashed out for administrative convenience.

Mr. Seery testified that when the plan was formulated, the concept was to separately classify liquidated claims in small amounts in Class 7 and unliquidated claims in Class 8. Mr. Seery also testified that there's a valid business justification to treat the -- hold business 7 -- Class 7 claims differently. These creditors had a reasonable expectation of getting paid promptly, as compared to litigation creditors, who would expect to be paid over time.

As the Court is aware, the litigation claims in Class 8 involve litigation that has been pending for several years in the case of Acis, Daugherty, Redeemer, and more than a decade in UBS.

And most importantly, as Mr. Seery testified, the Committee and the Debtor had significant negotiation regarding the classification and treatment provisions of the plan for Class 7.

The Committee does have one constituent who is a Class 7 creditor. However, the other three creditors are all in Class 8 and hold claims in excess of $200 million and supported the separate classification and the different treatment.

So, Your Honor, discrimination, different treatment among Class 7 and 8 is appropriate, and the different treatment is not unfair. In the February 1 projections, the Class 8 creditors are estimated to receive 71.32 percent of their claims, but that's just an estimate. As Mr. Seery testified,

the number can go up based upon the value he can generate from the assets and, importantly, from litigation claims. Class 8 creditors could up end up receiving a hundred percent on account of their claims. Class 7 creditors are fixed at 85 percent.

Giving Class 8 creditors the opportunity to roll the dice and potentially get more or less than the 85 percent offered to Class 7 is not at all unfair.

For these reasons, Your Honor, the Court has the ability and should confirm the plan pursuant to the cram-down provisions of 1129(b).

Your Honor, I'm now going to switch from the statutory requirements to all the issues raised by the release, injunction, and exculpation provisions.

I'd just like to take a brief sip of water.

Dugaboy -- I will first deal with the Debtor release provided in Article 9(f) of the plan, which we claim is appropriate. Dugaboy and the U.S. Trustee have objected to the release contained in Article 9(f). Dugaboy objects because it believes that the Debtor release releases claims that the Claimant Trust or Litigation Trust have that have not yet arisen, and the U.S. Trustee objects because it believes that the release is a third-party release.

These objections have no merit, and they should be overruled.

I would like to ask Ms. Canty to put up a demonstrative which contains the provision Article 9(f) of the plan.

Your Honor, as set forth in this Article 9(f), only the Debtor is granting any release. While that --

THE COURT: And for the record, it's 9(d)? 9(d), right?

MR. POMERANTZ: 9(d)? 9(d), correct, Your Honor.

THE COURT: Yes. Okay.

MR. POMERANTZ: Sorry about that.

THE COURT: Uh-huh.

MR. POMERANTZ: While the release is broad, it does not purport to release the claims of any third party. The Claimant Trust and the Litigation Trust are only included in the release as successors of the Debtor. The release is specifically only for claims that the Debtor or the estate would have been legally entitled to assert in their own right.

Section 1123(b)(3)(A) of the Bankruptcy Code provides that a plan may provide for the settlement or adjustment of any claims or interests belonging to the debtor or the estate, and that's exactly what the Debtor release provides.

Accordingly, Dugaboy is wrong that the release effects a release of claims that the Claimant Trust or the Litigation Sub-Trust have that won't arise until after the effective date. And the U.S. Trustee is simply wrong; there's no third-party release aspect under the release.

The last point I will address on the release, Your Honor, is who is being released and why and what does the evidence show. The Debtor release extends to release parties which include the independent directors, Strand, for actions after January 9th, Jim Seery as the CEO and CRO, the Committee, members of the Committee, professionals, and employees.

You have heard Mr. Seery's testimony that the Debtor does not believe that any claims against the parties that are proposed to be released actually exist. You have heard Mr. Seery's testimony that he worked closely with the employees and believes that not only have they all been instrumental in getting the Debtor to the -- be on the cusp of plan confirmation, but that also Mr. Seery is not aware of any claims against them.

Moreover, as Mr. Seery testified, the release for the employees is only conditional. He testified that the employees are required to assist in the monetization of assets and the resolution of claims, and if they do not like -- if they do not lose their release, then any Debtor claims are tolled, such that could be pursued by the Litigation Trustee at a future time.

Lastly, I'm sure that the Dondero entities will argue that someone needs to investigate claims against Mr. Seery for mismanagement or for, God forbid, having failed to file the 2015.3 statements. Such claims are part of the continuing

harassment of Mr. Seery that the Dondero entities have embarked on after it was apparent that nobody would support their plan.

There is no evidence of any claims that exist, Your Honor. In fact, the Committee and its professionals have watched the Debtor through this case like a hawk. They have not been afraid to challenge the Debtor's actions in general and Mr. Seery's in particular. FTI has worked on a daily basis with DSI and the company, had access to information. When COVID was happening, they were looking at trades going on on a daily basis.

So if the Committee, whose members hold approximately $200 million of claims against the estate, are okay with the release against the independent directors and Mr. Seery, that should provide the Court with comfort to approve the releases as part of the plan.

In summary, Your Honor, the Debtor release is entirely appropriate and does not affect the release of third-party claims that have not yet arisen.

Next, Your Honor, I want to go to the discharge. There's been objections to the discharge. Dugaboy and NexPoint have objected that the Debtor receiving a discharge under the plan -- argue a debtor is liquidating. The objection is not well taken based upon Mr. Seery's testimony regarding what it is the Claimant Trust and the Reorganized Debtor plan to do after

the effective date, as compared to what the limitations of a discharge are under 1141(d)(3).

Your Honor, Article 9 of the -- 9(b) of the plan provides that as -- except as otherwise expressly provided in the plan or the confirmation order, upon the effective date, the Debtor and its estate will be discharged or released under and to the fullest extent provided under 1141(d)(A) [sic] and other applicable provisions of the Bankruptcy Court. Bankruptcy Code.

Section 1141(d)(3) provides an exception to the discharge, and I'd like to have that section put up for Your Honor at this point. Ms. Canty?

As this -- as the section reflects, and as the Fifth Circuit has ruled in the *TH-New Orleans Limited Partnership* case cited in our materials, in order to deny the debtor a discharge under 1141(d)(3), three things must be true: (1) the plan provides for the liquidation of all or substantially all of the property in the estate; (2) the debtor does not engage in business after consummation of the plan; and (3) the debtor would be denied a discharge under 727(a) of this title if the case was converted to Chapter 7. Here, only C applies.

With respect to A, Your Honor, while the plan does project that it will take approximately two years to monetize the Debtor's assets for fair value, the Debtor is just not liquidating within the meaning of Section A.

As Mr. Seery testified, during the post-confirmation period, post-effective date period, the Debtor will continue to manage its funds and conduct the same type of business it conducted prior to the effective date. It'll manage the CLOs. It'll manage Multi-Strat. It'll manage Restoration Capital. It'll manage the Select Fund, and it'll manage the Korea Fund.

The Bankruptcy Court for the Southern District of New York's 2000 opinion in *Enron*, cited in our materials, is on point. There, the Court found that a debtor liquidating its assets over an indefinite period of time that is likely to take years is not liquidating within the meaning of Section 1141(b)(3)(A), justifying a denial of discharge.

But even if we failed A, based upon Mr. Seery's testimony, we would not fail B. The Debtor will be continuing to do what it has done during the case, as it did before, as I said, managing its business. B says the debtor does not engage in the business after management. So while Mr. Seery testified that it would take approximately two years, it could take more, it could take less, and there is no requirement to liquidate assets over a period of time.

Accordingly, Your Honor, the Debtor is conducting the type of business contemplated by Section B so as not to just deny a discharge.

As the Fifth Circuit said in the *TH-New Orleans* case, the court granted a discharge there because it was likely that the

debtor would be liquidating its assets and conducting business (indecipherable) years following a confirmation date. And this result makes sense, Your Honor, because the Debtor will need the discharge and the tenant injunctions, which I'll get to in a moment, in order to prevent interference with the Debtor's ability to implement the terms of the plan and make distributions to creditors.

I would now like, Your Honor, to turn to the exculpation provisions, which there's been -- there's been a lot of briefing on it, and I know Your Honor is very aware of the exculpation provisions and the *Pacific Lumber* case. And several parties have objected to the exculpation contained in the plan, based primarily on the Fifth Circuit ruling in *Pacific Lumber*.

The exculpation provision, which is not dissimilar to what is found in many plans around the country, including in plans confirmed in bankruptcy courts in the Fifth Circuit, acts to exculpate the exculpated parties for negligent-only acts as it contains the standard carve-outs for gross negligence, intentional conduct, and willful misconduct.

I do want to bring to the Court's attention a deletion we made to the parties protected by the exculpation in the plan and now -- were filed on February 1st. The definition of exculpated parties included, before February 1, not only the Debtor but its direct and indirect majority-owned subsidiaries

and the managed funds. In the plan amendment, we have deleted the Debtor's direct and indirect majority-owned subsidiaries and managed funds from the definition and are not seeking exculpation for those entities.

But before, Your Honor, I address *Pacific Lumber* and why the Debtor believes it does not preclude the Court from approving the exculpation in this case, I do want to focus on something that the Objectors conveniently ignore from their argument.

As I mentioned in my opening argument, Your Honor, the independent directors were appointed pursuant to the Court's order on January 9, 2020. They have resolved many issues between the Debtor and the Committee, and avoided the appointment of a Chapter 11 trustee.

The January 9th order was specifically approved by Mr. Dondero, who was in control of the Debtor at the time, and I believe the transcripts that are admitted into evidence will demonstrate that he was fully behind the approval of the January 9th order.

In addition to appointing the independent directors into what was sure to be a contentiously litigious case, the January 9th order set the standard of care for the independent directors, and specifically exculpated them from negligence.

You have heard Mr. Seery and Mr. Dubel testify that they had input into what the order said and would have not agreed

to be appointed as independent directors if it did not include Paragraph 10, as well as the provisions regarding indemnification and D&O insurance.

I would like to put a demonstrative on the screen, which is actually Paragraph 10 of that order. Your Honor, Paragraph 10, there's two concepts embedded here. First, it requires any parties wishing to sue the independent directors or their agents to first seek such approval from the Bankruptcy Court. Secondly, and importantly for purposes of the independent directors and their agents, who would include the employees, it set the standard of care for them during the Chapter 11 and entitled them to exculpation for negligence. Paragraph 10 says the Court will only permit a suit to go forward if such claim represents a colorable claim for willful misconduct or gross negligence.

And Your Honor, Paragraph 10 does not expire by its terms.

By not including negligence in the definition of what a colorable claim might be, the Court has already exculpated the independent directors and their agents, which include the employees acting at their direction.

And because the independent directors and their agents are exculpated under Paragraph 10, Strand needs to be exculpated as well for actions occurring after January 9th. This is because a suit against Strand for conduct after the independent board was appointed is effectively a suit against

the independent directors, who were the only people in control of Strand at that time.

After the effective date, Mr. Dondero will regain control of Strand, as the independent directors will be discharged. And for parties able to sue Strand essentially for negligence for conduct conducted by the independent directors after January 9th, Strand will then be able to seek indemnification from the Debtor under the Debtor's partnership agreement because the partnership agreement does provide the general partner is entitled to indemnification.

Accordingly, an exculpation for Strand is really the functional equivalent of an exculpation for the independent directors and the Debtor.

The January 9th order was not appealed, and an objection to exculpation at this point as it relates to the independent directors, their agents, and Strand is a collateral attack on this order. So, Your Honor, Your Honor does not even need to get to the thorny issues addressed by *Pacific Lumber*.

However, even in the absence of the January 9th order, exculpation of the independent directors and their employees, as well as the other exculpated parties, is not prohibited by *Pacific Lumber*. In *Pacific Lumber*, the Fifth Circuit reversed a bankruptcy court order confirming a plan because the exculpation provision was too broad and included parties that the Fifth Circuit thought could not be exculpated under

Section 524(e) of the Code.

A close look at the issue before the Court, Your Honor, the reasoning for the Court's ruling and why certain parties like Committee and its members were entitled to exculpation, reflects that this case does not prevent the Court from approving exculpation of this case.

A careful read of the underlying briefs and opinions in *Pacific Lumber* reveals that the concern that the Appellants had in that case was the application of exculpation to non-fiduciary sponsors. There were two competing plans in the case. The first was filed by the indenture trustee. The second was filed by the debtor's parent and lender, and was deemed -- called the Marathon Plan. The Court confirmed the Marathon Plan, and the indenture trustee appealed, and the indenture trustee argued that the plan sponsors could not be exculpated.

After determining that the appeal of the exculpation provisions were not equitably moot, the Fifth Circuit determined that exculpation was not authorized under 524(e) of the Code because that section provides a discharge of the debtor does not affect the liability of any other entity on such debt.

However, and here's the important part, Your Honor: The Fifth Circuit did not say that all exculpations are prohibited under the Code and authorized the exculpation of the Committee

and its members. And why did the Court do that? Because it looked at the Committee's qualified immunity under 1103 and also reasoned that Committee members are essentially disinterested volunteers that should be entitled to exculpation on negligence.

The Court also cited approvingly *Colliers* for the proposition that if Committee members were not exculpated for negligence and subject to suit by people who are unhappy with them, they just would not serve.

Accordingly, the Fifth Circuit based its willingness to exculpate Committee members on the strong public policy that supports exculpation for those parties under those circumstances. And against this backdrop, Your Honor, there are several reasons why the Court should authorize exculpation in this case, notwithstanding *Pacific Lumber*.

First, Your Honor, the independent directors in this case are analogous -- much more analogous to the Committee members that the Fifth Circuit ruled were entitled to than the incumbent officer and directors.

Your Honor has the following facts before the Court, based upon the testimony of Mr. Seery and Mr. Dubel and other evidence in the record. The independent board members were not part of the Highland enterprise before the Court appointed them on January 9th. The Court appointed the independent directors in lieu of a Chapter 11 trustee to address what the

Court perceived as the serious conflicts of interest and fiduciary duty concerns with current management, as identified by the Committee.

The independent directors would not have agreed to accept their role without indemnification, insurance, exculpation, and the gatekeeper function provided by the January 9th order.

And Mr. Dubel testified regarding the significant experience he has as an independent director during his 30-plus years in the restructuring community, including several engagements as an independent director in Chapter 11 cases. And he testified that independent directors have become commonplace in complex restructurings over the last several years and have been appointed in many cases, including high-profile cases. We've cited to just a few of those cases in our brief, but we could go on and on.

Mr. Dubel testified that the independent directors are a critical tool in proper corporate governance and restoring creditor confidence in management in modern-day restructurings, and he testified that, based upon his experience, independent directors expect to be indemnified by the company, expect to obtain directors and officers insurance, and expect to be exculpated from claims of negligence when they agree to be appointed.

He further testified that if independent directors cannot be assured that they will be exculpated for simple negligence,

he believes they will be unwilling to serve in contentious cases like the one we have here, which will have a material adverse effect on the Chapter 11 restructuring process as we know it.

Based upon the foregoing testimony, Your Honor, which is uncontroverted, the Court should have no problem finding that the independent directors are much more analogous to the Committee members in *Pacific Lumber* who the Fifth Circuit said could be exculpated.

The facts, these facts also distinguish this case from the *Dropbox v. Thru* case which Your Honor decided and which was reversed on this issue by the District Court. In neither *Pacific Lumber* or *Thru* was there an argument that the policy reasons that supported exculpation of Committee members also supported the exculpation of the parties sought to be exculpated.

Moreover, Your Honor, the independent directors in this case were pointed as essentially as substitute for a Chapter 11 trustee. There was a Chapter 11 trustee motion filed a few days before, I believe, and the Court, in approving this, said that you -- better than a Chapter 11 trustee. And Chapter 11 Trustees are entitled to qualified immunity. So, while, yes, the independent directors aren't truly Chapter 11 trustees, they are analogous.

Second, Your Honor, while there is language in *Pacific*

Lumber that says that the directors and officers of the debtor are not entitled to exculpation, the issue before the Court really on appeal was the plan sponsors and whether they were. So I would argue that any discussion of the exculpation not being available for directors and officers in the Fifth Circuit opinion in *Palco* is actually dicta.

Third, Your Honor, as I discussed before, the *Pacific Lumber* decision was based solely on 524(e) of the Bankruptcy Code, which only says that the discharge of a claim against the debtor does not affect the discharge of a third party. However, the Debtor is not relying on 524(e) as the basis of their exculpation. As we outline in our brief, Your Honor, we believe that the exculpation is appropriate under Section 105 and 1123(b)(6) as a means -- part of an implementation of the plan.

Importantly, Your Honor, as other courts hostile to third-party releases have determined, exculpation only sets a standard of care for parties and is not an effort to relieve fiduciaries of liability.

Other courts that have aligned with the Fifth Circuit and rejected third-party releases, like the Ninth Circuit, have recently determined exculpation has nothing to do with 524(e). In *In re Blixseth*, a Ninth Circuit case decided at the end of 2020 cited in our materials, they examined several of their circuit cases that had strongly prohibited non-consensual

third-party releases under 524(e). But again, the Court concluded that 524(e) only prohibits third parties from being released from liability of a prepetition claim for which the debtor receives a discharge. The Court reasoned that the exculpation clause, however, protects parties from negligence claims relating to matters that occurred during the Chapter 11 case and has nothing to do with 524(e).

The Ninth Circuit, which along with the Fifth Circuit has been notorious for prohibiting third-party releases, issued its ruling against this backdrop and said that exculpations are appropriate.

Your Honor, the Objectors made a point yesterday of pointing out that Strand, as the Debtor's general partner, is liable for the debts under applicable law. To the extent they intend to argue that the exculpation is seeking to discharge any such prepetition liability, they would be wrong. The exculpation only applies to postpetition matters. And to the extent they argue that the exculpation seeks to discharge Strand's potential postpetition liability, for the reasons I discussed, a claim against Strand will essentially be a claim against the Debtor because the Debtor will be obligated to indemnify them.

Accordingly, Your Honor, we submit that if this matter goes up to appeal to the Fifth Circuit, which it may very well do, that the Fifth Circuit may very well come out the same way

as the Ninth Circuit and start relaxing the standard or otherwise provide that the independent directors are much more like Committee members.

Lastly, Your Honor, if the Court does confirm the plan, which we certainly hope it will do, it will have made a finding that the plan has been proposed in good faith, and in doing so, the Court essentially finds that the independent directors and their agents have acted appropriately and consistent with their fiduciary duties, and it makes -- exculpation for negligence naturally flows from that finding.

Your Honor, I would now like to go to the injunction provisions, and my argument is that the injunction provisions as amended are appropriate.

THE COURT: Can I stop you?

MR. POMERANTZ: We received several of -- yes.

THE COURT: I want to just recap a couple of things I think I heard you say. You're not asking this Court, you say, to go contrary to *Pacific Lumber* per se. You have thrown out there the possibility that *Pacific Lumber* mistakenly relied on 524(e) in rejecting exculpations of plan sponsors. You're saying, eh, as a technical matter, I think they were wrong in focusing on that statute because that statute seems to deal with prepetition liability. Okay? Its actual wording, 524(e) states, discharge of a debt of a debtor does not affect the liability of any other entity on such debts.

And reading between the lines, I think you're saying -- well, maybe this isn't what you're saying, but here's what I inferred -- "debt" is defined in 101(12) to mean liability on a claim, and then "claim" is defined in 101(5) of the Bankruptcy Code as meaning right to payment. It doesn't say as of the petition date, but I think if you look at, then, Section 502 of the Bankruptcy Code that addresses claims and interests, clearly, it seems to be referring to the prepetition time period, you know, claims and interest as of the petition date. And then -- that's 502. And then 503 speaks of, for the most part, postpetition administrative expenses.

So that was my rambling way of saying I'm understanding you to say, eh, as a technical matter, we think the Fifth Circuit was wrong to focus on 524(e) because when you're talking about exculpation you're talking about postpetition liability, not prepetition liability. And 524(e) is talking more about prepetition liability.

But I think what I also hear you saying is, at bottom, *Pacific Lumber* was sort of a policy-driven holding where, you know, we're worried about no one would ever sign up for being on an unsecured creditors' committee if they could be exposed to lawsuits. They're fiduciaries, we think, for policy reasons. Exculpation is appropriate for this one group. And you're saying, well, they didn't have an independent board

that they were considering. They were just considering non-fiduciary plan sponsors. And so the rationale presented by *Pacific Lumber* applies equally here, and just they didn't make a holding in this factual context.

Have I recapped what you're saying?

MR. POMERANTZ: Your Honor, that's generally -- generally correct, with a couple of nuances. So, yes, first, I think, on a policy basis, Your Honor -- again, putting aside the January 9th order, because we don't see --

THE COURT: Right. Right.

MR. POMERANTZ: -- Your Honor even needs to get to this issue.

THE COURT: I understand.

MR. POMERANTZ: But if Your Honor does get to this issue, we think, as a first point, Your Honor could be totally consistent with *Pacific Lumber* because there's policy reasons and there was not a categorical rejection of exculpation. Okay. So if there was a categorical rejection, then it wouldn't have been okay for committee members. Okay.

Second argument, yes, we don't think -- we think it's part of dicta. It's not part of the holding. We understand that other courts may have not agreed, maybe your *Thru* case, which Your Honor was appealed on.

But the third issue, our argument is all they looked at was 524(e). They said 523 -- 4(e) does not authorize it.

They did not say 524(e) prohibits it.

We think there's other provisions in the Code. And then when you basically add in the analysis that Your Honor provided, which we agree with, and what 524 was -- to do, 524(e) just says that discharge doesn't affect. It doesn't say that under another provision of the Code or for another reason you are authorized to give an exculpation. I think it's a nuance and it's a difference there.

And my point of bringing up the *Blixseth* case -- which, of course, is Ninth Circuit and it's not binding on Your Honor, it's not binding on the Fifth Circuit -- is to say, when that was presented to them, they saw the distinction that 524(e) has nothing to do with an exculpation. And while, yes, the Fifth Circuit hasn't ruled on that, and if the Fifth -- if that argument is made to the Fifth Circuit, we don't know how they would rule, I think that, based upon their analysis -- which, again, Your Honor, is no more than a page and a half of their opinion, right, of a long, lengthy opinion on the confirmation issues. So I think, Your Honor, with the Fifth Circuit, there is a good chance that based upon the developing case law of exculpation, based upon the sister circuit in *Blixseth* making that distinction, that there is a very good chance that the Fifth Circuit would change.

But look, I recognize that argument requires Your Honor to say, okay, this is outside and -- and what *Pacific Lumber* did

or didn't do. But I think, Your Honor, there's several potential reasons, there's several potential arguments that you can get to the same place.

THE COURT: Okay. Thank you.

MR. POMERANTZ: Okay. If I may just get another glass of -- sip of water before my time starts?

THE COURT: Okay.

MR. POMERANTZ: Okay, Your Honor. We're now turning to the injunction provision. The Debtor received several objections to the injunction provisions in -- I think I have it right now -- Article 9(f) to the plan. And we've modified Article 9(f) to address certain of those concerns, and we believe that, as modified, that the injunction provision implements and enforces the plan's discharge, release, and exculpation provisions to prevent parties from pursuing claims in interest that are addressed by the plan and otherwise interfering with consummation and implementation of the plan.

I'd like to put up the first paragraph of the injunction on the screen now.

Okay, Your Honor. The first paragraph, all it does is prohibits the enjoined parties from taking action to interfere with consummation or implementation of the plan. I suspect a sentence like that is probably in hundreds of plans in the Fifth Circuit and elsewhere.

Initially, to address a concern that it applied to too

many parties, the Debtor added a definition in the revised plan that defines "enjoined parties," which I'd like to now put that definition up on the screen.

The changes -- it's a little hard to read there, but you have it in the -- oh, there you go. The changes made clear that only parties who have a relationship to this case, either holding a claim or interest, having appeared in the case, be a -- or be a party in interest, Jim Dondero, or related entity, or related person of the foregoing are covered. The claim objectors argue that the word "implementation and consummation" is vague, or vague and unclear. Your Honor, these terms are both defined in the Bankruptcy Code and under the case law, and they're, as I said, common features of many plans.

Section 1123(a)(5) of the Code provides that a plan shall provide for its implementation, and identifies a list of items that the plan can include. Article 4 of our plan is defined as "Means of Implementation of This Plan," and describes the various corporate steps required to implement the provisions of the plan, including canceling equity interests, creation of new general partners and a limited part of the Reorganized Debtor, the restatement of the limited partnership agreement, and the establishment of the various trusts.

Paragraph 1 rightly and appropriately enjoins efforts to interfere with these steps.

Nor is the term "consummation of the plan" vague. "Consummation" also is a commonly-used term and has been defined by the Fifth Circuit and the Code. 1102 -- 1101(2) defines "Substantial Consummation" to be the transfer of assets to be transferred under the plan, the assumption by the debtor of the management of all the property dealt with by the plan, and the commencement of distributions under the plan.

Section 1142 gives the Court authority to direct a party to perform any act necessary for consummation of a plan. And as the Fifth Circuit, in *United States Brass Corp.*, which is said in our material, states, said the Bankruptcy Court had post-confirmation jurisdiction to enforce the unperformed terms of a plan with respect to a matter that could affect the parties' post-confirmation rights because the plan had not been fully consummated.

And Your Honor just wrote on this issue last year in the *Senior* -- the *Texas* -- the *TXMS Real Estate v. Senior Care* case, and you cited to *U.S. Brass* to find that, in that case, post-confirmation jurisdiction existed to resolve a dispute relating to an assumed contract because the matter related to interpretation, implementation, and execution of the plan.

Accordingly, Your Honor, neither implementation or consummation are vague, and the first paragraph of the injunction is necessary and appropriate to enforce the Debtor's discharge.

As I said before, I will leave it to Mr. Kharasch to address specifically the concerns that the Advisor and the Funds have with the injunction.

The second and third paragraphs of the injunction, Your Honor, certain parties have objected to them on the ground that they constitute an improper release of the independent directors as well as the release of claims against the Reorganized Debtor, the Claimant Trust, and the Litigation Sub-Trust, entities that will not have come into existence until after the effective date.

We believe we have addressed these concerns by modifications to the second and third paragraphs of the injunction, which I would now like to put the second and third paragraphs on the screen.

(Pause.)

MR. POMERANTZ: As that is happening, Your Honor, I will -- there we go.

We believe that the changes that were made to these paragraphs should address the Objectors' concerns.

First, as with the first paragraph, we have created a defined term of "Enjoined Parties" who are subject to the injunction which is narrower than all persons, I believe, or all entities that was included in the prior plan. So we've narrowed that.

"Enjoined Parties" are generally defined, as I mentioned

before, as entities involved in this case or related to Jim Dondero, or have appeared in this case.

Second, we have removed independent directors from these paragraphs to address the concern that the injunction was a disguised third-party release.

Third, we have removed the Reorganized Debtor and the Claimant Trust from the second paragraph and moved them to the third paragraph. We did this to make clear that the Reorganized Debtor and Claimant Trust were only getting the benefit of the injunction as the successors to the Debtor. As the Reorganized Debtor and the Claimant Trust receives the property from the Debtor free and clear of all claims and interests and equity holders under 1141(c), they are entitled to the benefit of the injunction.

Fourth, we have addressed the concern that the injunction improperly affected set-off rights. We added language to make clear that the injunction would only affect the parties' set-off of an obligation owed to the Debtor to the extent that that was permissible under 553 and 1141 of the Bankruptcy Code.

In other words, we are punting the issue for another day, and there's nothing in the plan that gives the Debtor any more set-off rights than it otherwise has under the Bankruptcy Code.

Lastly, Your Honor, certain Objectors have argued that the

injunction somehow prevents them from enforcing the rights they have under the plan or the confirmation order. We don't really understand this concern, as the language leading into the second paragraph of the injunction says, except as expressly provided in the plan, the confirmation order, or a separate order of the Bankruptcy Court.

With these modifications, Your Honor, the provisions do nothing more than implement 1123(b)(6) and 1141 by preventing parties from taking actions to interfere with the Debtor's plan.

The Court has also heard testimony from Mr. Seery regarding the importance of the injunction to implementation of the plan. He testified that he intends to monetize assets in a way that will maximize value. And to effectively do that, he has testified that the Claimant Trust needs to be able to pursue its objectives without interference and continued harassment from Mr. Dondero and his related entities.

In fact, Mr. Seery testified that if the Claimant Trust were subject to interference by Mr. Dondero, it would take him more time to monetize assets, they would be monetized for less money, and creditors would be harmed.

If Your Honor doesn't have any questions for me on the injunction provisions, I'd like to turn to the last part of the injunction, which is really the gatekeeper provision.

THE COURT: All right. You may.

MR. POMERANTZ: Your Honor, the last paragraph in Article 9(f) is really not an injunction but is rather a gatekeeper provision. And as originally drafted, it'd do two things: first, it'd require that before any entity, which is defined very broadly, could file an action against a protected party relating to certain specified matters, the entity would have to seek a determination from this Court that the claim represented are colorable claim of bad faith, criminal conduct, willful misconduct, fraud, or gross negligence. The specified matters to which the gatekeeper provision would apply included the Chapter 11 case, negotiations regarding the plan, the administration of the plan, the property to be distributed under the plan, the wind-down of the Debtor's business, the administration of the Claimant Trust, or transactions related to the foregoing.

Subject to certain exceptions for Dondero-related parties, protected parties were defined to include the Debtor, its successors and assigns, indirect and direct, majority-owned subsidiaries and managed funds, employees, Strand, Reorganized Debtor, the independent directors, the Committee and its members, the Claimant Trust, the Claimant Trustee, the Litigation Trust, the Litigation Sub-Trustee, the members of the Oversight Committee, retained professionals, the CEO and CRO, and persons related to the foregoing. Essentially,

parties related to the pre-effective-date administration of the estate or the post-confirmation implementation of the plan.

Second, the gatekeeper provision as originally presented gave the Bankruptcy Court exclusive jurisdiction to adjudicate any cause of action that it determined would pass through the gate. The gatekeeper provision, Your Honor, is not a release in any way. Rather, it permits enjoined parties who believe they have a claim against the protected parties to pursue such a claim, provided they first make a showing that the claim is colorable to the Bankruptcy Court.

Several parties, Your Honor, objected to the Bankruptcy Court having exclusive jurisdiction to adjudicate the claims that pass through the gate. The Debtor believes that the Bankruptcy Court would ultimately have jurisdiction of any of those claims that pass through the gate. However, the Debtor did, upon reflection, appreciate the concern that if the Court agreed to that now, it would essentially be determining its jurisdiction before a claim was filed.

Accordingly, in the January 22nd plan, Your Honor, we amended the provision to provide that the Bankruptcy Court will only have jurisdiction over such claims to the extent it was legally permissible to do so, essentially deferring the issue to a later time.

And as Your Honor, I believe, in one of cases called the

Icing on the Cake, the retention and jurisdiction provisions in the plan only are to the extent under applicable law and are quite broad and include the things that we would have the Court -- have jurisdiction for the Court, otherwise determined.

The Court made some other changes to the gatekeeper provision, and I would like to place the amended gatekeeper provision on the screen right now. In addition to the change I mentioned, the Debtor made the following changes: the provision is limited now to apply only to enjoined parties, rather than any entity. Than any entity. Much narrower. The provision added the administration of the Litigation Sub-Trust to the matters to which the provision would apply. The provision makes clear now that any claim, including negligence, is a claim that could be sought and pursued through the gatekeeper function. And the provision made some other syntax changes.

We believe, Your Honor, with these changes, we believe that the gatekeeper provision is within the Court's jurisdiction and it's appropriate to include under the plan.

But certain parties have argued that the Court does not have the authority, the jurisdictional authority to perform the gatekeeper function, separate and apart from whether it has jurisdiction to adjudicate the claims that pass through the gate.

Your Honor, we submit that these arguments represent a fundamental misunderstanding of Bankruptcy Court jurisdiction and the Court's authority to make sure the Debtor is free of interference in carrying out the plan which I'll get to in a couple moments.

As a preliminary matter, Your Honor, it is important for the Court to remember that Paragraph 10 of the January 9 order already contains a gatekeeper provision as it relates to the independent directors and their agents. And as I mentioned on a couple of occasions, that order is not going away, it doesn't expire by its terms, and it cannot be collaterally attacked in this forum.

The Debtor does acknowledge, though, that the gatekeeper provision in the plan is broader in terms of the people it protects and it applies to post-confirmation matters.

Before I address the Court's authority to approve the gatekeeper provision, I want to summarize the evidence that it has heard from Mr. Seery and Mr. Tauber regarding why the gatekeeper is so important a provision to the success of the plan.

Although the Court is all too familiar with the history of litigation initiated by and filed against Mr. Dondero and his related affiliates, Mr. Seery spent some time on the stand testifying about the litigation so the Court would have a complete record for this hearing. He testified that prior to

the petition date, the Debtor faced years of litigation from Mr. Terry and Acis that led to the *Acis* bankruptcy case, which Your Honor has said many times it's still in your mind. Years of litigation with the Redeemer Committee which precipitated the filing of a bankruptcy case and resulted in an award very critical of the Debtor's conduct. Years of litigation with UBS. Years of litigation with Patrick Daugherty. And we placed all the dockets for all these matters before the Court.

Also, during the bankruptcy and after the Committee essentially rejected the Debtor's pot plan proposal and indicated -- and the Debtor indicated it would be terminating the shared service agreements with Mr. Dondero and his related entities, the Debtor was the subject of harassment from Mr. Dondero and related entities which resulted in the temporary restraining order against him, a preliminary injunction against him, a contempt motion, which Your Honor is scheduled to hear Friday, a motion by the Debtor's controlled -- by the Dondero-controlled investors and funds in CLO managed -- managed by the Debtor, which the Court referred to that motion as being frivolous and a waste of the Court's time. Multiple plan objections, most of which are focused on allowing the Debtors to continue their litigation crusade against the Debtor and its successors post-confirmation. An objection to the Debtor approval of the Acis order and a subsequent appeal. An objection to the HarbourVest settlement and subsequent

appeal. A complaint and injunction against the Advisors and the Funds to prevent them from violating Paragraph 9 of the January 9th order. And a temporary restraining order against those parties, which was by consent.

Mr. Dondero's counsel tends to argue that he is the victim here and that the litigation is being commenced against him and -- instead of by him. That response does not even deserve a response, Your Honor. It is disingenuous.

Mr. Tauber testified that he was part of the team at Aon that sourced coverage for the independent directors after their appointment in January 2020 and that he has over 20 years of underwriting experience. He testified that at Aon he builds bespoke insurance programs which are not cookie-cutter programs for his clients, with an emphasis on D&O and E&O. And he was asked by the independent board to obtain D&O and E&O insurance after the board's appointment on January 9th.

Based upon the process Aon conducted in reaching out to insurance carriers, Mr. Tauber testified that Aon was only able to obtain D&O insurance based upon the inclusion of Paragraph 10 of the January 9 order, the gatekeeper provision. I know Mr. Taylor said that that was spoon-fed to the insurers, but Mr. Tauber's testimony is they knew about Mr. Dondero and they knew about his litigation tactics, so it is not a good inference to be made from the testimony that they would not have required something. They probably would have

just said no.

Aon has now been -- Mr. Tauber testified that Aon has now been asked to obtain D&O coverage for the Claimant Trustee, the Litigation Trustee, the Oversight Committee, the members, the Claimant Trust, and the Litigation Sub-Trust. He testified that he and Aon have approached the insurance carriers that they believe might be interested in underwriting coverage.

And no, he hasn't approached every D&O and E&O carrier out there, and there may be, just like an investment banker doesn't have to approach everyone. They are experts in the field, and he testified they approached the people they thought would likely be willing or interested and potentially be willing to extend coverage. And as a result of Aon's efforts, Mr. Tauber has determined that there's a continued resistance to provide any coverage that does not contain an exclusion for actions relating to Mr. Dondero or his related entities. And he further believes that all carriers that will -- that have discussed a willingness to provide coverage will only do so if there is a gatekeeper provision, and only one carrier will agree to provide coverage without a Dondero exclusion.

Mr. Tauber testified that he believes that any ultimate policy will provide that if at any time the gatekeeper provision is not in place, either the carrier will not cover

any actions related to Mr. Dondero or his affiliates or that the coverage will be vacated or voided.

Based upon the foregoing record, Your Honor, which is uncontroverted, there's ample justification on a factual basis for approval of the gatekeeper provision.

I will now turn to the Court's authority to approve the gatekeeper provision.

There are three alternative bases upon which the Court can approve the gatekeeper provision. First, several provisions of the Bankruptcy Code give broad authority to approve a provision like the gatekeeper provision.

Second, the Court can analogize to the Barton Doctrine the facts and circumstances in this case and authorize the Court to act as a gatekeeper to prevent frivolous litigation from being filed against court-appointed officers and directors and those that will lead the post-confirmation monetization of the estate's assets.

And third, Your Honor, the Court can find that Mr. Dondero and his entities are vexatious litigants, and use the gatekeeper provision as a sanction to prevent the filing of baseless litigation designed merely to harass those in charge of the estate post-confirmation.

So, Bankruptcy Court authority. Your Honor, there are several provisions in the Bankruptcy Code which we rely on to support the Court's authority. First, Section 1123(a)(5)

permits the plan to approve adequate means of implementation, and contains a long, non-exclusive list. Mr. Seery's testimony is uncontroverted that a gatekeeper provision is necessary for the adequate implementation of the plan.

Second, Your Honor, 1123(b)(6) authorizes a plan to include any appropriate provision in a plan not inconsistent with any other provision in this Code. There are not any provisions and none have been cited by the Objectors that would prohibit a gatekeeper provision. Section 1141 effectively holds that the terms of a plan bind the debtor and its creditors and vest property in a reorganized debtor, free and clear of the interests of third parties.

If nothing else, Your Honor, the spirit of 1141 allows the Court to prevent, in appropriate cases, vexatious litigation by unhappy creditors and parties in interest from torpedoing the plan.

1142(b), Your Honor, provides that the confirmation -- that, after confirmation, the Court may direct any parties to perform any act necessary for the consummation of the plan, and requiring the party to seek court-approval before filing an action is certainly an act.

And lastly, Your Honor, Section 105 allows the Court to enter orders necessary to order other things, enforce orders of the Court like the confirmation order, and prevent an abuse of process which would certainly occur if baseless litigation

were filed against the parties in charge of the Reorganized Debtor and the trust vehicles entrusted with carrying out the plan.

Your Honor, gatekeepers are not a novel concept and have been approved by courts in appropriate circumstances. In the *Madoff* cases, the Court has been the gatekeeper post-confirmation to determine whether investor claims are derivative or direct claims.

In *General Motors*, the Court has been the gatekeeper post-confirmation to determine whether product liability claims are proper claims against the reorganized debtor.

Closer to home, Judge Lynn, Mr. Dondero's counsel, approved a gatekeeper provision, arguably even more far-reaching than the provision here, in the *Pilgrim's Pride* case. In that case, Judge Lynn held that *Pacific Lumber* prevented him -- prevented the Court from approving the exculpation provision in the plan. However, he did hold that it was appropriate for the Court to ensure that debtor representatives are not improperly pursued for their good-faith actions by requiring that any actions against the debtor or its representatives, and further, on the performance of their obligations as debtor-in-possession, be heard exclusively before the Bankruptcy Court.

And *Pilgrim's Pride* is not the only case in this district to include a gatekeeper provision, as Judge Houser approved

one in the *CHC Group* in 2016, which is cited in our materials.

The theme in all these cases, Your Honor, is that there are circumstances where it is necessary and appropriate for the Bankruptcy Court to act as a gatekeeper as a means of reducing litigation that could interfere with a confirmed plan and that a Court has the authority to approve such provisions.

The Objectors argue that the Bankruptcy Court does not have jurisdiction to approve that provision. The Debtor understands the argument as it related to the prior provision, which gave the Court exclusive jurisdiction over any claim it found colorable, and we've amended the plan to address that issue. The jurisdiction to deal with those claims could be left to a later day.

But to the extent the Objectors still pursue the jurisdiction argument in light of the current provision, they're really conflating two very different things: the ability to determine whether a claim is colorable and the ability to adjudicate that claim if the Court determines it's colorable.

None of the authorities cited by the Objectors hold that the Court is without jurisdiction to approve a gatekeeper provision like the one here. So, rather, what they do is they try to -- they argue, based upon the *Craig's Stores* case, which is narrower than other circuits of post-confirmation jurisdiction in the Bankruptcy Court, and argue that the

gatekeeper provision doesn't fall within that. But that -- such reliance is misplaced, Your Honor.

Craig held that the Bankruptcy Court did not have jurisdiction to adjudicate a post-confirmation dispute over a private-label credit card agreement between the debtor and the bank. In declining to find jurisdiction, the Fifth Circuit remarked that there was no antagonism or claim pending between the parties as of the reorganization and no facts or law deriving from the reorganization or the plan was necessary to the claim asserted by the debtor.

However, in so ruling, Your Honor, the Fifth Circuit did reason that post-confirmation jurisdiction in the Bankruptcy Court continues to exist for matters pertaining to implementation and execution of the plan. Requiring parties to seek Bankruptcy Court determination the claim is colorable before embarking on litigation that will impact indemnification rights and affect distributions to creditors is not an expansion of jurisdiction and fits well within the *Craig* reasoning.

Unlike the credit card agreement dispute in *Craig*, Mr. Dondero and his entities have demonstrated tremendous antagonism towards the Debtor. And while the Debtor's plan may be confirmed, further litigation has been threatened by Mr. Dondero. It's in the pleadings. That's one of the reasons Mr. Dondero says his plan is better. It'll avoid

tremendous amount of litigation.

After *Craig*, the Fifth Circuit again examined the bankruptcy court's post-confirmation jurisdiction in the *Stoneridge* case in 2005. In that case, the Fifth Circuit ruled that a bankruptcy court has post-confirmation jurisdiction to resolve a dispute between two nondebtors that could trigger indemnification claims against a liquidating trust formed as a result of a confirmed plan.

And lastly, as I mentioned Your Honor's decision before, the *TXMS Real Estate* case, I think just a couple of months ago, it stands for the proposition that post-confirmation jurisdiction exists for matters bearing on the implementation, interpretation, and execution of a plan. In that case, Your Honor ruled that Your Honor had jurisdiction to resolve a post-confirmation dispute between a liquidating trust formed under a plan and a landlord, the result of which could significantly and adversely affect the value of the liquidating trust and monies available for unsecured creditors.

And you have heard Mr. Seery testify that litigation will have an adverse effect on the ability to make distributions to creditors.

So, Your Honor, under these authorities, the Court undoubtedly would have jurisdiction to act as the gatekeeper for the litigation.

There's also an independent basis for the gatekeeper provision, Your Honor, the Barton Doctrine, which the Court is very familiar from your opinion in the *In re Ondova* case in 2017 and which provides that before a suit may be brought against a trustee, leave of Court is required. In *Ondova*, the Court reviewed the history of the doctrine in connection with litigation brought by a highly-litigious debtor against a trustee and his professionals. This Court noted that there are several important policies followed by the doctrine, including a concern for the overall integrity of the bankruptcy process and the threat of trustees being distracted from or intimidated from doing their jobs. And Your Honor's language still: For example, losers in the bankruptcy process might turn to other courts to try to become winners there by alleging the trustee did a negligent job.

Your Honor, this is precisely what the Debtor is trying to prevent here, Mr. Dondero and his entities from putting the bad experience before Your Honor in this case behind it and going to try to find better luck in a more hospitable court.

Your Honor, the Barton Doctrine originally only applied to receivers, and over the course of time has been extended to apply to various court-appointed fiduciaries, as we have cited in our materials: trustees, debtors-in-possession, officers and directors, employees, and attorneys representing the debtor.

And I expect the Objectors to argue that there is a statutory exception to the Barton Doctrine under 28 U.S.C. 959 and it does not apply to acts or transactions in carrying out business conducted with a property. The exception, Your Honor, is very narrow and was meant to apply for things like slip-and-fall cases. In fact, the Eleventh Circuit in the *Carter v. Rodgers* case, 220 F.3d 1249 in 2000, held that Section 11 -- 28 U.S.C. 959(a) does not apply to suits against trustees for administering or liquidating the bankruptcy estate.

The Objectors also argue that the gatekeeper provision violates *Stern v. Marshal*. However, as the Court acknowledged in *Ondova*, the Fifth Circuit in *Villegas v. Schmidt* has recognized that the Barton Doctrine remains viable post-*Stern v. Marshal*. The Fifth Circuit reasoned that while Barton Doctrine is jurisdictional in that a court does not have jurisdiction of an action if preapproval has not been obtained, it does not implicate the extent of a bankruptcy court's jurisdiction to adjudicate the underlying claim, precisely the distinction we're making here. The bankruptcy court would be the gatekeeper for deciding whether the claim passes through the gate, and then after will decide if it has jurisdiction to rule on the underlying claim.

And this is important especially in a case like this, Your Honor, where Your Honor has had extensive experience with the

parties and is in the best position to determine whether the claims are valid or attempted to be used as harassment.

The Objectors will complain about the open-ended nature of the gatekeeper provision, whether it will or won't apply after the case is closed or a final decree is issued, and the unfair burden of their rights.

Your Honor has a previous reported opinion where basically jurisdiction does extend after a case is closed or a final decree is entered, so that issue is a red herring.

As Your Honor is well aware, it's a decade-long -- a decade of litigation against the Dondero-controlled entities that caused the Highland bankruptcy. And the Court is very well aware of the litigation that occurred in *Acis*, very well aware of the litigation that's occurred here that I mentioned a few minutes ago. Your Honor, it is not over, you'll be presiding over the contempt hearing.

And if the Court needs yet another ground to approve the gatekeeper provision, the Debtor submits that the procedure is an appropriate sanction for Dondero's vexatious litigation activities. We cited the *In re Carroll* case in the Fifth Circuit of 2017 that held that a bankruptcy court has the authority to enjoin a litigant from filing any pleading in any action without the prior authority from the bankruptcy court.

And in affirming the decision of the bankruptcy court, the Fifth Circuit commented on the reasons the bankruptcy court

gave for its ruling. After recounting the bad faith of appellants, the bankruptcy court determined that the Carrolls' true motives were to harass the trustee and thereby delay the proper administration of the estate, in the hope that they would be able to retain their assets or make pursuit of the assets so unappealing that the trustee would be compelled to settle on terms favorable to appellants.

Sounds familiar, Your Honor. The same can certainly be said about what Mr. Dondero is doing in this case.

And to make a showing that a party is vexatious litigant, the Court must find that the party has a history of vexatious and harassing litigation, whether the party has a good faith -- the litigation or has filed it as a means to harass, the burden to the Court and other parties, and the adequacy of alternative sanctions.

And as Your Honor is well aware from all the litigation, Your Honor is well, well able to make the finding required for the vexatious litigation finding.

But here, we don't ask for the drastic sanction of enjoining from any further filings. Rather, we just ask for a less-severe sanction, requiring Mr. Dondero and his entities to first make a showing that he has a colorable claim.

The Fifth Circuit in *Baum v. Blue Moon*, 2007, did exactly that. In *Baum*, the district court barred a vexatious litigant from initiating litigation without first obtaining the

approval of the district court. Ultimately, the matter reached the Fifth Circuit after the district court had modified the pre-filing injunction to limit it to a certain case, and then broadened it again based upon continued bad faith conduct.

On appeal, the Fifth Circuit, citing several prior cases, noted that a district court has the authority to impose a pre-filing injunction to defer vexatious, abusive, and harassing litigation.

And for those reasons, Your Honor, the Debtor asks the Court to overrule any objections to the gatekeeper provision.

Your Honor, I was just going to then go to the plan modification provisions, but I wanted to stop and see if you had any questions at this point.

THE COURT: I do not. Let's give him a time estimate, Nate. About how --

THE CLERK: Twenty.

MR. POMERANTZ: I have another five or six minutes, I think, based upon --

THE COURT: Okay.

MR. POMERANTZ: And then I'll be ready to turn it over to --

THE COURT: Okay.

MR. POMERANTZ: -- to Mr. Kharasch.

THE COURT: All right. Yes. You've got -- you've

done an hour and 33 minutes. So you have about, I guess, 37 minutes left. Okay. Go ahead.

MR. POMERANTZ: Thank you, Your Honor.

I would like to address the modifications of the plan that were contained in our January 22nd plan and the additional changes filed on February 1, several of which I have referred.

As a preliminary matter, Your Honor, under 1127(b), the Debtor can modify a plan at any time prior to confirmation if -- and not require resolicitation if there's no adverse change in the treatment of claim or interest of any equity holder.

With that background, I won't go through the changes we made that I've already discussed, but I will point out a couple, Your Honor, that I would like to point out now. We have modified the plan with respect to conditions of the effective date in Article 8. First, a condition to the effective date will now be entry of a final order confirming a plan, as opposed just to entry of order. And final order is defined as the exhaustion of all appeals.

In addition, the ability to obtain directors and officers insurance coverage on terms acceptable to the Debtor, the Committee, the Claimant Trustee, the Claimant Trustee Oversight Board, and the Litigation Trustee is now a condition to the effective date.

The Court heard testimony today and has experienced firsthand the litigiousness of Mr. Dondero and his related

entities. And the Court heard testimony from Mr. Tauber and Aon that the D&O insurance will not be available post-effective date without assurances that the gatekeeper provision will be in effect for the duration of the policy and any run-off period.

Mr. Tauber further testified that he expected the final terms from the insurance carrier to provide that if the confirmation order was reversed on appeal and the gatekeeper was removed, it would void -- it would either void the directors and officers coverage or it'd result in a Dondero exclusion.

Mr. Dondero and his entities are no strangers to the appellate process, as Your Honor knows. They appealed several of your orders, and continue the tack in this case, having appealed the Acis and the HarbourVest orders and the preliminary injunction. It would not surprise the Debtor if Mr. Dondero and his entities appealed your confirmation order, if Your Honor decides to confirm the plan.

The Debtor is confident that it will prevail on any appeal in the confirmation order, as we believe the Debtor has made a compelling case for confirmation.

The Debtor also believes a compelling case exists that if the plan went effective without a stay pending appeal, that the appeal would be equitably moot, but we understand we are facing headwinds from the courts, bankruptcy court have

addressed that issue before.

However, given the effect a reversal would have on the availability of insurance coverage, the Claimant Trustee, the Claimant Oversight Committee, and the Litigation Trustee are just not willing to take that risk.

We are hopeful that Mr. Dondero and his entities will recognize that any appeal is futile and step aside and let the plan proceed and become effective.

If Mr. Dondero and his related entities do appeal the confirmation order, preventing it from becoming final and preventing the effective date from the occurring, the Debtor intends to work closely with the Committee to ratchet down costs substantially and proceed to operate and monetize assets as appropriate until an order becomes final.

None of these modifications adversely affect the treatment of claims or interests under the plan, Your Honor, and for those reasons, Your Honor, we request that the Court approve those modifications.

And with that, I would like to turn the podium over to Mr. Kharasch to briefly address the remaining CLO objections.

THE COURT: All right. Mr. Kharasch?

CLOSING ARGUMENT ON BEHALF OF THE DEBTOR

MR. KHARASCH: Good afternoon, Your Honor. I'll be as brief as possible. I know we're under a deadline.

As you've heard yesterday, you've heard before in other

proceedings, Your Honor, the CLO Objecting Parties, the so-called investors, do have rights under the CLO management agreements and indentures, including contractual rights to terminate the management agreements under certain circumstances.

What they complain about today, Your Honor, is that the injunction language in the plan, including the language preventing actions to interfere with the implementation and consummation of the plan, is so broad and ambiguous that their rights are or may be improperly impacted, especially any rights to remove the manager for acts of malfeasance.

But the Debtor is primarily relying, Your Honor, not so much on the plan injunctions but on the clear provisions of the January 9 order, to which Mr. Dondero consented and which provides that Mr. Dondero shall not cause any of his related entities to terminate any agreements with the Debtor.

Yes, that is a broad provision, but it is very clear, and it does not even allow the CLO Objecting Parties to come to court under a gatekeeper-type provision. But that is what Mr. Dondero consented to on behalf of himself and his related entities.

Important to note, Your Honor, we are not here today to litigate who is and who is not a related entity. That will be left for another day. However, Your Honor, we have considered these issues, including last night and this morning, and we

are going to propose -- well, we will modify our plan through a provision in the confirmation order to provide the following: Notwithstanding anything in the plan or the January 9 order, the CLO Objecting Parties will not be precluded from exercising their contractual or statutory rights in the CLOs based on negligence, malfeasance, or any wrongdoing, but before exercising such rights shall come to this Court to determine whether those rights are colorable and to also determine whether they are a related entity. If the Court has jurisdiction, the Court can determine the underlying colorable rights or claims.

This does not impact the separate settlement we have with CLO Holdco, Your Honor.

We think that such modification addresses some of the concerns raised yesterday by the objecting parties by providing more clarity as to what the plan is doing and not doing with respect to the plan and the January 9 order, and we think it is also a fair resolution of some legitimate concerns.

So, with that, Your Honor, we think that, with that clarification that we did not have to make but are willing to make, that this should fully satisfy the CLO Objecting Parties with regard to their objections to the injunction and the gatekeeper.

Thank you, Your Honor.

THE COURT: All right. Mr. Clemente?

CLOSING ARGUMENT ON BEHALF OF THE CREDITORS' COMMITTEE

MR. CLEMENTE: Yes, Your Honor. And I actually am going to be brief. Mr. Pomerantz's discussion, obviously, was very, very thorough, so I'm able to cut out a lot of stuff.

Thank you, Your Honor. Matt Clemente, Sidley Austin, on behalf of the Committee.

The plan, Your Honor, meets the confirmation standards and should be confirmed. Mr. Pomerantz covered a lot of ground, and I will endeavor not to repeat that, but there are a few points that I think the Committee wishes to emphasize.

Your Honor, since I first appeared in front of you, I have maintained consistently that no plan can or should be confirmed without the consent of the Committee. Your Honor, in her wisdom, understood this immediately, as it was obvious -- it was the obvious conclusion, given the makeup of the creditor body, the asset pool, and the impetus for the filing of the case.

Unfortunately, not everyone came to this conclusion so easily, and it took much hard-fought negotiations as well as a defeated disclosure statement, among other things, and tireless dedication and commitment by each individual Committee member to drive for a value-maximizing plan that is in the best interests of its constituencies and for us to get to where we are today.

And where we are today, Your Honor, is at confirmation for a plan that the Committee unanimously supports, which was the inevitable outcome for this case from the very beginning.

I've also said, Your Honor, that context is critical in this case. It has been from the beginning, and it remains so now. Mr. Draper, interestingly, began his comments yesterday by saying that even a serial killer is entitled to *Miranda* rights. While I will admit that at times the rhetoric in this case has been heated, I have never certainly likened Mr. Dondero to a serial killer. But the record shows, and Mr. Dondero's own words and actions show, that he is, in fact, a serial litigator who has no hesitation at all to take any position in an attempt to leverage an outcome that suits his self-interest. And he has no hesitation at all to use his many tentacles in a similar fashion.

That is a very important context in which the Court should view the remaining objections of the Dondero tentacles and weigh confirmation of the Debtor's plan.

Against this context of a serial litigator, Your Honor, we have a plan supported by each member of the Official Committee of Unsecured Creditors, accepted by two classes of claims, Class 2 and Class 7, and holders of almost one hundred percent in amount of non-insider claims in Class 8.

The parties that have voted against the plan are either employees who are not receiving distributions under the plan

or are insiders or parties related to Mr. Dondero.

The overwhelming number and amount of creditors who are receiving distributions under this plan, therefore, have accepted the plan. The true creditors and economic parties in interest have spoken, they have spoken loudly, and they have spoken in favor of confirming the plan.

Your Honor, I'm not going to address the technical requirements, as Mr. Pomerantz did that. So I'm going to skip over my remarks in that regard, except I do want to emphasize the remarks regarding the gatekeeper, exculpation, and injunction provisions as they're of critical importance to the plan.

The testimony has shown and the proceedings of this case has shown, again, Mr. Dondero is a serial litigator with a stated goal of causing destruction and delay through litigation.

The testimony has further shown that none of the independent board members would have signed onto the role without the gatekeeper and injunction provisions and the indemnity from the Debtor.

Therefore, it follows that such provisions are necessary to entice parties to serve in the Claimant Trustee and other roles under the plan, which, as I remarked in my opening comments, are integral to providing the structure that the creditors believe is necessary to unlocking the value and

unlocking themselves from the Dondero web.

Regarding the exculpation and injunction provisions specifically, Your Honor, the Court will recall that the Committee raised objections to them in connection with the first disclosure statement hearing. In response, the Debtor narrowed the provisions, and the Committee believes they comply with the Fifth Circuit precedent, as Mr. Pomerantz ably walked Your Honor through.

And to be clear, Your Honor, not only does the Committee believe the exculpation and injunction provisions comply with Fifth Circuit law, the Committee does not believe the estate is harmed by such provisions, as the Committee does not believe there are any cognizable claims that could or should be raised that would otherwise be affected by the exculpation or injunction, and, frankly, with respect to the release that Mr. Pomerantz walked Your Honor through with respect to the directors and the officers.

Regarding the gatekeeper, Your Honor, Your Honor presciently approved it in her January 9th order, and the developments since then only serve as further justification for including it in the plan and confirmation order. Mr. Dondero is a serial and vexatious litigator, and the instruments put in place under the plan to maximize value for the creditors and to oversee that value-maximizing process must be protected, and the gatekeeper function serves that

protection while also, importantly, as Mr. Pomerantz pointed out, providing Mr. Dondero with a forum to advance any legitimate claims he and his tentacles may have.

In short, Your Honor, the gatekeeper provision is necessary to the implementation to the plan, is fair under the circumstances of the case, and is therefore within this Court's authority, and it is appropriate to approve.

Your Honor, in sum, it has been a long road to get here today, but we are finally here. And we are here, Your Honor, I believe in large part as a result of the tireless efforts of the individual members of my Committee, and for that I thank them.

The Committee fully supports and unanimously supports confirmation of the plan. As demonstrated by the evidence, the plan meets all the requirements of the Bankruptcy Code. The Committee believes the plan is in the best interests of its constituencies. And therefore the Committee, along with two classes of creditors and the overwhelming amount of creditors in terms of dollars, urge you to confirm the plan.

That's all I have, Your Honor, but I'm happy to answer any questions you may have for me.

THE COURT: Okay. Not at this time.

Nate, how much time --

(Clerk advises.)

THE COURT: Twenty-five minutes remaining? All

right. Just so you know, you've got a collective Debtor's counsel/Committee's counsel 25 minutes remaining for any rebuttal, if you choose to make it.

Let's take a five-minute break, and then we'll hear the Objectors' closing arguments. Okay.

THE CLERK: All rise.

(A recess ensued from 2:00 p.m. until 2:06 p.m.)

THE COURT: All right. Please be seated. We're going back on the record in Highland. We're ready to hear the Objectors' closing arguments. Who wants to go first?

MR. DRAPER: Your Honor, this -- this is Douglas Draper. I get the joy of going first.

THE COURT: Okay.

CLOSING ARGUMENT ON BEHALF OF THE GET GOOD AND DUGABOY TRUSTS

MR. DRAPER: We've heard a great deal of testimony about the Debtor's belief that the circumstances in this case warrant an exception to existing Fifth Circuit case law, the Bankruptcy Code, and Court's post-confirmation jurisdiction.

I would not be standing here today objecting to the plan if the Debtor didn't attempt to extend, move past and beyond the Barton Doctrine, move beyond 1141, move beyond *Pacific Lumber*. In fact, I think I heard an argument that *Pacific Lumber* is not applicable and this Court should disregard Fifth Circuit case law.

Let's start with the exculpation provision. And the focus

of this case has been, and what we've heard over the last few days, is about the independent directors. I understand there was an order entered earlier, the order stands, and the order is applicable in this case. It cuts off, however, when we have a Reorganized Debtor, because these independent directors are no longer independent directors. It cuts off when we have a new general partner.

And so the protections that were afforded by that order do not need to be afforded to the new officers and new directors of the new general partner. And in fact, the protections that they're entitled to are completely different than the protections that were entitled -- that are covered by the order that the Court has looked at.

Let's first focus on, however, the exculpation provision. And I wanted to ask the Court to look at the exculpated parties. Have to be very careful and very interest -- and focus solely on the independent directors. But if you look at the parties covered by exculpation provision, it includes the professionals retained by the Debtor. My reading of *Pacific Lumber* is that neither the Creditors' Committee counsel nor the Debtor can be covered by an exculpation provision. This in and of itself makes the plan non-confirmable. This exculpation provision is unwarranted and unnecessary.

Two, --

THE COURT: Well, let's drill down on that.

MR. DRAPER: -- we have --

THE COURT: Let's drill down on that. Mr. Pomerantz says that this wasn't what they considered one way or another by *Pacific Lumber*. Debtor, debtor professionals. Okay? Do you disagree with that?

MR. DRAPER: I disagree with that. *Pacific Lumber* said you could only have releases and exculpations for the Creditors' Committee members. And the rationale behind that was that those people volunteered to be part and parcel of the bankruptcy process, that those parties did not get paid. Here, we have two professionals who both volunteered and are being paid, and are not entitled to an exculpation under *Pacific Lumber*. They're not entitled to a --

THE COURT: Okay. So you say *Pacific* --

MR. DRAPER: -- release. Now, ultimately, they --

THE COURT: -- *Pacific Lumber* categorically rejected all exculpations except to Creditors' Committee and its members. That's your --

MR. DRAPER: I agree. That's --

THE COURT: -- interpretation of *Pacific Lumber*?

MR. DRAPER: Yes.

THE COURT: Okay. All right. So you just absolutely disagree, one by one, with every one of the arguments, that it was really -- the only thing before the Fifth Circuit was plan sponsors, okay? A plan proponent that I think was like a

competitor previously of the debtor, and I think a large creditor or secured creditor. I think those were the two plan proponents.

So you disagree -- I'm going to, obviously, go back and line-by-line pour through *Pacific Lumber*, but you disagree with Mr. Pomerantz's notion that, look, it was really a page and a half or two of a multipage opinion where the Fifth Circuit said, no, I don't think 524(e) is authority to give exculpation from postpetition liability for negligence as to these two plan sponsors. And I guess it was also -- I don't know. They say, Pachulski's briefing says it was really only looking at these two plan sponsors and the Committee and its members on appeal, you know, going through the briefing, and in such, you can see that these were all that was presented and addressed by the Fifth Circuit. You disagree with that?

MR. DRAPER: Look, I know the facts of *Pacific Lumber* and they -- I know what the posture of the case was. However, the literal language by the opinion in it, it transcends just a dispute in the case. And I think the U.S. Trustee's position that this exculpation provision is correct as a matter of law support -- is further evidence of the fact that the U.S. Trustee, as watchdog of this process, and *Pacific Lumber* say this cannot be done, period, end of story.

THE COURT: Okay. So you, at bottom, just totally disagree with Mr. Pomerantz? You say *Pacific Lumber* is

actually a very broad holding, and I guess, if such, there's a conflict among the Circuits, right?

MR. DRAPER: Well, that's okay.

THE COURT: So, --

MR. DRAPER: I mean, quite frankly, *Pacific Lumber* is binding on you.

THE COURT: Understood.

MR. DRAPER: There may be a conflict in the Circuits, and ultimately the Supreme Court may make a decision and decide who's right and who's wrong.

But for purposes of today and for purposes of this exculpation provision and for purposes of this confirmation, *Pacific Lumber* is the applicable law.

THE COURT: Okay. Well, again, this is a hugely important issue, although in many ways I don't understand why it is, because we're just talking about postpetition acts and negligence, okay? You know, many might say it's much ado about nothing, but it's front and center of your objection. So I guess I'm just thinking through, if the Fifth Circuit was presented these exact facts and was presented with the argument, you know, the *Blixseth* case says 524(e) has nothing to do with exculpation because exculpation is a postpetition concept, and it's just talking about standard liability -- these people aren't going to be liable for negligence; they can be liable for anything and everything else -- if presented

with that *Blixseth* case, you know, there are several arguments that Mr. Pomerantz has made why, if you accept that 524(e) might not apply here, let's look at the reasoning, the little bit of reasoning we had of *Pacific Lumber*, that it was really a policy rationale, right? These independent fiduciaries, strangers to the company and case, they'd never want to do this if they knew they were vulnerable for getting sued for negligence. Mr. Pomerantz's argument is that these independent board members are exactly analogous to a Committee, more than prepetition officers and directors. What do you have to say about that policy argument?

MR. DRAPER: Well, I think there's a huge distinction between the members of a Creditors' Committee who are volunteers and are not paid versus a paid independent director. And more importantly, I think there's a huge difference between a member of a Creditors' Committee who's not paid and counsel for a Debtor and counsel for a Creditors' Committee.

THE COURT: Okay.

MR. DRAPER: Look, you have -- you've --

THE COURT: So, at bottom, it was all about compensation to the Fifth Circuit?

MR. DRAPER: Well, no. The Fifth Circuit policy decision was we want to protect a party who wants to serve and do their civic duty to serve on a Creditors' Committee for no

compensation. I agree with that. I think it's a laudable policy decision. I think it makes sense.

However, the Fifth Circuit in its language basically said, nobody else gets it. It didn't say, look, you know, if there are circumstances that are different, we may look at it differently. The language is absolute in the opinion. And that's what I think is binding and I think that's what the case stands for.

And look, just so the Court is very clear, when Pachulski files its fee application and the Court grants the fee application, any claim against them is res judicata. So, in fact, they do have -- they do have protection. They do have the ability to get out from under. The Court -- they're just not -- they just can't get out from under through an exculpation provision. And the same goes for Mr. Clemente and his firm.

THE COURT: Which, --

MR. DRAPER: And the same goes for DSI.

THE COURT: Which, by the way, that's one reason I think sometimes this is much ado about nothing. It goes both ways. The Debtor professionals, the Committee professionals, estate professionals, they're going to get cleared on the day any fee app is approved, right? I mean, there's Fifth Circuit law that says --

MR. DRAPER: I -- I --

THE COURT: -- says that's res judicata as to any future claims.

But I guess I'm really trying to understand, you know, at bottom, I feel like the Fifth Circuit was making a holding based on policy more than any directly applicable Code provision.

I mean, it's been said, for example, that Committee members, they're entitled to exculpation because of, what, 1103, some people argue, 1103, which subsection, (c)? That's been quoted as giving, quote, qualified immunity to Committees. But it doesn't really say that, right? It's just something you infer.

MR. DRAPER: No. Look, what I think, if you really want to put the two concepts together, I think what the Fifth Circuit, when they told lawyers and professionals that you can't get an exculpation, was very mindful of the fact that you can get released once your fee app is approved. So, as a policy, they didn't need to do it in a exculpation provision. There was another methodology in which it could be done.

THE COURT: Uh-huh.

MR. DRAPER: And so that's -- you have to look at it as holistic and not just focus on the exculpation provision. Because, in fact, they recognize and they -- I'm sure they knew their existing case law on res judicata, and that's why they read it out.

So, honestly, there's no reason for Pachulski to be in here. There's no reason for Mr. Clemente to be in here. There's no reason for the professionals employed by the Debtor to be in here. They have an exit not by virtue of the plan.

THE COURT: But so then it boils down to the independent directors and Strand post January 9th?

MR. DRAPER: It boils down somewhat to them, but quite frankly, there are two parts to this. One is you have an order that's in place. I am not asking the Court to overturn the order. And quite frankly, this provision could have been written to the effect that the order that was in place on -- that's been presented to the Court is applicable and applied.

However, let's parse that down. Let's look at Mr. Seery. The order that's in place solely protects the independent directors acting in their capacities as independent directors. If somebody's acting as -- and if you want to liken it to a trustee, their protection is afforded by the Barton Doctrine, and that's how the protection arises.

What's going on here is they're extending the provisions, first of all, of the Court's order, and number two, of the Barton Doctrine, which are -- which cannot be -- which should not be extended. The law limits what protections you have and what protections you don't have. And we, as lawyers -- look, I'll give you the best example. Think of all the times you

had somebody write in the concept of superpriority in a cash collateral order. And how many times have you had a lawyer rewrite the concept of the issue as to diminution in value? The Code says diminution in value, and quite frankly, a cash collateral order should just say if, to the extent there's diminution in value, just apply the Code section. It's written there. Smart people put it in, and Congress approved it. And once you start getting beyond that, those things should be limited.

And what we have are lawyers trying to extend out by definitions things that the Code limits by its reach. That goes for post-confirmation jurisdiction. That goes for the injunction. That goes for the so-called gatekeeper provision.

And so, again, I would not be here if, in fact, they had said, we have an injunction to the full extent allowed by the Bankruptcy Code and *Pacific Lumber*. We have an exculpation provision that's allowed by virtue of the Court's order. We have the full extent and full reach of the Barton Doctrine. Those are legitimate. Once you start expanding upon that, you're reaching into matters that are not authorized and not allowed.

And then you get into 105 territory, which is always very dangerous. And that's really what's going on here. And that's the tenor of my argument and what I'm trying to say. The Code gives protections. It is not for us to extend the

protections. It's not for us to enlarge them, even under a, gee, the other party's litigious.

And so that's -- let's take *Craig's Store*. Attempted to limit its reach. *Craig's Store* says once you have a confirmed plan, any dispute between the parties, for -- let's take an executory contract. If there's a breach of the executory contract, that's a matter to be handled aft... by another court. It's not a matter to be handled by this Court. This Court lets the parties out.

And in this case, it's even worse, because you basically have a new general partner coming in, you have an assumption of various executory contracts, and you have a -- Strand is no longer present.

If you adopted Mr. Seery's argument, anybody who appeals a decision, questions what he does or how he does it, is a vexatious litigator. That's not the case. And the fact that we are appealing a decision is a right that we have. It shouldn't be limited, and it shouldn't be held against us. Courts can rule against us. That's fine.

And so that's really what the focus is here and that's why I gave the opening that I had. We are willing to be bound by applicable law. And quite frankly, the concept that the exigencies of a case allow a court to change what applicable law is is problematic. I gave the criminal example as a reason. And the reason was that, in certain instances, the

application of law may allow a criminal to go free. It's a problem with our system and how we work, but that's what the law does, and it is absolute in its application.

Let me address the so-called gatekeeper provision. The gatekeeper provision, in a certain sense, is recognized in the Barton Doctrine. It's jurisdictional, and it says, to the extent you're going to litigate with somebody who served during the bankruptcy, who was a trustee, then you have to come to the bankruptcy court and pass through a gate. It doesn't say you have to pass through a gate for a reorganized debtor who does something after a plan is confirmed and going forward. And so that's -- there's a distinction.

And if you look at Judge Summerhays' decision, which I will be happy to send to the Court, in *WRT* involving -- it's kind of (indecipherable) and Mr. Pauker, where, in that case, the trustee, the litigation trustee, spent more litigating than it had in recoveries, and Baker Hughes filed suit. Judge Summerhays said, look, the Barton Doctrine only applies to a certain extent. It is limited once you get into post-confirmation matters and related-to jurisdiction.

And so, again, the Barton Doctrine is what it stands for. We agree with it, we recognize it, and it should be applied. The Barton Doctrine, however, should not be extended, should not go past its reach, and should not go past the grant of jurisdiction for this Court.

And so you have in here, though they have -- they have tried to hide it in a limited fashion, this gatekeeper provision. The gatekeeper provision, as currently written, covers post-confirmation claims that somebody has to come before this Court to the extent there's a breach of a contract. That's not proper, and it's not covered by your post-confirmation jurisdiction. To the extent there's an interpretation of an existing contract and an interpretation of the order, you do have authority, and I don't question that.

THE COURT: But address Mr. Pomerantz's statement that there's a difference between saying you have to go to the bankruptcy court and make an argument, we have a colorable claim that we would like to pursue, and having that jurisdictional step required. There's a difference between that and the bankruptcy court adjudicating the claim.

MR. DRAPER: Well, there are two parts to that. Number one is there's an injunction in place from an action taken post-confirmation against property of the estate. We all agree at that, correct? And we believe that the injunction applies to post-confirmation action against property of the pre-confirmation estate. We all agree to that.

However, if in fact there's a breach of a contract postpetition that the parties have a dispute about, that

contract is now no longer under your purview once the contract has been assumed. And so they shouldn't have to make a colorable claim to you that a breach of the contract has occurred. That should be the determining factor for another court.

That's, in essence, what *Craig's Store* says. Your jurisdiction and the jurisdiction of a bankruptcy court is limited. It's limited by *Stern vs. Marshall*. It's limited by your ability to render findings of fact and conclusions of law versus render a final decision. That decision has been made not by us, it's been made by Congress and it's been made by the United States Constitution.

THE COURT: All right. And I think we all agree with you regarding the holding of *Craig's Stores* and some of the other post-confirmation bankruptcy subject matter jurisdiction holdings. But Mr. Pomerantz is arguing that this gatekeeping function is warranted by, among other things, you know, there was a district court holding, *Baum v. Blue Moon*, or a Fifth Circuit case, that upheld a district court having the ability to impose pre-filing injunctions in the context of a vexatious litigator. So, you know, that's a strong analogy he makes to what's sought here. What is your response to that?

MR. DRAPER: My response to that is a district court can do that. A district court has jurisdiction to make that decision. And quite frankly, a district court can sanction a

vexatious litigator under Rule 11.

So, in fact -- again, you have to bifurcate your power versus the power that a district court has. And that gatekeeper provision is allowed by a district court because they had authority over the case. You may not have authority over being the gatekeeper for a post-confirmation matter that you had no jurisdiction over to start with.

THE COURT: Okay.

MR. DRAPER: That, that's the distinction between here. That's -- what's going on here is they are -- they are mashing together a whole load of concepts under the vexatious litigator and the anti-Dondero function that fundamentally abrogate the distinction between what your jurisdiction is pre-confirmation versus your jurisdiction post-confirmation. And that --

THE COURT: Do you think --

MR. DRAPER: -- is sacrosanct.

THE COURT: Do you think Judge Lynn got it wrong in *Pilgrim's Pride*? Do you think Judge Houser got it wrong in *CHC*? Or do you think this situation is different?

MR. DRAPER: There are two parts to that. I have told Judge Lynn, since I have been working with him, that I think *Pilgrim's Pride* is wrongfully decided. However, having said that, *Pilgrim's Pride* and those cases dealt with claims against the -- the channeling injunction affected actions

during the bankruptcy. It did not serve as a post-jurisdictional grant of jurisdiction to the bankruptcy court. It did not pose as an ability -- as a limitation on a post-confirmation litigator or a post-effective date litigator to address a wrong done to them by an independent director of a general partner.

In a sense, Judge Lynn's determination, and Judge Houser, is consistent somewhat with the Barton Doctrine. Now, do I agree that they're right? No. But I understand the decision and I understand the context in which it was rendered and I don't have a huge problem with it.

So, again, let's parse what we're trying to do here. Number one, we are -- we have to bifurcate post-confirmation jurisdiction or post-effective date jurisdiction and what you can do as a post-effective date arbiter versus what you could do pre-effective date and pre-effective date claims. And again, that's the problem with what's written here. It is designed one hundred percent to expand your post-effective date jurisdiction through both the gatekeeper provision and the jurisdictional grant that's here from your pre-effective date capability, your pre-effective date jurisdiction, and your pre-effective date ability to either curb a claim or not to curb a claim. And that, that's the issue.

And again, let's start talking about the independent directors. I recognize, again, that there's an order there.

But if Mr. Seery -- let's take Mr. Seery -- is acting as a director of Strand but is also an accountant for the Debtor and makes a mistake, he would be sued in his capacity as the accountant for the Debtor, not as an independent director of Strand. That distinction needs to be made.

What we are doing here under this plan, and what's been argued by Mr. Pomerantz, is too broad a brush. It needs to be cut back. The Court needs to take a very hard look at what's being presented here.

And again, the Court's order is very clear. And this is binding. I recognize that. But the protection they got was serving as an independent director. The protection they didn't get was -- let's take Mr. Seery, if Mr. Seery was serving as an accountant and blew a tax return. Those are distinctions that warrant analysis and warrant looking at here. And again, it is too broad a brush that's touted here, and that is why this plan on its face is not confirmable with respect to both the post-confirmation jurisdiction, the gatekeeper provision, the exculpation provisions.

And so let me address a few other things, just to address them. Number one, the argument has been made with respect to the creditors and the resolicitation issue and that creditors could have come in looking, seen, followed the case, and basically calculated and made the same calculation that the Debtor made when they filed this and put forth the new plan

analysis versus liquidation analysis. And then they've also made the argument, well, nobody came and complained. Well, two parts to that.

Number one, as you know, a disclosure statement needs to be on its face and should not require a creditor to go back in and monitor the record -- and quite frankly, in this record, there are thousands of pages -- and do the calculation himself. This was incumbent upon the Debtor to possibly resolicit when these material changes took place.

Number two, the recalculation has not been subject to the entire creditor body seeing it. And anybody who wanted to call them would have had to have seen the document they filed on February 1st and made a telephone call basically contemporaneous with seeing it.

Those are two things. The argument that they didn't call me is just nonsensical. There's nobody -- you, you are sitting here -- and I've had a number of battles over the years with Judge (indecipherable), who was -- who -- and her view was, I'm here to protect the little guy who's not -- didn't hire counsel, who's not represented by Mr. Clemente and his huge clients who have voted in favor of the plan. It's the little person, *i.e.*, the employees who would vote against a plan that they so -- so desperately tried to get out from under.

THE COURT: Well, --

MR. DRAPER: It's really a function --

THE COURT: -- Mr. Pomerantz argues it's not as though there was a materially adverse change in treatment; it was the disbursement estimate. And doesn't every Chapter 11 plan -- most Chapter 11 plans, not every -- they make an estimate. I mean, and it's, frankly, it's very often a big range of recovery, right, a big range of recovery, because we don't know what the allowed claims are going to compute to at the end of the day. There's obviously liquidation of assets. We don't know. Isn't this sort of like every -- not, again, not every other plan, but most other plans -- where there's a big range of possible estimated distributions? I mean, this wasn't a change in treatment, right?

MR. DRAPER: Well, let me address that. There are two parts to that. Most plans I see that contain some sort of analysis have a range. This one doesn't have a range. What they've done is they've buried in a footnote or assumption that these numbers may change. So had they said, look, your recovery can go from 60 cents to 85 cents, God bless, they probably would have been right.

Number two, which is more problematic to me, to be honest with you, is the fact that, number one, the operating expenses have increased over a hundred percent. And number two, the Debtor has made a determination post-disclosure statement and pre-hearing that they're going to change their model of

business.

The original disclosure statement said we're not going to get into the managing CLO part of the business and we're going to let these contracts go. However, at some point along the way, they made a change. I don't know to this day, because I was never furnished the backup to the expense side. I understand what they said why they didn't give me the asset side, but the expense side, they should have given me, and I did ask for.

But, you know, what we have now is a more fundamental problem with the execution of the plan and the expectation that creditors -- what they're going to get, because, in fact, the expense items have doubled.

I think creditors were entitled to know that, rather than it having been sprung upon everybody, when I got it the day before a deposition. And so those are things that I think warranted a change in solicitation. Now, the result may have been the same. I don't know. More people may have voted against the plan. More people may have opted in from Class 8 to Class 7, I mean, based upon that information. That information was not provided to them.

And so I look at two -- three things. One is a range could have been given, and they probably would have been a whole lot better off. Two, you have a material change in expenses. And three, you have a material change in business

model. Three things that occurred between November and this confirmation hearing. Three things that were not known by the creditor body and not told to them.

THE COURT: Mr. Draper, I --

MR. DRAPER: Now, it may have been told --

THE COURT: I don't want to belabor this any more than I think we need to, but I've got a Creditors' Committee with very sophisticated professionals, very sophisticated members. They're fiduciaries to this constituency. You know, you mentioned the little guy. I'm not quite sure who is the little guy in this case. I think it's a case of all big guys. But, I mean, they're fine with what's happened here. Meanwhile, you -- I mean, clarify your standing here for Dugaboy and Get Good. I mean, --

MR. DRAPER: I have --

THE COURT: -- I know you have standing. Mr. Pomerantz did not say you don't have standing. But in pointing out the economic interests here, I think he said your clients only have asserted a postpetition administrative expense. Is that correct?

MR. DRAPER: No. I have a post -- I have an -- I have a claim that's been objected to. I don't think my economic --

THE COURT: A claim of what amount?

MR. DRAPER: I think it's $10 million. But Mr.

Pomerantz is right, it requires a looking through the -- through the entity that I had a loan relationship with.

I recognize all of those things. I don't think that's relevant to whether my argument is correct or incorrect. I have standing to do it. I don't think whether my claim is 50 cents or $50 million should change the Court's view of whether the claim is good or bad.

THE COURT: Well, I do want to understand, though. Okay. So you have not asserted an administrative expense, correct?

MR. DRAPER: No. There's been an administrative expense that's been asserted, --

THE COURT: For what?

MR. DRAPER: -- but that --

THE COURT: For what?

MR. DRAPER: I don't have the number in front of me, Your Honor. I don't -- I don't have those numbers --

THE COURT: Okay. Well, then, --

MR. DRAPER: -- in front of me. I have asserted --

THE COURT: -- what is the concept? What is the basis for it?

MR. DRAPER: It deals with -- Mr. Pomerantz is absolutely right as to how he's articulated it.

THE COURT: I can't remember what he said.

MR. DRAPER: It deals with -- it deals with a

transaction that's unrelated to the Debtor that deals with Multi-Strat. I agree with that.

THE COURT: Okay. So I remember him saying piercing the corporate veil. Your trusts -- both of them, one of them, I don't know -- engaged in a transaction with Multi-Strat that you say --

MR. DRAPER: No, that --

THE COURT: -- gave -- okay. Well, you say Multi-Strat is liable and the Debtor is also liable?

MR. DRAPER: No. Let me make two things. The administrative claim deals with a Multi-Strat transaction that took place during the bankruptcy. My unsecured claim deals with a transaction that took place prior to the bankruptcy, where we lent money to another entity that then funneled money out into the Debtor. We're -- our contention is that the Debtor is liable for that loan.

THE COURT: All right. So both the administrative expense as well as the prepetition claim require veil-piercing to establish liability of the Debtor?

MR. DRAPER: Or single business enterprise. I don't necessarily have to veil-pierce.

THE COURT: Okay. I'm not even sure that single business enterprise is completely available anymore in Texas, by the Texas legislature doing different things, assuming Texas law applies. I don't know, maybe Delaware does. But I

-- sorry. Just let me let that sink in a little bit. You're -- okay. Okay. Let me let it --

MR. DRAPER: Your Honor, I --

THE COURT: -- sink in a little bit.

MR. DRAPER: Okay.

THE COURT: These trusts -- of which Mr. Dondero is the beneficiary ultimately, right?

MR. DRAPER: Yes. Well, and to --

THE COURT: So, your --

MR. DRAPER: Again, I have not gone up --

THE COURT: The beneficiary of your client --

MR. DRAPER: Mr. Dondero is --

THE COURT: The beneficiary of your client is ultimately hoping to succeed on the administrative expense and the claim on the basis that you should disregard the separateness of Highland and these other entities?

MR. DRAPER: Well, let's take the --

THE COURT: When he's resisted that --

MR. DRAPER: -- unsecured claim. The --

THE COURT: -- in multiple pieces of litigation? Right? I'm sorry. I'm just trying to let this sink in. Okay. If you could elaborate. I'm sorry. I'm talking too much. You answer me.

MR. DRAPER: Okay. What we are saying is that, in essence, the party we lent the money to was a conduit for the

Debtor.

THE COURT: Okay. And who was that entity that either --

MR. DRAPER: Highland Select.

THE COURT: -- Dugaboy or Get Good lent money to?

MR. DRAPER: The Get Good claim is completely different. The Get Good claim is written as a tax claim. Honestly, I haven't taken a hard look at it. I will, once we get through this, and it may be withdrawn. The Dugaboy claim is a claim that arises through a conduit loan.

THE COURT: Okay. But to which entity?

MR. DRAPER: Highland Select.

THE COURT: Okay. All right. Well, continue with your argument. I'll get my flow chart out and --

MR. DRAPER: Well, let me -- again, I think I've made the points that I needed to make. I think I've done it in a sense that you -- what I think the Court needs to do is take a very hard look at the jurisdictional extension that's being granted here. I think the exculpation provision, in and of itself, just by the mere inclusion of Pachulski and the Debtor's professionals and the Committee professionals, is just unconfirmable. It has to be stricken.

And I think the injunction and the juris... the gatekeeper provision are not allowed by applicable law. If this plan merely said, we will enforce the Barton Doctrine, we will

abide -- and this order the Court has entered stands, the injunction that's provided and the rights that we have under 1141 stand, nobody would be objecting. That's why the U.S. Trustee has objected, because of the expansive nature of what the -- what's been done in this plan.

And with that, I'll turn it over to Mr. Taylor or Davor.

THE COURT: All right. Who's next?

MR. RUKAVINA: Your Honor, Davor Rukavina. Can you hear me?

THE COURT: I can.

CLOSING ARGUMENT ON BEHALF OF CERTAIN FUNDS AND ADVISORS

MR. RUKAVINA: Your Honor, thank you. I'll try not to repeat the arguments from Mr. Draper, but I do want to point out a couple bigger-picture issues, I think.

One, the issue today is not Mr. Dondero, what he has been alleged to have done, what he is alleged to do in the future. The Debtor has gone out of its way to create the impression that we're all tentacles, we're vexatious litigants, we're frivolous litigants. The issue today is whether this plan is confirmable under 1129(a) and 1129(b). And I think that that has to be the focus.

Nor is the issue, I think, today any motivation behind my objection or Mr. Draper's or anything else.

And I do take issue that my motivation or my client's motivation has some ulterior motive for a competing plan or

burning down the house or anything like that. It's very, very simple. My clients do not want $140 million of their money and their investors' money, to whom they owe fiduciary duties, to be managed by a liquidating debtor under new management without proper staffing and with an obvious conflict of interest in the form of Mr. Seery wearing two hats.

I respect very much that Mr. Seery wants to monetize estate assets for the benefit of the estate creditors. That's his job. That's incompatible with his job under the Advisers Act and, as he said, to maximize value to my clients and over a billion dollars of investments in these CLOs.

That should not be, Your Honor, a controversial proposition. I should not be described as a tentacle or vexatious because my clients don't want their money managed by someone that they, in effect, did not contract with. I may be -- I may lose that argument. The CLOs have obviously consented to the assumption. But my argument should not be controversial. It should not be painted with a broad brush of somehow being done in bad faith by Mr. Dondero.

And in fact, Mr. Seery has admitted that the Debtor and he are fiduciaries to us. The fact that today they call us things like tentacles and serial litigants and vexatious litigants -- we all know what a vexatious litigant is. We've all dealt with those. The fact that our fiduciary would call us that just reconfirms that it should have no business

managing our or other people's money.

And then for what? Mr. Seery has basically said that the Debtor will make some $8.5 million in revenue from these contracts, net out $4 million of expenses. That's net profit of $4.5 million. But then they have to pay $3.5 million for D&O insurance and $525,000 in cure claims. But it's the Debtor's business decision, not ours.

Your Honor, the second issue is the cram-down of Class 8. There are two problems here: the disparate treatment between Class 7 and Class 8, which also raises classification, and then the absolute priority rule. Class 7 is a convenience class claim -- is a convenience claim, Your Honor, with a $1 million threshold. Objectively, that is not for administrative convenience, as the Code allows. And the only evidence as to how that million dollars was arrived at was, oh, it was a negotiation of the Committee.

There is no evidence justifying administrative convenience. Therefore, there is no evidence justifying separate classification. And on cram-down, the treatment has to be fair and equitable, which *per se* it is not if there is unfair discrimination. And there is unfair discrimination, because Class 8 will be paid less.

On the absolute priority rule, Your Honor, I think that it's very simple. I think that the Code is very clear that equity cannot retain anything -- I'm sorry, equity cannot

retain any property or be given any property. Property is the key word in 1129(b), not value. It doesn't matter that this property may not have any value, although Mr. Seery said that it might. What matters is whether these unvested contingent interests in the trust are property. And Your Honor, they are property. They have to be property. They are trust interests.

So the absolute priority rule is violated on its face. There is no evidence that unsecured creditors in Class 8 will receive hundred-cent dollars. The only evidence is that they'll receive 71 cents. Mr. Seery said there's a potential upside from litigation. He never quantified that upside. And there is zero evidence that Class 8 creditors are likely to be paid hundred-cent dollars. So, again, you have the absolute priority rule issue.

And this construct where, okay, well, equity won't be in the money unless everyone higher above is paid in full, that is just a way to try to get around the dictate of the absolute priority rule. If that logic flies, then the next time I have a hotel client or a Chapter 11 debtor-in-possession client where my equity wants to retain ownership, I'll just create something like, well, here's a trust, creditors own the trust, I won't distribute any money to equity, and equity can just stay in control.

The point again is that this is property and it's being

received on account of prepetition equity.

And there's also the control issue. The absolute priority rule, the Supreme Court is clear that control of the post-confirmation equity is also subject to the absolute priority rule. Here you have the same prepetition management postpetition controlling the Debtor and the assets.

Your Honor, the Rule 2015.3 issue, someone's going to say that it's trivial. Someone's going to accuse me of pulling out nothing to make something. Your Honor, it's not trivial. That's part of the problem in this case, that this Debtor owns other entities that own assets, and there's been precious little window given into that during the case, during this confirmation hearing, and in the disclosure statement.

Rule 2015.3 is mandatory. It's a shall. I respect very much Mr. Seery's explanation that there was a lot going on with the COVID and with everything and that it just fell through the cracks. That's an honest explanation. But the Rule has not been complied with. And 1107(a) requires that the debtor-in-possession comply with a trustee's duties under 704(a)(8). Those duties include filing reports required by the Rules.

So we have an 1129(a)(3) problem, Your Honor, because this plan proponent has not complied with Chapter 11 and Title 11. I'll leave it at that, because I suspect, again, someone will accuse me of being trivial on that. It is not trivial. It is

a very important rule.

On the releases and exculpations, Your Honor, I'm not going to try -- I'm not going to hopefully repeat Mr. Draper. But there's a couple of huge things here with this exculpation that takes it outside of any possible universe of *Pacific Lumber*.

First, you have a nondebtor entity that is being exculpated. I understand the proposition that, during a bankruptcy case, the professionals of a bankruptcy case might be afforded some protection. I understand that proposition. But here you have Strand and its board that's a nondebtor.

The other thing you have that takes this outside of any plausible case law is that the Debtor is exculpated from business decisions, including post-confirmation. I understand that professionals in a case make decisions, and professionals, at the end of the case, especially if the Court is making findings about a plan's good faith, that professionals making decisions on how to administer an estate ought to have some protection.

That does not hold true for whether a debtor and its professionals should have protection for how they manage their business. GM cannot be exculpated for having manufactured a defective product and sold it during its bankruptcy case.

Here, I asked Mr. Seery whether this language in these provisions, talking about whether the administration of the

estate and the implementation of the plan includes the Debtor's management of those contracts and funds. He said yes. He said yes. So if you look at the exculpation provision, it is not limited in time. It affects, Your Honor, I'm quoting, it affects the implementation of the plan. That's going forward.

So you are exculpating the Debtor and its professionals from business decisions, including post-confirmation, from negligence. Well, isn't negligence the number one protection that people that have invested a billion dollars with the Debtor have? It's cold comfort to hear, well, you can come after us for gross negligence or theft. I get that. What about negligence? Isn't that what professionals do? Isn't that why professionals have insurance, liability insurance? It's called professional negligence for malpractice.

So this exculpation, let there be no mistake -- I heard Your Honor's view and discussion -- this is a different universe, both in space and in time.

And we don't have to worry about *Pacific Lumber* too much because we have the *Dropbox* opinion in *Thru, Inc.* We have that opinion. Whether it's sound law or not, I don't wear the robe. But the exculpation provision in that case was virtually identical. And Your Honor, that's a 2018 U.S. Dist. LEXIS 179769. In that opinion, Judge Fish -- I don't think anyone could say that Judge Fish was not a very experienced

district court judge -- Judge Fish found that the exculpation violated Fifth Circuit precedent. That exculpation covered the debtor's attorneys, the debtor, the very people that Mr. Pomerantz is now saying, well, maybe the Fifth Circuit would allow an exculpation for.

THE COURT: Well, I think he is relying heavily on the analogy of independent directors to Creditors' Committee members, saying that's a different animal, if you will, than prepetition officers and directors. And he thinks, given the little bit of policy analysis put out there by the Fifth Circuit, they might agree that that's analogous and worthy of an exculpation.

MR. RUKAVINA: And they might. And they might. And again, I usually do debtor cases. You know that. I'd love to be exculpated.

THE COURT: But --

MR. RUKAVINA: And I think, again, I do -- I do --

THE COURT: -- I really want people to give me their best argument of why, you know, that's just flat wrong. And Mr. Draper just said it's, you know, there's a categorical --

MR. RUKAVINA: Yeah.

THE COURT: -- rejection of exculpations except for Committee members and Committee in *Pacific Lumber*. And I'm scratching my head on that one. And partly the reason I am, while 524(e) was thrown out there, the fact is there's nothing

explicitly in the Bankruptcy Code, right, that explicitly permits exculpation to a Committee or Committee members. There's just sort of this notion, you know, allegedly embodied in 1103(c), or maybe there are cases you want to cite to me, that they're fiduciaries, they're voluntary fiduciaries, they ought to have qualified immunity.

And again, I see it as more of a policy rationale the Fifth Circuit gave than pointing to a certain statute. So if it's really a policy rationale, then I think the analogy given here to a newly-appointed independent board is pretty darn good.

So tell me why I'm all wrong, why Mr. Pomerantz is all wrong.

MR. RUKAVINA: I am not going to tell you that you're all wrong. I'm not going to tell Mr. Pomerantz that he's all wrong. Although I am, I guess, a Dondero tentacle, I am not a Mr. Draper tentacle, and I happen to disagree with him. That's my right. I respect the man very much. I thought he did a very honorable and ethical job explaining his position to Your Honor. I believe that the Fifth Circuit would approve exculpations for postpetition pre-confirmation matters taken by estate fiduciaries. I do believe that they would. And I do believe that that should be the case.

But again, I'm telling you that this one is different. It's -- Mr. Pomerantz is misdirecting you. The estate

professionals manage the estate. The Debtor manages its business. It goes out into the world and it manages business. And as Your Honor knows, under that 1969 Supreme Court case, of course I blanked, and under 28 U.S. 959, a debtor must comply, when it's out there, with all applicable law.

So if the Debtor -- and I'm making this up, okay? I am making this up. I'm not alleging anything. But if the Debtor, through actionable neglect, lost $500 million of its clients' or its investor clients' money, I'm telling you that under no theory can that be exculpated, and I'm telling you that that's what this provision does.

The estate and the Debtor can release their claims. It happens all the time. Whatever -- whatever claims the estate may have against professionals, those can be released. It's a 9019. I'm not complaining about that. Although I do think that it's premature in this case, because we don't know whether there's any liability for the $100 million that Mr. Seery told you Mr. Dondero lost. But in no event can business -- business --

THE COURT: I don't understand what you just said.

MR. RUKAVINA: Your Honor, I --

THE COURT: Mr. Dondero is not released --

MR. RUKAVINA: -- went through Mr. Seery's --

THE COURT: -- by the estate.

MR. RUKAVINA: I understand. I understand. But we

all have to also understand that a board of directors and officers can be liable, breaches of fiduciary duty by not properly managing an employee. So I'm not suggesting -- I mean, I know that there's been an examiner motion filed. I'm not suggesting that we have a mini-trial. I'm not suggesting there's actionable conduct. What I'm telling you is that the evidence shows that there's a large postpetition loss. And it's premature to prevent third parties that might have claims from bringing those.

And then I think -- I'm not sure that Your Honor understood my point. Let me try to make it again. This exculpation is not limited in time. This exculpation is expressly not limited in time and applies to the administration of the plan post-confirmation. I don't think under any theory would the Fifth Circuit or any court at the appellate level allow an exculpation for purely post-reorganization post-bankruptcy matters. I have nothing more to tell Your Honor on exculpation.

THE COURT: Well, again, I -- perhaps I go down some roads I really don't need to go down here, but I'm not sure I read it the way you did. I thought we were just talking about pre -- postpetition, pre-confirmation. Or pre-effective date.

MR. RUKAVINA: Your Honor, Page --

THE COURT: The --

MR. RUKAVINA: Page 48 of the plan, Section C,

Exculpation. Romanette (iv). The implementation of the plan. And I -- and that's -- that's part of why I asked Mr. Seery that yesterday. Does the implementation of the plan, in his understanding, include the Reorganized Debtor's management and wind-down of the Funds, and he said yes.

THE COURT: Okay.

MR. RUKAVINA: So that's right there in black and white.

It also includes the administration of the Chapter 11 case. If that is defined broadly, as Mr. Seery wants it to be, to define business decisions, then that also exceeds any permissible exculpation.

So, again, I'm telling Your Honor, with due respect to you and to Mr. Pomerantz, that the focus of Your Honor's questioning is wrong. The focus of Your Honor's questioning should be on exculpation from what? From business -- *i.e.*, GM manufacturing and selling the car -- or from management of the bankruptcy case? Management of the bankruptcy case? Okay. Postpetition pre-confirmation managing business, never okay.

Your Honor, on the channeling -- and let me add, I think it's very clear, there is no Barton Doctrine here. This is not a Chapter 11 trustee. The Barton Doctrine does not extend to debtors-in-possession. And I can cite you to a recent case, *In re Zaman*, 2020 Bankr. LEXIS 2361, that confirms that the Barton Doctrine does not apply to a debtor-

in-possession.

I want to --

THE COURT: Remind me of that --

MR. RUKAVINA: -- discuss, Your Honor, the --

THE COURT: Remind me of the facts of that case. I feel like I read it, but -- or saw it in the advance sheets, maybe.

MR. RUKAVINA: I honestly do not recall. I read it a few days ago, and since then, I hope Your Honor can appreciate, I've been up very late trying to negotiate something good in this case.

THE COURT: I'd like to know --

MR. RUKAVINA: So, I mean, I have the case in front of me.

THE COURT: I'd like to know about a holding that says Barton Doctrine can't be applied in a Chapter 11 post-confirmation context, if that's --

MR. RUKAVINA: Well, I have it --

THE COURT: -- indeed the holding.

MR. RUKAVINA: I have it right in front of me here, Your Honor, and I can certainly -- all I know is that this case held that -- it rejected the notion that the Barton Doctrine applies to a debtor-in-possession.

THE COURT: Okay.

MR. RUKAVINA: And maybe --

THE COURT: That --

MR. RUKAVINA: There it is, right there.

THE COURT: What judge?

MR. RUKAVINA: Your Honor, it is the Southern District of Florida, and it is the Honorable -- Your Honor, it is the Honorable Mindy Mora.

THE COURT: Okay.

MR. RUKAVINA: M-O-R-A.

THE COURT: Okay.

MR. RUKAVINA: I have not had the pleasure of being in front of that judge.

Your Honor, let me discuss the channeling injunction. This is the big one for me. This is the big one. And I think we have to begin -- and it's the big one, as I'll get to, because Your Honor knows that the CLO management agreements give my clients certain rights, and this injunction would prevent those rights from being exercised post-confirmation. It's not dissimilar from the PI hearing that we're in the middle of in an adversary.

But I begin my analysis, again, with 28 U.S.C. 959. Your Honor, that -- the first sentence of that statute makes it very clear that when it comes to carrying on a business, a debtor-in-possession may be sued without leave of the court appointing them.

So the first thing that this channel -- gatekeeper,

channeling, I don't mean to miscall it -- the first thing that this gatekeeping injunction does is it stands directly opposite to 28 U.S.C. 959.

28 U.S.C. 959 also says that jury rights must be preserved. As I'll argue in a moment, this injunction also affects those rights.

In addition to 959, we have the fundamental issue of post-confirmation jurisdiction. As Mr. Draper said, here, this channeling injunction applies to post-confirmation matters. Similar to my answer to you on exculpation, I can see there being a place for a channeling injunction during the pendency of a case or for claims that might have arisen during the pendency of a case. I cannot see that, and I don't know of any court that, at least at a circuit level, that would agree that this can apply post-confirmation.

It is, again, the equivalent of GM manufacturing a car post-confirmation and having to go to bankruptcy court because someone's wanting to sue it for product negligence or liability. It's unthinkable. The reason why a debtor exits bankruptcy is to go back out into the community. It's no longer under the protection of the bankruptcy court. That's what the media calls Chapter 11, it calls it the protection of the court. There's no such protection post-reorganization. So, --

THE COURT: Is that really analogous, Mr. Rukavina?

Let's get real. Is this really analogous --

MR. RUKAVINA: It is.

THE COURT: -- to GM --

MR. RUKAVINA: It is.

THE COURT: -- manufacturing thousands of cars?

MR. RUKAVINA: It absolutely is analogous. Because this Debtor is going to assume these contracts and it is going to go out there and it is going to make daily decisions affecting a billion dollars of other people's money. Each of those decisions hopefully will be done correctly and make everyone a lot of money, but each of those decisions is the potential for claims and causes of action.

So it is analogous, Your Honor. They want my clients and others to come to you for purely post-confirmation matters. The Court will not have that jurisdiction. There will be no bankruptcy estate, nor can the Court's limited jurisdiction to ensure the implementation of the plan go to and affect a post-confirmation business decision.

That's the distinction. The Debtor's post-confirmation business is not the implementation of a plan. As Mr. Draper said, there's a new entity. There's a new general partner. There's a new structure. Go out there and do business, Debtor. That's what they're telling you. They're telling you this is not a liquidation because they're going to be in business. Okay. Well, the consequence of that is that

there's no post-confirmation jurisdiction.

Now, Mr. Pomerantz says, and I think you asked Mr. Draper, well, the jurisdiction to adjudicate whether something is colorable is different from the jurisdiction to adjudicate the underlying matter. Your Honor, I don't understand that argument, and I don't see a distinction. If the Court has no jurisdiction to decide the underlying matter, then how can the Court have any jurisdiction to pass on any aspect of that underlying matter?

And whether something is colorable is a fundamental issue in every matter. That's the thing that courts look at in a 12(b)(6), in a Rule 11 issue, in a 1927 issue. So they're going to come -- or someone is going to have to come to Your Honor and present evidence and law that something is colorable. Let's say that we've said there's a breach of contract. Aren't we going to have to show you, here's the contract, here's the language, here's the facts giving rise to the breach, here's the elements? And Your Honor is going to have to pass on that. And if Your Honor decides that something is not colorable, then there ain't no step two.

And if Your Honor decides that something is colorable, then isn't that going to be binding on the future proceeding? And if it's going to be binding on the future proceeding, then of course you're exercising jurisdiction to adjudicate an aspect of that lawsuit.

I don't think that that -- I don't know I can be clearer than that, Your Honor, unless the Debtor has some other understanding of what a colorable claim or cause of action is that I'm misunderstanding.

And Your Honor, I would ask, when Your Honor is in chambers, to look at one of these CLO management agreements. I'm sure Your Honor has already. I just pulled one out of the Debtor's exhibits, Exhibit J as in Jason. And Section 14, 14 talks about termination for cause. Most of these contracts are for cause. So, Your Honor, cause includes willfully breaching the agreement or violating the law, cause includes fraud, cause includes a criminal matter, such as indictment.

So let's imagine, Your Honor, that I come to you a year from now and I say, I would like to terminate this agreement because I don't want the Debtor managing my $140 million because of one of these causes. What am I going to argue to Your Honor? I'm going to argue to Your Honor that those causes exist. And Your Honor is going to have to pass on that.

And if Your Honor says they don't exist, again, I'm done. I just got an effective final ruling from a federal judge that my claim is without merit. I'm done. Your Honor has decided the matter effectively, legally, and finally.

That's why, when Mr. Pomerantz says that the jurisdiction to adjudicate the colorableness of a claim is different from

adjudicating that claim, it's not correct. They're part of the same thing, Your Honor.

We strenuously object to that injunction, we think it's unprecedented, and we strenuously object to that injunction because we are not Mr. Dondero.

I understand the January 9th order. I'll let Mr. Dondero's counsel talk about why that was never intended to be a perpetual order. I'll let Mr. Dondero's counsel argue as to why the extension of that order *ad infinitum* in the plan is illegal.

But even if Mr. Dondero is enjoined in perpetuity from causing the related parties to terminate these agreements, Your Honor, the related parties themselves are not subject to that injunction. That's why you have the preliminary injunction proceeding impending in front of you on ridiculous allegations of tortious interference.

So whether the Court enjoins Mr. Dondero or not in perpetuity is a separate matter. The question is, as you've heard, at least my retail clients, they have boards. Those boards are the final decision-makers. Mr. Dondero is not on those boards.

In other words, it is wrong to conclude *a priori* that anything that my clients do has to be at the direction of Mr. Dondero. There is no evidence of that. The evidence is to the contrary.

Yes, a couple of my clients, the Advisors are controlled by Mr. Dondero. Mr. Norris testified to that. You'll not find Mr. Norris anywhere testifying in that transcript that Your Honor allowed into evidence that the funds, my retail fund clients are controlled by Mr. Dondero. You won't find that evidence. There was no evidence yesterday or today that Mr. Dondero controls those retail funds. The only evidence is that they have independent boards.

So I ask the Court to see that it's a little bit of a sleight of hand by the Debtor. If I am to be enjoined or if I am to have to come to Your Honor in the future as a vexatious litigant or a tentacle or a frivolous litigant, whatever else I've been called today, then let it be because of something that I've done or failed to do, something that my client has done to warrant such a serious remedy, not something that Mr. Dondero is alleged to have done.

And what have my clients done, Your Honor? What have we done to be called vexatious litigants and serial litigants? We've done nothing in this case, pretty much, until December 16th, when we filed a motion that was a poor motion, unfortunately, the Court found it to be frivolous, and the Court read us the riot act.

We refused, on December 22nd, we, my clients' employees, to execute two trades that Mr. Dondero wanted us to execute. We had no obligation to execute them. We knew nothing about

them. And Mr. Seery -- I'm sorry. Not Mr. Dondero, that Mr. Seery wanted to execute. And Mr. Seery closed those transactions that same day. And then a professional lawyer at K&L Gates, a seasoned bankruptcy lawyer, sent three letters to a seasoned professional lawyer at Pachulski, and the letters were basically ignored.

Okay. Those are the things that we've done. Other than that, we've defended ourselves against a TRO, we've defended ourselves against a preliminary injunction, we will continue to defend ourselves against a preliminary injunction, and we defend ourselves against this plan because it takes away our rights. Is that vexatious litigation? Is that, other than the frivolous motion, is that frivolous litigation?

And we heard you loud and clear when you read us the riot act on December 16th. And I will challenge any of these colleagues here today to point me to something that we have filed since then that is in any way, shape, or form arguably meritless.

So where is the evidence that my retail funds are tentacles or vexatious litigants or anything else? There is no evidence, Your Honor, and the Debtor is doing its best to give you smoke and mirrors to just make that mental jump from Mr. Dondero to my clients, effectively an alter ego, without a trial on alter ego.

Once these contracts are assumed, the Debtor must live

with their consequences. It's as simple as that. Your Honor has so held. Your Honor has so held forcefully in the *Texas Ballpark* case. And the Court, I submit respectfully, cannot excise by an injunction a provision of a contract.

Also, this injunction will -- is a permanent injunction. We know from *Zale* and other cases the Fifth Circuit does permit certain limited plan injunctions that are temporary in hundred-cent plans. This is a permanent one. It doesn't even pretend to be a temporary one.

It's also a permanent one because the Debtor knows and I think the Debtor is banking on me being unable to get relief in the Fifth Circuit before Mr. Seery is finished liquidating these CLOs.

So what we are talking about today is effectively excising valuable and important negotiated provisions of these contracts, provisions that, although my clients are not counterparties to these contracts, you've heard from at least three of them we do control the requisite vote, the voting percentages, to cause a termination, to remove the Debtor, or to seek to enforce the Debtor's obligations under those contracts.

And again, Your Honor, it's very simple. Where those contracts require cause, there either is cause or is not cause. If there is not cause, the Debtor has its remedies. If there is cause, I'll have my remedies. But it's not for

this Court post-confirmation to be making that determination. That's not my decision. That's Congress's decision.

So, Your Honor, for those reasons, we object, and we continue to object, and we'd ask that the Court not confirm this plan because it is patently unconfirmable. Or if the Court does confirm the plan, that it excise those provisions of the releases, exculpations, and injunction that I just mentioned as being not in line with the Fifth Circuit or Supreme Court precedent.

Thank you.

THE COURT: All right. Can I -- I meant to ask Mr. Draper this. Can we all agree that we do not have third-party releases *per se* in this plan? Can we all agree on that?

MR. DRAPER: I don't know. I have to look at that. I think what you have are exculpations and channeling injunctions for third parties who have not paid for those channeling injunctions or those exculpations.

THE COURT: All right.

MR. RUKAVINA: Your Honor, was that question -- was that question solely to Mr. Draper?

THE COURT: Well, no, it was to all of you. I thought we could all agree that we don't have third party releases *per se*. Okay. There was --

MR. RUKAVINA: Your Honor, we --

THE COURT: -- a little bit of glossing over that in

some of the briefing, I can't remember whose. But we have Debtor releases, we have --

MR. RUKAVINA: Yes.

THE COURT: -- exculpations that deal with postpetition negligence only, we have injunctions, which I guess the Debtor would say merely serve to implement the plan provisions and are commonplace, but Mr. Draper would say maybe are tantamount to third-party releases. Is that --

MR. RUKAVINA: Your Honor, I don't think --

THE COURT: -- where we are?

MR. RUKAVINA: -- there's any question -- I don't think there's any question that the exculpation is a third-party release, and that that's also what Judge Fish held in the *Dropbox* case. It says that none of the exculpated parties shall have any liability on any claim. So, --

THE COURT: All right.

MR. RUKAVINA: -- that necessarily --

THE COURT: I get what you're saying, but I just think, in common bankruptcy lingo, most people regard a third-party release as when third parties are releasing -- third parties meaning, for example, creditors, interest holders -- are releasing officers and directors and other third parties for anything and everything.

Exculpation, I get it, it's worded in a passive voice, but it is third parties releasing third parties, but for a narrow

thing, postpetition conduct that is negligent. Okay. So I think -- while there's technically something like a third-party release there, it's not in bankruptcy lingo what we call a third-party release. It's an exculpation means no liability of the exculpated parties for postpetition conduct that's negligent. So I -- anyway, I think we all agree that, I mean, can we all agree there aren't any *per se* third-party releases as that term is typically used in bankruptcy parlance?

MR. RUKAVINA: I apologize, Your Honor, and I'm not trying to try your patience, but I cannot agree to that. Whatever claims my client, a nondebtor, has against Strand, a nondebtor, are gone. Whether it's a release or exculpations, they're gone. So I apologize, I cannot agree to that, Your Honor.

MR. DRAPER: Your Honor, this is Douglas Draper. I can't agree, either. I think it's definitional. And quite frankly, I think I'm looking at the functional effect of what's here, and they appear to be third-party releases.

THE COURT: Okay. All right. Who is making the argument for Mr. Dondero?

MR. TAYLOR: Your Honor, Clay Taylor appearing on behalf of Mr. Dondero.

THE COURT: Okay.

CLOSING ARGUMENT ON BEHALF OF JAMES D. DONDERO

MR. TAYLOR: Your Honor, first of all, as this Court

is well aware, this Court sits, as a bankruptcy court, as a court of equity. It has many different tools available to it. One of those, of course, is denying confirmation of this plan because of the laws that we have discussed today and that we believe the evidence has shown, and I won't go into those. Of course, of course, Your Honor could confirm that plan. Yet another tool available to this Court is it can take it under advisement.

To the extent that this Court decides to confirm this plan and decides to confirm it today, it certainly takes a lot of options off the table for all parties. There are ongoing discussions, I'm not going to go into any of the particulars of those discussions, but a ruling on confirmation today would effectively end that, because, absent, then, an order vacating confirmation, there's a lot of eggs that can't become unscrambled after a confirmation order is entered.

So we would respectively ask that, to the extent that the Court is even considering confirmation, we don't believe it to be appropriate, but at least take it under advisement for 30 days, or at least, in the very alternative, that it announce some date which it is going to give a ruling, so that we kind of know when that is going to come down, to see if any positive ongoing discussions can result in more of a global resolution that all parties can agree upon.

Addressing more the merits of the case, Your Honor, Mr.

Dondero does indeed object to the nondebtor releases, the exculpations, the injunction. I believe those have been covered rather extensively in the prior argument, so I wasn't going to go into those here because they've been addressed. Of course, I will endeavor to answer any questions that Your Honor may have on those.

I will say I think Your Honor asked for everybody's best shot as to why this is different for a Committee member versus the independent trustees here. I will say my best shot is, first of all, *Pacific Lumber* says what it says. I believe Mr. Pomerantz has indicated their position that that language is dicta and therefore not binding upon this Court. I respectfully disagree with that. But to the extent, more directly answering Your Honor's question, to me, the difference is clear. Chapter 7 trustees are a creature of statute. So are Chapter 11 trustees. And -- as are members of a Committee that are seated pursuant to the Bankruptcy Code. Those are all creatures of statute. And the independent board of trustees, while there are certainly -- there are some analogies that can be made, undoubtedly, but they are not a creature of statute. There is no provision for them under the Bankruptcy Code. And therefore I don't believe that they should and can receive the same protections under *Pacific Lumber*.

And so hopefully that -- that is my best shot at

answering, directly answering the question that Your Honor posed.

THE COURT: Okay.

MR. DRAPER: Mr. Dondero also has issue with the overbroad continuing jurisdiction of this Court. I believe Mr. Rukavina has stated that rather succinctly, too. Merely ruling upon whatever claim is colorable or not certainly has definite impacts. If this Court has jurisdiction to do that when it otherwise wouldn't have jurisdiction, it enacts an expansion, a potentially impermissible expansion of this Court's jurisdiction. And for that reason, the plan should -- confirmation should be denied.

Getting into the particulars of 1129, Your Honor, there is problems under 1129(a)(2). Those are the solicitation problems. Let's just kind of look at what the evidence showed. On November 28th, there was a disclosure statement, it was published to all creditors, and it said, under this plan, you're going to get 87 cents. It wasn't a range. Now, there was some assumptions that went in there, but they said, under a liquidation of all these assets, you're going to get 62 cents.

The Debtors came back approximately two months later, on January 28th, and said, oh, wait, we missed the boat here, and actually, under the plan, you're going to get 61 cents. And under a liquidation, though, you'd only get 48.

Well, the problem is, already, two months later, they've already told you they missed the boat on what the liquidation analysis was just two months ago. And two months ago, they told you under a liquidation you'd get 62 cents, and now we're telling you you're going to get less. That's at least some very good evidence that the best interests of the creditors isn't being met, and potentially a liquidation is much better.

They then came back, potentially maybe realizing that problem, also because some new information came in with the employees, and also with UBS, which adjusted the overall general unsecured claims pool, and said, well, under the plan you're going to get 71 cents, and under a liquidation you're going to get 55 cents.

In between those iterations from November to February, they found $67 million more in assets. So Mr. Seery testified he believed some of that's as to market increases in values, and some (garbling) investment, market -- securities. And some were just in these private equity investments.

There are indeed some rollups behind all of these numbers. I do understand why they wouldn't want to make some of these numbers public, because they might not be able to get -- create the upside for any particular asset class that they're seeking to monetize.

However, we and others, including Mr. Draper, asked for those rollups to be provided, and we certainly could have

taken those under seal or a confidentiality agreement, could have also put those before this Court under seal and the Debtor could have put those rollups before this Court under seal. It elected not to do so.

So, rather, what you have is the naked assumptions of this is what we think we can monetize the assets, or we're not going to tell you what it is, but trust me, Creditors, and cool, we found $67 million worth of value in the past two months, so therefore we're going to beat the liquidation analysis that we previously told you just two months ago.

They also acknowledge that, in those two months, that there was going to be about $26 million in increased costs from their November analysis to their February analysis. And they included that in their projections.

Finally, they acknowledged, in those two months, that we had previously estimated -- and they even have it in their assumptions in November liquidation and plan analysis -- that UBS, HarbourVest, and I believe it was Acis, were all going to be valued at zero dollars, and that's what the claims were going to be. Well, they kind of missed the boat on those, and they missed it by a lot. They -- it increased all the claims in the pool from $195 million to $273 million, or sorry, I don't -- look at that again, but it was an increase of $95 million. I'm sorry, 190 -- the claims pool increased from $194 million to -- I'm sorry, Your Honor, I have too many

papers in front of me -- on November, the claims pool was 176 and it increased by February 1st to 273. Therefore, approximately $95, almost $100 million worth of claims that they weren't anticipating that actually came in.

That tells you about the quality of the assumptions that went into the analysis to begin with. They missed it by 50 percent on what the overall claims pool was going to be. That's significant. It's material.

There is a lot of other assumptions that could go into this document, and one of those assumptions are how much are we going to be able to monetize these assets for? One other assumption is, well, how much is it going to cost during the two-year life of this wind-down? Another assumption is going to be, are we actually going to be able to wind down in two years? Because if we're not, well, guess what, all those costs are going to go up. Another assumption is, well, how much are those fee claims going to be over the two-year period? Again, if it goes over two years, they're going to be significantly higher. Moreover, you might have just missed what the burn rate is.

So I think it's rather telling that the assumptions made of -- all the way back of over two -- of only two months ago were off by $100 million, and therefore it skewed all of the plan-versus-liquidation analysis all over the board.

That's the only evidence that the Debtor has put forth as

to why it's in the best interest of the creditors. And quite frankly, we don't believe they have met their burden. And it is their burden to prove to Your Honor that the plan is better than what a Chapter 7 trustee will -- can do.

What the evidence does show, as far as what the plan would do as compared to a hypothetical Chapter 7 trustee, is that we know for sure that the Claimant Trust base fee, just over the two years, is going to be $3.6 million.

(Interruption.)

MR. TAYLOR: I'm sorry.

THE COURT: Someone needs to put their device on mute. I don't know who that was.

MR. TAYLOR: Oh, I'm sorry. I thought you said something, Your Honor.

THE COURT: No.

MR. TAYLOR: So what we do know is the Claimant Trustee base fee is going to be $3.6 million. What we don't know and what was not put into evidence because they are still negotiating it is there's going to be a bonus fee on top of that that's going to be paid to Mr. Seery. Is that $2 million? Is that $4 million? Is that $10 million? Well, we don't know. We can't perform that analysis as compared to what a hypothetical Chapter 7 trustee could be. Nor can Your Honor, based upon the evidence presented.

And quite frankly, I don't see how one could ever conclude

-- and there are some other unknowns that we're about to go over, including the Litigation Trust base fee and there are collection fees, contingency fees. Those are also to be negotiated. To be negotiated and unknown. You can't perform the analysis. The Debtor couldn't perform the analysis because those are to be negotiated, so you can't tell whether a Chapter -- hypothetical Chapter 7 trustee might come out better because he's not going to incur all these costs. We know that they're going to incur D&O costs.

THE COURT: Let me interject right now.

MR. TAYLOR: Sure.

THE COURT: Again, I'm going to go back to understanding who your client is arguing for. Okay? Again, as we've said before, Mr. Pomerantz did not technically say no standing, but he thought it was important to point out the economic interests that our Objectors either have or don't have. Okay?

So I'm looking through my notes to see exactly what the Dondero economic interest is. I have something written in my notes, but I'm going to let you tell me. Tell me what his economic interests are with regard to this Debtor, this reorganization.

MR. TAYLOR: Your Honor, I believe he has been placed into Class 9, Subordinated Claims. So to the extent that there is recovery available to Class 9, he can recover on

those claims.

THE COURT: But what proof of claim --

MR. TAYLOR: We also have --

THE COURT: What proof of claim does he have pending at this juncture?

MR. TAYLOR: Your Honor, I would have to go back and look. I don't have the proofs of claim register in front of me. And I'm sorry, if I tried to speculate, I would be doing a disservice to my client and this Court by trying to speculate. I did not prepare those proofs of claim. People in my firm did. But I would be merely speculating if I tried to give you an answer off the spot. And I apologize. I'm happy to submit a post-confirmation hearing letter --

THE COURT: No, no, no.

MR. TAYLOR: -- as to that.

THE COURT: I'm not going to allow one more piece of paper in connection with confirmation. I thought you would be able to answer that.

MR. TAYLOR: I'm sorry. I just don't want to lie to Your Honor.

THE COURT: What about his -- what would be an indirect equity interest?

MR. TAYLOR: Well, again, there are a lot of people that know this org chart a lot better than me. This is me going on hearsay myself. But I understand he also owns a lot

of indirect interests in subsidiaries, some of which are majority, some of which are minority, and some of which he owns maybe directly, some of which through other entities. So the way in which these assets could be monetized at the sub-debtor level could certainly impact his economic rights and could impact him greatly. For instance, if the --

THE COURT: I really wanted an exact answer.

MR. TAYLOR: Mr. Seery --

THE COURT: I really wanted an exact answer, not just he has an indirect interest in, you know, some of the 2,000 -- I'm not going to say tentacles, but --

I'm going to interrupt briefly, because I really want to nail down the answer as best I can. Mr. Pomerantz, can you just remind me of what your answer was or statement was regarding Mr. Dondero, individually, his economic stake in all this?

MR. POMERANTZ: He has an indemnification claim that's been objected to, --

THE COURT: That's the one and only --

MR. POMERANTZ: -- although it's not before --

THE COURT: That's the one and only pending proof of claim, right?

MR. POMERANTZ: That's my understanding. And while it's not before the Court, we could all imagine whether Mr. Dondero's going to be entitled to indemnification.

He has an interest in Strand, which is the general partner.

THE COURT: Right.

MR. POMERANTZ: And Strand owns a quarter-percent -- a quarter of one percent of the equity. I believe that is all of Mr. Dondero's economic interest in the Debtor.

THE COURT: Okay. So, again, I'm just trying to, you know, understand who he's looking out for, for lack of a better way of saying it, Mr. Taylor, in making these arguments.

MR. TAYLOR: So, there is also, and this is -- I'm not involved in what are these going to be filed collection suits, or some of which have been filed, some of which have not been filed, none of which I believe the answer date has been -- has passed or come to be yet.

But he is also a defendant in collection suits on these notes, as you are undoubtedly aware.

THE COURT: Okay. He's a defendant in adversary proceedings. Okay? That makes him a party in interest to -- well, I keep -- that makes him have standing to make an 1129(a)(7) argument? That's why I'm going down this trail. Because you've spent the last five minutes talking about, you know, creditors could do better in a Chapter 7 liquidation. I'm not sure he has standing to make that argument, so I'm wanting you to address that squarely.

MR. TAYLOR: Your Honor, I believe he has economic interests up and down the capital structure. And I cannot describe to you, without wildly speculating and potentially lying to this Court, which I'm not going to do, without some time to have looked at that, because I was -- I was not involved in the proofs of claim and I am not his accountant. So I could not do that without wildly speculating, so I just -- I would like to more directly answer your question, Your Honor. I am not trying to avoid the question. But I can't honestly answer your question with true facts as we sit here right now.

THE COURT: All right. But do you agree or disagree with me that only parties -- the only parties that really can make an 1129(a)(7) argument are holders of claims or interests in impaired classes?

MR. TAYLOR: Your Honor, I believe that Mr. Dondero has standing to do so by virtue of claims for indemnification --

THE COURT: Okay.

MR. TAYLOR: -- if these -- if these -- if this Debtor (indecipherable) able to meet its obligations to indemnify him. And some of those are significant claims that are being brought against him that could total millions, if not tens of millions of dollars, just in defense costs alone, that I do believe give some standing.

THE COURT: Okay. So, assuming you're right, you think the evidence does not show this is better than a Chapter 7 liquidation where we would have a stranger trustee come in and just, yeah, I guess, cold-turkey liquidate it all.

MR. TAYLOR: Your Honor, I do believe that the evidence shows that the Debtor hasn't met its burden as to this. A Chapter 7 trustee doesn't necessarily have to liquidate immediately. It can run these -- these assets. I mean, Mr. Seery is going to do it with ten people. At one time, just two months ago, he said he was going to do it with three people. A Chapter 7 trustee could certainly have a limited runway, or even an extended runway, if it so asked for it, to liquate these Debtors.

Moreover, there would be at least the requirements that the Chapter 7 trustee would request the sale, tell creditors about it. And, as many courts have said, the competitive bidding process is the best way to make sure that you ensure the highest and best offer that you can get.

Mr. Seery has not committed to providing notice of sales to creditors and other parties in interest, potentially bringing them in as bidders. They -- he could name a stalking horse, but he has not indicated any desire to do so. A Chapter 7 trustee would endeavor to do so.

So I do believe that there are some advantages. And you've heard no testimony that they've performed any analysis

or conducted any interviews with any Chapter 7 trustees as to whether or not this was possible or not. They just made the naked assumption that they would do work based upon what they said was their experience. And Mr. Seery's deposition, when it was taken and noticed as a 30(b)(6) deposition, and I believe it has been entered into evidence here, he said the last time he dealt with a Chapter 7 trustee was 11 or 13 years ago, and it was the *Lehman* case, and that was the -- a SIPC trustee. So --

THE COURT: Well, --

MR. TAYLOR: -- that's the last time he had any experience with it.

THE COURT: -- again, I don't mean to belabor this point, just like I didn't mean to belabor a few others. But, you know, there is a mechanism, yes, in Chapter 7, Section 704, for a trustee to seek court authority to operate a business. But it's not a statute that contemplates long-term operation. Okay? It's just, oh, we've got a little bit of -- you know, we have some assets here that really require a short-term operation here.

If it's long-term, then you convert to Chapter 11. Okay? It's just a temporary tool, Section 704. Right? Would you agree with me?

MR. TAYLOR: That's typically how it has been used.

THE COURT: Okay.

MR. TAYLOR: But that's not to say that it's limited in time by the statute itself. It doesn't say that it can't go for one year or two years. That can be a short wind-down period.

THE COURT: But hasn't your client's argument been this past several weeks that Mr. Seery is moving too fast, he's wanting to sell things and he needs to hold them longer? I mean, these two argument seem inconsistent to me.

MR. TAYLOR: So, just because a Chapter 7 trustee has been appointed doesn't mean that he has to sell them any faster than Mr. Seery.

I think what the -- the problem with the process that has been going on with Mr. Seery, my client's problem with it, is not necessarily the timing but the process that Mr. Seery is going through with these sales. Provide notice, allow more bidders to come in, make sure that he's getting the highest and best price. And if that happens to be Mr. Dondero who offers the highest and best price, great. And if Mr. Dondero gets outbid by somebody, well, that's all the more better for the estate.

THE COURT: Okay. Continue your argument.

MR. TAYLOR: I believe we covered a lot of it, Your Honor, and the plan analysis is all based upon their assumptions that there's $257 million worth of value. Again, there's no rollup provided as to how that asset allocation is

broken out, but they consist of a couple of items.

First, there's the notes; and second, there's the assets. The notes are either long-term or demand notes. Those long-term notes, Mr. Seery will tell you some have been validly accelerated and therefore are now due and payable. I think there's arguments to the contrary. But those long-term notes probably have some both time value of money and collection costs. And then, of course, you have to discount them by collectability issues, too.

I don't believe any analysis went into it, or at least the Court was not provided any data or analysis as to what discounts were applied to those notes. And, therefore, I don't think that this Court can make any determination that the best interests of the creditors have been met.

As far as the assets that are to be monetized, again, there's two sub-buckets of those assets. There's securities that are to be sold. Some of those are semi-public securities that have markets. Those are somewhat more readily ascertained. The others are holdings in private equity companies, and sometimes holdings in companies that own other companies.

There's no evidence of the value -- empirical evidence of the value of those companies, nor of the assumptions that went into as to when they should be sold, how much they'd be sold for.

Again, I do realize the sensitive nature of such information, but that could have been placed under seal. And without that information, I don't believe that the Court can conduct the due diligence it's necessary to say the best interest of the creditors have been met.

To sum up, Your Honor -- oh, I'm sorry. One other point that I did want to talk about before I summed up is, you know, Mr. Pomerantz and I were listening to a different record or I was totally confused as to the testimony that was put forth regarding the directors and officers. I believe the testimony in the record is extremely clear that the Debtor made no effort to go out and find out if it could obtain directors and officers insurance without a gatekeeping injunction or a channeling injunction, whatever you want to call it. I believe that his testimony was extremely clear. He didn't shop it. He doesn't know. And that's what the record is before this Court.

To the extent that the Debtor wants to rely upon we can't get Debtor -- or, directors and officers insurance because without this gatekeeping function we just can't get it, I believe the record just wholly does not support that. The testimony was at least extremely clear, as how I heard it. Your Honor will have to review the record herself, but I don't believe that there was much argument about it.

I'm sure -- as I stated in the beginning, Your Honor, this

is a court of equity. It could deny confirmation, as I believe Your Honor should, based upon the flaws in the plan.

If Your Honor finds that the plan as written is impermissible because of any of the exculpation or the gatekeeping functions that they're asking, the testimony is equally clear that the independent directors would not serve in -- as officers of the Reorganized Debtor. Any plan that is put forth by the Debtor has to tell the people who are going to be officers going forward. And with that naked testimony before the Court, that it's simply not feasible, and I don't think it is one of the possible -- where the Court can come back and say, well, I can't confirm this plan as written, but if you change it and rewrite it to get rid of the certain offensive parts of the exculpation or the gatekeeping functions, then we can confirm this plan. And I think the evidence before this Court is it's not feasible because none of the directors will serve in that capacity, and therefore this plan should be dead on arrival if Your Honor agrees the proposed provisions do not meet *Pacific Lumber*.

We would ask the Court to deny confirmation, but in the alternative, to at least take this under advisement. Give us a time frame -- we'd ask for 30 days -- but give us a time frame of when the Court is going to rule, to allow the positive conversations to move forward.

To that end, Your Honor, there is, indeed, a hearing on

the extension of a temporary injunction and contempt that is scheduled for Friday. I understand that the parties, at least the joint parties, will not -- will agree to, I'm sorry, will agree to the extension of the temporary injunction until such time as the Court can rule on confirmation. I do see that there could be a lot of harm done at the Friday hearing. We would ask that the Court additionally continue that hearing on that motion and on the injunction, and contempt, until such time as confirmation has been ruled upon. It will be both efficient and allow discussions to continue regarding potential global resolution.

And so that is the end of my argument, Your Honor.

THE COURT: All right. Thank you. All right. Mr. Pomerantz, do you have any rebuttal?

REBUTTAL CLOSING ARGUMENT ON BEHALF OF THE DEBTOR

MR. POMERANTZ: Yes, I do, Your Honor. I want to address a couple of comments that Mr. Taylor made towards the end. First of all -- and, actually, the beginning.

We think Your Honor should rule on confirmation. Ruling on confirmation and having an entered confirmation order are two separate things. We understand that a new offer was made. Whether that's acceptable to the Committee -- I actually think it will enhance the ability of the parties to see if they could reach a deal if there's (audio gap) that Your Honor is going to confirm the plan.

Again, doesn't mean a confirmation order has to be entered, but I think, based upon my personal experience in negotiating with Mr. Dondero, that your clear communication to the parties that, unless something happens, you will enter a confirmation order, I think will change things. Okay? Without getting into settlement discussions, things have changed over the last several days, and we wish you would have -- wish things would have happened sooner. But we totally disagree that Your Honor should hold your ruling for 30 days or any other period of time.

Part of the reason I think they are making that argument is because they have an examiner motion and they recognize that, upon confirmation, the examiner motion is moot. So I think there's strategic reasons as well.

We don't think there should be a continuance of the TRO hearing and of the contempt hearing. As Your Honor recalls, the contempt motion was specifically set for this time to give Mr. Dondero enough time to prepare. Your Honor was sensitive to his due process concerns. We set the TRO, the preliminary injunction hearing against the Advisors and the Funds, we set that, again, knowing that it would be after confirmation.

So we do not agree that either should be continued. Again, we think the more direct, unequivocal answers Your Honor can give to the parties, the better off we'll be.

I guess -- Mr. Taylor and I do agree that the record was

clear. I guess we just disagree on the clarity of it. I heard Mr. Tauber testify that when he went out to people, to insurance carriers, after he and Aon were engaged, they all talked about a Dondero exclusion. Okay? They weren't convinced into a gatekeeper provision because it was provided as part of the normal materials you would provide in a bankruptcy court and trying to get D&O liability in the context of a bankruptcy case. Mr. Tauber's testimony was pretty clear, that carriers wanted to have a Dondero exclusion. And, in fact, the only reason we were able to get any coverage was because of the gatekeeper.

So, yes, the record was clear. We just disagree.

I'd like to go back to Mr. Draper's comments going -- and a couple of things, obviously, overlap. I guess one of the things here, it's great that everyone is coming in here as different interests and different parties or whatnot. But as I mentioned, Your Honor, at the outset, and I've repeated a few times, these are all -- the only people we have not been able to resolve issues with are the Dondero parties and the related parties. And I recall the tentacles. Mr. Davor questioned that. Mr. Clemente, his comments. But the fact of the matter is, Your Honor, Your Honor has heard testimony. Your Honor has had hearings. Mr. Rukavina represents the Advisors and the Funds. Your Honor has never seen the independent board member testify in this case to demonstrate

how these entities are really different. So while Mr. Rukavina does -- you know, tries his best, and I think he has limited stuff to work with, but I give him credit for doing the best he can, these are all Dondero-related entities and Your Honor has seen that.

So, Your Honor, going to the resolicitation argument, it actually has taken up a lot more time than the argument is worth, for one very simple reason. As I said in my argument, and as Mr. Taylor and Mr. Draper totally ignored, there were 17 creditors who voted yes, 17 creditors who were apparently misled, that Mr. Draper is looking out for the little guy and Mr. Taylor is fumbling over his reason for why that's important to Dondero. And of those 17 creditors that voted yes, Your Honor, they were either the employees related to HarbourVest, UBS, Redeemer, or Acis, except for two. And you know the other two? One was Contrarian, a claim buyer, who, yeah, elected to be in Class 7, and the other was an employee with a dollar claim.

So the whole argument that there should be a resolicitation is preposterous, Your Honor. But to go to some of the specifics in what they argued, we didn't require creditors to monitor recovery. The footnote -- as I indicated, the UBS 3018 was in the disclosure statement that went out. It didn't make it to the projections. It was clearly -- and they characterize it, I think Mr. Draper

characterized it as buried in the document. There is a section that every disclosure statement is required to have called Risk Factors. This disclosure statement had that. And in the disclosure statement, it talked about the amount of claims being a risk factor.

Mr. Draper also said that the Debtor totally changed its business model from the first to the second analysis. That is incorrect. The Debtor was always going to manage funds. Yes, did they add the CLOs? But before, they were going to manage Multi-Strat, they were going to manage Restoration Capital, they were going to oversee Korea, they were going to be doing the management of the funds. So there wasn't a big change in the business model, Your Honor.

Mr. Taylor, on the solicitation issue, says we found $67 million in assets. You know, that's a disingenuous statement. I think over $20 million was found because his client and related entities didn't make a payment on notes and they got accelerated. So while before we would have had to wait over time if they were paid, it's not surprising that Mr. Dondero and his related entities just failed to basically pay the notes.

So that was, I think, over $20 million. And then there was the HCLOF asset. That was acquired in the HarbourVest settlement. And then there was basically an increase in some value to some assets.

So there wasn't anything mysterious here. There wasn't anything that the Debtor was trying to hide. There weren't any found assets. It was based upon different circumstances.

Mr. Taylor complains about the lack of rollup of assets, the lack of evidence on the best interests of creditors test. Your Honor, you've had extensive testimony from Mr. Seery about what would happen in a Chapter 7 and what would happen in a Chapter 11. And you know why we didn't provide the information to Mr. Taylor and his client on what the rollup of the assets would be, and do you know why he wants them? He wants to know what the assets are so he can try to bid.

And there also was the allegation that the failure to allow them to bid means we're going to get less in a Chapter 11 than a 7. Two comments to that, Your Honor. Number one, if that was the case, a debtor would never be able to satisfy the best interests of creditors test. If the existence of a public process *de facto* meant you would get more value than outside, you would never be able to satisfy that. And, quite honestly, that's just not the law, Your Honor.

You have an Oversight Committee with over $200 million of creditors who are going to watch Mr. Seery like a hawk, like they have watched him during the case. And the concern that somehow, because these assets are not put into full view to sell, that they will get less value, it's just not -- it's not supported by the evidence at all, Your Honor. And Mr. Seery

will make the determination. If it makes sense to notice up and provide Mr. Dondero with notice, he will. If he doesn't, he won't.

Your Honor, going -- oh, and then the last comment on the -- that I'll make on the resolicitation and the liquidation analysis is Mr. Taylor chides us and we've been criticized for not disclosing more about the HarbourVest and the UBS settlements and that we were off substantially. Your Honor, you've heard testimony that we were in pending litigation with HarbourVest and UBS at the time. What kind of litigant would we be if we came in and said, you know, Your Honor, you know, Creditors, we think the UBS claim is going to be allowed at $60 million and we think the HarbourVest claim is going to be allowed at $30 million? Would that really have benefited creditors and this estate, to basically, after we took the position, hard negotiations and hard pleadings that we prepared, and in some cases filed, that we didn't have any liability? It would have made no sense, and it would have been a dereliction of our duty to actually come out and say what the claims -- the claims were, or what we thought they could be settled for.

Your Honor, going back to Mr. Draper's comments. He started with the exculpation. First he made a comment that I don't think he intended what he said, but he said that the exculpation order, the January 9th order, cuts off when the

independent directors go away. I think what he meant to say is that since the three people are not going to be independent directors anymore, that basically any actions going forward by any of those three are not covered. But let's be clear. The January 9th order is in effect, and if at some point in the future somebody has a claim against those three gentleman, or their agents, for what they did as independent directors or their agents, that order will apply.

Your Honor, we next had a discussion, or Mr. Draper and you had a discussion on professionals. I'm aware of the Fifth Circuit law that says res judicata, fee applications. I think that only applies to claims that the Debtor and estate would have. It doesn't really apply to an exculpation. But there's Texas state law that I identified in our brief and we cited to that limits third parties' ability to go after professionals.

But the bottom line is the Fifth Circuit, in *Pacific Lumber*, didn't deal with professionals. Your Honor was correct in pushing both Mr. Taylor and Mr. Rukavina. What really that was was a policy case. And professionals have nothing to do with 524(e). So the *Palco* and the *Pacific Lumber* reference and explanation of 524(e) doesn't have anything to do with professionals. And we would submit, Your Honor, that an exculpation, especially in a case like this, is important for professionals.

I understand Your Honor's comments that maybe it's much

ado about nothing, but I'm not really sure it's much ado about nothing when we have Mr. Dondero and his affiliates who, notwithstanding their efforts to just claim that all they are doing is trying to get a fair shake, Your Honor knows better. Your Honor knows better from the years you've been litigating with them, and we know better and the Debtor knows better from what the independent directors have been dealing with.

THE COURT: Let me ask you this, though. I came into the hearing with the impression we were just talking about postpetition pre-confirmation, or pre-effective date maybe I should say, was the expanse of time covered by exculpation. And Mr. Rukavina said no, no, no, go back, look at, I don't know, Subsection 4 of something. It is a post-confirmation concept. What is your response to that?

MR. POMERANTZ: I believe it's implementation. And, again, --

THE COURT: Implementation? Yes.

MR. POMERANTZ: -- I think Mr. Rukavina -- right. I think Mr. Rukavina and Mr. Taylor and Mr. Draper have done a great job trying to muddy the issues. They talk about our sleight of hand and how we're trying to do things that are way beyond the bankruptcy court's jurisdiction. We are not. I think they are trying -- what they have done throughout the case is throw up enough mud. And here's, here's the answer to that question, Your Honor. Implementation. Okay? We know

what implementation means. The plan says implementation is cancelation of the equity interests, creation of new general partners, restatement of the limited partners, establishment of the Claimant Trust and Litigation Sub-Trust. That's the implementation.

We are not trying to get exculpation for post-confirmation activity. Actually, my partner, Mr. Kharasch, in specifically addressing Mr. Rukavina's concern, said, look, if you have a problem with cause, if you have a problem, want to exercise your rights, we're only asking you to come back to the Court. We are not stopping you.

So the whole argument that the exculpation is really broad and is not really -- does not really cover just the plan, the approved plan, I think is a red herring. Implementation is implementation in the context of the plan.

And also Mr. Rukavina tries to argue that, well, it's administration, it's not really you acting any operation of business. I just don't think there's any support in the case law. Your Honor has overseen this case, overseen this Debtor's activities, overseen the independent directors' activities, overseen Strand's activities, overseen the employees' activities. And those activities have been (indecipherable) administration of the case. And his attempt to create a different category for, well, it's not administration, it's operation and so it doesn't apply, I just

think is wrong.

Your Honor made a couple of comments about what was *Pacific Lumber* doing. It was a policy decision. If there was a bright-line rule, then nobody would be entitled to exculpation. The very fact that the Fifth Circuit said that Committee members are different made -- makes it clear it was -- it was policy.

And Mr. Taylor's comments that, well, their creation of statute, Chapter 11 trustees and Committee members, that's not what basically the case said. If you look at the citation to touters in the case, it was we want people to volunteer and who are needed for the process. Committee members are needed for the process. We don't want to discourage them from coming in. And the only testimony you have on the independent directors is from Mr. Dubel, and he testified the importance of independent directors to modern-day Chapter 11 practice, the importance of exculpation, indemnification, and D&O insurance. And his testimony: uncontroverted. The Objectors could have brought in someone to say something different, but the only testimony before Your Honor is, if Your Honor does not approve exculpations in cases like this, you will not get independent directors and it will have an adverse effect on the Chapter 11 process.

So, while I appreciate all the Objectors trying to say bright line, trying to say *Pacific Lumber*, that is the gut

reaction, right? That's -- it's easy to say. But Your Honor will know better, from reading the cases, that's not what *Pacific Lumber* says. And for the several reasons I gave, it's the reason why *Pacific Lumber* does not govern the decision in this case.

Your Honor, Mr. Draper then started to talk about *Craig*. And everyone cites *Craig* as this, you know, limiting jurisdiction. Now, we acknowledge that *Craig* and the Fifth Circuit has a more limited post-confirmation jurisdiction approach than the other Circuits, but it's not nonexistent. And just because the Debtor is going out post-confirmation and acting does not mean that the conduct that they are engaging in is not -- and disputes that arise, doesn't come within the Court's jurisdiction. If that was the case, and I think Your Honor recognized this, in your case it was the *TXMS* case, while it's limited, more limited after confirmation, and I think you even, in the case -- or, in one case of yours, said that even after the case is closed there could be jurisdiction. So their just trying to argue *Craig* is just -- is just too much.

Going out of the gatekeeper, Mr. Draper tried to say we are *Barton*, and that's it, and *Barton* has its limitations, et cetera. First of all, with respect to *Barton*, it is not limited and doesn't include debtors-in-possession. We have cited cases in our materials where it has been applied to

debtors-in-possession.

So, you know, look, maybe this is a provision -- this is a proposition like many in bankruptcy, you could find a bankruptcy court to agree with a proposition, but there's cases all over the place on that. There's cases applying to post-confirmation. The trend has been to expand *Barton*. But the beauty of it is, Your Honor, you don't have to rely on *Barton*. *Barton* was one of our arguments. We gave *Barton* as, you know, somewhat of an analogy but somehow applying because in the -- because the independent directors were like the trustees.

But we recognize it may be going farther than *Barton* has previously gone. But the case law is clear, it is being extended. But we -- I gave you several provisions of the Bankruptcy Code that authorized you to enter a gatekeeper order. None of the Objectors objected on any of those grounds. They didn't say the statutes that I cited. And it wasn't only 105, I know bankruptcy practitioners love to cite 105, but there were three or four others that I mentioned, and they're in our brief. There's no case that they cited that said that there is no authority on the gatekeeper.

But what was the argument that was raised? And I think Mr. Rukavina raised it, saying, you know, look, I don't understand the argument of no jurisdiction, of jurisdiction for a gatekeeper but no jurisdiction for underlying cause of

action. Well, Mr. Rukavina should read and Your Honor should read, when you're considering the plan, the case, the *Villegas* case in the Fifth Circuit as it dealt with *Stern*. That was particularly a case. Does *Barton* -- is *Barton* impacted from *Stern*? By *Stern*? And *Stern*, we know, limits the bankruptcy court's jurisdiction. But, no, the Fifth Circuit said, in that case, no. Even though the bankruptcy court's jurisdiction is limited to hear the claim, there is nothing inconsistent with that and allowing the bankruptcy court to act as a gatekeeper.

So Mr. Rukavina's argument that, well, he'll present to you that there's cause and you'll find there's no cause and then he will be without a remedy by someone that had jurisdiction, that really sounds good but it just doesn't withstand analytic scrutiny. There is a distinction. They are glossing over the distinction. They don't like the distinction.

And why is that distinction -- and why is it important in this case? Again, we're not talking about garden-variety people who are just involved with a debtor and will get caught up in a bankruptcy. We narrowly tailored the gatekeeper to enjoined parties. Enjoined parties are the people before Your Honor, some of the people that have made the Debtor's life miserable over the last few months.

We have every interest and desire, as does the Committee,

to go out post-confirmation and monetize these assets. But we see the clouds on the horizon. We see all the pleadings that have been filed by the Objectors saying how, if there's no deal, there will be an unending amount of costs and appeals. It's, you know, the point, not too subtle. It wasn't lost on us.

Your Honor, going to Mr. Rukavina's arguments on Class 8 cram down, again, it's really a hard argument to understand, but first I want to make a point. He sort of mentioned -- and I'm not sure if he intends to preserve this on appeal, but it was not objected to and I'll ask for a ruling on it, Your Honor -- he said that there was inappropriate separate classification. That was not raised in any of the objections. We don't think it was properly before the Court. We understand there's a component of that in unfair discrimination in connection with a cram down, but there is no objection, there was no filed objection, to the separate classification of the deficiency claims and the Class 8 unsecured claims.

And if you look at the voting, you realize it wasn't done for gerrymandering, because if you put both claims together, both classes together, you would have had one class that voted yes.

So I don't believe the separate classification under the 1129 standards is appropriate for Your Honor to consider,

other than in connection with the cram down.

Now, Mr. Rukavina complains that the only way the convenience class was decided was by way of negotiation. Your Honor, how else do provisions like that get decided? And who was the negotiation between? It was between the Committee. And one of the benefits of a Committee process, and I represent a lot of Committees, you put people in a Committee that have diverse interests and they can come up with an appropriate result. And here you have that. You had one creditor who was a convenience creditor. You have three other creditors who would lose liquidity if convenience payments are made.

Do you think that UBS, Acis and Redeemer, do you think they had a desire just to pay people off? No. It was part of a collaborative process. So to say that there was no basis and no testimony on the appropriateness to have -- and how the convenience class was put together just would be wrong.

And with respect to the absolute priority rule, Your Honor, again, there's a missing link here, okay? These are contingent interests. They are property. No doubt they are property. But if I did not allow those creditors or those equity to have a contingent interest, the argument would have been made that the plan violates the absolute priority rule. And I said that in my argument. And why would it have violated the absolute priority rule? Because there's a

potential that creditors could get over a hundred cents on the dollar, plus interest. So it's a game of gotcha, right?

And why do they really care? Mr. Dugaboy said in his -- Mr. Draper said in his brief that Dugaboy cares because they may have wanted to buy the interest. Well, I'm sure they can go to Hunter Mountain, you know, Mr. Dondero's left hand can go to his right hand, and I'm sure he'd be happy to sell the contingent interests.

And with respect to the argument that Mr. Rukavina made about control, equity be in control, yeah, control is a right. No doubt. You've got -- if you're giving control to the post-confirmation Debtor, that could be a right and implicate the absolute priority rule. But what is the control here? Equity is not given any rights. Your Honor heard how the post-confirmation entity is structured. It's going to be Mr. Seery, overseen by an Oversight Board. So I really don't understand the concept of control. There just is no violation of the absolute priority rule.

Your Honor, Mr. Rukavina then took us to task for 2000 -- or, for not filing the 2015.3 statement. And if you take his argument to the logical conclusion -- well, we didn't file it, we didn't comply with that Rule, so we're not in compliance with the Bankruptcy Code, so we can never basically get our plan confirmed, right, because it's a violation and we didn't file and seek an extension.

That's just a preposterous argument, Your Honor. Mr. Seery poignantly told the Court, in the rush of things that were going on, it wasn't filed. Did Mr. Rukavina, before yesterday, having Mr. Dubel on the stand, did he ever ask where is our 2015.3 report? He probably didn't ask it because the answer -- when I told him the reason why it wasn't filed before January 9 was because I don't think Mr. Dondero wanted it filed, and I think that's why, as Mr. Seery testified, we were having a challenging time getting that information from the in-house -- in-house.

But, yes, should it have been filed? Yes. But if that is all they could point to through the course of the case that Mr. Seery or Mr. -- or the rest of the board did wrong, you know, I think that just demonstrates they did a fine job.

THE COURT: All right.

MR. POMERANTZ: Your Honor?

THE COURT: You've got four minutes left.

MR. POMERANTZ: Oh. Okay. Your Honor, going to Mr. Rukavina and the Strand argument that it's a nondebtor entity, as I explained in my argument, the Strand -- Strand needs to get exculpation or else that's a backdoor way to the Debtor. Forget about the independent directors, it's a backdoor way to the Debtor. Because Mr. Dondero will be in control. If Strand is sued for post-January 9th activities, he will assert an administrative claim. And one thing from *Pacific Lumber* is

clear, the Debtor is entitled to an exculpation as part of the injunction and the -- and the discharge.

Your Honor, Mr. Kharasch adequately addressed Mr. Rukavina's comments with the gatekeeper and the gatekeeper problem. We are not seeking to stop his clients, however related they may be, from exercising their rights. We are seeking a process that will not embroil the Debtor in litigation going forward. There is no problem with Your Honor acting as the gatekeeper to do so. And to the extent that they are bound by the January 9th order is not really an issue for today. That'll be an issue at the temporary -- the temporary -- at the preliminary injunction hearing.

I -- just one minute, Your Honor.

(Pause.)

MR. POMERANTZ: Your Honor, I think I covered a lot. If there's anything that any of the Objectors have mentioned that I failed to respond to, I'd be happy to answer questions Your Honor has.

THE COURT: All right. I guess there's, what, about two minutes left, if Mr. Clemente had anything.

Mr. Clemente, have you drifted off? I doubt it. But anything else from you, Mr. Clemente?

MR. TAYLOR: Your Honor, I show him talking -- this is Clay Taylor -- but no one's hearing him.

THE COURT: Okay. Mr. Clemente, we are not hearing

you, or I'm not seeing you. Make sure you're not on mute.

THE CLERK: He's not on mute, Judge.

THE COURT: He's not on mute? So we must have a bandwidth issue or something else.

All right. Mr. Clemente, still not hearing or seeing you. We'll give him another 30 seconds.

THE CLERK: He's coming up.

THE COURT: He's coming up? Ah, I see his name now.

MR. CLEMENTE: Your Honor, can you hear me?

THE COURT: I can hear you now.

MR. CLEMENTE: Okay, Your Honor. I don't know what happened. I just switched another camera, so you may not be able to see me, but can you hear me? I'll be very quick.

THE COURT: Okay. I can hear you.

MR. CLEMENTE: Can you hear me?

THE COURT: Yes.

MR. CLEMENTE: Okay. Thank you, Your Honor.

CLOSING ARGUMENT ON BEHALF OF THE UNSECURED CREDITORS' COMMITTEE

MR. CLEMENTE: Two things I want to say. First, just on Class 8, I think what's important, as my comments emphasized earlier, the structure of Class 8. We must remember what it is. It's really designed so that Class 8 holders receive their pro rata share of what's left after prior claims are paid. That's really what Class 8 creditors voted on. That's what the disclosure provided. They did not

vote on receiving a specific dollar or a specific recovery percentage.

And regarding the projections and estimates, Your Honor, we're talking about large litigation claims that were asserted and then settled. And given the nature of these assets, the values fluctuate. It's perfectly expected, Your Honor, and indeed disclosed, that there could be wide swings in the amount of claims. That does not lead to the conclusion that the plan needs to be resolicited.

And then, finally, Your Honor, again, Mr. Pomerantz adequately addressed all the points, as he did with his earlier presentation, so I'm not going to touch on them, but I did want to respond to one thing that Mr. Taylor said. And I, of course, agree with Mr. Pomerantz. The Committee believes there's no reason for you to delay a ruling and would in fact urge you to rule as soon as Your Honor is ready to rule. Confirmation of the plan, to the extent that there are conversations occurring, is not going to prevent those conversations from taking place, and they can continue after the plan is confirmed. There's simply nothing inherent in Your Honor confirming the plan that would prevent those conversations from occurring or would ultimately prevent parties from pivoting to a deal on the off-chance that one should be reached.

So I just wanted to emphasize, Your Honor, again, Your

Honor is going to rule when Your Honor rules, but the Committee would urge you to rule, and certainly the idea that there may or may not be discussions with Mr. Dondero should not at all in any way lead you to the conclusion that you shouldn't rule or that those conversations cannot continue after plan confirmation.

Thank you, Your Honor. Unless you have questions for me. And my apologies with the technology.

THE COURT: No problem. All right. Here's what I'm going to do. We can see you now, Mr. Clemente.

MR. CLEMENTE: Oh. I'm sorry, Your Honor. I switched to another camera again because it wasn't working. So, I apologize.

THE COURT: All right. I am going to call you back Monday. What day of the week will that be? Is that -- I mean, Monday, what date, I should say. That'll be the 8th, right? I am going to call you back Monday, this coming Monday, February 8th, at 9:30 Central time, and I am going to give you my ruling. It will be a detailed oral bench ruling. And I'm not going to leave you hanging on the edge of your seat over the next few days. I will tell you I'm inclined to confirm this plan. I think it meets all of the requirements of 1129 and 1123 and 1122.

The thing that I am going to spend some time thinking about between now and Monday morning is, no surprise, the

propriety of the exculpations, the propriety of the plan injunctions, the propriety of the gatekeeper provisions. I certainly am duty-bound to go back and reread *Pacific Lumber*, to go back and read *Thru, Inc.*, and to really think hard about what is happening here.

So, I'm pretty much down, I think, to just those three issues here. I'll talk to my law clerk. He may remind me of something else that I'm not articulating right now. But I think I'm just down to those issues. Okay? So it's not going to be a mystery very long. We will come back Monday, 9:30. My courtroom deputy will post on the docket the WebEx connection instructions as usual, and we'll go from there. Now, --

MR. POMERANTZ: Your Honor? Your Honor, this is Jeff Pomerantz. I have a question, and it's going to sound odd coming from someone on the West Coast, but I was wondering if you could do it earlier. And the only reason I say that is, the night before, I have to call in to see if I'm on jury duty on Monday, and it would be helpful to me -- I assume your reading the ruling would be within a half hour, 45 minutes. That if you started at 9:00, if that was possible, I could then get in a car, and if I'm actually called to jury duty, I can get there. Of course, I don't know if I will be called, but I'd hate to miss it.

THE COURT: Okay. Well, I don't want to make you

miss jury duty. Okay. We will do 9:00 o'clock.

MR. POMERANTZ: Thank you, Your Honor.

THE COURT: Hopefully no one will be, you know, hung over from watching the Super Bowl. Personally, I don't like Tom Brady, so I may be boycotting the Super Bowl. But maybe I'll watch it. Maybe I'll -- I'll watch it. So we'll do it 9:00 o'clock. So 9:00 o'clock next Monday.

Now, let's talk about next the currently-set hearing this Friday, February 5th, on the injunction and contempt of court motion as to Mr. Dondero and the other entities. I want to continue that, and here is what I am struggling with. The only day I have next week is Friday, the 12th, and I would rather not use that date because I'm pretty jam-packed Monday through Thursday, unless stuff has been settled that I haven't become aware of. So let me ask two things. First, when is the examiner motion set? I'm just wondering if there's a block of time we have coming up that --

MR. POMERANTZ: I believe that's March 2nd, Your Honor, so that's not for another month.

THE COURT: Oh, that's not for another month? All right.

Traci, are you on the line? I want to ask you --

THE CLERK: Yes, I am.

THE COURT: What about the following week? I know Monday, the 15th, is a federal holiday, but do we have

availability for -- I fear a full day is going to be needed for continuing this Friday setting.

THE CLERK: Wednesday, February 17th, is available.

THE COURT: We've got all day on Wednesday, February 17th?

THE CLERK: Yes.

THE COURT: All right. What about that? I think I heard Mr. Rukavina, I think he's the one who threw it out there -- or maybe it was Mr. Taylor; I'm getting mixed up -- the possibility that they would agree to a continuation of the preliminary injunction through -- well, I think you said through confirmation. Until the Court enters a confirmation order. And if I were to rule and approve confirmation Monday, then we're talking about an order that might be entered sooner than the 17th. So, do you all have any --

MR. RUKAVINA: Your Honor?

THE COURT: -- mutually-agreeable suggestions? If not, I'm just going to set it the 12th and I'll, you know, I'm killing myself, but I'll --

MR. TAYLOR: Your Honor?

MR. RUKAVINA: No, Your Honor. I think Your Honor is wise to do what's she's proposing. The agreed TRO against my clients expires on the 15th of February.

THE COURT: Uh-huh.

MR. RUKAVINA: We can easily move that back a week or

a sufficient amount of time so that there's no prejudice by going on the 17th, if that would be acceptable to the Debtor, and then we can just pick a date that's sufficiently after the PI hearing so that there's protection for everyone.

THE COURT: All right. Mr. Taylor, do you agree?

MR. TAYLOR: Yes, Your Honor. That is acceptable to Mr. Dondero.

THE COURT: Okay.

MR. TAYLOR: We can also push it back. Can you hear me?

THE COURT: Yes, I can. Uh-huh.

MR. TAYLOR: Okay.

THE COURT: All right.

MR. POMERANTZ: I just want to make -- I just want to make sure Mr. Morris, John Morris, is on, since he's taking the lead in those matters. I don't see his picture.

MR. MORRIS: I am, Jeff, and I appreciate that. I'm available, Your Honor. We were supposed to take the depositions of Mr. Leventon and Mr. Ellington tomorrow. I don't know if their counsel is on the phone. But given Your Honor's decision to adjourn the hearing from Friday, I would respectfully request at this time that counsel for those two individuals work with me to find a date next week in order to take those depositions.

THE COURT: All right. That's --

MS. DANDENEAU: Debra Dandeneau from --

THE COURT: Go ahead.

MS. DANDENEAU: This is Debra Dandeneau from Baker McKenzie. We agree, and we're happy to work with you on a rescheduled time.

MR. MORRIS: Thank you very much.

THE COURT: All right. All right. So, someone had filed a motion to continue Friday's hearing. I think it was your firm, Mr. Taylor. I already had a motion pending for a few days now. So I'm going to direct you to upload an order, Mr. Taylor, or someone at your firm, continuing the hearing to the 17th at 9:30, with language in there that your -- the injunction is continuing at least through that date. And, again, it's a continuance of the motion for contempt as well as the setting on the preliminary injunction. And, of course, run that by Mr. Morris and Mr. Rukavina.

MR. TAYLOR: Sure. Your Honor, this is -- I'm not handling the injunction hearing, or at least I don't think I am. But just so that I'm clear, should maybe the injunction continue through the next day or something, so depending on how Your Honor rules, there's not a rush to try and get an order to you?

MR. RUKAVINA: Your Honor, I think that Mr. Morris and I can work this out. Mr. Taylor is not involved in that adversary, that's true, but Mr. Morris and I will be able to

very quickly enter a proposed agreed order that extends that TRO for some period of time.

THE COURT: Okay.

MR. RUKAVINA: I'm not going to be difficult.

THE COURT: Okay. So we'll shift to you and Mr. Morris to be the scriveners. I just -- I suggested that because I thought there was a motion to link the order to that had been filed by Bonds Ellis. I may be --

MR. MORRIS: There was, Your Honor. There was an emergency motion to continue. We filed an opposition, and Your Honor has not yet ruled on that motion. You're exactly right.

THE COURT: Okay. All right.

MR. TAYLOR: Your Honor, this is Clay Taylor. I will make sure the right people confer with Davor and John, and we'll get -- we'll link it to that motion, because that makes sense, to have something to link it to.

THE COURT: Okay. Yes. And it can be a two-paragraph order, I would think.

All right. And then so I'm going to see you Monday at 9:00 o'clock Central time with the ruling.

Please, don't anyone file anymore paper. I threw that out earlier today. I've got all the paper I need. And I will see you Monday at 9:00 o'clock. Okay? We're adjourned.

MR. POMERANTZ: Thank you, Your Honor.

THE CLERK: All rise.

MR. MORRIS: Thank you, Your Honor.

(Proceedings concluded at 4:34 p.m.)

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CERTIFICATE

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/ Kathy Rehling **02/05/2021**

_____ _____

Kathy Rehling, CETD-444 Date
Certified Electronic Court Transcriber

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